CONSOLIDATED DIGEST OF CASE LAWS (JANUARY 2023 TO DECEMBER 2023)

The research team has digested section wise cases reported in the year 2023 in various reports, journals and itatonline.org. (ITR 450 to 459, Taxman 290 to 295, CTR 330 to 335, ITD 198 to 203, ITR(Trib) 101 to 108 , TTJ 221 to 226, BCAJ, The Chamber's Journal.) The cases have been digested section wise in the descending order; Supreme Court, High Courts and Tribunal. Digest also provides easy reference to circulars and articles.

Editorial Board.

S. 2(1A) : Agricultural Income-Denial of exemption and taxation of income under head "income from other sources", remanded back to the AO for furnish details filed before CIT(A) and admitted as additional evidence. [S. 10(1), 254(1)]
The Tribunal remanded back to the AO observing that, it was the plea of the assessee that most of the details could not be furnished during the assessment proceedings since the CBI, in relation to the matter of Stationery Point India Ltd., in which the assessee was a director, had seized the entire record maintained at the office premises, where the records pertaining to the assessee were also maintained. Tribunal held that the AO shall have the liberty to call for or summon any party from whom the assessee claimed to have purchased products in respect of its agricultural activity and to conduct a field visit to verify the claim of cultivation of agricultural products by the assessee.(AY. 2011-12 to 2014-15)
Shankar Namdeo Kashid v. Dy. CIT (2023) 105 ITR 16 (SN.)(Mum) (Trib)

S. 2(14)(iii) : Capital asset-Agricultural land-Capital gains-agricultural lands converted for non-agricultural purpose-lands did not fall within 8 kms from Municipality of Bangalore-Continued agricultural operation-Mere inclusion of land in Special Zone without any infrastructure development does not convert land into non-agricultural land-Not liable to capital gain tax-SLP of Revenue dismissed. [S. 45, Art. 136]Assessee got their agricultural lands converted for non-agricultural purpose. The assessee sold the part of the land and claimed the surplus as exempt. The Assessing Office assessed the surplus as capital gains. As per Certificate of Tahsildar and PWD Engineer's Certificate, distance between lands in question and BBMP was more than 8 kms. Tribunal had recorded that, though land was converted, assessee had continued agricultural operations which was evident from fact that income derived from agricultural operations declared by assessee were accepted by revenue. Even as per Notification issued by Central Government, lands did not fall within 8 kms from BBMP. The Tribunal held that the assessee was not liable to capital gains. Court also held that inclusion of lands in Special Zone cannot be a determining factor, hence, mere inclusion of land without any infrastructure development does not convert land into non-agricultural land. High Court affirmed the order of the Tribunal. SLP by the Revenue, was dismissed and the order of High Court affirmed. (AY. 2008-09)
CIT v. M.R. Anandaram (2023) 453 ITR 757/ 292 Taxman 548 (SC)
CIT v. M.R. Seetharaman (2023) 453 ITR 757/ 292 Taxman 548 (SC)
CIT v. M. R. Prabhavathy (2023) 295 Taxman 415 (SC)

Editorial : Refer, CIT v. M.R. Anandaram (HUF) (2022) 289 Taxman 121/ 216 DTR 432/ 328 CTR 90/ /(2023) 450 ITR 94 (Karn)(HC), order of High Court affirmed.

S. 2(14)(iii) : Capital asset-Agricultural land-Mango, orchard-land Situated beyond 8 kmS. of City corporation-Sale proceeds of land is entitled to exemption. [S. 45]
Held that in remand report by Assessing Officer clearly showed that said land continued to be mango orchard and there was no sign of any development. The land was situated beyond 8 Kms. limits of the City corporation. Sale proceeds of land were entitled to exemption (AY. 2011-12)
K.M. Bopanna (HUF) v. Dy. CIT (2023) 290 Taxman 298 (Karn)(HC)

S. 2(14)(iii) : Capital asset-Agricultural land-Vacant land-Sale to non agriculturist-Records maintained by State Government, certificate issued by Additional Tahsildar and Village Officer showed that the said land was an agricultural land and used for agricultural operations-Not capital asset-Not liable to be assessed as capital gainS. [S. 45]
Assessee sold a vacant land and claimed that land is an agricultural land used for agricultural operations and thus, it was out of scope of capital asset as defined under section 2(14) of the Act. Assessing Officer computed long-term capital gains on sale of land on ground that land sold by assessee was not an agricultural land as revenue records could not convincingly prove nature of land as agricultural land. CIT(A) confirmed the addition. On appeal the Tribunal held that as per evidences filed by assessee, it was very clear that land was an agricultural land when it was purchased in year 2006 and remained agricultural land when it was sold in year 2015. Assessee had also filed various evidences including copies of purchase and sale deeds of land, revenue records maintained by State Government, certificate issued by Additional Tahsildar and Village Officer, which clearly showed that impugned land was an agricultural land and used for agricultural operations-Whether therefore, when land had been classified as agricultural land, it would remain to be an agricultural land as long as assessee did not change use or put land for some other purpose.Simply because land was situated in a place where proper road connection exists and land was sold to non-agriculturist, it did not change characteristics of land, for purpose of taxation. Therefore, land sold by assessee is an agricultural land which was outside scope of definition of capital asset as defined under section 2(14) and thus, Assessing Officer was to be directed to delete additions made towards computation of capital gains on sale of land. (AY. 2015-16)
George Gee Varghese. v. ITO (2023) 202 ITD 339 (Chennai) (Trib.)

S. 2(14)(iii) : Capital asset-agricultural land-land situated within the jurisdiction of municipality limit-Chargeable to capital gain tax. [S. 2(14)(iii)(a), 2(14)(iii)(b), 45]
Tribunal held that the population of local municipality, and not village panchayat, is to be considered for S. 2(14)(iii). Accordingly, the assessee's land was covered by S. 2(14)(iii)(b) and not by S. 2(14)(iii)(a), hence the AO has rightly charged land to capital gain tax.(AY. 2014-15)
Precot Ltd. v ACIT (2023) 201 ITD 350/ 103 ITR 82 (SN) / 226 TTJ 481 (Chennnai)(Trib)

S. 2(14)(iii) : Capital asset-Agricultural land-Sale of agricultural land-Land revenue record shown as " Lagavadi Yogya Sherta " (Cultivable land)-Vegetables and minor millets grown-Land situated in Raigad District-No condition is prescribed under the provision of section 2(14)(iii) of the Act that active agricultural activity should be there

at the time of sale of the land-Only condition that it must be agricultural land-Consideration received is not liable to be taxed as capital gainS. [S. 45, 54B, 131]

The Assessee is a professional Architect. The Assessee had purchased agricultural lands from time to time. During the year the Assessee has sold all the agricultural lands to Mayank Land Pvt Ltd for a sale consideration of Rs. 5, 39 67,045 and claimed that the sale of agricultural land being not a capital asset, hence not liable to capital gains. The Assessing Officer denied the exemption on the ground that the aassessee has not carried on agricultural activities and income was not offered to tax as agricultural income in the income tax return. The Assessing Officer relied on the report of the Inspector who has stated in his report that the land is not capable of using for agricultural activity. On appeal the CIT(A) called for remand report and also examined the Assessee under section. 131 of the Act. After satisfying the contention of the Assessee, the Learned CIT(A)), allowed the claim of the Assessee treating the sale consideration is not liable to be taxed as capital gains. On appeal by the Revenue, there was difference of opinion amongst the Honourabe Members of the ITAT. The matter was referred to Third Member. The Honouarble Third Member considering the various case laws on the subject and explaining the law on the subject held that the land sold by the assessee as per the Land revenue record shown as " Lagavadi Yogya Sherta " (Cultivable land). The Assessee has grown the Vegetables and minor millets in the said land.The Land is situated in Raigad District. The Honourable Third Member held that no condition is prescribed under the provision of section 2(14)(iii) of the Act that, active agricultural activity should be there at the time of sale of the land. Only condition that it must be agricultural land. Accordingly consideration received is not liable to be taxed as capital gains. The Honourable Third Member agreed with the view of the Learned Accountant Member. Appeal of the Revenue was dismissed. (ITA No. 5147 / Mum /2017 dt. 21-5.2023) (AY. 2011-12)

ACIT v. Ashok W. Wesavkar (TM) (Mum)(Trib) www.itatonline.org

S. 2(15) : Charitable purpose-Education-Assessee organising drama programs for companies for fee-Companies selling tickets for profit-Element of profit involved in organising dramas-Assessee not eligible for exemption-Binding precedent-Supreme Court-Pendency of review petition-Does not affect its binding force. [S. 11, Art. 141]

The Hon'ble Tribunal held that the assessee was organising the drama for institutes and companies for fee. Such institutes and companies, in turn, sold tickets and passes on commercial basis. This showed that the assessee was organising the drama for the payer institutes and companies, who were then exploiting it commercially by selling tickets and earning revenue at their own end. Held that that the assessee earned huge margin on performance of the activity, which was in the nature of business, it ceased to fall within the domain of "charitable purpose", as the business receipts exceeded 20 percent of the total receipts. The assessee did not satisfy the condition of "advancement of any other object of general public utility" so as to be covered under section 2(15). Thus, the assessee was not eligible for exemption. Held that Pendency of a review petition does not dilute or alter in any manner the binding force of a judgment in terms of article 141 of the Constitution of India.(AY 2013-14)

Maharaja Shivchatrapati Pratishthan v ITO (E) (2023) 199 ITD 607 /101 ITR 84 (SN)/226 TTJ 218 (Pune) (Trib)

S. 2(22)(d) : Dividend-Any distribution to its share holders on the reduction of its share capital-Buy back of shares-Scheme of arrangement or compromise-There was a capital reduction and distribution out of accumulated profit of company to its shareholders, same would entail release of all or part of assets of a company on reduction of capital

and would attract provisions of section 2(22)(d), and consequently, assessee was liable for payment of DDT under section 115-O [S. 115O, 115QA, Companies Act 1956, S. 77, 77A 100 to104, 391, 292, 393]

Assessee-company had purchased its own shares from non-resident shareholders (CTS-USA, MRX-USA and CML-Mauritius) in accordance with scheme of arrangement & compromise' sanctioned by High Court as per provisions of sections 391-393 of Companies Act, 1956. Net effect of scheme was that post-sanction of scheme, entire shareholding of CTS-USA and MRX-USA, were purchased by assessee and shareholding percentage of CML-Mauritius was increased to 99.87 per cent of total paid up capital of assessee company. Assessing Officer held that consideration paid by assessee to its shareholders for purchase of its own shares was liable to tax as deemed dividend under section 2(22), and consequently, assessee was liable for payment of DDT under section 115-O. On appeal the Tribunal held that th from above restructuring of shareholding pattern of assessee-company, it was clear that there was an artificial shifting of shareholding base from USA to Mauritius solely with aim of claiming DTAA benefits as per India-Mauritius DTAA wherein capital gains on transfer of equity shares was not taxable in India, as per Indian Tax Laws. Further, assessee had paid a sum of certain amount from paid up share capital, a sum of certain amount from general reserves and balance of sum of certain amount from retained earnings-Therefore, it was clear that there was a capital reduction and distribution out of accumulated profit of company to its shareholders. Accordingly any distribution by a company of accumulated profits, if such distribution entails release by company to its shareholders all of or any part of asset of company would come within definition of 'dividend' under section 2(22). Consideration paid by assessee for purchase of its own shares in accordance with scheme sanctioned by High Court as per provisions of sections 391-393 of Companies Act, 1956, amounted to distribution of accumulated profits which entailed release of all or part of assets of a company on reduction of capital which attracted provisions of section 2(22)(d), and consequently, assessee was liable for payment of Dividend Distribution Tax under section 115-O. (AY. 2017-18)

Cognizant Technology Solutions India (P.) Ltd v.ACIT (2023) 108 ITR 492/ 154 taxmann.com 309 (Chennai)(Trib)

S. 2(22)(e) : Deemed dividend-Shareholder-Advances to share holder-Portuguese Civil Code-Companies Act-Concept of common ownership of assets by spouses under Portuguese Civil Code is not applicable-Order of Tribunal affirming the addition is affirmed. [S. 260A, Companies Act, 1956, 150, 152A, Portuguese Civil Code 1867]

Held that the “beneficial owner of shares”, “shareholder” and “member” in the company referred therein, shall only be the registered shareholder or registered beneficial owner of a share whose name is found in the register of members/shareholders of the company under section 150 or register of beneficial owner under section 152A of the Companies Act, 1956. Clearly, the provisions of the Portuguese Civil Code could not create any right in a spouse, who is not registered shareholder of the company, by operation of law, in relation to other shareholders of that company including her spouse, as the provisions of the Companies Act, 1956 exclusively regulate this relationship between the company and a shareholder. Under no circumstances would the provisions of the Civil Code confer or create an ownership right in the shares, of a company or give the right of voting, in proportion to the share in the capital of the company, to the other spouse. Accordingly, that the provisions of clause (e) of section 2(22) of the 1961 Act, would, therefore, fully apply to the husband, who would be the owner of the entire 33 per cent. share in each of the companies with the entire voting power (which was more than 20 per cent. in such company), to the exclusion of the wife. Consequently, the submission that the wife of the spouse, married under the provisions of

Portuguese Civil Code, by operation of law, would be entitled to the beneficial ownership of the shares of the husband was not tenable. Order of Tribunal is affirmed.(AY.2007-08, 2009-10 to 2012-13)
Dattaprasad Kamat v.ACIT (2023)458 ITR 201 /153 taxmann.com 702 (Bom)(HC)

S. 2(22)(e) : Deemed dividend-Unsecured loan from company-Partner of firm shareholder-Dividend is taxable in hands of Individual and not in the name of firm-Remand by the Tribunal is set aside. [S. 254(1)]
Allowing the appeal the Court held that the deemed dividend should be taxed in the hands of the individual director of the company and not in the hands of the assessee. In terms of section 2(22)(e) the deemed dividend was taxable in the hands of the shareholder and not the assessee which did not hold the shares in the company and the Tribunal had needlessly remanded the matter to the Commissioner (Appeals). The order of the Commissioner (Appeals) was affirmed.(AY.2011-12)
Mahimananda Mishra v.ACIT (2023)455 ITR 449/292 Taxman 49 (Orissa)(HC)

S. 2(22)(e) : Deemed dividend-Loans and advances-Withdrawal-Matter remanded to Tribunal. [S. 254(1), 260A]
Allowing the appeal of the Revenue the Court held that neither the order passed by the Assessing Officer nor the Commissioner (Appeals) nor the Tribunal clearly showed as to how much amount was advanced by the assessee and how much was repaid towards loan. In the absence of a specific finding regarding the repayment of loan, the assessee's claim that he had given loan to the company and received corresponding payment by the company towards repayment of loan had to be correctly determined. The order of the Tribunal was set aside. The matter was remanded to the Tribunal which was the final fact finding authority for reconsideration. (AY.2013-14)
PCIT v. P. M. A. Razak (2023)455 ITR 446 /153 taxmann.com 501 (Karn)(HC)

S. 2(22)(e) : Deemed dividend-Advances to directors-Joint owner of property-Advance to be adjusted for sale consideration-Matter remanded to the Tribunal for reconsideration.[S. 254 (1)]
Allowing the appeal of the assessee the Court held that the advance amount paid was to be adjusted towards sale consideration of property which was to be transferred to DTDC as and when sale deed was to be executed. Since ground floor of said premises was purchased by company, entire sum paid as advance could not be treated as dividend. Matter was remanded to Tribunal for reconsideration. (AY. 1995-96)
Rinku Chakraborthy (Smt.) v. Dy. CIT (2023) 292 Taxman 353 (Karn.)(HC)

S. 2(22)(e) : Deemed dividend-Advances from companies-Substantial shareholding-Lending money is the business-Advances cannot be assessed as deemed dividend.
Held that the assessee had received advances from two companies in which assessee had substantial shareholding, since both transactions with aforesaid concerns were business and commercial arrangements duly supported not only by agreements but also by conduct of parties involved, said advances could not be treated as deemed dividend under section 2(22).(AY. 2010-11 to 2012-13)
DCIT v. Forum Projects (P.) Ltd. (2023) 202 ITD 51 (Kol) (Trib.)

S. 2(24)(x) : Income-Any sum received by assessee from his employees-Addition to be made prior to apportionment of 60% as agricultural income and 40% as business

income. AO directed to recompute disallowance and only 40% amount to be added to business income. [S. 36(1)(va), 43B, R. 8]
Assessee engaged in the business of growing and manufacturing tea. As per Rule 8, income of the assessee is to be apportioned in the ratio 60:40 whereby 60% is treated as agricultural income and 40% is treated as business income. In light of the judgment of Hon'ble SC in the case of Checkmate Service P. Ltd. v. CIT [2022] 448 ITR 518 (SC), deduction allowable only on actual payment made within due date under respective Act. On appeal, it was held that disallowance of EPF has to be first added before computing 60:40. Thereby, only 40% of amount to be added in business income. (AY. 2019-20)
Hanuman Plantations Ltd. v ITO (2023)104 ITR 78 Kol) (Trib)

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S. 2(24)(xviii) : Income-Assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement-Subsidy was given to setting up a new biomass co-generation system or to promote existing systems and its benefits-Capital subsidy-Directed to reduce from cost of asst acquired out of said subsidy and allow depreciation. [S. 4, 32, 43 (1)
The assessee was engaged in the business of manufacturing and trading of petrochemical products. the assessee received a capital subsidy from the Government of India through Tamilnadu Energy Development Agency, and such subsidy was been given for the purpose of implementation of a program on 'Biomass Co-generation in Industries'. The subsidy could be utilised for three purposes, including deployment of biomass co-generation systems, promotion of decentralised/distributed power generation through the supply of surplus power to the grid and creation of awareness of the potential and benefits of alternative modes of energy generation in the industry. Revenue treated this receipt as a revenue receipt and made an addition to the income of the assessee. Upon an appeal to ITAT, it was held that the

subsidy received from the Government of India was directly linked to an investment made in setting up a new power plant and, hence, was to be considered as a capital receipt. However, it also directed the assessee to reduce the subsidy amount from the cost of the asset as per S. 43 (AY. 2013-14)
Manali Petrochemical Ltd. v. Dy. CIT (2023) 201 ITD 317 (Chennai)(Trib.)

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Manali Petrochemical Ltd. v. Dy. CIT (2023) 201 ITD 317 (Chennai)(Trib.)

S. 4 : Charge of income-tax-Capital or revenue-Sales tax exemption-Scheme requiring recipient of benefit to utilise substantial portion of subsidy for capital purposes-Capital receipt.[S. 28(i)]
Dismissing the SLP of the Revenue the Court held that Tribunal was right in holding that sales tax exemption granted by the Government of Gujarat was a capital receipt exempt from tax instead of a revenue receipt as held by the Assessing Officer. High Court affirmed the order of the Tribunal. (AY. 1999-2000, 2000-01)
CIT v. Gujarat Alkalies and Chemicals Ltd. (2023) 454 ITR 808 (SC)
Editorial : CIT v. Gujarat Alkalies and Chemicals Ltd (2015) 372 ITR 237 (Guj)(HC), affirmed. CIT v. Indian Petrochemicals Corporation Ltd (2017) 10 ITR-OL 275 (Guj)(HC), affirmed.

S. 4 : Charge of income-tax-Mutuality-Clubs-Interest earned on deposits-Income earned by clubs through its assets and resources, from persons who are not members of clubs-Income is not covered under principle of mutuality and would be liable to be taxed under provisions of Income-tax Act-Precedent-It is a settled position of law that only the ratio decidendi of a judgment is binding as a precedent. [S. 2(24), 56, Art. 141]
Held principle of mutuality would not apply to interest income earned on fixed deposits made by assessee clubs in banks irrespective whether banks are corporate members of club or not; thus, interest income earned on fixed deposits made in banks by appellant clubs had to be treated like any other income from other sources within meaning of section 2(24).If any income is earned by clubs through its assets and resources, from persons who are not members of clubs, such income would also not be covered under principle of mutuality and would be liable to be taxed under provisions of Income-tax Act. Followed, Bangalore Club

v.CIT (2013) 212 taxman 566/ 350 ITR 509 (SC). It is a settled position of law that only the ratio decidendi of a judgment is binding as a precedent. The legal principles guiding the decision in a case are the basis for a binding precedent for a subsequent case, apart from being a decision which binds the parties to the case. Therefore, while applying a decision to a later case, the court dealing with it has to carefully ascertain the principle laid down in the previous decision. A decision in a case takes its flavour from the facts of the case and the question of law involved and decided. However, a decision which is not express and is neither founded on any reason nor proceeds on a consideration of the issue cannot be deemed to be law declared, so as to have a binding effect as is contemplated under article 141.

Secundrabad Club etc. v. CIT (2023) 457 ITR 263 /295 Taxman 123 / 334 CTR 105 (SC)

Editorial : Secundrabad Club Ltd (2012) 340 ITR 121 (AP)(HC), Madras Gymkhan Club v. Dy.CIT (2010) 328 ITR 348 (Mad)(HC), Madras Cricket Club v.Dy.CIT (2011) 334 ITR 238 (Mad)(HC), Coimbatore Cosmopoltion Club v. ACIT (2010) 229 CTR 414 (Mad)(HC), affirmed.

S. 4 : Charge of income-tax-Transfer of rights-Value of any benefit or perquisites-Business income-Transfer is genuine-Set off credit-No evidence-Deletion of addition is valid.[S. 28(iv)]

High Court held that the Revenue failed to produce any cogent material to prove that the assessee received over and above the disclosed consideration of Rs. 2 crores. Order of Tribunal was affirmed. Dismissing the SLP of the Revenue the Court held that the High Court was right in holding that value of grant given by Dutch government as a subsidy for purchase of wind turbine generator, could not be brought to tax in hands of assessee under section 28(iv), when assessee did not purchase equipment and transferred its rights to DLWL. (AY. 2000-2001 to 2003-04)

CIT v. Tube Investments of India Ltd. (2023) 292 Taxman 465 (SC)

CIT v. Tube Investments of India (P.) Ltd. (2023) 292 Taxman 546 (SC)

Editorial : CIT v. Tube Investments of India Ltd (2022) 446 ITR 676/ 288 Taxman 524 (Mad)(HC)

S. 4 : Charge of income-tax-Entrance fees paid by Member-Capital receipt. [S. 28(i), Art. 136]

Dismissing the SLP of the Revenue, the Court held that the order of the High Court affirming the order of the Tribunal holding that the entrance fees paid by a member of the assessee-club constituted a capital receipt. (AY. 2009-10)

PCIT v. Royal Western India Turf Club Ltd. (2023)453 ITR 460 (SC)

Editorial : Order in CIT v. Royal Western India Turf Club Ltd(2023) 450 ITR 707 (Bom)(HC), affirmed

S. 4 : Charge of income-tax-Accrual of income-Interest-Interest credited to interest suspense account-Taxed in earlier year-Written off in the relevant year-Order of Tribunal is affirmed. [S. 145, 260A]

Held that where the Tribunal remanded the issue of disallowance of interest credited to the interest suspense account to the Assessing Officer with a direction to verify whether the interest credited to the interest suspense account had to be taxed in the year of credit or year of recovery. Order of Tribunal is affirmed.

PCIT v. State Bank of India (2023)459 ITR 497 /153 taxmann.com 389 (Bom)(HC)

Editorial : SLP dismissed,PCIT v. State Bank of India (2023) 294 Taxman 428 (SC)

S. 4 : Charge of income-tax-Diversion of income by overriding title-State Government undertaking entrusted with Government funds-The income never reached the assessee and was diverted at source by an overriding title-Addition is not valid.[S. 145]

The assessee under the directions of the Government kept a portion of unutilised funds in short-term bank deposits and interest earned from these deposits was transferred to the respective fund accounts of the Government. As a matter of fact, an office memorandum dated December 6, 2006 issued by the Joint Secretary, Ministry of Tourism, had directed the assessee to deposit funds released as instalments of Central Financial Assistance from the Ministry of Tourism in saving accounts or fixed deposits in banks and as a result a substantial amount accrued as interest on deposits made out of the Central Financial Assistance. It was also directed to ensure utilisation of interest earned on deposits for the execution and completion of the projects without deviation to any other head of expenditure. In case there was no scope to utilise the amount of interest for execution of the project, such amount could be returned to the Ministry of Tourism. Thus, the income never reached the assessee and was diverted at source by an overriding title. Order of Tribunal is affirmed. (AY.2012-13, 2014-15)

PCIT v. Jharkhand Tourism Development Corporation Ltd. (2023)458 ITR 497/150 taxmann.com 268 (Jharkhand)(HC)

S. 4 : Charge of income-tax-Capital-Income from trading of carbon credits-Capital receiptS. [S. 28(i)]

Assessee earned income from trading of carbon credits. The Assessing Officer treated same as revenue receipt. Tribunal held that assessee's income from trading of carbon credits should be in nature of capital receipts. Order of Tribunal is affirmed. (AY. 2014-15)

PCIT v. Gujarat Flurochemicals Ltd. (2023)459 ITR 242/ 295 Taxman 200 (Guj.)(HC)

S. 4 : Charge of income-tax-Interest-Short term deposits-Funds placed with banks during period of construction of project-Interest earned is capital in nature [S. 28(i), 145, 260A]

Dismissing the appeals of the Revenue the Court held that the interest received by the assessee from short-term deposits made out of unutilized capital subsidy, unutilized debt funds, and unutilized equity funds received as capital during the formative years till the project was completed was rightly claimed by the assessee as capital receipts. No question of law. (AY. 2011-12, 2014-15, 2015-16)

PCIT v. Brahmaputra Cracker and Polymer Ltd. (2023)454 ITR 202 (Gauhati)(HC)

S. 4 : Charge of income-tax-Subsidy from State Government-Incentive given to establish an industrial unit in a backward area-Capital receipt-No adjustment could be made to actual cost.[S. 32, 43 (1)]

Held that subsidy received by assessee was an incentive given to establish an industrial unit in a backward area and, thus, generate employment for local inhabitants, said subsidy which is a capital receipt. Subsidy was not intended as a payment to meet, directly or indirectly, a part of cost of assets, no adjustment could be made to actual cost while allowing the depreciation. 2009-10)

PCIT v. Nestle India Ltd. (2023) 457 ITR 216 / 294 Taxman 397 (Delhi)(HC)

S. 4 : Charge of income-tax-Sales tax subsidy-Issue attained finality in assessment year 2002-03-Order passed by Tribunal for relevant assessment year was not required to be given effect and order passed by Commissioner (Appeals) was restored. [S. 250]

The Assessing Officer held that sales tax subsidy is revenue receipt. Order of Assessing Officer was affirmed by the CIT(A). On appeal the Tribunal held that the receipt was capital receipt. On appeal the Court held that the assessee would not be entitled to subsidy and ordered assessee to refund amount. Assessee claimed deduction with respect to said refund for assessment year 2002-03. Court held that since issue attained finality and Tribunal granted it relief for assessment year 2002-03, order passed by Tribunal for relevant assessment year was not required to be given effect and order passed by Commissioner (Appeals) was restored. (AY. 1993-94)

CIT v. ITC Bhadrachalam Paper Boards Ltd. (2023) 293 Taxman 59 (Cal.)(HC)

S. 4 : Charge of income-tax-Club-Principle of mutuality-Non-permanent members, non-life members, temporary or honorary members, they are not entitled to vote or offer themselves as candidates for any elective office, or have no right of disposal over the surplus-Principle of mutuality is applicable. [S. 2(24)]

Allowing the appeal of the assesseee the Court held that even if there are non-permanent members, non-life members, temporary or honorary members who are not entitled to vote or offer themselves as candidates for any elective office or to the membership of the council or have no right of disposal over the surplus in case of dissolution of the club, the assessee would not cease to be governed by the principles of mutuality. Once the assessee is governed by the principles of mutuality, its income would not be construed to be an income within the meaning of the Act and liable to be taxed. The Court also held that the doctrine of mutuality, based on common law principles, is premised on the theory that a person cannot make a profit from himself. The essence of the principle of mutuality lies in the commonality of the contributors and the participants who are also the beneficiaries. The contributors to the common fund must be entitled to participate in the surplus and the participators in the surplus are contributors to the common fund. The principle postulates that what is returned is contributed by a member. Any surplus in the common fund shall therefore, not constitute income but will only be an increase in the common fund meant to meet sudden eventualities. (AY. 2001-02)

Jubilee Hills International Centre v. ITO (2023)457 ITR 70/ 291 Taxman 600 / 334 CTR 158 (Telangana) (HC)

S. 4 : Charge of income-tax-Capital or revenue-Race Club-Membership fees received from members-Capital receipt. [S. 28((i), 260A]

The assessee received membership fees from its members. The Assessing Officer disallowed the amount credited by the assessee as general reserve and claimed to be capital receipt treating it as revenue receipt. The Commissioner (Appeals) held it to be capital receipt. The Tribunal held that from the date of incorporation of the assessee in the year 1925 onwards, the entrance fees received from the members of the assessee were treated as capital in nature and majority of these orders were passed under section 143(3) of the Income-tax Act, 1961 and relying on the judgment in CIT v. Diners Business Services Pvt. Ltd (2003)) 263 ITR 1 (Bom)(HC) held that any sum paid by a member to acquire the rights of a club was a capital receipt. On appeal High Court affirmed the order of the Tribunal. (AY. 2009-10)

PCIT v. Royal Western India Turf Club Ltd. (2023) 450 ITR 707 (Bom)(HC)

Editorial : Affirmed, CIT v. Royal Western India Turf Club Ltd (2016) 52 ITR 235 (Mum)(Trib). SLP of Revenue dismissed, PCIT v. Royal Western India Turf Club Ltd. (2023)453 ITR 460 (SC)

S. 4 : Charge of income-tax-Capital or revenue Receipt-Preoperative expenditure pending capitalization-Interest Earned from fixed deposits of unutilised foreign external

commercial borrowing loans during period of construction-Interest capitalised in the books of account-Capital receipt.[S. 28(i), 56, 145]
During this year, the assessee could utilise only part of loan which was borrowed during period of construction.The assessee had temporarily made fixed deposits of the external commercial borrowing funds till utilisation for fixed asset or capital expenditure. The assessee had paid interest of Rs. 13.38 crores on the borrowings and had earned interest of Rs. 4.03 crores on the fixed deposits. The net interest of Rs. 9.35 crores was added to the preoperative expenditure pending capitalization. The Tribunal allowed the capitalisation of interest on fixed deposit receipts earned during the period of construction. On appeal the Court affirmed the order of Tribunal. (AY.2012-13), (2013-14)
PCIT v.Triumph Realty Pvt. Ltd. (No. 1) (2023) 450 ITR 271 (Delhi)(HC)
PCIT v.Triumph Realty Pvt. Ltd. (No 2) (2023) 450 ITR 274 (Delhi)(HC)

S. 4 : Charge of income-tax-Capital or revenue-Sales tax subsidy-Backward area-Capital receiptS.
Held that sales tax subsidy for setting up plant at backward area under specific scheme of Sate Governments which are meant to encourage growth in specified areas are capital receipts. (AY. 2005-06)
Ambuja Cement Ltd v Addl.CIT (2023) 223 TTJ 427 (Mum)(Trib)

S. 4 : Charge of income-tax-Joint venture of Central Government and State Government-Rail corporation-Metro rail project-Separate legal entity-Income derived from corporation from business activities could not be said to be income of Karnataka State Government under article 289-Capital or revenue receipts-Sales tax referred-Matter remanded to the Assessing Officer-Interest on fixed deposits-Interest earned from fixed deposits of surplus funds after commencement is taxable though it was received for expansion of the project. [Companies Act, 1956, Art. 12, 289]
Held that a business activity carried on by corporation is not business activity on the State Departmentally, or it is a business activity carried on by a State through its agents appointed in that behalf. The contention that the assessee is performing sovereign function of the Government and since the assesee cannot be considered to be part of Sate Government and since the private parties could also carry on the activity of Rail transport, the contention is rejected. Receipt was given by the State Government to meet the capital cost of the assesseee company. It is to be capital receipt and cannot be taxed. Issue is remitted to the Assessing Officer for fresh consideration. Interest earned from fixed deposits of surplus funds after commencement is taxable though it was received for expansion of the project. (AY. 2011-12 to 2015-16)
Bangalore Metro Rail Corporation Ltd v.Dy.CIT(2023) 223 TTJ 665 (Bang)(Trib)

S. 4 : Charge of income-tax-Capital or revenue-Duty credit entitlement under served from India Scheme-credit only be utilised by set off against duties arising on purchase of capital goods or spare-Capital in nature. [S. 28(i), 32, 43(1)]
Held that duty credit entitlement under served from India Scheme, credit only be utilised by set off against duties arising on purchase of capital goods or spare is capital in nature. Tribunal directed the Assessing Officer to collect utilization of SFIS credit in various capital assets acquired or procurement of spare parts by assessee i.e., custom/excise duty credit claimed by assessee 'assets wise' and direct him to reduce respective value from cost of assets recorded in depreciation schedule and also recalculate depreciation for year and accordingly, reassess taxable income of assessee as SFIS is not a taxable income. (AY. 2008-09, 2009-10)

Chennai Container Terminal P. Ltd v.Dy.CIT(2023) 108 ITR 147 / 154 taxmann.com 68 (Mum)(Trib)

S. 4 : Charge of income-tax-Principle of mutuality-Payments were reimbursement and exempt from taxation and covered by principle of mutuality.

Association set up for non-commercial objective. Members make contributions to meet operating and management expenses, proportionate to their revenues. Subscription fee, Technical subscription fee and other recoveries from its member firms located in India. Principle of mutuality is applicable.Payments were reimbursement and exempt from taxation and covered by principle of mutuality. (AY.2008-09 to 2011-12)

Dy. CIT (IT) v. Deloitte Touche Tohmastu (2023)108 ITR 577 (Delhi) (Trib)

S. 4 : Charge of income-tax-Interest received on deposits in Consolidated fund of India-Not chargeable to tax-Directed the Assessing Officer to verify the factS. [S. 143(3)]

Held that since the entire amounts received as interest were deposited in the Consolidated Fund of India, no addition was called for in the hands of the assessee. For the limited purpose of reconciliation of the interest earned and deposited in the Consolidated Fund of India, the assessee was to furnish the entire details of receipt of interest income earned, tax deducted at source and the total amounts deposited in Consolidated Fund of India, before the Assessing Officer in a consolidated statement, which the Assessing Officer shall verify and accord the benefit.(AY.2016-17 to 2018-19)

Dy. CIT v. National Highways And Infrastructure Development Corp India (2023)108 ITR 21 (SN)/2024) 204 ITR 1/ 227 TTJ 1 (UO) (Delhi)(Trib)

S. 4 : Charge of income-tax-Block of assets-Assessee reducing Block of assets from item and claimed depreciation on reduced Block of asset-Addition is not sustainable.[S. 2(11)]

Held that the fact was that the assessee had sold 20 garbage vans each for Rs. 5 lakhs in cash. During the remand proceedings, the assessee adduced evidence of confirmation of 20 buyers with their permanent account number details and a depreciation chArt. The Commissioner (Appeals) observed that the question of showing any income arising out of the sale of assets would arise only when the block of assets ceased to exist, which was not the case, that the assessee had reduced the block of assets from the item and claimed depreciation on the reduced block of assets. Therefore, the additions made by the Assessing Officer was not sustainable.(AY.2014-15)

ITO v. Umed Meghraj Jain (2023)108 ITR 58 (SN) (Ahd)(Trib)

S. 4 : Charge of income-tax-Principle of mutuality-Association formed to promote machine tool industry-Holding exhibitions for both members and non-members-Matter is remanded.[S. 11]

Held that principle of mutuality applies in respect of income earned from members in respect of holding seminars, exhibitions, and other activities not taxable. Matter remanded to Assessing Officer to examine allocation of income and expenditure amongst members and non-members and grant relief to assessee to extent of income earned from members on principle of mutuality. (AY.2014-15)

Dy. CIT v. Indian Machine Tools Manufacturers' Association (2023)107 ITR 20 (SN)(Mum) (Trib)

S. 4 : Charge of income-tax-Infrastructure projects-Nodal agency to implement certain schemes of State Government and unspent amount of grant given to assessee for

carrying on infrastructure projects remained property of Government and had to be returned to Government as and when demanded-Grant cannot be assessed as income-Interest earned on deposits of surplus Government grants received by assessee to carry on its business activity of development of infrastructure projects was to be treated as part of grants and same could not be treated as income of assessee. [S. 28(i), 145]

Assessee is engaged in building infrastructure projects. It received grants from Government for carrying out its infrastructure projects. Out of total grants received, certain amount had remained unutilized and assessee had shown this as current liability in its balance sheet. Assessing Officer held that this unutilised amount of grant was to be treated as income of assessee reason being that, sanction letter giving grants to assessee did not specify kind of activities to be carried out by assessee for utilization of grants received by it, and accordingly, he inferred from same that grants were in nature of receipts in hands of assessee. Tribunal held that since assessee is mere nodal agency to implement certain schemes of State Government and unspent grant remained property of Government and had to be returned to Government as and when demanded, there is no question of treating such grant as income of assessee. Assessee treated the interest as current liability in its books contending that interest partook character of grants itself and same was asset of State Government and not assessee. However, Assessing Officer disagreeing with assessee added same to income of assessee. Tribunal held that Memorandum and Articles of Association of assessee showed that surplus grants received by assessee from State Government had to be deposited as per direction of State Government and company could not make any profits out of same. Interest earned on surplus funds is not freely available to assessee so as to utilize it in manner it desired and make profits out of it.Therefore, interest earned on deposits made out of grant received by assessee from Government is also to be treated as part of grants, and same could not be treated as income of assessee (AY. 2010-11)

ACIT v. Gujarat State Road Development Corporation Ltd. (2023) 202 ITD 510 (Ahd) (Trib.)

S. 4 : Charge of income-tax-Diversion by overriding title-Transfer of interest receipts to tribal development fund (TDF) and watershed development fund (WDF) per scheme devised by Government of India for promotion of investments in agriculture and rural development-Not chargeable to tax.[S. 145]

Amounts transferred to TDF and WDF by the assessee acting as nodal or implementing agency as per the schemes framed by the Government of India for promotion of investments in agriculture and rural development stood diverted at source itself and did not belong to the assessee and, therefore, the said amounts cannot be brought to tax in the hands of the assessee. (AY.2010-11)

Dy. CIT v. National Bank for Agriculture & Rural Development [2023] 221 TTJ 25 / 221 DTR 369 (Mum.)(Trib.)

S. 4 : Charge of income-tax-Association of person-Purchase of property-Allotment letters issued to members-Members are real owners-Liable to be taxed in the hands of members and not in the hands of AOP. [S. 2(31)(v)]

Assessee, an association of persons (AOP), purchased a property. Assessee got permission to do construction on said property and later sold it. Members of assessee-AOP in their return, offered consideration received from sale of said property. Assessing Officer held that income from sale of property is taxable in hands of AOP. CIT (A) held that the members of assessee-AOP were real 'owners' of property and, accordingly, income from sale of property is liable to be taxed in hands of members and not in hands of AOP. Tribunal affirmed the order of the CIT(A). (AY. 2007-08)

ACIT v. Shree Ami Office Owner's Association. (2023) 199 ITD 670 (Ahd) (Trib.)

S. 4 : Charge of income-tax-Compulsory acquisition of non-agricultural land-Business income-Compensation is not taxable. [S. 28(i), Land Acquisition Act, 1894,S. 11, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act, S 24, 96]

Assessee received compensation by way of an award dated 5-8-2016 on account of acquisition of its non-agricultural land by Municipal Corporation under section 11 of Land Acquisition Act, 1894. Assessee claimed that in view of section 96 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) and CBDT Circular no. 36/2016, dated 25-10-2016, said compensation was exempt under Income-tax Act. Assessing Officer held that as award was passed under section 11 of Land Acquisition Act, provision of RFCTLARR Act would not apply and, accordingly, compensation received was to be treated as business income. CIT(A) allowed the claim. On appeal by Revenue the Tribunal held that since award dated 5-8-2016 was passed after Land Acquisition Act, 1894 stood repealed with effect from 1-1-2014 and replaced by RFCTLARR Act, provisions of RFCTLARR Act would apply. In view of section 96 of RFCTLARR Act and CBDT circular, the compensation is not be taxable. (AY. 2017-18)

DCIT v. Ganga DeveloperS. (2023) 198 ITD 435 (Mum) (Trib.)

S. 4 : Charge of income-tax-Subsidy-Technology up gradation fund scheme-Capital in nature though net off against the interest expenditure in the books of account is still capital in nature and therefore not taxable. [S. 28(i)]

The Assessee Company engaged in diverse business had received subsidy under the technology up gradation fund scheme, claimed subsidy as capital receipt. The department treated subsidy as revenue in nature. Held that the subsidy received by Assessee Company under the technology up-gradation fund scheme was a capital receipt. Interest subsidy received under the technology up-gradation fund scheme, though net off against the interest expenditure in the books of account is still capital in nature and therefore not taxable. (AY.2009-10)

Dy. CIT v. Grasim Industries Ltd. (2023) 201 ITD 641 (Mum)(Trib.)

S. 4 : Charge of income-tax-Capital or revenue receipt-Entertainment tax subsidy is capital receipt not exigible to tax. [S. 28(i)]

Where the object of the entertainment tax subsidy scheme of the State Government was to encourage development of multiple theatre complexes, such incentive is capital in nature and not a revenue receipt. Hence, subsidy amount received by the assessee on account of entertainment tax exemption is a capital receipt and not liable to be taxed. (AY 2012-13)

ACIT v. Inox Leisure Ltd. [2023] 105 ITR 3 (SN) (Ahd) (Trib)

S. 4 : Charge of income-tax-Alternative accommodation-Redevelopment agreement-Corpus monetary consideration-Rent for alternative accommodation-Hardship allowance-Capital receipt not taxable. [S. 56]

The Assessee is non-resident. The issue before the Income tax Appellate Tribunal was whether the addition on account of corpus fund for alternate accommodation received by the Assessee from the Developer / Builder is capital receipts. The Tribunal held that corpus monetary consideration, Rent for alternative accommodation, hardship allowance is capital receipt not taxable. Tribunal relied on Lawrence Rebello v. ITO (ITA No. 132 /Ind / 2020

order dt 29-9-2021, Deliah Raj Mansukhani (Smt) v. ITO (ITA N0/ 3526/ Mum/ 2017 dt 29-1-2021) (AY. 2015-16)
Narayan Devarajn Iyengar v. ITO (2023) 201 ITD 503/ 223 TTJ 905 (Mum)(Trib)

S. 4 : Charge of income-tax-Re development of building-Monthly rental compensation received from the builder for rent of alternative accommodation-Not utilised for paying alternative accommodation-Capital receipt-Not taxable as income from other sources-Delay of 1566 days in filing the appeal is condoned. [S. 56, 254(1)]
The Tribunal condoned the delay of 1566 days in filing of the appeal by the assessee. The assessee received from the builder monthly rent as compensation for providing alternative accommodation as the building has gone for redevelopment. The Assessing Officer treated the said amount as income from other sources. The addition was affirmed by the CIT(A). On appeal it was contended that the amount received by the builder is in the nature of hardship compensation and it is a capital receipt hence taxable. The Revenue argued that the aassessee has not utilised the rent received for his accommodation and he has lived with his parents. Tribunal deleted the addition on the ground that the receipt of compensation for hardship is in the nature of capital receipt hence not taxable. Followed Deliah Raj Mansukhani (Smt) v. ITO (ITA No. 3526/Mum/ 2017 dt. 29-1-2021 (ITA No. 2823/Mum/ 2022 dt. 3-4-2023)(AY. 2013-14)
Ajay Parasmal Kothari v. ITO (Mum)(Trib) www.itatonline.org

S. 4 : Charge of income-tax-Subsidy-Technology up gradation fund scheme-Capital in nature though net off against the interest expenditure in the books of account is still capital in nature and therefore not taxable. [S. 28(i)]
The Assessee Company engaged in diverse business had received subsidy under the technology up gradation fund scheme, claimed subsidy as capital receipt. The department treated subsidy as revenue in nature. Held that the subsidy received by Assessee Company under the technology up-gradation fund scheme was a capital receipt. Interest subsidy received under the technology up-gradation fund scheme, though net off against the interest expenditure in the books of account is still capital in nature and therefore not taxable. (AY.2009-10)
Dy. CIT v. Grasim Industries Ltd. (2023) 201 ITD 641 (Mum)(Trib.)

S. 4 : Charge of income-tax-Capital or revenue receipt-Entertainment tax subsidy is capital receipt not exigible to tax. [S. 28(i)]
Where the object of the entertainment tax subsidy scheme of the State Government was to encourage development of multiple theatre complexes, such incentive is capital in nature and not a revenue receipt. Hence, subsidy amount received by the assessee on account of entertainment tax exemption is a capital receipt and not liable to be taxed. (AY 2012-13)
ACIT v. Inox Leisure Ltd. [2023] 105 ITR 3 (Ahd) (Trib)

S. 5 : Scope of total income-Passing of entries in books of account not conclusive to determine income-Entries in books representing notional income-Notional income is not taxable.[S. 145]
It has been held by the Hon'ble Appellate Tribunal that it is a settled law that passing of entries in the books of account is not conclusive to determine the income under the provisions of the law. Whether an amount is to be considered as income or not is to be determined on the basis of the Income-tax law and not on the basis of the entries made in the books of account. No tax can be charged on an amount which is not earned. Since the necessary entries made in the books of account of the assessee represented only hypothetical or notional

income although it followed the mercantile system of accounting, the amounts as brought to tax by the AO did not represent the income of the assessee. (AY. 2016-17)
ACIT v. Gravita Metal Inc. [2023] 105 ITR 10 (Amritsar) (Trib)

S. 5 : Scope of total income-Passing of entries in books of account not conclusive to determine income-Entries in books representing notional income-Notional income is not taxable.[S. 145]
It has been held by the Hon'ble Appellate Tribunal that it is a settled law that passing of entries in the books of account is not conclusive to determine the income under the provisions of the law. Whether an amount is to be considered as income or not is to be determined on the basis of the Income-tax law and not on the basis of the entries made in the books of account. No tax can be charged on an amount which is not earned. Since the necessary entries made in the books of account of the assessee represented only hypothetical or notional income although it followed the mercantile system of accounting, the amounts as brought to tax by the AO did not represent the income of the assessee. (AY. 2016-17)
ACIT v. Gravita Metal Inc. [2023] 105 ITR 10(SN) (Amritsar) (Trib)

S. 6(1) : Residence in India-Individual-Taxed on source basis-The Assessing Officer held that the assessee did not get himself entitled to status of a resident of USA automatically on his going to USA-Income is held to be taxable in India-Tie breaker test failed-Directed to grant foreign tax credit-DTAA-India-USA [Art. 4]
Assessee, an individual, during assessment year 2016-17, was employed with Amazon India between 1-4-2015 and 17-10-2015 and was subsequently transferred to Amazon USA from 20-10-2015. Assessee filed return of income but did not include his income between period 17-10-2015 and 31-3-2016 and submitted that he was qualified to be a resident of two countries for relevant period and therefore, in terms of article 4 of DTAA, his residency broke to USA for said period entitling him to claim exemption in terms of Schedule EI of Act. Assessing Officer did not accept plea for reason that shift of assessee to USA was only a temporary one and company treated his position to be based at Bangalore. The Assessing Officer also held that the assessee did not get himself entitled to status of a resident of USA automatically on his going to USA. CIT(A) up held the order of the Assessing Officer. On appeal the Tribunal held that mere securing house on rent in USA was not conclusive fact that assessee had become USA resident moment he moved from India to USA. Election of assessee under IRC section 7701(b)(4) showed that in relevant year he did not meet SPT (Substantial Presence Test), which was mandatory to be considered as tax resident in USA. On facts, assessee could not claim exemption from taxes on income earned during relevant period of his stay in USA as he was taxed in USA not on residence basis but on basis of source. Tribunal directed the Assessing Officer to grant foreign tax credit. (AY. 2016-17)
Jenendra Kumar Jain v. ITO (IT) (2023) 199 ITD 376/ 225 TTJ 732 (Hyd) (Trib)

S. 6(1) : Residence in India-Individual-Tie-breaker-Revised return-Shifted to Singapore with his wife and daughters for employment and resided in Singapore and had habitual abode therein only-Treated as resident of Singapore-Addition is deleted-Revised return is directed to be accepted-DTAA-India-Singapore. [Art. 4]
Assessee offered income from employment in India and Singapore to tax in India. Assessee later revised return to restrict taxability to income earned from employment in India. Revenue on basis of tie-breaker questionnaire as per article 4 of India-Singapore DTAA, held that assessee was actually a resident of India for purpose of taxation of global income, thus, rejected revised return and concluded scrutiny assessment as per original return. CIT(A) up

held the order of the Assessing Officer. On appeal the Tribunal held that assessee held Singapore Driving License and Overseas Bank Account and also held tax residency certificate issued by Singapore authorities. Revenue had not doubted tax residency certificate issued by Singapore authorities for period under consideration and on basis of that, Income-tax had already been paid by assessee in Singapore. In tie-breaker questionnaire, assessee specifically mentioned to have apartment on rent in Singapore as well and shifted to Singapore with his wife and daughters for employment and resided in Singapore and had habitual abode therein only. Tie-breaker questionnaire is important in determining residency of a person, but cannot be exclusively taken into consideration as a base for deciding residency. Since during period under consideration assessee resided in Singapore and had habitual abode therein only, assessee was to be treated as resident of Singapore for relevant period under consideration. Consequently, addition was to be deleted and Assessing Officer was to be directed to accept revised return of income filed by assessee. (AY. 2015-16)
Sameer Malhotra. v. ACIT (2023) 199 ITD 317 (Delhi) (Trib.)

S. 6(3) : Residence in India-Company-Prima facie adjustments-Derivative Income claimed as exempt as per DTAA between India and Singapore-CIT(A) denied examining the issue on merits on the ground that proper medium of communication not used-Matter remanded for fresh adjudication on merits-DTAA-India-Singapore. [S. 250, Art. 13 (5)]
Held, that the matter was remanded to the CIT (A) for adjudication on the merits after ascertaining the facts and applicable position of law thereon. The CIT (A) shall also take appropriate measures to direct the Assessing Officer to carry out the rectification of the adjustments made in accordance with law giving reasonable opportunity of hearing to the assessee. (AY. 2019-20)
CanLah Investments Pte. Ltd. v.Asst. CIT CPC (2023)101 ITR 9 (SN.)(Delhi) (Trib)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Fixed PE, place of business-
-Online booking services-15% of income is attributable to Indian operations-Order of Tribunal is affirmed-Order of High Court reversed-DTAA-India-USA. [Art. 5, 7, Art. 136]
Assessee, a US based company, provided online airline booking services. The Assessing Officer held that assessee had PE in India and held that entire income generated in India would be taxable in India.Tribunal following previous judgment held that only 15 per cent of income was to be attributed to assessee's Indian operations. High Court held that since Assessing Officer had based his conclusions upon figures furnished by assessee, Tribunal ought not to have disturbed that order, without a finding. On appeal the Court held that since in assessee's own case Supreme Court held that Tribunal arrived at quantum of revenue accruing to assessee on basis of functions performed, assets used and risk undertaken (FAR analysis) and commission paid to agents in India was more than amount attributed to operations carried out in India, following the order of Tribunal did not call for interference. Followed Travelport L.P. USA v. CIT(IT) (2023) 149 taxmann.com 470/ 454 ITR 289 (SC)
Travelport L.P. USA v. CIT(IT) (2023) 295 Taxman 6 (SC)
Editorial : PCIT v. Travelport L.P. USA (2023) 154 taxmann.com 95 (Delhi)(HC), reversed.

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Commission-Payments were made by foreign counter parties-Not liable to be assessed in India-Article 7-OECD Model Convention-SLP dismissed. [Art. 136]

Assessee is engaged in business of mining and extraction of iron ore and processing, trading and exporting of same. Assessee appointed commission agents for facilitating its export business outside India. Payments were made to these commission agents on behalf of assessee directly by foreign counter-parties to whom exports were made by assessee. High Court held that since payment on account of commission to overseas agents was made by importers abroad, same was not liable to be assessed in India. SLP of Revenue is dismissed. (AY. 2012-13)

PCIT v. Shantilal Khushaldas & BroS. (P.) Ltd (2023) 295 Taxman 239 /2024) 461 ITR 361 (SC)

Editorial : PCIT v. Shantilal Khushaldas & Bros. (P.) Ltd (2019) 108 taxmann.com 549 / (2024) 470 ITR 73 (Bom)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Portion of income reasonably attributable to operations in India-Question of fact-Tribunal attributing 15 Per Cent. of Total revenues as income accruing or arising in India on basis of functions performed, assets used and risks-Commission paid to distribution agents more than twice this amount and taxed-No further income taxable in India-DTAA-India-USA.[S. 9(1)(i),n Explanation 1(a), Art. 7]

Dismissing the appeals the Court held that the approach of the High Court on the question of attribution was fair and reasonable. The Tribunal arrived at the quantum of revenue accruing to the assessee in respect of bookings in India attributable to activities carried out in India, on the basis of a "functions performed, assets used and risks" analysis undertaken. The commission paid to the distribution agents by the assessee was more than twice the amount of attribution and this had already been taxed. Therefore, the Tribunal rightly concluded that this extinguished the assessment. The question as to what proportion of profits arose or accrued in India is essentially one of fact. On this question of fact, the Tribunal had taken into account relevant factors. Therefore, the concurrent orders of the Tribunal and the High Court did not call for any interference. Article 7 of the Double Taxation Avoidance Agreement between India and the United States of America would not apply, as in the contracting State, the entire income derived by the assessee would be taxable. This is why section 9(1) confines the taxable income to that proportion which is attributable to the operations carried out in India. The court did not go into the question whether the computers placed in the premises of the travel agents and the nodes and leased lines formed a fixed place permanent establishment of the assessee in India, as it had affirmed the High Court on the first issue.(AY. 2003-04 to 2006-07)

DIT v. Travelport Inc. (2023)454 ITR 289/ 293 Taxman 439/ 332 CTR 480/ 225 CTR 201 (SC)

DIT v. Galieo International Inc (2023)454 ITR 289/ 293 Taxman 439/ 332 CTR 480/ 225 CTR 201 (SC)

Editorial : Decision of the Delhi High Court in DIT v. Galileo International Inc. (2011) 336 ITR 264 (Delhi)(HC), Galileo Netherland BV. V.ADIT (IT) 2014) 367 ITR 319 (Delhi)(HC), affirmed.

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Non-Resident- Use of copyright in the computer software-Software receipts-Not taxable in India-DTAA-India-USA.[S. 9(1)(vi), 195]

SLP dismissed against High Court order that payments received by assessee, US company, for grant of licence for use of software and further grant of rights for distribution of software products were not taxable as 'royalty' under provisions of Act and also under

India-US DTAA,with Liberty To Revive If Review Petition In Engineering Analysis Centre Of Excellence Pvt. Ltd. v. CIT [2021] 432 ITR 471 (SC).
CIT v. MOL Corporation (2023)454 ITR 32/ 293 Taxman 74 (SC)
Editorial : Refer, CIT (IT) v. Mol Corporation (2023)454 ITR 28 / 150 taxmann.com 117 (Delhi)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Supply of equipment-DTAA-India-Singapore-Issue settled under VSV Scheme-Appeals have became infructuous-Appeal is dismissed. [S. 92, Art.5, Art. 136]
Assessee had settled this dispute with department under VSV scheme, impugned appeal filed by revenue against order of High Court is dismissed as infructuous. (AY. 2000-01 to 2004-05)
ADIT (IT) v. Rolls Royce Singapore (P.) Ltd (2023) 332 CTR 733/152 taxmann.com 502 (SC)
Editorial : Rolls Royce Singapore (P.) Ltd v. ADIT (IT)(2011) 64 DTR 95 (Delhi)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Information, reservations, transaction processing and related services to airlines, travel agencies and other travel related entities by utilizing a CRS-Major part of business activities took place in USA-Tribunal is justified in holding that 15 per cent of assessee's profit was to be attributed to India-DTAA-India-USA.[Art. 5(4)(a)]
Dismissing the SLP of the Revenue the Court held that Information, reservations, transaction processing and related services to airlines, travel agencies and other travel related entities by utilizing a CRS-Major part of business activities took place in USA. Tribunal is justified in holding that 15 per cent of assessee's profit was to be attributed to India. Oder of High Court affirmed. Followed, DIT v Travelport L.P. USA (2023) 454 ITR 2899 / 149 taxmann.com 470 (SC) (AY. 2006-07)
CIT (IT) v. Travelport L.P. USA (2023) 294 Taxman 165 (SC)
Editorial : CIT (IT) v. Travelport L.P. USA (2023) 153 taxmann.com 175 (Delhi)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Fees for technical services-Indian company merely displaying and storing data of Indian subscribers-Services limited to provision of E-Commerce platform of advertising of products of services in India-Standard facility-Not fees for technical services-Not taxable in India-DTAA-India-Singapore [S. 9(1)(vii), Art.4]
Dismissing the appeal of the Revenue the Court held that the assessee could not be reckoned to have any kind of business connection in India in the form of the entity F. When F was not a dependent agent, in view of Explanation 2, read with proviso to section 9(1)(i), the income of the assessee could not be deemed to accrue or arise in India under section 9(1)(i). The services provided by the assessee to the Indian customers were merely of displaying and storing data of Indian subscribers and such services were limited to the provision of e-commerce platform for advertising of products or services in India. The arrangement between the assessee and the subscribers was for the provision of services for a standard facility and not for “rendering of any technical, managerial or consultancy services” as provided under section 9(1)(vii) read with Explanation 2. No technical services had been provided by the assessee to treat the subscription fees as in the nature of fees for technical services. No questions of law arose. Circular No. 7 of 2003 dated September 5, 2003 ([2003] 263 ITR (St.) 62) (AY.2011-12)
CIT (IT) v. Alibaba.Com Singapore E-Commerce Pvt. Ltd. (2023)459 ITR 508/152 taxmann.com 110 (Bom)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Threshold period of twelve months for activities in India not exceeded-Not taxable in India-DTAA-India-CypruS. [Art. 5(2)(g), 7]
Held, dismissing the appeals the Court held that no material had been placed before the court to rebut the Tribunal's finding that work had commenced at the site only on or after January 4, 2008. The preparatory work such as travelling for obtaining tender or contract could not be deemed to be the starting point of the contract. Consequently, there was no perversity in the findings of fact rendered by the Tribunal. (1996 218 ITR (St.) 70) (AY.2008-09, 2009-10)
CIT (IT) v. Bellsea Ltd. (2023)459 ITR 375 /147 taxmann.com 488 (Delhi)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Indian firm sub-contracting work to firm in Philippines-No permanent establishment in India-Not liable to deduct tax at source. DTAA-India-PhilippineS. [S. 195, Art. 7 (1), 23]
Held that the transactions between the assessee and IBM Philippines were in the course of its business and this had not been disputed by the Revenue and had no permanent establishment in India. Hence, the payments received by IBM Philippines would not be liable for deduction of tax at source under section 195 of the Act.(AY.2011-12)
DIT (IT) v. IBM India Pvt. Ltd. (2023)458 ITR 86 /149 taxmann.com 185 (Karn)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Fixed PE, place of business-Online booking services-15% of income is attributable to Indian operations-Order of Tribunal is reversed-DTAA-India-USA [S. 260A, Art. 5, 7,]

Assessee, a US based company, provided online airlines booking services through a computerized reservation system (CRS). Assessing Officer held that assessee had a PE in India and held that entire income generated in India would be taxable in India. Tribunal following previous judgments of High Court in case of DIT v. Galileo International Inc. (2009) 180 Taxman 35/ (2011)) 336 ITR 264 (Delhi) (HC) held that only 15 per cent of income was to be attributed to assessee's Indian operations. On appeal by Revenue High Court held that since the Assessing Officer had based his conclusions and determined income based upon figures furnished by assessee, Tribunal ought not to have disturbed said order. Order of the Tribunal is reversed.
PCIT v. Travelport L.P. USA (2023) 154 taxmann.com 95 (Delhi)(HC)
Editorial : Order of High Court is reversed, Travelport L.P. USA v. CIT(IT) (2023) 295 Taxman 6 (SC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Permanent establishment-Global net loss-DTAA-India-Finland. [Art. 7]
Dismissing the appeal of the Revenue the Court held that the Tribunal had returned a finding of fact, that the assessee recorded a "global net loss" in the relevant assessment year, and therefore no profit could have possibly been attributed to it. Hence, there could be no assessment. Order of Tribunal is affirmed. (AY.2008-09 to 2011-12, 2013-14 to 2015-16)
CIT (IT) v. Nokia Solutions and Networks Oy (2023) 455 ITR 157/147 taxmann.com 165 (Delhi)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Non-Resident- Use of copyright in the computer software-Software receipts-Not taxable in India-DTAA-India-USA.[S. 9(1)(vi), 90(2) 195, Art. 12]

Held, dismissing the appeals, that the issue of taxability of software receipts was no longer res integra since the Supreme Court in Engineering Analysis Centre Of Excellence Pvt. Ltd. v. CIT [2021] 432 ITR 471 (SC) had held that the amounts paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers, as consideration for the resale or use of the computer software through end-user licence agreements or distribution agreements, was not royalty under section 9(1)(vi) of the Income-tax Act, 1961 for the use of copyright in the computer software, and did not give rise to any income taxable in India, as a result of which the persons referred to in section 195 were not liable to deduct any tax thereunder. No question of law arose.
CIT (IT) v. Mol Corporation (2023)454 ITR 28 /150 taxmann.com 117 (Delhi)(HC)
Editorial : SLP of Revenue is dismissed, CIT v. MOL Corporation (2023)454 ITR 32/ 293 Taxman 74 (SC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Providing Jack up drilling Unit and platform Well operationS.-Number of days of deployment of rig was more than 183 days-No substantial question of law arose for consideration-DTAA-India-Singapore. [S. 44BB, 260A, Art. 5]
Assessee-company is engaged in the business of providing Jack up drilling unit and platform well operations services. It entered into agreement with GSPC for providing Jack up drilling unit and platform well operations. During the year under consideration, it earned contractual income from GSPC under the contract but it did not offer its income to tax on ground that drilling operations were undertaken only for 119 days which were less than 183 days and, thus, assessee could not be said to have a PE in India. The Assessing Officer held that drilling rig was brought into India in April and was undergoing necessary upgrades/repairs to meet the requirements of GSPL. Hence, rig being in India for more than 183 days, the requirements of treaty being in India for 183 days was satisfied and assessee was deemed to have a PE in India and activities carried out by assessee were covered under section 44BB. Commissioner (Appeals) decided issue in the favour of assessee.On appeal the Tribunal held that when rig had entered Indian waters and it was undergoing fabrication, upgradation and positioning for the drilling activity for GSPC, it can be said that the PE was there in connection with the exploration, exploitation or extraction of mineral oils, and thus, the day from which such fabrication, positioning and upgradation activity started, the assessee was having an establishment in connection with its services and activity for GSPC. and it was undergoing fabrication, upgradation and positioning for drilling activity to be included to compute period of 183 days to determine PE in India and since number of days of deployment of rig was more than 183 days, it could be said that PE was there in connection with exploration, exploitation or extraction of mineral oils. Affirmed the order of the Assessing Officer. High Court up held the order of the Tribunal. (AY. 2011-12)
Deep Drilling 1 Pte. Ltd v. Dy.CIT (IT) (2023) 294 Taxman 474 / 335 CTR 500(Bom)(HC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Information, reservations, transaction processing and related services to airlines, travel agencies and other travel related entities by utilizing a CRS-Major part of business activities took place in USA-Tribunal is justified in holding that 15 per cent of assessee's profit was to be attributed to India-DTAA-India-USA.[S. 260A, Art. 5(4)(a)]

Assessee is a tax resident of US and carried on business of providing information, reservations, transaction processing and related services for airlines, travel agencies and other travel related entities by utilizing a Computerized Reservation System (CRS). Assessing Officer held that assessee had a business connection in India under section 9(1)(i) and PE in terms of article 5(4)(a) of Indo-US Treaty and, accordingly, assessee's income generated in India was chargeable to tax under section 9(1)(i) of the Act. Tribunal held that computers at desk of travel agent in India were merely connected to extent that it could perform a booking function but were not capable of processing data of all airlines together at one place. No assets were deployed to India.Tribunal held that major part of business activities were carried out outside India in USA and only limited activities were attributable to India, 15 per cent of revenue was enough to attribute towards activities done in India.. No substantial question of law.(AY. 2006-07)

CIT(IT) v. Travelport L. P. USA (2023) 153 taxmann.com 175 (Delhi)(HC)

Editorial : SLP of Revenue dismissed, CIT (IT) v. Travelport L.P. USA (2023) 294 Taxman 165 (SC)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Commission-Not chargeable to tax in India-Not liable to deduct tax at source-Royalties/Fees for technical services-Computer software-Not liable to deduct tax at source-OECD Model Convention-Art. 12. [S. 9(1)(vi), 9(1)(vii), 195]

Assessee had made payment of commission to non-resident agents who were operating outside India and submitted that no part of agents' income arose in India as payments were remitted directly abroad. Held that since non-resident agents had rendered services in their respective countries and did not have either any business connection in India or any PE in India, commission paid to non-resident agents was not chargeable to tax in India at their hands and thus there was no necessity for assessee to withhold tax under section 195(1) on such payment. Held that the amounts paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers, as consideration for resale or use of computer software through end-user licence agreements or distribution agreements, was not royalty for use of copyright in computer software, and did not give rise to any income taxable in India, as a result of which persons referred to in section 195 were not liable to' deduct any tax at source under section 195 (AY. 2014-15)

Tata Consultancy Services Ltd. v. Dy. CIT (2023) 154 taxmann.com 372 / 226 TTJ 361 (Mum)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Payment of compensation to overseas cricket association-Premature termination of agreement-Payment is not chargeable to tax in the hands of South Africa Cricket Board-Cricket South Africa (CSA(-No obligation to deduct tax at source-No Permanent Establishment in India-DTAA-India-South Africa. [S. 5(2), 90, 115BBBA, 194 E, 195 Art.5(5), 7]

Held that payment of compensation to overseas cricket association for premature termination of agreement. Payment is not chargeable to tax in the hands of South Africa Cricket Board, Cricket South Africa (CSA). There is o obligation to deduct tax at source. Tribunal also held that there is nothing on record to show that the assess had the authority to conclude contracts in the name of CSA and has habitually exercised the said authority, therefore the assessee cannot be treated as PE of CSA in India as per provisions of Art.5(5)of the DTAA between India and South Africa. (AY. 2016-17)

The Board of Control for Cricket in India v. Dy.CIT(2023) 224 TTJ 137 / 150 taxmann.com 246 (Mum)(Trib)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Dependent agency permanent establishment-Remunerated by the assessee for commission activities on arm's length basis, no further attribution was required. The Assessing Officer was directed to delete the addition.

Indian subsidiary is not empowered to conclude contracts nor habitually maintain stock of inventory on non-resident assessee. Payment of commission to Indian company for co-ordinating delivery and payment for Indian customers not implying "Habitually Securing Orders". Indian company not economically dependent on assessee. Risk entirely with assessee. No adverse view be taken in previous years based on same agreement. Indian company not dependent agency permanent establishment of assessee. Remunerated by the assessee for commission activities on arm's length basis, no further attribution was required. The Assessing Officer was directed to delete the addition. *(*AY.2011-12)

Krones Aktiengesellschaft v. Dy. CIT (IT) (2023)108 ITR 705 (Delhi) (Trib)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Attribution of profit is without any basiS.

Held that the tax authorities below had fallen in error to hold the existence of a permanent establishment on the basis of the mere assumption that the assessee-company had a subsidiary in India without substantiating how the Indian subsidiary was privy to the purchases by other entities. Without examining the buyers no inference could be drawn about the role of Indian subsidiary. The tax authorities had not appreciated the evidence in the form of bill of lading showing delivery outside India and payments made outside India nor taken note of the fact that the export to Indian counterparts was on principal-to-principal basis. The assessee-company was not alleged to have any fixed place of business in the form of branch office or project office or liaison office or godown or warehouse or any other business site in India. No employee of the assessee-company was found working in India. Thus, to hold a permanent establishment on the basis of existence of a subsidiary of the assessee in India could not be sustained. There was no permanent establishment of the assessee in India and the consequential attribution of the profit had no basis.(AY.2013-14)

Mosdorfer Gmbh v.Asst. CIT (IT) (2023)108 ITR 44 (SN) (Delhi) (Trib)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Supervision-Frequent visit by employees-Fixed PE, place of business-Profit attribution had to be made in hands of assessee due to such fixed place Permanent Establishment-Subsidiary-No authority to conclude contracts or secure orders-Not a Dependent Agent PE of assessee in India-No transfer of right to use, either to assessee or its subsidiary (CIS) and no part of equipment was leased out to CIS, said payment did not constitute royalty under provisions of article 12 of India-USA DTAA-Reimbursement of expenses-Not taxable-DTAA-India-USA. [S. 9(1)(vi), Art. 5,7, 12]

Assessee, a US company had subsidiary in India (CIS). It claimed that it procured services from India and did not carry out any operations in India Lower authorities opined that assessee had a fixed place PE in India under article 5(1) of DTAA. On appeal the Tribunal held that since employees of assessee frequently visited premises of CIS to provide supervision, direction and control over operation of CIS and such employees had a fixed place of business at their disposal, it had fixed place PE in India and thus, profit attribution had to be made in hands of assessee due to such fixed place PE. Tribunal held that since CIS was not an agent of assessee and it did not have any authority to conclude contracts or secure orders on behalf of assessee, CIS could not be treated as a dependent agent PE of assessee in India. Assessing Officer held that this consideration was taxable as equipment royalty at rate of 10 per cent, since there was no transfer of right to use, either to assessee or its subsidiary

(CIS) and no part of equipment was leased out to CIS, said payment did not constitute royalty under provisions of article 12 of India-USA DTAA. Assessing Officer held that this consideration was taxable as equipment royalty at rate of 10 per cent. Tribunal held that since there was no transfer of right to use, either to assessee or to CIS and assessee had merely procured a service and provided same to CIS and no part of equipment was leased out to CIS, payment made by assessee was in nature of reimbursement of expenses and accordingly not taxable in hands of assessee. (AY. 2018-19, 2019-20)

Concentrix CVG Customer Management Group Inc. v. ACIT (IT) (2023) 203 ITD 110 (Delhi) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Capital gains-Sale of shares-Produced relevant documents to prove that entire affairs were controlled from Singapore, short-term capital gains were exempt from tax-DTAA-India-Singapore. [Art. 13]

Assessee, a tax resident of Singapore is engaged in investment holding and general wholesale trade.It is subsidiary company of company resident in BVI. During year, assessee earned short-term capital gain on account of sale of shares of a company and claimed same to be exempt as per article 13 of DTAA. Assessing Officer held that assessee's holding company was situated in BVI with which India had no DTAA and in order to avail treaty benefits entire investment and sale transactions had been routed through Singapore entity and thus, he held assessee to be ineligible for treaty benefits due to lack of commercial substance in Singapore. DRP held that Assessing Officer had not established that beneficial owner was BVI and directed him to verify whether affairs of assessee were controlled from outside Singapore. However, Assessing Officer had simply repeated what was said in draft assessment order. Assessing Officer had not made any efforts to make further verification but assessee had given enough evidences to prove that its entire affairs were not controlled from outside Singapore and it had duly reflected acquisition of shares in its balance sheet and its audited balance sheets were subjected to verification by Singapore tax authorities. Tribunal held that all documents proved that affairs of assessee-company were not controlled from outside Singapore and, consequently, short-term capital gain was not taxable in India. (AY. 2018-19)

Golden State Capital Pte. Ltd. v. DCIT (IT) (2023) 203 ITD 303 / 2024) 229 TTJ 290 (Delhi) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Non-resident trust-Investment in Indian Portfolio companies-Beneficial provisions of India-UAE DTAA-Not chargeable to tax in India either by virtue of application of section 61 read with section 63 or on an application of section 161 conjointly with provisions of article 24 of India-UAE DTAA. [S. 5, 61, 63, 115AD, 161, Art. 24]

Assessee, a non-resident, based in New Jersey, was a revocable and determinant trust settled by Abu Dhabi Investment Authority (ADIA) through deed of settlement with Equity Trust Jersey Ltd. (ETJL) acting as trustee of trust. It filed nil return.Trustee of assessee-trust (ETJL) and ADIA had filed an application before AAR claiming tax exemption on interest earned from investment made in non-convertible debenture of Indian portfolio companies as per article 24 of India-UAE DTAA. AAR held that said interest income was taxable in India as income from investment in debt portfolio in India had been received or accrued to assessee-trust in India and was taxable under section 5 read with section 9(1)(i). Assessing Officer in accordance with ruling of AAR taxed interest income as per section 115AD. On appeal the Tribunal held that assessee had filed a writ petitions before High Court challenging ruling pronounced by AAR wherein High Court had held that income earned by

assessee-trust was not chargeable to tax in India either by virtue of application of section 61 read with section 63 or an application of section 161, conjointly with provision of article 24 of India-UAE DTAA. Since addition to taxable income had proposed by Assessing Officer on basis of AAR ruling which had already been reversed by High Court, same is be set aside. (AY. 2016-17 to 2018-19)

Green Maiden A 2013 Trust. v. ACIT (IF) (2023) 203 ITD 599 (Mum) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Guarantee agreement with its subsidiaries-Other income-Taxed in contracting State-DTAA-India-Korea.[S. 56 Art. 23]

Assessee a foreign company incorporated in Korea is engaged in manufacture of automobile and auto parts. During relevant year, assessee entered into guarantee agreement with its subsidiaries DISPL and KMSIPL to provide guarantees to foreign banks to provide loan to above subsidiary companies. Pursuant to guarantee agreements, assessee received a sum from its subsidiaries after deducting TDS at rate of 10 per cent-According to Assessing Officer, guarantee fee received from Indian Subsidiaries namely DISPL and KMSIPL had accrued and arisen in India as income from other sources. Assessing Officer framed assessment order and brought abovementioned guarantee fee to tax. Tribunal held that it is a clear cut case of applicability of DTAA of Indo-Korea, whereby by virtue of article 23, other income had to be taxed in contracting state i.e., Korea and not India. Therefore, following article 23 of Indo-Korea DTAA which specifically provides that taxability of other income is only in contracting state and in instant case, contracting state is Korea and not India, taxability under Income-tax Act is not at all desirable. The addition made by Assessing Officer is to be deleted. (AY. 2014-15, 2015-16)

Daechang Seat Co. Ltd. v. DCIT (IT) (2023) 202 ITD 395/ 224 TTJ 409 (Chennai) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Capital gains-Shares/units, transfer-Capital gain on sale of equity shares that arose from conversion of cumulative convertible preference shares (CCPS)-CCPS were issued prior to 1-4-2017 but conversion took place after said date, capital gain derived from sale of such shares would not be covered under article 13(3A) or 13(3B) but under article 13(4) of India-Mauritius DTAA-Exempt from taxation-DTAA-India-MauritiuS. [S. 45, 90, Art. 13(3A), 13(3B)]

Assessee-Company, a tax resident of Mauritius, made investment in equity shares of two Indian companies 'S' and 'V' which were sold during assessment year 2019-20 and long-term capital gain earned was claimed as exempt income under article 13(4) of India-Mauritius DTAA.Subsequently, assessee filed revised return to offer LTCG from sale of equity share of 'V' under article 13(3B) of India-Mauritius DTAA.Assessing Officer denied benefit of DTAA to assessee and brought to tax, entire long-term capital gain under provisions of domestic law. DRP affirmed the order of the Assessing Officer. On appeal the Tribunal held that once tax resident of Mauritius is holding a valid TRC, Assessing Officer in India cannot go behind TRC to question residency of entity. Assessing Officer had committed a fundamental error in denying Treaty benefits to assessee inspite of fact that assessee was having a valid TRC. Further since assessee had acquired cumulative convertible preference shares (CCPS) of 'V' prior to 1-4-2017, capital gain derived from sale of such shares would not be covered under article 13(3A) or 13(3B) of Treaty but it would fall under article 13(4) of India-Mauritius DTAA, hence, would be exempt from taxation. (AY. 2019-20)

Sarva Capital LLC. v. ACIT (2023) 202 ITD 685 (Delhi)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Fees for technical services Tax resident of China-Indian subsidiary concluding contracts on behalf of assessee-Active involvement-Income attributable is taxable in India-Royalty-Income from software embedded in hardware equipment supplied to customers in India-Does not amount to royalty-Not taxable in India-DTAA-India-China [S. 5(2), 9(1)(i), Expln 2,9(1)(vi) Art.12]

Followed the assessee's appeals for the assessment years 2009-10 to 2016-17, on identical issues, were disposed of by the Tribunal in favour of the Revenue on the same grounds. Therefore, the issues were consistently decided against the assessee in the assessment years 2005-06 to 2016-17. As regards royalty following the order of the Tribunal for earlier years the addition is deleted. (AY.2018-19)

Huawei Technologies Co. Ltd. v.ACIT (2023)103 ITR 181 / 149 taxmann.com 77 Delhi) (Trib)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Contract for offshore manufacture and supply of equipment and parts to ONGC-DTAA-India-UK. [S. 44BB, Art. 5]

Assessee is a tax resident of UK and was awarded contract from ONGC along with four other consortium members whereby assessee was required to manufacture and supply subsea production system components. Assessing Officer treated contract as a composite contract and vide draft order held that consortium member was working on behalf of assessee-company which forms PE of assessee-company and further held that assessee is also involved in survey, installation and commissioning of equipment in India and since payments were not bifurcable, entire receipts of assessee were taxable in India under section 44BB of the Act. DRP is held that off shore supplies were also within the ambit of section 44BB of the Act. Held that burden of proving existence of PE had not been discharged by revenue and thus, there being no finding of PE in instant case, section 44BB would not apply. (AY. 2020-21)

Baker Hughes Energy Technologies UK Ltd. v. ACIT (IT) *(*2023) 201 ITD 509 (Delhi) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Permanent Establishment-Contract for offshore manufacture and supply of equipment and parts to ONGC-DTAA-India-UK.[S. 44BB, Art. 5]

Assessee is a tax resident of UK and was awarded contract from ONGC along with four other consortium members whereby assessee was required to manufacture and supply subsea production system components. Assessing Officer treated contract as a composite contract and vide draft order held that consortium member was working on behalf of assessee-company which forms PE of assessee-company and further held that assessee is also involved in survey, installation and commissioning of equipment in India and since payments were not bifurcable, entire receipts of assessee were taxable in India under section 44BB of the Act. DRP is held that off shore supplies were also within the ambit of section 44BB of the Act. Held that burden of proving existence of PE had not been discharged by revenue and thus, there being no finding of PE in instant case, section 44BB would not apply. (AY. 2020-21)

Baker Hughes Energy Technologies UK Ltd. v. ACIT (IT) *(*2023) 201 ITD 509 (Delhi) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Projection of business in India-Under control and guidance-Considered as fixed place PE of assessee company-Attribution of profit PE is taxable in India-DTAA-India-USA.[Art. 5]

Assessee is an American company engaged in providing IT enabled customer management services by utilizing its advanced information system capabilities, human resource management skills and industrial experience. It had a subsidiary in India by name 'CIS' which provided call centre/back office support service to its Indian customers CIS was practically projection of assessee's business in India and carried out its business under control and guidance of assessee without assuming any significant risk in relation to such functions-Employees of assessee frequently visited premises of CIS to provide supervision, direction and control over operations of CIS. The assessee had a fixed place PE in India under article 5(1) of DTAA. Attribution of profit PE is taxable in India. (AY. 2014-15)

ACIT v. Convergys Customer Management Group Inc. (2023) 200 ITD 23/102 ITR 21 (SN) (Delhi) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Limited Liability Partnership (LLP) and tax resident of UK-legal services to its clients worldwide-Entitled to benefit of article 4(1) of India-UK DTAA in respect of income generated from professional services rendered in India which had been taxed in UK-providing legal services to its client worldwide was not FTS-Employees of assessee, non-resident LLP, for rendering services in India stayed for only 17 days-Independent personnel services or independent activity-DTAA-India-UK.[S. 9(1)(vii), Art. 4(1), 5, 13, 15]

Held that the assessee, a Limited Liability Partnership (LLP) and tax resident of UK, provided legal services to its clients worldwide, it is entitled to benefit of article 4(1) of India-UK DTAA in respect of income generated from professional services rendered in India which had been taxed in UK in hands of its UK tax resident partners. Held that remuneration received by assessee for providing legal services was not FTS.Held that since employees of assessee for rendering services in India stayed for only 17 days and only when it amounts to 90 days or more, assessee was said to have a permanent establishment (PE) and, thus, assessee did not have a PE in India. Held that since article 15 of India-UK DTAA deals with only for taxability of independent personnel services or independent activity and not for other persons, assessee being a partnership firm LLP, amount of fee received by assessee would not be liable to be taxed in its hands under article 15 of India-UK (AY. 2016-17)

Linklaters LLP. v. ACIT *(*2023) 200 ITD 503 (Mum) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Operation of ships in international traffic-Shipping, Inland waterways transport-Freight income from shipping operation with India-Not taxable in India-DTAA-India-Singapore [S. 172(3), 172 (4), Art. 8, 24(1)]

Assessee, a company incorporated in Singapore, is engaged in business of operating ships in international traffic and earned freight income from such shipping operations with India. The Assessing Officer held that freight income was transferred to account of agents of assessee who were resident of Denmark. He t held that assessee would not qualify for tax exemption under article 8 in view of article 24 on ground that assessee was not subject to tax in Singapore as freight income was not directly remitted to Singapore and assessee was liable to be taxed in India. On appeal the Tribunal held that since shipping income was taxable in Singapore, on an arising basis when income was earned by shipping enterprise regardless of whether shipping income was received in or remitted to Singapore, clause (1) of article 24 of Indo-Singapore DTAA would not apply to deny benefit of article 8 of Indo-Singapore DTAA to said company. (AY. 2017-18)

Maersk Tankers Singapore Pte. Ltd v. ACIT IT (2023) 199 ITD 284 (Rajkot)(Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Permanent establishment-Reinsurance services to its Indian clients and earned reinsurance commission-Indian subsidiary would not be assessee's fixed place PE in India-Business profits earned by assessee on account of reinsurance business would have no tax implications in India-DTAA-India-Ireland. [Art.5]

Assessee, Ireland based company, was engaged in business of providing reinsurance services to its Indian clients. During relevant assessment year earned reinsurance commission from Indian clients and claimed that same was exempt from tax in India as it did not have any PE in India. Assessing Officer held that assessee-company had a group entity in India, RGA-India which provided key functions in insurance business and was performing all critical support activities including marketing support services, claims support services, data synopsis services and other administrative services accordingly held that RGA-India constituted fixed place PE of assessee-company and business profits arising out of reinsurance premium received from Indian clients would be taxable in India. DRP confirmed the order of the Assessing Officer. On appeal the Tribunal held that there was no particular premises in India which was at disposal of assessee. The core reinsurance activity of assumption of risk was done outside India. Since for support activities carried out by RGA-India were duly paid for by assessee and said position was also accepted in transfer pricing assessment, assessee did not have any fixed place PE and business profits earned by assessee on account of reinsurance business would have no tax implications in India. (AY. 2015-16)

RGA International Reinsurance Co. Ltd. v. CIT IT (2023) 198 ITD 240 /221 DTR 41/221 TTJ 10 (Mum) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Income from sale of tickets-Profit derived from operation of ships or aircraft in international traffic was liable to be taxed in contracting state in which place of effective management of enterprise was situated, which was Bhutan-DTAA-India-Bhutan [S. 90, Art. 8]

Assessee, an airline having establishment in Bhutan, claimed that income from sale of tickets to air passengers, insurance and fuel charges, etc. in India was taxable in Bhutan only. Assessing Officer held that as assessee was having permanent establishment in India, income was taxable in India.Commissioner (Appeals) had accepted contention of assessee that since its place of effective management (POEM) had been in Bhutan, as per article 8 of Indo Bhutan Double Taxation Avoidance Agreement its income from air transport was taxable in Bhutan only. Tribunal affirmed the order of CIT(A). (AY. 2017-18, 2018-19)

DCIT (IT) v. Tashi Air (P.) Ltd. (2023) 198 ITD 420 (Kol) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Interest paid-Head office-Cannot be brought to tax even though it is allowed as deduction in computing profits attributable to PE-DTAA-India-Korea.[Art. 7, 11]

Tribunal held that fiction of hypothetical independence as determined under article 7(2) was for limited purpose of profits attributable to PE and could not be used for computation of profits of assessee and, thus, interest paid by PE of assessee-bank to head office could not be brought to tax in hands of assessee-bank, even though it was allowed as deduction in computation of profits attributable to PE. (AY. 2012-13 to 2015-16)

Shinhan Bank. v. DCIT (IT) (2023) 198 ITD 453 (Mum) (Trib.)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-DRP cannot invoke provisions of section 44BB without any good and sufficient reason while departing from methodology adopted by revenue in respect of attribution of profit to

PE on receipts from offshore supply of equipment in past assessment years-DTAA-India-Singapore.[S. 44BB, Art. 6, 7]

The AO took a view that the activities of the assessee were integrally connected to the service and installing activity undertaken by the PE in India and hence, computed assessee's income under section 44BB. The DRP upheld view taken by the AO. The Tribunal held that Paragraph 6 of article 7 of DTAA provides that the profit attributable to the PE shall be determined by adopting the same method year on year basis unless there is good and sufficient reason to the contrary. Therefore, both the Assessing Officer and DRP having failed to provide any good and sufficient reason while departing from the methodology adopted by the department in respect of attribution of profit to the PE on receipts from offshore supply of equipment in past assessment years, the addition made by the AO invoking provisions of section 44BB was deleted.(AY. 2018-19)

Vetco Gray Pte. Ltd. v. DCIT (2023) 200 ITD 277/(2024) 109 ITR 521 (Delhi)(Trib)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-licensing of software in India through distributors to end users-Transaction between the assessee and its Indian PE was at arm's length therefore, no further attribution of profit could be made to dependent agent PE in India.[S. 92C]

Assessee is a non-resident corporate entity incorporated in Ireland and a tax resident of Ireland. The assessee is engaged in licensing of software in India through distributors to the end users. The issue which arose for consideration was that if the transaction between the assessee and its AE in India has been found to be at arm's length, whether further profit can be attributed to the dependent agent PE in India, if at all, such a PE exists in India. The ITAT observed that the TPO had proposed transfer pricing adjustment in relation to the international transactions between the assessee and its Indian AE, however, DRP has deleted such adjustment also no reference was made to the TPO, in the subsequent AY under consideration. This meant that the transaction between the assessee and its Indian AE was found to be at arm's length. It was further noted that in appeals for earlier AYs it was held that when the transaction between the assessee and its Indian AE is found to be at arm's length, therefore no further attribution of profit can be made to the dependent agent PE in India. It was held that the present appeal stands covered in favour of the assessee by the earlier decisions of the ITAT and accordingly the additions were deleted.(AY. 2018-19, 2019-20)

Adobe Systems Software Ireland Ltd v. ACIT (IT) (Delhi) 201 ITD 77(Delhi)(Trib)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-DRP cannot invoke provisions of section 44BB without any good and sufficient reason while departing from methodology adopted by revenue in respect of attribution of profit to PE on receipts from offshore supply of equipment in past assessment years-DTAA-India-Singapore.[S. 44BB, Art. 6, 7]

The AO took a view that the activities of the assessee were integrally connected to the service and installing activity undertaken by the PE in India and hence, computed assessee's income under section 44BB. The DRP upheld view taken by the AO. The Tribunal held that Paragraph 6 of article 7 of DTAA provides that the profit attributable to the PE shall be determined by adopting the same method year on year basis unless there is good and sufficient reason to the contrary. Therefore, both the Assessing Officer and DRP having failed to provide any good and sufficient reason while departing from the methodology adopted by the department in respect of attribution of profit to the PE on receipts from offshore supply of equipment in past assessment years, the addition made by the AO invoking provisions of section 44BB was deleted.(AY. 2018-19)

Vetco Gray Pte. Ltd. v.DCIT (2023) 200 ITD 277/(2024) 109 ITR 521 (Delhi)(Trib)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Sales transaction on principal-to-principal basis for resale-transaction between parties was accepted to be at arm's length by TPO-attribution of profit to PE in India could not be sustained-DTAA-India-Singapore.[Art. 5(8), 5(9)]

Assessee based at Singapore was engaged in the business of manufacturing and sale of scientific research instruments and peripheral. The products sold by assessee required maintenance, calibration, which involved servicing, repairing and supply of spares. Assessee earned revenue under Annual Maintenance Contract (AMC), however, did not offer any income in India. AO treated DHR Holding India Ltd. as assessee's PE in India and thus attributed profit to PE. Tribunal held that the assessee did not have a warehouse or sales outlet in India to constitute a fixed place PE in India. Thus, there cannot be any PE under Article 5(8) and 5(9) of DTAA between India-Singapore. Even more assuming that assessee had a PE in India, no further attribution of profit could be made to PE as transaction between assessee and DHR India was accepted to be at arm's length by TPO, both in case of assessee and DHR India. Accordingly, additions made by AO by way of attribution of profit to PE in India could not be sustained. ([ITA No.406 to 410/Del/2023, dated 17/03/2023) (AY. 2013-14 to 2016-17, 2020-21)

AB Sciex Pte Ltd v. ACIT (Delhi)(Trib) (UR)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-licensing of software in India through distributors to end users-Transaction between the assessee and its Indian PE was at arm's length therefore, no further attribution of profit could be made to dependent agent PE in India. [S. 92C]

Assessee is a non-resident corporate entity incorporated in Ireland and a tax resident of Ireland. The assessee is engaged in licensing of software in India through distributors to the end users. The issue which arose for consideration was that if the transaction between the assessee and its AE in India has been found to be at arm's length, whether further profit can be attributed to the dependent agent PE in India, if at all, such a PE exists in India. The ITAT observed that the TPO had proposed transfer pricing adjustment in relation to the international transactions between the assessee and its Indian AE, however, DRP has deleted such adjustment also no reference was made to the TPO, in the subsequent AY under consideration. This meant that the transaction between the assessee and its Indian AE was found to be at arm's length. It was further noted that in appeals for earlier AYs it was held that when the transaction between the assessee and its Indian AE is found to be at arm's length, therefore no further attribution of profit can be made to the dependent agent PE in India. It was held that the present appeal stands covered in favour of the assessee by the earlier decisions of the ITAT and accordingly the additions were deleted.(AY. 2018-19, 2019-20)

Adobe Systems Software Ireland Ltd v. ACIT (IT) (Delhi) 201 ITD 77(Delhi)(Trib)

S. 9(1)(i) : Income deemed to accrue or arise in India-Business connection-Not-For-Profit entity incorporated in U. S. A. and exempt from Federal Income-Tax-Providing consulting and education and teaching programs to Hospitals, Medical Schools, Healthcare Institutions under agreements with Medical Institutions-Receipts are not taxable in India-Reimbursement of expenses also not taxable-DTAA-India-USA.[S. 9(1)(vi), 9(1)(vii), Art. 7, 12(3) 12(4)(b), 12(5)(c)]

Held, allowing the appeal, that for the AYs 2006-07 to 2009-10, the Tribunal having taken a consistent view that similar receipts from hospitals and healthcare institutions were neither

royalty nor fees for included services, the addition on account of royalty or fees for included services in the hands of the assessee was not sustainable. Further, the income being in the nature of business profits was not taxable in India in the absence of a permanent establishment of the assessee in India. The reimbursement of expenses also could not be held to be taxable, since the main receipts had been held to be not taxable.(AY. 2011-12)
Partners Medical International Inc. v. Dy. CIT (IT) (2023)101 ITR 40) (SN) (Mum)(Trib)

S. 9(1)(ii) : Income deemed to accrue or arise in India-Dependent personal services-Tax Credit-Salaries-Bonus received from previous employer in Singapore-Taxable in India-Tax paid in Singapore would be eligible for tax credit-DTAA-India-Singapore. [S. 5(1), 90, Art. 15]
Assessee during year under consideration, was a resident individual and had filed his return of income for assessment year 2012-13 on 23-7-2012.He had declared income under head 'income from salary' and had claimed relief under section 90 in respect of bonus received in June 2011 from his previous employer in Singapore. Said bonus was included by assessee in his return of income and tax had been deducted by Indian employer also. When bonus was declared by Singapore Company on 1-6-2011 in that period assessee was a resident and therefore, in view of provisions of section 5(1), said bonus income would have to be construed as income accruing or arising to assessee in India and would be taxable for year under consideration in India. In terms of section 90, entire taxes paid by assessee in Singapore for very same salary and bonus component, would be eligible for tax credit for assessee. (AY. 2012-13)
Souvik Mukherjee. v. ITO (2023) 202 ITD 25/ 224 TTJ 549 (Delhi) (Trib.)

S. 9(1)(ii) : Income deemed to accrue or arise in India-Salaries-NRI-Independent personal services-Stayed more than 182 days outside India-Salary for period working outside India at Morocco had been subjected to tax as per income tax laws of Morocco-Eligible for benefit of DTAA-India-Morocco. [S. 5(2), 15, Art. 15(1)]
Assessee is a Non-Resident Indian and was an employee working with Dell. He had worked at assignment at Morocco and salary for doing this service was though received in India, but same was subjected to tax as per Income-tax laws of Morocco. Assessee had claimed benefit under DTAA on ground that salary income received by assessee was taxed as per taxation laws of Morocco and, therefore, assessee is eligible for benefit under article 15(1) of the Act. The Assessing Officer held that the assessee had not been able to prove that whether he was resident of Morocco therefore article 15(1) is not applicable. CIT(A) confirmed the order of the Assessing Officer. On appeal the Tribunal held that since assessee was NRI and stayed more than 182 days outside India, and had provided services as an employee outside India and salary for period working outside India at Morocco had been subjected to tax as per income tax laws of Morocco, assessee is eligible for DTAA benefit as per article 15(1), however the Assessing Officer is directed to examine the quarterly income tax statement of Morocco placed in another language. (AY. 2012-13)
Gautam Arora. v. DCIT (IT) (2023) 202 ITD 563 (Kol) (Trib.)
S. 9(1)(ii) : Income deemed to accrue or arise in India-Salaries-Short term assignment-Service rendered USA-Salaries received in India-Not taxable in India-DTAA-India-USA [S. 5(2)(a) 5(2)(b), 90 Art. 16]
Assessee an individual, was employee of Wells India was sent on short term assignment into Wells USA, his salary was taxable in India under provisions of Section 5(2)(a), but because of overriding effect of Section 90, Article 16 of DTAA would prevail over Section 5(2)(a) and, consequently, salary received by assessee in India for services rendered in USA was not

liable to tax in India. Followed: British Gas India (P) Ltd. [2006] 157 Taxman 225 / 287 ITR 462 (AAR) *(*AY. 2019-10)
Prasanth Nandanuru v. ITO (IT)(2023) 200 ITD 596/ 225 TTJ 110 (Hyd)(Trib)

S. 9(1)(ii) : Income deemed to accrue or arise in India-Salaries-Short term assignment-Service rendered USA-Salaries received in India-Not taxable in India-DTAA-India-USA [S. 5(2)(a) 5(2)(b), 90 Art. 16]
Assessee an individual, was employee of Wells India was sent on short term assignment into Wells USA, his salary was taxable in India under provisions of Section 5(2)(a), but because of overriding effect of Section 90, Article 16 of DTAA would prevail over Section 5(2)(a) and, consequently, salary received by assessee in India for services rendered in USA was not liable to tax in India. Followed: British Gas India (P) Ltd. [2006] 157 Taxman 225 / 287 ITR 462 (AAR) *(*AY. 2019-10)
Prasanth Nandanuru v. ITO (IT)(2023) 200 ITD 596/ 225 TTJ 110 (Hyd)(Trib)

S. 9(1)(iv) : Income deemed to accrue or arise in India-Dividend from JV registered as company under Omani Laws-Tax credit-Method of Eliminating of Double Taxation-Exempt from tax-DTAA-India-Oman.[S. 90, 263, Art. 8(bis), 11, 25,]
The assessee, a multi-state co-operative society registered in India, entered into a Joint Venture agreement with an Oman oil company to form OMIFCO. The assessee had a branch office in Oman and received dividend income from JV. The Assessing Officer allowed tax credit in respect of said dividend income aheld that dividend income is exempt from tax. Principal Commissioner passed the revision order relying on article 25(4) of DTAA and no tax credit was due to assessee under section 90 he also held that that article 25 would not be applicable as there was no tax payable on dividend in Oman and thus, assessee would not be covered under exemption. The ITAT quashed the revision order of the PCIT. On appeal the appeal of the Revenue was dismissed. On appeal by Revenue the Court held that assessee's establishment in Oman had been treated as PE from very inception. The assessee had invested in project by setting up a PE in Oman and as JV was registered as a separate company under Omani laws, it was aiding to promote economic development within Oman and achieve object of article 8(bis) of Omani Tax Laws. Since, article 8(bis) exempts dividend tax received by assessee from its PE in Oman and by virtue of article 25 of DTAA, assessee would be entitled to same tax treatment in India as it received in Oman. (AY.2010-11,2011-12)
PCIT v. Krishak Bharti Co-operative Ltd (2023) 458 ITR 190 / 295 Taxman 110 / 334 CTR 507 (SC)
Editorial : PCIT v. Krishak Bharti Co-operative Ltd (2017) 247 Taxman 317/395 ITR 572 (Delhi)(HC)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest Difference in Form 26AS-Profit and loss account-Interest on external commercial borrowing-DTAA-India-Nether land. [Art. 11(2)]
Assessee an Indian Branch of Bank in Netherlands, had an undisclosed TDS credit. Assessee submitted that difference in income appearing in Form 26AS vis-a-vis Profit & Loss Account and return of income could be brought to tax representing interest on external commercial borrowing in hands of assessee at tax rates prescribed under article 11. Assessing Officer brought to tax difference of undisclosed gross receipts as per Form 26AS and return of income as normal business receipts taxable at rate of 40 per cent as applicable to a foreign company instead of applying tax rate provided in article 11. CIT(A) deleted the addition. On appeal the Tribunal held that since nature of income that was sought to be taxed was interest

income, in view of article 11(2), Assessing Officer should bring to tax interest income at rate of 10 per cent. Appeal of Revenue is dismissed. (AY. 2012-13)
DCIT v. Cooperative Rabobank UA. (2023) 201 ITD 340 (Mum) (Trib.)

S. 9(1)(v) : Income deemed to accrue or arise in India-No permanent establishment-Interest paid by the Indian branch/PE to the head office/GE is not taxable in India-DTAA-India-France. [Art.7(3)]
The assessee is a commercial bank having its head office in France. AO noticed that the Indian branch office had paid interest to its head office/overseas branches as interest on the subordinated debt and further interest on Nostro overdrafts. The Indian branch office has claimed a deduction of such an amount citing the provisions of Article 7(3) of the India-France DTAA. The AO held that once the assessee has opted to be governed under the beneficial provisions of the India-France DTAA and it is accepted that the assessee has a PE in India under the DTAA, then the single entity approach of the Act gives way to the distinct and independent entity or separate entity approach under the DTAA. The AO therefore, held that the interest paid by the Indian branch office (i.e. PE) is chargeable in the hands of the head office in terms of the provisions of S. 9(1)(v)(c) of the Act by virtue of the Explanation to S. 9(1)(v)(c) of the Act, inserted by the Finance Act, 2015. The ITAT held that the coordinate bench of the Tribunal came to the conclusion that the interest paid by the Indian branch/PE to the head office/GE is not taxable in India independent of the decision of the Special Bench of the Tribunal in Sumitomo Mitsui Banking Corporation (supra). Thus, in view of the above, even though the submission of the Revenue that the amendment by Finance Act 2015, whereby Explanation to S. 9(1)(v) of the Act was inserted specifically to overcome the decision in Sumitomo Mitsui Banking Corporation (supra), is accepted, the same would still not lead to taxation of the interest paid to the head office/overseas branches under the provisions of the DTAA. (AY. 2017-18, 2018-19)
BNP Paribas v. ACIT (IT) (2023) 102 ITR 587 (Mum)(Trib)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Interest paid by Indian Branch of assessee-Japanese bank to its overseas head office was not chargeable to tax in India-DTAA-India-Japan [Art. 11]
Held that interest paid by Indian Branch of assessee-Japanese bank to its overseas head office was not chargeable to tax in India (AY. 2012-13 to 2017-18)
DCIT v. Mizuho Bank Ltd. (2023) 199 ITD 523 (Mum.)(Trib.)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Hypothetical independence of PE and the head office cannot be extended to computation of profit of the head office and the same is restricted only for computation of profit attributable to PE-DTAA-India-Switzerland.[Art. 7(2), 11]
The Assessee is a company incorporated in Switzerland and is a tax resident of Switzerland. The Assessee had a branch in India through which banking operations were undertaken. The Indian branch constituted a PE of Assessee in India, and its income was offered to tax under article 7 of the Indio-Swiss DTAA. During the relevant AY, the Indian branch of the Assessee paid certain interest towards loans procured from the Assessee's Singapore and London branch. The said interest was not offered to tax by the Singapore branch on the basis that Assessee and the branches are one and the same enterprise by relying on the decision of Sumitomo Mitsui Banking Corporation v. DDIT [2012] 145 TTJ 649 (Mum) (SB). The interest payment was however claimed as deduction while computing business profits of the Indian branch. Assessment proceedings were initiated against the Assessee. The AO was of the view that Explanation to section 9(1)(v) was specifically inserted to overcome the

decision in Sumitomo Mitsui (supra) and therefore the concept of payment to self is not an income is no longer valid. Accordingly, the AO classified such interest payments to be income attributable to the head office under article 7(2) of the DTAA and sought to tax the same in the hands of the Assessee.

The Hon'ble Tribunal followed the judgment of the coordinate bench of the Tribunal in the case of BNP Paribas v. ACIT [ITA No. 1076/Mum/2021 and 1670/Mum/2022] held that fiction of hypothetical independence of PE and the head office/overseas branch cannot be extended to the computation of profit of the head office/ overseas branch and the same is restricted only for computation of profit attributable to PE. It was also observed that though Explanation to section 9(1)(v) of the Act can be said to have overcome the findings in Sumitomo Mitsui (supra), however, the independent fiction and separate entity approach under article 7 of the DTAA is only for the purpose of determining profit attributable to the PE and not for the enterprise as a whole. (AY. 2016-17,2017-18)

Credit Suisse AG v. DCIT (2023) 103 ITR 38 (Trib) (SN) (Mum)(Trib)

S. 9(1)(v) : Income deemed to accrue or arise in India-Interest-Bank is a subsidiary of Netherlands company-Interest paid by Indian branch not taxable in hands of head office or overseas branches-Change of law with effect from 1-4-2016 not be applicable prior to ay 2016-17-DTAA-India-NetherlandS. [Art. 11(2).]

During the assessment proceedings, the assessee merely requested that the income be taxed at the rates prescribed under the DTAA of 10% in terms of Article 11(2) of the DTAA, but had not proved the beneficial ownership of the interest. Therefore, this issue was remanded to the file of the AO for adjudication de novo after examining the applicability of the DTAA. It was further held that the interest paid by the Indian branch was not taxable in the hands of the head office or overseas branches, all being the same entity. Further, the amendment to S. 9(1)(v) of the Act by the Finance Act, 2015 with effect from 01.04.2016, would not be applicable to the years under consideration and would only be applicable to the AY 2016-17 and onwards. Therefore, it was held that the CIT(A) was right in deleting the addition made by the AO in respect of interest received by head office and overseas branch from the assessee. (AY.2013-14 to 2015-16)

Dy. CIT (IT) v. Co-Operative Rabobank U. A. (2023) 152 taxmann.com 295 / 103 ITR 89 (SN)/223 TTJ 911 (Mum) (Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fess for technical services-Computer software-Non-resident computer software manufacturers/suppliers-, Consideration for resale/use of computer software through EULAs/distribution agreement-Not payment of royalty for use of copyright in computer software-Not taxable in India-DTAA-India-Netherland-SLP of Revenue is dismissed.[S. 9(1)(vii) Art. 12, Art. 136]

Dismissing the SLP of the Revenue the Court held that the amount paid by resident Indian end-user/distributors to non-resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreement, is not payment of royalty for use of copyright in computer software, and thus, same does not give rise to any income taxable in India. Followed, Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT(2021) 432 ITR 471(SC) (AY. 2014-15)

CIT (IT) NET APP B V (2023) 295 Taxman 216/ 460 ITR 154 (SC)

Editorial : CIT (IT) NET APP B V (2023) 155 taxmann.com 274 /(2024) 460 ITR 152 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Non-Resident-Payment for software not royalty-ExplnS. 5, 6-DTAA-India-China.[Art. 12(3)].
High Court following its order in the assessee's own case in CIT (IT) v. ZTE Corporation [2017] 392 ITR 80 (Delhi)(HC) held that payment for software did not constitute royalty, on a petition for special leave to appeal to the Supreme Court :The Supreme Court dismissed the petition holding the issue is covered against the Department by its ruling in Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT [2021] 432 ITR 471 (SC) but granted liberty to the Department to get the special leave petition revived if the review petition in Engineering Analysis Centre of Excellence Pvt. Ltd. (AY. 2013-14, 2015-16)
CIT (IT) v. ZTE Corporation (2023)454 ITR 541/ 293 Taxman 274 (SC)
Editorial : CIT (IT) v. ZTE Corporation (2021) 130 taxmann.com 128 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Receipts from sale of software licences to Indian customers-Software receipts is not taxable as royalty-SLP of Revenue is dismissed. [Art. 136]
Dismissing the SLP of the Revenue the Court held that if the review petition in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) 432 ITR 471 (SC) was allowed on the issue raised in the special leave petition, it would be open to the Department to get the special leave petitions revived.(AY. 1999-2000 to 2001-02)
DIT(IT) v.Microsoft Regional Sales PTE. Ltd. (2023)454 ITR 19/ 294 Taxman 519 (SC)
Editorial: DIT(IT) v.Microsoft Regional Sales PTE. Ltd. (2023)454 ITR 15 (Delhi) (HC), affirmed.

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Transferee authorised to use licensed software-No transfer of Copyright-Amount received is not royalty-DTAA-India-USA-SLP of Revenue dismissed. [S. 90(2) Art. 12, Art. 136]
Dismissing the appeals of the Revenue the Court held that the Tribunal was right in holding that payments for licensing of software products of the assessee in the territory of India by it were not taxable in India as royalty under section 9(1)(vi) read with article 12 of the Double Taxation Avoidance Agreement. Dismissing the SLP the Court held that in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) 432 ITR 471 (SC) was allowed on the issue raised in the special leave petition, it would be open to the Department to get the special leave petitions revived.*(*AY. 1997-98, 1999-2000)
CIT (IT) v. Microsoft Corporation (Ms Corp) (2023)453 ITR 746 / 293 Taxman 508 (SC)
Editorial : CIT (IT) v. Microsoft Corporation (Ms Corp) (2022) 445 ITR 6 / 288 Taxman 32 (Delhi)(HC), affirmed.

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Consideration for resale / use of computer software-Licensing of software products in India not taxable in India as royalty-Not payment of royalty for use of copy right in computer software-Not taxable in India-Precedent-Decision rendered following earlier decision-Subsequent overruling of earlier decision does not revive judgment passed earlier-DTAA-India-USA.[S. 9(1)(vii), Art. 12, Code of Civil Procedure, 1908, Order XLVII, Rule, 1]
Dismissing the appeal of the Revenue High Court held that amount paid by resident Indian end-user/distributors to non-resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreements, is not payment of royalty for use of copyright in computer software, and it does not give rise to any income taxable in India.SLP of revenue dismissed followed Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT (2021) 432 ITR 471 / 281 Taxman 19 (SC). Court also held

that once a judgment is passed by a court following another judgment and subsequently the latter judgment is overruled on a question of law, it cannot have an effect of reopening or reviving the former judgment passed following the overruled judgment nor can the same be reviewed. The Explanation to rule 1 of Order XLVII of the Code of Civil Procedure, 1908 is in the nature of an exception. In other words, the Explanation being in the nature of a proviso qualifies or is an exception to what is stated in rule 1 of Order XLVII of the Code, which states the grounds for seeking a review. Hence, the object and intendment of the Explanation must be given its full effect. (AY. 2006-07)

CIT (IT) v. Gracemac Corporation (2023) 456 ITR 135 / 294 Taxman 708(SC)

Editorial : CIT (IT) v. Gracemac Corporation (2023) 456 ITR 130 / 153 taxmann.com 680 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty Import of licensed software under exclusive licences-Not royalty-Not liable to deduct tax at source-Pendency of Review petition-SLP of Revenue was dismissed. [S. 195, 201 (1), Art. 136]

The High Court, following the ruling of the Supreme Court in Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) 432 ITR 471 (SC) answered in favour of the assessee the question whether the assessee was in default under section 201(1) of the Income-tax Act, 1961 for failure to deduct tax at source on payments in the nature of "royalty payments" as defined under Explanation 2 to section 9(1)(vi) of the Income-tax Act, 1961 and under the applicable Double Taxation Avoidance Agreements. SLP of Revenue dismissed giving liberty to the parties to rely upon the order if any passed in the review, disposed of the petition on the same terms leaving it open to the parties to initiate appropriate proceedings relying upon the order passed in review petition.(AY.2007-08 to 2012-13)

Add.CIT v. Wipro Ltd. (2023)453 ITR 799 (SC)

Editorial : Affirmed, Wipro Ltd v.Add.CIT (2023) 453 ITR 796 (Karn)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fess for technical services-Computer software-Non-resident computer software manufacturers/suppliers-, Consideration for resale/use of computer software through EULAs/distribution agreement-Not payment of royalty for use of copyright in computer software-Not taxable in India-DTAA-India-Netherland-Appeal of Revenue is dismissed. [S. 9(1)(vii), 260A, Art. 12]

Dismissing the appeal of the Revenue the Court held that the amount paid by resident Indian end-user/distributors to non-resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreement, is not payment of royalty for use of copyright in computer software, and thus, same does not give rise to any income taxable in India. Followed, Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT(2021) 432 ITR 471(SC) (AY. 2014-15)

CIT(IT) v. NET APP B V (2023) 155 taxmann.com 274 (2024) 460 ITR 152 (Delhi)(HC)

Editorial : CIT (IT) v.NET APP B V (2023) 295 Taxman 216/ 460 ITR 154 (SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Software receipts is not taxable as royalty.

Dismissing the appeals of the Revenue the Court held that the issue of taxability of software receipts was no longer res integra since the Supreme Court in Engineering Analysis Centre of Excellence Pvt. Ltd. v. CIT (2021) 432 ITR 471 (SC) had held that the amounts paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers, as consideration for the resale or use of the computer software through end-user licence agreements or distribution agreements, was not payment of royalty under

section 9(1)(vi) for the use of copyright in the computer software. No question of law arose.(AY. 1999-2000 to 2001-02)
DIT v. Microsoft Regional Sales PTE. Ltd. (2023)454 ITR 15 (Delhi)(HC)
Editorial : SLP of Revenue is dismissed, DIT(IT) v.Microsoft Regional Sales PTE. Ltd. (2023)454 ITR 19 (SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Payment to Non-Resident telecommunication operators for provision of bandwidth and inter-connectivity usage-Not royalty-Not liable to deduct tax at source-Expansion of definition of royalty inserted later-Assessee cannot be expected to foresee future amendment at time of payment in earlier assessment y ears-Jurisdiction-No jurisdiction to tax income arising from extra-territorial source-Double Taxation Avoidance Agreement-Sovereign document between two countries-Applicable in Proceedings under Section 201 of the Act-DTAA-India-Belgium-[S. 195]
Held that a Double Taxation Avoidance Agreement being a sovereign document between two countries the assessee was entitled to take the benefit thereunder. Therefore, the Tribunal's view that the Double Taxation Avoidance Agreement cannot be considered in proceedings under section 201 was untenable. Held that amendment to the provisions of section 9(1)(vi) inserting the Explanations would not result in amendment of the Double Taxation Avoidance Agreements. The Supreme Court had held that Explanation 4 to section 9(1)(vi) was not clarificatory of the position as on June 1, 1976 and had expanded that position to include what was stated therein by the Finance Act, 2012. Explanations 5 and 6 to section 9(1)(vi) had been inserted with effect from June 1, 1976. Held that the fact that for the subsequent years in the assessee's own case, the Tribunal had held that tax was not deductible under section 195 when payment was made to non-resident telecommunications operators was not refuted. Therefore, the payments made to non-resident telecommunications operators for providing inter-connectivity services and transfer of capacity in foreign countries was not chargeable to tax as royalty under section 9(1)(vi). Held that the Department had no jurisdiction to bring to tax income that arose from extra-territorial sources. The non-resident telecommunications operators to whom the assessee had made payments had no presence in India. The assessee's contract was with B, a Belgium entity which had made certain arrangement with OMT for utilisation of bandwidth and B had permitted the assessee to utilise a portion of the bandwidth which it had acquired from OMT. The facilities were situated outside India and the agreement was with B, a foreign entity which did not have any permanent establishment in India. Therefore, the assessee was not liable to deduct tax at source under section 195 on the payments made to the non-resident telecommunications operators. Held that Deputy Director (International Transaction) was not right in holding that for the assessment years 2013-14 to 2015-16 the withholding of tax liability could be levied at a higher rate at 20 per cent. Held that as a deductor the assessee was not liable for deduction of tax at source for payments made for the assessment years 2008-09 to 2012-13 on the basis of a subsequent amendment to section 9(1)(vi) whereby Explanations 5 and 6 were introduced.(AY.2008-09 to 2012-13, 2013-14 to 2015-16)
Vodafone Idea Ltd. v. Dy. DIT (IT) (2023)457 ITR 189 /152 taxmann.com 575 / 334 CTR 39 (Karn)(HC)
Editorial: Order in Vodafone Idea Ltd. v. Dy. DIT (IT)(2015) 44ITR 330(Bang)(Trib) is reversed.

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Software receipts-Tribunal was justified in deleting addition made in hands of assessee on account of

recharacterization of receipts from sale of software licenses to Indian customers/distributors as royalty-DTAA-India-USA.[S. 260A, Art. 12]
Dismissing the appeal of the Revenue, High Court held that the Tribunal was justified in deleting the addition made on account of recharacterization of receipts from sale of software licenses to Indian customers/distributors as royalty. Relied on Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT (2021) 432 ITR 471 / 281 Taxman 19 (SC). High Court affirmed the order of the Tribunal. (AY. 1999-2000 to 2001-02)
DIT(IT) v.Microsoft Regional Sales Corporation (2023) 151 taxmann.com 309 (Delhi)(HC)
Editorial : SLP of revenue dismissed, DIT (IT) Microsoft Regional Sales Corporation (2023) 294 Taxman 519 (SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Consideration for resale / use of computer software-Licensing of software products in India not taxable in India as royalty-Not payment of royalty for use of copy right in computer software-Not taxable in India-DTAA-India-USA. [S. 9(1)(vii), Art. 12]
Dismissing the appeal of the Revenue the Court held that the Tribunal is justified in holding that licensing of software products is not taxable in India as royalty in view of Article 12 of the DTAA between India and USA. No substantial question of law. (AY. 2006-07)
CIT (IT) v. Gracemac Corporation (No.2) (2023) 456 ITR 130 / 153 taxmann.com 680 (Delhi)(HC)
Editorial : SLP of Revenue dismissed, CIT (IT) v. Gracemac Corporation (2023) 294 Taxman 708(SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty- Non-Resident-Import of licensed software directly supplied by foreign vendor to end-user in India under exclusive licences-Not liable to deduct tax at source. [S. 195, 201(1)]
Allowing the appeal the Court held that the Tribunal was not correct in holding that the assessee was to be treated as an assessee-in-default under section 201(1) of the Act holding that payments made by the assessee were in the nature of "royalty payments" as defined under Explanation 2 to section 9(1)(vi) of the Act and under the applicable Double Taxation Avoidance Agreements.(AY. 2007-08 to 2012-13)
Wipro Ltd. v. Add. CIT (2023)453 ITR 796 (Karn)(HC)
Editorial : Add. CIT v. Wipro Ltd (2023) 453 ITR 799 (SC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Non-resident-Providing satellite transmission services is not royalty-Order of Tribunal affirmed-DTAA-India-Netherland. [S. 260A Art. 12]
Dismissing the appeal of the Revenue the Court held that receipts earned for providing satellite transmission services are not royalty. Followed order in DIT v. New Skies Satellite BV (2016) 238 Taxman 577/ 382 ITR 114/ 285 CTR 1 (Delhi) (AY. 2016-17)
CIT (IT) v. New Skies Satellite BV (2023) 290 Taxman 170 (Delhi)(HC)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-No right in the domain name-Income received from domain name registration is not royalty-Web hosting-Does not constitute royalty-Conducting conference for two days cannot be considered as fixed place of business and excluded from the definition of Permanent Establishment-DTAA-India-UAE. [S. 90, Art. 5(3), 7, 12]
Held that the assessee functions merely as the registrar in the domain name registration process and it has no right in the domain name of the customer / registration, therefore the

income received by the assessee from domain name registration is not royalty as defined in Art. 12(3) of the DTAA between India and UAE. Held that web hosting services to end customers who do not have any control over the equipment belong to the assesseee, therefore the income from web hosting services does not constitute royalty under the provisions of Art. 12(3) of the DTAA between India and UAE. Tribunal also held that conducting conference for two days cannot be considered as fixed place of business and excluded from the definition of Permanent Establishment. (AY. 2017-18, 2018-19)

FRD Solutions FZC v. Dy.CIT (2023) 222 TTJ 628 (Mum)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Videos on database-Learning platform on its website-Subscription revenue-Subscription fees could not be said to be for imparting of any information concerning industrial, commercial or scientific experience-Not taxable as royalty-DTAA-India-USA. [S. 9(1)(vii), Art. 12(3)(a)]

Assessee, a US company provided online technology learning platform on its website and earned subscription revenue. During relevant assessment year, assessee was in receipt of subscription charges from its Indian customers which were not offered to tax in return of income. Assessing Officer held that subscription revenue was towards granting of right to use any copyright of a literary, artistic or scientific work and, hence, same amounted to royalty. He also stated that subscription fee received by assessee was royalty for information concerning industrial, commercial or scientific experience as per article 12 of DTAA and held that subscription fees received by assessee amounted to royalty under article 12(3)(a) and under section 9(1)(vi). Tribunal held that since subscribers only get a non-exclusive, non-transferable license to view videos on website and neither any copyright in software/database, nor any copyright in videos was granted to subscribers and assessee reserved all intellectual property rights in its proprietary material, and subscribers did not make payment for availing knowledge of assessee's experience regarding its business of creating/maintaining database of videos, said subscription fees could not be said to be for imparting of any information concerning industrial, commercial or scientific experience of assessee and, thus, it did not amount to royalty. (AY. 2016-17)

Plural sight LLC v.Dy. CIT (2023) 156 taxmann.com 436 / 226 TTJ 433 (Bang)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Distributor of software-Not sale of copyright-Income from sale of software in India is not royalty-DTAA-India-Singapore [Art.12(3)]

Held that the assessee could not own copyright over the software. The products sold by the assessee were ready to use off the shelf or shrink wrapped software, which were nothing but copyrighted articles. The assessee was merely a trader of software. Thus, has no domain or ownership over the software. When the assessee did not have any ownership over the software sold, it could not have transferred the right to use the copyright in the software to the distributors or customers in India. Hence, this consideration received from sale of software could not be treated as royalty.(AY. 2017-18)

Dy. CIT v. Software One Pte. Ltd. (2023)105 ITR 605 / 155 taxmann.com 133 (Delhi) (Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Business of providing human resource background screening services including pre-employment background screening, employment, education, verification services and investigative due diligence services etc-Consideration cannot be treated as royalty-DTAA-India-UK.[S. 9(1)(vii), Art. 13 (4), Indian Copyright Act, 1957, S. 13(1)(a)]

Assessee, a tax resident of UK, was engaged in business of providing human resource background screening services including pre-employment background screening, employment, education, verification services and investigative due diligence services etc. Assessing Officer held that reports provided by assessee was protected by copyright laws and, therefore, use of such reports by clients would result in use of copyright chargeable to tax as royalty and consideration received by assessee was for allowing use of database to its clients and was chargeable to tax as royalty and services provided by assessee were ancillary to alleged 'royalties' and, therefore, also taxable as FTS. On appeal the Tribunal held that assessee is only providing a report summarising its findings with respect to background check undertaken by assessee which was primarily a factual data and could not per se qualify as literary or artistic or any other copyrightable work as such a report could not be copyrighted as it did not fulfil requirements enlisted under section 13(1)(a) of Indian Copyright Act, 1957. Therefore, consideration received by assessee under terms of its agreement with its client was purely towards provision of background screening services could not be regarded as royalties under provisions of article 13. (AY. 2019-20, 2020-21)

Hire Right Ltd. v. ACIT IT (2023) 203 ITD 508 /226 TTJ 450 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Roaming services to its customers while travelling to UK-roaming charges paid to assessee would not fall within scope and meaning of royalty-DTAA-India-UK [Art. 13]

Assessee a UK based company, telecommunication service provider was primarily engaged in business of providing mobile and broadband services in United Kingdom.Vodafone (VIL) a licensed telecommunication service provider in India entered into an agreement with assessee to provide roaming services to its customers travelling to UK.In lieu of said services VIL paid roaming charges to assessee. Assessee did not file return on ground that roaming services were rendered outside India i.e., in UK therefore, income did not accrue or arise in India. Assessing Officer held that roaming charges received by assessee were in nature of royalty on ground that it involved NTO (Non-resident Telecom Operator assessee) sharing information with RTO/VIL (Resident Telecom Operator) concerning working of, or use of process employed in telecom network of NTO to allow transit of telecom traffic generated by RTO/VIL and held that amount received by assessee was covered within scope of "process" and taxable as royalty under Act as well as India-UK DTAA. On appeal the Tribunal held that process employed for rendering roaming services was not at all exclusively held by assessee or VIL and it was a standard process employed by all telecom operators around world including VIL in India.Since VIL could not provide services to its customers who travelled to UK as it did not have any facility or infrastructure in UK and arrangement with assessee was made only to provide services to its customers whenever they travelled to UK, roaming charges would not fall within scope and meaning of royalty under section 9(1)(vi). (AY. 2014-15)

Telefonica UK Ltd. v. DCIT (2023) 203 ITD 171 (Mum) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Information technology support services and management services-Neither royalty nor FTS-Not taxable-DTAA-India-France. [S. 9(1)(vii), Art.13]

Assessee, a French company, provided information technology support services and management services to its group entity in India. Assessing Officer held that payment received by assessee from its AE was in terms of service agreement covered by definition of royalty as well as FTS under article 13(3) of India-France DTAA and amount was taxable as royalty under Explanation 2 to section 9(1)(vi). Tribunal held such income was neither

royalty nor FTS and, therefore, not taxable either within Act or within DTAA. Addition is deleted. (AY. 2020-21)
Faurecia Automotive HoldingS. v. ACIT (IT) (2023) 201 ITD 1 (Pune) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Permanent Establishment-Providing online decision support applications for Airline companies in India-Not business income-Taxable only on gross basis under Section 115A at 10 Per Cent.-Expenses not allowable-DTAA-India-USA. [S. 9(1)(i), 44DA]
Held, dismissing the appeals and cross-objections, that there was no reason to interfere with the reasoned order of the Commissioner (Appeals). The receipts of the assessee for the subsequent assessment years 2015-16, 2016-17 and 2017-18, had also been taxed at 10 per cent. which had been followed in terms of the decision of the Commissioner (Appeals) for the year under consideration. The order of the Commissioner (Appeals) was affirmed.(AY.2013-14, 2014-15)
Asst. CIT (IT) v. Sabre Decision Technologies International LLC (2023)102 ITR 610 (Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-No evidence was available to ascertain the precious nature of actual services rendered-Matter remanded to the Assessing Officer-DTAA-India-USA. [S. 90, Art. 12(4)]
Held that there is no evidence was available to ascertain the precious nature of actual services rendered. Accordingly the matter is remanded to the Assessing Officer to determine its taxability or otherwise as per Art. 12 of DTAA of the India and USA. (AY. 2016-17)
Nalco Co v. ACIT(2023) 222 TTJ 1002 (Pune) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Fees for included services-Conceptual design services-Make available-Designs, drawings, lay-outs etc. provided by assesse-Not assessable as fees for technical services-DTAA-India-USA [S. 115A, Art. 12(4)(b)]
Assessee, a tax resident of USA, provided designs, drawings, lay-outs etc. to an Indian company (AOP) for construction of Statue of Liberty. Assessing Officer held that assessee had rendered technical and architectural design services which made available technology, skill, experience etc. to AOP and, thus, fell within ambit of FIS under article 12(4)(b) of India-USA DTAA. DRP affirmed the order of the Assessing Officer. On appeal the Tribunal held that designs, drawings, lay-outs etc. provided to AOP were project specific which were specifically made for construction of 'Statue of Liberty' and therefore even if ownership of such drawings etc. was transferred to AOP same could not be utilised for any other purpose by AOP. Further, while providing architectural services neither any technical knowledge, skill, experience, know-how etc. was made available to AOP for utilising them in future independently nor any developed drawing or design had been provided by assessee which could be applied by AOP independently.On facts, conditions of article 12(4) of tax treaty were not fulfilled and, thus, said services would not fall within purview of Fees for included services (AY. 2014-15, 2015-16)
Michael Graves Design Group Inc v.Dy.CIT(2023)225 TTJ 224/ 154 taxmann.com 177 (Delhi)(Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Advisory services-Intergroup services-Make available-Human resources-Receipts is not taxable as Fees for technical services-DTAA-India-UK. [Art. 13]

Assessee, a UK based company, entered into intragroup agreement with its Indian AE and provided services pertaining to human resources, finance, legal and compliance and conducting of internal audit assurance work. Assessee received certain amount with respect to said services which was not offered to tax while filing return.Assessing Officer held that such receipts were for services in nature of FTS under article 13 and would be taxable in India. DRP affirmed the order of the Assessing Officer. On appeal the Tribunal held that from service agreement that services rendered by assessee were in nature of advisory services and assessee's role was to assist AEs in making correct decision on aspects specifically referred to in agreement.Since such rendition of services did not result in transfer of technical knowledge, know-how, skill etc. to Indian AE, make available condition provided under article 13(4)(c) remained non-compliant and thus, receipts would not fall within definition of FTS as provided under article 13(4) of India-UK DTAA. (AY. 2018-19, 2019-20)
N. M. Rothchild & Sons Ltd. v. Dy. CIT (2023) 225 TTJ 983 (Delhi)(Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Income from software sales and support services-Addition is deleted-DTAA-India-Singapore. [Art. 12(4)]
Hel that no material was found brought on record by the Assessing Officer to establish that during the rendition of services, the assessee had made available technical know-how, skill, etc., to the service recipient so as to enable him to apply technical knowledge, know-how, skill, etc., in the future independently, without the aid and assistance of the assessee. Moreover, in the final assessment orders, the Assessing Officer had not made any discussion under article 12(4) of the Double Taxation Avoidance Agreement between India and Singapore to tax a part of the receipts. Addition is deleted.(AY.2018-19, 2019-20)
Software One Pte. Ltd. v. Asst. CIT (IT) (2023) 108 ITR 464 (Delhi)(Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Not adding any value to laboratory report but acting as medium to procure report from laboratory having higher credibility-Not fees for technical services.
Held that the authorities below had completely failed to take into consideration the relevant pieces of evidence filed as additional evidence. The Dispute Resolution Panel had fallen in error in considering the services to be in consultancy and professional services to the Indian associates. In spite of accepting that it was a reimbursement expense the Dispute Resolution Panel considered it to be substantially fees for technical services in nature. The assessee had not added any value to the laboratory report. The assessee had not played any role except for being a medium to procure a report from a laboratory having higher credibility. This could not at all be in the nature of fees for technical services, as erroneously held by the tax authorities..(AY.2013-14)

Mosdorfer Gmbh v.Asst. CIT (IT) (2023)108 ITR 44 (SN)(Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Non-resident-Fees for technical services-Hotel management support services-Services of business strategy, marketing and sales cannot result in fees for technical services-No Permanent Establishment in India-Not royalty-Additions are deleted-DTAA-India-Singapore. [S. 9(1)(i), 9(1)(vi), Art. 12(3)(a), 12 (4)(a)]
Held that the assessee, not being the owner of the trademark and having received the payment therefor under a distinct and separate licence agreement, the question of allowing a third-party the use, or right to use, of the property did not arise ; that the services for which payments were received could not be considered to be ancillary and subsidiary to the

application or enjoyment of the right of property or information for which royalty had been paid ; that, therefore, many of the determinative factors mentioned in the memorandum of understanding to the Double Taxation Avoidance Agreement were absent to treat the centralised service fee as "fees for included services" under article 12(4) ; that the predominant purpose of the centralised service agreement and the overall arrangement between the parties was to provide advertisement, marketing and promotion of the hotel business ; that the trademark, trade name, etc., made available by the assessee-company to the Indian hotels were an integral part of the business arrangement between them and merely incidental to carrying out the job of advertisement, publicity and sales promotion undertaken by the assessee, and the entire payment consideration made by the Indian hotels for such use was on account of the services rendered in relation to advertisement, publicity, etc. ; that, thus, it was neither desirable nor possible to apportion any part of the consideration towards use of trademark, trade name, etc., by the Indian hotels, and, hence, such payment was not in the nature of "royalties" within the meaning of article 12(3)(a). As a result, the fees received by the assessee under the centralised services agreement could not be treated as fees for included services either under article 12(4)(a) or under article 12(4)(b) of the Double Taxation Avoidance Agreement and could only be treated as business income of the assessee. Hence, in the absence of a permanent establishment in India, it would not be taxable.(AY.2017-18)

Inter Continental Hotels Group (Asia Pacific) Pte Ltd. v. ACIT (IT) (2023)107 ITR 352 (Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Non-Resident-Income from sale of software licences-Not royalty-Not fees for technical services-DTAA-India-Singapore.[Art. 12(3)(a), 12(4)(b)]

Held that income from sale of software was exempt from the tax net primarily on the ground that no copyright was provided by the assessee to its customers. In order for income to fall under para (4)(a) of article of the DTAA, it is necessary that there should be some amount falling in para (3)(a) and the income under para (4)(a) should be for services ancillary to the enjoyment of the right, property, etc., "for which a payment described in para (3) is received". Since there was no amount taxable as royalties under article 12(3)(a) in this case, the information technology support service charges, as a natural corollary, could not be brought within the purview of article 12(4)(a) of the Double Taxation Avoidance Agreement.

Held that once it was held that the amount received by the assessee for providing the information technology support services did not fall under para (4)(a) and also missed the prescription of para (4)(b) of article 12, it ceased to be fees for technical services. Hence, the addition was directed to be deleted.(AY.2019-20)

BMC Software Asia Pacific Pte Ltd. v. Asst. CIT(IT) (2023) 107 ITR 648 (Pune)(Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Commission for sale of books-Not fees for technical services-Not taxable in India-Royalty-Subscription fees for sale of online books and Journals-Not royalty-Not taxable in India-DTAA-India-Germany. [S. 9(1)(vi) Art.12]

Held that the commission is not in the nature of fees for technical services as it did not constitute fees for managerial services. Managerial services entail an element of management of the business of the service recipient in a substantial manner. The mere provision of support services could not be labelled as managerial services. Hiring of outside parties to receive support in respect of the operational aspects of a business cannot qualify as managerial services unless the service provider lays down policies or executes such policies by managing the personnel of the service recipient. Commission earned by the assessee could thus not be

charged to tax in India.That the subscription fees were not in the nature of royalty. Amounts received as consideration for the resale or use of computer software are not payments of royalty for the use of the copyright in the computer software. Accordingly, the sums received by the assessee did not give rise to any income taxable in India.(AY.2013-14)

Springer Nature Customer Services Centre Gmbh v. Jt. CIT (IT) (2023) 107 ITR 594 (Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Sale and maintenance service of software licences-Not fees for technical services-Not taxable in India-DTAA-India-Singapore. [Art. 12]

The Assessing Officer held that the consideration received by the assessee as fees for technical services under section 9(1)(vii) of the Income-tax Act, 1961 and article 12 of the Double Taxation Avoidance Agreement between India and Singapore. The Dispute Resolution Panel affirmed this. On appeal the Tribunal held that the receipt cannot be taxes as fees for technical services. (AY.2018-19, 2019-20)

Veritas Storage (Singapore) Pte. Ltd. v. Dy. CIT (IT) (2023)107 ITR 3 (SN)(Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Non-Resident-Fees for technical services-Rendering services-Matter remanded-DTAA-India-Ireland.[Art. 12]

The assessee, a non-resident corporate entity and a tax resident of Ireland, received revenue for rendition of certain services. Relying upon the decision taken in the AY. 2016-17, the Assessing Officer characterised the receipts as fees for technical services, both under the Income-tax Act, 1961 as well as under article 12 of the Double Taxation Avoidance Agreement between India and Ireland. The Commissioner (Appeals) upheld the decision of the Assessing Officer. On appeal the Tribunal restored the issue to the Assessing Officer for adjudication de novo with certain directions to consider the aspect on the basis of human intervention taking into account the relevant evidence and opinion of expert and taking into consideration the judgment of the Supreme Court in CIT v. Bharti Cellular (2011) 330 ITR 239 (SC).Followed Avaya International Sales Ltd. v. ACIT CIT (IT) (2013) 103 ITR 616 / 150 taxmann.com 530 (Delhi)(Trib) (AY. 2018 19, 2020-21)

Avaya International Sales Ltd. v.Asst. CIT (2023)105 ITR 48 (SN)/ 153 taxmann.com 536 (Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Payment of destination sampling charges to non-resident service providers for services rendered by them outside India-Payment is not taxable-DTAA-India-China [Art. 12]

Assessee had made payment of destination sampling charges to non-resident service providers for services rendered by them outside India, which were utilized by assessee-company for purpose of earning income from source outside India. Tribunal held that s payments were not taxable for reason that they had been made for earning income from sources outside India and, therefore, fell within exclusionary clause of section 9(1)(vii)(b)-Held, yes [Para 3] [In favour of assessee] (AY. 2011-12)

Tumkur Minerals (P.) Ltd. v. JCIT (2023) 203 ITD 491 (Panaji) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-No make available clause-IT services to Indian customers-Taxable in India-Fee for providing corporate guarantee to its Indian AE-DTAA-India-Finland.[S. 56, Art. 5, 7, 12, 21]

Assessee, Finland based company, provided IT services to Indian customers and raised invoices in respect of said services.Assessee claimed that it had earned income from IT

services in pursuance to a service agreement with its Indian AE and services were provided from its office in Finland. Assessee further claimed that it had no PE in India and thus, receipts would not be taxable in India. Assessing Officer made additions on ground that receipts from IT services were in nature of FTS. On appeal the Tribunal held that said services were specific services for entities of assessee only.Since these were specific services, fees paid by users in India was to be taxed in India as there is no make available clause in India-Finland DTAA, without making it available, if technology is used then also receipts would be taxable in India.Assessee had given bank guarantee only to its subsidiary and it could-not be established that assessee was engaged in business of providing bank guarantee, commission income earned on providing such guarantee is taxable under head income from other sources as per article 21 of India-Finland DTAA.(AY. 2018-19, 2020-21)

Metso Outotec OYJ, (Earlier Known as "Outotec Oyj") v. Dy.CIT (2023) 203 ITD 79 /(2024) 227 TTJ 715 (Kol) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Royalty-Intra-group services agreement with its India affiliates, services provided in relation to marketing and sales services-Services did not 'make available' technical knowledge, experience, skill, know-how or processes and there was no transfer of technology-DTAA-India-Singapore [S. 9(1)(vi), Art. 12(4)]

Assessee, a Singapore based company, had entered into intra-group services agreement with Indian affiliates for providing management and support services which included marketing and sales services and operations and standardization services and received certain amount of consideration. Commissioner (Appeals) held that amount received by assessee for providing such services was in nature of fee for technical services (FTS) under section 9(1)(vii) as well as article 12(4) of DTAA. Tribunal held that trainings did not 'make available' technical knowledge, experience, skill, know-how or processes and there was no transfer of technology, amount received by assessee was not taxable as FTS. (AY. 2010-11)

DCIT v. CEVA Asia Pacific Holdings Company Pte. Ltd. (2023) 203 ITD 438 / (2024) 109 ITR 280/ 227 TTJ 50 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Receipts of fabrication charges for refurbishing of bushes-Not fees for technical services taxable in India-No permanent establishment in India-DTAA-India-Singapore [S. 9(1(i), Art. 12]

Held, allowing the appeal, that the Tribunal, in the assessee's case for the AYs 2011-12, 2012-13, 2016-17 and 2017-18 having held that that the assessee did not have any permanent establishment in India, that, accordingly, income earned by the assessee from the refurbishing of the bushes was not taxable in India, the fabrication charges received by the assessee from its associated enterprises did not fall under the purview of fees for technical services.(AY. 2020-21)

Owens Corning Inc. v. Dy. CIT (IT) (2023)104 ITR 47 (SN)(Mum) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Presumptive taxation-Permanent Establishment-Fixed place of profession-Akin to a fixed place of business-No permanent establishment in India, presumptive tax is not applicable-Income is taxable at regular rate. [S. 44DA,92F(iiia), 115A]

Indian entity providing office space with some other facilities free of charge to employees of assessee in India to carry out their activities is not fixed place of business from where assessee carried on its business wholly or partly. Failure by Department to establish that the assessee had control over premises. Assessee did not have Permanent establishment in India,

presumptive tax is not applicable. Income is taxable at regular rate. Therefore, the income offered by the assessee under section 115A read with section 9(1)(vii) of the Act had to be accepted especially considering that in the preceding AYs, similarly declared income had been accepted. Accordingly, the addition made by the Assessing Officer under section 44DA of the Act was not sustainable.(AY. 2011-12)
MTR Corporation Ltd. v. Dy. CIT (IT) (2023)104 ITR 17 (SN.)(Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Make available-Architectural, technological and project administration services-Not assessable as Fees for technical services-Reimbursement of market data charges-Not royalty-DTAA-India-USA. [S. 9(1)(vi), Art. 12 (4)]
On appeal the Tribunal held that the payment received pertained to document handling and printing charges; assistance and support in estimating, review of kitchen design; legal services; telecommunications services, etc. which could neither be said to be made available to recipient nor could consist of development and transfer of any technical plan or a technical design. Services would not fall within ambit of FIS as per DTAA and amount received by assessee was not taxable under article 12(4). Tribunal also held that payments towards reimbursement of market data charges received by assessee-US based company from its Indian AEs was not royalty as per article 12 of India-US DTAA. (AY. 2013-14 to 2017-18)
Goldman Sachs & Co. LLC v. DCIT (IT) (2023) 201 ITD 670 / 227 TTJ 224 (Mum) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Make available-Services rendered from outside India-Not liable to deduct tax at source-DTAA-India-UK.[S. 9(1)(vi), 195, Art. 13(4)(c)]
Assessee, a U.K. based company, provided services to its AE, BTPL under Business Cooperation Agreement. Services rendered by assessee to BTPL did not satisfy 'make available' clause as envisaged under article 13(4)(c) to fall within scope of FTS, since assessee did not make available any technical knowledge, experience or skill to BTPL. Services were continuously rendered by assessee to BTPL and BTPL had to again and again go back to assessee for provision of these services. BTPL was in no way able to apply and use technical knowledge provided by assessee on its own in its business. Twin test of rendering services and making technical knowledge available at same time were not satisfied. Therefore, fees for services rendered by assessee from outside India to BTPL were not in nature of FTS as per provisions of article 13(4)(c) of India-UK DTAA. Not liable to deduct tax at source. (AY. 2017-18)
Infobip Ltd. v. ACIT (2023) 201 ITD 291/ 104 ITR 51 (SN) (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Supply of equipment-Offshore sale of goods-Not taxable as FTS-DTAA-India-Ireland. [S. 5, 9(1)(vi), Art. 12]
Assessee, a Ireland based company, which is engaged in business of manufacturing highly sophisticated complex, technology advanced and expensive equipment. It had supplied equipment to Indian customers and claimed same as offshore sale of goods and claimed that since revenue had accrued outside India as per provisions of section 5, same was not taxable in India-Assessing Officer was of view that assessee was providing sophisticated equipment's to its client which could be put to use by it only as well as rendering support services and had taxed receipt from offshore sale of goods as fees for technical services. On appeal the Tribunal held that the assessee had submitted copy of invoices and purchase order and in invoices description of sale of equipment, number of quantity, price of item sold and details

of buyer to whom shipment of goods was provided which demonstrated that assessee had received amount on sale of equipment. The Assessing Officer had not brought on record any clinching evidence to substantiate that assessee had received impugned amount for rendering of services. Accordingly the addition is deleted. (AY. 2018-19)
Baker Hughes EMEA Unlimited Company. v. CIT IT *(*2023) 201 ITD 43 (Mum) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Amounts received towards the provision of SAP & IT services on a recurring basis are not in the nature of FTS-Not taxable in India-DTAA-India-Israel.[S. 9(1)(i), Art. 13]
The Hon'ble Tribunal held that the amounts received by the Assessee did not qualify to be FTS and hence, not taxable in India in the absence of a permanent establishment. While arriving at the said decision, the Tribunal took note of following points viz. (i) The term FTS under Article 13 of the India-Israel DTAA had a very wide scope. Further, w.r.t Article 12 and 13 of the India-Israel DTAA, the Protocol to the treaty contained the 'Most Favoured Nation' clause. Accordingly, the definition of the term FTS under India-Portugal and India-Canada DTAA were borrowed. In terms of the said DTAAs, the term FTS included 'make available' clause within its ambit; (ii) In the present case, the Assessee had not made available technical knowledge, experience, skill, knowhow etc. to NIIPL since such services were provided on a recurring basis; (iii) By applying the restricted meaning of FTS as per India-Portugal and India-Canada DTAAs, the amounts received by the Assessee from providing SAP and information technology support services were not in the nature of FTS. (AY. 2010-11, 2011-12)
Netafim Ltd. v. DCIT (2023) 102 ITR 40/149 taxmann.com 295/ 225 TTJ 851 (Delhi)(Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Payments were made to UAE company to carry out services of project specification study, preparation of tower designs, preparation of structural drawings of tower, preparation of tower test data documents etc.-Not royalty-Not liable to deduct tax at source-DTAA-India-UAE. [S. 201(1), 201(IA), Art. 7, 12]
Assessee, an Indian Company, entered into service agreement with UAE based company for carrying out project specification study, preparation of tower designs, preparation of structural drawings of tower, preparation of tower test data documents etc. and made payment for aforesaid services. Assessing Officer held that a payment was royalty and since assessee had failed to deduct tax on such payment, it was in default and liable to provisions under section 201(1) and 201(1A) Commissioner (Appeals) held that payment for designing of towers made to UAE company was in nature of FTS and not royalty. On appeal the Tribunal held that there was no existing tower structure design or data etc. which was supplied to assessee by UAE company, but it was a case of actual rendering of services where UAE company was required to create a new design in course of rendering service under service agreement based on specifications provided by assessee. In absence of FTS clause in India UAE tax treaty, payment made by assessee did not qualify as FTS under India-UAE DTAA and in absence of PE of UAE company in India, assessee had no obligation to withhold taxes on such payments. (AY. 2018-19)
DCIT, IT v. Kalpataru Power Transmission Ltd. (2023) 200 ITD 420 (Ahd) (Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Sale of advertisement space through its AdWords program could not be brought to tax in India as royalty-Not parted with copyright-DTAA-India-Ireland.[S. 147, 148,201, 201(IA), Art. 12]

Assessee derived more than 97 per cent of its total revenue from advertisement services through its AdWords program worldwide. Revenue initiated reassessment proceedings in case of assessee on basis of orders passed under section 201 and 201(1A) in case of GIPL and passed assessment order holding that receipts from GIPL/other Indian customers for sale of advertisement space was taxable as royalty under Act as well as under treaty provisions. Tribunal held that the amount received by assessee from sale of advertisement space through its AdWords program could not be brought to tax in India as royalty. (AY. 2007-08)
Google Ireland Ltd. v. DCIT (IT) (2023) 200 ITD 618 (Bang) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Consideration for resale/use of computer software through EULAs/distribution agreements, is not payment of royalty for use of copyright in computer software, and same does not give rise to any income taxable in India-standard automated services to Indian customers-Matter remanded-DTAA-India-Ireland.[S. 9(1)(vii), Art. 12]
Held that the amounts paid by Indian end-users/distributors to assessee, non resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreements, is not payment of royalty for use of copyright in computer software, and same does not give rise to any income taxable in India. Foreign company, earned income from rendering of standard automated services to Indian customers and Assessing Officer treated same as technical services, since Tax Authorities did not examine whether technical services involved human intervention and moreover there was lack of examination of issue by taking into account relevant evidence and opinion of expert, issue required restoration to files of Assessing Officer to decide issue afresh. (AY. 2016-17)
Avaya International Sales Ltd. v. ACIT (IT) *(*2023) 103 ITR 616 / 200 ITD 765 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Consideration for resale/use of computer software through EULAs/distribution agreements, is not payment of royalty for use of copyright in computer software, and same does not give rise to any income taxable in India-standard automated services to Indian customers-Matter remanded-DTAA-India-Ireland.[S. 9(1)(vii), Art. 12]
Held that the amounts paid by Indian end-users/distributors to assessee, non resident computer software manufacturers/suppliers, as consideration for resale/use of computer software through EULAs/distribution agreements, is not payment of royalty for use of copyright in computer software, and same does not give rise to any income taxable in India. Foreign company, earned income from rendering of standard automated services to Indian customers and Assessing Officer treated same as technical services, since Tax Authorities did not examine whether technical services involved human intervention and moreover there was lack of examination of issue by taking into account relevant evidence and opinion of expert, issue required restoration to files of Assessing Officer to decide issue afresh. (AY. 2016-17)
Avaya International Sales Ltd. v. ACIT (IT) *(*2023) 103 ITR 616 / 200 ITD 765 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Sale of software-Not transferred use or right to use of any copyright in software-Cannot be treated as royalty-India-USA. [Art. 12(3)]

Assessee, a non-resident US company, was engaged in developing technology for enterprise IT operations and development operations and provided operational intelligence solutions.The assessee sold software to two Indian entities for their internal use.Assessing

Officer treated amount received from sale of software as royalty. On appeal the Tribunal held that the assessee had sold copyrighted articles and had not transferred use or right to use of any copyright in software. Therefore the amount received by assessee from sale of software could not be treated as royalty under article 12(3) of DTAA between India and USA and accordingly, addition is deleted. (AY. 2016-17)
Moogsoft Inc. v. CIT (2023) 200 ITD 65 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Consideration received for Satellite Transmission Services-Not taxable as royalty-DTAA-India-USA. [Art. 12(3)]
Held that consideration received by assessee, a U.S. based company, from Satellite Transmission Services could not be treated as royalty under section 9(1)(vi) as well as article 12(3) of DTAA between India and USA and hence, not taxable in India as royalty. (AY. 2019-20)
Intelsat US LLC. v. ACIT (2023) 200 ITD 154 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Reimbursement of expenses would not constitute royalty-Not taxable in India-DTAA-India-USA. [Art. 12]
Assessee, an American company, entered into various transactions with its Indian subsidiary CIS.It procured services of telecom service providers and provided same to its Indian subsidiary CIS and received link charges from CIS. There was no right to use, either to assessee or to CIS.Assessee had merely procured a service and provided same to CIS. No part of equipment was leased out to CIS. Even otherwise, payment was in nature of reimbursement of expenses and accordingly not taxable in hands of assessee. Therefore, payments did not constitute royalty under provisions of article 12 of DTAA between India and USA. (AY. 2014-15)
ACIT v. Convergys Customer Management Group Inc. (2023) 200 ITD 23/102 ITR 21 (SN) (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Sale of computer software products-Not royalty-DTAA-India-USA [Art. 12(3)]
Assessee, a foreign company, was engaged in business of development and sale of Project Management Software ('PMS') Licenses to various customers all over world. The Assessing Officer held that the amount received is taxable as royalty. DRP upheld the order. On appeal the Tribunal held that payment received by assessee from its customer from sale of software products/licenses did not fall in nature of 'royalty' as per article 12(3) or section 9(1)(vi) and therefore, same was not taxable in India. (AY. 2014-15)
Digite Inc. USA v. ADIT (IT) (2023) 199 ITD 18 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Computer software-Royalty-Income from sale of software to its distributor in India-Not in the nature of royalty-Not taxable in India-DTAA-India-Ireland.[S. 9(1)(vii), Art. 12]
Assessee, an Ireland based company, received certain amount towards sale of software from its Indian distributors. The Assessing Officer held that receipts on account of sale of software is to be taxed as income from royalty as per article 12 of DTAA between India and Ireland. The assessee received consideration for transfer of a copyrighted product and not for transfer of copyrights in computer software programme, amount received by assessee was not in nature of 'royalty' as defined under article 12 of India-Ireland DTAA. Addition is deleted. therefore, impugned order passed by Assessing Officer was to be deleted. (AY.2015-16)
Mentor Graphics (Ireland) Ltd. v. ACIT (IT) (2023) 199 ITD 147 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Permitting right to use of brand name/trademark-Taxable as royalties-DTAA-India-Turkey. [S. 2(47) Art. 12(3), 13(6)]

Assessee, a tax resident of Turkey, entered into a Trademark Licence Agreement (TLA) with its Indian subsidiary for transferring exclusive, irrevocable and perpetual right of usage of trademark/brand name in favour of Indian subsidiary for a consideration. Assessee claimed said consideration as capital gain and exempt under article 13(6). DRP affirmed the order of the Assessing Officer. On appeal the Tribunal held that consideration received by assessee for permitting right to use of brand name/trademark under TLA was nothing but in nature of royalties as defined under section 9(1)(vi) read with article 12(3) of India-Turkey tax treaty hence taxable in India. (AY. 2019-20)

Soktas Tekstil Sanayi Ve Ticaret AS. v. ACIT (IT) (2023) 199 ITD 457 / 222 TTJ 312/ 223 DTR 339 (Delhi) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Vessel hire charges-Royalty-Fees for technical services-Charter contract for transporting coal from one port to another through its ship-Not royalty-Rightly offered to tax under section 44B of the Act-DTAA-India-UAE [S. 9(1)(vii) 44B, Art. 13]

Assessee, a UAE based company, entered into time charter contract with PSCL for transporting coal from one port to another through its ship. Assessee in turn had chartered vessel from PO again on time charter basis. In return of income, assessee had disclosed receipts of transporting coal as shipping business and had taxed same under section 44B. Assessing Officer held that payment received by assessee is in nature of royalty and taxable under section 9(1)(vi) of the Act. On appeal the Tribunal held that there was no absolute right to use of vessel had been given to charterer.Payment received by assessee from time charter of vessel was not in nature of royalty and, hence, same was not taxable under section 9(1)(vi). Since agreement and payment received by assessee was for carriage of goods and for operating ships, therefore income of assessee had rightly been offered to tax under section 44B of the Act. (AY. 2019-20)

Nan Lian Ship Management LLC v. ACIT (2023) 199 ITD 640 (Mum) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Data line charges-Neither royalty nor fees for technical services-Reimbursement of expenses on actual cost basis-Not chargeable to tax-Not liable to deduct tax at source-DTAA-India-USA [S. 9(1)(vii, 195, 201(1), 201(IA), Art. 12]

Assessee is engaged in business of software development services to its US based holding company. During year, Assessing Officer held that assessee had not deducted TDS under section 195 on international transaction for payment made on account of data line charges to its holding company. Assessing Officer made an addition as shortfall of TDS amount on data line charges and further calculated interest under section 201(1)/201(1A) of the Act. On appeal the Commissioner (Appeals) deleted the addition. Tribunal held that the amount paid to holding company was on actual cost basis without any element of mark-up and was in nature of reimbursement of expenses incurred by way of using network connectivity provided by service provider and, therefore, same was not chargeable to tax on any account. Order of CIT(A) is affirmed. (AY. 2013-14)

ACIT (IT) v. Allscripts (India) (P.) Ltd. (2023) 198 ITD 260 (Ahd) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Purchase of software-Non transferable and non exclusive grant of license-Not royalty-Not liable to deduct tax at source-DTAA-India-USA.[S. 195, 201,Art. 12]

Held that when once software was purchased for a particular usage under a non transferable and non grant of license, by no stretch of imagination could be said that any payment made for usage of software could be royalty. Accordingly remittance towards use of software did not amount to royalty and consequently assessee could not be treated as an assessee in default under section 201 for non deduction of tax. (AY. 2008-09 to 2010-11)

GE India Industrial (P.) Ltd. v. ADIT (IT) *(*2023) 198 ITD 522 (Hyd) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-Service Agreement-Service Agreement was independent of royalty earned in terms of License Agreement, same was not taxable in India as FTS or royalty-DTAA-India-Netherland-Reimbursement of expenses-Not taxable as FTS Management service fee-Matter remanded for de novo consideration. [S. 9(1)(vii), Art. 12(5)(a)]

Assessee, a Netherlands based company, was engaged in business of executive search service as well as providing technology, software and related support services to its group companies. It had entered into a licence agreement (LA) with its Indian company (SS) whereby it granted license to SS to use trade-name, trademark, and rights to use software owned by it against license fee which was offered to tax as royalty. It had also entered into a service agreement (SA) whereby, SS and assessee agreed to provide, on a principal-to-principal basis, support and services to each other in relation to executive search assignments against executive search service fee (ESF). Assessee claimed that search fee was in nature of business income and was not taxable in India in absence of a PE in India. Tribunal held that search fee and license fee were distinct from each other and search fee received under SA was independent of LA and was not taxable in India as FTS or royalty under article 12(5)(a). Followed order of earlier year. Reimbursement of expenses is not taxable as FTS. Management service fee matter remanded for de novo consideration. (AY. 2019-20)

Spencer Stuart International B.V. v. ACIT (IT) (2023) 198 ITD 698 (Mum) (Trib.)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty Granting access to database and earning subscription fee-Income not taxable in India-DTAA-India-USA. [Art. 12(3)]

Held, that there was no dispute that the assessee collated data relating to healthcare from the public domain and put it in one place creating a database. The content on the database was not created by the assessee but was created by third parties. The only improvement the assessee made was analysis, indexing, description, appending notes for facilitating easy access to the customers, etc. For a subscription fee, customers were only granted access to the contents of the database. They were not permitted to copy, print, reproduce, modify, translate, adapt or create derivative works based on the licensed products. Thus, neither was the assessee the creator of the content, nor had it transferred any such non-existent right. It could not be said that in terms of article 12(3) of the Agreement, the assessee had transferred the right to use any copyright of literary, artistic or scientific work or any other secret formula or process or information concerning industrial, commercial or scientific experience. The amount received did not fall within the ambit of royalty as defined under article 12(3) of the Agreement and could not be brought to tax in India. The addition was to be deleted. (AY. 2016-17)

Uptodate Inc. v. Dy. CIT (IT) (2023) 150 taxmann.com 231 /105 ITR 707 (Delhi)(Trib)

S. 9(1)(vi) : Income deemed to accrue or arise in India-Royalty-

Non-Resident-Use of Transponder services-Secret formula or process-Not liable to tax in India-Not liable to deduct tax at source-DTAA-India-Malaysia. [Art. 12, 13]

Dismissing the appeal of the Revenue the Tribunal held that the transponder charges were not in the nature of royalty. The term used secret formula or process and not process, therefore the meaning of the term process could not be incorporated in the agreement because then meaning of the word secret therein would became redundant. The payment is not subjected tax withholding. (AY. 2017-18 to 2020-21)

ACIT v. Viacom 18 Media Pvt Ltd (2023) 101 ITR 586 (Mum)(Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Royalty-Computer software-Maintenance and support services-Not payment of royalty for use of copyright in computer software-Not taxable in India-SLP of Revenue dismissed-DTAA-India-Singapore. [S. 9(1)(i) 9(1)(vi), 195, Art. 12]

Held that the amount received by assessee, a Singaporean company, from Indian end-user/distributors/resellers as consideration for sale/resale of computer software, maintenance and support services was not payment of royalty for use of copyright in computer software, and same did not give rise to any income taxable in India. Followed, Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT (2021) 432 ITR 471/ 281 Taxman 19 (SC). SLP of Revenue is dismissed. (AY. 2014-15)

CIT(IT) v. Symantec Asia Pacific Pte. Ltd (2023) 456 ITR 356 / 294 Taxman 340 (SC)

Editorial : CIT (IT) v. Symantec Asia Pacific Pte. Ltd (2023) 153 taxmann.com 26 (Delhi) (HC)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Subscription fee-From members Non-commercial objectives, professional practices, and articles did not reflect any element of commerciality, subscription fee would not be in nature of FTS-Also exempt on principle of mutuality-DTAA-India-Switzerland.[S. 4, 260A, Art. 6.2(a), 6(2)(b), 7.5, 12]

Dismissing the appeal of the Revenue the Court held that, it was found from articles of the assessee that all member firms contributed to a common fund for achieving common objectives i.e. non-commercial objectives, and that all member firms contributed towards budgeted operating expenses of the assessee and were entitled to proportionate share in surplus lying with assessee in case of dissolution. The sole objective of the assessee was to benefit its members) place of subscription to evolve better professional practices and articles did not reflect any element of commerciality between member and assessee. Since all three tests of mutuality were satisfied, receipts of the assessee from its members would not be in nature of FTS, and same would be exempt from tax having regard to the principle of mutuality.(AY. 2008-09 to 2011-12)

CIT (IT) v. Deloitte Touche Tohmatsu(2023) 335 CTR 271/ (2024) 296 Taxman 104 (Delhi)(HC)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Make available-The facts on record showed that the recipient of the services was not enabled to provide the same service without recourse to the service provider-DTAA-India-Singapore.[S. 260A, Art. 12(4)(b)]

Held, dismissing the appeal of the Revenue the Court held that according to the Tribunal, the agreement between the assessee and its affiliate had been effective from January 1, 2010, and it had run for a long period. In order to bring the services in question within the ambit of fees for technical services under the Double Taxation Avoidance Agreement, the services would have to satisfy the ”make available” test and such services should enable the person acquiring

the services to apply the technology contained therein. The facts on record showed that the recipient of the services was not enabled to provide the same service without recourse to the service provider. The analysis and conclusion arrived at by the Tribunal were correct.(AY.2019-20)

CIT (IT) v. Bio-Rad Laboratories (Singapore) Pte. Ltd. (2023)459 ITR 5 /(2024) 296 Taxman 167 (Delhi)(HC)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Non-Resident-Marketing services-No Permanent Establishment in India-Not taxable-Not liable to deduct tax at source-DTAA-India-USA. [S. 201, Art. 12(4)]

Dismissing the appeal of the Revenue the Court held that the assessee had made payments to the U. S. company. The Tribunal had held that the scope of the work was to generate customer leads using customer database, market research, analysis, and online research data and rightly held that the service provider had not made available any technical knowledge, experience, know-how, process or develop and transfer technical plan or technical design. Accordingly the Tribunal was right in holding that the payments made by the assessee were not taxable in India. Tax was not deductible at source on such payment.

CIT (IT). v. Ad2pro Media Solutions Pvt. Ltd. (2023)455 ITR 648 /148 taxmann.com 226(Karn)(HC)

Editorial : SLP dismissed, CIT v. Ad2pro Media Solutions (P.) Ltd. (2023) 157 taxmann.com 205/ 296 Taxman 569 (SC)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Centralised services-Not fees for technical services or fees for included services-DTAA-India-USA. [Art. 12(4)(a)]

Dismissing the appeal of the Revenue the Court held that though the decision of this court in the Department 's appeal against the decision of the court in DIT v. Sheraton International Inc.(2 009) 313 ITR 267 (Delhi)(HC) is pending before the Supreme Court there was no stay on the judgment till date. The Department had not brought anything to distinguish the judgment on facts. No question of law. (AY. 2016-17)

CIT (IT) v. Radisson Hotel Interaction Incorporated (2023)454 ITR 816 (Delhi)(HC)

Editorial : Notice issued in SLP filed by the Revenue, CIT (IT) v. Radisson Hotels International Incorporated (2023)454 ITR 819 (SC)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Telecom services-There was no human intervention in rendering said service-Payments could not be characterised as fees for technical services-DTAA-India-UK [S. 9(1)(vi), Art. 13]

The assessee has provided telephone connectivity services to its Indian customers *viz.*, Vodafone India and BSNL. The Assessing Officer held that the revenue that had generated from Vodafone India and BSNL qualified as fees for technical services as per the provisions of section 9 (1 (vii) read with Article 13 of the India-United Kingdom Double Taxation Avoidance Agreement. On appeal CIT(A) affirmed the order of the Assessing Officer. Tribunal reversed the order of the CIT(A). On appeal High Court affirmed the order of the Tribunal. Followed CIT v. Kotak Securities Ltd (2016) 383 ITR 1/ 239 Taxman 139 (SC),.CIT, International Taxation v. Alibaba.Com Singapore E-Commerce (P.) Ltd (2023) 152 taxmann. com 110 (Bom)(HC) (AY. 2010-11)

CIT v. Interoute Communications Ltd (2023) 294 Taxman 449 (Bom)(HC)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Commission-Rendering support in business operations in printed and on-line sale of books and journals-Receipts are not fees for technical services-Subscription Received from third-party customers in India for sale of E-Journals, Online Journals and books under Commissionaire agreement-No copyright granted-Not assessable as royalty-DTAA-India-Germany. [S. 9(1)(vi), Art. 12]

Dismissing the appeal of the Revenue the Court held that Commission received for rendering support in business operations in printed and on-line sale of books and journals. No special skills or knowledge were required to render services under the agreement. Receipts are not fees for technical services. Subscription received from third-party customers in India for sale of E-Journals, Online Journals and books under Commissionaire agreement. No copyright granted hence not assessable as royalty. (AY. 2013-14)

CIT(IT) v. Springer Nature Customer Services Centre GMBH(2023) 458 ITR 728/ 294 Taxman 167 / 333 CTR 845 (Delhi)(HC)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Diamond testing services for certification of diamond from USA-Services could not be treated as Fees for technical services-Mere rendering of services cannot be held to be fees for technical services, unless the person utilising the services is able to make use of the technical knowledge etc-DTAA-India-USA. [S. 195, 201(1) 201(IA), Art. 12]

Assessee is a partnership firm, which is engaged in business of cutting and polishing diamonds and export of diamonds. It had made remittances qua diamond testing service for certification of diamonds to GIA USA which set up a laboratory at Hong Kong as GIA Hong Kong and claimed that said sum was not tax deductible at source. Assessing Officer held that assessee had made payment to GIA Hong Kong Laboratory and not GIA USA and, therefore, could not claim treaty benefit between India. Tribunal held that the payment was received in offshore bank account of GIA USA and the lower authorities were right in holding that there was a 'take in window' where articles were delivered, i.e., in Hong Kong but service agreement was between assessee and GIA USA and rightful owner of remittances was GIA USA and the payment is covered under India-USA DTAA as mere rendering of services could not be roped into FTS when person utilising services was unable to make use of technical knowledge etc. Mere rendering of services cannot be held to be fees for technical services, unless the person utilising the services is able to make use of the technical knowledge etc (AY. 2015-16)

CIT(IT) v. Star Rays (2023) 457 ITR 1/ 294 Taxman 641 / 334 CTR 908 (Guj)(HC)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Royalty-Computer software-Maintenance and support services-Not payment of royalty for use of copyright in computer software-Not taxable in India-DTAA-India-Singapore. [S. 9(1)(i),9(1)(vi), 195, Art. 12]

Held that the amount received by assessee, a Singaporean company, from Indian end-user/distributors/resellers as consideration for sale/resale of computer software, maintenance and support services was not payment of royalty for use of copyright in computer software, and same did not give rise to any income taxable in India. Followed, Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT (2021) 432 ITR 471/ 281 Taxman 19 (SC).(AY. 2014-15)

CIT (IT) v. Symantec Asia Pacific Pte. Ltd (2023) 153 taxmann.com 26 (Delhi) (HC)

Editorial : SLP of revenue dismissed, CIT (IT) v. Symantec Asia Pacific Pte. Ltd (2023) 456 ITR 356 / 294 Taxman 340 (SC)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Make available-Sales services-Not assessable as technical services-DTAA-India-Singapore.[S. 90, Art.12(4)(b)]

The marketing and sales services, operations and standardization services do not satisfy the "make available" clause as per article 12(4)(b) of Indo Singapore DTAA and, therefore, the amounts attributable for these services cannot be held to be fees for technical services. (AY. 2010-11 to AY. 2014-15)

Dy. CIT v. CEVA Asia Pacific Holdings (2023) 203 ITD 438/ [2024] 109 ITR 280 /227 TTJ 50 (Delhi)(Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Income on account of rendering business support services from Indian-company-Not assessable as FTS-DTAA-India-Netherland. [S. 9(1)(vi), Art.12(5)]

Assessee-company, a tax resident of Netherlands, had received income on account of business support services from Indian-company.Said receipt was not offered as income on plea that it was in nature of business profit and in absence of Permanent Establishment (PE) in India, it was not chargeable to tax.Assessing Officer held that said payment was taxable as FTS and added to total income of assessee as it was in nature of management and consultancy services. On appeal the Tribunal held that nature of services showed that they were mostly in nature of managerial services but by rendering services assessee had not made available technical knowledge, know-how, skill, etc., to recipient of services, which would have enabled recipient of such services to utilize it independently without aid and assistance of assessee, in terms of article 12 and thus, make available condition was not satisfied. Therefore, payment received by assessee could not be treated as FTS under article 12(5). (AY. 2015-16 to 2018-19)

Inteva Products Netherlands BV. v. ACIT, IT (2023) 200 ITD 466 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Income on account of rendering business support services from Indian-company-Not assessable as FTS-DTAA-India-Netherland.[S. 9(1)(vi), Art.12(5)]

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Inteva Products Netherlands BV. v. ACIT, IT (2023) 200 ITD 466 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Marketing services-Related services to hotels-Distinct and different from license fee-Not to be assessed as FTS-Reimbursement of cost received cannot not be treated as FTS-DTAA-India-Singapore. [Art. 12(4)(a)]

Assessee, a tax resident of Singapore, is engaged in business of rendering management consultancy and other related services to hotels.It had entered into three separate agreements with third party Indian hotels and earned revenue towards management fee and license fee.

The Assessing Officer held that receipts are for services ancillary and subsidiary to trade mark license agreement for use of trade mark and brand name, which was in nature of royalty and would fall within ambit of FTS under article 12(4)(a) of India-Singapore DTAA. On appeal the Tribunal held that there is nothing on record to demonstrate that while rendering services, assessee had made available technical knowledge, experience, skill, know-how or processing etc. to bring it within ambit of FTS under article 12(4)(b) of treaty. Held that reimbursement of cost received by assessee, could not be treated as FTS under article 12(4).(AY. 2018-19, 2019-20)

Shangri-La International Hotel Management Pte. Ltd. v. ACIT (2023) 106 ITR 52 / 200 ITD 534 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Training services-Installation and supervision fee was made by assessee to sub-contractor at Belgium-Entitled to claim benefit of restricted definition of fee-DTAA-India-Portugal.[S. 9(1)(vi), Art. 12]

Assessee, a German company, had entered into a contract with an Indian company to render training, supervision and consultancy in connection with installation services to set up HDF/MDF board production line machinery at Greenply's premises in India. A payment in nature of installation and supervision fee was made by assessee to sub-contractor at Belgium but TDS was not deducted. Assessing Officer held that since payment was in nature of fees for technical service and services were provided in India, TDS was required to be deducted. Assessee submitted that in view of MFN clause mentioned in DTAA between India and Belgium, no tax at source was to be deducted after taking into consideration DTAA between India and Portugal. Tribunal held that the assessee is entitled to claim benefit of restricted definition of fee for technical services, under India-Portugal DTAA and since assessee had been found not to have made available any technical knowledge experience or skill or know-how, impugned services received by assessee could not be taxed under section 9 as well as article 12. (AY. 2018-19)

Dieffenbacher GmbH Maschinen Und Anlagenbau. v. ACIT, IT *(*2023) 200 ITD 760 / (2024) 109 ITR 598 (Mum.)(Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Use of equipments-Cannot be treated as royalty or fees for technical services-DTAA-India-Singapore. [S. 9(1)(vi), Art. 12(4)(a)]

Held that customers were neither in possession of any equipment nor had any control over equipment used by assessee and assessee was sole bearer of risks in relation to said equipment. Since the assessee was merely making an entrepreneurial use of its own equipment to provide services, it could not be said that customers had a right to use process, if any, involved or applied by assessee in its capacity as a service provider. Accordingly the amount received by assessee from its customers in India as consideration for provision of a service could not be characterized as royalty for use or right to use of a process. (AY. 2017-18)

Adore Technologies (P.) Ltd. v. ACIT (2023) 199 ITD 385 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Providing consulting engineering services to an Indian entity-Contract specific-Make available-Not taxable as fees for technical services-DTAA-India-UK. [Art. 13]

Assessee, a tax resident of UK, had earned an amount under contract for providing consulting engineering services to an Indian entity.Technical designs/drawings/plans supplied by assessee under contract were project specific and could not be used by Indian entity in any other project in future.Assessing Officer held that amount received by assessee was in nature

of Fee for Technical Services (FTS) as per article 13 of India UK DTAA and brought same to tax in hands of assessee. Tribunal held that in absence of make available condition, consultancy fee received by assessee could not be treated as fees for technical services under article 13 of India-UK DTAA, therefore, amount received by assessee had to be treated as business profit and in absence of a PE in India, it could not be brought to tax in India. Followed order of earlier year. (AY. 2019-20)
Buro Happold Ltd. v. DCIT (IT) (2023) 199 ITD 180 (Mum) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Royalty-Fees for technical services-Computer software-Use of standardized software through EULA agreements which were non-exclusive and non-transferable-Payment is not in nature of royalty-Not taxable in India-DTAA-India-USA. [S. 9(1)(vi), Art. 12(4)(b)]

Assessee a US resident, had entered into end user licence agreement (EULA) with customers in India in terms of which assessee had granted licence to use certain standardized software to customer and received certain amount of consideration. Licences provided to end users were non-exclusive and non-transferable. End users of licnese did not have any access to source code, nor there was any transfer of right in process or use of any process. Limited right granted to customers under EULA was to use software for their own internal purposes. Amount received by assessee is not in nature of royalty, hence, not taxable in India. (AY. 2017-18)
Kony Inc. v. DCIT (2023) 199 ITD 427 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Business profits-Services rendered outside India-Cloud, colocation and network services, mainframe services, disaster/data recovery services-Infrastructure services to a US based company in US-Not taxable in India-DTAA-India-USA.[Art. 12]
Assessee is a tax resident of USA. It entered into a service agreement with an Indian company for providing cloud infrastructure-managed private cloud, colocation and network services, mainframe services, disaster/data recovery services to a US based entity and received certain amount of consideration. The AO held that taxable in India. Commissioner (Appeals) held said consideration received by assessee not taxable in India. Tribunal affirmed the order of the CIT(A). (AY. 2018-19, 2019-20)
ITO (IT) v. Sungard Availability Services LP. (2023) 199 ITD 492 (Pune) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-No permanent establishment in India-Fees for technical services-Providing hotel related services-Marketing, advertisement and other services to customers in India-Not taxable as fees for technical services-DTAA-India-USA. [S. 9(1)(i), Art. 12]
Held that revenue received by assessee, US company, engaged in business of providing hotel related services, for rendering various marketing, advertisement and other services to customers in India, was not taxable as fees for technical services as well as article 12 of India US DTAA but it was business income. Since assessee was not having any PE in India, its business income was not taxable in India. (AY. 2016-17)
Westin Hotel Management LP v. ACIT *(*2023) 198 ITD 76 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Marketing support services-Fees for included services-Cannot be treated as Fees for included services-DTAA-India-USA. [Art. 12(4)(b)]

Assessee, a wholly owned subsidiary of an Indian entity, was tax resident of USA. It entered into an marketing support services agreement with its parent company for providing marketing and sales support services with all its operations exclusively in USA and received certain amount of consideration. Assessing Officer held that a services were in nature of fee for included services (FIS) as per article 12 of DTAA and, accordingly, brought same to tax. Tribunal held that nothing had been brought on record by Assessing Officer to demonstrate that there was complete transfer of technical knowledge, know-how, skill etc. to Indian company of service so as to enable it to use such technical know-how, knowledge, experience, skill etc. independently without aid and assistance of service provider therefore services provided by assessee were neither in nature of technical or consultancy services under article 12(4) and even make available condition provided under article 12(4)(b) was not satisfied. Addition is deleted.(AY. 2017-18)

Anand NVH Products Inc. v. ACIT (2023) 198 ITD 515/ 223 TTJ 218 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Business of providing hotel service-Franchise Agreement (MFA)-Amount received by assessee under MFA could not be treated as royalty/FTS/FIS amount received by assessee under MFA could not be treated as royalty/FTS/FIS-DTAA-India-USA. [Art. 12]

Assessee, a US based corporate entity, was engaged in providing hotel services.Assessee had entered into two agreements with Indian hotels, (i) licence agreement for right to use its trade name and (ii) Master Franchise Agreement (MFA).During year under consideration, assessee received service fee towards package of services under MFA towards third party reservation, Club Carlson marketing fee, reservation fee etc.. Assessing Officer held that amount received by assessee under MFA would fall into different categories, hence, should be treated either as royalty or FTS. On appeal the Tribunal held that payment received by assessee included marketing, promotion, reservation and other allied which was ancillary and subsidiary to license fee under MFA could not be treated either as royalty or FTS/FIS. Followed order of earlier year. (AY. 2018-19)

Country Inn & Suites By Redisson. v. ACIT (2023) 198 ITD 620 (Delhi) (Trib.)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Reimbursement of salaries paid to employees-Employees were high level technical executives-Payments fell under technical services-Tax deducted at source not relevant-Payment taxable. [Explanation. 2]

Held that that the facts were identical to the facts for the AY 2013-14 for which the Tribunal had held that since the employees deputed by the assessee were high level technical executives and rendered highly technical services to the Indian company, the payments for such services would fall within the ambit of fee for technical services Merely because the assessee had deducted tax at source that would not change the colour of the transaction. Thus, A.O. was justified in its order. (AY. 2015-16, 2017-18)

Panasonic Holdings Corporation v. Dy. CIT (2023)101 ITR 5 (SN)(Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Non-resident-Subscription fees receipt from India-Online Database-Not taxable in absence of permanent establishment in India-DTAA-India-USA.[S. 9(1)(i), Art. 7]

The Tribunal held that receipt from subscription fees does not fall within the ambit of fees from technical service defined u/s. 9(1)(vii). Further, by placing reliance of the order passed in case of group company viz. Elsevier Information Systems GmbH (ITA No. 1683/Mum/ 2015), held that receipt from online database is in the nature of business profit, therefore, the

same is not taxable in India in absence of permanent establishment in India under Article 7 of India-US DTAA. (AY.2018-19, 2019-20)
Relx Inc. v. ACIT (2023) 149 taxmann.com 78 / 103 ITR 54 (SN)(Delhi) (Trib)

S. 9(1)(vii) : Income deemed to accrue or arise in India-Fees for technical services-Assessee providing legal services to clients in India and abroad-No permanent establishment in India-Services not making available technical knowledge, skills know-how process-Income not taxable-DTAA-India-United Kingdom. [Art. 4,5,7, 13]
Held, that the assessee's provision of legal services under Indian engagements did not fall within the meaning of "fees for technical services" (as defined in article 13 of the Double Taxation Avoidance Agreement) since the services did not make available any technical knowledge, experience, skills, know-how or process. Therefore, the income received therefrom, being in the nature of business income, was not taxable in India in the absence of a permanent establishment of the assessee in India in terms of articles 5 and 7 of the Double Taxation Avoidance Agreement between India and the United Kingdom. (AY. 2012-13, 2013-14)
Herbert Smith Freehills L. L. P. v. Asst. CIT (2023)101 ITR 106 /198 ITD 633 / 222 TTJ 720 (Delhi) (Trib)

S. 10(1) : Agricultural income-Apportionment of expenses-Agricultural and trading-Order of Tribunal is affirmed. [S. 260A]
Dismissing the appeal of the Revenue the Court held that in view of the seasonal nature of the business carried out by the assessee and the short shelf life of the seeds, Tribunal has held that it is imperative for the assessee to take into account the quantity of unsold seeds at the end of the year and the need to re-validate their further utility and to take them into stock for the next season. It cannot be said that the provision for sales returns is unascertained or unreasonable. On due consideration, no error or infirmity is found in the view taken by the Tribunal. (AY.2013-14)
PCIT v. Prabhat Agri Biotech Ltd (2023) 333 CTR 439 (Telangana)(HC)

S. 10(1) : Agricultural income-Growing and selling of hybrid corn seeds jointly with help of farmers-Ownership or possession of land is not a pre-condition for claiming agricultural operations to be carried out under section 10(1)-Entitled to exemption.
Assessee is engaged in growing and selling of hybrid corn seeds jointly with help of farmers. During year, it earned income from said activity which was claimed as exempt under section 10(1). Assessing Officer denied claim of assessee primarily on basis that assessee had not carried agricultural process ordinarily undertaken by cultivator and assessee was not in lawful possession of land.As per agreement between assessee and farmer, farmer agreed to perform agricultural operations such as sowing foundation seeds for purpose of production of hybrid seeds from foundation seeds jointly.Manner in which agricultural process was undertaken by assessee during year was similar to preceding years wherein issue was considered in favour of assessee, assessee was entitled to claim exemption under section 10(1). AY. 2009-10, 2012-13)
Bayer Crop Science Ltd. v Dy. CIT (2023) 156 taxmann.com 510 / / 226 TTJ 825 / (2024) 204 ITD 630 (Mum) (Trib.)
Dy.CIT v. Mosanto India Ltd (2023) 156 taxmann.com 510 / / 226 TTJ 825 / (2024) 204 ITD 630 (Mum) (Trib.)

S. 10(1) : Agricultural income-Business of manufacture and sale of sugar-Income from cultivation of sugarcane seeds treated in earlier years as agricultural income-Exempt from tax.

Income from cultivation of sugarcane seeds treated in earlier years as agricultural income. The AO is not justified in assessing the income as business of manufacture and sale of sugar.(AY. 2015-16)

Dy. CIT v. Wahid Sandhar Sugars Ltd. (2023)104 ITR 60 (SN)(Delhi) (Trib)

S. 10(1) : Agricultural income-Engaged in producing foundation seeds and selling to various seed companies-Engaged labours and supervisors-Operation not of contract farming-Exemption justified.

Held, that the assessee took the agricultural lands on lease and conducted normal agricultural operations to produce a hybrid variety of foundation seeds in order to sell them in the open market to the seed industries, and in that pursuit engaged labour and supervisors. The assessee had produced voluminous record to show the engagement of labour and the payment of salaries to the supervisors and the agreements with the landowners. Merely because the assessee took the land on lease for conducting its research operations to produce foundation seeds of hybrid varieties, such a lease could not ipso facto make the operations of the assessee contract farming. Therefore, there was no illegality or irregularity in the conclusions reached by the Commissioner (Appeals). (AY. 2014-15)

Profarm Seed India P. Ltd. v. ITO (2023)101 ITR 120/ 198 ITD 113 (Hyd) (Trib)

S. 10(2A) : : Share income of partner-The Limited Liability of Partnership, (LLP) being a distinct person from its partners can become a partner in a partnership firm and is also eligible to claim the exemption. [S. 2(23), Indian Partnership Act, 1932,S. 4,25, 26, 49, Limited Liability of Partnership,Act, 2008, S. 14,General Clauses Act, 1897, 3(42)]

The assessee, an LLP, was a partner in a partnership firm from where it derived profits. While filing its Return, it claimed an exemption under s. 10(2A) of the Act. The exemption was disallowed by Revenue Authorities, stating that a firm cannot be a partner in another firm. Tribunal, after analysing various provisions of the Indian Partnership Act, 1932, the LLP Act, 2008, and the General Clauses Act, 1897, observed that the liability of partners of the LLP and liability of the LLP as a partner under the Partnership Act would be different. The liability of partners in an LLP cannot have any relevance when the LLP itself becomes a partner. In such cases, the provisions of the Partnership Act will apply to an LLP. It also observed that the LLP is a distinct body corporate and a 'person' separate from its partners and hence characteristically differs from a partnership firm. Referred Dulichand Laxminarayan v. CIT AIR 1956 SC 354.(AY. 2020-21)

Mulberry Textiles LLP v. ITO (2023) 200 ITD 244/ 226 TTJ 573 (SMC) (Bang)(Trib)

S. 10(2A) : Share income of partner- No distributable profits-Partnership firm had earned profit-Partner is eligible to claim exemption.

Assessee is a partner in partnership firm of 50 per cent in profit and loss. During year, assessee claimed exemption on profit received from partnership firm under section 10(2A). Assessing Officer held that although in relevant year there was profit in partnership firm but after setting off brought forward losses from previous year, total income was NIL and, therefore, distributable profit of firm was also NIL. The AO disallowed the claim. Tribunal held that though as per income tax, there was no distributable profits but in real theory partnership firm had earned profit in relevant year against which losses of previous year was set off. Assessee had not got any undue benefits and was eligible to claim to exemption under section. (AY. 2018-19)

Davalagiri Property Developers (P.) Ltd. v. DCIT (2023) 199 ITD 416 (Bang) (Trib.)

S. 10(10AA) : Leave salary-Employee of the Central Government or State Government-Originally employed by Government but retiring from service of Government undertaking-Whether Entitled To Full Exemption-Matter remanded to Assessing Officer-CIT(A) has the power to entertain fresh claim which is not made in the return.[S. 143(1), 250]

Held, allowing the appeal, that the issue had been restored to the file of the Assessing Officer for determination of the exemption of leave encashment to which the assessee was entitled under the provisions of section 10(10AA)(i) and (ii) of the Act. Tribunal also held that CIT(A) has the power to entertain fresh claim which is not made in the return. (AY.2016-17)

Devendra Mehta v.Dy. CIT (2023)108 ITR 6 (Jabalpur)(Trib)

S. 10(13A) : House rent allowance-Rent paid by husband to his wife-house was registered in wife's name-Rental income was shown by wife in ITR-Deduction of house rent allowance is allowable as deduction.

The Tribunal held that it is evident from the ITR of the wife that she has declared apart from rental income, income from business and profession and income from other sources. The Hon'ble ITAT rejected the CIT(A)'s contentions that husband cannot pay rent to the wife. The ITAT observed that the rent paid by the assesse has been included by the wife in her total income, which has been accepted by the revenue conforming payment of taxes. Further, the house is registered in the name of the wife and she is also paying interest and loan instalments. Therefore, the rent paid by the assessee to his wife cannot be doubted and thus deduction of HRA u/s. 10(13A) shall be allowed. Appeal was decided in favour of assessee. [ITA No. 267/Del/2023 dt. 30.06.2023] (AY. 2020-21)

Aman Kumar Jain v. ITO (Delhi)(Trib.) (UR)

S. 10(20) : Local authority-Change of law-For years prior to and subsequent to AY in question assessee treated as "local authority"-To be assessed as local authority for year in question-Not as artificial juridical person. [S. 2(31)(vii)]

For A.Y. 2014-15, the assessee filed its return declaring taxable income at NIL, it being a a local authority. However, in view of the amendment effected in section 10(20) of the Act with effect from April 1, 2003, the AO treated the assessee as an "artificial juridical person" and held that the assessee had failed to furnish the audit report, balance-sheet, profit and loss account and details of the expenses claimed in the return. On appeal, the Tribunal held that for the AY 2017-18 in the assessee's own case the A.O. and CIT (A) had accepted the stand of the assessee that it was a Local Authority for the AYs 2015-16 and 2016-17. Therefore, on identical facts, which had attained finality, the assessee was to be assessed as a local authority and its receipts were not chargeable to tax. (AY. 2014-15)

Cane Development Council v. ITO (2023)104 ITR 12 (SN)(Delhi) (Trib)

S. 10(22) : Educational institution-Income of trust was utilised personally by managing trustee-Not entitle to exemption. [Art. 136]

On appeal the High Court held that the assessee-trust was not entitled to exemption because the funds of the trust were being misutilised and misappropriated in the name of the managing trustee and chairman and his family members and the expenditure was incurred towards the house of the managing director and chairman-cum-managing trustee and huge amounts had been spent in the name of the family members of the managing trustee, the purchase of dental equipment for the college was not supported by valid receipts and documents, properties were purchased in the name of the managing trustee, the documentary

evidence showed that the receipts were in the name of the trust and the collections of donations amounted to profit-making motive which could not be the object or the purpose of running a charitable educational institution. On appeal Supreme Court affirmed the order of the High Court. (AY. 1997-98)

Sir M. Visveswaraya Education Trust v. CIT (2023)454 ITR 438/ 293 Taxman 425/ 334 CTR 344 (SC)

Editorial : CIT v.Sir M. Visveswaraya Education Trust (2009) 319 ITR 425 (Karn)(HC), affirmed.

S. 10(23B) : Khadi or Village Industries-Period for which certificate is to be granted is not within control of assessee-Technical violation-Denial of exemption is not justified.

Assessee-society is registered with Khadi and Village Industries Commission and claimed exemption under section 10(23B) Exemption denied exemption on ground that grant of approval at any one point of time could not be for more than three consecutive assessment years, however in case of assessee approval/renewal of approval was granted for 5 consecutive hence case assessee was hit by violation of second proviso to section 10(23B). On appeal the Tribunal held that in similar to assessee, Tribunal held that time period for which certificate was to be granted was not within control of assessee, thus it was only a technical violation for which assessee could not be penalized by denying exemption. Directed to grant the exemption. (AY. 2021-22)

Vivekananda Resham Khadi Gramodyog Sangha. v. ACIT, CPC (2023) 203 ITD 753 (Kol) (Trib.)

S. 10(23C) : Educational institution-Activities not solely for educational purposes-Earned profits at 67.81 percent without depreciation and 44.48 Per cent with depreciation-Not entitle to exemption. [S. 10(23C(vi)]

The assessee is engaged in the activity of imparting education and applied for exemption under section 10(23C)(vi) of Act before the Commissioner. The Commissioner found that the assessee earned profits to the extent of 67.81 per cent. without depreciation in the year in question and dismissed the application. On writ High Court directed the Commissioner to allow exemption.On appeal by the Revenue the Court held that the judgment of the High Court was unsustainable taking into consideration the entire material on record, in fact, the Commissioner, while considering the application of the assessee for grant of exemption under section 10(23C)(vi) specifically held that the activity of the assessee could not be said to be solely for imparting the education and that the assessee earned profits which were found to be 67.81 per cent. without depreciation and 44.48 per cent. with depreciation. The finding of fact recorded by the Commissioner, as such, had not been upset. Court held that for claiming the exemption under section 10(23C)(vi) the activity of the assessee must be solely for educational purposes and if ultimately it is found that the activity is for profits the assessee is not entitled to the exemption under section 10(23C)(vi) of the Act. Relied on New Noble Educational Society v. CCIT(2022)448 ITR 594 (SC) a three-judge Bench of the court had not approved the decision in Queen's Educational Society (2015) 372 ITR 699 (SC).(AY.2006-07)

UOI v. Baba Banda Singh Bahadur Education Trust (2023)454 ITR 273 / 293 Taxman 428/ 332 CTR 503 / 225 DTR 255 (SC)

Editorial : Baba Banda Singh Bahadur Education Trust v. UOI (P&H)(HC) (C.W.P No. 18251 of 2009 dt. 20-5 2010)

S. 10(23C) : Educational institution-Charitable purpose-Order of High Court affirmed-SLP of Revenue is dismissed. [S. 2(15), 10(23C)(iv), Art. 136]

The High Court, following its decision in the assessee's case in India Trade Promotion Organization v. DGIT (E) [2015] 371 ITR 333 (Delhi)(HC) held that the Tribunal did not err in granting exemption to the assessee under section 10(23C)(iv) of the Income-tax Act, 1961 for the AY.s 2009-10, 2010-11 and 2011-12. SLP of Revenue was dismissed. (AY. 2009-10 to 2011-12)

CIT (E) v. India Trade Promotion Organisation (2023)454 ITR 799 / 294 taxman 1 (SC)

Editorial : CIT v. India Trade Promotion Organisation (2023) 454 ITR 795 / 152 taxmann.com 490 (Delhi)(HC), affirmed.

S. 10(23C) : Educational institution-Essential purpose of the trust is to run both institutions on non-profit basis-Collection of the amount towards placement and training-Entitle to exemption.[S. 10(23C)(vi), Art. 226]

Court held that neither the collection of the amount towards placement and raining nor its utilisation by the assessee can be said to be in a manner that is not solely for educational purposes. Accordingly the assessee is entitled to exemption under s. 10(23C)(vi) of the Act. Court directed the CCIT to pass the order within a period of 4 weeks. (AY.2009-10)

Orissa Trust of Technical Education & Training v. CCIT (2023) 333 CTR (Ori) 527/ 226 DTR 114 (Orissa)(HC)

S. 10(23C) : Educational institution-Interest earned on grants-Quantifying amount of grant-in-aid-Eligible to claim exemption. [10(23C) (iiiac), 11, 13, R. 2BBB]

Dismissing the appeal of the Revenue the Court held that if interest was included, then, grant-in-aid provided to assessee was more than 50 per cent of total receipts, the assessee is entitle to exemption under section 10(23C)(iiiac). Explanation appended to section 10(23C)(iiiac) providing threshold of grants received at 50 per cent was inserted via Finance Act 25 of 2014, with effect from 1-4-2015 which would not be applicable to relevant year 2013-14. (AY. 2013-14)

CIT (E) v.Institute of Liver & Biliary Sciences (2023) 335 CTR 922 / 154 taxmann.com 401 (Delhi) (HC)

S. 1023C) : Educational institution-Charitable purpose-Order of the Tribunal allowing exemption is affirmed. [S. 2(15), 10(23C)(iv).]

On appeal by the Revenue order of the Tribunal allowing exemption is affirmed. (AY.2009-10 to 2011-12)

CIT v. India Trade Promotion Organisation (2023) 454 ITR 795 / 152 taxmann.com 490 (Delhi)(HC)

Editorial : SLP of revenue is dismissed, CIT (E) v. India Trade Promotion Organisation (2023)454 ITR 799 / 294 taxman 1 (SC)

S. 10 (23C) : Educational institution-American Trust Established In India Solely for educational purposes with permission granted by Central Government-American organisation incurring expenses in support of Indian Trust and repatriating amounts to it-Amounts received utilised for purposes of education in India-Entitled to exemption. [S. 10(23C)(vi), 10(22), 11(5), Art. 226]

The petitioners were trustees of a trust, American School of Bombay Education Trust (ASB). The ASB was set-up solely for the purpose of education and not for the purpose of profit. The Trustees held the Trust Fund solely for the purpose of education. ASB had applied for an exemption under section 10(23C)(*vi*) and had been granted under section 10(22) for

assessment years 1998-99 to 2001-02 and 2006-07 to 2026-27. Accordingly the petitioners sought exemption for intermediate years 2002-03 to 2005-06 on ground that institution shall exist solely for the purpose of providing education and not for the purpose of profit. The application was rejected on grounds that part of income was received by SAIESF directly, it was not possible to verify expenses incurred by SAIESF and funds repatriated by SAIESF were not invested in accordance with section 11(5) of the Act. On writ allowing the petition the Court held that SAIESF was set-up in USA, wholly and exclusively for charitable and educational purposes and was formed for sole purpose of assisting and supporting assessee-trust and entire expenses incurred by SAIESF were towards educational purpose of assessee-trust, exemption claimed by assessee under section 10(23C)(vi) could not have been denied; revenue could not have enquired about receipts and expenses made by SAIESF outside country merely because it was transferring its surplus or even a portion thereof to assessee-trust in India. Petition was allowed. (AY. 2002-03, 2003-04, 2004-05, 2005-06)

Laura Entwistle v. UOI (2023) 454 ITR 345 / 148 taxmann.com 251 / 292 Taxman 429 / 333 CTR 172/ 226 DTR 401 (Bom)(HC)

S. 10(23C) : Educational institution-Cancellation of registration-Surplus generated by was to be ploughed back for fulfilment and attainment of educational activities-Denial of approval is not justified. [S. 10(23C(vi), 12AA(2), Art. 226]

Allowing the petition the Court held that main object of assessee was in field of education as was stated in its Memorandum of association and Articles of association of assessee. The surplus generated by assessee was to be ploughed back for fulfilment and attainment of educational activities, denial of approval to assessee under section 10(23C)(vi) was not justified. (AY. 2010-11) (SJ)

Bosco Educational Academy (P.) Ltd. v. Chief CIT (2021) 127 taxmann.com 776 /(2023) 332 CTR 43/224 DTR 131 (Mad)(HC)

S. 10(23C) : Educational institution-Retrospective withdrawal of approval-Approval can be withdrawn only from the date of issuance of the show cause notice-Chairperson-Occupying the house property in lieu of her services-Provision for vehicles for members of the Society-Withdrawal of exemption is not justified. [S. 10(23C)(vi)]

Held that show cause notice was issued by the PCIT on 15 th June, 2021, and he passed order withdrawing the approval retrospectively, w.e.f Assessment Year 2003-04. Tribunal held that PCIT is not justified in withdrawing the approval under section 10(23C)(vi) retrospectively. Withdrawal can only be from the date of issuance of the show cause notice.Tribunal also held that just because the Chairperson is occupying the house property in lieu of her services and also providing facilities of vehicles for members of the Society, withdrawal of exemption is not justified (AY.2021-22)

St. Peterrs Educational Society v.PCIT (2023) 223 TTJ 145 (Chd)(Trib)

S. 10(23C) : Educational institution-University or educational institution must exist solely for educational purposes and not for purpose of profit each year-Earning royalties from publications-Not existing solely for education but for profit-Not entitled to exemption. [S. 10(23C)(vi) 10A, 10B, 80IB]

Held that all the objects of the assessee were not aimed at or related to imparting education or in relation to educational activities. The assessee provided copyright in the course material to certain publishing houses. These books would then be made available by the publishers across the country, in respect of which the assessee received royalty. Thus, it was evident that to provide copyright in the course material to the publishing houses and earn royalty from them, was to earn more profit and was not solely for the purpose of education. The assessee

had modified its objectives and it could not be said to exist "solely" for the purpose of education. Denial of exemption under section 10(23C)(vi) of the Act is held to be justified.(AY.2016-17 to 2019-20)

Indian Institute of Banking and Finance v. CIT (2023) 107 ITR 250 / 226 TTJ 43 (Mum.)(Trib.)

S. 10 (23C) : Medical institution-Hospital-Failure to follow the direction of High Court-Order of commissioner rejecting the exemption is set aside. [S. 10(22A, 10(23C(iiiac), 10(23C) (iiiae), 10(23C)(via)]

Assessee, a co-operative society was formed to give members of society and citizens better medical facilities at reasonable charges and provide decent hospital facilities, dispensaries, and other up-to-date scientific medical and surgical amenities. It enjoyed benefit under section 10(22A) and in past, applications made by assessee under section 10(23C) were also accepted. Assessee filed an application for continuation of registration under section 10(23C)(via)-Commissioner (E) rejected said application on ground that there was no system prevailing of reserving beds for poor or indigent patients and amounts spent on patients belonging to economically weaker societies was on an average only 0.93 per cent of total receipts for last 4 years. On writ High Court held that it is necessary for Commissioner to look into entire record for ascertaining income received by assessee from beds/rooms provided in hospital. Further, it is necessary for Commissioner to ascertain as to how many patients, treatment was rendered either free of cost or at a concessional rate.High Court remitted matter back to Commissioner (E) for fresh consideration of application for registration under section 10(23C)(via). On remand Commissioner (E) rejected application for continuation of registration under section 10(23C)(via). On appeal the Tribunal held that on pursuant to remand by High Court, assessee submitted all necessary information to Commissioner (E), like details of total no. of patients admitted year-wise; total amount collected from patients; details availing discounts offered for poor patients; details availing discount offered for indigent patients; details of occupation of beds etc., but Commissioner (E) without examining all these aspects, as directed by High Court, had reiterated its findings regarding non-earmarking of any beds for indigent and weaker sections, which was held to be not a correct test by High Court. Since directions of High Court had not been complied with by Commissioner (E), Tribunal restored the issue to file of Commissioner (E) for de novo adjudication as per directions of High Court. (AY. 2019-20)

Shushrusha Citizens' Co-operative Hospital Ltd. v. CIT (2023) 202 ITD 443/ (2024) 228 TTJ 840 (Mum) (Trib.)

S. 10 (23C) : Educational institution-Statement in the course of survey-Certain expenses not properly vouched-Principal Commissioner cancelled registration by invoking clause (b)(ii) of 15th proviso to section 10(23C)-Edifice erected on statement of trustee-No case within any of 'specified violation'-Cancellation order revoked. [S. 10(23C(vi), 131, 133A]

Assessee was a trust running five schools, which was granted registration under section 10(23C)(vi) of the Act. One trustee admitted undisclosed income of Rs. 9 crore relating to trust Principal Commissioner cancelled registration by invoking clause (b)(ii) of 15th proviso to section 10(23C). There was no evidence to demonstrate either of undisclosed income or spend on objects other than the objects. In a scenario where the cancellation of registration for an assessee trust was cancelled solely on a statement given by a trustee during a survey and there exists no evidence indicating any diversion of income for purposes other than those designated for the trust's objects, thereby suggesting an absence of any specified violation, the order to cancel the registration ought to be nullified..*(*AY.2009-10 to 2019-20)

St. Xavier's Education Trust v. PCIT [2023] 202 ITD 696 / [2024] 109 ITR 501 [Pune] (Trib)

S. 10(23C) : Educational institution-Publication-Charitable-Exemption is denied on the ground that activities of assessee were not charitable in nature-Matter remanded to the file of CIT(A) and pass order after considering judgment of High Court [S. 2(15), 10(23)(iiiab), 10(23C)(iv), 12A, 12AA]

Assessee is a society registered under section 12AA was doing work of books writing, books publication and books sale with no profit motive. During year under consideration, assessee-society had declared surplus and claimed exemption under section 10(23C)(iiiab) and 10(23C)(iv). Assessing Officer as well as Commissioner (Appeals) held that activities of assessee were not charitable in nature and therefore, it was not entitled for claiming exemption under section 10(23C)(iiiab) and 10(23C)(iv) read with section 2(15). On appeal the assessee submitted that issue was squarely covered by decision of High Court of Rajasthan in assessee's own case for assessment year 2010-11 in IT Appeal No. 302/2016 dated 1-11-2017 wherein it was held that activities of assessee is educational in nature and assessee is running only with a view to publish educational books without any profit motive and thus, would be entitled for benefit under section 10(23C)(iiiab) of the Act. Tribunal held that since order of assessment was passed before judgment given by High Court and there was no discussion in order of Commissioner (Appeals) about High Court judgment on merits of case, matter was to be remanded back to Commissioner (Appeals) for deciding appeal afresh on merits of case after considering judgment of High Court in case of assessee for assessment year 2010-11. (AY. 2014-15)

Rajasthan Hindi Granth Academy. v. ITO (2023) 202 ITD 593 (Jaipur) (Trib.)

S. 10 (23C) : Educational institution-Multiple objectives along with educational object-Could not be said to be existing solely for educational purpose-Exemption is not allowed. [S. 10(23C)(vi)]

Assessee-trust running colleges for imparting higher education in various fields claimed exemption under section 10(23C)(vi). Objects of trust were medical treatment for poor people, undertaking general activities related to public health, organising Family Planning Centres, undertaking activities for education from pre-primary to higher education at university levels, providing and taking forward necessary help/assistance for development of educational activities in different branches/faculties of education CIT (E) denied exemption holding that assessee trust had multiple objects in trust deed, which did not satisfy conditions of section 10(23C)(vi). On appeal the Tribunal held that assessee-trust having multiple objects could not be said to be existing solely for purpose of education which is condition of section 10(23C)(vi) as it was open to trust to pursue all or any of objects of trust under garb of education and, therefore, Commissioner (E) rightly denied exemption under section 10(23C)(vi) of the Act. (AY. 2018-19)

Parul Arogya Seva Mandal Trust. v. CIT (2023) 202 ITD 738 (Ahd) (Trib)

S. 10(23C) : Educational institution-Survey-Statement of trustee-No evidence to demonstrate that assessee spent income on any object other than for which it was established and thus, assessee did not commit any specified violation-Order, cancelling registration is set aside. [S. 10(23C)(vi), 131, 132(4) 133A(3)]

Assessee is a trust running five schools, which was granted registration under section 10(23C)(vi). During course of survey under section 133A, survey party found certain expenses not properly vouched-Statement of one 'F', a trustee, was recorded under section 131 on date of survey, wherein, she admitted undisclosed income of Rs. 9 crore relating to

trust.Thereafter, pursuant to reference made by Assessing Officer, Principal Commissioner cancelled registration by invoking clause (b)(ii) of 15th proviso to section 10(23C). On appeal the Tribunal held that it was not case of any of revenue authorities, that assessee collected any on-money from its students over and above declared fee. Apart from deficient vouchers of certain expenses relating to salary, perquisites and bonus etc., there was no evidence to demonstrate that assessee spent income on any object other than for which it was established. There was not even an iota of indication, either in survey statement or in impugned order, that assessee earned any income from 'profits and gains' that was not incidental to attainment of its objectives. Even though edifice of cancellation of registration had been erected on statement of trustee recorded during course of survey action, still it did not bring case within any of 'specified violation'.As per 15th proviso to section 10(23C) occurrence of one or more 'specified violations' is sine qua non for cancellation of registration.Since assessee did not commit any specified violation, impugned order, cancelling registration, is set aside. (AY. 2019-10 to 2019-20)
St. Xavier‘s Education Trust. v. PCIT (2023) 202 ITD 696 /226 TTJ 316 (Pune) (Trib.)

S. 10(23C) : Educational institution-Sub-lease of leasehold nauzul land to builder-Sub-leasing is permissible-Order of CIT(E) withdrawal of registration is set aside. [S. 10(23(C)(vi)]
Assessee society was granted registration under section 10(23C)(vi) by Chief Commissioner on 29-2-2008.During assessment proceedings for relevant year, Commissioner (E) withdraw registration on ground that assessee society had violated terms and conditions of approval granted under section 10(23C)(vi). Violations included sub-leasing leasehold nazul land to a builder without showing rental income from it, contrary to conditions of use for educational purposes. On appeal the Tribunal held that society had right to sub-lease property as per lease deed with State Government-Sub-leasing was in conformity with society's object clause of controlling and administering movable property and raising funds for maintaining and managing educational institution. Regarding alleged non-accounting of rental income from sub-lessee, it was found that amount was duly reflected in balance sheet, and sub-lease had been terminated due to sub-lessee's failure to comply with terms-Further, failure to account for interest income was an inadvertent omission and could not be a basis for withdrawal of registration. Furthermore, it could not be said that assessee society had obtained approval under section 10(23C)(vi) on basis of any fraud or misrepresentation of facts before him. Accordingly the order of CIT(E) withdrawal of exemption is set aside. (AY. 2019-20)
Rajkumar College v. CIT(E) (2023) 202 ITD 296 (Raipur)(Trib)

S. 10 (23C) : Educational institution-Registration-Matter remanded to the PCIT to consider whether such College and School could be treated as an independent entity under section 10(23C)(vi) in absence of separate PAN numberS. [S. 10(23C)(vi), 12AA]
Assessee-society was registered under Societies Registration Act, 1860. Under its management, a College and Senior Secondary School were running, not having their independent PAN numbers. Assessee-society applied for grant of registration under section 10(23C)(vi).PCIT denied registration under section 12AA noting that rights/proprietorship of institutes and properties were restricted to family itself and not for enduring benefit to general public. On appeal the Tribunal held that there being a fundamental error in impugned order of Pr. Commissioner as Pr. Commissioner had denied registration under section 12AA, although assessee sought for registration under section 10(23C)(vi). Matter restored back to PCIT to adjudicate appeal afresh on issue of grant of registration under section 10(23C)(vi) considering whether such College and School could be treated as an independent entity under section 10(23C)(vi) in absence of separate PAN numbers.

S. M.D.R.S. D. College of Education. v. CIT (2023) 201 ITD 358 (Amritsar) (Trib.)

S. 10(23C) : Educational institution-Bogus donation-Donation supported by certificate of recognition of Director General of exemptions and bank statements-Denial of exemption is not proper-Retracted statements not incriminating material-Cannot be used to reopen concluded assessment-Gratuity-Leave encashment-Provision for gratuity or leave encashment-Constitutes ascertained liability-Allowable as deduction. [S. 12AA, 80G, 143(3) 153A]

Held that the Donation supported by certificate of recognition of Director General of exemptions and bank statements hence the denial of exemption is not proper. Retracted statements not incriminating material hence cannot be used to reopen concluded assessment. Gratuity. Provision for gratuity or leave encashment constitutes ascertained liability hence allowable as deduction. (AY.2012-13, 2014-15 to 2018-19)

Dy. CIT v. Podar Education Trusts (2023)102 ITR 270 (Mum) (Trib)

S. 10(23C) : Educational institution-Provisional approval granted u/s. 10(23C) is not equivalent to the grant of registration for the purpose of S. 11(7). [S. 10(23C(vi) 11(7), 12A]

The assessee was a trust registered under S. 12A since 1974. It claimed exemption u/s 11 up to the AY 2020-21. However, from the AY 2020-21 assessee applied for the alternative claim of exemption under S. 10(23C)(vi) and it received provisional approval u/s 10(23C)(vi) in Form No. 10AC for AY 2021-22 to 2023-24. Thereafter, the assessee filed an application u/s 12A(1)(ac)(iv) as per the 2nd proviso to S. 11(7) seeking revival of its registration u/s 12A. The application filed by the assessee u/s 12A(1)(ac)(iv) was rejected in terms of 2nd proviso to S. 11(7) by CIT (Exemptions), on the basis that the registration granted to the assessee u/s 10(23C) was provisional and therefore, same is not identical to the approval granted u/s 10(23C) for S. 11(7). The 1st proviso to S. 11(7) is not even triggered in the facts of the present case, as the CIT(Exemptions) rejected the submission of the assessee to treat provisional approval u/s 10(23C) identical to approval u/s 10(23C) for S. 11(7). Therefore, it was held that once the 1st proviso to S. 11(7) is not triggered, there is no question of the registration granted u/s. 12A becoming inoperative. (AY. 2021-22)

Indian Institute of Banking and Finance v. CIT(E) (2023) 102 ITR 58(SN)] (Mum)(Trib.)

S. 10(23C) : Educational Institution-Rejection of application seeking approval u/s 10(23C)(vi) of the Act by the CIT (E) merely stating that the Trust did not exist solely for educational purpose-Entitle to approval. [S. 10(23C)(vi)]

The Hon'ble ITAT, allowing the appeal, observed that the assessee's sole object was to provide education to students, the other ancillary activities like promotion of cultural, social and sports were necessary in building the character of the students and were to meet the prime activity of education, that nominal profit earned could not be termed as the assessee trust exists for profit motive, that the State Government has granted the approval to establish and run the secondary and higher secondary studies for the students. The assessee trust entitled to the approval certificate u/s. 10(23C)(vi) of the Act.

Star Education Trust v. CIT (E) (2023) 102 ITR 15 (SN) (Surat) (Trib)

S. 10(23C) : Educational institution-Fresh claim-Educational institution wholly and substantially financed by Government-Matter remanded to the Assessing Officer for fresh adjudication. [S. 10(23C)(iiiab), 10(23C(iiiad), 12A]

Assessee is an autonomous college conducting under a University.During year, assessee obtained separate PAN to file return and claimed exemption under section 10(23C)(iiiad). Assessing Officer denied same on ground that exemption could not be granted to assessee as it was not independently registered under section 12A and assessee could not claim exemption on basis of exemption availed by parent University. Assessee contended that although it had erroneously treated itself as an independent entity, it would still be entitled for exemption under section 10(23C)(iiiab) if not under section 10(23C)(iiiad) as it was an educational institution wholly and substantially financed by Government. Tribunal held that since contention of assessee was a fresh claim which should be examined, matter was to be remanded back to Assessing Officer for de novo adjudication. (AY. 2014-15)
Sir Vithaldas Thackersey College of Home Science (Autonomous) SNDT Women's University. v. ITO (2023) 198 ITD 97 (Mum) (Trib.)

S. 10 (23C) : Educational institution-Corpus donation-Registration is not mandatory-Matter reamanded for verification. [S. 10(23C(iiiad), 12AA]
Assessee, an educational society, was running a school and claimed exemption under section 10(23C) (iiiad) on account of corpus fund. The Assessing Officer added back said corpus funds since the genuineness of transactions was not proved. Consequently, exemption under sections 11 and 12 was rejected for violation of section 12AA since turnover of assessee exceeded Rs. 1 crore. Commissioner (Appeals) also upheld order of Assessing Officer. Registration under section 12AA is not a necessary requirement for availing corpus donations. Since, in instant case, corpus donations remained unverified and assessee was also interested in reverification of evidence, matter was to be remitted back to Assessing Officer for further verification.(AY. 2010-11)
Guru Govind Singh Educational Society v. ITO (2023) 201 ITD 325(Amritsar)(Trib)

S. 10(23C) : Educational institution-Donations-not wholly or substantially financed by Government of India-Matter remanded to the file of CIT(A) for reconsideration. [S. 10(23C)(iiiab)]
Assessing Officer held that the institution is not wholly or substantially financed by Government of India hence receipt of capitation fees hence not eligible for exemption. Commissioner (Appeals) allowed the claim. On appeal the Tribunal remanded the matter to the file of the CIT(A) to decide the issue on merits (AY. 2011-12)
Joint CIT (OSD)(E) v. Deccan Education Society. (2023) 199 ITD 424 (Pune)(Trib.)

S. 10(23C) : Educational institution-Hospitals-Treatment at concessional rate provided by hospital to patients accounted for less than 1 per cent of revenue-Denial of exemption is justified. [S. 10(23C)(vi), 12AA, 80G(5)(vi), Companies Act, 2013, S. 8]

The assessee-company owning hospital was converted from private limited company to charitable company under section 8 of Companies Act, 2013 and hospital continued to charge patients at market rates even after such conversion and, treatment at concessional rate provided by hospital to patients accounted for less than 1 per cent of revenue, Commissioner (E) is justified in denying registration/approval under sections 12AA,10(23C)(vi) & 80G(5)(vi) to assessee.
Fernandez Foundation. v. CIT (E) (2023) 199 ITD 37/ 221 TTJ 109 (Hyd) (Trib.)

S. 10(23C) : Educational institution-Condonation of delay-Commissioner(E) is not vested with any power to condone delay involved in filing application for grant of approval under section 10(23C)(vi) [S. 10(23C)(vi)]

Assessee, an educational society, filed an application belatedly on 25-4-2019 for grant of approval under section 10(23C)(vi) for assessment year 2018-19. Commissioner vide order dated 30-9-2020 rejected application as not maintainable for reason that same was filed beyond prescribed time period. On appeal the Tribunal held that since Commissioner is not vested with any power to condone delay involved in filing of application by assessee, same had rightly been rejected by him. (AY. 2018-19)

Manav Rachana Education Society v. CIT(E) (2023) 199 ITD 589 (Raipur) (Trib.)

S. 10(23C) : Educational institution-Exemption-AOP formed solely for education-No distribution of profit-Income only from educational fees and Bank interest on FDs-Surplus utilised only for education-No contrary evidence-Assessee entitled to exemption. [S. 10(23C)(vi), Form No 10BB, 56D]

Held, the assessee was an association of two charitable trusts. The objects of the assessee was education. Both these charitable trusts were registered with the Income-tax authorities and under the Bombay Public Trusts Act, 1950. Both these members of the association of persons were entities regulated by the Charity Commissioner. Further, the annual accounts furnished for 2017-18 clearly showed that the assessee had earned only educational fees and bank interest on fixed deposits and there was no other revenue earned. The expenses incurred by the assessee were with respect to the educational activities only. Furthermore, one of the members of the association of-persons was merged with another trust and therefore instead of the member of the association of persons, the trust in which the member of the association of persons amalgamated was mentioned. Further, in the certificate dated March 7, 2019 the names of both the members of the association of persons were mentioned. That the fees had been received and the educational activities were also carried out by the association of persons and the fixed assets created for education purposes were in the name of the association of persons, was-evident by the annual accounts and was mentioned in form 10BB filed. Form 56D clearly showed that the association of persons was formed to run and manage an English medium public school and the total income shown clearly showed that the assessee was running a school. Thus, exemption claim was justified by the assessee. (AY. 2018-19)

Sharda Mandir High School v. CIT (E) (2023)101 ITR 39 /200 ITD 331 (Mum)(Trib.)

S. 10(26) : Schedule Tribes-Income of member of Scheduled Tribe-Individual-Special Bench-Family-Matter remanded to the Tribunal with a request to the President of the Tribunal to constitute a Larger Bench without including either member who was a party to the order for the consideration of the entire gamut of the matter. [S. 2(31), 184, 254(1), 255, 260A]

In the appeal in one of the matters the registered partnership firm has a husband and wife as partners. In the other matters, uterine brothers constitute the partnership firm in each case, Going by the dictum in CIT v. Mahari & Sons (1992) 106 CTR (Gau) 229: (1992) 195 ITR 630 (Gau) and, particularly, the interpretation of the concept of family made therein, it would appear that an association, even if it be a partnership, between a husband and wife or between a brother and another, would be entitled to the same exemption as any of the partners would in their individual capacity. It cannot also be missed that the rule which has been enunciated in Mahari & Sons has held the field for more than three decades and persons may have organised their businesses in accordance therewith.Court hheld that there is no doubt that the Tribunal noticed the dictum in CIT v. Mahari & Sons in the common order impugned and, in effect, held that such rule was per incuriam or, at any rate, no longer good law in view of subsequent Supreme Court pronouncements. However, the exercise appears to have been done in a rather cavalier manner without covering the entire gamut of the discussion possible

on the issue. At any rate, none of the Supreme Court judgments referred to in the order impugned by the Tribunal expressly deals with the situation covered by Mahari & Sons. The general dicta pertaining to interpretation of a taxing statute and an exemption clause contained in a taxing statute have been relied upon by the Tribunal in the order impugned to come to a conclusion that the principle enunciated in Mahari & Sons no longer holds the field. Balancing both sides-the fact that the dictum in Mahari & Sons has held the field for three decades and the recognition that the order impugned has been rendered by a specialised Tribunal-it is deemed fit and proper to remand the matter before the Tribunal with a request to the President of the Tribunal to constituite a Larger Bench without including either member who was a party to the order impugned, for the consideration of the entire gamut of the matter.

Ri Kynjai Serenity By The Lake. v. PCIT (2023) 334 CTR 890 (Meghalaya) (HC)
Hotel Centre Point. v. PCIT (2023) 334 CTR 890 (Meghalaya) (HC)

S. 10(26AAAA) : Income of Sikkimese-Individual-Old Indian settlers who had settled in Sikkim prior to the merger of Sikkim with India on April 26, 1975 were also entitled to the exemption-Proviso excludes from the provision of exemption a Sikkimese woman merely because she marries a non-Sikkimese after April 1, 2008 is discriminatory and violative of articles – Law declared by Court to be treated as law until legislation is made. [Sikkim Income Tax Manual, 1948, Sikkim Citizenship (Amendment) Order, 1989-Sikkim Work Permit Rules, 1965, Art. 14 15 142 371F]

Held that Sikkimese who were old Indian settlers and who had settled in Sikkim prior to the merger of Sikkim with India on April 26, 1975 were also entitled to the exemption under section 10(26AAA) of the 1961 Act. The proviso to section 10(26AAA) inasmuch as it excludes from the provision of exemption a Sikkimese woman merely because she marries a non-Sikkimese after April 1, 2008 is discriminatory and violative of articles 14, 15 and 21 of the Constitution of India, and requires to be struck down. Law declared by Court to be treated as law until legislation is made.

Association of Old Settlers of Sikkim v. UOI (2023)451 ITR 213 / 292 Taxman 73 /330 CTR 481 (SC)
Rapden Lepcha v. UOI (2023)451 ITR 213/ 330 CTR 481 /222 DTR 1 (SC)

S. 10(26AAB) : Income of an agricultural produce market committee or board-Trading in fish, poultry and eggs-Entitled to set-off of loss against fee income. [Delhi Agricultural Produce Marketing (Regulation) Act, 1976, S. 2(1)(a)]

Dismissing the appeal of the Revenue the Court held that since agricultural produce was not defined in the 1961 Act, the Tribunal had taken recourse to section 2 of the 1998 Act. The definition of agricultural produce as contained in section 2(1)(a) of the 1998 Act, read with Schedule is wide, which included all kinds of produce, including fish, poultry and eggs. Even otherwise, the fee earned by the assessee would constitute income derived from regulating agricultural produce. The assessee is entitled to set-off of loss against fee income. The order of Tribunal is affirmed. (AY.2012-13)

PCIT v. Fish Poultry and Egg Marketing Committee (2023)455 ITR 252/149 taxmann.com 487 (Delhi)(HC)

S. 10(34) : Dividend-Domestic companies-Tax on distribution of profits-Dividend received during FY. 2019-20 relevant to AY. 2020-21 cannot be taxed. [S. 115O, 154]

Allowing the appeal of the assessee the Tribunal held that the second proviso to section 10(34) categorically states that dividends received on or after 1 st April 2020 alone would be subjected to tax. On the facts the dividend was received during FY. 2019-20 relevant to AY. 2020-21 therefore not taxable during the year under consideration. (ITA No. 1884/ Mum/ 2022 dt. 6-9-2022) (AY. 2020-21)
Manmohan Textiles Ltd v. NFAC (2023) BCAJ-January-P. 32(Mum)(Trib)

S. 10(35) : Units of mutual fund-Dividend Mutual Funds-Dividend income earned cannot be subject to tax.[S. 115BBDA, 154]
The CPC rejected the rectification application of the assessee on ground that the assessee had earned dividend income from mutual funds during the year which were exempt from taxation u/s 10(35). On appeal the Tribunal held that it was clear from a bare reading of provisions of sections 115BBDA levies special rate of tax only on dividend income earned from domestic companies if exceeding Rs. 10lakhs. Accordingly directed the CPC to allow the rectification application filed by the assessee and allow the exemption. (AY. 2018-19)
Rajalben Hirenbhai Patel v. DCIT (2023) 108 ITR 67 (SN/ [2024]204 ITD 674(SMC) (Ahd) (Trib)

S. 10(37) : Capital gains-Agricultural land-Compensation received for acquisition land [Gujarat Town Planning and Urban Development Act, 1976 S. 107]
Held that the land was needed for town planning scheme by SMC for purpose of sewage treatment plant and it was deemed to be land needed for public purpose and, accordingly, it was compulsorily acquired land under section 107 of Gujarat Town Planning and Urban Development Act, 1976.Order of Tribunal allowing the exemption is affirmed (AY. 2008-09)
PCIT v. Urmi Nilesh Nagarsheth (2023) 291 Taxman 611 (Guj.)(HC)

S. 10(37) : Capital gains-Agricultural land-With in specified urban limits-Compensation received on account of compulsory acquisition of agricultural land by state Govt is exempt from tax. [S. 2(14)(iii), 45 (5), Land Acquisition Act, 1894, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. [RFCTLARR Act.]
Dismissing the appeal of the Reveenue the Tribunal held that where the assessee's agricultural land was compulsorily acquired by following entire procedure prescribed under Land Acquisition Act, merely because compensation amount was awarded vide order of State Government, determining final award would not change character of acquisition from that of compulsory acquisition to voluntary sale so as to deny exemption under section 10(37) to assessee.(AY. 2015-16)
ITO v. Mohd. Aslam Baggar (2023) 200 ITD 712 (Amritsar)(Trib)

S. 10(38) : Long term capital gains from equities-Sale of shares-Capital gains-Income from other sources-Deletion of addition by the Tribunal is justified-Question of fact. [S. 45, 56, 260A]
Dismissing the appeal of the Revenue the Court held that the Tribunal had given a finding that the assessee had produced all the documentary evidence to establish the genuineness of the share transaction and that the Assessing Officer had failed to produce contrary material evidence to rebut the claim and documents produced by the assessee. Order of Tribunal is affirmed. (AY. 2014-15)
PCIT v. Ritu Agarwal Shreeram Bhawan (2023)453 ITR 520 (Raj) (HC)
Editorial : SLP of Department is dismissed, PCIT v. Ritu Agarwal Shreeram Bhawan (2023) 452 ITR 412(St) (SC)

S. 10(38) : Long term capital gains from equities-Additional evidence-Directed the Assessing Officer to admit the additional evidence and allow the claim of exemption.[S. 45, 68, 250]

Assessing Officer held that assessee did not furnish documentary evidence to substantiate earning of exempt income under section 10(38), treated entire consideration received on sale of shares as unexplained income under section 68. Tribunal held that since notices for seeking evidences were sent by Assessing Officer to assessee on non-functional e-mail ID, and moreover, assessee had filed all necessary details called for to substantiate its claim of exempt income and also filed petition for filling additional evidence before Commissioner (Appeals) which was rejected, addition upheld by Commissioner (Appeals) is held to be unjustified. The Assessing Officer is directed to admit the additional evidence and allow the claim of exemption. (AY. 2017-18)

Humuza ConsultantS. v. CIT (2023) 203 ITD 799 (Mum.)(Trib.)

S. 10(38) : Long term capital gains from equities-Business income or capital gains-Two portfolios viz., investment portfolio and trading portfolio-Sale of shares from investment portfolio is entitle to exemption. [S. 28(i), 45]

Assessee claimed exemption under section 10(38) in respect of long-term capital gain earned on sale of PSTL shares. Pursuant to SEBI's investigation, the Assessing Officer declared assessee to be involved in price manipulating of PSTL's shares and held sale of PSTL shares was business income of assessee denying exemption under section 10(38). It was observed that in balance sheet and profit and loss account, assessee had two portfolios viz., investment portfolio and trading portfolio, and shares of PSTL were always held under investment portfolio and nothing contrary had been brought on record to controvert findings of Commissioner (Appeals) and same were treated as an investment by revenue, in preceding years. Thus, the Commissioner (Appeals) was justified in treating profit earned from sale of PSTL shares as a long-term capital gain eligible for exemption under section 10(38) (AY. 2009-10)

ITO v. Nirmal Kotecha (2023) 200 ITD 52/102 ITR 60 (SN) (Mum)(Trib)

S. 10(46) : Body or Authority-Specified income-Issue concluded by Supreme Court-Matter remanded to Central Board of Direct taxeS. [S. 119, Art. 226]

Held, that the issue pertaining to the eligibility of the assessee for exemption under the provisions of section 10(46) stood concluded in ACIT (E) v. Ahmedabad Urban Development Authority (2022) 449 ITR 1 (SC). Matter is remitted to the Central Board of Direct Taxes for examination.

Urban Improvement Trust, Udaipur v. UOI (2023)457 ITR 57/155 taxmann.com 452 (Raj)(HC)

S. 10(46) : Body or Authority-Specified income-Industrial Development Authority constituted by Government for public benefit-Directions issued to concerned authority to pass speaking order. [Art. 226]

On writ the court directed the concerned authority to dispose of the application dated April 6, 2021, to accord a personal hearing to the assessee and thereafter pass a speaking order, bearing in mind the judgments in Yamuna Expressway Industrial Development Authority v. UOI n W. P. (C) No. 5603 of 2020, dated August 25, 2020 (Delhi) and Greater Noida Industrial Authority v. UOI (2023) 456 ITR 702 (Delhi)(HC) (AY.2019-20 to 2023-24)

Yamuna Expressway Industrial Development Authority v. UOI (2023)456 ITR 204/154 taxmann.com 287 (Delhi)(HC)

S. 10A : Free trade zone-Provisions written back-Gains on foreign exchange fluctuation-Entitle to exemption-Turnover-Communication charges-SLP of Revenue is dismissed.[Art. 136]

The High Court answered in favour of the assessee the questions whether the Tribunal was right in holding that the deduction under section 10A of the Income-tax Act, 1961 was to be allowed in respect of provisions written back, that the gains on foreign exchange fluctuation were eligible for deduction under section 10A, and that the communication charges were to be excluded both from the total turnover and the export turnover while computing deduction under section 10A. SLP of the Revenue is dismissed. Referred, CIT v. Hewlett Packard Global Soft Ltd (2018) 403 ITR 453 (Karn)(HC), CIT v. Hewlett Packard Global Soft Ltd (2019) 417 ITR 59 (SC)(St). (AY. 2002-03)

CIT v. Cognizant Technology Solutions Of India Pvt. Ltd. (2023)454 ITR 1 / 293 Taxman 500 (SC)

Editorial : CIT v. Cognizant Technology Solutions of India Pvt. Ltd (Mad)(HC)(TCA No. 83 of 2017 dt. 20-11-2020)

S. 10A : Free trade zone-Deduction allowed for the first time in assessment year 1997-98-Deduction allowable in the assessment year 2001-02-Res Judicata-Not strictly applicable-Principle of consistency to be followed.

The Assessing Officer disallowed the deduction under section 10A on the ground that the Mumbai unit was started in the assessment year 1991-92 and therefore, the assessment year 2000-01 was the last assessment year to claim exemption under section 10A of the Act. This was upheld by the Commissioner (Appeals) and the Tribunal. On appeal, High Court held that the assessee had sought deduction under section 10A of the Act for the first time in the assessment year 1997-98 and this had been allowed. Therefore, without disturbing the relief granted in that year, the Assessing Officer could not have denied the benefit for subsequent years. Court also held that though the principle of res judicata as such are not applicable to different assessment years there is some value to be placed on the need for uniformity even in tax adjudication. Followed,Direct Information Pvt Ltd v. ITO (2012) 349 ITR 150 (Bom)(HC). (AY.2001-02, 2002-03, 2005-06)

CGI Information Systems and Management Consultants Pvt. Ltd. v ITO (2023)455 ITR 265 /153 taxmann.com 376 (Karn)(HC)

S. 10A : Free trade zone-Exemption should be computed by excluding telecommunication charges both from export turnover and total turnover-Interest income earned on temporary parking of surplus funds with banks would be entitled to 100 per cent exemption under section 10A-Loss incurred in one eligible unit not required to be set off against profits of other eligible units for purpose of computing exemption under section 10A in respect of profit earning unitS.

Held that exemption under section 10A should be computed by excluding telecommunication charges both from export turnover and total turnover. Interest income earned on temporary parking of surplus funds with banks would be entitled to 100 per cent exemption under section 10A. loss incurred in one eligible unit not required to be set off against profits of other eligible units for purpose of computing exemption under section 10A in respect of profit earning units. (AY. 2006-07)

Oracle Finance Services Software Ltd. v. ACIT (2023) 202 ITD 266 (Mum.)(Trib.)

S. 10AA : Special Economic Zones-Export-Services-Articles which are imported by Unit in Special Economic Zone and subsequently reexported-Entitle to deduction. [Special Economic Zones Act of 2005, S. 27]

Dismissing the appeal of the Revenue the Court held that the definition of the expression "services" is not provided in the 1961 Act. A perusal of the definition of "services", would show that, inter alia, tradable services, which are prescribed by the Central Government for the purposes of the 2005 Act, are included in the definition. What those tradable services which are alluded to in section 2(z)(ii) are referred to in rule 76 of the 2006 Rules, with the Explanation. A plain reading of the Explanation would show that trading for the purposes of the Second Schedule of the 2005 Act means import for the purposes of re-export. Undoubtedly, the 2005 Act and rule 76 point in the direction that the expression "services" means services which are offered by way of re-export of articles that are imported into the country. If there was any doubt as regards this aspect of the matter, it is clarified in Instruction No. 4 dated May 24, 2006 issued by the Government of India, Ministry of Commerce and Industry, Department of Commerce. The Instruction has been adopted by the Export Promotion Council in its Circular No. 17 dated May 29, 2006. Likewise, after rule 76 was inserted in the 2006 Rules, the Export Promotion Council for export oriented undertakings and special economic zone units issued another circular dated November 16, 2006. Accordingly having regard to this intrinsic evidence available both in the 2005 Act and Rules, it was always intended that the deduction under section 10AA of the 1961 Act will also be available qua those articles which, upon import to the unit located in special economic zone, were thereafter re-exported. (AY.2010-11)

PCIT v. Om Nanotech Pvt. Ltd. (2023)455 ITR 50 /293 Taxman 636 /335 CTR 373 (Delhi)(HC)

S. 10AA : Special economic zones-Export turnover-Telecommunication expenses were to be excluded from export turnover.

Dismissing the appeal of the Revenue the Court held that telecommunication expenses were to be excluded from export turnover in computing deduction. (AY. 2009-10)

Subex Ltd v. Addl.CIT(2022) 145 taxmann.com 176 (Karn)(HC)

Editorial : SLP of Revenue dismissed, Addl. CIT v. Subex Ltd. (2023) 290 Taxman 102 (SC)

S. 10AA : Special Economic Zones-Interest income-Profits of the business has to be considered.[S. 10AA(7)]

As per sub-section (7) of section 10AA for purpose of deduction under section 10AA, it is profits of business that needs to be considered and consequently interest on deposits being part of profits from business of assessee while computing deduction as per sub-section (7) of section 10AA, same is to included as part of profits of business. (AY. 2014-15)

Tata Consultancy Services Ltd. v. Dy. CIT (2023) 154 taxmann.com 372 / 226 TTJ 361 (Mum)(Trib.)

S. 10AA : Special Economic Zones-Turnover-Expenses incurred in foreign currency for providing technical services outside India-Not to be excluded from export turnover.

Held, that the services rendered were in respect of software development or production of computer software which were technical in nature, the expenses incurred in foreign currency for providing technical services outside India, could not be excluded from the export turnover.(AY. 2013-14)

Harman Connected Services Corporation India P. Ltd. v. Asst. CIT (2023)105 ITR 36 (SN)/ 151 taxmann.com 500 (Bang) (Trib)

S. 10AA : Special Economic Zones-Surplus funds-Interest on fixed deposit-Eligible profits-Interest earned is eligible for deduction.
Held that the assessee had placed the surplus funds in fixed deposits and earned interest therefrom. The interest income earned by the assessee was eligible for deduction under section 10AA.Followed, CIT v. Hewlett Packard Global soft ltd (2018) 403 ITR 453 (Karn)(HC) (AY. 2013-14)

Jardine Lloyd Thompson P. Ltd. v ACIT (2023)104 ITR 30 (SN.)(Mum) (Trib)

S. 10AA : Special Economic Zones-Amendment in section 10AA(1) vide Finance Act, 2023 with effect from 1-4-2024-Exemption cannot be denied for not filing return of income within due date specified under section. 139(1) of the Act.[S. 10AA(1), 139(1)]
Held that the amendment in section 10AA(1) vide Finance Act, 2023 with effect from 1-4-2024 inserting a condition for mandatory filing of return within due date specified under section 139(1) so as to avail exemption under section 10AA would come into effect from 1-4-2024. Therefore in absence of specific provision in A.Y. 2018-19, Assessing Officer cannot deny deduction under section 10AA for not filing return of income within due date specified under section 139(1). (AY. 2018-19)
Arvind Kumar Agarwal. v. ITO (2023) 201 ITD 247/224 TTJ 977 (Delhi) (Trib.)

S. 10AA : Special Economic Zones-Amendment in section 10AA(1) vide Finance Act, 2023 with effect from 1-4-2024-Exemption cannot be denied for not filing return of income within due date specified under section. 139(1) of the Act.[S. 10AA(1), 139(1)]
Held that the amendment in section 10AA(1) vide Finance Act, 2023 with effect from 1-4-2024 inserting a condition for mandatory filing of return within due date specified under section 139(1) so as to avail exemption under section 10AA would come into effect from 1-4-2024. Therefore in absence of specific provision in A.Y. 2018-19, Assessing Officer cannot deny deduction under section 10AA for not filing return of income within due date specified under section 139(1). (AY. 2018-19)
Arvind Kumar Agarwal. v. ITO (2023) 201 ITD 247/224 TTJ 977 (Delhi) (Trib.)

S. 10AA : Special Economic Zones-Amendment in section 10AA(1) vide Finance Act, 2023 with effect from 1-4-2024-Exemption cannot be denied for not filing return of income within due date specified under section. 139(1) of the Act.[S. 10AA(1), 139(1)]
Held that the amendment in section 10AA(1) vide Finance Act, 2023 with effect from 1-4-2024 inserting a condition for mandatory filing of return within due date specified under section 139(1) so as to avail exemption under section 10AA would come into effect from 1-4-2024. Therefore in absence of specific provision in A.Y. 2018-19, Assessing Officer cannot deny deduction under section 10AA for not filing return of income within due date specified under section 139(1). (AY. 2018-19)
Arvind Kumar Agarwal. v. ITO (2023) 201 ITD 247/224 TTJ 977 (Delhi) (Trib.)

S. 10AA : Special Economic Zones-The trading activity of import and re-export carried out by the assessee-Falls within the meaning of "services" as defined u/s 2(z) of the SEZ Act, 2005-Eligible for deduction.[Special Economic Zone Act, 2005, S. 2(z)]
The assessee was engaged in the business of import and re-export of goods carried out from the Special Economic Zone (SEZ) for Free Trade and Warehousing Zone (FTWZ). The AO disallowed the 10AA deduction claimed by the assessee on the ground that the assessee is not involved in the business of manufacturing or producing any article or things nor was the

assessee into provision of services. The CIT(A) reversed the findings of the AO and allowed the deduction u/s 10AA. The ITAT observed that the term "services" is not defined under the Act and hence, referred to the definition provided u/s 2(z) of the SEZ Act, 2005 and Rule 76 of the SEZ Rules, 2006 which lists out the activities that fall within the meaning of services for the purpose of s. 2(z) of the SEZ Act, 2005. The ITAT observed that a conjoint reading of both the aforesaid provisions make it clear that the activity of trading falls within the meaning of services as defined u/s 2(z) of the Act. Further, the letter dated 20.06.2011 from the Ministry of Commerce and Industries clarifies that 'trading' for the purpose of the Second Schedule of the SEZ Act, 2005 shall mean import for the purpose of re-export. In view of the above observations and relying upon the decision of *DCIT vs. Goenka Diamond and Jewellers Ltd. 19 taxmann.com 91(Jaipur)* the ITAT upheld the order of the CIT(A) and dismissed Revenue's appeal. (AY. 2015-16, 2017-18)

ACIT v. Bytescale Technologies (P) Ltd. (Mum.) (2003) 201 ITD 760 (Mum)(Trib)

S. 10AA : Special Economic Zones-Revised return-Audit report was filed during assessment proceedings-Convertible foreign currency-**Goods were sold by assessee to parties were exported by merchant exporters and foreign exchange was received by the said exporters and assessee did not receive any convertible foreign exchange on such sales-Eligible for deduction. [S. 139(1) Form No 56, SEZ rules 2006]**

The assessee is a partnership firm engaged in manufacturing business and the factory of the assessee was located at the SEZ. The assessee filed a revised ROI and claimed deduction u/s 10AA. The AO denied the said claim on grounds that ROI was not filed within the due date and deduction was claimed in the revised return without filing form no. 56F and other relevant documents. The assessee was initially installed as a proprietorship concern and later converted into a partnership concern. Furthermore, the assessee executed sales transactions with local parties and neither exported goods nor received converted foreign currency. The AO thus, held that the assessee had not followed basic required conditions for eligibility of deduction u/s 10AA.The ITAT held that an ROI can be revised only in situations where there is an omission or any wrong statement in the ROI filed u/s 139(1). But there is no allegation in the AO's order that there was no omission or any wrong statement in the ROI of the assessee. Thus, without going into the question of whether there was any omission or any wrong statement in the ROI filed u/s 139(1), the ITAT held that the AO was duty-bound to take note of the revised ROI while framing the assessment. CIT v. Mitesh Impex [2014] 46 taxmann.com 30/225 Taxman 168 (Mag.)/367 ITR 85 (Guj) relied upon.

With respect to time limit to file the ROI where the assessee has claimed the exemption u/s 10AA, it was held that there is no mandate to file the ROI within the time specified u/s 139(1) for claiming the deduction unlike the proviso u/s 10A (IA) requiring the assessee to file the ROI within the time specified u/s 139(1) for claiming the deduction. Thus, in the absence of any specific provision u/s 10AA to file the ROI within the provisions of S. 139(1), the assessee cannot be deprived of the benefit of S. 10AA in the given circumstances.With respect to filing audit report in form 56F at the time of assessment proceedings and not with ROI, it was held that benefit of S. 10AA cannot be denied merely for this reason.With respect to whether the assessee is not eligible for deduction u/s 10AA account of having been converted from proprietorship to partnership firm, it was held that the said conversion was duly approved by the SEZ authorities and there is no prohibition u/s 10AA for denial of deduction on account of change of status of the assessee as long as assessee is not formed after splitting up or reconstruction of the existing business. With respect to earning income in INR and no convertible foreign currency was brought in India, it was observed that, the goods sold by the assessee to the parties were eventually exported by the merchant exporters and the foreign exchange was received by these merchant exporters and not by the assessee.

As per SEZ rules 2006, the assessee cannot make local sales but is allowed to make sales to the merchant exporters which will be treated as deemed export. Therefore, the assessee is eligible for deduction u/s 10AA. (AY. 2015-16).
ACIT v. Vishnu Export (2023) 201 ITD 184(Ahd)(Trib)

S. 10AA : Special Economic Zones-Failure to file e. file Form No. 56F along with the return-Form was filed during the assessment proceedingS. [S. 80IA(10), Form No. 56F]

Deduction under S.10AA cannot be denied only on the ground that the assessee did not e. file Form No56F along with the return of income, when the assessee has furnished Form No 56F during the assessment proceedings. Tribunal also held that deduction under section 10AA cannot be partly denied on the ground that a group company which is manufacturing and selling the same type of product has reported much lower net profit rate as compared to the net profit rate reported by the assesse. (AY, 2014-15)
Dy.CIT v. Croygas Equipments (P) Ltd (2023) 224 TTJ 597 (Ahd)(Trib)

S. 10B : Export oriented undertakings-Filing of Form 56G is mandatory requirement-Denial of exemption is justified. [S. 10A, 10B(5), Form 56F, 56G]
Hon'ble Orissa High Court upheld the view of the lower authorities in denying the exemption claimed under section 10B of the Act by observing that the assessee has filed Form 56F which is relevant for claiming deduction under section 10A of the Act. Thus, the assessee has not satisfied the mandatory requirement under section 10B(5) of the Act of filing Form-56G. Hence, exemption under section 10B of the Act cannot be allowed. (AY. 2011-12)
Discoverture Solutions (India) Pvt Ltd v. Dy.CIT (2023) 455 ITR 151/ 225 DTR 491 / 147 taxmann.com 262 / 332 CTR 635 (Orissa)(HC)

S. 11 : Property held for charitable purposes-Warehousing agricultural produce and connected activities-Activities incidental to main objects-Entitle to exemption. [S. 2(15) 12, 12AA]
Dismissing the appeal of the Revenue the Court held that the assessee-Corporation was carrying out activities incidental to the main objects for which it had been granted registration under section 12AA hence entitle to exemption. Followed, ACIT(E) v. Ahmedabad Urban Development Authority (2022) 449 ITR 1 (SC)
CIT v. Haryana Warehousing Corporation (2023)456 ITR 778 /295 Taxman 315 / 334 CTR 6 (SC)
Editorial : CIT v. Haryana Warehousing Corporation (2011) 196 taxman 260 (P& H)(HC), affirmed.

S. 11 : Property held for charitable purposes-Activities of Commercial nature-Exclusive rights relating to GSI coding in India-Receipts from trade and business significantly high-Not entitle to exemption. [S. 2(15), 12]
Allowing the SLP of the Revenue the Court held that though the assessee was involved in advancement of general public utility, its services were for the benefit of trade and business, from which it received significantly high receipts, and that in the circumstances, its claim for exemption could not succeed having regard to amended section 2(15).Order of High Court is set aside. Followed ACIT (E) Ahmedabad Urban Development Authority (2022) 449 ITR 1 (SC) AY.2010-11)
CIT v.GS1 India (2023)456 ITR 30 /294 Taxman 426 (SC)
Editorial : CIT (E) v.GS1 India (2023) 153 taxmann.com 387 (Delhi)(HC) is set aside.

S. 11 : Property held for charitable purposes-Object of general public utility-Accumulation of income-Urban Development Authority-Entitled to exemption. [S. 2(15), 11(1)(a), 11(2), 12]

Dismissing the SLP of the Revenue the Court held that the Decision of the High Court dismissing the Department's appeal on the questions whether the Tribunal was justified in allowing the benefit of exemptions under sections 11 and 12 of the Income-tax Act, 1961, the benefit of capital expenditure and accumulation at 15 per cent, following its decision in the case of ACIT v. Ahmedabad Urban Development Authority (2022) 449 ITR 1 (SC) (AY. 2015-16)

CIT (E) v Gandhinagar Urban Development Authority (2023)454 ITR 43 / 292 Taxman 70 (SC)

Editorial : CIT (E) v. Gandhinagar Urban Development Authority (2022) 454 ITR 40 / 292 Taxman 516 (Guj)(HC), affirmed.

S. 11 : Property held for charitable purposes-Transfer of fund to infrastructure development fund-Order of High Court affirmed-SLP of Revenue is dismissed. [S. 2(15), Art. 136]

SLP of Revenue dismissed,the High Court dismissed the Department's appeal where the that the Tribunal had recorded findings of fact that the nature of activity of the assessee was charitable and it was not hit by the proviso to section 2(15) of the Income-tax Act, 1961 and remanded the matter to the Assessing Officer to examine the activity of the assessee and if it were found to be in consonance with the objects, allow the benefit of exemption under section 11 and adjudicate the issue of transfer of fund to infrastructure development fund in terms of the ratio laid down by the Tribunal in the cases of Saharanpur Development Authority and Khurja Development Authority. (AY. 2012-13)

CIT (E) v. Ghaziabad Development Authority (2023)454 ITR 803/ 293 Taxman 449 (SC)

Editorial : CIT (E) v. Ghaziabad Development Authority (2022) 448 ITR 342 (All)(HC), affirmed.

S. 11 : Property held for charitable purposes-Object of aiding development of industries-Statutory board set up by State-Entitled to exemption-SLP of revenue dismissed.[S. 2(15), Art. 136]

The High Court, following DIT (E) v. Karnataka Industrial Area Development Board (2020) 429 ITR 249 (Karn)(HC) dismissed the appeal of the Revenue. SLP of Revenue dismissed. (AY. 2011-12)

CIT (E) v. Karnataka Industrial Area Development Board (2023)454 ITR 8 / 293 Taxman 505 (SC)

Editorial : Decision of High Court affirmed, CIT (E) v. Karnataka Industrial Area Development Board, (Karn)(HC) (ITA No. 130 of 2021 dt.27-10-2021)

S. 11 : Property held for charitable purposes-Charitable Purpose-School-Income from newspapers, which included advertisement revenue and surplus-Matter remanded for fresh consideration of nature of receipts and whether they qualified for exemption. [S. (2(15)]

Partly allowing the appeal of the Revenue the Court held that the law with regard to the interpretation of section 2(15) had undergone a change, due to the decision in Ahmedabad Urban Development Authority [2022] 449 ITR 1 (SC). As a result, the matter remitted for fresh consideration of the nature of receipts in the hands of the assessee, and the question of whether the amounts received by the assessee qualified for exemption, under section 2(15) or

section 11 had to be gone into afresh. The Assessing Officer shall examine the documents and relevant papers and render fresh findings on the issue of whether the assessee was a charitable trust, entitled to exemption of its income. (AY.2010-11, 2011-12)
PCIT (E) v. Servants of People Society (2023)452 ITR 1/ 330 CTR 617/ 222 DTR 185 / 330 CTR 617 (SC)
Editorial : PCIT (E) v. Servants of People Society (2022) 447 ITR 99 (Delhi)(HC) partly reversed.

S. 11 : Property held for charitable purposes-Imparting education-Surplus in educational activities-Alleged excess remuneration to trustee employees-Revenue has no power to interfere-Exemption cannot be denied-Order of High Court affirmed.[S. 2(15), 12A, 13, Art. 136]
On appeal to the High Court dismissing the appeal of the Revenue the Court held that the AO merely on surmises and conjectures had come to the conclusion that the salary and remuneration paid to the two trustees was highly excessive and not proportionate to the services rendered by them. The Department cannot regulate the management of the assessee-trust. Indeed, the salary or remuneration paid to the trustees were duly accounted and reflected in their returns as income. Merely on imagination, exemption under section 11 of the Act could not be denied. SLP of Revenue was dismissed. (AY.2009-10, 2010-11)
CIT (E). v. Krupanidhi Education Trust (2023)453 ITR 750/ 293 Taxman 2 (SC)
Editorial : CIT (E). v. Krupanidhi Education Trust (2022) 441 ITR 154 (Karn)(HC), affirmed.

S. 11 : Property held for charitable purposes-Charging substantial fees from students-Exemption cannot be denied-Order of Tribunal is affirmed.[S. 2(15), 13, 260A]
Dismissing the appeal of the Revenue, the Court held that exemption cannot be denied on the ground that the assessee had been charging substantial fees from the students with a view to making profit and that the imparting of education was for commercial motive. Referred New Noble Educational Society. v. Chief CIT (2022) 329 CTR 137/219 DTR 89 (SC)/ Association Educational Institute v. CBDT (2008) 216 CTR 377. 7 DTR 183/ (2008) 10 SCC 509 / Queen's Educational Society v. CIT (2015) 275 CTR 449 / 117 DTR 1(SC), (2015) 8 SCC 47 (AY. 2007-08 to 2012-13)
CIT v. Siksha 'O' Anusandhan (2023) 331 CTR 348 (Orissa) (HC)

S. 11 : Property held for charitable purposes-Donations-Entire Capitation Fees-No denial of exemption if certificate in force-Entitle to exemption.[S. 11(d), 12A, 12AA(4)(b)]

Allowing the appeals the Court held that the assessee claimed to be a charitable society and obtained certificate under section 12A of the Act. It was not in dispute that the entire amount received as “contribution” had been shown in the income and expenditure account. The denial of benefit under section 11 of the Act was on the premise that the donations received were not voluntary in nature, but in the nature of capitation fees and therefore, taxable in the hands of the assessee. In each year of assessment, the Assessing Officer had to examine the case independently. For the assessment year 2011-12, the Assessing Officer had held that he had made enquiry with the parents and collected information that the amount was not made voluntarily. Should there be any violation with regard to receipt of capitation fee, the Assessing Officer could not have denied the benefit under section 11 of the Act so long as the certification was in force and admittedly, the assessee’s certificate was in force. Though the

certificate was cancelled by the Revenue it had been restored by an earlier order of the court.(AY.2009-10 to 2011-12)
Kammavari Sangham v. Dy. DIT (E) (2023)459 ITR 433 /146 taxmann.com 367 / 334 CTR 699 (Karn)(HC)

S. 11 : Property held for charitable purposes-Registration-Does not ipso facto entitle to exemption-Other conditions to be satisfied-Matter remanded to the Assessing Officer. [S. 12, 12A, 12AA, 13]
Allowing the appeal of the Revenue the Court held that the mere grant of registration under section 12AA would not entitle the assessee to claim exemption under sections 11 and 12 of the Act without fulfilling the other prerequisite conditions stipulated therein. According to the provisions of sections 11, 12, 12AA and 13 and in the light of judicial precedents the grant of registration under section 12AA could not ipso facto give the assessee exemption under sections 11 and 12. An independent examination by applying the relevant provisions of law was required by the authorities regarding the satisfaction of other conditions by the assessee for grant of exemption. The matter remanded to the Assessing Officer.Relied on CIT v. Red Rose School (2007) 212 CTR (All)(HC)
(AY. 2003-04 to 2006-07)
CIT v.Chennai Port Trust (2023)454 ITR 674 /335 CTR 928 (Mad)(HC)

S. 11 : Property held for charitable purposes-Object of general public utility-Urban Development Authority-Entitled to exemption. [S. 2(15),11(1)(a),11(2),12, 260A]
Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in allowing the benefit of exemptions under sections 11 and 12 of the Income-tax Act, 1961, the benefit of capital expenditure and accumulation at 15 per cent. under section 11(1)(a), accumulation of income under section 11(2). Referred, Ahmedabad Urban Development Authority v.ACIT (E)(2017) 396 ITR 323 (Guj)(HC). (AY. 2015-16)
CIT (E) v. Gandhinagar Urban Development Authority (2023)454 ITR 40 / 292 Taxman 516 (Guj)(HC)
Editorial : SLP of Revenue, dismissed, CIT (E) v Gandhinagar Urban Development Authority (2023)454 ITR 43 / 292 Taxman 70 (SC)

S. 11 : Property held for charitable purposes-Capitation Fee-No action was initiated against by State for any violation of the Act-Certificate was issued under section. 12A of the Act-Denial exemption is held to be not justified.[S. 12, 12A, Karnataka Educational Institution (Prohibition of capitation fee) Act, 1984]
Assessee is an educational trust filed its return of income claiming exemption under section 11 of the Act. The Assessing Officer denied benefit of section 11 to assessee on ground that assessee had collected capitation fee in violation of Karnataka Educational Institution (Prohibition of capitation fee) Act, 1984. The assessee had filed an affidavit stating that no action was initiated against it by State for any violation under said Act. The Tribunal held that the Assessing Officer, based on assumption and surmise, had held that there was violation under KEI (Prohibition of Capitation Fee) Act by assessee. Tribunal also hedl that department had issued certificate under section 12A to assessee. Accordingly the denial of exemption. was not justified. On appeal by the Revenue, High Court affirmed the order of the Tribunal. Followed Kammavari Sangham v.Dy.CIT (E) (2023) 146 taxmann.com 367 (Karn)(HC) (AY. 2012-13)

PCIT (E) v. Rashtreeya Sikshana Samithi Trust (2023) 294 Taxman 349 / 334 CTR 705 (Karn.)(HC)

S. 11 : Property held for charitable purposes-Hospital-Providing medicines and medical aid to needy and poor people-Free distribution of medicines-Tribunal was justified in allowing application of income on account of free distribution of medicines. [S. 133(6)]
Assessee is a hospital, engaged in charitable activities of providing medicines and medical aid to needy and poor people. The Assessing Officer had doubted genuineness of expenditure incurred by assessee on such free distribution of medicines during flood situation. The Assessing Officer had based his decision solely upon statement recorded from an employee doctor of assessee without giving any opportunity to assessee to cross-examine him. Tribunal allowed the claim of application of income. On appeal the High court held that the Tribunal was justified in allowing application of income on account of free distribution of medicines. (AY. 2014-15)
CIT (E) v. Anandalok (2023) 293 Taxman 727/(2024) 460 ITR 338 (Cal.)(HC)

S. 11 : Property held for charitable purposes-Accumulation of income-Revenue cannot insist on a copy of resolution being furnished regarding amount being accumulated for charitable activitieS. [S. 11(2), R. 17(2), Form No.10]
Dismissing the appeal of the Revenue the Court held that there is nothing in either section 11(2) or rule 17(2) that mandates furnishing of resolution of assessee-trust in order for statement with respect to income being accumulated/set apart for carrying out activities of trust in Form No. 10 to be acted upon by Assessing Officer. Accordingly the Revenue cannot insist on a copy of resolution being furnished regarding amount being accumulated for charitable activities. (AY. 2007-08, 2008-09)
CIT v. Paradeep Port Trust (2023) 292 Taxman 347 (Orissa) (HC)

S. 11 : Property held for charitable purposes-Res Judicata-Rule of consistency-Benefits granted in earlier years-Order of Tribunal affirmed. [S. 12, 260A]
Dismissing the appeal of the Revenue the Court held that in the absence of any change in the law and of any fresh facts shown to be involved in the AY. 2014-15, the Tribunal had not committed any error in following the rule of consistency and in taking the same view as in the assessee's own case for the AY. 2010-11. No question of law arose. (AY. 2014-15)
CIT v. Swami Omkarananda Saraswati Charitable Trust (2023)453 ITR 245 (All)(HC)

S. 11 : Property held for charitable purposes-Publishing newspaper-Denial of exemption is not justified. [S. 2(15), 10(23C(iv)), 12A, 80G]
Assessee running a printing press and publishing a newspaper, claimed exemption under section 11of the Act. Assessing Officer denied the exemption on ground that activities of assessee fell under last limb of section 2(15) i.e. advancement of any other object of general public utility and same was hit by amended proviso to said section. Tribunal allowed exemption claimed by assessee under section 11 in view of interpretation of proviso to section 2(15) that mere receipt of fee or charge could not prove that assessee was involved in trade, commerce or business. It was further noted that revenue itself had granted assessee with registration under section 12A, recognition under section 10(23C)(iv) and exemption under section 80G of the Act. Further assessee had been enjoying exemption under section 11(1) and section 10(23C)(iv) in past and accordingly principle of consistency should be followed. On appeal High Court affirmed the order of the Tribunal on the ground that the activities of assessee were charitable in nature as profit, if any, made by it was ploughed back for charitable activities and, thus, there was no perversity in finding of Tribunal.. (AY. 2010-11, 2012-13, 2013-14)
CIT (E) v. Servants of People Society (2022) 145 taxmann.com 145 (Delhi)(HC)

Editorial : Followed CIT(E) v. Ahmedabad Urban Development Authority (2022)449 ITR 1 / 329 CTR 297/219 DTR 209// 143 taxmann.com 278 (SC), SLP of Revenue was dismissed, CIT (E) v. Servants of People Society(2023) 290 Taxman 127 (SC)

S. 11 : Property held for charitable purposes-Charitable purpose-Purpose of securing and assisting rapid and orderly establishment and organization of industrial areas and industrial estates in the State-Proviso not attracted-Entitle for exemption. [S. 2(15), 12, 13(8)]

The assessee was a State Industrial Development Corporation constituted for the purpose of securing and assisting rapid and orderly establishment and organization of industrial areas and industrial estates in the State and for the purpose of establishing the commercial centres in connection with the establishment and organization of such industries. The Assessing Officer invoked the provisions of section 2(15) read with section 13(8) of the Income-tax Act, 1961. The Tribunal held that the activities carried out by the assessee were neither in nature of trade, commerce or business for cess or fee nor any other consideration so as to attract the proviso to section 2(15) and could be said to be for charitable purpose and consequently, the exemption under section 11 was permitted. The Tribunal allowed the exemption under sections 11 and 12. On appeal, High Court affirmed the order of the Tribunal. (AY.2015-16)

CIT(E) v. Gujarat Industrial Development Corporation (2023)452 ITR 27 / 292 Taxman 207 (Guj)(HC)

S. 11 : Property held for charitable purposes-Charitable purposes-Business activity-Amendment makes it necessary to ascertain if activities are for earning profit or for purposes of charitable institution-Ascertainment of facts could not be made in writ proceedings-Writ petition was dismissed. [S. 2(15) Art. 226]

Dismissing the writ petition the Court held that the critical issue related to the usage of funds by the assessee as this would determine whether its activities were charitable or otherwise. This had then to be seen in the context of section 2(15) of the Act. This exercise necessarily involved an appreciation of facts that the court was not inclined to embark upon in terms of Article 226 of the Constitution of India. In any event, no legal infirmity was made out to warrant intervention with the impugned orders, denying exemption to the assessee. (AY.2015-16) (SJ)

Tamizhavel P. T. Rajan v. ITO (E) (2023)452 ITR 45/ 333 CTR 420/ 227 DTR 51 (Mad)(HC)

S. 11 : Property held for charitable purposes-Assessment completed before grant of registration-Exemption is not available. [S. 12A(2), 12AA, 148]

Return was not furnished. Assessing Officer, on getting information about assessee having made FDR of Rs.5.00 lakh with State Bank of India, issued notice under section 148. In response, assessee filed return declaring total income at Rs.7,99,352/-, claiming that it was engaged in promotion of research in Oral and maxillofacial surgery. In absence of any registration under section 12A, no benefit of exemption under section 11 was claimed. Assessee contended that its registration under section 12AA on 18-05-2023. It claimed benefit of second proviso to section 12A(2) On appeal the Tribunal held that benefit of proviso can be granted only when assessment proceedings are pending on date of grant of registration by CIT (E). The assessee could not claim benefit of exemption under section 11 of the Act. (AY. 2012-13)

Association of Oral Maxillofacial Surgeons of India v. ITO (2023) 225 TTJ 740 / 156 taxmann.com 332 (Pune)(Trib)

S. 11 : Property held for charitable purposes-Managing trustee is paid unreasonable and excessive salary-Failure to prove that the vehicle was used for performing its charitable activity-Foreign tour of manging trustee-Denial of exemption is justified-When there is violation of section 13(2) and 13(1)(c), the trust has to be taxed at maximum marginal rate under section. 164 (2) on its income. [S. 13(1)(c), 13(2)(c), 164(2)]

Held that the managing trustee is paid unreasonable and excessive salary. The assessee failed to prove that the vehicle was used for performing its charitable activity and also foreign tour of manging trustee for object of the Trust. Denial of exemption is justified. Tribunal also held that when there is violation of section 13(2) and 13(1)(c), the trust has to be taxed at maximum marginal rate under section. 164 (2) on its income.[S. 13(1)(c), 13(2)(c), 164(2)] (AY. 2011-12)

Seth Ramdas Nathubhai Dharmadaya Vishwastha Nidhi v. ITO (E) (2023) 224 TTJ 194 (Pune)(Trib.)

S. 11 : Property held for charitable purposes-Delay of 852 days in filing the appeal is condoned-Late filing of Form No 10B-CIT(A has no power to condone the delay-Tribunal condoned the delay and directed the Assessing Officer to verify the Form No 10B in accordance with provisions of the Act-Circular No 2 of 2020 dt. 3-1-2020. [S. 11, 12, 143(1), 249(3), Form No 10B]

Tribunal condoned the delay of 852 days in filing the appeal. As regards late filing of Form No 10B the Tribunal held that the CIT(A has no power to condone the delay. However considering the Circular No 2 of 2020 dt. 3-1-2020, Tribunal condoned the delay in filing Form No 10B and directed the Assessing Officer to verify the Form No 10B in accordance with provisions of the Act. (AY. 2016-17)

Late Arjan Smarak Charitable Trust v.Dy.CIT(2023) 224 TTJ 269(Rajkot) (Trib)

S. 11 : Property held for charitable purposes-Depreciation-No capital expenditure claimed in earlier years-Depreciation is allowable. [S. 2(15), 11(1)(a), 32]

Held that the assessee has not capital expenditure claimed in earlier years hence depreciation is allowable. (AY.2007-08)

Asst. DIT (E) v. Maharshtra Samaj (2023) 108 ITR 657 (Mum) (Trib)

S. 11 : Property held for charitable purposes-Depreciation-No double deduction claimed-Disallowance of depreciation is to be reversed.[S. 11(6), 12A]

Held, allowing the appeal, that for the assessment year 2016-17 there could not be double deduction allowed to the assessee if the assessee claimed the acquisition of the asset as application of income as well as depreciation on the same amount. The assessee had claimed depreciation on this sum for first time in the financial year ended on March 31, 2014, subsequently on March 31, 2015 and in March 31, 2016, i. e., the assessment year in question. In the earlier assessment years, the depreciation had been allowed to the assessee in assessments under section 143(3) of the Act. Thus, the assessee had not claimed it as application of income to the extent The disallowance of depreciation is reversed.(AY.2016-17)

Sangit Kala Kendra v. ITO(E) (2023)108 ITR 63 (Trib) (SN) (Mum)(Trib)

S. 11 : Property held for charitable purposes-Object of general public utility-Serve as forum for exchange of ideas in mobility engineering and creation, maintenance and adherence of code of conduct for profession-Conducting meetings, workshops, seminars

and other educational programs for development of mobility engineering-Falls under "Any Other Object of General Public Utility"-Objects and activities in nature of trade, commerce or business-Entitlement to exemption to be examined in light of gross receipts and receipts from activity of trade, commerce or business-If gross receipts from conducting conferences considered, receipts exceeded 20 Per Cent. of gross receipts of assessee-Matter remanded-Mutuality-Matter remanded-Taxability of corpus donations receipts towards magazine fund and depreciation to be considered afresh in light of amended provisions of Section 2(15) and of Supreme Court In Asst. CIT (E) v. Ahmedabad Urban Development Authority [(2022) 449 ITR 1 (SC) [S. 2(15)]

Held that the assessee, which was formed with the main objects to serve as a forum that according to the assessee's objects, it conducted technical meetings, workshops, seminars and other educational programs and speciality conference for development of mobility engineering. It was clear that the assessee fell under the last limb of the definition of "charitable purpose" as defined under section 2(15) of the Act, i. e., any other object of general public utility. The objects of the assessee-trust and its activities were clearly in the nature of general public utility activity, and thus, the exemption needed to be examined in light of provisions of section 2(15) of the Act. The order of the Commissioner (Appeals) on this issue was liable to be set aside. The objects and activities of the assessee were in the nature of trade, commerce or business and hit by proviso to section 2(15) of the Act. Therefore, the assessee's entitlement to exemption needed to be examined in light of gross receipts and receipts from the activity of trade, commerce or business. The gross income of the assessee from conducting conference was more than 20 per cent. of the gross receipts of the assessee for the assessment year. The assessee had considered the net income after expenses from conducting conference and then, compared with gross receipts of the assessee to work out the limit prescribed under provisions of section 2(15) of the Act. The working was not in accordance with law, because, according to section 2(15) of the Act, if the gross receipts from the general public utility activity, i. e., from trade, commerce or business exceeds 20 per cent. of gross receipts, the assessee is not entitled for exemption under section 11 of the Act. If the gross receipts from conducting conference were considered, undisputedly, the receipts exceeded 20 per cent. of the gross receipts of the assessee for the assessment year. But, the facts had to be verified with reference to the financial statement of the assessee for relevant assessment year. That all other issues including computation of taxable income, if any, and taxability of corpus donations receipts towards magazine fund and depreciation had to be considered afresh after considering the assessee's case in light of amended provisions of section 2(15) of the Act, and of the Supreme Court in the case of ACIT (E) v. Ahmedabad Urban Development Authority (2022 449 ITR 1 (SC) (AY.2013-14)

SAE India v. ITO (E) (2023)107 ITR 88 (SN) (Chennai) (Trib)

S. 11 : Property held for charitable purposes-Donations from various donors-Small portion retained to meet administrative expenses-Remaining donations distributed to various charitable organisations-Matter remanded to the Assessing Officer to decide the claim in accordance with law laid down by Supreme Court in case of Asstt. CIT (E) v. Ahmedabad Urban Development Authority. [S. 2(15), 12AA]

Assessee-company, registered under section 12AA, carried on activity of receiving donations from various donors and passing on same as specified by donor to various charitable organisations, all registered under section 12AA. However, some part of donations received by assessee were retained by it to meet its administrative expenditure and to enable it to carry on its operations, which had been termed by assessee as "retained earnings". Commissioner (Appeals) relying on Tribunal's order for assessment year 2009-10 in assessee's own case had

held that assessee is not engaged in charitable activities. On appeal the Tribunal relying on Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 449 ITR 1/ (2023) 291 Taxman. 11 (SC) had held that while carrying out charitable activities, assessee-trust might also collect nominal cost/consideration with objective to effectuate carrying out of charitable activities, however, this was subject to condition that such charge was only confined to extent that same was required for purpose of carrying out charitable activities and should not take colour of professional fees/business income. Tribunal in the assessee's own case for assessment year 2009-10 while rendering decision, did not have benefit of considering impact of aforesaid decision of Supreme Court on activities carried out by assessee-trust, having been rendered at a later date. Matter is restored to Assessing Officer to analyse impact of observations made by Supreme Court in aforesaid decision of Ahmedabad Urban Development Authority (supra) with regards to incidental earning of income, in light of assessee's set of facts.(AY. 2015-16)
Give Foundation. v. JDIT / DIT (2023) 203 ITD 612/108 ITR 605 (Ahd.)(Trib.)

S. 11 : Property held for charitable purposes-Income applied to charitable purposes more than receipts of year-Excess applied can be carried forward to succeeding year-Plant and machinery-Depreciation is allowed. [S. 32]
Held that when the application of income was more than the receipts of year, the excess application of income, i. e., expenditure in the hands of the assessee, could be carried forward to the succeeding year. Held, that the assessee was entitled to claim the depreciation as "plant and machinery" as the assessee was promoting public objects which were activities in the nature of trade, commerce or business but without commercial motive. (AY. 2015-16)
Dy. CIT (E) v.Ahmedabad Urban Development Authority (2023)105 ITR 24 (SN)(Ahd) (Trib)

S. 11 : Property held for charitable purposes-Income applied to charitable purposes more than receipts of year-Excess applied can be carried forward to succeeding year-Plant and machinery-Depreciation is allowed. [S. 32]
Held that when the application of income was more than the receipts of year, the excess application of income, i. e., expenditure in the hands of the assessee, could be carried forward to the succeeding year. Held, that the assessee was entitled to claim the depreciation as "plant and machinery" as the assessee was promoting public objects which were activities in the nature of trade, commerce or business but without commercial motive. (AY. 2015-16)
Dy. CIT (E) v.Ahmedabad Urban Development Authority (2023)105 ITR 24 (SN)(Ahd) (Trib)

S. 11 : Property held for charitable purposes-Educational activities-Not registered under section 12A-Computation has to be done under normal provision of the Act-Corpus donation of Trust-Addition cannot be made while computing as per normal provisions of the Act-Anonymous donations-Only applicable to trusts which are registered under section 12A, and does not deal with unregistered charitable trusts-Donations cannot be added as cash creditS. [S. 12A 68, 115BBC, 158BC]
Held that where, assessee-trust engaged in educational activities which is not registered under section 12A, computation of its income had to be made as per normal provisions of Act. Held that corpus donations by their very nature are towards corpus of trust and are not freely available for utilization by trust, further, corpus donations are capital in nature and could not have been added, to income of assessee while computing same as per normal provisions of Act.Held that Section 115BBC is only applicable to trusts which are registered under section 12A, and does not deal with unregistered charitable trusts. Donations cannot be added as cash

credits without, finding of non-genuine credits having been specifically arrived at with respect to all credits. (AY. 2010-11)
DCIT v. Shree Saraswati Education Sansthan. (2023) 203 ITD 668 (Ahd) (Trib.)

S. 11 : Property held for charitable purposes-Donations from various donors-Small portion retained to meet administrative expenses-Remaining donations distributed to various charitable organisations-Matter remanded to the Assessing Officer to decide the claim in accordance with law laid down by Supreme Court in case of Asstt. CIT (E) v. Ahmedabad Urban Development Authority. [S. 2(15), 12AA]
Assessee-company, registered under section 12AA, carried on activity of receiving donations from various donors and passing on same as specified by donor to various charitable organisations, all registered under section 12AA. However, some part of donations received by assessee were retained by it to meet its administrative expenditure and to enable it to carry on its operations, which had been termed by assessee as "retained earnings". Commissioner (Appeals) relying on Tribunal's order for assessment year 2009-10 in assessee's own case had held that assessee is not engaged in charitable activities. On appeal the Tribunal relying on Asstt. CIT (E) v. Ahmedabad Urban Development Authority (2022) 449 ITR 1/ (2023) 291 Taxman. 11 (SC) had held that while carrying out charitable activities, assessee-trust might also collect nominal cost/consideration with objective to effectuate carrying out of charitable activities, however, this was subject to condition that such charge was only confined to extent that same was required for purpose of carrying out charitable activities and should not take colour of professional fees/business income. Tribunal in the assessee's own case for assessment year 2009-10 while rendering decision, did not have benefit of considering impact of aforesaid decision of Supreme Court on activities carried out by assessee-trust, having been rendered at a later date. Matter is restored to Assessing Officer to analyse impact of observations made by Supreme Court in aforesaid decision of Ahmedabad Urban Development Authority (supra) with regards to incidental earning of income, in light of assessee's set of facts.(AY. 2015-16)
Give Foundation. v. JDIT / DIT (2023) 203 ITD 612/108 ITR 605 (Ahd)(Trib)
S. 11 : Property held for charitable purposes-Development agreement-Advance received-Transaction of sale is concluded after grant of approval by Charity Commissioner vide order dated 31-3-2021-No addition can be made for the relevant assessment year-Notional interest-No real interest was accrued or received nor same was recorded by assessee in its books of account, addition made on account of notional interest by Assessing Officer is deleted [S. 12A, 13(1)(c),13(2(a), 22, Bombay Public Trust Act, 1950, S. 36]
Assessee entered into a development agreement with developer TIPL to construct temple and building with several flats in addition to temple. As per agreement, TIPL would give 50 per cent of constructed area from newly constructed building to assessee. Assessee agreed to sale flats of his share to developer and two other parties Transaction of sale was concluded after grant of approval by Charity Commissioner vide order dated 31-3-2021.Assessing Officer held that considered an aggregate amount of consideration at certain amount as income of assessee from sale of property during year under consideration. On appeal the Tribunal held that since sales were to be concluded only upon sanction by Charity Commissioner who had granted approval on 31-3-2021 and enhanced compensation so decided amongst parties in subsequent year while passing his orders, such flats were not sold by assessee in year under consideration and, thus, no addition could be made in this year. As regards advanced loans without charging interest to a private company wherein more than 20 per cent shareholding was held by trustees of assessee. The Assessing Officer held that assessee had violated provisions of section 13(1)(c) and held that the assessee did not charge any interest on

advances given despite fact that in assessment year 2011-12 assessee received an interest at 10.5 per cent on same. Therefore, he alleged that assessee had violated provisions of section 13(2)(a) since adequate security had not been taken for advances given. Accordingly, Assessing Officer denied exemption under section 11 to assessee and also proceeded to compute interest at rate of 10.5 per cent by applying rate at which interest was paid in assessment year 2011-12. Tribunal held that only consequence of case which fell within four corners of section 13 was denial of exemption under section 11 and section 13(2)(a) also did not authorise revenue to compute notional interest, in case no such interest was actually charged by trust. Since no real interest was accrued or received nor same was recorded by assessee in its books of account, addition made on account of notional interest by Assessing Officer is deleted. (AY. 2013-14)

ITO v. Laxminarayan Mandir Trust. (2023) 203 ITD 477 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Form No 10B was not uploaded along with return-Procedural defects-Procedural defect which was rectifiable, issue was to be restored to Assessing Officer to adjudicate afresh. [S. 11, 12A, Rul3. 17B, Form No 10B]

Assessing Officer denied benefit under section 11 to assessee as audit report in Form No. 10B was not uploaded along with return but was uploaded belatedly. On appeal the Tribunal held that in view of judicial precedent on subject that delay in filing audit report in Form No. 10B was merely a procedural defect which was rectifiable, issue was to be restored to Assessing Officer to adjudicate afresh after considering audit report.Matter remanded. Followed, Savitri Foundation (ITA.No. 1025/ um/2021 AY. 2018-19) CIT v. Devradhan Madhavlal Genda Trust [1998] 230 ITR 714 147 CTR 461 (MP)(HC) (AY. 2018-19)

Shri Namiyun Parswanath Jain Swetamber Manidhari Trust. v. ITO (2023) 203 ITD 433 (Jabalpur) (Trib.)

S. 11 : Property held for charitable purposes-Exemption declined-The Assessing Officer is obligated to have considered its claim for deduction of expenses raised in income and expenditure account while deducing its taxable income.[S. 12, Form No.10A, 10B]

Assessing Officer denied exemption under sections 11 and 12 for reason that assessee had delayed filing Form No. 10A and Form No. 10B. Assessing Officer assessed gross receipt of assessee society as its income and brought same to tax. On appeal the Tribunal held that where assessee's claim for exemption under sections 11 and 12 is declined, Assessing Officer is obligated to have considered its claim for deduction of expenses raised in income and expenditure account while deducing its taxable income. Matter is remanded to Assessing Officer to consider its claim of deduction of expenses as debited in income and expenditure account. (AY. 2016-17)

Saroj Gopal Educational Society. v. ITO (2023) 203 ITD 62 (Raipur) (Trib.)

S. 11 : Property held for charitable purposes-Advancement and promotion of science and technology-Not in nature of imparting education-Nature of general public utility-Matter restored to Assessing Officer to determine whether these general public utility activities were commercial in nature-Delay of 178 days condoned. [S. 2(15) 253, 254(1)]

Assessee-trust, registered for advancement and promotion of science and technology, claimed exemption under section 11 stating that it was imparting education.Assessing Officer denied exemption. Commissioner (Appeals) dismissed assessee's stand that it was imparting education and held that it was involved in rendering of activities in nature of general public utility by indulging in trade, commerce or business. On appeal the Tribunal held that since Tribunal in assessee's own case for earlier years held that activities carried out by assessee were not in nature of imparting education but were in nature of general public utility

activities provided in section 2(15) and restored back issue to Assessing Officer to determine whether these general public utility activities were commercial in nature. Matter remanded to the Assessing Officer. Delay of 178 days in filing the appeal is condoned. (AY. 2016-17)
Gujarat Council of Science City. v. DCIT (2023) 203 ITD 218 (Ahd) (Trib.)

S. 11 : Property held for charitable purposes-No registration-Only net income can be taxed and not gross receiptS. [S. 12A, 12AA, 143(1)]
Assessee, a charitable trust declared nil income. CPC issued an intimation under section 143(1) wherein it had added a certain sum and raised a demand taking entire receipts as income and taxed same. On appeal the Tribunal held that since gross receipts could not be taxed in hands of assessee-trust, expenditure relatable to earning of such income was to be allowed as deduction. (AY. 2018-19)
Annadaneshwara Charitable Trust. v. ITO *(*2023) 203 ITD 641 (Bang) (Trib.)

S. 11 : Property held for charitable purposes-Registration is granted-Eligible for benefit of section 11 and 12 [S. 12, 12A, 12AA, 148]
Assessee, a trust, made an application under section 12A seeking registration, which was rejected by Competent Authority vide order dated 22-2-2011. Tribunal vide order dated 3-1-2018 directed Competent Authority to grant registration to assessee For assessment year 2010-11, assessee filed return of income on 26-10-2010 claiming benefit of sections 11 and 12. Assessing Officer denied benefit for reason that by that time assessee was not found to be registered under section 12AA On appeal the Tribunal held that since after order of Tribunal dated 3-1-2018 assessee had been granted registration under section 12AA, there was no reason why it should not be allowed benefit of sections 11 and 12. Since assessee was eligible for benefit of sections 11 and 12, it was entitled to deduction of expenses incurred on object of trust. (AY. 2010-11, 2013-14)
Bank of India Retired Employees Medical Assistance Scheme. v. ITO (2023) 203 ITD 635 (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Religious trust-Purchase gold and silver for preparation of ornaments for idols of God in temple-No violation of provision-Denial of exemption is not valid. [S. 11(5)(b), 12A]
Assessee is a religious trust registered under section 12A. Assessee purchased gold and silver along with silver bullion for preparation of various gold and silver ornaments for various idols of God in temple. Assessing Officer disallowed assessee's claim of exemption under section 11 on assumption of fact that assessee had made an investment in gold and silver in violation of provisions of section 11(5)(b). Commissioner (Appeals) allowed the claim. Tribunal held that practice of purchasing gold and silver for making ornaments had been followed by assessee preceding years also and exemption was not disallowed in those years, in absence of any change in facts from earlier years, following principle of res judicata, exemption is allowed. (AY. 2016-17)
ACIT v. Shri Mahudi Madhupuri Jain Shwetamber Murtipujak Trust. (2023) 203 ITD 723/ 107 ITR 32 (SN) (Ahd) (Trib.)

S. 11 : Property held for charitable purposes-Hospital along with a Pharmacy store within its premises-Maintained separate books of account-Running of pharmacy store was ancillary to dominant object of assessee to run a hospital-Denial of exemption is not valid.[S. 11(4A)]
Assessee-trust operated a Hospital along with a Pharmacy store within its premises. Assessing Officer treated surplus (profits) from the Pharmacy store as business income under

section 11(4A) and taxed it separately. CIT(A) deleted the addition.On appeal the Tribunal held that running of chemist shop was not only essential but also incidental or ancillary to dominant object and purpose to run a hospital. The assessee was maintaining separate books of account and financial statements for pharmacy store. As the trust had complied with twin conditions, as set out in section 11(4A) income accrued from Pharmacy store was incidental to dominant object of running Hospital by assessee and, hence, action of Assessing Officer in treating Pharmacy store of assessee as separate business entity and profits therein as taxable income is not justified. (AY. 2017-18)

DCIT v. Shri Kutchi Visa Oswal Jain Manav Seva Kendra. (2023) 202 ITD 259/ 225 TTJ 12 (UO) (Mum) (Trib.)

S. 11 : Property held for charitable purposes-Delay in filing Form 10B-Accumulation of income-Audit report is filed in the course of assessment proceedings-Exemption cannot be denied merely on account of delay in furnishing audit report-It is permissible for assessee to produce audit report at a later stage, either before Assessing Officer or appellate authority-Lack of declaration in Form No. 10 regarding specific purpose for which funds were being accumulated by assessee-trust, would not be fatal to exemption claimed under section 11(2). [S. 11(2), 12A, 44AB, Form No 10, 10B]

Assessee is a public charitable trust registered under section 12A, filed its return of income declaring income of certain amount However, assessee did not furnish audit report in Form No. 10B. The assessee filed audit report in Form no. 10B during assessment proceedings and sought to condone such delay. Assessing Officer rejected same and disallowed exemption under sections 11 and 12 to assessee. CIT (A) allowed the claim. On appeal the Tribunal held that benefit of exemption under sections 11 and 12 could not be denied to assessee-trust merely on account of delay in furnishing audit report and it is permissible for assessee to produce audit report at a later stage, either before Assessing Officer or appellate authority. Tribunal also held that lack of declaration in Form no. 10 regarding specific purpose for which funds were being accumulated by assessee-trust, would not be fatal to exemption claimed under section 11(2). (AY. 2014-15)

DCIT v. State Institute of Health & Family Welfare. (2023) 202 ITD 480 (Jaipur) (Trib.)

S. 11 : Property held for charitable purposes-Filed return after time allowed under section 139(4A) but before last day of filing of belated return under section 139(5)-Return should be treated as due compliance with clause (ba) in sub-section (1) of section 12A-Entitle for exemption. [S. 12A(1) (ba), 139(1), 139(4A), 139(5)]

Assessee-trust filed return of income after time allowed under section 139(4A) claiming exemption under section 11. Assessing Officer denied exemption for not filing return within time as prescribed under section 139(4A) as required under section 12A(1)(ba). CIT(A) allowed the exemption. On appeal the Tribunal held that in Bangarh Educational Welfare Trust v. ITO (E) [IT Appeal No. 496 (Kol.) of 2021, dated 2-1-2022] taking note of CBDT Circular F. No. 173/193/2019-ITA-I, dated 23-4-2019 held that since section 139(1) and section 139(5) are part of section 139 only and in this section 139 and sub-section (5) provides mechanism to file a belated return, therefore, even if assessee files return before last date of filing of belated return same should be treated as due compliance to section 12A(1)(ba). Order of CIT(A) is affirmed. (AY. 2020-21)

ITO v. Debendra and Rohini Memorial Trust. (2023) 202 ITD 587 (Kol) (Trib.)

S. 11 : Property held for charitable purposes-Audit report-Not e.filed along with return-Filed in the course of assessment proceedings-Denial of exemption is not justified.[S. 12 12A, Form No 10B]

Assessee, a registered charitable trust under section 12A, claimed exemption under section 11. He did file audit report Form No. 10B during assessment proceedings. Assessing Officer denied exemption on ground that audit report was not e-filed along with return of income. CIT(A) allowed the exemption. On appeal the Tribunal held that requirement of furnishing of audit report in Form No. 10B is a mandatory requirement while that of filing of audit report along with return of income is a procedural requirement, assessee is entitled to exemption.Followed Social Security Scheme of GICEA v.CIT(E) (2023) 147 taxmann.com 283 (Guj)(HC) (AY. 2018-19)

JCIT (OSD) (E) v. Gujarat Energy Development Agency. (2023) 202 ITD 733 (Ahd) (Trib.)

S. 11 : Property held for charitable purposes-Not involved in any activities other than charitable-Entitle to exemption. [S. 12(2(a) 12AA,143(1)]

Held, that considering the provisions of section 12(2)(a) of the Act and also the explanatory note issued by CBDT Circular No. 1 of 2015, dated January 21, 2015 ([2015 371 ITR (St.) 22), since the proceedings were pending for the AY 2018-19 and in the meantime registration under section 12AA of the Act was granted the benefit of deduction under section 11 of the Act was available to the assessee. Further, there was no other finding of the authorities against the assessee of being involved in any other activities other than charitable activities for which registration under section 12AA of the Act had been granted. The Assessing Officer is directed to allow the exemption under section 11 of the Act as claimed in the return of income.(AY. 2018-19)

Lions Club of Burdwan v.ADIT (2023)104 ITR 75 (SN)(Kol) (Trib)

S. 11 : Property held for charitable purposes-Audit report in Form No 10B was filed beyond prescribed date-Application for condonation of delay was not filed-Denial of exemption is not proper-Assessing Officer is bound to consider deduction of expenses debited in Income and expenditure account as allowable-Matter remanded to the Assessing Officer.[11(2), 12AA, 119(2)(b), 139(1)]

Held that though the assessee had obtained the "audit report" in form 10B on September 30, 2016, prior to filing its return on June 21, 2018, the third limb in paragraph 4(i) of Circular No. 10, dated May 22, 2019 ([2019 418 ITR (St.) 2) which required that the audit report in form 10B be filed before the date specified under section 139 of the Act was not satisfied. The term "specified date" as defined in Explanation 1 to section 139 of the Act, in the case of the assessee-trust for the AY 2016-17 was June 30, 2016. As the assessee-trust had uploaded the audit report in form 10B on June 21, 2019, much beyond the date specified under section 139 of the Act, its case would clearly fall beyond the scope and gamut of paragraph 4(i) of Circular No. 10, dated May 22, 2019. The case of the assessee would fall within the sweep of paragraph 4(ii) of the Circular, which would be applicable to all other cases prior to the AY 2018-19 where form 10B is belatedly filed. The assessee not having filed any application for condonation of delay under section 119(2)(b) of the Act as provided in paragraph 4(ii) of the circular, there was no occasion for condoning the delay in filing of form 10B by the assessee beyond the stipulated time period. Thus, there was no infirmity in the view taken by the lower authorities who had rightly declined the assessee's claim for exemption under section 11 of the Act. However, the Assessing Officer after declining the assessee's claim for exemption under section 11 of the Act could not have summarily held its gross receipts of Rs. 24,83,562 as its income. In sum and substance, the Assessing Officer after treating the assessee as an unregistered trust was bound to have considered its claim for deduction of expenses as raised in the income and expenditure account. Accordingly, the Assessing Officer was to grant the assessee a reasonable opportunity of being heard and to

consider the assessee's claim for deduction of expenses as debited in the income and expenditure account, to the extent allowable under the Act. [Matter remanded.(AY. 2016-17, 2017-18)

Shri Jain Shwetamber Murtipujak Sangh v. ITO (E) (2023)104 ITR 58 (SN)(Raipur) (Trib)

S. 11 : Property held for charitable purposes-Accumulation of income-Accumulated in wrong column-Bona fide mistake-Matter remanded for verification and to decide in accordance with law. [S. 11(2) 11(3), 143(1)]

Held, allowing the appeal, that the authorities below ought to have considered and verified the facts as well as the bona fide mistakes. Therefore, the orders of the authorities below were to be set aside and the issue restored to the Assessing Officer to verify the grievance of the assessee. If it was found correct, the issue may be decided in accordance with law.(AY. 2020-21)

Shrimati Saraswati Manuja Education and Well Living Society v..ITO (2023)104 ITR 78 (SN.)(Delhi) (Trib)

S. 11 : Property held for charitable purposes-Expenditure-Certain receipts taken by directly to balance-sheet held to be on revenue account, even though treated as balance-sheet item-Corresponding expenditure to be allowed in accordance with law-Matter remanded-Delay in filing of appeal is condoned.[S. 253]

Held, that certain receipts had been taken by the assessee directly to the balance-sheet, viz., betterment charges, impact fees, amenities fees, etc. The assessee's contention was that since these receipts had been held to be on revenue account, even though treated by the assessee as a balance-sheet item, the corresponding expenditure incurred for earning the income should be allowed in accordance with law. If certain receipts were treated by the Commissioner (Appeals) as revenue receipts, the assessee would be entitled to claim deduction of corresponding expenditure incurred for earning them. Accordingly, the Assessing Officer was to work out the expenditure incurred by the assessee in earning the receipts and allow it in accordance with law. (AY. 2009-10, 2011-12, 2014-15)

Vadodara Urban Development Authority v. Dy. CIT (E) (2023)104 ITR 4 (SN.)(Ahd) (Trib)

S. 11 : Property held for charitable purpose-Registration-Corpus Donations-Registration condition precedent for exemption in respect of corpus donations-Cash credits-Genuineness of loan is doubtful-Addition is proper-Business expenditure-Each item of expense considered and disallowance restricted to expenses not verifiable-No Justification for further reducing disallowance. [S. 12AA, 68]

Held that the assessee was not clear whether it received corpus donation. First, the assessee must clarify whether or not it received any such corpus donation, and if so, whether it was exempted under which provisions of law, particularly in the absence of registration under section 12AA, which after amendment in section 12A by the Finance Act, 2007, with effect from June 1, 2007 was a condition precedent for exemption. That though the assessee had proved the identity of the lenders and their capacity by filing the record of agriculturists' showing sufficient land holding in their names the entire transaction of unsecured loan was received in cash and the assessee had shown alleged unsecured loan on daily basis. Unsecured loans on more than 50 occasions were shown only to avoid the rigours of section 269SS, and the genuineness of transactions was doubtful. Thus, all three conditions of section 68 were not substantiated simultaneously by the assessee. The order of the Commissioner (Appeals) was proper.That the Commissioner (Appeals), after considering

each and every item of expense had granted sufficient relief and reasonably restricted the disallowance to those expenses which were not verifiable. There was no justification for further reducing the disallowance.(AY.2013-14)
Shri Ram Education and Graminvikas Charitable Trust v. ITO (E) (2023)102 ITR 17 (SN.) (Surat) (Trib)

S. 11 : Property held for charitable purposes-Exemption not claimed as ITR-5 was filed instead of ITR-7-Partnership firm-Order of adjustment is justified. [S. 143(1),154 184]
Where assessee-trust filed its return of income in Form No. 5, natural inference to be drawn was that assessee was a partnership firm and computation of tax liability to be made accordingly; CPC could not go beyond return of income and accompanying documents when processing returns of income under section 143(1).Rectification application is rejected. (AY. 2012-13)
Lions Nab Community Eyecare Centre v. DCIT (2023) 221 TTJ 1023 / 150 taxmann.com 115(Pune)(Trib)

S. 11 : Property held for charitable purpose-Anonymous donations-The donations given by the donors whose addresses were not furnished to Assessing Officer, would fall within the ambit of section 115BBC and the donations given by donors whose addresses were duly furnished to the Assessing Officer, would be eligible for exemption under section 11(1)(d).[S. 2(24)(iia),11(1)(d), 115BBC,131, 133(6)]
The Hon'ble Tribunal observed that on an analysis of section 11(1)(d) in conjunction with section 2(24)(iia), it becomes overt that corpus donations are also otherwise part of income but qualify for exemption by virtue of the operation of clause (d) section 11(1). Further section 115BBC provides that income by way of anonymous donation will be included in the total income and will be taxable as per the provisions of the said section if the person receiving such donation does not maintain a record of the identity indicating the name and address of the person making such donation. Therefore, when section 115BBC is read in juxtaposition to section 2(24)(iia), it becomes ostensible that anonymous donation included within its ambit all types of voluntary contributions whether corpus or non-corpus. Thus, corpus donations are not immune from the rigor of section 115BBC. The requisite conditions of maintaining record of the identity indicating the name and address of a person making contribution as prescribed under section 115BBC also need to be satisfied in respect of corpus donation failing which even the corpus donation is taxable under section 115BBC.
In present facts of the case, the assessee maintained a separate register for corpus donations and also furnished a list of corpus donations to the Assessing Officer and the said list had columns such as Sl. No., name of the donor, receipt No., amount and address. The Hon'ble Tribunal discovered that the Assessing Officer made addition even in respect of those donors to whom he had not issued any notice even though the assessee had given their addresses. This approach is not proper. If the Assessing Officer chose to issue notice under section 133(6) and summons under section 131 in respect of few of them then he cannot draw an adverse inference in respect of others to whom he did not issue any notice. Genuineness of such other donors having made corpus donations has to be accepted.
Accordingly, the Hon'ble Tribunal held that going with the prescription of section 115BBC r.w.s. 11(1)(d), only such corpus donations fall for consideration under section 115BBC for which the assessee did not maintain and furnish address of the donors to the Assessing Officer through the list. Consequently, the impugned assessment order was set aside. The matter was remitted back to the Assessing Officer for examining the list of corpus donors already provided by the assessee and the Assessing Officer was directed to make addition

under section 115BBC only in respect of such donations received from donors whose addresses are not given and rest are eligible for exemption under section 11(1)(d). (AY. 2017-18)
Agrawal Sabha v. ITO (E) (2023) 221 TTJ 104 (SMC) (Pune) (Trib)

S. 11 : Property held for charitable purposes-Credit for tax deduction at source-Income from property-Application of income-Accumulation of income-The lower authorities were not justified in jettisoning claim of allowing deduction of tax deducted at source in computation of income available for application or accumulation. [S. 11(1)(a), 11(2)]
Allowing the appeal of the assessee the Tribunal held that essence of provisions of section 11(1)(a) and 11(2) is that there should firstly be income available at disposal of trust capable of either application or accumulation for later application and income available to a trust in such a scenario could only be its commercial income and such income available could be computed after excluding relevant outgoes and unless taxes paid were not deducted it could not be said that amount of income to that extent was available for application or accumulation. Accordingly the lower authorities were not justified in jettisoning claim of allowing deduction of tax deducted at source in computation of income available for application or accumulation. (AY. 2016-17)
Society of Saint Ursula. v. ACIT (2023) 200 ITD 471/225 TTJ 119(SMC) (Pune) (Trib.)

S. 11 : Property held for charitable purposes-Form No 10B-Audit report-Delay condoned by CIT(E)-Denial of exemption is not justified-Return filed under section 139(4)-Exemption cannot be denied-Provisions of section 13(9) would attract only when assessee claims benefit of section 11(2) and its scope would not extend to other sub-sections of section 11. [S. 12A (1)(ba), 13(9), 139(1), 139 (4),13(9), Form No.10B]
Held that when delay in furnishing audit report in Form no. 10B by assessee-trust had already been condoned by Commissioner, assessee could not be denied benefit of exemption under sections 11 and 12. Held that assessee had filed return after due date of filing return under section 139(1) but before due date prescribed under section 139(4), benefit of exemption under section 11 could not be denied to assessee by invoking provisions of section 12A(1)(ba). Held that provisions of section 13(9) would attract only when assessee claims benefit of section 11(2) and its scope would not extend to other sub-sections of section 11.(AY. 2020-21)
Shri Rajkot Vishashrimali Jain Samaj. v. ITO *(*2023) 200 ITD 662 /225 TTJ 992 (Rajkot) (Trib.)

S. 11 : Property held for charitable purposes-Education-promotion of science and technology by developing science city project-Activities carried out by assessee being primarily run as a science museum did not qualify as education and order of Commissioner (Appeals) holding so was to be set aside-Activities carried out by assessee were not in nature of imparting education, but were in nature of general public utility activities-Matter remanded to the Assessing Officer. [S. 2(15)]
Assessee-trust is registered under Societies Registration Act for advancement and promotion of science and technology by developing science city project. Assessing Officer rejected assessee's claim for exemption under section 11 holding that activities carried on by assessee qualified as general public utility, carried out in a commercial manner and thus, did not qualify as a charitable activity in terms of section 2(15). Commissioner (Appeals) held that activity carried out by assessee qualified as 'education', in terms of section 2(15), and thus assessee was entitled to claim exemption under section 11. On appeal the relying on the judgement of Apex Court in case of New Noble Educational Society v. Chief CIT (2023) 290

Taxman 206/ (2022) 448 ITR 594(SC) held that very clear terms held that education means imparting formal scholastic learning for purposes of qualifying as charitable purposes under section 2(15)-Whether therefore, in view of narrow and restricted meaning given to term 'education' as used in section 2(15), activities carried out by assessee being primarily run as a science museum did not qualify as education and order of Commissioner (Appeals) holding so was to be set aside. Tribunal also held that activities carried out by assessee were not in nature of imparting education, but were in nature of general public utility activities in terms of section 2(15), matter was to be remanded back to Assessing Officer for purpose of determining whether they were commercial in nature so as to disqualify them from being charitable activities in terms of first and second proviso to section 2(15). (AY. 2013-14)
DCIT v. Gujarat Council of Science City. (2023) 200 ITD 780 (Ahd) (Trib.)

S. 11 : Property held for charitable purposes-Lease of properties-Rental income-Order of the Assessing Officer estimating the income at notional rental income is deleted-Only actual rental income be assessed. [S. 12AA, 13, 22, 23]
Assessee is a public trust registered under section 12AA. During year, assessee earned rental income from two properties leased out by it. Assessing Officer held that rental income shown by assessee was not fair market value of rent and it was only nominal value as compared to prevailing market rent in area and, thus, he assessed rent at higher amount. Order of the Assessing Officer is affirmed. On appeal the Tribunal held that accumulation or application in section 11(1)(a) must be of real income. Further, entire income of trust in commercial sense had been spent for its purpose. Accordingly the trust could not be assessed on notional rental income in terms of CBDT Circular No. 005P(LXX-6), dated 19-6-1968 but only on actual rental income. (AY. 2016-17)
TVS CharitieS. v. ITO (2023) 199 ITD 813 / 224 TTJ 842 (Chennai) (Trib.)

S. 11 : Property held for charitable purposes-Lease rent-Lessee companies were part of same group where trustees of assessee-trust and their relatives held more than 50 per cent of shares, tenants of rented property-Section 13(3) and as provisions of section 13(1)(c) read with section 13(1)(b) were violated-Assessee is not entitled to claim exemption under section 11. [S. 12AA, 13(1)(b), 13(1(c), 13(3)]
Assessee is public trust registered under section 12AA. Assessee leased out two lands owned by it to two companies. During year, assessee claimed exemption under section 11 on lease rent received by it.Assessing Officer held that lessee companies were part of same group where trustees of assessee-trust and their relatives held more than 50 per cent of shares. Thus, tenants were specified persons under section 13(3) and provisions of section 13(1)(c) were applicable and assessee was not entitled to claim exemption under section 11. Since assessee had received rent from two tenants who were specified persons under section 13(3) which was in clear violation of provisions of section 13(1)(c) read with section 13(1)(b), assessee is not entitled to claim exemption under section 11. (AY. 2016-17)
TVS CharitieS. v. ITO (2023) 199 ITD 813/224 TTJ 842 (Chennai) (Trib.)

S. 11 : Property held for charitable purposes-Education-Organizing drama programs for companies for fee-Companies selling tickets for profit-Element of profit involved in organising dramas-Not eligible for exemption. [S. (2(15), 12A]
The Tribunal held that the assessee was organising the drama for institutes and companies for fee. Such institutes and companies, in turn, sold tickets and passes on commercial basis. This showed that the assessee was organising the drama for the payer institutes and companies, who were then exploiting it commercially by selling tickets and earning revenue at their own

end. Held that that the assessee earned huge margin on performance of the activity, which was in the nature of business, it ceased to fall within the domain of "charitable purpose", as the business receipts exceeded 20 percent of the total receipts. The assessee did not satisfy the condition of "advancement of any other object of general public utility" so as to be covered under section 2(15). The assessee was not eligible for exemption. (AY. 2013-14)
Maharaja Shivchatrapati Pratishthan v.ITO (E) (2023)101 ITR 84 (SN) / 199 ITD 607 (Pune) (Trib)

S. 11 : Property held for charitable purposes-Depreciation-Capital asset-Application of income-Matter remanded-Directed to pay cost of Rs 1000 to the Prime Minister Relief Fund.[S. 11(6), 32]

Assessee Society was engaged in providing and had claimed deduction towards depreciation and claimed same as application of income out of receipts of years. On failure to reply to specific query and show cause letter, Assessing Officer relying provisions of Section 11(6) denied claim of depreciation. CIT(A) also held that claim was not acceptable without any documentary evidence.Tribunal accepted the request of the assessee to allow one more opportunity on merits and restored the matter to the file of Assessing Officer. The Tribunal also directed the assessee to pay cost of Rs 1000 to the Prime Minister Relief Fund for casual approach of the assessee. (AY. 2016-17))
Rajiv Gandhi Vidya Pith Shiksha Sansthan v. ITO (E) [2023] 201 ITD 114 (Jaipur) (Trib)

S. 11 : Property held for charitable purposes-Interest received on compensation in respect of compulsory acquisition of land-Not barred from claiming deduction under section 57(iv) of the Act. [S. 10(33), 56(2)(vii), 57(iv), 145B(1)]
Assessee-trust, claimed exemption under section 11, claimed deduction under section 57(iv) from interest received on compensation in respect of compulsory acquisition of land. Assessing Officer rejected assessee's claim on ground that section 11 is a separate code under Chapter III and, therefore, no deduction is allowable under Chapter IV of the Act. Commissioner (Appeals) allowed assessee's appeal holding that deduction had been claimed in accordance with law. Dismissing the appeal of the Revenue the Tribunal held that the income of an assessee claiming exemption under section 11 could be classified under various heads of income, except Profits and gains of business or profession (PGBP) and entitled to permissible deductions therein. Assessee claiming exemption under section 11 is not barred from claiming deduction under section 57(iv) on account of interest received on compensation in respect of compulsory acquisition of land. Referred DIT(E) v.Jasubhai Foundation (2015) 374 ITR 315 / 58 taxmann.com 218 (Bom)(HC), IAC v. Saurashtra Trust (2007) 106 ITD 1 ((SB)(Mum)(Trib) (AY. 2016-2017)
ITO (E) v. Shree Sardarshahr Gaushala Samity (2023) 201 ITD 110 (Kol)(Trib)

S. 11 : Property held for charitable purposes-Collection of charges from the civilians for community work of spreading awareness related about drug abuse and addiction and rendered services for procuring passport, issuance of NOC, etc-Denial of exemption is not justified-Mater remanded to the AO to verify whether proviso to section 2(15) had been breached. [S. 2(15), 12AA, 13(8)]
The Assessing Officer denied the exemption. on appeal the Tribunal remanded back the matter to the A.O. for de novo adjudication. The Tribunal emphasized that assessing authorities must scrutinize whether the activities are in the nature of trade or business and whether they breach the quantified limit. (AY. 2016-17)

Sub Division Saanjh (Community Police) Society v. ITO (E) (2013) 201 ITD 57 (Amritsar)(Trib)

S. 11 : Property held for charitable purposes-Adjustment-A prior intimation is required to be served on assessee, either in writing or electronically, as contained in 1st proviso to section 143(1)(a)-Income should be understood in its commercial sense and computing total income of assessee equal to total receipts for year was not in accordance with commercial prudence and commercial sense-Addition was deleted.[S. 12AA, 143(1)(a)]

Assessee Trust, registered under section 12AA, had evidently demonstrated failure on part of revenue to issue prior intimation to assessee before making an adjustment under section 143(1)(a) by way of disallowing its claim of exemption under section 11, such adjustment was to be delete. Also, it was held that revenue was wrong in computing the income of the assessee at total receipts for the year under consideration. It was held that income should be understood in its commercial sense and computing total income of assessee equal to total receipts for year was not in accordance with commercial prudence and commercial sense, despite fact that both revenue and capital expenditure were accepted by revenue in processing of return.(AY. 2020-21)

ITO(E) v. Camellia Educare Trust (2023) 201 ITD 616 (Kol.)(Trib)

S. 11 : Property held for charitable purposes-Foreign travel expenses incurred for obtaining donations, are allowable as a deduction when donations received are utilized towards the fulfilment of the objects of the trust. [S. 12A, Foreign Contribution Regulation Act **]**

The appeal is against the disallowance of expenditure incurred on foreign travel amount, incurred in the context of foreign travel to seek donations.

The Assessee is a charitable trust registered under section 12A and with a registration under the FCRA – Foreign Contribution Regulation Act. Return of income was filed declaring nil income after claiming exemption under section 11. The Assessing officer disallowed the expenditure incurred on foreign travel under scrutiny assessment.

The assessee's contention is expenditure incurred on foreign travel was to obtain donations from the donors who were abroad and hence must be allowed. Upon appeal, the Ld. CIT(A) confirmed the Orders of the Assessing Officer.

The Hon'ble Tribunal noted that-the assessee had received substantial portions of donations from abroad. The details of the donations received and utilization of the same was also enclosed in the records. That the expenditure incurred was for obtaining the donations from the various donors who were stationed abroad, and the utilization of the donation was also for the objects of the trust. In view of the judicial pronouncements, the Hon'ble Tribunal held that since the donations received are utilized for charitable purpose, which was never doubted by the Assessing Officer, the foreign travel expenses incurred for obtaining the above said donations is to be allowed as an expenditure.(AY. 2016-17)

Agastya International Foundation v. ACIT [2023] 201 ITD 399 (Bang) (Trib.)

S. 11 : Property held for charitable purposes-Grants from State Government for specific infrastructure projects-Grants would not be voluntary contributions and would not constitute income of assessee.[S. 11(1)(d), 12, 12AA]

Assessee-trust was registered under section 12AA and was constituted for construction of infrastructure on behalf of Government of West Bengal. During relevant assessment year, assessee received specific grants from Government through urban development department for implementation of various infrastructure projects. Assessee showed said funds in balance

sheet as part of corpus of trust and did not offer same for tax as income. Assessing Officer opined that only voluntary contributions made with a specific direction that contribution shall form part of corpus of trust could be treated as corpus donation. He, thus, added back government grant in income of assessee on ground that no express direction was given from Government that funds would form part of corpus and basic nature of grant was that it was meant for application. Since grants were given to assessee for specific infrastructure projects and did not belong to assessee and furthermore assessee was not authorized to use said grants for any other purpose and unutilized funds were returned to Government, said grants were not voluntary contributions and would not constitute income of assessee. Thus, impugned additions were to be deleted. (AY. 2015-16)

Howrah Improvement Trust v. DCIT(E) (2023) 201 ITD 841/ 226 TTJ 816 (Kol) (Trib)

S. 11 : Property held for charitable purposes-Accumullation of income-Not eligible to claim in respect of deemed income-Directed to recompute exemption available. [S. 11(1)(a), 11(b), 11(2), 11(3), Rule 17]

The Assessing Officer assessed deemed income on the ground that the same could not be subject to provisions of Section 11(1)(a). on appeal the CIT(A) held that exemption under Section 11(1) was not available for deemed income under Section 11(3).On appeal The Tribunal held that ;

Firstly, in view of Circular No. 29 [F. No. 20/22/69 IT (A-1) dated 23rd August, 1969, unapplied amount is deemed income under Section 11(3), hence, benefit of Section 11(1)(a) would be lost.

Secondly, as per the said Circular, the assessee should not be eligible to claim double deduction in respect of the same income.

Thirdly, in the case of Trustees, the B.N. Gamadia Parsi Hunnarshala [2002] 77 TTJ 274 (Mum) (Trib) held that exemption under Section 11 is available only on income and not on deemed income.

Fourthly, clause 10 of Part 1 of Form No. 3A does not allow that assessee to claim exemption under Section 11(b).

It was, therefore, held that assessee trust is not eligible to claim exemption under Section 11(1)(a) and Section 11(2) in respect of deemed income under Section 11(2). The Assessing Officer was directed to recompute exemption available to the assessee. (AY. 2015-16 2016-17) (AY. (AY 2016-17, 2017-18)

Prabhas Patan Jain v. ITO (E), [2023] 200 ITD 323 (Rajkot)(Trib.)

Anand Mercantile Samaj Seva Trust v. ITO (E) (2023) 201 ITD 708 (Ahd) Trib.)

S. 11 : Property held for charitable purposes-First proviso to sub-section (2) of section 12A as inserted by Finance (No.2) Act, 2014 with effect from 1-10-2014 is retrospective in nature-Application for registration under section 12AA was made on 9-3-2012, Commissioner granted registration on 28-10 2015 with effect from 1-4-2011-Claim for exemption is deserved to be allowed for the Assessment year 2011-12. [S. 11(1), 12A, 12AA(2)]

The Assessee applied registration under section 12A in the year 1991 (which had not been disposed yet) again moved before the Commissioner, second application for granting the registration in the year 2012. For the concerned Assessment Year, it claimed exemption under section 11 under the premise that deemed registration could be assumed in the event of non-disposal of application by the statutory authority within the statutorily prescribed limit. The Assessing officer denied the exemption under the premise that the trust was not registered under section 12AA and assessed the assessee as an association of persons attracting maximum marginal rates. Meanwhile the Commissioner acting upon the second

application of the Assessee, *vide* its order, granted registration to the assessee up to a certain cut-off year in retrospective, however not applicable to the year in question. The assessee contended that insertion of 2nd proviso to section 12AA of the Act *vide* Finance (No. 2) Act, 2014 was applicable retrospectively, which was not accepted by the revenue authorities who otherwise considered its applicability to be prospective. The Hon'ble Tribunal observed that the insertion of first proviso to sub-section (2) of section 12A has been explained by Explanatory Notes to provisions of Finance (No. 2) Act, 2014 and it is provided that the same is applicable to earlier assessment years which are pending before the Assessing Officer as on date of such registration. And further concurred with the judgement in SNDP Yogam *v.* ADIT (E) [2016] 161 ITD 1(Cochin)(Trib) where the registration granted to the assessee under section 12AA was held to be retrospective and not prospective and its claim for exemption under section 11 was allowed. (AY 2011-12) (AY 2009-10, 2010-11)
Alpha Educational Trust v. DCIT (E)(2023) 200 ITD 454 (SMC) (Chennai (Trib.)
Adhyakshya Lok Mela Amlikaran Sammittee v. ITO (2023) 201 ITD 606 (Rajkot)(Trib)

S. 11 : Property held for charitable purposes-Exemption cannot be denied only on the ground that audit report was not filed along with the return-Matter remanded to the Assessing Officer.[S. 12, Form 10B.]
The assessee was a public charitable trust imparting education. It filed its Return without filing an Audit Report in Form 10B; which was filed subsequently. The AO disallowed the expenses incurred by the assessee for want of an Audit Report. The assessee did not file a request for condonation of delay with CIT(E) in filing an Audit Report, and hence, CIT(A) dismissed the appeal of the assessee. The Tribunal, after referring to various other judgements, observed that the assessee has substantially satisfied all the conditions for availing the benefit of exemption under section 11/12 of the Act, except for filing the audit report in Form 10B, which was filed belatedly. The matter was restored to the Assessing Officer to verify the contents of the Audit Report and to grant the necessary exemptions under the Act. (AY. 2019-20)
Navbharat Charitable Trust v. ITO (2023) 200 ITD 812 (Surat)(Trib)

S. 11 : Property held for charitable purposes-Trust formed under statute to bring about improvement in the town of Sangrur by providing streets, housing facilities, development of parks, development of roads and other infrastructure, providing drinking water, etc-Entitle to exemption.[S. 2(15), 12, 13 (8)]
Held, allowing the appeal, that the assessee was established for the purpose of advancement of an object of general public utility, and the entire Act in general indicated this to be the basis of the establishment of the assessee-trust. Sale of plots and premises by the assessee was incidental and ancillary to its main purpose of "town improvement", that mere profit making on account of such incidental or ancillary activity did not disentitle the assessee to the exemptions under the Act, that profit was not the predominant motive of the assessee, that even where the plots were developed and premises were constructed and sold at market price, the activity was not a commercial or business venture per se, but one necessitated on account of implementation of the provisions of the assessee-trust, through statutory schemes. The trusts have been formed for the purpose of dealing with and satisfying the need for housing accommodation, planning, development or improvement of cities, towns and villages, regulating, or regulating and developing, any activity for the benefit of the general public, or regulating any matter, for the benefit of the general public, arising out of the object for which it has been created. Therefore, the second proviso to section 2(15) and, consequently, section 13(8) of the Act were not applicable to the assessee's case, and the assessee was entitled to exemption u/s. 11 of the Act. (AY. 2016-17)

Improvement Trust, Sangrur v. ACIT (2023) 156 taxmann.com 153 / 105 ITR 502 (Chd) (Trib)

S. 11 : Property held for charitable purposes-Prima facie adjustments-No intimation given to assessee filing return and form 10B beyond due date mentioned under Act-Supreme Court extending limitation in respect of all judicial and quasi-judicial proceedings-Exemption is directed to be allowed.[S. 139(4), 143(1)(a)]

The Assessing Officer before making adjustment or disallowance to the returned income according to the return filed by the assessee was duty-bound to intimate the assessee either in writing or in the electronic mode. However, no such intimation had been given to the assessee either in writing or in electronic mode before making the adjustment or disallowance. The Assessing Officer had not followed the mandate of the first proviso to section 143(1)(a) of the Income-tax Act, 1961 and consequently, the order passed u/s. 143(1) of the Act had to be quashed.

For the AY. 2020-21, the assessee filed its return in form ITR 7 u/s. 139(4) on March 31, 2021 and filed form 10B on March 30, 2021 whereas the extended due date for filing the return was February 15, 2021. The Assessing Officer disallowed the exemption claimed u/s. 11 of the Act on the ground that the Income-tax return and form 10B were filed late. Held, that the covid pandemic had spread all over the country and the entire country was brought to a standstill. Considering all these practical difficulties for making compliances, the Supreme Court had extended the period of limitation with respect to judicial or quasi-judicial proceedings. There was no delay in filing the return or form 10B. Therefore, the order of the Commissioner (Appeals) was set aside and the Assessing Officer was to allow exemption claimed u/s. 11 of the Act. (AY. 2020-21)

Kalyan Educational Society v.ACIT (2023)105 ITR 694 / 226 TTJ 348 (Kol)(Trib)

S. 11 : Property held for charitable purposes-Business Loss-Embezzlement of funds-Loss to be treated as revenue loss CBDT Circular No. 35d (X1, Vii-20) [F. No. 10148/65-It (Al)-Amount recovered disclosed as income in consolidated income and expenditure account-Adjoining land purchased for purpose of extending college building-Form 10 filed not specifically mentioning object for which funds accumulated-Not reason to deny benefit. [S. 11(2), 12AA, Form No 10, Form No 26AS]

The assessment was completed by making additions and disallowances on account of difference between the interest income as declared by the assessee and that reflected in form 26AS, the amount remaining unutilised out of accumulated funds in terms of provisions of section 11, the amount claimed as embezzlement expenses and anonymous donations. The assessee had recovered out of the embezzled funds, and subsequently offered to tax.Tribunal held that the principle laid down in Central Board of Direct Taxes Circular No. 35D (X1, VII-20) [F. No. 10148/65-IT (AL) would be squarely applicable to the facts and circumstances of the case inasmuch as the embezzlement had occurred during the course of day-to-day carrying out of charitable activities by the assessee-trust. Undisputedly, the funds were embezzled on account of manipulation made by the employees of the society. Therefore, the loss was a revenue loss and was to be allowed. There was much more application of income by the assessee-society and, therefore, the Assessing Officer was not justified in not allowing the benefit of exemption to the assessee u/s. 11 of the Act and taxing the assessee under the status of association of persons.

That the adjoining land was purchased for the purpose of extending the college building. The purchase of land adjoining the college for the purpose of extending the scope of activities of the college was in furtherance of the objects of imparting of education. Though form 10 filed by the assessee did not specifically mention the object for which the funds were being

accumulated, it could not be said that the condition of section 11(2) of the Act had not been fulfilled. (AY.2015-16)

Gurudwara Godri Sahib Baba Farid Society v. Dy. CIT (E) (2023) 154 taxmann.com 503 / 105 ITR 570 (Chd)(Trib)

S. 11 : Property held for charitable purposes-Expenditure incurred for renovation of school building and payment of taxes-Allowable as application of income though the assessee is not owner of the building. [S. 11(1)(a)

The appellant had incurred an expenditure on repairs/renovation of the school building and towards payment of property taxes. The Assessing Officer (AO) disallowed the expenditure towards repairs of the building and the property taxes on the ground that the building in respect of which such expenditure was incurred does not belong to the appellant-society. CIT(A) confirmed the disallowances. On appeal it is submitted that the nature of expenditure, being capital expenditure or otherwise is not relevant in the context of section 11(1)(a) of the said Act. On appeal the Tribunal held that renovation/repairs of the school building are essential for the security of children and others who are using the building for running of the school and thus would be in consonance with the objects of the trust and consequently the expenditure incurred on such repairs and obviously the payment of taxes can be said to be application of the income towards charitable purpose. Accordingly the appeal of the assessee was allowed.(ITA No. 2920/Mum/2023 dt. 12-12-20023) (AY. 2016-17)

Bombay Society of the Salesian Sisters India, v. ITO (Mum)(Trib) www.itatonline.org.

S. 11 : Property held for charitable purposes-Not filing of Form No.10B along with the return-Denial of exemption is not justified. [S. 154]

CPC denied the exemption on the ground that the Form No10B was not filed along with the return. The assesse filed rectification application and filed the Form No 10B along with rectification application. On appeal the Tribunal held that benefit of section 11 cannot be denied merely on the ground of delay in filing form 10B.Relied on CIT v. Kalavani Mandal (P) Ltd (2014) 41 taxmann.com 184 (Guj)(HC)/ Sarvoday Charitable Trust v. ITO (2021) 125 taxmann.com 75 / 278 Taxman 148 (Guj)(HC) (AY. 2014-15) (ITA No. 669/ SRT/ 2018 dt. 28/02/2022)

Trinity Education Trust v. ITO (2023) The Chamber's Journal-April-P. 139 (Surat)(Trib)

S. 12A : Registration-Trust or institution-Registration is granted based on facts-Order of Tribunal is affirmed. [S. 12AA, 13(1) (c), 260A]

Dismissing the appeal of the Revenue the Court held that the Tribunal had examined the facts from all angles and had rightly held that while considering the application for registration under section 12A the Commissioner was supposed to enquire into the nature of the trust and since there was nothing substantive or serious to doubt the nature of the trust being charitable, the Commissioner was not justified in rejecting the application for registration. Order of Tribunal is affirmed.

CIT v. President, Seth Malukchand Hirachand Digambar Jain Goth Bees Panthi Mandir Dharmik Avam Paramarthik Trust (2023)456 ITR 70 /154 taxmann.com 537 (MP)(HC)

S. 12A : Registration-Trust or institution-Refusal of registration on incorrect facts-Matter is remanded to the CIT(E) with the direction to decide a fresh.[S. 11, 12AA]

Held that the CIT (E) rejected the application for registration on incorrect facts. The Matter is remanded to the CIT(E) with the direction to decide a fresh.

Boondien v. CIT(E) (2023) 225 TTJ 479 (Lucknow)(Trib)

S. 12A : Registration-Trust or institution-Deemed Registration us 12A due to non-disposal by the Revenue-Matter remanded. [S. 11]

The assessee contended that it had filed application seeking 12A registration on 25/05/1999 in support of which the assessee filed letters and RTI replies, whereas, the revenue contends that the assessee for the first time filed the 12A application back dated, on 21/02/2002. The Revenue contended before the Hon'ble High Court as well as before this Tribunal that office of the PCIT Belgam came into existence in June 2001, and therefore it is not possible that the assessee could have filed the alleged application that bares the acknowledgement of ITO Belgam, during the period when the office was not in existence. Matter is remanded back to the CIT to verify the inward register first maintained by the Belgaum office and to verify the seal in order to establish whether the alleged application dated 25/05/1999 was existing with the revenue records prior to 2002.

Visvesvaraya Technological University v. CIT (E) (2023) 153 taxmann.com 28 / 221 TTJ 439/ 223 DTR 73 (Bang)(Trib)

S. 12A : Registration-Trust or institution-Cancellation of registration-Capitation fees-Siphoned off by trustees for their personal benefits-Search-Cancellation of registration is held to be justified. [S. 12AA]

Assessee, a trust running educational institute, was granted registration under section 12A. Authorized Officer conducted a search upon assessee on 6-8-2013 and found that assessee had collected capitation fees in cash for granting admission and such fees was being siphoned off by trustees for their personal use.Principal Commissioner considering search and seizure report cancelled registration of assessee for reasons that it had been indulging in collection of capitation fees and such fees was siphoned off by trustees for their personal benefits. On appeal the Tribunal held that since reasons for cancellation of registration were based on material found during course of search conducted on 6-8-2013 upon assessee and assessment order framed based on above material was sustained by Commissioner (Appeals) as well as by Tribunal, Principal Commissioner had rightly cancelled registration of assessee.

Sinhgad Technical Education Society. v. PCIT (2023) 200 ITD 183/226 TTJ 114 (Pune) (Trib.)

S. 12A : Registration-Trust or institution-Voluntary contributions-Trust is not registered-Corpus donation will form part of taxable income-Failure to produce vouchers disallowance of expenditure is justified. [S. 2(24(iia)11, 37 (1)]

Assessee-trust had received donation of certain sum from a foreign association. The assessee claimed the said amount as capital receipt. The Assessing Officer held that as the trust is not registered under section 12A exemption provided under sections 11 and 12 would not be available to assessee for year under consideration. The Tribunal held that the assessee could not take benefit of pre-amended section 2(24)(iia) as said section has been amended vide Finance Act, 1987 and further amended vide Amendment Act, 1989 and since trust being not registered under section 12A for year under consideration, corpus donation would form part of taxable income of assessee-trust. The assessee claimed deduction in respect of expenditure incurred under head 'food and beverages', since no bills and vouchers had been maintained by assessee for aforesaid expenditure, same was rightly disallowed by lower authorities. The Tribunal also confirmed the disallowance of the expenses since no bills and vouchers had been maintained for expenditure, there was no infirmity in order of Commissioner (Appeals). (AY. 2011-12)

Akshay Educational & Social Welfare Charitable Trust. v. DCIT (2023) 199 ITD 328 / 222 TTJ 14/ 223 DTR 9/102 ITR 24 (SN (Patna) (Trib.)

S. 12A : Registration-Trust or institution-Water Corporation of Odisha Ltd. (WATCO)-fall under definition of 'State' within meaning of article 12 of Constitution of India and, thus, it would be entitled for immunity from taxation under Income-tax Act, 1961 as directed under article 289 of Constitution of India-Additional ground is allowed-Original grounds became academic. [S. 2(15), 12AA, Art. 12, 289]

Assessee, Water Corporation of Odisha Ltd. (WATCO), is wholly owned not-for-profit company set-up by Government of Odisha. It was incorporated to oversee ring-fenced operation of water supply production and distribution system, operation and maintenance of sewage collection, treatment and operation and maintenance of sewerage network, sewage treatment and disposal. Assessee filed an application for registration under section 12A. Commissioner (E) rejected same observing that objects of assessee were in nature of business/commerce and, thus, did not fall within ambit of charitable activity as prescribed by section 2(15).On appeal the assessee contended that WATCO was a wholly owned company of Government of Odisha and was to be held as a 'State' making it not liable to pay income-tax. Tribunal held that the assessee would fall under definition of 'State' within meaning of article 12 of Constitution of India as it satisfied tests laid down by Apex Court in case of Som Prakash Rekhi v. Union of India 1981 AIR 212 and, thus, it would be entitled for immunity from taxation under Income-tax Act, 1961 as directed under article 289 of Constitution of India. (AY. 2020-21)

WATCO. v. CIT (2023) 198 ITD 658 / 223 TTJ 206 (Cuttack) (Trib.)

S. 12A : Registration-Trust or institution-Registration-Registration granted on 21.07.2011-Proceeding pending for earlier years before AO-Eligible for deduction. [S. 11, 12,]

The Hon'ble Tribunal observed that the assessee-trust was granted registration under section 12A of the Income-tax Act, 1961, on July 21, 2011. Thus, the assessee was eligible for deduction under sections 11 and 12 for the AY. 2010-11 under the first proviso to section 12A of the Act.(AY. 2010-11)

Leh Nutrition Project v. Dy. CIT (2023)101 ITR 9 / 199 ITD 732 (Amritsar) (Trib)

S. 12A : Registration-Trust or institution-Exemption-Failure to furnish audit report within specified time-Procedural and technical requirements of e-filing-Subsequent filing of audit report electronically and seeking rectification-Assessing Officer is directed to accept audit report and decide thereon. [S. 11, 12A(1) (b),143(1), 154, Form No. 10B]

Held, that it was not the case of the Revenue that the assessee had ceased to be a religious or charitable institution. Further, it was also not the case of the Revenue that the accounts of the assessee had not been audited by an accountant, or that an audit report in form 10B had not been obtained. The exemption under section 11 was denied only on the technical aspect of form 10B not being filed along with the return of income, and without going into the merits. The assessee had complied with the procedural requirement of obtaining and filing form 10B. The Assessing Officer was directed to decide on the claim of the assessee under section 11 on the merits, after accepting the audit report filed.(AY. 2016-17)

Shree Bhairav Seva Samiti v. ITO (E) (2023)101 ITR 708 (Mum) (Trib)

S. 12A : Registration-Trust or institution-Beneficiaries are members of general public-Conducting workshops to disseminate knowledge of Vedas-Financial assistance and distribution of food-Entitle to registration and approval under section 80G of the Act. [S. 80G]

Allowing the appeal the Tribunal held that the assessee-trust had carried on other charitable activities in the nature of relief of poor. The vedic scholars were identified and felicitated irrespective of their caste, creed or religion. The trust had given financial assistance to various people, irrespective of caste, creed or religion, involved in Indian heritage education. the activities carried on by the assessee were charitable in the nature of education, relief of poor and not religious. The findings of the Commissioner (E) that the assessee-trust was registered as religious was quashed. Directed to grant registration and also approval under section 80G of the Act.

Shri Shruthiparampara Gurukulam v. ITO (E) (2023)101 ITR 598 /200 ITD 517 / 223 TTJ 96 (Bang)(Trib)

S. 12AA : Procedure for registration-Trust or institution-Preservation of environment-Control of Irrigation Department of State Government-Registration was allowed-Order of High Court affirmed.[S. 2(15)]

Affirming the order of the High Court the Court held that since activity carried out by assessee had a direct connection with activity of preservation of environment, it was not a fit case for invoking first proviso to section 2(15) and assessee's claim for registration was to be allowed. Since Commissioner, overlooked circumstance that category within which assessee claimed registration as a charitable trust, was considered to be "per se" a charitable object and did not fall within description of residuary clause of a general public utility concern, there was no infirmity with impugned order of High Court. (AY. 2012-13

CIT (E) v. Water & Land Management Training & Research Institute (2023) 295 Taxman 753/(2024) 461 ITR 1/ 337 CTR 352 (SC)

Editorial : CIT (E) v. Water & Land Management Training & Research Institute (2017) 83 taxmann.com 234 / 398 ITR 282 (AP& Telangana (HC), affirmed.Refer, Water & Land Management Training & Research Institute v.DIT (E) (2015) 40 ITR 559(Hyd)(Trib)

S. 12AA : Procedure for registration-Trust or institution-Survey and search and seizure Violation of provisions of Section 13(1)(c) Rejection of application-Not erroneouS. [S. 12, 12A, 13(1)(c), 132, 133A, 260A]

The Commissioner (E) relied on the survey operation conducted under section 133A in the premises of the assessee and the search and seizure operation conducted under section 132 in the residential premises of the assessee's secretary. Incriminating documents, books of account were found and impounded and a demand was raised which was confirmed by the first appellate authority. The Tribunal set aside the rejection order. On appeal by Revenue allowing the appeal, that no error was committed by the authority in scrutinising the genuineness of activities of the institution in obtaining satisfaction to grant registration. Prior to the amendment of section 12AA by the Finance Act, 2019 with effect from September 1, 2019, the requirement for obtaining satisfaction was only about genuineness of activities of the trust or institution. By the amendment satisfaction on the objects was also included. The authority had found that the activities were done in such a way that it had led to conducting survey under section 133A against the assessee and search and seizure operation under section 132 in the premises of its secretary. When the authority was confronted by the activities requiring survey, search and seizure, there was conclusion that satisfaction had not been obtained for the purpose of granting registration. This, the authority had done as required and empowered by the provision existing prior to the amendment. The facts that the assessee had suffered survey and search and seizure operations in the course of conducting its activities under its objects and that there had been violation of the provisions of section 13(1)(c) could be considered for the purpose of satisfaction on the application for grant of registration under section 12AA.(AY.1997-98, 2011-12)

CIT (E) v. Orissa Cricket Association (2023) 334 CTR 799 (2024)461 ITR 382 (Orissa)(HC)

S. 12AA : Procedure for registration-Trust or institution-Genuineness of activities-Order of Tribunal directing the Commissioner to grant registration is affirmed.[S. 12A]
Commissioner refused registration by holding that assessee did not satisfy registering authority, about genuineness of its activities and assessee had generated surplus (profit) out of their total receipts which was not in consonance with intent and spirit of provisions of section 12AA of the Act. On appeal the Tribunal held that there was nothing on record brought out by Commissioner that fee structure was in-genuine or against accepted norms and that activities of trust were for non-charitable purpose or for personal purposes of trustees, etc., and directed Commissioner to grant registration to assessee. On appeal by the Revenue High Court affirmed the order of the Tribunal.
CIT v. D.N Memorial Trust (2023) 293 Taxman 735 /335 CTR 601 (J&K and Ladakh)(HC)

S. 12AA : Procedure for registration-Trust or institution-Commencement stage-Only has to examine whether the object of the Trust is charitable or not-Order of Tribunal directing to grant the registration is affirmed. [S. 2(15), 11]
Dismissing the appeal of the Revenue the Court held that while granting registration to charitable institution or trust, if it is at commencement stage, powers of DIT with whom application is filed by such trust/institution are limited to aspect of examining whether or not objects of trust are charitable in nature. Order of Tribunal is affirmed.
DIT (E) v. She Foundation (2023) 292 Taxman 216 (Cal.)(HC)

S. 12AA : Procedure for registration-Trust or institution-Failure to furnish self attested copy of registered bye-laws-Matter remanded. [S. 2(15), R. 17A(1)]
Tribunal held that since assessee had submitted information as sought by department from time to time, Commissioner was to be directed to dispose of application afresh after considering all available material evidence.
Confederation of Real Estate Developers Association of India. v. CIT (2023) 202 ITD 83 (Raipur) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Formed to implement Corporate Social Responsibility activities of financing company-Directed to grant exemption. [S. 11,12AB, 13, 37(1), Form 10A]
Held that the main aim and object of the assessee is to implement the corporate social responsibility activities of the financing or parental company, and enured to the benefit of general public at large. The corporate social responsibility expenditure was not allowable expenditure under section 37 of the Act but this was relevant only for the taxability of the company incurring such expenditure. The amount received as a donation would be eligible for exemption under section 11 depending on the application of such funds for charitable activities by the assessee. Thus, the Commissioner (E) was empowered to satisfy himself only about two factors, i. e., the objects of the trust and the genuineness of the activities of the trust or institution, and such powers did not extend to the eligibility of the assessee for exemption under section 11 read with section 13 of the Act which fell in the domain of the Assessing Officer. The Commissioner (E) had neither pointed out any defects in the objects of the trust nor doubted the activities carried out to achieve these objects. Accordingly, the

Commissioner (E) is directed to grant registration to the assessee-trust under section 12AA of the Act from the date of the application.

Santosh Foundation v. CIT (E) (2023)107 ITR 492/ 226 TTJ 466 (Amritsar) (Trib)

S. 12AA : Procedure for registration-Trust or institution-Objects of the Trust should be charitable in nature and its activities were genuine-The Commissioner (E) was directed to grant registration to trust from the date of application. [S. 2(15), 12A]

The assessee trust applied for the first time for registration under Section 12AA of the Income-tax Act, 1961 as per the Trust Deed executed on February, 2019 has not disputed which was duly registered with the Sub-Registrar, Pampore. The objects as enshrined in the Trust Deed, it is clear that the aims and objects are in conformity with provisions of Section 2(15) of the Income-tax Act, 1961. The purpose of provisions of Section 12AA is to enable registration only of such trust or institution whose objects and activities are genuine. Section 12AA pertains to registration of the trust and not to assess what a trust has actually done and the term activities in the provision includes proposed activities. The Registering Authority is bound to consider whether the objects of Trust are genuinely charitable in nature and whether the activities of the Trust proposed to carry on are genuine, i.e., they are in line with the objects of the trust. The only requirement for granting registration is that the objects of the Trust should be charitable in nature and its activities were genuine. Supreme Court in case of *Anand Social and Educational Trust vs. CIT. [2020] 426 IR 340 (SC)* has laid down the basic principles for allowability of basis registration. The Commissioner (E) was directed to grant registration to trust from the date of application.

B. M. L. Welfare Trust v. CIT (E) [2023] 151 taxmann.com 76/ [2024] 109 ITR 678 (Amritsar) (Trib)

S. 12AA : Procedure for registration-Trust or institution-Benefit of a particular sub-caste-Private religious trust-Rejection of registration is held to be justified.

Assessee-trust filed an application for grant of registration under section 12AA. Commissioner rejected the application on the ground that the Trust is only for the benefit of sub-caste and it is only for benefit of that sub-caste, it is a private religious trust. Tribunal is affirmed the order of CIT(E).

Arulmigu Aathi Karumapuram Sellandiamman Kudipaattukarakal Seva Trust. v. CIT (2023) 201 ITD 450/224 TTJ 623 (Chennai) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Pendency of assessment-CBDT Circular No. 1/2015-Entitle for exemption. [S. 10(23C)(iiiad), 11, 12A]

Assessee, an educational society, claimed exemption under section 10(23C)(iiiad). Application was rejected but application for registration under section 12A was granted for and from assessment year 2017-18. Assessing Officer declined assessee's exemption on grounds that gross receipts of assessee-society exceeded Rs. 1 crore and assessee-society had not applied for registration either under section 10(23C)(vi) or 12A. Commissioner (Appeals) also upheld view taken by Assessing Officer. On appeal the Tribunal held in view of CBDT Circular No. 1/2015, benefit of sections 11/12 would be available to an assessee for a period prior to year of registration despite that no application for registration for said period had been filed subject to condition that assessment proceedings for said earlier assessment year are pending before Assessing Officer on date of registration under section 12AA. Matter was restored to Assessing Officer's file for framing of a fresh assessment. (AY. 2016-17)

Shivom Vidyapeeth Shikshan Samiti. v. ITO (2023) 201 ITD 144 (Raipur) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Application filed but not disposed of-No evidence showing application pending before CIT (E)-One sided correspondence not proof.

Held, that the assessee failed to furnish any evidence whether such application was registered in the office of the CIT (E) or not or any further query was raised by the Commissioner (Exemptions). One-sided correspondence, unless acknowledged by the other party would not be enough to consider the application of the assessee as pending. The assessee was allowed registration under section 12AA from the date of application, which was in order.

Domadia Raiyaben Muljibhai Charitable Trust v CIT (E) (2023)101 ITR 14 (SN) (Surat) (Trib)

S. 12AA : Procedure for registration-Trust or institution-Denied registration without considering objects and genuineness of activities-Matter remanded to CIT(E) pass de novo order. [S. 253(2)]

Assessee-trust filed an application for registration under section 12AA. CIT (E) rejected application without considering objects and genuineness of activities of assessee. Tribunal held that for granting registration under section 12AA Commissioner (E) has to satisfy himself about objects and genuineness of activities of assessee. Matter is remanded to Commissioner (E) directing him to give finding on charitable objects and genuineness of charitable activities of assessee and pass de novo order. (AY. 2019-20)

Hari Krishna Trust. v. CIT (2023) 203 ITD 58 (Lucknow) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Ex parte order-Rejection of registration-Order is set aside and assessment to be made afresh. Consequent Upon Reconsideration Of Application For Registration-Penalty order is also set aside.[S. 270A]

Held that the order passed by the Commissioner (E) is cryptic. Along with the application in form 10A, the assessee-trust had uploaded various documents. What was lacking in the application in form 10A submitted by the assessee for grant of registration under section 12AA of the Act was not discussed in the ex parte order of the Commissioner (E). In order to meet the ends of natural justice, the Commissioner (E) is directed to reconsider the application in form 10A filed by the assessee for grant of registration under section 12AA of the Act after affording the assessee an opportunity of being heard and to furnish clarifications as may be required by the Commissioner (E). Tribunal also held that since the quantum addition had not attained its finality, the penalty levied under section 270A of the Act was to be deleted. However, the Assessing Officer was at liberty to pass an order under section 270A of the Act, if warranted, after concluding the assessment order afresh consequent upon the order passed by the Commissioner (E) under section 12AA of the Act.(AY.2019-20)

CVMV Reddy's Educational and Public Charitable Trust v. ACIT (E) (2023)102 ITR 7 (SN)(Chennai) (Trib)

S. 12AA : Procedure for registration-Trust or institution-Diverting income in hands of trustees-Not entitle to registration. [S. 11, 12A]

Assessee-trust applied for registration under section 12AA Commissioner held that trust had been created for an arrangement, whereby it was not laundering its income but also diverting same in hands of trustees. Activities undertaken by assessee-trust were contrary to its objects hence denied the registration. Tribunal affirmed the order of the Commissioner. Commissioner had rightly denied registration to assessee, (AY. 2019-20)

Sh. Gurudwara Sahib Parbhandhan Committee. v. CIT (2023) 200 ITD 589 (Amritsar) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Application filed but not disposed of-No evidence showing application pending before CIT (E)-One sided correspondence not proof.

Held, that the assessee failed to furnish any evidence whether such application was registered in the office of the CIT (E) or not or any further query was raised by the Commissioner (Exemptions). One-sided correspondence, unless acknowledged by the other party would not be enough to consider the application of the assessee as pending. The assessee was allowed registration under section 12AA from the date of application, which was in order.

Domadia Raiyaben Muljibhai Charitable Trust v CIT (E) (2023)101 ITR 14 (SN) (Surat) (Trib)

S. 12AA : Procedure for registration-Trust or institution-Principe of natural justice-Order was passed without giving an opportunity of hearing-Matter remanded. [S. 80G]

The Tribunal held that, Since CIT (E) straightaway rejected application for registration u/s. 12AA without giving an opportunity of being heard to assessee, same was not justified and hence matter remanded back to CIT (E) for deciding matter afresh after providing adequate opportunity of hearing to assessee. (AY. 2022-23)

Braingyan Foundation v. CIT (E) [2023] 200 ITD 138 (Mum)(Trib.)

S. 12AA : Procedure for registration-Trust or institution-Denial of registration without considering the information and evidence are brought on record-Matter was remanded back to PCIT to adjudicate application for registration afresh.[S. 11, 12A]

PCIT denied registration under Section 12AA without considering the information / evidence brought on record and had not made required examination regarding objects of trust and genuineness of activities while denying registration. PCIT was required to examine and verify activities carried out in lieu of objects so as to ascertain whether they were charitable in nature in consonance to the objects of trust and were carried out not in profit making or fund generation for purpose of personal/commercial benefit, hence, matter was remanded back to PCIT to adjudicate application for registration afresh.(AY. 2018-19)

Peer Panchal Educational and Welfare Trust v. CIT (2023) 201 ITD 170 (Amritsar) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Specific community-Amerili Modh Vanik-Denial of registration is justified. [S. 2(15), 11, 13(1)(b)]

The assessee submitted that the trust provides its property to the modh mahajan and other communities' people on various occasions along with various other charitable activities for general benefit of the community and public at large. The Assessee however did not furnish any documentary evidence to prove that the common purpose hall was available for use of general public. Further, on verification of public trust register, it was revealed that the objects of the trust were restricted to a particular community. The Ld. CIT(E) not being satisfied with the genuineness of the trust rejected the application of the Assesee in consonance with section 13(1)(b) of the Act.On appeal The Hon'ble Tribunal heeld that the Assessee had not produced copies of the activities carried out by Assessee. Further, there was nothing on record to substantiate that the activities carried out by the trust were open to the general public. In the absence of any such details, the Tribunal held that the trust was hit by section 13(1)(b) of the Act and thereby upheld the order of CIT(E) denying registration under section 12AA of the Act.

Amreli Modh Vanik Community Property v. CIT (E); (2023) 200 ITD 584 /225 TTJ 755 (Rajkot) (Trib.)

S. 12AA : Procedure for registration-Trust or institution-Christian community-**object of the trust mentioned that charity would be done without prejudice to any caste and creed-Rejection of aplication for registration on the ground that it operated only for Christian community is held to be not valid. [S. 2(15), 12A, 13(1)(b)]**

The Assessee is a charitable and religious trust created for the welfare of general public regardless of caste, creed and religious status. The Assessee filed an application before CIT(E) seeking registration u/s 12A of the Act. The CIT(E) rejected the application of the Assessee citing a violation of section 13(1)(b) of the Act due to operation only for the Christian community. The Hon'ble Tribunal perused the object clause of the Assessee trust and noted that it specifically mentioned that the trust is charitable in nature and the charity would be done without prejudice to any caste and creed. Therefore, primarily the object is not barred by section 13(1)(b) of the Act. Further, it was also noted that the revenue had not made any adverse comment on the activity of the Assessee trust. On the said grounds, the Tribunal allowed the appeal in favour of the Assessee trust and thereby directed revenue to issue registration to Assessee. (AY.2019-20)

Amritsar Diocese of Believers Eastern Church v. CIT (E) (2023) 200 ITD 111 (Amritsar)(Trib.)

S. 12AA : Procedure for registration-Trust or institution-Non-profit organization established with objective of promoting social and economic development with women's full participation-Any trust that had been created for purpose of managing statutory obligations of employees of parent trust would certainly fall within ambit of advancement of general public-Directed to grant registration. [S. 2(15), Companies Act, 1956, S. 25, Payment of Gratuvity Act, 1972

ICRW was a non-profit organization established with objective of promoting social and economic development with women's full participation and was incorporated as a company recgistered under section 25 of Companies Act, 1956. Provisions of Payment of Gratuity Act, 1972 were applicable in case of ICRW and, therefore, to protect financial interest of its employees, ICRW set up a trust, namely, 'ICRW Group Gratuity Trust'. New trust applied for seeking registration under section 12AA. Commissioner (E) held that assessee was formed only for limited purpose of managing statutory obligations in form of gratuity payable to employees of ICRW and said purpose would not fall within ambit of 'charitable purpose' as defined under section 2(15). Accordingly, he dismissed application seeking registration. On appeal the Tribbunal held that any trust that had been created for purpose of managing statutory obligations of employees of parent trust would certainly fall within ambit of advancement of general public utility and, hence, its activities was to be considered as a charitable as defined under section 2(15).(AY. 2018-19, 2020-21, 2021-22)

ICRW Group Gratuity Trust v. CIT (E) (2023) 201 ITD 647/ 224 TTJ 881 (Delhi)(Trib)

S. 12AA : Procedure for registration-Trust or institution-Order withdrawing registration was set aside by Tribunal-Exemption under section 11 or 12 cannot be denied.[S. 11, 12, 254(1)]

The Hon'ble Tribunal held that the reassessments made by the AO on the ground that PCIT withdrew the registration of Assessee will not stand. The Tribunal thereby set aside the reassessment orders passed by the AO and restored the assessments to file of AO for *denovo* assessments in light of the Tribunal order restoring the registration u/s 12AA of the Act. (AY.2009-10 to 2013-14)

Gian Sagar Educational & Charitable Trust v. ACIT (2023) 103 ITR 88 (SN)(Delhi) (Trib)

S. 12AA : Procedure for registration-Trust or institution-Plastic Waste Management-Preservation of Environment as defined in Section 2(15) of the Act-Eligible for exemption-Denial of registration is not valid. [S. 2(15), 11,12A, 12AA (1)(b)(ii), Form No.10A, Constitution of India Art. 14, 19 and 21, 47, 48-A,51-A(g), Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution), Act 1981]

Assessee is engaged in Plastic Waste Management. The Assessee society was formed with the main aims and objects to set up a mechanism for collection, transportation, treatment & disposal of plastic material, especially multilayered plastic pouches, thermocol packing & utility items (polystyrene products) in environmentally sound and safe methods / technologies; etc. The ld. CIT(E), rejected the Assessee's application for registration, referring only only a few clauses mentioned in the Assessee's bye-laws and aims and objectives. ld. CIT(E) has adopted a pick and choose method to deny registration to the Assessee without looking at the picture in a holistic manner. On appeal the Honourable Tribunal Referred the various Article of the Constitution of India, various provision of the Environment Act and importance of preservation of the environment and duties of the citizens. Allowing the Registration the Honourable Bench by their well considered and reasoned order, summarised the conclusion as under ;

1. The Punjab Pollution Control Board is a creature of Legislation in the form of the Plastic Waste Management Rules, 2016, particularly Rule 12 and Schedule–II, containing the Guidelines with regard to the plastic waste management under the Extended Producer's Responsibility for Plastic Packaging and duties and functions of the State Pollution Control Boards.

2. In view of the above, there is nothing wrong in the factum of all the powers having been vested with the Punjab Pollution Control Board. Rather, this is in furtherance of the requirement of the Plastic Waste Management Rules, 2016.

3. The Bye-laws of the Assessee society are entirely in keeping with its Memorandum of Association which, in turn, is well within the four corners of the Plastic Waste Management Rules, 2016.

4. The aims and objects of the Assessee society are not restrictive in nature. Rather, as per requirement of the Plastic Waste Management Rules, they are centered towards the implementation of the preservation of the environment purpose of plastic waste management under the aegis of the Punjab Pollution Control Board. It is out of sheer ignorance of the law that the ld. CIT(E) has held that the Assessee society, as per its bye-laws, is meant to be run as a one man show and not as a public charity.

5.Apropos the finding of the ld. CIT(E) that none of the activities of the Assessee society is covered by any limb of 'charitable purpose', as envisaged by section 2(15) of the I.T. Act, we find that not only one, but all the objectives of the Assessee society are directly covered by the limb of preservation of the environment as a 'Charitable Purpose' under the provisions of section 2(15) of the I.T. Act.

6.Expenditure of multi-layered plastic collection and disposal charges for members are the only major expenses incurred by the Assessee society. Considering its sole object of plastic waste management, obviously, there cannot be any other major expenditure attributable to the objects of the Assessee society. The factum of this major expenditure does not take away from the prevailing fact that the objects of the Assessee society are charitable objects and its activities are with regard to the Members of the society only, strictly as per

the requirements of the scheme of plastic waste management under the Plastic Waste Management Rules, 2016, as amended from time to time.
7.The ld. CIT (E) is again wrong in observing the objects of the Assessee society to be merely ostensible charitable objects. All the objects of the Assessee society, taken either individually, or collectively, are directed towards the Assessee's charitable object of preservation of the environment.
8.The ld. CIT(E) has also erred in holding that the activity of the Assessee society does not enure for the public at large. It cannot be over stressed that the object of plastic waste management under the Plastic Waste Management Rules, 2016 is nothing other than an activity substantially and wholly enuring for one and all, so that the basic purpose of preservation of the environment is fulfilled so far as regards the pollution caused by plastic.
9.The National Green Tribunal as well as the Hon'ble Supreme Court, besides the High Courts of the country are repeatedly laying down law favouring plastic waste management as a measure for the preservation of the environment, enuring for the public at large.

Accordingly the appeal of the assessee was allowed and the Revenue was directed to grant the Registration. (ITA No. 17/CHD/2020 dt. 14-7-2023) (AY. 2019-20)
Punjab Plastic Waste Management Society v. CIT(E) (2023) 225 TTJ 1 (Chd)(Trib) www.itatonline.org

S. 12AA : Procedure for registration-Trust or institution-Natural justice-If the CIT(E) is not satisfied with the documents supplied with by the assessee, adequate opportunity must be given before rejection of application-Matter remanded [S. 80G]
Assessee-trust filed an application for seeking registration under section 12AA and also sought for registration under section 80G of the Act. CIT(E) called for certain information for verification of genuineness of activity of assessee vide notice issued through Income-tax website portal. The assesseee submitted a note on activity which was general in nature without giving any specific details as to who were beneficiaries of trust and what activities were carried out.CIT(E) rejected the application. On appeal the Tribunal held that since CIT(E) straightaway rejected application for registration under section 12AA without giving an opportunity of being heard to assessee, same was not justified and matter was remanded back to CIT(E) for deciding matter afresh after providing adequate opportunity of hearing to assessee. (AY. 2022-2023)
Braingyan Foundation v. CIT (E) (2023) 200 ITD 138 (Mum)(Trib)

S. 12AA : Procedure for registration-Trust or institution-Application filed but not disposed of-No evidence showing application pending before CIT (E)-One sided correspondence not proof.[S. 12A]
Held, that the assessee failed to furnish any evidence whether such application was registered in the office of the CIT (E) or not or any further query was raised by the Commissioner (Exemptions). One-sided correspondence, unless acknowledged by the other party would not be enough to consider the application of the assessee as pending. The assessee was allowed registration under section 12AA from the date of application, which was in order.
Domadia Raiyaben Muljibhai Charitable Trust v. CIT (E) (2023)101 ITR 14 (SN) (Surat) (Trib)

S. 12AB : Procedure for fresh registration-Assessee should be given one more chance to contest-Matter remanded. [S. 10AB, 12A]

Held that the assessee should have been given one more chance to contest the case before the Commissioner (E). The assessee is directed to produce all the relevant papers concerning the application filed before the Commissioner (E) to settle the dispute.(AY.2023-24)
Noble Kingdom Public School Shiksha Samiti v.CIT (E) (2023)107 ITR 488 (Jaipur) (Trib)

S. 12AB : Procedure for fresh registration-Commissioner (E) did not specifically pointing out which specific details called for were Not filed by assessee-Matter restored to Commissioner (E) for de novo consideration.
Held, that the assessee had filed various details before the Commissioner (E), however, the Commissioner (E) dismissed the application of the assessee holding that the details filed were "peripheral" in nature and the response filed was "cryptic" in nature. The Commissioner (E), while dismissing the application for registration filed by the assessee had not specifically pointed out which specific details had been called for were not filed by the assessee. He had summarily dismissed the application observing that the assessee failed to file documentary evidence to enable him to satisfy about the genuineness of the activities of the Trust and to verify whether the activities of the applicant are in consonance with its objects. The matter is restored to the Commissioner (E) for de novo consideration. (AY.2022-23)
Shree Uttar Gujarat Panchgam Leuva Patidar Samajik Parishad v CIT (2023)107 ITR 12 (SN.)(Ahd) (Trib)
S. 12AB : Procedure for fresh registration-Providing medical facilities to poor. CIT(E) is to directed to grant registration to assessee-trust under section 12AB. [S. 12A]
Assessee-trust came into existence in year 1958 and since then it had been carrying out charitable activities for providing medical facilities to poor as per its objects for more than six decades. In accordance with new provisions of Act, it had filed an application for registration under section 12AB. Commissioner (E) being of view that certain amount of expenditure did not relate to charitable work denied exemption claimed by assessee. On appeal the Tribunal held that on perusal of Income and Expenditure Account, it was found that expenditures were clearly related to medical aid, providing various help to poor, doing charity to sadhus and public, including administrative work for carrying out activities of trust and building repairs, etc.. Even expenditure under head administrative expenses could not be said to be outside ambit of charitable activities, because these were expenditures incurred for carrying out activities of trust, for which registration was granted earlier. Tribunal directed Commissioner (E) is directed to grant registration to assessee-trust under section 12AB of the Act.
Math Gadwaghat Trust. v. CIT (2023) 203 ITD 661 / (2024) 228 TTJ 262 (Varanasi) (Trib)

S. 12AB : Procedure for fresh registration-Mis match in name vis-a vis name shown in PAN, Form 10AB-Matter restored back to reconsider registration a fresh. [R. 17A, Form No 10AB]
Assessee filed an application for registration under section 12AB in Form No. 10AB. Assessing Officer having found that as per PAN/Form No. 10AB name of assessee was Kamar Free Library Trust, whereas in certificate of registration name of assessee was mentioned as Kamar Muslim Free Library and in translated copy of trust deed name of assessee was appearing as Kamar Free Library rejected application for registration on ground that there was mismatch in name of assessee vis-a-vis name shown in PAN, Form No. 10AB and translated copy of trust deed. On appeal the Tribunal held that since mismatch in name was not intentional or deliberate but might be due to inadvertence and assessee was not given opportunity to explain mismatch, issue was to be restored back to CIT(E) to reconsider registration of assessee afresh.

Qamar Free Library. v. CIT (2023) 202 ITD 529 (Surat) (Trib.)

S. 12AB : Procedure for fresh registration-Replied all issues raised by Commissioner-Not justified in denying registration. [Companies Act, 2013, S. 8]

Assessee, a company with charitable objects, was registered under section 8 of Companies Act, 2013. It applied for registration under section 12AB. Commissioner rejected application on basis that only part details were submitted by assessee and it did not perform activities of charitable in nature but business activities were visible. On appeal the Tribunal held that since assessee had replied all issues raised by Commissioner and he did not controvert them and activities undertaken by assessee were interconnected with objects mentioned in memorandum of association which were not of profit motive, Commissioner was not justified in denying registration. (AY. 2022-23)

Keeday Makauday Foundation. v. CIT (2023) 200 ITD 39 (Jaipur) (Trib.)

S. 12AB : Procedure for fresh registration-Cancellation of registration-Withdrawal of registration cannot be done retrospectively Commissioner Central has no jurisdiction to cancel the registration-Cancellation of registration was quashed-Alternative contentions became academic hence not dealt with. [S. 11, [12A, 12AB(4), 13]

The asseessee is a Charitable Trust which was set up vide trust deed dated April 21, 1988. The Trust was granted registration under section 12A of the Act vide certificate dated July 21, 1989. One of the objects of the Trust is to hold seminars in the field of medical education. Due to search on Pharmaceutical companies which had given donation to the assessee the survey was conducted on the assessee. The assessment of the Trust was transferred to Central Circle. For the assessment year 2021-22 the assessee had filed its return in the status of Association of Persons (AOP) without claiming the exemption under section 11 of the Act. In the course of the assessment proceedings the Assessing Officer made reference to the PCIT (Central) to cancel the registration. On the basis of the reference the PCIT (Central) cancelled the registration retrospectively from the Assessment year 2016-17. In the appeal before the Tribunal the assesee contended that, the PCIT (Central is not prescribed authority hence has no jurisdiction to cancel the Registration of Trust, The assessee had not applied for a fresh registration under section 12AB of the Act and hence the registration could only be cancelled under section 12AA(3) of the Act, the reference made by the Assessing Officer (Central) to the PCIT(Central) for AY. 2021-22 is bad in law as the assessee ceased to be a charitable organisation and filed its return as an AOP, there is no specific violations committed by the assessee Trust,the Registration of the Trust cannot be cancelled retrospectively, the decision of the Honourable Supreme Court in the case of Apex Laboratories Pvt Ltd v. DCIT (2022) 442 ITR 1 (SC) pertains to disallowance under section 37(1) of the Act is not applicable to the facts of the assessee which is carrying on the activities of charitable in nature. Allowing the appeal of the assessee, the Tribunal held that PCIT(Central) has no jurisdiction to cancel the registration and withdrawal of registration cannot be done retrospectively. Accordingly the cancellation of registration was quashed. As regards alternative contentions have became academic hence not dealt with. (ITA No. 1524 /Mum/ 2023 dt 27-7-2023)

Heart Foundation of India v.CIT (Mum)(Trib) www.itatonline.org

S. 12AB : Procedure for fresh registration-Company registered under Companies Act-Objects are not profit motive-Denial of exemption is not justified. [S. 12A, Companies Act, 2013, S. 8(1)]

Assessee, a company registered under section 8 of Companies Act, 2013, applied for registration under section 12AB of the Act. Commissioner rejected the application only on the ground that only part details were submitted. On appeal the Tribunal held that since

assessee replied all issues raised by Commissioner and activities undertaken by it were interconnected with objects mentioned in memorandum of association which were not of profit motive, Commissioner was not justified in denying registration to assessee.(AY. 2022-23)
Keeday Makauday Foundation v. CIT (E)(2023) 200 ITD 39 (Jaipur)(Trib)

S. 12AB : Procedure for fresh registration-Not communicated exact deficiency in documents submitted-Rejection order is seta side and directed to pass a speaking order by providing a reasonable opportunity. [Rule. 17A, Form No.10AB]
Assessee filed an application under section 12AB for fresh registration. The commissioner rejected application without communicating the exact deficiency in documents submitted and exact nature of clarification/explanation required from the assessee. On appeal the Tribunal held that the assessee should be given an opportunity of being heard in order to prevent the miscarriage of justice and directed the Commissioner to pass a speaking order by providing a reasonable opportunity. (AY. 2022-23)
Shree valinath Gujrati Rabari Dharmashala trust Tarabh v. CIT (2023) 203 ITD 93 /106 ITR 82 (SN.) (Ahd)(Trib)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions-Concession in rent on property let out to its trustees-No change on facts-Denial of exemption is not justified.[S. 11, 12, 13(2)(b), 13(3)]
Assessee-trust received rentals from its trustees for property provided to them on lease. Assessing Officer relying on data available at makaan.com held that property was let out by assessee at a much lower rate as compared to market rate, thus, assessee had offered substantial concession in rent to persons specified under section 13(3) in contravention to provision of section 13(2)(b). Accordingly, he denied exemption under sections 11 and 12 to assessee.CIT(A) held that Assessing Officer had merely relied on data available at a property dealing website and did not obtain valuation report from statutory authority. Tribunal held that the assessee had derived benefit of tax exemption consistently over last few decades both under Act of 1922 and thereafter 1961 Act, including three preceding assessment years. As there was no change either in facts or in law in instant year from those in preceding years, order of CIT(A) is affirmed. (AY. 2016-17)
Dy.CIT (E) v. Hamdard Laboratories (India) (2023) 203 ITD 729 (Delhi) (Trib.)

S. 13 : Denial of exemption-Trust or institution-Investment restrictions-Luxury cars-Trustess did not use the cars-AO did not bring anything on record to rebut the claim of the assessee that the car was used for the principal and staff of the school-Disallowance made by AO to be deleted.[S. 2(15), 11]
The charitable trust was running a school. It replaced its lower model of car with a higher model. The Assessee submitted that the car was used for the travel of the principal and the staff of the school. It was also submitted that the Trustees did not use the car. The lower authorities stated that the assessee needed to maintain logbooks of travels; hence, it was unascertainable as to the purpose for which the car was used. Assessee submitted that maintenance of such records was not required since the car was not used for hiring purposes. The Tribunal held that even though the car is a luxury car, AO did not bring on record anything to rebut the claim of the assessee that the car was used for the principal and staff of the school and hence disallowance made by the AO was to be deleted. (AY. 2016-17)
Manohar Education Society v. ITO (E) (2023) 200 ITD 682 (SMC) **(Delhi)(Trib.)**

S. 14A : Disallowance of expenditure-Exempt income-Not recording satisfaction-Order of Tribunal deleting the disallowance is affirmed.[R.8D(iii)]

Dismissing the appeal of the Revenue the Court held that Not recording satisfaction. Order of Tribunal deleting the disallowance is affirmed. (AY. 2014-15)

PCIT v. Security Printing and Minting Corporation of India Ltd (2023) 459 ITR 261 (Delhi)(HC)

Editorial : Security Printing and Minting Corporation of India Ltd v.Addl.CIT (2023) 33 ITR (Trib)-OL 669 (Delhi)(Trib), affirmed.

S.14A : Disallowance of expenditure-Exempt income-Not recording satisfaction-Order of Tribunal deleting the addition is affirmed.[R.8D]

Held that the assessee had made suo motu disallowances in those years and such disallowances were not commented upon by the Assessing Officer but were disregarded and he did not record satisfaction for not accepting the suo motu disallowances. Order of Tribunal is affirmed. *(*AY.2013-14)

PCIT v. Nestle India Ltd. (No. 1) (2023)457 ITR 210/153 taxmann.com 150 ((Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Not recording of satisfaction-Not examined the shared accounts-Order of Tribunal deleting the addition is affirmed.[R.8D, 260A]

Dismissing the appeal of the Revenue the Court held that before recording disbelief the Assessing Officer did not examine even a shred of accounts of assessee. Without looking into accounts of assessee, Assessing Officer held that assessee had infused funds by way of equity in joint venture company and also held that it was not believable that no expenditure had been incurred in relation to assets, income wherefrom did not form part of total income. High Court affirmed the order of the Tribbunal.(AY. 2014-15)

PCIT v. Security Printing and Mining Corporation of India Ltd. (2023) 459 ITR 261/295 Taxman 732 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Mixed funds-Rule 8 would be attracted automatically is not correct-Disallowance cannot exceed exempt income.[R.8D]

Dismissing the appeal of the Revenue the Court held that the when there is mixed funds the Rule 8D would be attracted is held to be not justified. Court also affirmed that disallowance cannot exceed exempt income. (AY. 2014-15)

PCIT v. Gujarat Flurochemicals Ltd. (2023)459 ITR 242/ 295 Taxman 200 (Guj.)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Strategic investments-Subsidiary companies, associate concerns and partnership firms-Restricted 5% of aggregate of expenditure-Order of Tribunal was quashed and set aside-a Assessing Officer was directed to pass an order in accordance with law and formula laid down in Maxopp Investment Ltd. v. CIT [2018] 254 Taxman 325 / 402 ITR 640 (SC). [R. 8D, 260A]

The Assessing Officer disallowed the expenses under section n 14A of the Act. Commissioner (Appeals) held that assessee had made major portion of investments only in subsidiary companies, associates concerns and partnership firms in which assessee was a partner, thus, investments made by company were in form of strategic investments and he restricted disallowance at 5 per cent of fixed/semi variable aggregate of expenditure. Tribunal upheld the order of the CIT(A). On appeal by the Revenue following the judgement in

Maxopp Investment Ltd. v. CIT (2018) 254 Taxman325/402 ITR 640 (SC), the order of Tribunal was quashed and set aside and the Assessing Officer was directed to pass an order in accordance with law and formula laid down by the Apex court referred above. (AY. 2010-11)
PCIT v. D.B. Realty (P.) Ltd. (2023) 294 Taxman 241 (Bom.)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Failure to record dissatisfaction-Not earned any exempt income-Order of Tribunal deleting the disallowance is affirmed. [S. 115JB, 260A, R.8D]
Dismissing the appeal of the Revenue the Court held that the Tribunal has given finding that the assessee had not earned any exempt income for year under consideration and AO had not given any reason to reject claim of assessee. Order of Tribunal is affirmed. (AY. 2009-10)
PCIT (C) v. JSW Energy Ltd. (2023) 294 Taxman 407/(2024) 460 ITR 496 (Bom.)(HC)

S. 14A : Disallowance of expenditure-Exempt income-No exempt income earned-Question of law admitted.[R.8D, 260A]
The following question of law is admitted.
" Whether on the facts and circumstances of the case and in law the Hon'ble the ITAT was right in deleting the disallowance of Rs. 8, 58, 32, 156 under section 14A r. w. Rule 8D when no exempt income was earned by the assesseee ?"
PCIT v. Urban Infrastructure Holding (P.) Ltd. (2023) 294 Taxman 496 (Bom.)(HC)
Editorial : Arising from order of ITA No. 1979/Mum / 2015 dated 31-3 2017. (AY. 2009-10)

S. 14A : Disallowance of expenditure-Exempt income-Not recording of satisfaction-Own funds-Order of Tribunal deleting the addition is affirmed. [R. 8D (2)(ii)]
Dismissing the appeal of the revenue the Court held that the Tribunal has found that the assessee had sufficient own funds which are several times more than the investments made by the assessee and hence it can be concluded that the borrowed funds have not been utilised for the purpose of making investments. Based on such factual position, the Tribunal has rightly held that the AO could not have invoked Rule 8D(2)(ii) of the Income-tax Rules in the present case (AY 2008-09).
PCIT v. Century Enka Ltd. (2023) 459 ITR 190/ 293 Taxman 471 (Cal.)(HC)

S. 14A : Disallowance of expenditure-Exempt income-No exempt income was received or receivable during relevant previous year-Disallowance cannot be made-Amendment to section 14A is prospective.[R.8D]
Held that where the assessee had no dividend income, then no disallowance can be made under section 14A for AY 2010-2011 in the absence of such income. The amendment by the Finance Act, 2022 is only prospective and has no application to the Assessment year in question. (AY. 2010-11)
PCIT v. Delhi International Airport (P.) Ltd. (2023) 291 Taxman 490 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income – Dividend income earned from the overseas entity-Included in the total income-No disallowance can me made-DTAA-India-Oman. [S. 90(2), R.8D, Art. 25]
Held that that the dividend received by assessee from foreign company was chargeable to tax in India under head 'income from other sources' and formed part of total income and same was included in taxable income in computation of income filed by assessee. the rebate of tax had been allowed to assessee from total taxes in terms of section 90(2) read with article 25 of

Indo Oman DTAA and thus dividend earned could not be said to be in nature of excluded income and, therefore, provisions of section 14A would not be attracted.(AY. 2007-08)
PCIT v. IFFCO Ltd. (2023) 291 Taxman 493 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Suo-moto disallowance-Recorded the dissatisfaction-Assessing Officer recomputed the amount at higher amount-Order of Tribunal affirming the disallowance was up held. [S. 10(34), R. 8D(2)(iii)]
Assessee offered suo-moto disallowance of administrative expenses.Assessing Officer on not being satisfied with working of disallowance by assessee, invoked rule 8D(2)(iii) and recomputed same at higher amount. Tribunal confirmed the disallowance. on appeal the Court held that the assessee had admittedly not furnished particulars of actual expenditure incurred by it for earning exempt income.The Assessing Officer had duly recorded his dissatisfaction with assessee's computation of disallowance after examining its accounts and examining assessee's explanation and then rejected same as per statutory formula in rule 8D. On appeal High Court affirmed the order of Tribunal. (AY. 2012-13 2013-14)
H.T. Media Ltd. v. PCIT (2023) 291 Taxman 423 / 332 CTR 734/ 224 CTR 197 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Suo-moto disallowance-Recorded the dissatisfaction-Assessing Officer recomputed the amount at higher amount-Order of Tribunal affirming the disallowance was up held. [S. 10(34), R. 8D(2)(iii)]
Assessee offered suo-moto disallowance of administrative expenses.Assessing Officer on not being satisfied with working of disallowance by assessee, invoked rule 8D(2)(iii) and recomputed same at higher amount. Tribunal confirmed the disallowance. on appeal the Court held that the assessee had admittedly not furnished particulars of actual expenditure incurred by it for earning exempt income.The Assessing Officer had duly recorded his dissatisfaction with assessee's computation of disallowance after examining its accounts and examining assessee's explanation and then rejected same as per statutory formula in rule 8D. On appeal High Court affirmed the order of Tribunal. (AY. 2012-13 2013-14)
H.T. Media Ltd. v. PCIT (2023) 291 Taxman 423 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Only Investments yielding income can only be taken into account-CBDT Circular dated 11-2-2014(2014) 361 ITR 94 (St), cannot override provisions of Section 14A and Rule 8D. [S. 119, R.8D(2)(iii)]
Allowing the appeal of the assessee, the Court held that The Central Board of Direct Taxes circular dated February 11, 2014 ([2014] 361 ITR (St.) 94) cannot override the express provisions of section 14A read with rule 8D. The circular does not refer to rule 8D(1) of the Rules at all but only refers to the word ”includible” occurring in the title to rule 8D as well as the title to section 14A. The circular concludes that it is not necessary that exempt income should necessarily be included in a particular year’s income for the disallowance to be attracted. Hence where dividends are earned in calculating the disallowance under section 14A only those investments are to be considered for computing the average value of investments which yielded exempt income during the relevant.(ITA No. 5944/ Delhi/ 2016 dt. 31-7-2019) (AY. 2013-14)
Cargo Motors Pvt. Ltd. v. Dy. CIT (2023)453 ITR 554 / 291 Taxman 208 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Assessing Officer had not recorded any satisfaction that working of inadmissible expenditure under section 14A by assessee was incorrect, interest expenditure could not be disallowed [R. 8D (2)(ii)]

Dismissing the appeal of the Revenue the Court held that where the assessee earned exempt income and submitted computation of inadmissible expenditure under section 14A, since Assessing Officer had not recorded any satisfaction that working of inadmissible expenditure under section 14A by assessee was incorrect, interest expenditure could not be disallowed. Order of Tribunal is affirmed. (AY. 2011-12)

PCIT *v.* Godrej & Boyce Mfg. Co. Ltd. (2023) 149 taxmann.com 222 / 292 Taxman 497 (Bom)(HC)

S. 14A : Disallowance of expenditure-Exempt income-No exempt income during the year-Deletion of addition is justified. [R. 8D]

Held that on the facts the Tribunal was correct in deleting the disallowances made under section 14A since no exempt income was earned by the assessee in the assessment years 2012-13 and 2013-14. The contention of the Department that the Tribunal had failed to consider the Central Board of Direct Taxes Circular No. 5 of 2014 dated February 11, 2014 ([2014] 361 ITR (St.) 94) was also untenable. (AY.2012-13, 2013-14)

PCIT v.Amadeus India Pvt. Ltd. (No. 2) (2023) 452 ITR 206 / 290 Taxman 201 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-No exempt income received during the year-Disallowance cannot be made [R. 8D]

Held that where no exempt income is received or receivable during the relevant previous year no disallowance can be made.(AY. 2012-13)

PCIT v. Amadeus India (P.) Ltd. (2023) 290 Taxman 201 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Disallowance of expenditure on basis that some deployment of manpower for managing investment cannot be ruled out-Tribunal reducing the disallowance on ad hoc basis-No question of law. [S. 260A, R.8D]

Dismissing the appeal of the Revenue the Court held that the Tribunal had not found, as a matter of fact, that the assessee had devoted any of its resources or had otherwise incurred any expenditure for managing the investments. The assessee's assertion, that its investment was monitored by a group company without levying any charge or fee, was not found to be incorrect. In the circumstances, the Tribunal did not accept the Assessing Officer's determination of Rs. 8,53,916 as expenditure incurred for earning the exempt income. Once the Revenue authorities have found no reason to doubt the assessee's claim that the investments had been managed by a group company without levy of charge, it may not be open for the Tribunal to hold that the deployment of manpower for monitoring the dividends from mutual funds could not be ruled out. However, the assessee not having appealed against its decision no question of law arose. (AY. 2009-10)

PCIT v. Simon India Ltd. (2023) 450 ITR 316/ 221 DTR 358 / 330 CTR 222 (Delhi)(HC)

S. 14A : Disallowance of expenditure-Exempt income-Suo-moto disallowance-Matter remanded to the file of the Assessing Officer.[R.8D]

Held that AO had shown dissatisfaction over suo-moto disallowance made by assessee in comparison to amount of exempt income and amount of investment made by assessee-company to earn exempt income, in such circumstances, matter would be restored to file of Assessing Officer for deciding de novo after verification of basis of allocation of expenses under different heads from relevant material to be furnished by assessee. (AY. 2016-17,2017-18)

National Stock Exchange of India Ltd. v. Dy. CIT (2024) 159 taxmann.com 472 / 226 TTJ 609 (Mum)(Trib.)

S. 14A : Disallowance of expenditure-Exempt income-Justified in computing disallowance under section 14A at 0.5 per cent of average value of investment. [R. 8D]
Held that where, 25 per cent of cost of Treasury Department for monitoring investment activities was considered for disallowance under section 14A by assessee, since investment decisions were generally taken in meetings of Board of Directors for which administrative expenses were incurred, by applying computation mechanism as provided under rule 8D(2)(iii), AO was justified in computing disallowance under section 14A at 0.5 per cent of average value of investment. (AY. 2009-10, 2012-13)
Bayer Crop Science Ltd. v Dy. CIT (2023) 156 taxmann.com 510 / / 226 TTJ 825 / (2024) 204 ITD 630 (Mum) (Trib.)

S. 14A : Disallowance of expenditure-Exempt income-Suo-motu disallowance-Deletion of addition by CIT(A) is affirmed. [R.8D]
Held that when the assessee has suo motu disallowed the expenses, the Assessing Officer is not justified in further disallowance by observing that he is not satisfied with the correctness of the claim. Order of CIT(A) deleting the disallowance is affirmed. (AY. 2014-15)
Tata Consultancy Services Ltd. v. Dy. CIT (2023) 154 taxmann.com 372 / 226 TTJ 361 (Mum)(Trib.)

S. 14A : Disallowance of expenditure-Exempt income-Investments not yielding exempt income to be excluded in computing disallowance-Disallowance to be restricted to exempt income earned. [R. 8D]
Held that with respect to the disallowance under section 14A of the Act read with rule 8D(2)(iii) of the Rules, there was no infirmity in the directions of the Dispute Resolution Panel to exclude those investments which did not yield exempt income for the purpose of the computation of the disallowance and to restrict the disallowance only to the dividend income earned. (AY.2011-12)
Rampgreen Solutions P. Ltd. v. Dy. CIT (2023)108 ITR 392 (Delhi)(Trib)
Dy. CIT v. CLP India P. Ltd (2023) 108 ITR 248 (Ahd.)(Trib.)

S. 14A : Disallowance of expenditure-Exempt income-Disallowance can be only in respect of investments which yield exempt income. [R.8D(2) (iii)]
Held that only those investments which yielded income shall be considered for the purpose of computing expenditure in relation to exempt income.(AY.2018-19)
EDC Ltd. v.Asst. CIT (2023)107 ITR 409 (Panaji) (Trib)

S. 14A : Disallowance of expenditure-Exempt income-Disallowance is restricted to extent of exempt income earned.[R.8D]
Held, that the Assessing Officer was to restrict the disallowance made under section 14A of the Income-tax Act, 1961 to the extent of exempt income earned..(AY.2013-14)
Electronica Machine Tools Ltd. v. Dy. CIT (2023)107 ITR 24 (SN) (Pune) (Trib)
DCIT v. Forum Projects (P.) Ltd. (2023) 202 ITD 51 (Kol) (Trib.)
Dy. CIT v. PTC India Financial Services Ltd. (2023)104 ITR 1 (SN)(Delhi)(Trib)
Hero Corporate Service Pvt. Ltd. v Dy. CIT (2023)101 ITR 77 (SN)(Delhi) (Trib)
ABCI Infrastructure P. Ltd. v. ACIT (2023) 154 taxmann.com 397 /104 ITR 95 (Guwahati)(Trib)
Radison Projects Pvt. Ltd v. ITO (2023) 103 ITR 17 (SN) (Kol)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Investment held as stock-in-trade-Disallowance is restricted to exempt income. [R.8D]
Held, that the Commissioner (Appeals) is right in holding that the provisions of section 14A of the Act are applicable and restricting the disallowance to the extent of dividend income earned by the assessee.(AY.2015-16)
Wealth First Portfolio Managers P. Ltd. v. Dy. CIT (2023)107 ITR 14 (SN)(Ahd)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Interest expenses-Not maintaining separate books for investments-Disallowance by the Assessing Officer is affirmed. [R.6D]
Held, that the assessee had not maintained any separate books. The assessee failed to establish that it had not incurred any expenditure for earning the exempt income. Therefore, the Assessing Officer had rightly applied rule 8D to calculate the disallowance. (AY. 2010-11, 2011-12)
Angelica Properties P. Ltd. v. Add. CIT (2023)105 ITR 442 (Pune) (Trib)
Vason Engineers Ltd v. Add. CIT (2023)105 ITR 442 (Pune) (Trib)

S. 14A : Disallowance of expenditure-Exempt income-Interest-Sufficient non interest bearing funds-Administrative expenses the Assessing Officer is directed to restrict the disallowance under rule 8D(2)(iii) of the Rules to the extent of 0.5 per cent. of the average of exempt income yielding investmentS. [S. 36(1)(iii), R. 8D(2)(iii)]
Held that the presumption was available that the investment was made by the assessee out of its own funds and no interest-bearing funds were utilised and no expenditure was incurred in order to earn exempt income. Hence no disallowance can be made, however with respect to administrative expenses the Assessing Officer was to restrict the disallowance under rule 8D(2)(iii) of the Rules to the extent of 0.5 per cent. of the average of exempt income yielding investments.(AY. 2015-16 to 2018-19)

Aurum Platz P. Ltd. v. Dy. CIT (2023)105 ITR 615 / 225 TTJ 771 / 152 taxmann.com 85 (Mum) (Trib)
Srei Infrastructure Finance Ltd. v. Asst. CIT (2023)105 ITR 371 / 154 taxmann.com 650 / 225 TTJ 211 (Kol) (Trib)

S. 14A : Disallowance of expenditure-Exempt income-Own funds more than investments-No disallowance of interest could be made-Recording of satisfaction by AO that assessee's claim was incorrect is mandatory-Insertion of non-obstante clause perspective. [R 8D(2)(iii)]
Held that, own funds were far more than the investments made in shares and securities. Therefore, no disallowance could be made under section 14A read with rule 8D(2)(ii). The AO had not recorded any satisfaction referring to the assessee's books of account as to how the disallowance made by the assessee under section 14A of the Act read with rule 8D(2)(iii) of the Rules was wrong. The recording of such satisfaction was a prerequisite for invoking the provisions of section 14A. The insertion of the non-obstante clause in section 14A was prospective in nature. The memorandum to the Finance Bill, 2022 explicitly provided that the amendment made to section 14A would take effect from April 1, 2022, and would, accordingly, apply to the assessment year 2022-23 and later assessment years. The decision of the Tribunal holding the amendment to be retrospective in nature was wrong and could not be applied. (AY.2014-15)
TIL LTD. v. Dy. CIT (2023) 102 ITR 148 (Kol)(Trib.)

S. 14A : Disallowance of expenditure-Exempt income-Amendments to section 14A by Finance Act, 2022 is not retrospective effect. [R.8D]
The amendments to section 14A introduced by the Finance Act, 2022 shall apply from assessment year 2022-23 and onwards, and shall not have retrospective effect. In view of this, the order of CIT(A) was upheld.(ITA No. 2137/Mum/2021; dated 03/08/2022) [AY. 2015-16]
DCIT v. Welspun Steel Ltd (Mum)(Trib) (UR)

S. 14A : Disallowance of expenditure-Exempt income-Only investments yielding tax free dividend income to be considered for disallowance.[R.8D]
Held that only investments yielding tax free dividend income to be considered for disallowance. (AY. 2015-16)
Dy. CIT v. Wahid Sandhar Sugars Ltd. (2023)104 ITR 60 (SN)(Delhi) (Trib)

S. 14A : Disallowance of expenditure-Exempt income-No fresh investments towards mutual funds made in current year-Disallowance is not valid.[R.8D]
Held that as the investment in mutual funds which yielded dividend income were made out of non-interest bearing funds in the financial year 2014-15 and no fresh investments towards mutual funds were made in the financial year 2015-16, the disallowance under section 14A read with rule 8D(2)(ii) of the Rules was not sustainable for the year under consideration. (AY. 2016-17)
DCDC Health Services P. Ltd. v. ACIT (2023) 105 ITR 60 (SN)) (Delhi) (Trib)

S. 14A : Disallowance of expenditure-Exempt income-No exempt income-Disallowance cannot be made-Amendment made by Finance Act, 2022 to section 14A by inserting a non-obstante clause and Explanation will take effect from 1-4-2022 and cannot be presumed to have retrospective effectS. [R.8D]
Held that the assessee has not earned any exempt income during the year and therefore, in absence of any exempt income disallowance under section 14A was uncalled for. PCIT v Era Infrastructure (India) Pvt Ltd(2022)) 141 Taxmann.Com 289 (Delhi)(HC) (AY. 2013-14)
ACIT (LTU) v. Tamilnadu Petroproducts Ltd. (2023) 103 ITR 92 (SN) (Chennai)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-No exempt income-Disallowance cannot be made-Amendments to section 14A by Finance Act, 2022-No retrospective effect. [R. 8D]
Held that no exempt income is earned hence disallowance cannot be made. The amendments to section 14A introduced by the Finance Act, 2022 shall apply from assessment year 2022-23 and onwards, and shall not have retrospective effect. In view of this, the order of CIT(A) was upheld. (AY.2015-16) (ITA No 2137 /Mum/ dt. 3-8-2022
DCIT v. Welspun Steel Ltd (Mum)(Trib) (UR)

S.14A : Disallowance of expenditure-Exempt income-Absence of exempt income-Disallowance to be deleted. [R. 8D]
Held, that once there was no exempt income, no disallowance can be made in terms of section 14A read with rule 8D of the Rules. The Assessing Officer was directed to delete the disallowance made. (AY. 2012-13 to 2015-16).
Matrimony.Com Ltd. v. ACIT (2023)101 ITR 253 (Chennai) (Trib)

S.14A : Disallowance of expenditure-Exempt income-No exempt income earned-Disallowance not warranted. [R. 8D]

Held, that in the assessee's own case for the AY. 2009-10, it was held that in the absence of any exempt income, no disallowance could be made under section 14A. In the present case also, as the assessee had not earned any exempt income, the disallowance under section 14A read with rule 8D was not permissible. (AY. 2010-11, 2011-12).
Dabur India Ltd. v. Dy. CIT (2023)101 ITR 148 (Delhi) (Trib)

S. 14A : Disallowance of expenditure-Exempt income-Own funds available to cover investments-Presumption-Own funds are used-Interest expense-Cannot be disallowed-Disallowance can be made only in respect of investment which yielded dividend income. [R. 8D]
The Hon'ble Tribunal held if the overall funds position, i. e., if the assessee's own funds were sufficient to cover the investments, a presumption had to be drawn that own funds were used for making investments. The issue was to be restored to the Assessing Officer for a fresh consideration. No disallowance could be made on account of interest expense under section 14A read with rule 8D(2)(ii). Further, disallowance could be made only in respect of those investments which yielded dividend income under section 14A of the Act read with rule 8D(2)(iii). (AY. 2014-15, 2015-16).
ACIT v. Electrosteel Casting Ltd. (2023)101 ITR 359 (Kol) (Trib)

S. 14A : Disallowance of expenditure-Exempt income-Disallowance to be limited to the quantum of exempt income earned-Amendment disallowing irrespective assessee is in receipt of exempt income is prospective. [R. 8D]
Held, that the law was well-settled that in the absence of exempt income for an AY. 2011-12, no disallowance could be made under section 14A towards expenditure relatable to exempt income. In other words, the disallowance contemplated by section 14A cannot exceed the exempt income earned in an AY. 2011-12. The Explanation to section 14A inserted by the Finance Act, 2022 was prospective in nature and could not be applied prior to April 1, 2022.(AY. 2011-12)
Dy. CIT v. Zylog Systems Ltd. (2023)101 ITR 1 (Chennai) (Trib)

S. 14A : Disallowance of expenditure-Exempt income-Vague and stereotyped reasons for making disallowance-No satisfaction recorded-Disallowance to be reversed.[R. 8D]
That the Assessing Officer has recorded vague, stereotyped reasons dehors the accounts of the assessee for making the disallowance under section 14A. There was no satisfaction of the Assessing Officer having regard to the accounts of the assessee. The disallowance made under section 14A in computing the total income under regular provisions was liable to be reversed. (AY. 2013-14).
Praxair India P. Ltd. v Dy. CIT (2023)101 ITR 640 (Bang)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Book profits-Disallowance cannot be added to book profitS. [S. 115JB]
Held, that disallowance under section 14A of the Act could not be added to the book profits of the assessee under section 115JB. (AY. 2013-14).
Praxair India P. Ltd. v Dy. CIT (2023)101 ITR 640 (Bang)(Trib)

S. 14A : Disallowance of expenditure-Exempt income-Disallowance cannot exceed exempt income-AO is directed to restrict disallowance accordingly. [R. 8D]
Held that the disallowance under section 14A cannot exceed exempt income and in view of the fact that the disallowance made under section 14A read with rule 8D was much in excess of the exempt income, the Assessing Officer was to restrict the disallowance under

section 14A read with rule 8D to the extent of exempt income earned by the assessee. (AY. 2013-14, 2014-15)
Hero Corporate Service Pvt. Ltd. v Dy. CIT (2023)101 ITR 77 (SN)(Delhi) (Trib)

S. 17(3) : Salary-Profits in lieu of salary-Ex-gratia-Voluntary payment-Without establishing letter as non-genuine or without examining sanctity of payment made-Addition is not justified.[S. 10(10C), 15, 17(3)(iii)]
Assessee, upon retirement, received an amount from the employer voluntarily, ex-gratia, and out of their sweet will, and without any obligation under any law or a condition. The AO assessed the said receipt under section 17(3)(iii) of the Act on the ground that the tax was deducted by the eployer. On appeal the Tribbunal held that the department also did not challenge the genuineness of the letter issued by the employer stating the payment was voluntary. Tribunal held that simply invoking the provisions of the Act and bringing the amount under tax was considered an arbitrary exercise. Hence, the case falls outside the purview of S. 17(3)(iii) of the Act. AO is directed to delete the addition. (AY. 2018-19)
Mahadev Vasant Dhangekar v. ACIT (2023) 201 ITD 5/ 224 TTJ 1 (UO) (Pune)(Trib.)

S. 22 : Income from house property-Principle of mutuality-Matter remanded to the Tribunal for fresh decision. [S. 254(1)), 260A]
The assessee is a recreational club. It received certain sum as rent from Reliance Industries Limited, a corporate member of club, for occupation of a portion of club premises. Assessing Officer held that sum received by assessee on account of rent was taxable under head as Income from house property. The Assessee contened that the principle of mutuality is applicable hence not taxable. The order of the Assessing Officer was affirned by the CIT(A) and Tribunal. On appeal the Court held that no analysis was made of facts, which would go to show whether principle of mutuality was being maintained in subject transaction between club and Reliance and in those orders only conclusions were made with regard to status and transaction between parties. Accordngly the matter was remanded back to Tribunal for fresh decision by taking into account all disclosures of facts made before adjudicating authorities. (AY. 2008-09 to 2012-13)
Saturday Club Ltd. v. PCIT (2023) 294 Taxman 459 (Cal.)(HC)

S. 22 : Income from house property-Business income-Stock in trade-Deemed rent on unsold flats-Addition is not justified.[S. 28(i)]
Held, that the addition is not sustainable on account of deemed rent on unsold flats which were treated as stock-in-trade by the assessee. (AY.2015-16)
Cosmopolis Constructions v. ACIT (2023)103 ITR 543 (Pune) (Trb)

S. 22 : Income from house property-Business income-Receipts under leave and licence agreement taxable as income from house property-Income from consultancy treated as business income. [S. 28(i)]
Dismissing the appeal, that on the strength of the two main objects of the assessee income from consultancy had been treated as business income of the assessee. These objects were vague and general in nature and could not justify bifurcation of the revenue from operations into two parts namely rental income and consultancy services fees. There was no error or infirmity in the findings of the Commissioner (Appeals).(AY.2016-17)
RVM Education (P.) Ltd. v. ACIT (2023)102 ITR 31 (SN)(Delhi) (Trib)

S. 22 : Income from house property-taxed as house property for many years-No change in facts-Cannot be treated as income from business and profession. [S. 28(i)]
Held that the facts of the year under consideration were exactly similar to those of the preceding seven years and there was no change at all. Therefore, the order was not sustainable and income has to be taxed as income from house property. (AY. 2014-15).
Pawa Builders Pvt. Ltd. v. Dy. CIT (2023)101 ITR 43 (SN.)(Delhi) (Trib)

S. 22 : Income from house property-No change in facts-Cannot be treated as income from business and profession.[S. 28(i)]
Held that the facts of the year under consideration were exactly similar to those of the preceding seven years and there was no change at all. Therefore, the order was not sustainable and income has to be taxed as income from house property. (AY. 2014-15).
Pawa Builders Pvt. Ltd. v. Dy. CIT (2023)101 ITR 43 (SN)(Delhi)
(Trib)

S. 23 : Income from house property-Annual value-Property was vacant throughout the year-Addition cannot be made on notional rent. [S. 22, 23(1)(c)]
Dismissing the appeal of the Revenue the Tribunal held that in spite of efforts the property was let out no addition can be made on notional rent, the assessee is entitle to benefit of section 23(1)(c) of the Act. (ITA No.207/Ahd/ 2018 dt.10-11-2022) (AY. 2013-14)
DCIT v. Dhaval D.Patel (2022) 145 taxmann.com 20 / (2023) 198 ITD 293/ 222 TTJ 325 (Ahd)(Trib)

S. 23 : Income from house property-Annual value-Interest on borrowed to acquire property-Directed to allow deduction-Interest-Free Security Deposit-Notional Interest on interest-Free Security deposit could not be added to annual letting value of property. [S. 22, 24 (a)]
Held that evidence furnished proving assessee obtained Loans from banks for acquiring property and property let out and rental income Offered to tax. Assessing Officer is allowed to allow interest paid on borrowings while computing income under head income from house property. Notional Interest on interest-Free Security deposit could not be added to annual letting value of property. (AY.2018-19)
Gurpreet Singh Dhillon v. Asst. CIT (IT) (2023)107 ITR 55 (SN) (Delhi) (Trib)
S. 23 : Income from house property-Annual value-Estate developer-Deemed rent-Unsold stock of flat/shop as stock-in-trade in its balance sheet-Deemed rent-Assessable as income from hose property-Notional rent was to be computed by ascertaining municipal rentable value. [S. 22]
Assessee, real estate developer, filed return of income showing unsold stock of flat/shop as stock-in-trade in its balance sheet. Assessing Officer held that deemed rent on unsold flats as shown in balance-sheet should be taxed under head income from house property. Accordingly, he made an addition of certain amount as notional income from house property by applying 8.5 per cent on cost of construction. CIT(A) up held the order of the Assessing Officer. On appeal the Tribunal held that amendment to section 23(5) is prospective in nature and cannot be applied to assessment years prior to assessment year 2018-19. Tribunal held during relevant assessment year deemed rent on unsold stock would be exigible to tax under head income from house property however, Assessing Officer is not justified in estimating income at rate of 8.5 per cent of investment as ALV Assessing Officer is directed to recompute notional rent by ascertaining municipal rentable value.Followed, Dy.CIT v. Inorbit Malls (P)(Ltd (ITA No. 2220 (Mum) of 2021 dt. 11-10 2022) (AY. 2016-17)
Dimple EnterpriseS. v. DCIT (2023) 203 ITD 1 (Mum) (Trib)

S. 23 : Income from house property-Annual value-Joint ownership-Co-owner-Annual letting value at 8 per cent of cost of property-Revenue is justified in bringing to tax 50 per cent of income from house property in hands of assessee.[S. 22, 23(1)(a)]

Assessee had purchased a property in joint ownership with her husband. Assessing Officer considered 50-50 ownership of property between assessee and her husband. Further, since assessee did not provide any expected reasonable rent of property, he assessed annual letting value at 8 per cent of cost of property as shown in sale deed and computed income from house property and taxed assessee's share in her hands as per section 23(1)(a). Assessee contended that amount contributed by assessee for purchase of property was only 5.4 per cent of total investment, therefore, taxing 50 per cent of house property income in hands of assessee is not justified. On appeal the Tribunal held that assessee was not a housewife. Computation of her income for relevant year showed that she was salary earner and earned salary of Rs. 24 lakhs during year. Since co-ownership of assessee and her husband was evidenced in sale deed but there is no specification of their respective shares in deed, it must be held that husband and wife purchased equal shares and, therefore, revenue is justified in bringing to tax 50 per cent of income from house property in hands of assessee. (AY. 2015-16)

Shivani Madan (Smt.) v. ACIT (2023) 200 ITD 198 (Delhi)(Trib.)

S. 23 : Income from house property-Annual value-Rental income-Unsold flats-Deemed income cannot be estimated for unsold flats. [S. 22]

Assessee a real estate developer, had shown closing stock of several flats/shops, however no rental income had been offered in respect of such properties.The AO estimated the deemed rental income in respect of unsold flats which are held as stock in trade. CIT(A) deleted the addition. On appeal by revenue the Tribunal)affirmed the order of the CIT(A). Relied on CIT v. Neha Builders (P.) Ltd(2008) 296 ITR 661 (Guj)(HC)(AY. 2017-18)

DCIT v. Ganga DeveloperS. (2023) 198 ITD 435 (Mum) (Trib.)

S. 23 : Income from house property-Annual value-No deemed or Notional Rental Income for the properties held as Stock in Trade. [S. 22, 23(5)]

Tribunal held that the amendment has been brought in the statute in S. 23(5) where in respect of unsold stock of properties held as 'stock in trade' for a period of two years from the date of obtaining the completion certificate from the competent authority, the annual value of the such property would be determined as 'Nil'. There would be no addition towards deemed rental income in respect of unsold stock of properties held as 'stock in trade' for a period of two years from the date of obtaining the completion certificate from the competent authority. This specific provision has been brought in the statute from A.Y.2018-19 onwards. Hence, prior to A.Y.2018-19, there is no provision provided in the Act to tax the deemed rental income on unsold stock of properties lying as 'stock in trade' under the head 'income from house property'. Considering the same held that, no addition on account of deemed rental income could be made in respect of unsold stock of flats held as 'stock in trade' up to A.Y.2017-18.(ITA NO.2735/MUM/2022 dt.03/04/2023)(AY 2014-2015)

Modern Abodes Pvt. Ltd. v. ITO, (Mum)(Trib.) (UR)

S. 23 : Income from house property-Annual value-Stock in trade-No addition can be made on account of deemed rent on unsold flats held as stock in trade. [S. 22, 23(4), 23(5)]

The Assessee had shown 9 unsold flats as closing stock in its books on which the AO sought to make some additions on account of deemed rent under section 23(4) of the Act. The

Hon'ble Tribunal by following the judgement in the case of M/s Cosmopolis Constructions [ITA No. 191/Pun/2022] held that no addition is justified under deemed rent on unsold flats which are treated as stock in trade. (AY. 2015-16)
Dugad Properties v. DCIT; (2023) 103 ITR 65 (SN) (Pune) (Trib.)

S. 23 : Income from house property-Annual value-Flat was not habitable-Annual value cannot be added as income of the assessee. [S. 22, 23(1)(a)]
The assessee purchased a flat on 26-6-2009. Assessing Officer held that assessee failed to offer annual value as per section 22 on property which was other than self-occupied property and accordingly made addition on account of income from house property-. On appeal the Tribunal held that flat was not habitable on date of sale deed. There were further improvements in property. Certificate dated 12-8-2010 had been issued by Architect for completion of work and it was completed on 30-9-2010. Accordingly no annual letting value (ALV) could be determined in such circumstances under section 23(1)(a) for year under consideration.(ITA No. 436/ Nag / 2016 dt. 25-7-2022) (AY. 2010-11)
Dy. CIT v. Anju Saraf (2022) 142 taxmann.com 508 (Nagpur)(Trib.)

S. 24 : Income from house property-Deductions-Interest on loan to repay the original loan-Entitle to deduction-Rental income is offered as to tax as income from house property-Interest paid on loan borrowed for acquisition of property is allowable as deduction. [S. 22, 24(b)]
Held that interest on loan to repay the original loan is entitle to deduction. As the rental income is offered as to tax as income from house property, interest paid on loan borrowed for acquisition of property is allowable as deduction. (AY. 2013-14)
Muthu Daniel Ranjan v. ACIT (2023) 222 TTJ 498 (Chennai)(Trib)

S. 24 : Income from house property-Deductions-Commercial property-Property in respect of which assessee claimed interest under section 24(b) was only a commercial property-Restriction on deduction as provided in 2nd proviso to section 24(b) would not be applicable. [S. 22, 24(b), 71B, 143(1), 154]
Assessee filed his return of income declaring total loss after setting off and carrying forward of loss from house property under head 'Income from house property'-Assessing Officer denied set-off and carry forward of loss Assessee separately filed an application under section 154 seeking rectification of intimation issued under section 143(1) on basis that interest under section 24(b) was wrongly allowed to extent of Rs. 2 lakh only since he did not have any self-occupied property but a commercial property for year under consideration and, thus, entire amount was to be allowed. Application is rejected. Revenue had allowed similar claim of deduction of interest under section 24(b) in assessment years 2015-16 and 2017-18. Held that 2nd proviso to section 24(b) restricts deduction to Rs. 2 lakh, in case of property referred to in 1st proviso, however, 1st proviso deals with property as referred to in section 23(2). On facts, since interest paid by assessee on loan was for acquiring a commercial property, Assessing Officer erred in restricting deduction of interest so paid to Rs. 2 lakh vide intimation issued under section 143(1). The assessee was entitled to claim entire interest paid during year and consequently amount of loss under head 'income from house property', was to be set-off against income under other head of income and be carried forward as per provisions of section 71B. (AY. 2016-17)
Sameer Kishore Koticha v. Dy. CIT (2023) 221 TTJ 529 / 149 taxmann.com 345 (SMC) (Mum)(Trib)

S. 24 : Income from house property-Deductions-Interest expenses to the extent incurred towards the acquisition of property to be allowed u/S. 24(a)-Interest expenses not incurred in relation to business is not allowed under section 36(1)(iii).[S. 24(a), 36(1)(iii)]

The Assessee acquired a property for the purpose of business against a loan taken. However, the Assessee failed to use such property for the purpose of business and eventually let out the property on rent to HDFC Bank against rental income. During the impugned Assessment Year, a fresh loan was taken for repayment of the first loan. The interest cost incurred on such borrowing was claimed as a deduction under section 24 and alternatively under section 36(1)(iii) of the Act. The Assessing Officer disallowed the deduction against rental income on account of lack of evidence substantiating utilisation of the loans towards the acquisition of the property and against business income since the Assessee had closed down its business.

The Hon'ble Tribunal post analysing the financials of the Assessee observed that the amount borrowed under the second loan after settlement of the outstanding first loan was not utilised for the purpose of acquiring the property. Accordingly, the interest expense incurred in proportion to the borrowing utilised for repayment of first loan was held to be eligible for deduction against rental income. Further, considering the fact that no business was carried on by the Assessee during the relevant year and in immediate previous year, it was held that the balance amount of borrowing cannot be considered for the purpose of business and allowed u/s 36(1)(iii) of the Act. (AY. 2014-15)

Oceanic Vehicles Pvt. Ltd. v. DCIT (2023) 102 ITR 70 (SN) 153 taxmann.com 62 (Ahd)(Trib.)

S. 24 : Income from house property-Deductions-Administrative expenses was not as deduction-Deletion of addition is justified. [S. 24(i), 153A]

Assessing Officer disallowed deduction under section 24(i) claimed by assessee company, engaged in real estate business, on ground that assessee had also claimed certain administrative expenses relating to building maintenance etc. in his business income and at same time had claimed standard deduction under section 24(i). CIT(A) held that the assessee himself had suo motu added back aforesaid administrative expenditure and thus no double deduction was claimed, Commissioner (Appeals) had rightly deleted aforesaid disallowance of deduction under section 24(i). (AY. 2010-11 to 2012-13)

DCIT v. Forum Projects (P.) Ltd. (2023) 202 ITD 51 (Kol) (Trib.)

S. 24 : Income from house property-Deductions-Mall construction-Interest on loan-Optionally convertible debentures (OCDs) to repay outstanding Loan-Allowable as deduction. [S. 22, 24(b)]

Assessee is engaged in business of letting out shops on lease. Assessee claimed interest expense pertaining to borrowing for acquiring/constructing properties under section 24(b). Assessing Officer held that assessee-company issued OCD (Optionally convertible debentures) which were utilized for repayment of loan taken from one JPIPL and interest claimed was with respect to said OCD. He denied the claim of on ground that claim of interest on such indirect borrowings for construction is not tenable in law Commissioner (Appeals) held that loan on which interest was paid, was not utilized for repaying another loan, but was utilized for paying off a liability of assessee-company for construction expenses and thus, loan would be considered to be procured for constructing property and interest paid thereon would be allowable in terms of section 24(b). Held that ledger account of JPIPL that outstanding liability of JPIPL was on account of construction work undertaken by it for assessee and OCD were utilized for repaying this liability. Order of CIT(A) is affirmed. (AY. 2012-13)

DCIT v. Aryan Arcade (P.) Ltd. (2023) 200 ITD 176/ 223 TTJ 521/ 225 DTR 153 (Rajkot) (Trib.)

S. 28(i) : Business income-Capital gains-Full value of consideration-Stamp valuation-Capital asset-Business income or short-term capital gains-Sale of Development Rights in property-Stock in trade-Sale consideration received by builder was held to be assessable as business income-Provisions of S. 50C was held to be not applicable-Recorded in the balance sheet-Matter remanded to Tribunal for consideration afresh on merits to consider whether transaction a sale of capital assets or of stock-in-trade. [S. 2(14), 45, 50C, 145, Art. 136]

On appeal by the Revenue the High Court affirmed the order of the Tribunal where the Tribunal held that the transfer of development of rights the provisions of section 50C is not applicable. On appeal the Court held that to examine whether a particular transaction is a sale of a capital asset or a business transaction, multiple factors such as the frequency of trade and volume of trade, the nature of the transactions over the years, etc., are required to be examined. Court observed that The Tribunal had not questioned the factum of refund of the differential amount to the purchaser on account of the rectification deed dated May 30, 2008. The moment the receipt of the amount was recorded in the books of account of the assessee, it was to be treated as income unless it was shown to have been refunded or returned. The judgment of the High Court and order of the Tribunal were liable to be quashed and the matter remanded to the Tribunal to consider the appeal afresh in accordance with law and on the merits, taking into consideration the observations made in the judgment and take an appropriate decision on whether the transaction in question was a sale of capital assets or of stock-in-trade.(AY. 2009-10)

CIT v. Glowshine Builders and Developers Pvt. Ltd. (2023)454 ITR 249/ 293 Taxman 517/ 332 CTR 489/ 225 DTR 241 (SC)

Editorial : CIT v. Glowshine Builders and Developers Pvt. Ltd (2018) 405 ITR 540 (Bom)(HC), order of High Court set aside and matter remanded to Tribunal.

S. 28(i) : Business income-Transfer of business-Derecognition of income pertaining to consumer's portion overachievement of minimum target of efficiency gain-Not income.[S. 4]

Held that on transfer of business the assessee is entitled to assured return of 14 Per Cent. plus supply margin up to 2 Per Cent. per annum on commission approved equity subject to achievement of aggregate transmission and commercial loss reduction targets. In case of overachievement of aggregate transmission and commercial loss reduction targets assesse is entitled to retain portion of additional revenue realised.Derecognition of income pertaining to consumer's portion overachievement of minimum target or efficiency gain is not income of assessee. (AY.2011-12, 2012-13)

Tata Power Delhi Distribution Ltd. v.Add. CIT (2023)108 ITR 329 (Delhi)(Trib)

S. 28(i) : Business income-Income from house property-Business of real estate development-Sale of commercial building let out to tenants earlier-Assessing the capital gains and income from house property as business income by the Assessing Officer is affirmed. [S. 22, 23, 45]

Assessee-company, incorporated on 27-9-1996, purchased a land in financial year 1996-1997, commencing construction. Built-up property, a commercial building, was let out to tenants in financial year 1999-2000 and, accordingly, rental income was disclosed in return since assessment year 2000-2001 as income from house property (IFHP). Assessing Officer assessed it as income from business and professions. CIT (A) ssessed the income as income

for house property. On appeal the Tribunal held that the assessee is engaged in a continuous and systematic activity of business in real estate development, of which leasing and sale is an integral and a regular pArt. In each case, sum realized, as indeed rent received over years, was, after meeting expenses, ploughed back in business, purchasing and constructing landed property for being, similarly, either sold at a profit or leasing it. On facts the Assessing Officer is justified in assessing capital gains and income from house property as business income. (AY. 2012-13, 2015-16)
ACIT v. Knowell Realtors India (P.) Ltd. (2023) 203 ITD 645 (Cochin) (Trib.)

S. 28(i) : Business income-Unaccounted receipts-Cash receipts-Matter remanded. [S. 132]
Tribunal remanded the matter for re adjudication**.** (AY. 2004-05)
Anuradha Properties & Townships (P.) Ltd. v. ACIT (2023) 202 ITD 91 (Hyd)(Trib.)

S. 28(i) : Business income-Carbon credits-Capital or revenue-Income earned from sale of Renewable Energy Certificates (REC)/carbon credits is a capital receipt and not business income-Return-An assessee can amend a return filed by him during assessment proceedings-Commission paid-Disallowance is not justified. [S. 4,37(1), 69C, 139(5), 143(3)]
Tribunal held that income earned from sale of RECs/ESCs (carbon credits) is a capital receipt and not business income as carbon credit is an offshoot from environmental concern and not an offshoot from business, thus, it will not be taxable. Tribunal held that an assessee can amend a return filed by him during assessment proceedings. As regards the commission the since assessee had submitted tax invoice and TDS certificate as proof of transaction and no objection was raised against same by revenue, and further, payments were made through bank account, impugned addition made on account of said commission paid under section 69C is not warranted. (AY. 2018-19)
Satia Industries Ltd. v. NFAC(2023) 106 ITR 550 / 202 ITD 189 (Amritsar) (Trib.)

S. 28(i) : Business income-Interest on FDRs earned by contractor-Considered like contract receipts for the purpose of estimation of profit of 10 % of receipts-Interest on income tax refund and NSC deposits is assessable as income from other sourceS. [S. 56, 145]
Assessee-firm is a Government approved civil contractor and was engaged in 100 per cent Government contracts only. Revenue estimated income of assessee at certain amount and while doing so interest on FDR, interest on NSC and interest on income tax refund were excluded for purposes of estimations holding such income to be unconnected to contract business per se. On appeal the Tribunal held that interest on FDRs could not be seen differently from receipt derived directly from contract work. Having regard to nature of business, FDRs were integral part of working capital of assessee kept and expanded for commercial reasons.Fixed deposits were a necessity to provide security and meet contingency of such peculiar business. Therefore, interest income earned on fixed deposits deserved to be treated alike with business contract receipts for purposes of estimations and it could not be treated differently from contract receipts merely because such income flowed from a different source. However, interest income on IT refunds and NSC deposits would not get benefit of estimations but would be chargeable as other income in accordance with law. (AY. 2015-16 to 2020-21)
Shiv Shakti Construction v. ACIT (2023) 202 ITD 655/ 225 TTJ 676 (Delhi) (Trib.)

S. 28(i) : Business income-Income from house property-Business expenditure-Renting of parking spaces, table spaces and games collection-Renting activity against which maintenance recovered from tenants to be considered under business and balance to be disallowed as pertaining to income from house property-Matter remanded. [S. 22, 24, 37(1)]

Held that the assessee, in addition to earning rental income, also received maintenance charges for the portion let out, which were included in "Business income" and these had also been assessed accordingly, and that therefore, even the expenses pertaining to portion of the property let out should not be disallowed because the receipts in relation to maintenance charges had been taxed as "Business income". The fact of receipts of maintenance charges arising from the rented portion having been clubbed with the "Business income" was not borne out from the record. It would be just and fair if the order was set aside and the matter remitted to the Assessing Officer to allocate item-wise expenses to the requisite heads. The portion of the expenses pertaining exclusively to the business activity should be considered as business expenses and allowed as deduction against the income under the head "Profits and gains of business or profession". Expenses pertaining exclusively to the renting activity should be considered only under the head "Income from house property". The remaining common expenses should be allocated between the two heads on some rational basis, such as, area used for both the activities or revenue from both the activities on gross basis, etc. The Assessing Officer was also to ascertain if the receipts of maintenance charges from the let out portion had been considered as "Business income". If so, the nature of expenses against which the maintenance charges were received was to be looked into. The nature of expenses, forming part of the expenses relating to the renting activity, against which maintenance had been recovered from the tenants, should be considered under the head "Business" and others to be disallowed as pertaining to the income falling under the head "Income from house property".(AY. 2013-14 to 2017-18)

Marigold Premises P. Ltd. v. ITO (2023)104 ITR 24 (SN)(Pune)(Trib)

S. 28(i) : Business income-Interest on FDRs-Pledging fixed deposit receipts (FDRs) as margin with bank-Trading in crude palm oil (CPO)-Foreign Letters of Credit (FLCs) for oil import-Interest is assessable as business income and not as income from other sources-High sea sale-whether speculative-Not decided. [S. 43(5), 56]

Assessee traded crude palm oil (CPO) and opened Foreign Letters of Credit (FLCs) for oil import, pledging Fixed Deposit Receipts (FDRs) as margin with bank. Interest earned on these FDRs was treated as business income. Assessing Officer assessed the interest income as income from other sources. On appeal the CIT(A) held that high sea sale of imported goods as speculative transaction and assessed as business income. On appeal the Tribunal held that entire transaction was going through by proper delivery of goods during purchase and documents were provided for evidence of delivery of goods related to high sea sale, Commissioner (Appeals) rightly treated interest earned on these FDRs as business income. As regards the appeal of the assessee is dismissed as withdrawn. (AY. 2013-14, 2016-17)

DCIT v. G. G. Continental Traders (P.) Ltd. (2023) 201 ITD 440 (Amritsar) (Trib.)

S. 28(i) : Business income-Interest on FDRs-Pledge fixed deposit receipts (FDRs) as margin with the bank-Interest income assessable as business income-High sea sale. [S. 43(5)]

Interest earned on FDRs was treated as business income by the assessee, while revenue considered the same as 'Income from other sources'. Revenue had taken the high sea sale of imported goods as a speculative transaction u/s. 43(5) and loss was treated as a speculative loss. However, it was found that when goods were not taken by delivery, the entire issue was

treated as a speculative transaction. Held that, since the entire transaction was going through by proper delivery of goods during purchase and documents were provided for evidence of delivery of goods related to high sea sale. Interest earned on these FDRs is a business income. (AY. 2013-14.2016-17)
Dy. CIT v. G. G. Continental Traders (P.) Ltd. [2023] 201 ITD 440 (Amritsar)(Trib.)

S. 28(i) : Business income-Letting out properties-Assessable as income from business and not as income from house property.[S. 22)
Held that the main objects of assessee company was to construct, acquire, hold buildings, tenements and such other movable and immovable property and to rent, let on hire and manage immovable property, income earned by assessee from letting out of property would be assessable under head income from business. (AY. 2015-16)
ACIT v. Tupelo Builders (P.) Ltd. (2023) 199 ITD 58 / 221 TTJ 192 (Delhi)(Trib)

S. 28(i) : Business Income-Deduction of tax at source-Difference between receipts stated in form 26AS and income shown in profit and loss account cannot be brought to tax in the hands of the assessee.[S. 145, Form No 26AS]
Held that if lease rent is paid after deducting tax at source, assessee is supposed to reimburse to the extent of tax deduction at source to the financer. The customer issues tax deduction at source certificate in the name of the assessee because master rent agreement was between assessee and the customer. On completion of the tenure of the lease, assets are returned. Those assets are sold at the end of the tenure to the respective purchaser of those assets. The assessee offers investment in unguaranteed residuary account upfront. Therefore naturally, the income of the assessee is not the rental income but the income earned in the business of acquiring and dealing in unguaranteed residuary interest in assets rented to the customers. Thus, the income offered by the assessee is such income and not the rental income appearing in form number 26AS. Deletion of addition is valid. (AY. 2014-15)
Dy. CIT v. Connect Residuary P. Ltd. (2023) 105 ITR 46 (SN)(Mum) (Trib)

S. 28(i) : Business income-Agricultural income-Apportionment AO is directed to recompute disallowance and only 40% amount to be added to business income. [S. 2(24)(x), 36(1))(v), R. 8(1)]
On appeal, it was held that disallowance of EPF has to be first added before computing 60:40. Thereby, only 40% of amount to be added in business income. (AY. 2019-20)
Hanuman Plantations Ltd. v. ITO (2023)104 ITR 78 (Kol.)(Trib)

S. 28(i) : Business income-Fictitious sales-Burden is on revenue to prove that the sales are not fictitious-Addition confirmed by the CIT(A) was deleted. [S. 133A]
Held that the assessee had admitted that the sales was fictitious company. The act of the assessee may be illegal. The Assessing Officer was required to establish whether those were cash sales as claimed by him and not fictitious sale as claimed by the assessee. In the absence of cash sales by the assessee, the addition confirmed by the CIT(A) was deleted. (ITA No. 4295 / Mum / 2016 dt. 13-2-2023 (AY.2010-11)
S. J. Studio & Entertainment Ltd (2023) The Chamber's Journal-March-P. 110 (Mum)(Trib)

S. 28(i) : Business income-Accrual of income-Advance received for services to be rendered in subsequent years-AO taxed in current year-CIT(A) allowing 10% to be treated in subsequent year-Addition to be deleted.[S. 5, 145]

Held, that the advance received by the assessee pertained to services to be rendered in the immediately succeeding Assessment year. The assessee had rightly recognised its revenue in the following year ; therefore, the addition made by the Assessing Officer was erroneous ; he was directed to delete the addition made on account of advance receipts. (AY. 2012-13 to 2015-16).

Matrimony.Com Ltd. v.Asst. CIT (2023)101 ITR 253 (Chennai) (Trib)

S. 28(i) : Business income-Income from other sources-Income earned from FDs out of cash credit limits for securing contracts-Part of business income-Miscellaneous income from sale of scrap-Additions unjustified. [S. 56]

Held, that the interest income earned on fixed deposit receipts was part of business income as these deposits were made for the purpose of business for giving bank guarantees to contractees. For this purpose, the assessee had to obtain from the bank fixed deposit receipts, which were pledged to the latter. Thus, interest from the deposits were part of business income. As the deposits were made by utilising the cash credit limit on which interest was paid to the bank and which formed part of the business expenditure, the interest income earned from such deposits made by utilising the bank's overdraft limit was to be considered as business income and not as income from other sources. Similarly, as the miscellaneous receipts were from sale of scrap, it was part of business income. In the earlier years also it was considered as business income. Hence, the separate additions made by the Assessing Officer and confirmed by the Commissioner (Appeals) were unjustified. The additions were to be deleted.(AY. 2014-15)

R. G. Colonizers Pvt. Ltd. v. Dy. CIT (2023)101 ITR 409 (Jaipur) (Trib)

S. 28(i) : Business loss-Unabsorbed depreciation-Carry forward and set off-Amalgamation of companies-Relates back to appointed date-Business loss and unabsorbed depreciation of transferor company allowable. [S. 32, 72]

High Court dismissed the Department's appeal holding in favour of the assessee on the allowance of business loss and unabsorbed depreciation of the transferor company following its decision in IRM LTD. v. Dy. CIT (2017) 10 ITR-OL 395 (Guj)(HC) holding that, once the scheme of amalgamation was sanctioned, it would relate back to the appointed date of amalgamation. SLP of Revenue is dismissed. (AY. 2006-07)

PCIT v. Intas Pharmaceuticals Ltd. (2023)454 ITR 421/ 293 Taxman 496/ 332 CTR 731/ 225 DTR 206 (SC)

Editorial : Affirmed, CIT v. Intas Pharmaceuticals Ltd(Guj)(HC) (ITANo. 311 of 2019 dt 23-7 2019)

S. 28(i) : Business loss-Marked-to-market Loss-On open equity tock future contracts-Forward contracts-Suffered on stock-In-Trade-Speculative transaction-Ascertained loss-Allowable as deduction-SLP of revenue is dismissed.-Supreme Court-Special Leave Petition Dismissed. [S. 37(1), 43 (5), 73]

Dismissing the appeal of the Revenue the High Court held that market loss of stock in trade as ascertained liability so long as it was not a case of speculative transaction and the loss incurred was of forward contract in the regular course of business, the loss incurred should be allowed as business loss and that the Tribunal was justified in holding that marked-to-market loss on open equity stock future contracts and marked-to-market loss on interest rate swaps was an ascertained loss and in upholding the valuation of marked-to-market loss on March 31 in respect of future contract held as closing stock-in-trade. ITAT has relied on United Commercial Bank v.CIT (1999)8 SCC 338/ 106 taxman 601/ 240 ITR 355 (SC). Held,

dismissing the SLP that considering the reasoning of both forums and the High Court judgment, there was no infirmity and no interference was called for.

PCIT v. DSP Merill Lynch Capital Ltd. (2023)456 ITR 768/ 294 Taxman 161 / 333 CTR 569 (SC)

Editorial : PCIT v. DSP Merill Lynch Capital Ltd (2022) 142 taxmann.com 579 / (2023) 21 ITR-OL 710 (Bom)(HC), affirmed.

S. 28(i) : Business loss-Under invoicing of sales to sister concern-Books of account not rejected-Order of Tribunal is affirmed. [S. 4, 69, 145]

Dismissing the appeal of the Revenue the Court held that Assessing Officer made addition on account of alleged under invoicing of sales made to sister concern, however, fact that assessee's books of account had been duly audited and at no stage, Tax Auditor had questioned its books of account and Assessing Officer having adopted a method which was alien to statute, Appellate authorities had rightly held this to be method and act non-acceptable. (AY. 2010-11)

PCIT v. Bajaj Herbals (P.) Ltd. (2023) 335 CTR 530 / 148 taxmann.com 147 (Guj)(HC)

S. 28(i) : Business loss-Future and options-Not claimed in the original return-Retraction in the original assessment proceedings-Tribunal affirmed the order of the CIT(A), allowing the claim.[S. 139(5), 154, 260A]

Dismissing the appeal of the Revenue the Court held that the Tribunal noted that the Department had not brought on record any material to contradict the findings of fact of the Commissioner (Appeals) on this issue and accordingly upheld the deletion. No substantial question of law arose for consideration. Circular No. 14 (XL)-35 of 1955 dated April 11, 1955 (AY.2012-13)

PCIT v. GGC Constructions Pvt. Ltd. (2023)457 ITR 240 (Delhi)(HC)

S. 28(i) : Business loss-Bad debts-Commercial expediency-Expenditures incurred by subsidiary till its winding up-Amount disallowed as bad debt can be claimed as business losS. [S. 36(1)(vii), 36(2), 37(1)]

Allowing the appeal of the assessee considering the commercial expediency the expenditures incurred by subsidiary till its winding up the amount disallowed as bad debt can be claimed as business loss. The Tribunal was not right in not allowing the claims of the assessee. Followed Badridas Daga v. CIT (1958) 34 ITR 10 (SC), PCIT v. Khyati Realators Pvt Ltd (2022) 447 ITR 167 (SC), distinguished.(AY.1989-90)

Mahindra And Mahindra Ltd. v CIT (2023)456 ITR 723 /151 taxmann.com 332 / 333 CTR 665 (Bom)(HC)

S. 28(i) : Business Loss-Loan advanced to subsidiary-Converted to preference shares-Reserve Bank of India directive-Diminution in value of shares-Deductible as business losS. [S. 37(1)]

Held that under compelling circumstances as by the direction of the Reserve Bank of India such loans were converted into preference shares which consequently eroded in value because of the loss sustained by the subsidiary. Therefore, the Tribunal rightly held that merely because the loss was debited under the nomenclature “provision” that did not alter the basic character of the transaction and the loss incurred due to non-recoverability of the amount advanced in the ordinary course of business could not have been disallowed by the Assessing Officer.(AY.2012-13)

PCIT v. Balmer Lawrie And Co. Ltd. (2023)455 ITR 198/334 CTR 895/ 149 taxmann.com 286 (Cal)(HC)

S. 28(i) : Business loss-Shortage of coal-Deletion of addition is affirmed. [S. 260A]
Dismissing the appeal of the Revenue the Court held that the issue relating to the alleged shortage of coal being entirely factual had been rightly explained. Order of Tribunal affirmed. (AY. 2015-16)
PCIT v. Durgapur Projects Ltd. (2023)454 ITR 367/ 333 CTR 158/ 227 DTR 35 (Cal)(HC)

S. 28(i) : Business loss-Penny stock-Share trading-Information from investigation wing-VAS Insfratcture Ltd (VASIL)-Not black listed by SEBI-Order of Tribunal allowing the loss is affirmed. [S. 10(38), 45, 260A]
On the basis of the information received from the Investigation Wing that the assessee made transaction with penny stock scrip VAS Insfratcture Ltd (VASIL) to launder money to grab long-term capital gain and claimed exemption under section 10(38). Scrip of the VAS were manipulated by the assessee to generate bogus losss. Additions were made to income of assessee on account of bogus loss incurred in penny stock. The Tribunal deleted the additions. On appeal to the High Court, the Rrevenue submitted the order of the Tribunal was *ex-facie* erroneous, illegal and perverse because Tribunal deleted the additions on account of disallowance of bogus loss in penny stock incurred, without appreciating that the transaction was pre-arranged as well as sham and was carried out through penny scrip company/paper Company. High Court held that the Tribunal held that thee assessee was continuously dealing in share trading of various shares/scrips and said fact was not disputed. Further the Tribunal had observed that scrip of VAS was not black listed by SEBI at relevant point of time. Tribunal had also considered order passed by SEBI and nowhere in said order, scrip of VAS was blacklisted or was penny stock or sham and bogus scrips/shares. Tribunal had also observed that entire transaction of purchase and sale of scrips was through Stock Exchanges, through authorized brokers and payments made to brokers were reflected in bank account. Tribunal had therefore opined that merely on conjecture and surmises, Assessing Officer could not make disallowance. Court affirmed the order of the Tribunal . (AY. 2012-13)
PCIT v. Genuine Finance P. Ltd. (2023) 294 Taxman 303 (Guj.)(HC)

S. 28(i) : Business loss-Interest on NPAs-Accrual basis-Interest on NPAs was rightly taxed by the Revenue-Guidelines of RBI binding on Banking Companies-Appeal of the assessee is dismissed. [S. 36(1)(vii), 43D, 119,260A, Reserve Bank of India, Banking Regulation Act, 1949, S. 21]
Dismissing the appeal of the Assessee the Court held that on the facts of the case it is not the CBDT which had issued guidelines under section 119. On the other hand the guidelines have been issued by the RBI which are binding on all the banking companies in general. However, when it comes to the assessment under the Income-tax Act the revenue authorities are bound by the provisions of the Income-tax Act. Therefore, the claim of the assessee that the interest accrued on NPAs should be excluded from computation of income was rightly negatived by the Assessing Officer which had been affirmed by the appellate authorities. (AY. 1999-2000)
State Bank of Hyderabad v. Jt. CIT (2023) 458 ITR 79/ 292 Taxman 526 / 335 CTR 304 (Telangana)(HC)

S. 28(i) : Business loss-Burden of proof-Search-Order of Tribunal allowing the loss is held to be perverse-Order of Tribunal is set aside.[S. 132, 153A, 254(1)]

A search was conducted under section 132 in assessee's premises and an assessment order was passed under section 153A determining a total income by making an addition on account of loss of 99.055 kgs. gold.Tribunal allowed loss of gold. On appeal by the Revenue, allowing the appeal the Court held that the Tribunal had allowed assessee's appeal on premise that loss of gold accounted for only 0.047 per cent of total gold transactions which was without any rationale, from reasons recorded by Tribunal that it had given no logical explanation as to why loss of 0.047 per cent must be allowed.Further the assessee's explanation at first instance before Assessing Officer was that gold was misappropriated and before First Appellate Authority explanation was that it did not know about loss till conducting annual inventory. Both explanations were not supported by any evidence and if 99.055 Kgs gold were to be misappropriated, management of any prudent company would take necessary action such as filing a police complaint etc. Second explanation that assessee did not know about loss at all, was on face of it, unacceptable. Accordingly the reasons recorded by Tribunal were perverse and therefore, it was set aside. (AY. 2011-12)

PCIT v. Rajesh Exports Ltd. (2023) 293 Taxman 94 (Karn)(HC)

S. 28(i) : Business loss-Write-Off of Loss-Investment made in subsidiary abroad-Commercial expediency-Transfer pricing adjustment-Book profit-Provision for doubtful debts-Remanded to the Assessing Officer-Question of factS. [S. 37(1), 92C, 115JB, 260A]

Dismissing the appeal of the Revenue the Court held that the assessee had made investment in its subsidiary company in order to expand its business with a view to earn higher profit and therefore, the investment was driven by business expediency. Loss is allowable followed, PCIT v. Vaibhav Global Ltd (I. T. A. No. 53 of 2021 dated 15-12-2021) (Raj)(HC). The assessee had written back the provisions and then written it off and had held that therefore, for the year under consideration, this amount should not have been added back for computing the income under the provisions of section 115JB since it would amount to double disallowance. followed CIT v. Vodafone Essar Gujarat ltd (2017) 397 ITR 55 (Guj)(HC). On the issue of disallowance out of provision for doubtful loans to the assessee's subsidiary the Tribunal had only remanded the matter to the Assessing Officer and decisions have also been rendered on such remand and therefore, no question of law arose.(AY. 2009-10)

PCIT v. Vaibhav Global Ltd. (2023)453 ITR 24 / 333 CTR 443/ 226 DTR 123 (Raj)(HC)

Editorial : SLP of Revenue is dismissed, PCIT v. Vaibhav Global Ltd. (2023)453 ITR 31(SC)

S. 28(i) : Business loss-Foreign exchange rate fluctuation-Allowable as deduction.

Held that during the AYs 2017-18 and 2018-19, the assessee earned income on reinstatement of external commercial borrowings and duly offered it to tax and this was accepted by the Assessing Officer during the assessment proceedings. So, when the Department accepted the gains, the same treatment should be given to the loss. Hence, the addition was to be deleted.(AY.2012-13)

Dy. CIT v. PTC India Financial Services Ltd. (2023)104 ITR 1 (SN)(Delhi)(Trib)

S. 28(i) : Business loss-Purchase and sale of shares-Scripts manipulated by third parties-No adverse findings against assessee-Assessee made transactions in good faith-Loss not bogus-Loss allowed.

Held that that the Assessing Officer nowhere pointed out any adverse finding against the assessee. The assessee had carried out the transactions in the scrips in question on the stock exchange through a registered broker and these were duly supported by documentary evidence. The Assessing Officer had not found any discrepancies in the documentary evidence. The income earned by the assessee and loss incurred on the script could not be held bogus. Thus, CIT (A) was justified in allowing loss. (AY 2012-13)
ITO v. Champalal Gopiram Agarwal (2023)101 ITR 22 (SN.)(Ahd)
(Trib)

S. 28(i) : Business loss-Business expenditure-Money embezzled by director-CIT(A) accepted loss but denied deduction for want of details-AO to verify recovery and allow balance of losS. [S. 37(1)]
Held, that the Commissioner (Appeals) had accepted that the loss was allowable but he had not allowed the deduction for want of details. The assessee had clearly said that it had not made any debit of expenditure as embezzlement loss. It was only a note in the account explaining the loss from which the authorities had come to the conclusion that the assessee had debited the embezzlement loss. On the facts, this issue needed to be remitted back to the file of the Assessing Officer. The Assessing Officer was to factually verify the recovery and allow the balance of loss. (AY. 2014-15)
Wieden+Kennedy India Pvt. Ltd. v. Dy. CIT (2023)101 ITR 63 (SN.) (Delhi) (Trib)

S. 28(i) : Business loss-Survey-Client code modification-Information from Investigating agency-Loss in share trading-Misuse of client code modification to book losses to evade tax-Failure of the assessee to establish that he was not involved in Client Code Modification-Disallowance of loss is justified. [S. 133A, 148]
This decision consists of 3 appeals involving the same facts. The assessee's case was reopened by notice u/s 148 of the Act pursuant to information received from the Investigation Directorate gathered from surveys conducted u/s 133A of the Act at the premises of several share brokers that the Client Code Modification (CCM) facility was being misused by various clients, which included the name of the assessee, for tax evasion in connivance with the broker by shifting out profits or shifting in losses to reduce the taxable income. The assessee was asked to explain the misuse of CCM facility to book the contrived losses of Rs. 29,76,903. The ITAT observed that contrary stands were taken by the assessee before the AO and the CIT(A), before whom the assessee submitted the ledger account obtained from the Broker. The submissions of the assessee that the assessee never claimed loss in this year with the supporting return of income and the audit report would not justify that the assessee has not benefited from CCM. Besides this the assessee had not given details as to the shares and scrips through which broker of the assessee had traded. The assessee had also furnished her regular bank statement instead of her demat account statement. Thus, the assessee was not able to substantiate her non-involvement in the misuse of the CCM facility. Thus, the AO and the CIT(A) was right in adding Rs. 29,76,903 to the income of the assessee. (AY.2009-10)
Charuben Jitendrarai Mehta v.ITO (2023) 103 ITR 29 (SN)(Ahd)(Trib)
Bimal Jitendra Mehta v.ITO (2023) 103 ITR 29 (SN)(Ahd)(Trib)

S. 28(i) : Business loss-Set off-New business-Income from other sources-Set up-Matter remanded-Set-Off of expenses incurred against interest income allowable. [S. 37(1), 56]
Held that on perusal of the profit and loss account, certain expenditure was incurred in connection with the business which was sold were also debited to the profit and loss account. The Assessing Officer as well as the Commissioner (Appeals) had failed to examine the nexus of the-expenditure incurred and the new business stated to have been set up. Therefore,

the issue was remitted to the Assessing Officer to decide with reference to the material on record whether the assessee had set up a new business or not. On examination of the material on record, if the Assessing Officer formed an opinion that new business had been set up, the expenditure incurred-during the interval period of setting up of a new business and its commencement of business could be allowed as deduction and could be set off against the interest income earned on fixed deposits by the assessee assessed under the head "Income from the other sources".(AY. 2014-15)

Messung Systems P. Ltd. v.ITO (2023)101 ITR 30 (Pune)(Trib)

S. 28(i) : Business loss-Purchase and sale of shares-Penny stock-STT paid-Scripts manipulated by third parties-No adverse findings against assessee-Assessee made transactions in good faith-Loss not bogus-Loss allowed as business losS. [S. 10(32)]

Held that that the Assessing Officer nowhere pointed out any adverse finding against the assessee. The assessee had carried out the transactions in the scrips in question on the stock exchange through a registered broker and these were duly supported by documentary evidence. The Assessing Officer had not found any discrepancies in the documentary evidence. The income earned by the assessee and loss incurred on the script could not be held bogus. Thus, CIT (A) was justified in allowing loss in respect of shares of Vax Housing Finance Corp. Ltd and Arya Global Shares & Securities Ltd (AY. 2012-13)

ITO v. Champalal Gopiram Agarwal (2023)101 ITR 22 (SN)(Ahd)
(Trib)

S. 28(iv) : Business income-Value of any benefit or perquisites-Converted in to money or not-Receipt of equipment from client for testing purpose-Assessee cannot prove negative fact-Addition is not sustainable.

Held that it was clear that the import of the equipment in question from the suppliers was for testing and functionality with respect to the information technology services provided to them by the assessee. The additions made could not be sustained. (AY.2016-17)

Mindteck India Ltd. v.Dy CIT (2023)108 ITR 199 (Bang) (Trib)

S. 28(iv) : Business income-Value of any benefit or perquisites-Converted in to money or not-Income deemed to accrue or arise in India-Non-reimbursement of expenses incurred by Korean Head office for salary of employees personnel deputed in India but paid in Korean by Head office of Indian PE did not result in taxable income in hands of PE-DTAA-India-Korea [S. 9(1)(i), 28(iv), Art.7]

Assessee, a banking company based on Korea, was carrying on business in India through its PE. Assessee had claimed deduction in respect of salaries paid to its employees working for its permanent establishment in India. Assessing Officer held that deduction could not be allowed in computation of profits of PE in India, for reason that for purpose of computation of profits, PE was required to be treated as hypothetically independent of its head office and when PE did not incur expenditure, it could not be allowed a deduction. Tribunal held that since there could not be a benefit accruing to Korean company when Indian PE of assessee company did not reimburse its Korean company, non-reimbursement of expenses incurred by Korean Head Office for salary of employees of Indian PE did not result in taxable income in hands of PE/HO under section 28(iv) of the Act. (AY. 2012-13 to 2015-16)

Shinhan Bank. v. DCIT (IT) (2023) 198 ITD 453 (Mum) (Trib.)

S. 28(va) : Business income-Cash or kind-Under an agreement-Non-compete fees-Capitall or revenue-Non-compete fees received for the period prior to AY 20217-18 are to be treated as capital receipts and not to be charged under S. 28(va).[S. 4]

Tribunal helld that Revenue should only look at the agreement and not look through the binding agreements entered between the parties in a manner that suits the Revenue. Tribunal held that the transaction was of a capital nature and not taxable since it pertained to the period before AY 2017-18. (AY. 2014-15)

Nalini Mahajan (MrS.) v. ACIT (2023) 201 ITD 328 (Delhi)(Trib.)

S. 30 : Rent rates, taxes, repairs and insurance for buildings-Premises on short-term lease-Allowable as revenue expenditure.

Assessee had occupied premises on short-term lease which was in a disfigured condition and carried out extensive repairs to convert same into workshop and showroom so as to suit its business operation to be carried therefrom. The Tribunal held that the expenses incurred is allowable as revenue expenditure. (AY. 2013-14)

Garve Motors (P.) Ltd. v. ACIT (2023) 199 ITD 136 (Pune) (Trib.)

S. 31 : Repairs-Rented premises-temporary weather shed-Capital or revenue-Entitled to depreciation at rate of 100 per cent-Entire amount of expenditure incurred on construction of shed was to be allowed as revenue in nature. [S. 32, 37(1)]

During year, assessee claimed repairs & maintenance expenses on account of construction of temporary weather shed in its rented premises as revenue expenditure. Assessing Officer held that expenditure was for construction of structure which had enduring benefit to assessee and, therefore, it was capital in nature. Tribunal held that since temporary structures were entitled to depreciation at rate of 100 per cent, entire amount of expenditure on construction of temporary weather shed is to be allowed as revenue in nature. (AY. 2005-06)

KHS Machinery (P.) Ltd. v. ACIT (2023) 198 ITD 649 (Ahd) (Trib.)

S. 32 : Depreciation-Option-No requirement of particular mode of exercising option-Option To Be Exercised Before Filing Return Or At Time Of Filing Return-Department Not Justified In Reducing Depreciation On Ground Assessee Had Not Specifically Opted For Written Down Value Method. [S. 139(1), Rules, 5(1)(IA)]

Held, dismissing the appeal of the Revenue that there was no dispute that the assessee had claimed depreciation in accordance with sub-rule (1) read with appendix I before the due date for furnishing the return of income. The view taken by the Assessing Officer as affirmed by the first appellate authority that the assessee should opt for one of the two methods was not a statutory requirement. Therefore, the Department was not justified in reducing the claim of depreciation of the assessee on the ground that the assessee had not specifically opted for the written down value method.

CIT v. G. R. Govindarajulu and Sons(2015) 378 1 280 CTR 303/ 125 DTR 345 (SC)/ [2016] 16 SCC 335 applied. *(*AY.2001-02, 2006-07)

CIT v. Jindal Steel and Power Ltd (2023) 335 CTR 1017/. (2024)460 ITR 162/ 297 Taxman 253 (SC)

CIT v. Reliance Industries Ltd (2023) 335 CTR 1017/. (2024)460 ITR 162/ 297 Taxman 253 (SC)

Editorial : Decision of the Punjab and Haryana High Court in CIT v. Jindal Steel and Power Ltd(2024) 460 ITR 159 (P&H) affirmed.

S. 32 : Depreciation-Rate of depreciation-Plant-Oil Well-Plant-Eligible for depreciation at higher rate of 80 Per Cent.-Supreme Court-SLP of Revenue is dismissed.

Assessee company which is engaged in exploration of crude oil from oil fields, claimed depreciation on plant, contending that oil well was part of plant. Assessing Officer held that well drilled for exploration of oil was not a Plant and disallowed claim of depreciation. Tribunal allowed the claim. High Court affirmed the order of the Tribunal and held that oil wells constitute 'Plant' for purpose of section 32 and would be eligible for depreciation. SLP of Revenue is dismissed. (AY. 2006-07)

CIT (IT) v. Joshi Technologies International Inc. (2023)459 ITR 146 / 294 Taxman 706 (SC)

Editorial : Refer, CIT (IT&TP) v. Joshi Technologies International Inc. (2023) 459 ITR 142 / 153 taxmann.com 710 (Guj)(HC)

S. 32 : Depreciation-Revised return-Withdrawing claim to depreciation-Assessing Officer granting depreciation under amended provisions-Held to be not permissible.[S. 32(1), Expln.5]

Dismissing the appeals of the Revenue the Court held that the provisions of Explanation 5 would not be applicable to the controversy in issue pertaining to the AY. 1999-2000, and the assessee having validly withdrawn its claim to depreciation, it was not permissible for the Assessing Officer to grant the depreciation taking into account the amended provisions of section 32 of the Act. Referred CIT v. Mahendra Mills (2000) 243 ITR 56 (SC) (AY. 1999-2000)

ACIT v. G. E. Lighting (I) P. Ltd (2023)454 ITR 285/ 293 Taxman 435/ 333 CTR 129/ 227 DTR 73 (SC)

CIT v. Southern Petro-Chemical Industries (2023)454 ITR 285/ 293 Taxman 435/ 333 CTR 129/ 227 DTR 73 (SC)

Editorial : Decision of Gujarat High Court and Madras High Court, affirmed. CIT v. G. E. Lighting (I) P. Ltd (Guj)(HC) (ITA No. 325 of 2009 dt.8-3-2010, CIT v. Southern Petro-Chemical Industries (Mad)(HC) (TA No. 442 of 2005 dt.25-4-2012)

S. 32 : Depreciation-Activity of mining, mineral processing for exports, shipping etc. Amounted to production of iron-ore-Entitled for additional depreciation in respect of machinery used in mining.

It was held that since the activity of mining, mineral processing for exports, shipping etc. carried out by the assessee-company would amount to the production of iron-ore, the assessee was entitled to additional depreciation in respect of machinery used in mining. SLP filed by Revenue against the order of the High Court was to be dismissed. (AY. 2009-2010 2010-2011)

PCIT v. Vedanta Ltd. (2023) 291 Taxman 205/(2022) 448 ITR 732 (SC)

Editorial : PCIT v. Sesa Goa Ltd (2023) 146 taxmann.com 35 / 291 Taxman 229 (Bom)(HC)

S. 32 : Depreciation-Telecommunication Infrastructure-Towers Constructed subsequent to commencement of business-Depreciation is allowable on all towers

Held that the Tribunal was justified in allowing the amount of depreciation concerning those towers. (AY.2009-10)

PCIT v. Indus Towers Ltd. (2023)459 ITR 719/(2024) 296 Taxman 387 (Delhi)(HC)

Editorial : Refer, Dy.CIT v. Indus Towers Ltd (2019) 73 ITR 17 (SN) (Delhi)(Trib)

S. 32 : Depreciation-Additional depreciation-Order of Tribunal is affirmed. [S. 32(1)(iia)]

Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in allowing the claim of additional depreciation.(AY.2006-07)
CIT v. Century Enka Ltd. (2023)458 ITR 754 (Cal)(HC)

S. 32 : Depreciation-Intangible asset-Leasehold right-Depreciation is allowable.
Held that depreciation is allowable on the expenditure incurred in acquiring leasehold rights.(AY.2010-11)
Bangalore International Airport Ltd. v. Dy. CIT (2023)457 ITR 229/146 taxmann.com 206 / 335 CTR 586 (Karn)(HC)

S. 32 : Depreciation-User of asset-Pollution control devices-Order of Tribunal is affirmed.
Held that the requiring the assessee to place on record the comparative chart was not imperative for arriving at a decision whether the assessee was entitled to depreciation under section 32. Order of Tribunal is affirmed. (AY.2013-14)
PCIT v. Nestle India Ltd. (No. 1) (2023)457 ITR 210/153 taxmann.com 150 ((Delhi)(HC)

S. 32 : Depreciation-Brand name-Intangible assets-Commercial rights-Depreciation is allowable.[S. 32 (1)(ii)]
Dismissing the appeal of the Revenue the Court held that brand names will fall within scope of intangible assets, which are amenable to depreciation. Followed, CIT v. Smifs Securities Ltd. [2012] 210 Taxman 428/348 ITR 302. CIT v. Glenmark Pharmaceutical Ltd. [2013]213 Taxman 315/351 ITR 359 (Bom) (HC) (AY. 2008-09)

PCIT v. Kuantum Papers Ltd. (2023) 295 Taxman 546 (Delhi)(HC)

S. 32 : Depreciation-Goodwill created as a result of Amalgamation-Intangible asset-Order of Tribunal allowing the depreciation is affirmed. [S. 47, 49(1)(e), 55(2)]
Assessing Officer disallowed the depreciation on goodwill that was created as a result of amalgamation. On appeal the Commissioner (Appeals) held that goodwill had come to be created by virtue of merger in terms of scheme approved by Court and thus, depreciation on goodwill to extent was correctly claimed by assessee. Tribunal affirmed the order of the CIT(A). Revenue contended that provisions of section 49(1)(e) would apply and cost of acquisition of goodwill was to be considered nil as per section 55(2). Dismissing the appeal of the Revenue the Court held section 47 in express terms excludes transfer of capital assets in terms of scheme of amalgamation and scheme of amalgamation is sanctioned is accomplished by operations of law as opposed to an act of parties. On facts the goodwill being an intangible asset on which depreciation is rightly allowed. Followed, CIT v. Smifs Securities Ltd. [2012] 210 Taxman 428/348 ITR 302 (SC)
PCIT v. Eltek SGS (P.) Ltd. (2023) 457 ITR 733 / 295 Taxman 40 (Delhi)(HC)

S. 32 : Depreciation-Revaluation-Taken over assets and liabilities of the firm-Actual cost of assets will be actual cost which assessee paid to predecessor after revaluing assets-Entitled to claim depreciation for subsequent years on basis of actual cost paid. [S. 43(1), R. 5]
Dismissing the appeal of the Revenue the Court held that when the assets and liabilities are taken over from the partnership firm the assessee will be entitled to claim depreciation in respect of any assets on actual cost of said assets.The actual cost of said assets will be actual

cost which assessee paid to predecessor after revaluing assets and the assessee will be entitle to depreciation for subsequent years on basis of actual cost paid. (AY. 2009-10)
PCIT v. Dharmanandan Diamonds (P.) Ltd. (2023) 294 Taxman 29 (Bom.)(HC)

S. 32 : Depreciation-Rate of depreciation-Computer accessories and peripherals-Entitle to depreciation at 60 percent.
Held that UPS supports a computer system and it is amenable to depreciation at higher rate of 60 per cent as applicable to computers. Computer accessories and peripherals Computer accessories and peripherals are used for uninterrupted power supply system integral part of computer system (AY.2009-10)
PCIT v. Nestle India Ltd. (No. 2) (2023)457 ITR 216 /294 Taxman 397 (Delhi)(HC)

S. 32 : Depreciation-Actual cost-Block of assets-Subsidy from State Government-Incentive to establish an industrial unit in the backward area-Employment generation-Capital receipt-No adjustment is warranted to reduce form the the cost of acquisition. [S. 2(11) 4, 43(1)]
The Hon'ble Delhi High Court dismissing the Revenue appeal held that subsidy received was an incentive given by the State Government to establish an industrial unit in backward area for the purpose of generation of employment for local inhabitants hence the said subsidy should be treated as capital receipt. The measure for calculating the subsidy, which was 25% of the fixed capital cost cannot determine the purpose for which the subsidy was given and thus as directed by Ld CIT(A) was adjusted proportionately against the cost of the assets. The Hon'ble Delhi High Court upholding the view taken by the Hon'ble Tribunal held that since subsidy in this case was not intended as a payment to meet, directly or indirectly, a part of cost of assets hence no adjustment is warranted and therefore should not be reduced from the cost of acquisition. (AY.2004-05)
PCIT v. Nestle India Ltd (2023) 457 ITR 216/ 294 Taxman 397 (Delhi) (HC)

S. 32 : Depreciation-Plant-Oil wells constitute plant-Eligible for depreciation.
Assessee company which is engaged in exploration of crude oil from oil fields, claimed depreciation on plant, contending that oil well was part of plant. Assessing Officer held that well drilled for exploration of oil was not a Plant and disallowed claim of depreciation. Tribunal allowed the claim. High Court affirmed the order of the Tribunal and held that oil wells constitute 'Plant' for purpose of section 32 and would be eligible for depreciation. (AY. 2006-07)
CIT (IT&TP) v. Joshi Technologies International Inc. (2023) 459 ITR 142 / 153 taxmann.com 710 (Guj)(HC)
Editorial : SLP of Revenue is dismissed, CIT (IT&TP) v. Joshi Technologies International Inc. (2023) 459 ITR 146 / 294 Taxman 706 (SC)

S. 32 : Depreciation-Earth moving vehicles-Business of hire-Entitle depreciation at 30%. [S. 263]
Assessee claimed that earth moving vehicles fell under Entry 111(3)(ii) of Part A of Appendix I of Income-tax Rules, 1962 and as such entitled to depreciation at 30 per cent as allowable in case of motor lorries, since they were used in absence of running them on hire. Assessing Officer allowed said claim. Commissioner by invoking power under section 263 restricted depreciation at 15 per cent. On appeal, Tribunal held that Assessing Officer had correctly allowed claim of depreciation by applying rate of 30 per cent. On appeal by Revenue High Court affirmed the order of the Tribunal (AY. 2005-06)
CIT v. Bothra Shipping Services (2023) 292 Taxman 447 (Cal.)(HC)

S. 32 : Depreciation-Software-Period of use was less than 180 days-Entitle only 30 percent depreciation.

Assessing Officer disallowed depreciation on ground that supplier of software vide a letter had informed that certain balance payment was not received by it from assessee for non replacement of software version with latest version. Appellate Authorities upheld disallowance. On appeal the Court held that letter written by supplier that payment was withheld for not updating software was not sufficient cause to disallow depreciation because an engineer who purchased a software could continue use existing version till its updation. The assessee was entitle for depreciation. Since period of use of software was less than 180 days, assessee shall be entitled for only 30 per cent depreciation. (AY. 2012-13)

K. Chandrashekar Praskash v. ACIT (2023) 455 ITR 751 / 291 Taxman 217 (Karn)(HC)

S. 32 : Depreciation-Goodwill, Patent, Trade Mark and Intellectual Property Rights-Intangible assets-Entitled to depreciation-Trademark need not be registered in assessee's name. [S. 32(1(ii)]

Dismissing the appeal of the Revenue the Court held that Goodwill, Patent, Trade Mark and Intellectual Property Rights are intangible assets and entitled to depreciation. Trademarks need not be registered in assessee's name. (AY.2001-02, 2002-03)

CIT v. Daikin Shri Ram Aircon Pvt. Ltd. (2023)451 ITR 133 (Delhi)(HC)

CIT v. Daikin Air Conditioning India Pvt. Ltd. (2023)451 ITR 133 (Delhi)(HC)

S. 32 : Depreciation-Actual cost-Capitalisation of forex loss-CIT(A) is directed to decide the issue of capitalisation of forex loss-Reassessment is up held.[S. 43A, 147, 148]

Reassessment is up held. As regards capitalisation of forex loss, the CIT(A) is directed to decide the issue of capitalisation of forex loss.n(AY. 2014-15)

Dy.CIT v. Green Star Fertilizers Ltd (2023) 225 TTJ 748 (Chennai)(Trib)

S. 32 : Depreciation-Windmill-Obtained clearance and generated some income on sale of wind power-Entitle to depreciation.[S. 32(1)(ii)]

Held that the assessee has obtained clearance for commissioning of windmill from the State Government Agency MEDA in the month of March 2006 and also generated some income on sale of wind power. The assessee is entitle to depreciation. (AY. 2006-07)

Tanaaya Gems & Jewellery Exports Ltd. v. Dy.CIT (2023) 225 TTJ 615 (Mum)(Trib)

S. 32 : Depreciation-Vehicle registered as City bus-Commercial Vehicle-Eligible depreciation at higher rate.

Held that the Assessing Officer had found that on detailed verification of the registration certificates, the vehicle had been registered as city bus under the name of assessee's proprietary concern, that the vehicles purchased were used as commercial vehicle, and that therefore, from the details and documents filed, the depreciation claimed at 30 per cent. on buses and motor car for plying in transport business was verifiable, the depreciation claimed by the assessee was justified (AY.2014-15)

ITO v. Umed Meghraj Jain (2023)108 ITR 58 (SN) (Ahd) (Trib)

S. 32 : Depreciation-Rate of depreciation-Computer servers, software and networking equipment-Depreciation is allowable at 60 Per Cent.

Held that computer servers, software and networking equipment are entitle to depreciation is allowable at 60 Per Cent. Followed, PCIT v. Mphasis L td. [2021 128 taxmann.com 138 (Karn)(HC).(AY. 2013-14)

Harman Connected Services Corporation India P. Ltd. v. Asst. CIT (2023)105 ITR 36 (SN)/ 151 taxmann.com 500 (Bang) (Trib)

S. 32 : Depreciation-Addition in plant and machinery-Additional depreciation-Matter remanded back to the Assessing Officer. [S. 32(1)(iia)]
Relevant details pertaining to additions in plant and machinery had not been brought on record by assessee in claims made for additional depreciation and there was no material with respect to use of plant and machinery for year under consideration along with relevant details. Matter remanded back to Assessing Officer to adjudicate issue afresh. (AY. 2012-13)
Alok Ferro Alloys Ltd. v. DCIT (2023) 203 ITD 199 (Raipur) (Trib.)

S. 32 : Depreciation-Edible oil brand from a company on merger-Book value in the transferor company on date of merger was NIL-Subsequent change in its value had to be ignored-Not entitle to depreciation.[S. 2(19AA), 32(1)(ii)]
On mergers, company 'ACL' transferred an edible oil brand to assessee-company for a consideration of certain amount.. As per scheme, said consideration was required to be discharged by assessee in form of issuance of shares.Since assessee acquired edible oil brand for consideration, such cost of acquisition was accordingly recorded as cost of brand in books of account of assessee and depreciation thereon was claimed as per section 32(1)(ii). Assessing Officer held that no edible oil brand was shown in books of account of demerged company and that value of edible oil brands before merger was NIL,therefore, referring to provisions of section 2(19AA) read with Explanations thereon, Assessing Officer held that claim of depreciation by assessee was not as per provisions of law and disallowed.On appeal the Tribunal held that since book value of edible oil brand in books of transferor company on date of merger was NIL, any subsequent change in its value had to be ignored. Order of Assessing Officer is affirmed. (AY. 2007-08)
DCIT v. Amrit Banaspati Company Ltd. (2023) 203 ITD 230 /226 TTJ 137 (Delhi) (Trib.)

S. 32 : Depreciation-Intangible assets-Amalgamation-Matter remanded to the file of CIT(A) for de novo adjudication. [S. 32(1), 250]
Held that since appeal of assessee against disallowance of depreciation on intangible assets in first year itself was currently pending before Commissioner(Appeals), the matter is restored to the file of CIT(A) for de novo adjudication. (AY. 2017-18)
Dow Chemical International (P.) Ltd. v. DCIT (2023) 203 ITD 575 (Mum) (Trib.)

S. 32 : Depreciation-Plant and machinery-Additional depreciation-Put to use less than 180 days-Only 50 per cent of additional depreciation could be claimed in that year and thus, balance 50 per cent of additional depreciation could be availed in subsequent year.[S. 32(1)(iia)]
Assessee is engaged in business of power generation and had commenced commercial operation of its unit. Assessee claimed additional depreciation at rate of 10 per cent, being 50 per cent of 20 per cent on plant and machinery as same were put to use for less than 180 days in financial year 2012-13 and further claimed balance amount of additional depreciation at rate of 10 per cent during immediately preceding relevant assessment year.Assessing Officer disallowed said additional depreciation on ground that plant and machinery were acquired

and put to use in assessment year 2013-14, therefore, additional depreciation is allowable in that assessment year only and assessee could not claim balance amount of additional depreciation in subsequent relevant assessment year as same was in contravention to provisions of section 32(1)(iia). CIT(A) allowed the claim. On appeal the Tribunal held that since plant and machinery eligible for additional depreciation were put to use for less than 180 days in a financial year, only 50 per cent of additional depreciation could be claimed in that year, therefore the assessee is entitled to claim of balance 10 per cent of additional depreciation in relevant assessment year 2014-15. (AY. 2014-15)

DCIT v. GMR Warora Energy Ltd. (2023) 202 ITD 501 (Mum) (Trib.)

S. 32 : Depreciation-Plant and machinery-Solar Power Plant-Captive use of factory-Installed in office premises-Office building is part of factory and electricity so generated was used for factory-Matter remanded to Assessing Officer for verification.

Assessee had installed two Solar Power Plants, one at Bikaner in Rajasthan, from which electricity was generated and sold to 'Rajasthan Electricity Board' and another at factory premises in IMT Manesar, Gurgaon. Solar Power Plant installed at Bikaner, Rajasthan, depreciation had been held to be allowed. However, in respect of other Solar Power Plant, depreciation is declined on basis that same had been installed in office premises. On appeal the Tribunal held that Solar Power Plant in question was of 160 Mega Watt capacity and, it could not be presumed that this was installed for meeting need of office only. Considering fact that Solar Power Plant was of very high capacity and it was stated that office building was part of factory and electricity so generated was used for factory only, authority below ought to have verified fact by making field inquiry. Therefore, matter is restored to file of Assessing Officer for verification; if office was part of factory building and electricity was generated for captive use of factory, depreciation should be allowed as per provision of law. (AY. 2015-16)

Viney Corporation Ltd. v. ACIT (2023) 202 ITD 533 (Delhi) (Trib.)

S. 32 : Depreciation-Rate of depreciation-Plant and machinery-Vacuum Cleaner, Water Dispenser and Epabx Machine-Not furniture and fittings-Eligible to depreciation at rate of 15 Per Cent. [S. 32 (1)(ii)(a), 32A]

Held that the assets being vacuum cleaner, water dispenser, EPABX installation, etc., were clearly not in the nature of “furniture and fittings” qualifying for depreciation at the rate of 10 per cent. Further, the Commissioner (Appeals) had taken note of section 32A relating to investment allowance as well as section 32(1)(ii)(a) relating to additional depreciation on plant and machinery, which ruled out the allowance or additional depreciation on old plant and machinery while allowing an exemption to office appliances, to conclude that office appliances qualified as plant and machinery for depreciation at the rate of 15 per cent. Entitle to depreciation at 15 per cent. (AY.2011-12)

Dy. CIT v. Aatash Narcontrol Ltd. (2023)103 ITR 334 / 149 taxmann.com 157 (Ahd)(Trib)

S. 32 : Depreciation-Robotix kits-Not computer-Entitle to deprecation at 15 percent only-Prior period expenses-Depreciation is not allowable-Travelling expenses-Self made vouchers-Disallowance is restricted to 10%. [S. 37(1)]

Assessee purchased robotix kits for business use which were operated by computers. Assessee claimed depreciation on kits at 60 per cent. Assessing Officer allowed at the rate of 15 % only. Tribunal affirmed the order of the Assessing Officer. Expenditure incurred in one

year could not be claimed in any other year and depreciation was to be claimed in year under consideration only, impugned prior period depreciation could not be allowed. As regards travelling expenses considering Self made vouchers the Tribunal restricted the disallowance restricted to 10%. (AY. 2016-17)
Robotix Learning Solutions (P.) Ltd. v. ITO (2023) 201 ITD 179 (Chennai) (Trib.)

S. 32 : Depreciation-Ownership of asset-Asset purchased by sister concern-Mere agreement for use of asset does not vest assessee with any right, title and interest-Depreciation is not allowable.
Held that the assessee should be the owner of the asset and the asset must be used for the purposes of business or profession. By merely entering into an agreement or understanding of user of the asset, a licence may be created in favour of the user, but that did not vest the user with the interest of any nature akin to owner for the purpose of section 32(1) of the Act. No depreciation beyond the law was allowable on the basis of a mutual understanding between the owner and the user. (AY. 2016-17)
Radisson Hospitality Marketing (India) Pvt. Ltd. v. Asst. CIT (2023)101 ITR 15 (SN.)(Delhi) (Trib)

S. 32 : Depreciation-Motor car-Registered in the name of director-Disallowance of depreciation is not justified. [S. 2(11)]
Held that where a car formed part of fixed assets of assessee-company, depreciation could not be disallowed on said car merely because it was registered in name of director of assessee-company. (AY. 2012-13)
Well Wisher Construction (P.) Ltd. v. DCIT (2023) 198 ITD 268 (Mum) (Trib.)

S. 32 : Depreciation-Oil drilling rigs-Entitled to a higher rate of depreciation. [R. 5]
Tribunal held that the oil rigs which form part of plants of 'specific category' which was used for drilling operations for purpose of exploration and extraction of mineral oil in field of mineral oil concerns, the assessee was entitled to a higher rate of depreciation.(AY. 2013-14)
Addl.CIT v. Quippo Oil & Gas Infrastructure Ltd. (Delhi) 201 ITD 47 (Delhi)(Trib)
S. 32 : Depreciation-Income wrongly shown under the head income from other sources instead of business income-Matter remanded to the Assessing Officer. [S. 10(23C)(iii)(ad), 28(i), 56]
Tribunal held that the assessee's activities fell under "Profits and gains of business or profession" and that the Assessee had wrongly offered the income under the head “Income from Other sources”. That the income of the assessee should be computed under the head profit and gains of business & profession as per under Chapter IV D. Therefore, the assessee should be eligible for depreciation on Fixed Assets as per section 32 of the Act. The Hon’ble Tribunal remitted the issue back to the AO to determine the eligibility of the claimed depreciation. (AY. 2017-18)
Muwahhid Educational Foundation v. CIT(A) (2023) 103 ITR 26 (SN) (Bang) (Trib)

S. 32 : Depreciation-Initial assessment year-If depreciation is allowed in the initial year, the claim cannot be disturbed in the subsequent yearS.
Held that the AO allowed the depreciation for the first year and for the subsequent years, disallowed the depreciation on the ground of non-production of agreement with the bottler. The Hon’ble Tribunal held that it is a settled position in law that if in the initial year of claim the depreciation, is allowed, the claim cannot be disturbed in the subsequent years. On the said ground depreciation claim of the Assessee was allowed.(AY. 2004-05 to 2007-08)

Hindustan Coca-Cola Beverages Pvt. Ltd. *v*. DCIT (2023) 103 ITR 67 (SN) (Delhi) (Trib)

S. 32 : Depreciation on property held for charitable purposes-Depreciation is to be allowed at the rate prescribed for 'plant and machinery'. [S. 11]

Hon'ble appellate tribunal held that the assessee is eligible to claim depreciation at the rate prescribed for "plant and machinery" under the provisions of section 32 of the Act as the assessee is promoting public objects which are activities in the nature of trade, commerce or business but without commercial motive. (AY. 2015-16)

Dy. CIT (E) v. Ahmedabad Urban Development Authority [2023] 105 ITR 24(SN) (Ahd (Trib)

S. 32 : Depreciation-Generation of power-Depreciation on windmill allowable-Own funds-No disallowance can be made.[S. 14A, R.8D].

No new facts therefore depreciation on windmill is allowable.Invested Own funds hence no disallowance can be made. (AY.2011-12)

Dy.CIT v. PTC India Financial Services Ltd. (2023) 103 ITR 15 (SN)(Delhi)(Trib)

S. 32 : Depreciation-Additional depreciation permissible on new plant or machinery or plant acquired or installed: **[S. 32(1)(iia)**]

In accordance with the provisions contained u/s. 32(1)(iia) of the Act, the additional depreciation was permissible in the case of an assessee engaged in the business of manufacturing or producing any article or thing. On the other hand, depreciation at a higher rate is different from the claim of additional depreciation. Since, the Assessing Officer had proceeded on a wrong footing, treating the claim of depreciation at a higher rate as a claim to additional depreciation, the disallowance was not legally sustainable. (AY. 2014-15, 2017-1 8, 2019-20)

ABCI Infrastructure P. Ltd. v ACIT (2023) 154 taxmann.com 397 /104 ITR 95 (Guwahati). **(Trib)**

S. 32A : Investment allowance-Additional cost-Foreign exchange fluctuations-The increase or reduction in the liability has to take place only in the year of fluctuation and it does not relate back to the year of acquisition of the asset-Entitle to additional cost in the year of acquisition [S. 32, 43A]

The question before the High court was "Whether the increase in loan liability of the assessee due to fluctuation in foreign exchange rates in the subsequent years was part of actual cost of the ship by name M/s. M.V. Prabhu Parvati acquired on 1-6-1984 from the foreign country and the assessee was entitled to invest allowance on the additional cost in the year of acquisition?" Allowing the appeal of the assessee the Court held that assessee acquired ship for which it took loan and subsequently actual cost of ship increased due to foreign exchange fluctuation, said increase in loan liability would be part of actual cost of ship and thus assessee was entitled to investment allowance on additional cost in year of acquisition. The increase or reduction in the liability has to take place only in the year of fluctuation and it does not relate back to the year of acquisition of the asset (AY. 1985-86, 1987-88 to 1990-91 & 1992-93)

Tolani Shipping Co. Ltd. v. DCIT (2023) 149 taxmann.com 293 (Bom)(HC)

S. 35 : Expenditure on scientific research-Accommodation entries-Survey-Office bearers of done society admitted that in the course of survey and also before Settlement Commission that they are providing accommodation entries by way of bogus donations

in an organised manner-Not entitle to deduction-Notice issued under section 143(2) is valid-Reassessment is valid. [S. 35(1)(ii), 133A, 143(2), 147, 148]
Held that in the course of survey and also before Settlement Commission the Office bearers of done society admitted that in the course of survey and also before Settlement Commission that they are providing accommodation entries by way of bogus donations in an organised manner. Accordingly the assessee is Not entitle to deduction under section 35(1)(ii) of the Act. Tribunal also held that the notice issued under section 143(2) is valid and also reassessment is valid. (AY. 2011-12 to 2015-16)

Transafe International (P) Ltd v. Dy.CIT(2023) 223 TTJ 257 (Kol)(Trib)

S. 35 : Expenditure on scientific research-Weighted deduction-Certificate produced before CIT(A)-Balance amount allowed as revenue expenditure. [S. 35(2AB)(6)(d), 37(1)]
Department of Scientific and Industrial Research not issuing approval in Form 3CL until date of completion of assessment. Form 3CL issued by Department of Scientific and Industrial Research produced during appellate proceedings. Based on certificate issued Commissioner (Appeals) allowed weighted deduction and allowing balance as revenue. *(*AY.2014-15)
Asst. CIT v. Ecocat India P. Ltd. (2023)108 ITR 30 (SN)(Delhi) (Trib)

S. 35 : Expenditure on scientific research-Submitted tabulation form regarding deduction of expenses-Matter remanded.
Held, that before the Revenue authorities, the assessee had not specifically demonstrated under which head deduction was claimed in the provision. If the assessee was not entitled to deduction, the Revenue shall deny deduction. However, the issue was at the second appellate stage and the assessee had submitted certain tabulation in this regard and the true facts needed to be verified at the level of the Assessing Officer. Therefore, the issue is remanded to the Assessing Officer for adjudication in accordance with law. (AY.2013-14)
Electronica Machine Tools Ltd. v. Dy. CIT (2023)107 ITR 24 (SN) (Pune)(Trib)

S. 35 : Expenditure on scientific research-Prior to amendment in rule 6(7A)(b) with effect from 1-7-2016, once facility is approved by DSIR, assessee is entitled to weighted deduction under section 35(2AB) and there is no requirement that expenses also need to be approved by DSIR in Form No. 3CL. [R.6(7A)(b)]
Assessee is a company engaged in business of manufacturing and trading drugs, pharmaceutical formulations, chemicals and solvents. For relevant assessment year, assessee claimed a weighted deduction under section 35(2AB) which represented 200 per cent of revenue expenditure and 200 per cent of capital expenditure incurred on scientific research. Assessing Officer, restricted weighted deduction under section 35(2AB) to Rs. 1800.89 lakh (as approved by DSIR) and disallowed unapproved expenditure of Rs. 212.85 lakh. Tribunal held that there was an amendment with effect from 1-7-2016 to rule 6(7A)(b), whereby it has been laid down that prescribed authority, i.e., DSIR should quantify expenditure incurred on in-house research and development facility by company during previous year and eligible for weighted deduction under section 35(2AB) in Part-B of Form No. 3CL. Prior to 1-7-2016, there was no legal sanctity for Form No. 3CL in the context of quantifying expenditure eligible for weighted deduction under section 35(2AB). Prior to 1-7-2016, once facility is approved by DSIR, assessee is entitled to weighted deduction under section 35(2AB) and there is no requirement that expenses also need to be approved by DSIR in Form No. 3CL. Amendment was not applicable to assessment year 2014-15 as it came into effect from 1-7-

2016, Assessing Officer erred in restricting weighted deduction under section 35(2AB) to expenditure mentioned in Form No. 3CL. (AY. 2014-15)
Marksans Pharma Ltd. v. DCIT (2023) 203 ITD 269 (Mum)(Trib.)

S. 35 : Expenditure on scientific research-Application for extension of approval is denied-Not eligible for deduction under section 35(2AB) on such R&D expenditure. [S. 35(2AB)]
Held that when the application for seeking extension of approval under section 35(2AB) from prescribed authorities is denied, there is no requisite approval as envisaged under section 35(2AB) obtained by assessee at relevant point of time which is condition precedent to claim weighted deduction under section 35(2AB) on R&D expenditure, assessee is not eligible for deduction under section 35(2AB) on such R&D expenditure.(AY. 2015-16)
Saarloha Advanced Materials (P.) Ltd. v. DCIT (2023) 201 ITD 254/226 TTJ 952 (Pune) (Trib.)

S. 35 : Expenditure on scientific research-Weighted deduction-Disallowance for want of approval of prescribed authority-Form 3CL issued subsequently-Matter restored to Assessing Officer for verification and decision in accordance with Law. [S. 35(2AB).
Held that the prescribed authority had issued form 3CL to the assessee on April 25, 2022. The matter was restored to the Assessing Officer for factual verification afresh in accordance with law. (AY.2017-18)
Emerson Climate Technologies (India) Pvt. Ltd. v. ACIT (2023) 147 taxmann.com 359 / 102 ITR 43 (SN)(Pune) (Trib)

S. 35 : Expenditure on scientific research-Weighted Deduction-Allowable deduction. [S. 35(2AB(1)]
Scientific Research Expenditure partly denied by the AO erroneously applying the proviso to Section 35(2AB)(1) of the Act which was applicable to the assessment years beginning on or after 01-04-2021 and on the ground that the said expenditure had not been approved by the Department of Science and Industrial Research CIT (Appeals) affirm the AO's order. Tribunal held that the AO erroneously applied the proviso to Section 35(2AB)(1) to the relevant assessment year. The assessee is entitled to the claim of deduction of a sum equal to two times the expenditure incurred on scientific research (not being expenditure in the nature of cost of any land or building). (AY. 2017-18)
Hawkins Cookers Ltd. v. ACIT (2023) 102 ITR *395* / 151 taxmann.com 57 (Mum)(Trib)

S. 35 : Expenditure on scientific research-Weighted deduction-Unpaid amounts as expenditure-Disallowance is affirmed.[S. 2(24), 35(2AB), 36(1)(xii)]
Held that the CBDT, being the authority issuing notification, has itself stated that the assessee is recognized u/s 36(1)(xii) of the Act from AY 2013-14 onwards. In the decisions relied on by the assessee, it was the assessing officer, who had disallowed the claim for non-approval of scientific research facility. Hence it was a question of interpretation of the provisions of sec.35(2AB) of the Act. That is the not the case here. When the notifying authority itself has mentioned that the assessee is being notified from AY 2013-14 onwards, the assessee cannot be deemed to have been notified in the year under consideration, being AY 2010-11. Accordingly, we confirm the disallowance made by the AO. (AY. 2010-11)
Dy. CIT v. National Bank for Agriculture & Rural Development. (2023) 221 TTJ 25 / 221 DTR 369 (Mum.) (Trib.)

S. 35 : Expenditure on scientific research-Weighted deduction-Contribution towards research in social science or statistical research & Eligible projects-no opportunity to the assessee to rebut the reports of Investigation Wing on statements recorded of third party or to cross examine such third party-held, violation of principles of natural justice-Deduction allowed. [S. 35(1)(iii), 35AC]

The Tribunal observed that the assessee has furnished all the relevant documents and details in support of its claim of deduction u/s 35(1)(iii) and 35AC of the Act, for contributions made in trusts/institutions, which were not controverted or found to be false by the AO. However, the AO had heavily relied on the report on statements recorded of third persons by the Investigation Wing, a copy of which was not provided to the assessee to rebut. The AO also did not provide an opportunity to the assessee to cross-examine such third parties. There was no independent application of mind by the AO. Therefore, it was held that the AO had violated the principles of natural justice and also did not fulfil its obligations under S. 142(3) of the Act. Reliance placed on *CIT vs Andaman Timber Industries Ltd. [2015] 62 taxmann.com 3 (SC).* (AY 2015-16)

Gajraj Tradecom Pvt. Ltd. v. DCIT (2023) 102 ITR 80(SN) /200 ITD 74 (Kol)(Trib)

S. 35 : Expenditure on scientific research-Shell companies-Reports of Investigation Wing-Exemption cannot be denied on the ground that donations made by assessee were further given to shell companieS. 35(1)(iii), 35AC]

Tribunal held that from perusal of documentary evidence placed on record, it was evident that these trust/societies were eligible entities duly notified by Central Government/CBDT under section 35(1)(iii) and under section 35AC. Once assessee had made payments to these trusts/societies, it was neither authorized nor required to check end use of funds by these organizations that were independent in their own accord. The assessee is entitled to deduction. (AY. 2015-16)

Gajraj Tradecom (P.) Ltd. v. DCIT (2023) 200 ITD 474 /102 ITR 80 (SN) (Kol) (Trib.)

S. 35 : Expenditure on scientific research-Amendment to provisions of rule 6(7A)(b) with effect from 1-7-2016, whereby prescribed authority can quantify expenditure eligible for weighted deduction under sub-section (2AB) of section 35, would apply only from assessment year 2017-18.[S. 35(2AB), 263, R.6(7A)(b)]

Held that the amendment to provisions of rule 6(7A)(b) with effect from 1-7-2016, whereby prescribed authority can quantify expenditure eligible for weighted deduction under sub-section (2AB) of section 35, would apply only from assessment year 2017-18 (AY. 2016-17)

Reliance Industries Ltd. v. ACIT (2023) 198 ITD 158 (Mum) (Trib.)

S. 35 : Expenditure on scientific research-Weighted Deduction-Application for approval of In-House Research and development facility was filed before end of financial year-Held period mentioned in Form 3CM is not relevant-Approval would relate back to beginning of financial year in which the application is filed.[S. 35(2AB)]

During the relevant AY assessee claimed a 200% deduction u/s 35(2AB) of the Act on account of expense incurred on in-house Research & Development facility amounting to Rs. 2,68,23,495/-relating to Revenue expenditure and Rs. 1,87,94,736/-relating to Capital expenditure in relation to in-house scientific research. The AO observed that the Assessee applied for approval of in house R&D facility u/s 35(2AB) only on 29.03.2012 and the facility was approved in the Form 3CM from 16.03.2012 to 31.03.2014 and held that the assessee was entitled for deduction for the relevant FY 2011-12 only from 16.03.2012 till the

end of the year and not for the period before that. The ITAT upheld the order of the CIT(A) who relied on the decisions of Hon'ble Delhi High Court in Maruti Suzuki India Ltd.(supra) and Gujrat High Court in Sandan Vikas (India) Ltd and CIT V. Claris Life Sciences Ltd. (2008) 174 Taxman 113 (Guj) and held in its opinion the period mentioned in the approval is not relevant and would relate back to the beginning of FY in which the application is filed. It was therefore, held that the assessee was entitled for weighted deduction for AY 2012-13 u/s 35(2AB).
Dy. CIT v. Hanon Climate Systems India P. Ltd. (2023) 103 ITR 60 (SN) (Delhi)(Trib)

S. 35 : Scientific research expenditure-Weighted deduction-Recognition of facility different from approval-No Approval-Not entitled to exemption. [S. 35(2AB)]
Held that there was no requisite approval as envisaged under section 35(2AB), which was the condition precedent for availing of the benefit of deduction under section 35(2AB) of the Act.. Recognition of the research and expenditure facility is separate and distinct from approval of research and expenditure facility for the purpose of deduction under section 35(2AB) of the Act. In the absence of requisite approval under section 35(2AB) of the Act, the order of the CIT(A) was perverse and was to be set aside. The order of the Assessing Officer was restored. (AY. 2010-11 to 2015-16)
ACIT v. Ajeet Seeds Ltd. (2023) 199 ITD 600/ 101 ITR 86 (SN.) (Pune) (Trib)

S. 35 : Scientific research expenditure-Weighted deduction-Recognition of facility different from approval-No Approval-Not entitled to exemption. [S. 35(2AB)]
Held that there was no requisite approval as envisaged under section 35(2AB), which was the condition precedent for availing of the benefit of deduction under section 35(2AB) of the Act.. Recognition of the research and expenditure facility is separate and distinct from approval of research and expenditure facility for the purpose of deduction under section 35(2AB) of the Act. In the absence of requisite approval under section 35(2AB) of the Act, the order of the CIT(A) was perverse and was to be set aside. The order of the Assessing Officer was restored. (AY. 2010-11 to 2015-16)
Dy. CIT v. Ajeet Seeds Ltd. (2023) 199 ITD 600/101 ITR 86 (SN) (Pune) (Trib)

S. 35 : Expenditure on scientific research-Approval of expenses-Deduction on expenditure incurred-in-house research and development facility-Allowable as deduction-Prior to amendment to section 35(2AB)by Finance Act,2015, w.e.f 1-4-2016 [S. 35(2AB), Form No 3CL]
Assessee claimed weighted deduction of expenditure incurred on scientific research and claimed its profit and loss accounts. Department restricted assessee's claim of weighted deduction to the extent of expenditure which was approved by the prescribed authority. the Tribunal held that consequent to amendment to section 35(2AB) by the finance Act 2015, requirement of law was that the prescribed authority had to quantify the quantum of eligible expenditure incurred on in-house research and development facility by prescribed authority was the only required to grant approval to the in-house researched development activity. Accordingly the claim of the assessee was allowed on all expenditure incurred by it on in-house research and development facility. (AY. 2014-15, 2015-16)
Pharmanza Herbal P. Ltd. v. DCIT (2023) 203 ITD 159 (Ahd) (Trib)

S. 35D : Amortisation of preliminary expenses-Only small amount as capital expenditure-Balance representing one-Fifth Of preliminary expenses is allowed. [S. 37(1)]

Held that out of the total expenses claimed by the assessee under section 35D only a small sum qualified as capital expenditure incurred on increase of the share capital and Balance representing one-Fifth Of preliminary expenses is allowed. Order of CIT(A) is affirmed.(AY.2011-12)

Dy. CIT v. Aatash Narcontrol Ltd. (2023)103 ITR 334// 149 taxmann.com 157 (Ahd)(Trib)

S. 35D : Amortisation of preliminary expenses-Business expenditure-Payment to registrar of companies towards fees considered as preliminary expenses and 1/5th allowed in initial years-Cannot be disallowed in subsequent yearS. [S. 37(1)]

Held, allowing the appeal, that once the claim had been allowed in the-initial AY., the claim could not be denied in the subsequent-AY.s on identical facts. Since the expenditure incurred by the-assessee towards fees paid to the Registrar of Companies in the AY. 2007-08 had been considered as preliminary expenses and one-fifth of it had been allowed under section 35D of the Act, the balance had to be allowed in the subsequent four assessment years.(AY. 2009-10)

Vatika Hotels P. Ltd. v. Asst. CIT (2023)101 ITR 21 /199 ITD 741 (Delhi) (Trib)

S. 36(1)(ii) : Bonus or commission-Bonus paid to employees-No finding-Certificate from Auditor-Assessing Officer was to be directed to factually verify certificate issued by auditor and allow deduction-Cash credits-Additional evidence-Matter is remanded to the Assessing Officer. [S. 68]

Tribunal held that since there was no finding that employees were either partners or shareholders of assessee, assessee's claim was to be allowed, the Assessing Officer is directed to factually verify certificate issued by auditor and allow deduction. As regards cash credits the assessee has filed additional evidence, hence the matter is remanded to the Assessing Officer. (AY. 2013-14)

Karam Singh Malik. v. ITO (2023) 198 ITD 678 (SMC) (Delhi) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital-Joint venture company-Entitle to deduction.

Held that on the basis of material available on record the Tribunal had arrived at factual findings to the effect that the construction of towers began in April, 2008 whereas the indefeasible right to use agreement was executed on January 1, 2009. Therefore, the Assessing Officer was factually incorrect in observing that the assessee had commenced business through lease of towers under the indefeasible right to use agreement, that the telecommunications site was ready to use even before the suppliers of various material were paid, and no loan needed to be drawn when the site was under construction. Order of the Tribunal is affirmed. (AY.2009-10)

PCIT v. Indus Towers Ltd. (2023)459 ITR 719/(2024) 296 Taxman 387 (Delhi)(HC)

Editorial : Refer, Dy.CIT v. Indus Towers Ltd (2019) 73 ITR 17 (SN) (Delhi)(Trib)

S. 36(1)(iii) : Interest on borrowed capital-Tribunal deciding on the basis of Judgement of High Court-High Court judgement is overruled by Supreme Court-Directed to recompute the disallowance in line with Supreme Court judgement.[S. 260A]

On appeal the Court held that Tribunal decided on the basis of Judgement of High Court.High Court judgement is overruled by Supreme Court.High Court directed the Assessing Officer to recompute the disallowance in line with Supreme Court judgement (AY.2006-07)

Beekons Industries Ltd. v CIT (2023)456 ITR 431 (P&H)(HC)

S. 36(1)(iii) : Interest on borrowed capital-, Entire interest expenses had to be allowed in toto under section 36(1)(iii) as well as under section 37(1) as being for purpose of business-Order of Tribunal allloowing the interest is affirmed.[S. 37(1) 260A]

Assessee company had borrowed interest bearing funds for setting a SEZ Assessee-company had engaged services of a company to do job of intermediary between assessee, land owners and relevant government bodies to negotiate purchase price of land, make payments and complete formalities. Assessee paid Rs. 290 crores to it. As said company could not fulfil requirements, it paid back a sum as compensation over and above payment made by assessee.The Assessing Officer held that difference between income generated and interest paid was not allowable. On appeal the and Commissioner (Appeals) and Tribunal held that since interest were paid on funds which were utilised for business purpose only, entire interest expenses had to be allowed in toto under section 36(1)(iii) as well as under section 37(1) as being for purpose of business. On appeal by the Revenue, the High Court affirmed the order of the Tribunal.(AY. 2009-10)

PCIT v. Urban Infrastructure Holding (P.) Ltd. (2023) 294 Taxman 496 (Bom.)(HC)

S. 36(1)(iii) : Interest on borrowed capital-Interest free advances to partners-Commercial expediency-Assessee was not required to demonstrate commercial expediency in each year-Order of Tribunal is affirmed.[S. 37(1)]

Dismissing the appeal of the Revenue the Court held that interest paid by assessee was allowed as expenditure for assessment years 2005-06 and 2011-12. Since loan availed on account of stated commercial expediency had received approval of revenue when loan was first taken, assessee was not required to demonstrate commercial expediency in each year. Decision of Tribunal is affirmed. (AY. 2015-16)

PCIT v. N.S. Software (2023) 294 Taxman 403 (Delhi)(HC)

S. 36(1)(iii) : Interest on borrowed capital-Sick company-Loan-Advance given for the purpose of business-Disallowance of interest is deleted.

Assessing Officer disallowed interest on borrowed capital under section 36(1)(iii) on ground that assessee did not charge interest on loan given to company Syno Industries Ltd. Tribunal held that assessee till 31-3-2000 was regular in charging interest and had stopped because recovery of further interest became doubtful from 1-4-2000 on account of fact that said company became sick. Therefore, when interest was not received, disallowance is deleted. (AY. 2004-05)

Sunil & Co (2023) 225 TTJ 761 / 157 taxmann.com 490 (Jodhpur)(Trib)

S. 36(1)(iii) : Interest on borrowed capital-Investment in subsidiary-Commercial reasons-Disallowance of proportionate interest not warranted-Failure by authorities to consider suo motu disallowance made by assessee-Matter remanded. [S. 14A]

Held that the assessee had sufficient surplus funds and had raised capital during the year by issuance of shares. Thus, merely because the assessee had also raised loans or paid interest against loans that did not justify the disallowance. The investment in subsidiary and related entities has to be made for commercial purpose to earn future profits. It was not the case of the Department that investments were made in any entity not having any nexus with the principal object of the assessee-company. The disallowance of interest is not justified. Failure by authorities to consider suo motu disallowance made by assessee matter remanded**.** (AY.2013-14)

Living Media India Ltd. v. Asst. CIT (2023)107 ITR 80 (Delhi) (Trib)

S. 36(1)(iii) : Interest on borrowed capital-Advances to sister concerns-Interest-free funds available with assessee Presumption that advances were out of interest-free funds-Commercial expediency-Disallowance is not justified.

Held that the assessee's financial statements showed that the interest-free funds available with the assessee in the shape of share capital and reserves and surplus far exceeded the short-term loans and advances made by the assessee. The assessee used mixed funds. In such a case, a presumption would arise in the assessee's favour that the advances were made out of interest-free funds available with the assessee and the onus would be on the Assessing Officer to justify the disallowance. No such exercise having been carried out by the Assessing Officer, it was to be presumed that the funds were advanced first out of interest-free funds available with the assessee. Relied on CIT (LTU) v. Reliance Industries Ltd (2019) 410 ITR 466 (SC), S. A. Builders ltd. v. CIT (APPEALS)(2007) 288 ITR 1 (SC).(AY.2013-14, 2014-15)

Dy. CIT v.Agni Estates And Foundations P. Ltd. (2023)107 ITR 91 (SN.)(2024) 204 ITD 249 (Chennai)(Trib)

S. 36(1)(iii) : Interest on borrowed capital-Real estate business-Borrowed capital not shown to be utilised for acquiring new unit, land or capital asset-Interest allowable as deduction. [S. 43B]

Held that to disallow the interest paid under proviso to section 36(1)(iii) of the Act, 1961 it was necessary to show that the borrowed capital was utilised for the purposes of acquiring new assets or for the extension of existing business or profession. The Assessing Officer had not made any case here that the borrowed capital was utilised for the purposes of a new unit, land or capital asset and proviso to section 36(1)(iii) was applicable.(AY.2016-17)

Dy. CIT v. BPTP Ltd. (2023)107 ITR 75 (SN)(Delhi)(Trib)

S. 36(1)(iii) : Interest on borrowed capital-Investments in special purpose vehicles-Interest is allowed as deduction-Bad debt-Additional claim first time in the course of assessment-Allowed as deduction.[S. 36(1)(vii), 251]

Held that with respect to the addition of interest, the assessee had entered into an agreement with the other parties only pursuant to the nature of its business and acted only as a financial member of the special purpose vehicle. The shares therein were held to promote the business of financing and not with an intention to make an investment. Considering the nature of business of the assessee and the purpose of forming the special purpose vehicle, there was no infirmity in the order of the Commissioner (Appeals) holding that the investment was made for business purposes. The disallowance of interest could not be made. As regards with respect to the additional claim for bad debts made in assessment proceedings, there was no infirmity in the order of the Commissioner (Appeals) *(*AY. 2013-14)

Srei Infrastructure Finance Ltd. v. Asst. CIT (2023)105 ITR 371 / 154 taxmann.com 650 / 225 TTJ 211 (Kol) (Trib)

S. 36(1)(iii) : Interest on borrowed capital-Interest paid at the rate of 13.50 per cent-Interest received at rate of 11.50 per cent-Disallowance of difference is justified.

Assessee-company received interest on unsecured loan provided to a shareholder of its holding company at rate of 11.50 per cent and paid interest on capital borrowed at rate of 13.50 per cent. Assessing Officer disallowed certain interest under section 36(1)(iii) being difference of interest paid and received by assessee. Tribunal held that since assessee was not able to make out a case of commercial expediency and also genuineness of transaction entered into by it, Assessing Officer was justified in disallowing. (AY. 2014-15)

Mitra Trading & Exports (P.) Ltd. v. ACIT (2023) 203 ITD 395 (Mum) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital-Interest free advances have been given out of own fund-No disallowance can be made.

Since the own fund of the assessee exceeds the amount of loans and advances given to various parties, a presumption can be drawn to hold that the interest free advances have been given by the assessee out of his own interest free fund. Accordingly, the question of making disallowance of interest expense does not arise. Hence, the ground of appeal of the assessee is allowed. (AY. 2008-09)

Aaryavart Impex (P) Ltd. v. ACIT (2023) 221 TTJ 817/ 151 taxmann.com 22 (Ahd)(Trib)

S. 36(1)(iii) : Interest on borrowed capital-Diversion of funds-Proportionate interest paid on said diverted funds was to be disallowed.

Held that the assessee neither brought on record any authorisation from banker entitling such diversion of funds to sister concern nor placed any evidential material to substantiate that such diversion of funds was triggered on account of business exigencies vis-a-vis obligation and commercial expediency, therefore, proportionate interest on said diverted funds is to be disallowed. (AY. 2013-14)

Garve Motors (P.) Ltd. v. ACIT (2023) 199 ITD 136 (Pune) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital-Own funds-Advance of loan-Assessing Officer is directed to work out figure of interest disallowance considering figure of assessee's own fund.

Held that while calculating proportionate disallowance this amount of own funds were not considered by authorities below therefore the Assessing Officer is directed to work out figure of interest disallowance considering the assessess's own funds. (AY. 2010-11)

Samira Constructions (India) Ltd. v. DCIT (2023) 198 ITD 264 (Mum) (Trib.)

S. 36(1)(iii) : Interest on borrowed capital-Business expenditure-Interest payment to legal heirs of dead partner-Deducted tax at source-Cannot be disallowed on the ground of passing of entry-Matter remanded. [S. 37(1), 40 (b) (iv), 194A]

Held that the claim of interest paid to the legal heirs in the nature of loan and the interest, was already subjected to tax deduction at source, it could not be disallowed merely on the ground of passing an entry or on the ground that it was not a loan amount. Accordingly, the order of the Commissioner (Appeals) was modified and the matter was remanded to the record of the Assessing Officer for readjudication of this issue as per law. (AY. 2011-12)

Savla Agencies v.JCIT (2023)101 ITR 57 (SN.) (All) (Trib)

S. 36(1)(iii) : Interest on borrowed capital-Interest free loans-no business transaction with parties-Notional interest computed at 0.88 % on average-Reasonable.

Held, that the assessee could not controvert the finding of the Commissioner (Appeals) and as to how the proportionate disallowance on average outstanding computed by the Commissioner (Appeals) at 0.88 per cent. was unreasonable because there was no business transaction declared by the assessee from these parties. The Commissioner (Appeals) had rightly computed proportionate interest on average outstanding. (AY. 2014-15).

Saranya Agro Foods Pvt. Ltd. v.ITO (2023)101 ITR 60 (SN)(Chennai) (Trib)

S. 36(1)(iii) : Interest on borrowed capital-Business expenditure-Interest payment to legal heirs of dead partner-Deducted tax at source-Cannot be disallowed on the ground of passing of entry-Matter remanded. [S. 37(1), 40 (b) (iv), 194A]

Held that the claim of interest paid to the legal heirs in the nature of loan and the interest, was already subjected to tax deduction at source, it could not be disallowed merely on the ground of passing an entry or on the ground that it was not a loan amount. Accordingly, the order of the Commissioner (Appeals) was modified and the matter was remanded to the record of the Assessing Officer for readjudication of this issue as per law. (AY. 2011-12)
Savla Agencies v.JCIT (2023)101 ITR 57 (SN.) (All) (Trib)

S. 36(1)(iv) : Contribution towards a recognized provident fund-Contribution being neither towards an initial contribution nor towards an ordinary annual contribution, ceiling fixed of 27 per cent under rules 87 and 88 would not apply-Order of Tribunal is affirmed. [R. 87, 88]
Dismissing the appeal of the Revenue the court held that contribution of employer which was in excess of 27 per cent of salaries of employees, by way of lump sum contribution to approved pension fund and claimed deduction of same under section 36(1)(iv), as amount remitted was neither towards an initial contribution nor towards ordinary annual contribution, ceiling fixed under rules 87 and 88 would not apply to such a contribution. (AY. 2004-05)
PCIT v. Exide Industries Ltd. (2023) 333 CTR 5 /226 CTR 332 /146 taxmann.com 21 /226 DTR 332 (Cal)(HC)

S. 36(1)(iv) : Contribution towards a recognized provident fund-
Contribution to medical benefit fund of retired employees-Not disallowable.[S. 36(1)(v),36(1)(va), 40A(9)]

Held that contribution to medical benefit fund of retired employees allowable as deduction Not disallowable.
PCIT v. State Bank of India (2023)459 ITR 497 /153 taxmann.com 389 (Bom)(HC)
Editorial : SLP dismissed,PCIT v. State Bank of India (2023) 294 Taxman 428 (SC)

S. 36(1)(va) : Any sum received from employees-Sunday or gazetted holiday-Payment was made on next working day-Allowed as deduction. [S. 43B, 139(1)]
Assessee made payment towards employee's contribution towards EPF and ESI with a one day delay.Assessing Officer disallowed same on ground that deposit of contribution was made beyond stipulated period prescribed in respective Acts. Tribunal held that due date for depositing contribution of ESIC & EPF fell on Sunday or gazetted holiday and assessee had made payment on very next day. Disallowance is deleted. (AY. 2019-20)
G.D. Foods and Manufacturing (India) (P.) Ltd. v. ADIT (2023) 202 ITD 116 (Delhi) (Trib.)

S. 36(1)(va) : Any sum received from employees-Paid before due date of filing of return-Allowable as deduction-Explanation to section 43B by Finance Act, 2021 was only prospective and not retrospective. [S. 43B, 139(1), 143(1)]
Held that the amendment brought to Explanation to section 43B by Finance Act, 2021 was only prospective and not retrospective and applied to assessment year 2022-23 and to subsequent assessment years thereto.Accordingly the employees' contribution to PF, ESIC and Labour Welfare Fund paid after specified due date under relevant Acts, nevertheless paid before due date for filing of return of income for assessment year 2018-19 is allowable as deduction. (AY. 2018-19)
Geekay Facility Management (P.) Ltd. v. DCIT (2023) 198 ITD 13 (Mum) (Trib.)
Jabalpur Motors Ltd. v. ADCIT (2023) 198 ITD 528 (Jabalpur) (Trib.)

P.R. Packaging Service v. ACIT (2023) 199 ITD 724 / 221 TTJ 137 / 221 DTR 1 (SMC) (Mum) (Trib)

S. 36(1)(va) : Any sum received from employees-Employee's contribution-Belated payment-Not entitle to deduction. [S. 143(1)(a), 254(2)]
Assessee will not be entitled to deduction of belated payment of ESI and PF of employees' share of contribution as per provisions of section 36(1)(va). Followed Checkmate Services (P.) Ltd. v. CIT (2022) 143 taxxmann.com 178 (SC).(AY. 2019-20)
Nalina Dyave Gowda. (MS.) v. ADIT *(*2023) 199 ITD 28 (SMC) (Bang) (Trib.)
Premier Irrigation Adritec (P.) Ltd. v. ACIT (2023) 199 ITD 342 / 222 TTJ 732 (Kol) (Trib.)
Savleen Kaur. v. ITO (2023) 199 ITD 437 / 221 TTJ 409 (Delhi) (Trib.)
Kwality Motel Shiraz 1. v. ADIT (2023) 200 ITD 402 (Indore) (Trib.)
Ocean Exim India (P.) Ltd. v. ITO (2023) 200 ITD 366 (Jaipur) (Trib)
Prashanti Engineering Works (P.) Ltd. *v. ADIT (*2023) 200 ITD 408 (Indore) (Trib.)
Savleen Kaur v. ITO (2023) 199 ITD 437 / 221 TTJ 409(Delhi)(Trib)
Emerson Climate Technologies (India) Pvt. Ltd. v. ACIT (2023) 147 taxmann.com 359/ 102 ITR 43 (SN)(Pune) (Trib)
General Power System. v. ITO (2023) 203 ITD 702 (Pune) (Trib.)
Dy. CIT v. N. R. Wires P. Ltd. (2023)105 ITR 292 (Raipur) (Trib)
Asst. CIT v Montecarlo Construction Ltd. (2023)107 ITR 411 (Ahd) (Trib)
Adani Infrastructure and Developers (P) Ltd. v. Dy CIT (Ahd.) 201 ITD 805(Trib)
Jai Ambe Agricultural Industries v. Dy. CIT (2023) 201 ITD 600 (Varanasi)(Trib)
Microviews Infosystems (P.) Ltd. v. Dy.CIT (2023) 201 ITD 626 (Kol (Trib.)
Ocean Exim India (P) Ltd. v. ITO [2023] 200 ITD 366 (Jaipur) (Trib.)
Precot Ltd. v. ACIT [2023] 201 ITD 350 (Chennai)Trib)
Creative Textile Mills (P.) Ltd. v. Dy. CIT [2023] 201 ITD 871 (Mum)(Trib.)
Dy. CIT v. Hanon Climate Systems India P. Ltd. (2023) 103 ITR 60 (SN) (Delhi)(Trib)
Swatantra Microfin P. Ltd. v Centralised Processing Center (2023)105 ITR 181 (Mum)(Trib)
Chase Security. v. ITO (2023) 198 ITD 351 (Bang) (Trib.)
Siddhi Vinayaka Graphics (P.) Ltd. *v.* ADIT / ACIT (2023) 201 ITD 204 /224 TTJ 913 (SMC) (Kol) (Trib.)
Corrtech International (P.) Ltd. *v.* ACIT (2023) 201 ITD 732 (Ahd) (Trib.)

S. 36(1)(va) : Any sum received from employees-Any failure to pay employee's contribution to PF/ESI, within prescribed due date under respective Act or scheme will result in negating employer's claim for deduction permanently forever under section 36(1)(va).[S. 43B (b)]
Held that in case of employee's contribution to PF/ESI, any failure to pay within prescribed due date under respective PF Act or scheme will result in negating employer's claim for deduction permanently forever under section 36(1)(va) of the Act. (AY. 2018-19)
Suresh ElectricalS. v. DCIT (2023) 198 ITD 487 (Bang) (Trib.)

S. 36(1)(va) : Any sum received from employees-Delayed payments of Employee's contribution to PF/ESI-Payment after due date was not allowable-Appellate Tribunal-Rectification of mistake apparent from the record-Miscellaneous application of Revenue is allowed. [S. 43B, 254(2)]
The Revenue filed a miscellaneous application before the tribunal seeking recall of its order dated 03.08.2022 for a fresh hearing and submitted that the Supreme Court in the case of

Checkmate Servies Pvt. Ltd. v. CIT [2022] 143 taxmann.com 178/[2023] 290 taxman (2022) 448 ITR 518(SC) upheld the disallowance made under section 36(1)(va) due to delayed payments towards employee's contribution to PF/ESIC. The ITAT has allowed the miscellaneous application of the Revenue and held that the payment towards employee's contribution to PF/ESIC after due date prescribed under the relevant statue is not allowable as a deduction u/s 36(1)(va) of the Act. (AY. 2019-20)

DCIT v. Inventys Research Co. (P.) Ltd. (2023) 203 ITD 24 (Mum) (Trib)

S. 36(1)(vii) : Bad debt-Money lending business-Debts taken over from sister concern-Allowed as deduction-SLP of Revenue dismissed.[S. 36(2), Art. 136]

Dismissing the appeal of the Revenue the Court held that the Tribunal was right in allowing the bad debts taken over from a sister concern, following its decision in the case of the assessee for earlier years, in which the High Court had found that the Tribunal taken note of the fact that the memorandum and articles of association permitted the assessee to carry on the business of money lending and the transactions in question were in the realm of business activity. SLP of revenue is dismissed.(AY. 2004-05)

CIT v. Elgi Equipments Ltd. (2023)454 ITR 14/ 293 Taxman 504 (SC)

Editorial : CIT v. Elgi Equipments Ltd. (2023)454 ITR 11 / 151 taxmann.com 427 (Mad)(HC), affirmed.

S. 36(1)(vii) : Bad debt-Amounts written off-Agreements with sister concern for take over and assignment of certain book debts-Order of tribunal allowing the bad debt is affirmed.[S. 36(2), 260A]

Dismissing the appeal of the Tribunal the Court held that the Tribunal was right in allowing the bad debts. The issue had already been considered and decided in favour of the assessee in judgment dated December 6, 2021 wherein it was held that section 36(1)(vii) provides for allowance of bad debt or part thereof, which is written off as irrecoverable in the accounts of the assessee for the previous year and that the Tribunal had found that the memorandum and articles of association permitted the assessee to carry on the business of money lending and the transactions in question were within the realm of assessee's business activity.(AY. 2004-05)

CIT v.Elgi Equipments Ltd. (2023)454 ITR 11 (Mad)(HC)

Editorial : SLP of revenue dismissed, CIT v.Elgi Equipments Ltd.
(2023)454 ITR 14 (SC)

S. 36(1)(vii) : Bad debt-Trading loss-Stock in trade-No evidence to demonstrate nature of business advances-Question of fact-Disallowance of claim was affirmed. [S. 28(i), 36(2), 260A]

Dismissing the appeal the court held that the submission of the aassessee was vague and general in nature in respect of five entries, in respect of the remaining entries there was lack of clarity as to the nature of the transaction. Oder of lower Authorities was affirmed. (AY. 2001-02)

Katti Ma v. Dy. CIT (2023)453 ITR 258 / 293 Taxman 77 (Mad)(HC)

S. 36(1)(vii) : Bad debt-Advance to purchase of property-Mere write-off of advances for purchase of property is not allowable as bad debt. [S. 36(2)]

Held that the assessee is not having any business income and in last balance-sheet not having any debtors. Advances given to land owners with whom transaction did not materialise is written off as bad debt. Tribunal held that mere write-off of advances for purchase of property would not fall under bad debts. Not allowable as deduction. (AY.2014-15)

Alpha Reality v. Asst. CIT (2023)108 ITR 7 (SN)(Chennai) (Trib)

S. 36(1)(vii) : Bad debts-Failer to substantiate-Not allowable as deduction. [S. 36(2)]
Tribunal held that the amount written off against the salary advance was also not substantiated and the assessee could not even submit the basic details to support whether the person was actually in employment with the assessee. As the assessee has not substantiated the claim with proper documentary evidence to prove that it was incurred in the regular course of business and that the amount could not be recovered. (AY. 2011-12)
Dinesh Devraj Ranka v. Addl. CIT [2023] 200 ITD 731 (Bang)(Trib.)

S. 36(1)(vii) : Bad debt-Bad debt or part thereof-Sum received-Declared as income in subsequent year-Disallowance is not justified.[S. 36(2)]
Held that the profit and loss account for the year ended March 31, 2014 showed that the bad debt which was received by the assessee and was declared as income in the subsequent AY. Thus, once the assessee had offered the income to tax in the subsequent AY, there was no basis for the disallowance. Matter remanded to the file of CIT(A). (AY. 2013–14)
Vijay Liladhar Mohmaya v ITO (2023)101 ITR 33 (SN) (Mum) (Trib)

S. 36(1)(viia) : Bad debt-Provision for bad and doubtful debts-Schedule bank-Advances written off-Allowable as deduction-Limited purpose the matter is remanded to the Assessing Officer-[36(1)(v), S. 36(1)(vii), 36(2)]
Held that the quantum of deduction arrived at by the Assessing Officer was not based on the documents produced by the assessee. The Commissioner (Appeals) as well as the Tribunal did not look into those aspect, while allowing the deduction claimed by the assessee. limited purpose, the matter had to be re-examined by the Assessing Officer.(AY.2003-04)
CIT v. City Union Bank Ltd. (2023) 456 ITR 513 (Mad)(HC)

S. 36(1)(viia) : Bad debt-Provision for bad and doubtful debts-Schedule bank-Deduction to be computed at rate of 7.5 per cent of total income-After setting off of brought forward losseS. [S. 36(vii)), 72]
Allowing the review petition filed by the Revenue, the High Court held that it is a settled law that deduction towards bad and doubtful debts at 7.5% shall be made after setting off the brought forward loss, to arrive at the total income. Hence, the judgment passed by this Court is modified and the substantial question framed is answered in favour of Revenue.
DCIT v. Syndicate Bank (2022) 291 Taxman 166 (Karn) (HC)

S. 36(1)(viia) : Bad debt-Provision for bad and doubtful debts-Schedule bank-Disallowance could not be made merely on ground that certain provision made by assessee were not in nature of bad and doubtful debtS.
Assessee-co-operative bank claimed deduction under section 36(1)(viia) for provision of bad and doubtful debts Commissioner (Appeals) directed Assessing Officer to allow deduction only to extent of 7.5 per cent. On appeal the Tribunal held that in assessee's own case it was held that deduction claimed by assessee was less than 10 per cent of aggregate average advances by rural branches of assessee bank and 7½ per cent of total income of assessee-bank, since both conditions of section 36(1)(viia) were fulfilled, disallowance could not be made by Assessing Officer merely on ground that certain provision made by assessee were not in nature of provisions for bad and doubtful debts. Claim is allowed. (AY. 2011-12)
Surat District Co.op. Bank Ltd. v. ACIT (2023) 202 ITD 624 (Surat) (Trib.)
S. 36(1)(xii) : Corporation or body corporate-Central or State or Provisional Act-Business expenditure-Absence of notification in the relevant year-Not allowable as deduction. [S. 37(1)]

For availing deduction under Section 36(1)(xii), the assessee itself should be notified by the Central Government. Central Government has notified the assessee from assessment year 2013-14 onwards, meaning thereby the assessee was not notified for assessment year 2010-11. Moreover, was not the owner of funds transferred to WDF. If the amount has been spent out of the funds so transferred to WDF as per the directions issued by the Government / RBI, the assessee cannot claim such expenditure incurred out of WDF, as deduction. Held disallowance was sustainable.(AY.2010-11)

Dy. CIT v. National Bank for Agriculture & Rural Development [2023] 221 TTJ 25 /221 DTR 369 (Mum)(Trib)

S. 37(1) : Business expenditure-Accrued or contingent liability-Award of damages with interest-Arbitration made Rule of Court by Single Judge-Pendency of award before Division Bench-Grant of stay by Division Bench does not relieve assessee of liability to pay interest-Entitled to deduction of interest-SLP of Revenue is dismissed. [S. 145, Art. 136]

The Assessing Officer disallowed the claim holding that the liability of the assessee was contingent and that it had not been entered in its books of account and the Commissioner (Appeals) affirmed this. The Special Bench of the Appellate Tribunal held (National Agricultural Co-Operative Marketing Federation of India Ltd. v. JCIT (2015)) 44 ITR 275 (SB) (Delhi) (Trib) that there was no legally enforceable liability to interest that existed against the assessee, that where the claim to damages and interest thereon was disputed by the assessee in a court, deduction could not be allowed for the interest on such damages and that as a result of the stay order granted by the court, the liability of the assessee to pay interest remained suspended from the date of stay. On appeal, the High Court held (National Agricultural Co-Operative Marketing Federation of India Ltd. v. CIT(2017) 393 ITR 666 (Delhi)(HC) held that with the award being made rule of the court by a single judge, the mere fact that the judgment and decree was stayed by a Division Bench would not relieve the assessee of its obligation to pay the interest in terms thereof to A, that the liability had commenced in the previous year in which the judgment and decree was passed by the single judge. SLP of Revenue is dismissed. (AY.2000-01, 2001-02)

CIT. v. National Agricultural Co-Operative Marketing Federation of India Ltd. (2023)459 ITR 593/ 154 taxmann.com 658 (SC)

Editorial: Refer National Agricultural Co-Operative Marketing Federation of India Ltd v.CIT (2017) 393 ITR 666(Delhi)(HC), National Agricultural Co-Operative Marketing Federation of India Ltd v. JCIT (2015) 44 ITR 275 (SB) (Delhi) (Trib)

S. 37(1) : Business expenditure-Professional fees-Statement of the recipient during search-Affidavit filed-Subsequent statement-Failure to provide opportunity of cross examination-Allowable as deduction. [S. 132(4)]

Held, dismissing the appeal of the Revenue that the Assessing Officer had solely relied upon the statements made by S.K.Gupta during the course of the search but had overlooked the fact that within a short span of time, S.K.Gupta had retracted the statements by filing an affidavit and reiterated the statements categorically stating that he had rendered services to the assessee. He had categorically stated that he had rendered service to the assessee and that the assessee had not obtained any bogus accommodation bills from him. The Assessing Officer disbelieved the affidavit as well as the subsequent statement of S.K.Gupta without any justifiable and cogent reason. That apart when the Department relied upon the retracted statement of S.K.Gupta it ought to have provided an opportunity to the assessee to cross-examine him which was however denied. Thus, the Department was not justified in disallowing the professional expenses of the assessee on account of payment to G and his

group of companies. The entire issue was based on appreciation of the materials on record. The Tribunal had scrutinised the materials on record and recorded a finding of fact that there was sufficient evidence to justify payment made by the assessee to S.K Gupta a consultant of the assessee. In these circumstances, there was no admissible material to deny the claim of expenditure made by the assessee. *(*AY.2001-02, 2006-07)

CIT v. Jindal Steel and Power Ltd (2023) 335 CTR 1017/. (2024)460 ITR 162/ 297 Taxman 253 (SC)

CIT v. Reliance Industries Ltd 9 2023) 335 CTR 1017/. (2024)460 ITR 162/ 297 Taxman 253 (SC)

Editorial : Decision of the Bombay High Court in CIT LTU v. Reliance Industries Ltd (2020) 421 ITR 686 (Bom)(HC) affirmed.

S. 37(1) : Business expenditure-Capital or revenue-Licence-Capital asset-Amortisation of expenditure-Licence to operate telecommunication services-One-time entry fee and licence fee based on percentage of annual gross revenue earned-Both payments capital in nature and to be amortised-Intangible asset capital in nature.[S. 35ABB, The Telegraph Act, 1885, S, 4(1), 8, 20, 20A and 21]

The question before the Apex Court was whether, the variable licence fee paid by the respondent assesses to the Department of Telecommunicators (DOT) for under the New Telecom Policy of 1999 (Policy of 1999) is revenue expenditure and is to be allowed deduction under section 37 of the Act, or whether the same is capital in nature under section 35ABB of the Act.

Allowing the appeals of the Revenue the Court held that since the annual payment of variable licence fee was only towards licence fees, merely because it was paid in annual instalments based on the annual gross revenue, the payment could not be construed as revenue. The annual payments of licence fee as also the entry fee related to a singular purpose, i. e., the acquisition of the right to carry on the business of rendering telecommunications services. This right being in the nature of a capital asset, any payment made towards the acquisition of the right, whether in a lump sum or in annual instalments dependent on the annual gross revenue, would be in the nature of capital disbursement. Since the entry fee as well as variable licence fees were traceable to the same source, they would both have to be held to be capital in nature, notwithstanding the fact that the variable licence fee was paid in a staggered manner. Admittedly, any failure to pay the annual variable licence fee would inevitably lead to revocation of the licence under section 8 of the 1885 Act and the assessees would be disabled from carrying on the business of offering telecommunications services, even for a day in the absence of a valid licence. Continuation of the right to carry on the business was contingent on the payment of both, entry fee, as well as the variable licence fee. The payment of entry fee as well as the variable annual licence fee paid by the assessees to the Department of Telecommunications under the 1999 Policy were capital in nature and may be amortised in accordance with section 35ABB of the Act.

That the High Court was wrong in apportioning the licence fee as partly revenue and partly capital by dividing the licence fee into two periods, i. e., before and after July 31, 1999 and accordingly holding that the licence fee paid or payable for the period up to July 31, 1999, i. e., the date set out in the 1999 Policy should be treated as capital and the balance amount payable on or after the said date should be treated as revenue. The licence issued under section 4 of the 1885 Act was a single licence to establish, maintain and operate telecommunication services. Since it was not a licence for divisible rights that conceived of divisible payments, apportionment of payment of the licence fee as partly capital and partly revenue expenditure was without any legal basis. The right of establishing the network and running the telecommunications business was not preserved under the scheme of the 1885

Act. Though the licence fee was payable in a staggered or deferred manner, the nature of the payment, which flowed plainly from the licensing conditions, could not be recharacterised. The successive instalments related to the same obligation, i. e., payment of licence fee as consideration for the right to establish, maintain and operate telecommunications services as a composite whole. Thus, the composite right conveyed to the assessees by way of grant of licences, was the right to establish, maintain and operate telecommunications services. The composite right could not be bifurcated in an artificial manner, into the right to establish telecommunications services on the one hand and the right to maintain and operate telecommunications services on the other. Such bifurcation was contrary to the terms of the licensing agreements and the 1999 Policy. Further, even under the 1994 Policy regime the payment of licence fee consisted of two parts : a fixed payment in the first three years of the licence regime and a variable payment from the fourth year of the licence regime onwards, based on the number of subscribers. Having accepted that both components, fixed and variable, of the licence fee under the 1994 Policy regime must be duly amortised, there was no basis to reclassify it under the 1999 Policy regime as revenue expenditure in so far as variable licence fee was concerned. The migration to the 1999 Policy was on the condition that the entire policy must be accepted as a package and consequently, all legal proceedings and disputes relating to the period up to July 31, 1999 were to be closed. If the migration to the 1999 Policy was accepted by the assessees or the other service providers, then all licence fee paid up to July 31, 1999 declared as a one time licence fee as stated in the communication dated July 22, 1999 which was treated to be a capital expenditure. The licence granted under the 1999 Policy was non-transferable and non-assignable. The payment post July 31, 1999 was a continuation of the payment pre-July 31, 1999 albeit in an altered format which did not take away the essence of the payment. It was a mandatory payment traceable to the foundational document, i. e., the licence agreement as modified post migration to the 1999 Policy. Court held that the Licences are identified as intangible assets and are therefore, capital in nature. All important case laws on the subject of capital or revenue are discussed, such as, Cameron v. Prendergast (Inspector of Taxes)(1940) 8 ITR (EC) 75 (HL) Inland Revenue Commissioners v. D. H. Williams Executors (1943) 11 ITR (EC) 84 (CA) Assam Bengal Cement Co. Ltd. v. CIT (1955) 27 ITR 34 (SC), Pingle Industries Ltd. v. CIT (1960) 40 ITR 67 (SC) Gotan Lime Syndicate v. CIT (1966) 59 ITR 718 (SC) India Cements Ltd. v. CIT (1966)) 60 ITR 52 (SC) CIT v. Ciba of India Ltd (1968) 69 ITR 692 (SC) Travancore Sugars and Chemicals Ltd. v. CIT (1966) 62 ITR 566 (SC) Devidas Vithaldas and Co. v. CIT (1972) 84 ITR 277 (SC) Mewar Sugar Mills Ltd. v. CIT (1973) 87 ITR 400 (SC), Empire Jute Co. Ltd. v. CIT (1980) 124 ITR 1 (SC), L. H. Sugar Factory and Oil Mills (P.) Ltd. v. CIT (1980) 125 ITR 293 (SC)) CIT v. Jalan Trading Co. P. Ltd.(1985) 155 ITR 536 (SC) Alembic Chemical Works Co. Ltd. v. CIT (1989) 177 ITR 377 (SC) (AY.2003-04)

CIT v. Bharti Hexacom Ltd. (2023)458 ITR 593 /150 taxmann.com 436 / 335 CTR 1(SC)

Editorial : Decisions of the High Courts in CIT v. Bharti Hexacom Ltd (2019) 417 ITR 250 (Delhi)(HC), PCIT v. Bharati Telemedia Ltd (2019) 417 ITR 248 (Delhi)(HC) PCIT v. Vodafone Mobile Services Ltd (2019) 414 ITR 276 (Delhi)(HC), ITA No. 741 of 2017 dt 13-1-2020 (Bom) (HC) and ITA No. 443 of 2015 dt. 19-7-2018 (Karn) (HC)) reversed.

S. 37(1) : Business expenditure-Amount paid to retiring partner as per the provision in partnership deed-Diversion of income at source by overriding title-Allowable as deduction-Availed 2020-SLP of Revenue is dismissed as infructuous. [S. 4, Art. 136]

Assessee-firm paid certain amount to a retired partner on basis of provisions made in partnership deed. Tribunal allowed said claim. On appeal, High Court upheld order of Tribunal and held that payments to retiring partner amounted to a diversion of income at

source by overriding title, and therefore, same should be treated as deductible expenditures for income tax purposes. Against said order revenue filed Special leave petition.Assessee submitted that it had availed of benefit under Direct Tax Vivad Se Vishwas Act, 2020 as well as Rules made thereunder and consequently, issues which arose in this special leave petition had now been rendered infructuous.

PCIT v. Wadia Ghandy & Co. (2023) 295 Taxman 229 (SC)

Editorial : PCIT v. Wadia Ghandy & Co(2023) 155 taxmann.com 228 (Bom)(HC)

S. 37(1) : Business expenditure-Sales commission-Order of High Court is affirmed-SLP of Revenue is dismissed.

High Court affirmed the order of the Tribunal affirming the allowing the claim of the commission. SLP of Revenue is dismissed. (AY. 1997-98, 1998-99)

PCIT v. Olam Exports India Ltd. (2023) 295 Taxman 312 (SC)

Editorial : CIT v. Olam Exports India Ltd (2017) 398 ITR 397/ 85 taxmann.com 33 (Ker)(HC)

S. 37(1) : Business expenditure-Method of accounting-Award-Interest payable-Award stayed-Not contingent-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 145]

High Court held that since award had been made rule of Court by a Single Judge of High Court, mere fact that said judgement and decree was stayed by a Division Bench would not relieve assessee of its obligation to pay interest in terms thereof. Such liability commenced in previous year in which said judgment and decree was passed by Single Judge and, consequently, assessee incurred liability to pay interest and was entitled to deduction under section SLP is dismissed. (AY. 2001-02, 2002-03)

CIT v. National Agricultural Cooperative Marketing Federation of India Ltd. (2023) 459 ITR 593 /295 Taxman 122 (SC)

Editorial : National Agricultural Cooperative Marketing Federation of India Ltd v.CIT (2017) 393 ITR 666/ 247 Taxman 338 (Delhi)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Expenditure on replacement of remembraning in membrane cell plant-No material to show membrane itself could be treated as separate and independent machine-Revenue expenditure.

High Court held that the expenditure incurred by the assessee on replacement of remembraning in the membrane cell plant was a revenue expenditure. SLP of Revenue is dismissed (AY. 1999-2000, 2000-01)

CIT v. Gujarat Alkalies and Chemicals Ltd. (2023)454 ITR 808 (SC)

Editorial : CIT v. Gujarat Alkalies and Chemicals Ltd (2015) 372 ITR 237 (Guj)(HC), affirmed. CIT v. Indian Petrochemicals Corporation Ltd (2017) 10 ITR-OL 275 (Guj)(HC), affirmed.

S. 37(1) : Business expenditure-Final difference in rate paid at end of accounting year-Allowable as deduction.[S. 145]

Dismissing the appeal of the Revenue the Court held that final difference in rate although paid at the end of the previous year the amount was paid only to the milk suppliers, for the quantity of milk supplied and in terms of the quality supplied. The amount was not paid to all the shareholders and was not paid out of the profits ascertained at the annual general meeting.

The amount paid to the milk suppliers and to non-members could not be said to be an appropriation of the profits. Order of High Court, affirmed.

CIT (Central) v. Kolhapur Zilla Sahkari Dudh Utpadak Sangh Ltd. (2023)454 ITR 434/ 293 Taxman 603 /334 CTR 218 (SC)

Editorial : Affirmed, CIT (Central) v. Kolhapur Zilla Sahkari Dudh Utpadak Sangh Ltd (2009) 315 ITR 304 (Bom)(HC)

S. 37(1) : Business expenditure-Lease of assets-Lease rent assessed as business income in the assessment of lessor-lease rent should be allowed as deduction-Revenue cannot contend that the assessee is the owner.[S. 32, Art. 132]

Dismissing the SLP the Court held that once Gujarat Narmada Valley Fertilizers was held to be the owner and entitled to depreciation, the Department thereafter could not be permitted to contend with respect to the same transaction, that the assessee was the owner and entitled to depreciation. Order of High Court allowing the lease rent as deduction is affirmed.

CIT v. Narmada Chematur Petrochemicals Ltd. (2023)454 ITR 584 / 292 Taxman 2 (SC)

Editorial : CIT v. Narmada Chematur Petrochemicals Ltd (Guj)(HC)(ITA No. 1037 of 2013 dt. 28-1-2014)

S. 37(1) : Business expenditure-Business loss-Unexplained investments-Search-Unaccounted silver-Penalty or confiscation-Loss on account of confiscation-Not allowable as business losS. [S. 28(i),37(1), Expln, 69A, 115BBE]

Allowing the appeal of the Revenue the Court held that the assessee did not claim the value of the confiscated silver bars as business expenses but as business loss. The ownership of the confiscated silver bars of the assessee was not disputed, and there were concurrent findings by all the authorities below and including the Customs authorities to this effect. The main business of the assessee was dealing in silver. His business could not be said to be smuggling of the silver bars. He was carrying on an otherwise legitimate silver business and in attempt to make larger profits, he indulged in smuggling of silver, which was an infraction of the law. Looking to the business of the assessee, namely, silver business and the fact that he was not in the business of smuggling silver, allowing the value of the confiscated silver as business loss was unsustainable. Explanation 1 to section 37 seeks to prohibit deduction of any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law. Due regard will have to be given to the words “any expenditure” and “any purpose”. The reiteration being a legislative clarification of the main provision is required to be taken note of, and the power of judicial review over an Explanation, which has been introduced to explain and remove the doubts of the main provision, is rather limited. Though the provision speaks of expenditure while not making a specific reference to loss, one has to press into service the accepted commercial practice and trading principles. If one is to treat the expenditure as a genus, a loss would become a specie. All losses would become expenditures but not vice versa. The word “any expenditure” mentioned in section 37 of the Act takes in its sweep loss occasioned in the course of business, being incidental to it. If a loss in pursuance of an offence or prohibited business cannot be brought under section 115BBE of the Act for income assessed under sections 68, 69 and 69A to 69D of the Act, which deals with unexplained income, expenditure, etc., it can never be said that it could be brought under section 37(1) of the Act, despite the fact that the objectives behind both the provisions overlap with some connection. Section 115BBE being a subsequent legislation, the true meaning of section 37(1) can be understood on that basis. As a consequence, any loss incurred by way of an expenditure by an assessee for any purpose which is an offence or which is prohibited by law is not deductible in terms of Explanation 1 to section 37 of the

Act. There cannot be a situation where an assessee carrying on an illegal business can claim deduction of expenses or losses incurred in the course of that business, while another assessee carrying on a legitimate one cannot seek deduction of loss incurred on account of either a confiscation or penalty. Such an expenditure or loss incurred for any purpose which is an offence shall not be deemed to have been incurred for the purpose of business or profession or incidental to it, and hence, no deduction can be made. A penalty or a confiscation is a proceeding in rem, and therefore, a loss in pursuance thereof is not available for deduction regardless of the nature of business, as a penalty or confiscation cannot be said to be incidental to any business. An assessee cannot claim deduction of loss in a case of confiscation or penalty, as arising out of carrying on of the business or incidental to it. Ratio in Haji Aziz and Abdul Shakoor Bros. v. CIT (1961) 41 ITR 350(SC), J. S. PaLrkar v. V. B. Palekar (1974) 94 ITR 616 (Bom)(HC) and Soni Hinduji Kushalji and Co. v. CIT (1973) 89 ITR 112 (AP)(HC) approved. CIT v. Piara Singh (1980) 124 ITR 40 (SC) explained and distinguished.(AY. 1989-90)

CIT v. Prakash Chand Lunia (Decd. Through Lrs) and Another (2023)454 ITR 61/ 293 Taxman 229 / 332 CTR 261/ 225 DTR 57 (SC)
Editorial : Order of Jaipur Bench of Rajasthan High court, reversed, IT v. Prakash Chand Lunia (Decd. Through Lrs) And Another (Raj(HC) (ITA No. 96 of 2003 & ITR NO. 6 OF 1996 DT. 22-11-2016)

S. 37(1) : Business expenditure-Capital or revenue-Security deposit for lease premises-Foregone in dispute with lessor-Capital expenditure-SLP dismissed. [Art. 136].
Assessee entered into a lease agreement for a property. As per agreement assessee paid security deposit and same was reflected in balance sheet in capital under assets as receivables. However, on account of unforeseen circumstances assessee sought to vacate premises which resulted in dispute between lessor and assessee. Assessee agreed not to claim security deposit to end dispute and claimed same as revenue expenditure. Assessing Officer disallowed claim of assessee. The Tribunal affirmed the order of the Assessing Officer. On appeal High Court held that the character of amount was of capital nature and assessee agreed to not to claim refund of security deposit, said amount could not be treated as revenue expenditure merely because it was paid in course of dispute. SLP dismissed. (AY. 2008-09)
Mahle Anand Filter Systems Pvt. Ltd. v. ACIT (2023)456 ITR 29/153 taxmann.com 140 (SC)
Editorial : Melhle Anand Filter Systems Pvt. Ltd. v. ACIT(2023) 153 taxmann.com. 139/ (2019) 13 ITR-OL 406 (Delhi)(HC)

S. 37(1) : Business expenditure-Commission-Residence-Company-Control And Management-Assessee-Companies Registered In Sikkim-Burden not discharged-Round tripping of funds-Liable to tax in India-Review petition is dismissed. [S. 2(35), 5, 6(3)(ii), 131, 142(1), 143(2), 148, 234A, 261,282]
Supreme Court held that to be a domicile in India, registration of company is not at all relevant and determinate test is where sole right to manage and control of company lies. Order of High Court is affirmed Review petition is dismissed. (AY. 1987-88 to 1989-90)
Mansarovar Commercial (P.) Ltd. v. CIT (2023) 294 Taxman 513 / 335 CTR 744 (SC)
Editorial : Mansarovar Commercial (P.) Ltd. v. CIT (2023) 453 ITR 661/ 293 Taxman 312 /332 CTR 137 /224 DTR 305 (SC).

S. 37(1) : Business expenditure-Electricity charges-Allowable as deduction.

High Court held that electricity charges was allowable as deduction and there was no violation of the policies or guidelines by any of the parties to the lease agreement pointed out by the Electricity Board till date. SLP of Revenue is dismissed. (AY. 1998-99, 2000-01 to 2003-04)
CIT v. Tube Investments of India Ltd. (2023) 292 Taxman 465 (SC)
CIT v. Tube Investments of India (P.) Ltd. (2023) 292 Taxman 546 (SC)
Editorial : CIT v. Tube Investments of India Ltd (2022) 446 ITR 676/ 288 Taxman 524 (Mad)(HC)

S. 37(1) : Business expenditure-Education cess-Not allowable as deduction-As per Explanation 3 to the provision of section 40(a)(ii) inserted by Finance Act, 2022 with effect from 1-4-2005 surcharge or cess forms a part of 'tax' [S. 40(a)(ii)]
The Supreme Court held that Explanation 3 to section 40(a)(ii) inserted by Finance Act, 2022 with effect from 1-4-2005, made it clear that any surcharge or cess forms part of 'tax' and same could not be allowed as deduction while computing profits and gains of business of assessee, therefore, Education Cess claimed by the assessee was not allowable as a deduction under section 37(1). (AY. 2004-2005)
JCIT v. Chambal Fertilizers & Chemicals Ltd (2023) 291 Taxman 438 (SC)

S. 37(1) : Business expenditure-Commission-Residence-Company-Control and Management-Assessee-Companies Registered In Sikkim-Burden not discharged-Round tripping of funds-Liable to tax in India. [S. 2(35), 5, 6(3)(ii), 131, 142(1), 143(2), 148, 234A, 282]
Assessee-Companies Registered In Sikkim and carrying on business there as agents in cardamom and agricultural products. Commission earned in Sikkim during period prior to extension of Act to Sikkim. Assessee failing to produce evidence to prove genuineness of commission received in Sikkim. Summons issued to persons claimed to have paid commission to assessee not Complied with. Findings that inordinate amount of commission claimed to have been earned, that there were no employees or expenses incurred at Sikkim, and that there was round tripping of funds from Delhi into bank accounts at Sikkim to claim exemption in Sikkim. Burden of proof not discharged. Assessee liable to tax in India. *(*AY. 1987-88 to 1989-90) AY. 1987-88 to 1989-90)
Mansarovar Commercial Pvt. Ltd. v. CIT (2023)453 ITR 661/ 293 Taxman 312 / 332 CTR 137/ 224 DTR 305 (SC)
Editorial : Decision of Delhi High Court, affirmed, CIT v. Mansarovar Commercial Pvt. Ltd (Delhi)(HC) (2016) 134 DTR 105 / 287 CTR 28 (Delhi)(HC)
Editorial *:*Review petition is dismissed, Mansarovar Commercial (P.) Ltd. v. CIT (2023) 294 Taxman 513 (SC)

S. 37(1) : Business expenditure-Capital or revenue-Repairs and improvements in leased premises-Allowable as revenue expenditure. [Art. 136]
Held that expenses incurred for repairs and improvement works in leased premises are held to be revenue expenditure. Special leave of appeal is dismissed. (AY.2011-12)
PCIT v. Joy Alukkas (India) Pvt. Ltd (2023)452 ITR 271 (SC)
Editorial : PCIT v. Joy Alukkas (India) Pvt. Ltd (ITA No. 92/Coch/ 2016 dt. 26-9-2017)(Ker)(HC) affirmed. Followed Joy Alukkas (India) Pvt. Ltd (2015) 5 ITR-OL 340(Ker)/ (2016) 282 CTR 531 (Ker)(HC)

S. 37(1) : Business expenditure-Commission-Not supported by evidence-Disallowance is affirmed

The High Court dismissed the appeal holding that the deduction of the commission was not supported by law. SLP of assessee is dismissed.(AY.2013-14)
Shree Govind Buildneed Pvt. Ltd. v. ACIT (2023)452 ITR 212 /292 Taxman 37 (SC)
Editorial : Shree Govind Buildneed Pvt. Ltd. v. ACIT (D.B.I.T.A. No. 24 of 2019 dt. 16-7 2019)(Raj)(HC), affirmed.

S. 37(1) : Business expenditure-Web designing expenses-Allowable as revenue expenditure.
Dismissing the appeal of the Revenue the Court held that expenses incurred by assessee-company on web designing and development, market survey and production of commercial films for broadcasting on T.V. channel and advertisement of film will not have any enduring benefit to assessee to be termed as capital expenses as they were being used in connection with running business of assessee, hence, they will be held to be revenue in nature. AY. 2010-11)
PCIT v. Bajaj Herbals (P.) Ltd. (2023) 335 CTR 530 / 148 taxmann.com 147 (Guj)(HC)
S. 37(1) : Business expenditure-Capital or revenue-Hotel-renovation, refurbishment and repairs-Improved, efficiency of source of profit or income, expenses incurred for that purpose is allowable as revenue expenditure. [S. 30(a)(ii)]
Allowing the appeal the Court held that since renovation and refurbishment of rooms, including washrooms and other facilities in hotel, only improved, efficiency of source of profit or income, expenses incurred for that purpose could not be categorized as capital expenditure but were revenue in nature. The fact that pressurisation of lift shafts resulted in 'safety of lifts' being enhanced, could not have led to expenses being incurred in that behalf being characterized as capital expenditure. (AY. 1991-92, 1993-94 and 1994-95)
Asian Hotels Ltd. v. CIT (2023) 335 CTR 114/ (2024) 296 Taxman 225 (Delhi)(HC)

S. 37(1) : Business expenditure-Year of allowability-Method of accounting-Amortised in the accounts-Upfront loan processing fee expenses-Allowable as deduction. [S. 145]
Held that upfront loan processing fee though it was amortised for accounting purposes over a period of time in the profit and loss account, it was allowable in its entirety as deduction because a funding was required in business from time to time and those were regular business expenses. (AY. (AY.2009-10)
PCIT v. Indus Towers Ltd. (2023)459 ITR 719/(2024) 296 Taxman 387 (Delhi)(HC)
Editorial : Refer, Dy.CIT v. Indus Towers Ltd (2019) 73 ITR 17 (SN) (Delhi)(Trib)

S. 37(1) : Business expenditure-Capital or revenue-Premature Termination of advertisement and agency sales agreement-Revenue expenditure-Non-compete fee-Restrictive covenant-Capital expenditure-Intangible asset-Entitle to claim depreciation. [S. 28(va), 32]
Held that the payment of compensation under the advertisement and agency sales termination agreement saved the expenses which the assessee would have incurred not only in the relevant previous year but also for a few years to come. Order of Tribunal allowing the expenditure as revenue expenditure is affirmed. Followed, CIT v. Ashok Leyland Ltd.(1972) 86 ITR 549 (SC). Court also held that by paying non-compete fees under the restrictive covenant agreement the assessee acquired rights which not only gave an enduring benefit but also protected the assessee's business against competition, that too from a person who had closely worked with the assessee. Therefore, the Tribunal had not committed any perversity or applied incorrect principles to the given facts.(AY.2008-09)
PCIT v. Music Broadcast Pvt. Ltd. (2023)458 ITR 709 /155 taxmann.com 277 (Bom)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Construction and handing over of transmission lines sub-station-Revenue expenditure.
Dismissing the appeal of the Revenue the Court held that the Tribunal was right in holding that the expenses in connection with construction and handing over of transmission lines sub-station to the State Government were to be treated as revenue expenditure. Followed, Empire Jute Co Ltd v. CIT (1980) 124 ITR 1 (SC)
CIT v. Bannari Amman Sugars Ltd (2023)457 ITR 246/(2022) 145 taxmann.com 276 (Mad)(HC)

S. 37(1) : Business expenditure-Licence fee-Allowable as deduction.
Order of Tribunal deleting the disallowance of licence fee is affirmed. Followed, CIT v. Nestle India Ltd((2011) 337 ITR 103 (Delhi)(HC) (AY.2013-14)
PCIT v. Nestle India Ltd. (No. 1) (2023)457 ITR 210/153 taxmann.com 150 ((Delhi)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Software company-Expenditure on developing new product-New product abandoned as not feasible-Allowable as revenue expenditure.
Dismissing the appeal of the Revenue the Court held that the expenditure on developing new product and the new product abandoned as not feasible. No new asset came into existence which would be of an enduring benefit to the assessee, and therefore, in these circumstances, the expenditure could only be said to be revenue in nature.(AY.2006-07, 2007-08)
PCIT v. Trigent Software Ltd. (2023)457 ITR 765 /147 taxmann.com 52 (Bom)(HC)

S. 37(1) : Business expenditure-Provision for future expenses based on turnover-Provision is not contingent-Allowable as deduction. [S. 145]
Dismissing the appeals of the Revenue the Court held that the provision for expenses was made on pro rata basis based on the turnover with reference to total unbillable future expenses of the assessee's project. For the assessment year 2013-14 after the remand the Assessing Officer had accepted the provision made by the assessee. For the subsequent assessment year 2014-15 no disallowance had been made. Order of the Tribunal is affirmed. (AY.2011-12, 2012-13)
PCIT v. CEC Soma CICI JV (2023) 456 ITR 705 / 155 taxmann.com 285 (Karn)(HC)

S. 37(1) : Business expenditure-Contract business-Provision For estimated loss-Accounting Standard 7-On facts held to be not allowable. [S. 145]
Dismissing the appeal the Court held that despite being specifically asked to do so, the assessee had not explained how the total contract costs would exceed the total contract revenue either before the lower authority or before the first appellate authority or before the Tribunal. A reading of the order passed by the Appellate Commissioner also indicated that the assessee had not demonstrated its case despite specific opportunity being given. Barring reference to Accounting Standard 7 for recognition of estimated loss there was no explanation on the facts by the assessee. The Tribunal was right in not allowing provision for estimated loss on contracts. (AY.2011-12)
Flsmidth Pvt. Ltd. v Dy. CIT (2023)456 ITR 300 /155 taxmann.com 297 (Mad)(HC)

S. 37(1) : Business expenditure-Commercial expediency-Agreement for services relating to increased efficiency-Foreign travel of wives of directors-Allowable as deduction.

Allowing the appeal of the assessee the Court held that the agreement for services relating to increased efficiency and foreign travel of wives of directors is allowable as deduction.(AY.1996-97 to 1999-2000)
Rockman Cycles Industries Ltd CIT (Appeals) (2023)456 ITR 443/155 taxmann.com 34 (P&H)(HC)
Highway Cycles Industries Ltd. v. CIT (Appeals) (2023)456 ITR 443/155 taxmann.com 34 (P&H)(HC)

S. 37(1) : Business expenditure-Amount paid to retiring partner as per the provision in partnership deed-Diversion of income at source by overriding title-Allowable as deduction. [S. 4]
The assessee claimed the amount paid to retiring partner as per the provision in partnership deed as diversion of income at source by overriding title.Assessing Officer denied claim of assessee Tribunal allowed said claim. Order of Tribunal is affirmed by the High Court. Followed CIT v. Crawford Bayley & Co (1977) 106 ITR 884 (Bom)(HC)
PCIT v. Wadia Ghandy & Co. (2023) 155 taxmann.com 228 (Bom)(HC)
Editorial : PCIT v. Wadia Ghandy & Co. (2023) 295 Taxman 229 (SC). Availed of benefit under Direct Tax Vivad Se Vishwas Act, 2020, SLP of Revenue dismissed as infructuous.

S. 37(1) : Business expenditure-Capital or revenue-Replacements of parts of machinery-Allowable as revenue expenditure-Contribution to Sardar Vallabhbhai Rastriya Ekta Trust for construction of a statue of Sardar Vallabhbhai Patel-Enhance brand value-Allowable as deduction.
Dismissing the appeal of the Revenue the court held that expenditure incurred on repairs and maintenance to plant & machinery is rightly allowed as revenue expenditure. Contribution to Sardar Vallabhbhai Rastriya Ekta Trust for construction of a statue of Sardar Vallabhbhai Patel being enhance value of brand name which is incurred on account of commercial expediency rightly allowed as business expenditure. (AY. 2010-11, 2011-12)
PCIT v. Gujarat State Fertilizers & Chemicals Ltd. (2023) 295 Taxman 282 (Guj.)(HC)

S. 37(1) : Business expenditure-Participatory development expenses-CSR expenditures-Order of Tribunal is affirmed.
The Assessing Officer disallowed the participatory development expenses.The Tribunal held that it was mandatory for assessee, which was a mining industry, to look after development of area in which mines were operating to create employment opportunities, provide educational facility to children etc. Tribunal also noted that CSR expenditures incurred prior to assessment year 2015-16 were allowable as business expenditure as same were incurred wholly and exclusively for purpose of business. No substantial question of law. arose for consideration against impugned order of Tribunal. (AY. 2014-15)
PCIT v. Ramesh Prasad Sao (2023) 295 Taxman 755 (Cal.)(HC)

S. 37(1) : Business expenditure-Provision for warranty-Liquidated damages-losses of non-moving inventories due to cancellation of orders-Sales promotion expenses-Allowable as deduction. [S. 145]
As a part of contractual obligation, assessee provided warranty for replacement of spare parts, maintenance, after sales service and 0.5 per cent on sale for liabilities. Provision of after sales service was reverted back by company on expiry of guarantee/warranty period and amount of such expenditure was offered to tax. Allowable as deduction. liquidated damages provided in accounts were based on actual deduction allowed by assessee to its customers as a part of contract which was being followed by assessee consistently and were ascertained

expenditure, assessee-company had not committed any error in making provision of liquidated damages. Assessee's accounting policy was that losses of non-moving inventories due to cancellation of orders, change in technology, non-receipt of fresh order, etc., was charged to profit and loss account. Order of Tribunal is affirmed.Sales promotion expense also include expenditure on account of after sales service, assessee was correct in charging same under head Sales promotion.(AY. 2012-13)

PCIT v. Heavy Engineering Corporation Ltd. (2023) 295 Taxman 349 (Jharkhand)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Replacement of spares in machineries-Up gradation of software-Revenue expenditure.

Held that expenses incurred towards replacement of spares in machineries would be allowable as revenue expenditure. Similarly expenses on up gradtion of software for facilitating trading operation leaving fixes untouched is allowable as revenue expenditure. Followed, CIT v. N.J. India Invest (P.) Ltd. [2013] 215 Taxman 78 (Guj.) (HC). (AY. 2005-06)

PCIT v. Gujarat Industries Power Co. Ltd. (2023) 295 Taxman 345 (Guj.)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Corporate Social Responsibility (CSR)-Amendment is not retrospective-Explanation 2 was inserted by the Finance Act, 2014 with effect from April 1, 2015 to section 37(1) of the Income-tax Act, 1961 and is prospective.

Dismissing the appeal of the Revenue the Court held that the assessee had provided funds in discharge of its obligation as mandated by law on the advice of the Department of Public Enterprises and therefore, it could not be said that the obligation placed on the assessee by law was not connected wholly and exclusively to its business. There is nothing on record which would show that the assessee had directed investment of funds which were offered in fulfilment of discharge of its legal obligation in a capital asset. The Tribunal had concluded that the corporate social responsibility expenses incurred by the assessee were allowable under section 37. Explanation 2 appended to section 37(1) was not retrospective in nature. Followed, PCIT v. PEC LTD.(2023) 451 ITR 436 (Delhi)(HC)

PCIT v. Steel Authority of India Ltd. (2023)455 ITR 139 / 148 taxmann.com 132 (Delhi)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Annual subscription fee for software licence-Revenue expenditure-Provision for payment to employees based on performance-Not contingent-Allowable as deduction. [S. 145]

Held that annual subscription fee for software licence is allowable as revenue expenditure. Provision for payment to employees based on performance is not contingent, allowable as deduction.*(*AY.2003-04)

CGI Information Systems and Management Consultants Pvt. Ltd. v ITO (2023)455 ITR 270/153 taxmann.com 527 (Karn)(HC)

S. 37(1) : Business expenditure-Prior period expenditure-Liability crystallised in relevant previous year-Allowable as deduction.[S. 145]

Held that prior period expenditure, liability crystallised in relevant previous year is allowable as deduction. *(*AY.2012-13)

PCIT v. Balmer Lawrie And Co. Ltd. (2023)455 ITR 198/334 CTR 895/ 149 taxmann.com 286 (Cal)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Contingent-Ascertained expenditure-Premium payment on redemption of shares which has been quantified-Allowable as revenue expenditure-Duty of Tribunal to give finding based on factS. [S. 254(1)]

Held that the Tribunal had rightly recorded the correct principle of law that premium paid on redemption of debenture is revenue expenditure. The premium payable quantified on redemption of debentures was deductible as revenue expenditure.(AY. 2011-12)

Nitesh Housing Developers Pvt. Ltd. v. Dy. CIT (2023)454 ITR 770 (Karn)(HC)

S. 37(1) : Business expenditure-Provision for warranty-Depreciation on intellectual property. [S. 32, 145(2), 260A å]

Held that the provision for warranty the Tribunal had examined the relevant clause in the terms and conditions of the agreement and had found that the warranty clause was in-built in the guarantee clause itself and the assessee had to replace the meters in the event of any defective supply within a period of 5½ years and in the event of the meters not getting replaced, the assessee had to pay twice the cost of meters. Order of Tribunal is affirmed. Depreciation on intellectual property is also affirmed. (AY. 2012-13)

PCIT v. Landis GYR(2023) 454 ITR 462 (Cal)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Interest paid on securities held as stock in trade-Allowable as revenue expenditure. [S. 28(i)]

Hon'ble Telangana High Court has held that the assessee, a banking company, had been holding its securities all along as stock-in-trade, and therefore, interest paid on such securities would be allowed as revenue expenditure. (AY. 1998-99)

CIT v. State Bank of Hyderabad (2023) 455 ITR 122/ 292 Taxman 38 / 331 CTR 84/ 222 DTR 345 (Telangana)(HC)

S. 37(1) : Business expenditure-Inspection and survey charges-, Disallowance of inspection and survey charges to 25 per cent was justified.-Order of Tribunal is affirmed. [S. 260A]

Dismissing the appeal of the Revenue the Court held that as there was evidence only with respect to part of claim in relation to inspection charges, restriction of disallowance of inspection and survey charges to 25 per cent was justified.

PCIT (Central) v. Bajaj Alliance General Insurance Co. Ltd. (2023) 153 taxmann.com 678 (Bom)(HC)

Editorial : SLP of Revenue is dismissed, PCIT (Central) v. Bajaj Alliance General Insurance Co. Ltd. (2023) 294 Taxman 699 (SC)

S. 37(1) : Business expenditure-Capital or revenue-Security deposit for lease premises-Foregone in dispute with lessor-Capital expenditure.

Assessee entered into a lease agreement for a property. As per agreement assessee paid security deposit and same was reflected in balance sheet in capital under assets as receivables. However, on account of unforeseen circumstances assessee sought to vacate premises which resulted in dispute between lessor and assessee. Assessee agreed not to claim security deposit to end dispute and claimed same as revenue expenditure. Assessing Officer disallowed claim of assessee. The Tribunal affirmed the order of the Assessing Officer. On appeal High Court held that the character of amount was of capital nature and assessee agreed to not to claim refund of security deposit, said amount could not be treated as revenue expenditure merely because it was paid in course of dispute.(AY. 2008-09)

Mahle Anand Filter Systems (P.) Ltd. v. ACIT (2023) 153 taxmann.com. 139/ (2019) 13 ITR-OL 406 (Delhi)(HC)
Editorial : SLP of assessee is dismissed, Mahle Anand Filter Systems (P.) Ltd. v. ACIT (2023) 456 ITR 29 / 294 Taxman 162 (SC)

S. 37(1) : Business expenditure-liquidated damages provision-Matter remanded to Tribunal for fresh consideration. [S. 145 254(1)]
Court held that the decision which was followed by Tribunal was remanded by High Court for reconsideration. Therefore the order was set aside and matter would be remanded to Tribunal for fresh consideration. (AY. 2010-11)
PCIT v. Nokia Solutions and Networks India (P.) Ltd. (2023) 294 Taxman 615 (Delhi)(HC)

S. 37(1) : Business expenditure-Bonus to employees-Not doubted bona fide in creation of trust or that expenditure was not incurred wholly and exclusively for employees-Order of Tribunal allowing the expenditure is affirmed. [S. 36(1)(iv), 36(v), 40A(9)]
Assessee claimed deduction of certain amount contributed to SBI retired employees medical fund. Assessing Officer disallowed the claim on ground that fund was not recognized under section 36(1)(iv) or (v) and claim of expenditure was hit by provisions of section 40A(9) of the Act. Tribunal allowed the claim. On appeal dismissing the appeal of the Revenue the Court held that since Assessing Officer had not doubted bona fide in creation of trust or that expenditure was not incurred wholly and exclusively for employees, order allowing claim was affirmed. Followed, PCIT v. State Bank of India (2020) 420 ITR 376(Bom)(HC)

PCIT v. State Bank of India (2023) 153 taxmann.com 389 (Bom)(HC)
Editorial : SLP of Revenue is dismissed, PCIT v. State Bank of India (2023) 294 Taxman 428 (SC)

S. 37(1) : Business expenditure-Capital or revenue-Current repairs-Steel rolling mill-Expenditure incurred for replacement of steel rolls is revenue expenditure.[S. 31]
Dismissing the appeal of the Revenue the Court held that the expenditure incurred by steel rolling mill for replacement of steel rolls is revenue expenditure. (AY. 2005-06)
CIT v. Jindal India Ltd. (2023) 293 Taxman 478 (Cal.)(HC)

S. 37(1) : Business expenditure-Repairs and maintenance-Details produced-Disallowance of expenditure is held to be not justified.
Allowing the appeal the Court held that the documents produced by the assessee during course of scrutiny assessment showed details of repairs and maintenance. Disallowance of expenditure was deleted. (AY. 2006-07)
Sidhant Leather Exports (P.) Ltd. v. CIT (2023) 459 ITR 318 / 293 Taxman 412 (Cal.)(HC)

S. 37(1) : Business expenditure-Legal entity-business of providing technological and personnel support to food processing and dairy industry-Deploy skillful personnel and after 7-7-2008-Expenditure allowable as revenue expenditure-Order of Tribunal is affirmed.
Assessee was a legal entity engaged in business of providing technological and personnel support to food processing and dairy industry. Tribunal held that assessee had started to deploy skilful personnel and after 7-7-2008, it was fully equipped to mount operation of

business and thus, expenses incurred after 7-7-2008 till 31-3-2009 were for business purposes and same were to be allowed. Order of Tribunal is affirmed. (AY. 2009-10)
PCIT v. Danone (India) (P.) Ltd. (2023) 292 Taxman 585 (P & H)(HC)

S. 37(1) : Business expenditure-Derivative loss-Business loss-Mark-to-market basis-account Foreign exchange fluctuation-Mercantile basis-Allowable as deduction. [S. 28(i), 145]
Assessee claimed derivative loss which was booked on a marked-to-market basis on foreign exchange fluctuation at year-end on a mercantile basis. Revenue disallowed the loss on the basis that the same was a provision for the future and was, therefore, notional in nature. High Court dismissed the departmental appeal and held that the loss was allowable as a deduction under section 37(1) of the Act. In this regard, High Court followed its earlier decision in the case of *Pr. CIT v. Pricewaterhouse Coopers (P.) Ltd.* [ITAT No. 269 of 2017, dated 17-12-2021]. (AY 2011-12)
PCIT v. Kesoram Industries Ltd. (2023) 291 Taxman 562 (Cal)(HC)

S. 37(1) : Business expenditure-Provision-Warranty-Based on past experience-Allowable as a deduction. [S. 145]
Assessee was engaged in the business of manufacture and sale of pressure cookers and kitchenware. Based on its past experience, the assessee made a provision of 1% of the sales value of kitchen appliances towards warranty and replacement expenses which was disallowed by the Assessing Officer. High Court observed that the provision was made by the assessee based on its past experience and further noted that the business claims received by the assessee for the A.Y. in question were in excess of the provision made. High Court allowed the assessee's claim for deduction of the provision. High Court also placed reliance on the Supreme Court's decision in the case of Rotork Controls India (P) Ltd v. CIT (2009) 314 ITR 62 (SC) (AY. 2011-12 to 2013-14)
TTK Prestige Ltd. v. DCIT (2023) 291 Taxman 220 (Karn) (HC)

S. 37(1) : Business expenditure-Business development-Cash expenses-Genuineness of vouchers was not in dispute-Assessing Officer could not sit in arm chair of a businessman and decide what expenditure was expedient-Assessee was entitled for deduction.
Assessee incurred a sum of Rs. 3 lacs in cash towards business development and claimed as allowable business expenditure. Assessing Officer disallowed expenditure on ground that assessee had not satisfactorily explained business expediency. Appellate authorities upheld disallowance. On appeal the Court held that the Assessing Officer could not sit in arm chair of a businessman and decide what expenditure was expedient and it was for an assessee to decide from time to time expenditure that he found it expedient to make in order to promote business. Since genuineness of vouchers was not in dispute, assessee was entitled for deduction of expenditure incurred towards business development. Followed, S.A.Builders Ltd v. CIT(A) (2007) 288 ITR 1 (SC) (AY. 2012-13)
K. Chandrashekar Prakash v. ACIT (2023) 455 ITR 751 / 291 Taxman 217 (Karn)(HC)

S. 37(1) : Business expenditure-Capital or Revenue-Development of new product expenses-Shown as capital work in progress-Project abandoned-Capital work in progress written off as revenue expenditure-No new asset came into existence which would be of an enduring benefit to assessee-Allowable as revenue expenditure. [S. 145]
Assessee was engaged in business of software development solution and management. It incurred expenditure in connection with development of a new software product and treated

expenditure as a part of capital work in progress for assessment years 2004-05 to 2007-08 and new product never came into existence and same was abandoned and assessee then claimed whole capital work in progress as revenue expenditure in assessment years 2006-07 and 2007-08. The Assessing Officer held that expenditure incurred was capital in nature and disallowed same. Commissioner (Appeals) held that expenditure had to be allowed as a revenue expenditure in year in which product was abandoned. Tribunal upheld view expressed by Commissioner (Appeals). On appeal by the Revenue the Court held that the assessee incurred expenditure in connection with development of a new software and treated expenditure as a part of capital work in progress and new product never came into existence and same was abandoned and assessee then claimed whole capital work in progress as revenue expenditure, as no new asset came into existence, expenditure could only be said to be revenue in nature. Order of the Tribunal is affirmed. (AY. 2006-07, 2007-08)
PCIT v. Trigent Software Ltd. (2023) 147 taxmann.com 52 / 330 CTR 312 (Bom)(HC)

S. 37(1) : Business expenditure-Prior period expenditure-Crystallised during the year-Allowable as deduction. [S. 145]
Held that business expenditure which was incurred wholly and exclusively for the purpose of business, though related to earlier year period which got crystallised during the year under consideration is allowable as deduction. (AY. 2012-13)
PCIT v. Balmer Lawrie & Co. Ltd (2023)) 149 taxmann.com 286 (Cal)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Premium paid to allottee on redemption of debentures-Allowable as revenue expenditure.
The assessing Officer held that the premium paid on redemption would be arising out of reserves and surplus and, thus, the same would constitute capital expenditure and could not be allowed as a deduction. Held that premium paid to allottee on redemption of debentures was allowable as revenue expenditure. (AY. 2011-12)
Nitesh Housing Developers (P.) Ltd. v. Dy. CIT (2023) 290 Taxman 474 (Karn)(HC)

S. 37(1) : Business expenditure-Capital or revenue-Payment to State Power Corp. towards the construction of a transmission line and other supporting work-Allowable as revenue expenditure.
During the year the assessee had made a payment of a certain amount to State Power Corp. towards the construction of a transmission line and other supporting work. Assessing Officer held that said the expenditure was capital in nature. On appeal the Court held that power transmission lines which were laid by assessee were, upon erection, to constitute the exclusive property of State Power Crop. State Power Crop. was only consumer of electricity generated by the assessee and assessee had incurred said expenditure to facilitate its own business.-Further, the fixed capital of assessee was untouched and there was no capital accretion for the assessee. Accordingly, the expenditure which was incurred by assessee in the laying of the transmission line was revenue expenditure.
CIT v. Bannari Amman Sugars Ltd. (2023) 290 Taxman 311 (Mad.)(HC)

S. 37(1) : Business expenditure-Interest payment to DGFT on account of excess availment of export incentive is not penal nature-Allowable as business expenditure.
Assessing Officer disallowed interest paid on account of such exports not being in 'technical textile' category as penal in nature. CIT(A) held that interest was allowable as a deduction. On appeal, the Tribunal held that the amount paid was not penal in nature as it was as per the declared policy of the government and occasioned by the failure of the assessee to meet its

obligations. The amount being interest was compensatory and penal in nature. High Court affirmed the order of the Tribunal. (AY. 2014-15)

PCIT v. Attire Designers (P.) Ltd. (2023) 455 ITR 697 / 290 Taxman 551 (Delhi)(HC)

S. 37(1) : Business expenditure-Corporate social responsibility expenditure-Expenditure for earlier years allowable as a deduction-CBDT Circular binding on the department.[S. 119]

Dismissing the appeals of the Revenue the Court held that circulars issued by the Central Board of Direct Taxes were binding on the Department. Therefore, the Tribunal had not erred in allowing the deduction claimed by the assessees under section 37 of the expenses incurred for their corporate social responsibility. Explanation 2 was inserted in section 37 of the Income-tax Act, 1961 by the Finance (No. 2) Act, 2014 with effect from April 1, 2015. The Memorandum which was published along with the Finance (No. 2) Bill, 2014 clearly indicated that the amendment would take effect from April 1, 2015 and, accordingly, would apply in relation to the assessment year 2015-16 and subsequent years. This position is also exemplified in the circular dated January 21, 2015 ([2015] 371 ITR (St.) 22) issued by the Central Board of Direct Taxes. (AY.2013-14, 2014-15)

PCIT v. PEC Ltd (2023) 451 ITR 436 / 221 DTR 481/ 330 CTR 593/ 291 Taxman 281 (Delhi)(HC)

PCIT v. Rites Ltd. (2023) 451 ITR 436 / 221 DTR 481/ 330 CTR 593/ (Delhi)(HC)

Editorial : SLP of Revenue dismissed, leaving question of lae open, PCIT v. Rites Ltd. (2024)460 ITR 593/297 Taxman 5 (SC)

S. 37(1) : Business expenditure-Corporate Social Responsibility-Expenses of public sector company-Allowable as deduction.

Dismissing the appeal of the Revenue the Court held that the annual report of the assessee clearly showed the activities undertaken under corporate social responsibility during the year. Furthermore, the audited final statement for the financial year 2011-12 also showed that the welfare expenses formed part thereof. There was an obligation on the assessee to fulfil the responsibility for its employees in the entire area where operations were being carried on by the respective public sector undertaking. The Tribunal had rightly allowed the assessee's appeal and granted relief. Relied on S. A. Builders Ltd. v. CIT (Appeals)(2007) 289 ITR 26(SC) (AY. 2011-12)

PCIT v. Eastern Coalfields Ltd. (2023) 450 ITR 184 / 291 Taxman 457 (Cal)(HC)

Editorial : CIT v.Eastern Coalfields Ltd(2020) 83 ITR 61 (SN) (Kol)(Trib), affirmed.

S. 37(1) : Business expenditure-Donation given for public welfare of construction of ring road-Allowable expenditure.

Dismissing the appeal of the Revenue the Court held that Tribunal was justified in treating the donation given for construction of ring road was an allowable expenditure. Followed Sri Venkata Satyanarayana Rice Mills Contractors Coo v. CIT (1997) 223 ITR 101 (SC) *(*AY-2009-10)

PCIT v. Mysore Minerals Ltd. (2023) 450 ITR 647 (Karn)(HC)

Editorial : SLP of Revenue dismissed, PCIT v. Mysore Minerals Ltd (2022) 449 ITR 1(St)

S. 37(1) : Business expenditure-loss on forward contracts for foreign exchange-Transactions to hedge against risk of foreign exchange fluctuations-loss not speculative and to be allowed.[S. 28(i), 43(5)]

Dismissing the appeal of the Revenue the Court held that the forward contracts were entered into by the assessee to hedge against foreign exchange fluctuations resulting from inflows and outflows in respect of the underlying contracts for provisions of consultancy and project

management. Concededly, the assessee did not deal in foreign exchange. Tribunal held that the loss, on account of forward contracts could not be considered as speculative and that the Assessing Officer had erred in disallowing it were not erroneous. Followed CIT v. Woodward Governor India Pvt. Ltd (2009) 312 ITR 254(SC) (AY. 2009-10)
PCIT v. Simon India Ltd. (2023) 450 ITR 316 / 221 DTR 358 / 330 CTR 222 (Delhi)(HC)

S. 37(1) : Business expenditure-Capital or revenue tests-Rubber plantation-Amount spent on upkeep and maintenance of mature rubber trees-Allowable aS. revenue expenditure-Cost of replacement of dead and useless rubber trees deductible as replacement cost. [R. 7A(2)]

The question before the Full Bench was " Whether the assessee-plantation companies under rule 7A(2) of the Rules are entitle to an allowance towards replanting expenses and further deduction towards upkeep and maintenance expenses incurred by the assessee for the immature plants till the age of maturity in the computation of income under the Act and Rules ?"

Court held that Rule 7A of the Income-tax Rules, 1962 is structured in such a way keeping in perspective the very nature of a rubber plantation, time to yield produce, the normal produce yield period, etc. Replantation allowance is a straight allowance available to an assessee subject to satisfying the other two conditions: viz., (i) replantation cost is claimed in the area where rubber trees were planted and are cut, or the rubber trees have become useless or unproductive, (ii) the replanting must be a continuous act upon felling the rubber trees in the rubber plantation. The language ensures continuity of rubber plantation by providing for the allowance of replantation costs. The concept of infilling is not attracted to the nature of allowance. Under rule 7A of the Rulesin computing the income to tax under the Act, the allowance shall be made in respect of the cost of replanting rubber plants that have died or become permanently useless in an area already planted if the area has not been abandoned. In determining the cost of replanting or replacement, no deduction of the amount of any subsidy under the provisions of clause (31) of section 10 is includible in the total income. In the computation of business income under rule 7A of the Rules, the assessee under rule 7A(2) is entitled to an allowance in respect of the cost of replacement of dead and useless rubber trees in the rubber plantation in an area not abandoned, subject to section 10(31) of the Act. The upkeep and maintenance expenses incurred by the assessee till the maturity of rubber trees are revenue expenditures eligible for deduction under section 37 of the Act.(AY. 2011-12)
Rehabilitation Plantations Ltd v. CIT (2023) 450 ITR 626 / 331 CTR 719 (FB) (Ker) (HC)

Editorial : Rehabilitation Plantations Ltd v. CIT (2012) 251 CTR 343/ 73 DTR 78 (Ker)(HC), overruled.

S. 37(1) : Business expenditure-Corporate Social Responsibility(CSR)-Explanation 2 was inserted in section 37 by Finance (No.2) Act, 2004, w.e.f. Ist April, 2015-Apply in relation to the assessment year 2015-16 and subsequent years-Expenditure allowable as deduction.

The Assessing Officer disallowed the expenditure incurred under the Corporate Social Responsivity. On appeal the Tribunal held that Explanation 2 was inserted in section 37 by Finance (No.2) Act, 2004, w.e.f. Ist April, 2015 will apply in relation to the assessment year 2015-16 and subsequent years, hence the expenditure incurred was allowable as business expenditure. On appeal High Court affirmed the order of the Tribunal. (ITA No. 268, 269, & 270 of 2022 dt. 29-10-2022) (AY. 2013-14, 2014-15)
PCIT v. PEC Ltd (2023) BCAJ-January P. 44(Delhi)(HC)

S. 37(1) : Business expenditure-Marked-to-Market loss-Loss arising on reinstatement of the forward cover purchase contracts-Not speculative-CBDT Instructions and circulars which are contrary to law are not binding-Allowable as revenue expenditure. [S. 43(5), 73]

The AO disallowed the loss against a forward contract entered into hedge the risk against foreign exchange fluctuations to cover exports and imports as speculative in nature, relying on the Instruction No 3/2010 dt. 23-3 – 2010. Tribunal allowed the claim. On appeal by Revenue Dismissing the Court held that Loss arising on reinstatement of the forward cover purchase contracts is not speculative. CBDT Instructions and circulars which are contrary to law are not binding. Loss is allowable as revenue expenditure. (AY. 2009-10)

PCIT v. Simon India Ltd (2022) 145 taxmann.com 389/ (2023) 450 ITR 316 (Delhi)(HC)

S. 37(1) : Business expenditure-Discount on issue of ESOPs i.e., difference between grant price and market price of shares as on date of grant of options is allowable as a deduction.

Assessee had debited a certain sum towards ESOP expenses and as cost borne by assessee was in connection with providing incentive through stock options-related benefits to employees, expenses incurred by it were claimed as a deduction under section 37(1). Assessing Officer disallowed deduction primarily on basis that expenditure incurred was not real expenditure and was notional in nature Held that since discount on issue of ESOPs i.e., difference between grant price and market price of shares as on date of grant of options is allowable as a deduction under section 37(1), disallowance made by Assessing Officer was to be deleted. (AY. 2009-10, 2012-13)

Bayer Crop Science Ltd. v Dy. CIT (2023) 156 taxmann.com 510 / / 226 TTJ 825 / (2024) 204 ITD 630 (Mum) (Trib.)

S. 37(1) : Business expenditure-Statutory contribution-Settlement Guarantee Fund (Core SGF)-Allowable as deduction-Lease premium-Remanded to the Assessing Officer-Maintenance charges from tenants-Matter remanded to the file of CIT(A).

Assessee-Stock Exchange claimed deduction for its contribution to Core SGF.Assessing Officer disallowed deduction, considering it a reserve, as no defaults occurred during. Tribunal held that since contribution to Core SGF was a statutory requirement under SEBI regulations on which assessee had no control, it constituted allowable expenditure under section 37(1) as same had been incurred exclusively in course of carrying on its business. Assessee-company claimed deduction towards lease premium amortized on leasehold land, since Tribunal in assessee's own case on a similar issue for other assessment year had remanded matter for reconsideration, following said decision of Tribunal, this issue would also be restored to file of AO for deciding afresh. Assessee received maintenance charges from tenants, claiming it was reimbursement for expenses incurred, particularly for security services which was considered as income from house property by AO, since in assessee's own case for A.Y. 2005-06 Tribunal had restored said matter back for reconsideration, in view of said facts, this issue would also be restored to file of CIT(A) for fresh decision. (AY. 2016-17,2017-18)

National Stock Exchange of India Ltd. v. Dy. CIT (2024) 159 taxmann.com 472 / 226 TTJ 609 (Mum)(Trib.)

S. 37(1) : Business expenditure-Bogus sub-Contractor-10 percent disallowance is confirmed-Reassessment is affirmed.[S. 147, 148]

Held that the assessee-firm, engaged in business of transmission towers for electric lines, claimed deduction for sub-contracting expenses and AO disallowed said expenses on ground

that sub-contractors failed to provide evidence of work so done for assessee, since assessee could not carry out its contract work without engaging sub-contractors, only 10 per cent of alleged bogus sub-contracting expenses were to be disallowed. Reassessment is affirmed on the ground that the Assessing Officer is not required to establish escapement of income while recording reasons for reopening, notice issued under section 147 is valid. (AY. 2009-10 to 2012-12, 2016-17)

Dy. CIT v. Ultratech Transmission (P.) Ltd. [2023] 221 TTJ 760/151 taxmann.com 20 (Ahd)(Trib.)

S. 37(1) : Business expenditure-Subscription fees-Donation-Research programme-Training in the theory of disruptive innovation-Allowable as business expenditure-Sponsorship for luggage prize-No evidence is furnished-Not allowable as deduction-Brand building expenditure-Advertisement expenses-Matter remanded.

Assessee-company was engaged in business of export of computer software providing e-solutions, BPO activities and other management consultancy activity. Assessee had made as donation payment to CCI as approved by Board and as part of research programme under which, employees of assessee would undergo training in theory of disruptive innovation. Held that though amount was paid under head donation actual nature of payment was towards research programme which would benefit assessee in long term and same should be allowed as a deduction under section 37(1). The assessee also made payment to Royal Hospital for Women Foundation towards sponsorship for luggage prize and assessee claimed same to be allowable under section 37(1). Assessing Officer held that impugned amount was not an item eligible for deduction. Tribunal held as regards sum paid towards sponsoring luggage prize since nothing had been brought on record by assessee to substantiate claim that sponsoring prize at dinner would help business of assessee, amount paid towards sponsoring of prize at dinner of Royal Hospital For Women Foundation could not be held to be incurred for purpose of business of assessee and thus not allowable as deduction. The assessee incurred expenditure in respect of advertisement in newspaper/magazine was routinely incurred for ongoing business of assessee and was not in nature of any brand building and assessee did not derive any enduring benefit by incurring said expenditure and, therefore, it should be allowed as revenue expenditure. Assessing Officer held that expenditure was incurred for brand building and, thus, not allowable u/s. 37(1). Tribunal held that the assessee had demonstrated that in no way it was connected with development of Tata brand and details of expenditure incurred clearly demonstrated that they were basically for purpose of advertising assessee's products in print media or through seminar, conferences, etc.. the issue remitted back to Assessing Officer to decide issue afresh.](AY. 2014-15)

Tata Consultancy Services Ltd. v. Dy. CIT (2023) 154 taxmann.com 372 / 226 TTJ 361 (Mum)(Trib.)

S. 37(1) : Business expenditure-Legal expenses to protect the voting rights in the company-Chairman of the company-Allowable as business expenditure.

Held that legal expensed incurred by the assessee as a chairman to protect his voting rights in the company following a dispute regarding the structure of the Board of directors of the company are allowable as business expenditure. (AY. 2007-08, 2010-11)

Amritlal Batra v. Add. CIT(2023) 226 TTJ 917/ (2024) 110 ITR 127/ 160 taxmann.com 236 (Amritsar)(Trib)

S. 37(1) : Business expenditure-Payment of re-insurance premium foreign insurers-Foreign Insurance company has no business or branch in India-No violation of

provisions of Insurance Act-Provision of Explanation 1 to section 37 is not applicable. [S. 37(1), Explanation, Insurance Act, 1838]
Held that payment of re-insurance premium foreign insurers. Foreign Insurance company has no business or branch in India. No violation of provisions of Insurance Act hence provision of Explanation 1 to section 37 is not applicable. (AY. 2015-16)
Tata AIG General Insurance Co.Ltd v. Dy. CIT(2023) 224 TTJ 724 /(2022)) 141 taxmann.com 70 (Mum)(Trib)

S. 37(1) : Business expenditure-Service charges paid to group company-Allowable as revenue expenditure.
Held that service charges paid to group company is Allowable as revenue expenditure. The disallowance of 25% of the service charges is deleted. (AY. 1998-99, 1999-2000)
Coca Cola India (P) Ltd v.Dy.CIT(2023) 224 TTJ 520 (Pune)(Trib)

S. 37(1) : Business expenditure-Company-No personal-Vehicle running expenses-Depreciation-Telephone and mobile expenses-Disallowance cannot be made on account of personal use-Employees contribution-Paid before due date of filing of return-Allowable as deduction. [S. 32(1)(ii),36(1)(va), 139(1)]
Held that the assessee being a corporate entity there cannot be anything personal, therefore running expenses, depreciation, Telephone and mobile expenses cannot be disallowable on account of personal use. Employees contribution which are paid before due date of filing of return are allowable as deduction. (AY. 2013-14)
N. R. Wires (P) Ltd. v. Dy.CIT (2023) 224 TTJ 480 (Raipur)(Trib)

S. 37(1) : Business expenditure-Expenditure on marketing survey-Statement was retracted-Cross examination is not provided-Allowable as deduction. [S. 133A]
Held that expenditure on marketing survey is allowable as deduction. As regards the statement of Mr. Bhanwarlal and shri Kihan Lal they have retracted the statement and an opportunity of cross examination is not provided hence the statements cannot be used against the assessee. (AY. 2005-06 to 2008-09)
Rajasthan Patrikha (P) Ltd v. ACIT(2023) 223 TTJ 715 (Jaipur)(Trib)

S. 37(1) : Business expenditure-Donation to Red Cross Society and Japan relief Fund-Nature of gift cannot be allowed as deduction under section 37(1). [S. 80G]
Held that donation to Red Cross Society and Japan relief Fund is nature of gift cannot be allowed as deduction under section 37(1). (AY. 2011-12 to 2015-16)
Bangalore Metro Rail Corporation Ltd v.Dy.CIT(2023) 223 TTJ 665 / 149 taxmann.com 207 (Bang)(Trib)

S. 37(1) : Business expenditure-Interest on deposits-Allowable as deduction. [Electricity Act, 2003, S. 47(4)]
Held that interest on deposits is allowable as deduction. (AY.2011-12, 2012-13)
Tata Power Delhi Distribution Ltd. v.Add. CIT (2023)108 ITR 329 (Delhi)(Trib)

S. 37(1) : Business expenditure-Trade samples-Assessing Officer to allow relief in event same income gets doubly taxed-Sales return-Not allowable-Expenditure incurred with reference to refurbishment of retail showroom-Allowable as revenue expenditure
Held that disallowance on purchase of trade samples also subject matter of Transfer Pricing adjustment. Assessing Officer is directed to allow necessary relief in event same income gets doubly taxed. Sales return is not allowable as revenue expenditure. Expenditure incurred with

reference to refurbishment of retail showroom is allowable as revenue expenditure. (AY.2016-17)
Nike India P. Ltd. v. Dy. CIT (2023)108 ITR 666 (Bang) (Trib)

S. 37(1) : Business expenditure-Capital or revenue-Land registration charges-Lease of property-Allowable as revenue expenditure.
Held that a lease was not a permanent transfer of immovable property. It was for a specific period only and terminable as per terms and conditions of the agreement even before the expiry of the period of the lease by both the parties. The assessee had incurred the registration expenses in connection of his business. The assessee needed premises in order to carry on the business in various places and accordingly, had taken property on rent. The period of the agreement perhaps was more than one year and attracted compulsory registration of the agreement. The assessee could not enjoy that property forever under a rent agreement or lease. The assessee may have to vacate that property before efflux of time depending on the business conditions of that particular place. Therefore, the lower authorities had erred in treating the land registration fees incurred as capital expenditure. (AY.2008-09)
RMP Infotec P. Ltd. v. Asst. CIT (2023)108 ITR 171 (Chennai) (Trib)

S. 37(1) : Business expenditure-Grading and certification expenses-Payments were made after deducting tax at source-Ad-hoc disallowance is not justified.
Held that the payment was not in dispute and the payments were made after deducting tax at source hence ad-hoc disallowance is not justified. Order of CIT(A) is affirmed. (AY. 2011-12)
ACIT v. A.Lallubhai & Brother (2023) 108 ITR 662 (Trib)

S. 37(1) : Business expenditure-Salary, depreciation, audit fees-Not earning any income-Expenditure to maintain corporate entity-Directed to allow 25 Per Cent. of expenditure.
Held that expenses in nature of staff salary, depreciation on building, vehicle running and maintenance and audit fees. Assessee not earning any business income But having to incur certain minimum expenditure to maintain corporate entity. Assessing Officer is directed to allow 25 Per Cent. of expenditure. (AY.2014-15)
Alpha Reality v. Asst. CIT (2023)108 ITR 7 (SN)(Chennai) (Trib)

S. 37(1) : Business expenditure-Fuel charges, cleaning wages, greasing-Telephone, Staff Welfare And Office Uniform Expenses-Salary-ad-hoc disallowance is not justified-Allowable as deduction.
Held that the Assessing Officer in his remand report having made detailed verification of the expenses, and being satisfied with the expenses claimed by the assessee the disallowance had been rightly deleted. (AY.2014-15)
ITO v. Umed Meghraj Jain (2023)108 ITR 58 (SN) (Ahd) (Trib)

S. 37(1) : Business expenditure-Value added tax and central sales tax-Sums not shown to have been paid into Government treasure-Claiming fraud committed by agent-Complaint filed against tax Auditor and copies of first information report and crime investigation department report produced before Commissioner (Appeals)-Matter remanded to the Assessing Officer for verification.
Held that to establish the fraud, the assessee filed a complaint against the tax auditor and produced the copies of first information report and the Crime Investigation Department report before the Commissioner (Appeals). All the factual aspects required consideration by the authorities. Therefore, in the interest of justice the order was to be set aside and the issue

restored to the Assessing Officer for verification of the facts in respect of entitlement of the assessee to claim deduction of the amount said to have been misappropriated by the value added tax consultants.(AY.2015-16)
Rudra Industries v. ITO (2023)108 ITR 33 (SN)(Hyd) (Trib)

S. 37(1) : Business expenditure-Lease rentals on vehicles and computers-Matter remanded to the Assessing Officer.
Held, that since the assessee had not filed the schedules to the lease agreements or the relevant documents pertaining to the purchase of leased assets in subsequent years, the matter was to be remanded to the Assessing Officer with a direction to the assessee to file all the lease agreements with the schedules before the Assessing Officer. The Assessing Officer was to examine the lease agreements afresh and find out whether the leases were financial leases or operational leases. After ascertaining this, the Assessing Officer was to apply the judgments of the Supreme Court in I. C. D. S. Ltd. v. CIT (2013) 350 ITR 527 (SC) and of the Tribunal in Rak Ceramics India P Ltd. v. DY. CIT (I. T. A. No. 2226/Hyd/2017, dated November 15, 2019) and decide the issue after affording the assessee reasonable opportunity of being heard.(AY.2017-18)
Sai Life Sciences Ltd. v. Dy. CIT (2023)108 ITR 34 (SN)(Hyd) (Trib)
S. 37(1) : Business expenditure-Co-Operative Society-Banking business-Transfer of monies to funds-Overriding statute-Matter remanded to the Assessing Officer-Provision for standard assets-Allowable as deduction. [S. 36(1)(viia)]
Held that the transfer of monies to funds is allowable as deduction under section 37(1) only if at least one of the conditions exists, there is an overriding statute by which the amounts transferred to funds do not remain with or under the control of assessee ; or if the assessee has "actually spent" moneys for the relevant purposes during the previous year. In the present case, the provisions of section 37(1) of the Madhya Pradesh Co-operative Societies Act, 1960 spoke of "appropriate of profits" only. There was no material available on record by which it could be verified that either of the two conditions was satisfied. Matter remanded to the Assessing Officer. that the provision made by the assessee qua standard assets was basically in the nature of bad and doubtful debts and was allowable under section 36(1)(viia). (AY.2014-15)
Asst. CIT v.Jila Sahakari Kendriya Bank (2023)107 ITR 629 Indore) (Trib)

S. 37(1) : Business expenditure-Paying sponsorship fees to college in terms of agreement-Logo used on stationery items and books-Commercial wisdom-Expenditure allowable.
Held, that the assessee had paid sponsorship fees in terms of an agreement to carry out business promotional activities. Under the terms of the agreement, the trust was to carry out various sponsorship activities in the assessee's name as sponsor against yearly payment of Rs. 2.50 crores. The payment was backed by the agreement and invoices and the Department had no material to doubt these. The assessee had also furnished the details of actual expenditure incurred on business promotional activities. In such a case, it was not open for the Assessing Officer to question the commercial wisdom of the assessee as to how the business was to be promoted. The assessee's logo had been used on stationery items and other record books which would be used by a large number of students which enhance the image of the assessee in the minds of the parents of the students. Similarly, there was no basis to arrive at a conclusion that 50 per cent. of other expenditure was to be considered as an expenditure qualifying the test laid down under section 37(1).(AY.2013-14, 2014-15)
Dy. CIT v.Agni Estates And Foundations P. Ltd. (2023)107 ITR 91 (SN.) (2024) 204 ITD 249 (Chennai)(Trib)

S. 37(1) : Business expenditure-Bad debts and investment-Written off-Investment and loans and advances to subsidiary-Failure to establish commercial and business expediency for making investment in subsidiary-Disallowance is affirmed. [S. 36(1)(vii)]
Held that the assessee failed to establish commercial and business expediency for making investment in subsidiary. Disallowance is affirmed. (AY.2013-14)
Electronica Machine Tools Ltd. v. Dy. CIT (2023)107 ITR 24 (SN) (Pune) (Trib)

S. 37(1) : Business expenditure-Salary, Daily Allowance And Festival Expenses And Expenses On Telephone, Vehicle, General, Travelling, Business, Promotion, Staff Labour Cost Of Uniform-Estimate at 10 Per Cent is held to be reasonable-Failure to produce evidence-Disallowance is proper.[S. 80C]
Held that salary, daily allowance and festival expenses and expenses on telephone, vehicle, general, travelling, business, promotion, staff labour cost of uniform. Assessee failing to produce books of account and supporting bills and vouchers. Disallowance of 40 Per Cent. of expenses for non-verification of expenses. Commissioner (Appeals) affirming disallowance for daily allowances, festival celebration expenses and establishment expenses to 20 Per Cent. and restricting telephone expenses, vehicle running and maintenance, general expenses, travelling and conveyance expenses, business promotion, staff and labour welfare and cost uniform expenses at 10 Per Cent.is held to be reasonable. (AY.2013-14)
Kartar Singh Chouhan v.ITO (2023)107 ITR 85 (SN)(Delhi)(Trib)

S. 37(1) : Business expenditure-Interest paid on excess refund of duty drawback-Not penalty or fine-Allowable as deduction. [S. 37, Expln. 1,145, Customs And Central Excise Duties Drawback Rules, 2017, R. 17]
Held that rule 17 of the Customs and Central Excise Duties Drawback Rules, 2017 provides for refund of excess claim and interest thereon. It is not in the nature of penalty or fine where the rule itself provides for payment of principal as well as interest. Hence, it should not be considered as penalty or fine. Therefore, the interest paid by the assessee towards excess refund of duty drawback was not penal in nature, Explanation 1 to section 37 would not apply and the assessee was eligible for claiming it as expenditure. Since, the assessee had adjusted the interest paid from the refund of export benefit, it would not affect the profitability of the company.(AY. 2018-19)
Mahalasa Exports v.ITO (2023)105 ITR 69 (SN)(Bang) (Trib)

S. 37(1) : Business expenditure-Business of trading of drugs and medicines-Commission paid two doctors-Not allowable as deduction.
Held that payments made by assessee to doctors qualified as commission paid for promoting sale of medicines, in view of CBDT Circular No. 5 of 2012, dated 1-8-2012 read with Explanation 1 to section 37(1), payments were not allowable under section 37(1). Principle of tax neutrality would not apply in cases payments have been held to be illegal or are prohibited by law. (AY. 2013-14)
Sunflower Pharmacy. v. ITO (2023) 203 ITD 623 / 107 ITR 30 (SN (Ahd) (Trib)

S. 37(1) : Business expenditure-Pooja and festival-Not allowable as business expenditure-Depreciation-Additional depreciation-Not produced relevant material-Matter remanded to the Assessing Officer. [S. 32 (1)(iia)]
Held that expenditure incurred towards pooja and festival by assessee company could not be treated as expenditure incurred wholly and exclusively for purposes of business or profession of a company hence not allowable. Followed Hira Ferro Alloys Ltd. v. Dy. CIT (2010)) 326

ITR 261 /(2009) 227 CTR 508 ((Chhattishgarh)(HC) As regards additional depreciation, since assessee had not brought on record any relevant details pertaining to additions in plant and machinery and with respect to use of impugned plant and machinery for year under consideration, matter was to be remanded back to Assessing Officer to adjudicate issue afresh. (AY. 2012-13)
Alok Ferro Alloys Ltd. v. DCIT (2023) 203 ITD 199 (Raipur) (Trib.)

S. 37(1) : Business expenditure-Abandoned project-Expansion of business by setting up a clinic is economically not viable-Loss is allowable as deduction-Capital expenditure-Constructing and running business of hospital is to be allowed as deduction under section 35AD-There is no condition of any date or year of commencement of specified businesS. [S. 28(i), 35AD]
Assessee is engaged in hospital and trading of pharmaceuticals business. Assessee had planned to set up a clinic for expansion of its business. Expenditure incurred by it in this regard was accounted as capital work in progress. Since clinic was not ready to use, same was not added to block of assets, and accordingly, no depreciation was claimed on same. In year under consideration, assessee analysed to arrive at a conclusion that setting up of clinic would not be economically viable and in order to save future losses, this expansion of business by setting up of clinic was dropped Accordingly, assets in this respect were put to sale and amount of difference between realisation of sales and expenditure incurred up to date was charged to profit and loss account, claiming it as a loss. Tribunal held that loss incurred by assessee on sale of assets relating to setting up of clinic which was abandoned is to be allowed. Tribunal also held that capital expenditure incurred by assessee for purpose of specified business i.e. constructing and running business of hospital is to be allowed as deduction under section 35AD and there would be no condition of any date or year of commencement of specified business. (AY. 2015-16)
Ambuja Neotia Healthcare Venture Ltd. v. DCIT (2023) 203 ITD 143 (Kol) (Trib.)

S. 37(1) : Business expenditure-Fabricated agreement-Sales commission-Failure to provide supporting documents-Foreign travelling expenses of director-Sales promotion-Failure to produce evidence-Bogus expenditure-Disallowance is justified
Held that the assessee submitted a fabricated agreement and failed to provide any supporting evidence for its sales commission claim, lower authorities were justified in making addition for sales Held that claimed foreign travel expenses by a director exploring UK market, however, assessee failed to furnish any evidence to establish that such expenditure had been incurred wholly and exclusively for purpose of its business, said claim was rightly rejected by lower authorities. Held that business promotion expenses claimed by assessee were found to be used for personal purposes and gifting jewellery to customers, in absence of any assistance rendered by assessee in that respect, said claim was to be disallowed. Held that since detailed quantification or basis on which such expenses were booked was not reflected from invoice submitted by assessee and neither such invoices contained any stamp, seal, inward mark or receipt date, said expenses was to be treated as bogus. (AY. 2011-12)
Aditya Exim Ltd. v. DCIT (2023) 106 ITR 331 / 203 ITD 496 (Ahd) (Trib.)

S. 37(1) : Business expenditure-Failed to produce end product qualitatively-Expenditure is not incurred for any infringement of law and rather, it was a by-product of commercial activity, said expenditure was not hit by Explanation 1 and section 37.
Assessee entered into an agreement with JK Tyre for carrying out manufacturing activity of JK Tyres on job work basis. It failed to produce end product qualitatively according to parameters of JK Tyres and dispute arose between parties.In order to resolve dispute,

assessee had to pay a certain sum to JK Tyres so that it could continue to work on behalf of JK Tyre for job work basis and claimed it as revenue expenditure. Assessing Officer held that w Explanation 1 appended to section 37, disallowed the claim. On appeal the Tribunal held that since expenditure is not incurred for any infringement of law rather, it was a by-product of commercial activity, said expenditure is not hit by Explanation 1 to section 37.Addition is deleted. (AY. 2013-14)
Farseen Rubber Industries Ltd. v. DCIT (2023) 203 ITD 765 (Kol) (Trib.)

S. 37(1) : Business expenditure-Diesel & petrol expenses-Ad-hoc disallowance-No fining that expenses are bogus-Addition is deleted.
Tribunal held that ad-hoc disallowance which had no rationale and sound basis as no finding was recorded by Assessing Officer that assessee had claimed any bogus LPG/diesel expenditure or expenditure had not been incurred for purposes of assessee's business, disallowance is deleted (AY. 2013-14)
Pawan Aggarwal. v. DCIT (2023) 202 ITD 712 (Chd) (Trib.)

S. 37(1) : Business expenditure-Shortfall in PF- its statutory liability towards Employees Provident Funds Act, payment made towards maintenance of statutory interest rate was an allowable expenditure.[Provident Fund Rules, 17]
Assessee-co-operative bank claimed expenses with respect to contribution made towards shortfall in provident fund's statutory interest rate. Assessing Officer denied the claim on ground that assessee is using this fund to cover up shortfall and pay employees contribution. On appeal the Tribunal held that as per rule 17 under provident Fund Rules any shortfall in maintaining interest rate in provident fund of employees is responsibility of employer. Since assessee had fulfilled all its statutory liability towards Employees Provident Funds Act, payment made towards maintenance of statutory interest rate was an allowable expenditure. (AY. 2011-12)
Surat District Co.op. Bank Ltd. v. ACIT (2023) 202 ITD 624 (Surat) (Trib.)

S. 37(1) : Business expenditure-Gifts-Customers on occasion of new year and festivals-Allowable as business expenditure-Gifts given to directors and to government employees would not be allowed as expenseS.
Assessee-co-operative bank claimed expenses for giving gift to staff, director, customers and other.Assessing Officer disallowed said expenses on ground that there was no bifurcation. On appeal the Tribunal held that gifts given to customers of bank on occasion of new year and festivals were allowable, however gifts given to directors of assessee and to government employees would not by allowed as expenses. (AY. 2011-12)
Surat District Co.op. Bank Ltd. v. ACIT (2023) 202 ITD 624 (Surat) (Trib.)

S. 37(1) : Business expenditure-Community development expenses-Allowable as business expenditure.
The assessee claimed certain expenses towards community development expenses and environment health and safety expenses for development of in and around surrounding villages of plant area which needed to be developed for purpose of development of its power generation business. Assessing Officer held that said expenditure is not incurred wholly and exclusively for purpose of business, and disallowed same. CIT(A) deleted the addition. On appeal the Tribunal held that during assessment proceedings, the assessee furnished several details of community development expenses incurred by it. Further, it could not be disputed that expenditure incurred on environment health and safety, were relevant considering

business in which assessee was engaged, i.e. development and implementation of coal-based thermal power project. Once expenditures had been accepted to be incurred for community development and environment health & safety expenses, same could not be held to be not incurred wholly and exclusively for purpose of business. Order of CIT(A) is affirmed. (AY. 2014-15)

DCIT v. GMR Warora Energy Ltd. (2023) 202 ITD 501 (Mum) (Trib.)

S. 37(1) : Business expenditure-Expenditures towards road and bridge construction Commercial expediency-Allowable as deduction allowable as deduction though no income shown during the year. [S. 145]

Assessee claimed expenses towards certain projects. Assessing Officer disallowed said expenses on ground that this claim of expenses was made without corresponding disclosure of income against same. Tribunal held that expenses were related to road and bridge construction which is main object for which assessee-company had been incorporated. There is no dispute that these expenses were incurred wholly and exclusively for purpose of business of assessee and satisfied test of commercial expediency as per provisions contained in section 37(1). Disallowance is deleted.(AY. 2010-11)

ACIT v. Gujarat State Road Development Corporation Ltd. (2023) 202 ITD 510 (Ahd) (Trib.)

S. 37(1) : Business expenditure-Business of civil construction-Labour charges-Failure to support evidence-Restricted to 50 per cent of labour expenses.

Assessee, engaged in business of civil construction, claimed labour expenses of Rs. 6.2 lakhs out of which Rs. 6,13,800 was outstanding. The assessee had failed to furnish required details, Assessing Officer disallowance impugned labour expenses. Tribunal held that since assessee was engaged in business of civil construction which required involvement of labours, in interest of justice and fair play, disallowance was to be restricted to 50 per cent. (AY. 2012-13, 2014-15)

Niteshkumar Maganbhai Patel. v. ITO (2023) 202 ITD 323 (Ahd) (Trib.)

S. 37(1) : Business expenditure-Club membership fee-One-time entry fee paid by individual assessee for club membership could not be allowed as business expenditure-Adjustment is affirmed-Only corporate membership one time membership fee is allowable.. [S. 143(1)(a)]

Tribunal held that one-time entry fee paid by individual assessee for club membership could not be allowed as a business expenditure and was correctly disallowed by CPC under section 143(1)(a). Tribunal also held that even if assessee used its club facility for soliciting customers, recurring expenditure could be allowed as business expenditure subject to verification but not one-time entry fee. (AY. 2019-20)

Balrajsingh Jagjitsingh Kharbanda. v. ADIT, CPC, (2023) 202 ITD 433 (Mum) (Trib.)

S. 37(1) : Business expenditure-Self-generated bills and vouchers Not Verifiable-Material purchase expenses restricted to 50 Per Cent.-Other expenses directed to be allowed. [S. 44AD]

Material purchase expenses restricted to 50 Per Cent. in the light of Central Board of Direct Taxes Circular dated March 30, 1993 ([1993 201 ITR (St.) 4) and other expenses such as, power and fuel expenses, salary expenses, travelling expenses, convenience expenses,

telephone expenses, miscellaneous expenses, tea and refreshment expenses and accounts fees expenses directed to be allowed (AY. 2016-17)
Jyotikaben Ghanshyambhai Acharya v. ITO (2023)104 ITR 11 (SN.)(Ahd) (Trib)

S. 37(1) : Business expenditure-Capital or revenue-Lease premium paid at commencement of lease-Allowable proportionately as revenue expenditure over the lease period-Addition is deleted.
Held that the leasehold charges paid by the assessee could be proportionately claimed as revenue expenditure over the lease period. The amortisation of the leasehold charges claimed by the assessee for the assessment year under consideration is to be allowed as revenue expenditure.(AY.2017-18, 2018-19)
Teejay India P. Ltd. v. Dy. CIT (2023)103 ITR 52 / 152 taxmann.com 70 (Vishakha) (Trib)

S. 37(1) : Business expenditure-Interest paid on delayed remittance of tax-Not allowable as deduction.
Tribunal relied on the decision in CIT v. Chennai Properties and Investment Ltd (1999) 239 ITR 435 (Mad)(HC) and held that interest paid on delayed remittance of tax is not allowable as deduction. Order in Resolve Salvage and Fire India (P) Ltd v. Dy.CIT (1995) 195 ITD 266 (Mum) (Trib) distinguished. *(*AY. 2006-07 to 2010-11)
Spicejet Ltd. v. Add. CIT (2023) 102 ITR 58 (Delhi)(Trib)

S. 37(1) : Business expenditure-Failure to deduct tax at source-Royalty-Matter remanded-DTAA-India-Netherlands-Cash credits-Share capital matter remanded-Office repairs and maintenance-Matter remanded-Disallowance of expenditure in relation to exempt income-Income from dividend-Matter remanded to verify assessee's claim of income being exempt.[S. 14A, 40(a)(i),68, 195]
Tribunal remanded the matter to the file of the Assessing Officer in respect of failure to deduct tax at source, cash credits, office repairs and maintenance and Disallowance of expenditure in relation to exempt income. (AY. 2006-07 to 2010-11)
Spicejet Ltd. v. Add. CIT (2023)102 ITR 58 (Delhi)(Trib)

S. 37(1) : Business expenditure-Capital or revenue-Depreciation-Computer software-Ticketing system for Airlines-Enduring nature-Capital expenditure-Entitled to depreciation at 60 Per Cent. [S. 32]
Held that the assessee had incurred expenditure for purchasing software for a ticket booking system, which gave it enduring benefit and was of a capital nature. In the depreciation schedule under the statute, computer software was treated as an asset eligible to depreciation at the rate of 60 per cent. Order of CIT(A) is affirmed. (AY. 2006-07 to 2010-11)
Spicejet Ltd. v. Add. CIT (2023)102 ITR 58 (Delhi)(Trib)

S. 37(1) : Business expenditure-Foreign currency convertible bonds-Not amortising expenses in books-Revenue nature allowable as deduction-Premium payable on redemption of bonds-Allowable as deduction.
Held that the assessee had not amortised the expenditure in its books. The Assessing Officer did not dispute the nature of expenditure as revenue. The entire expenditure was allowable. In the assessment year 2006-07, the Assessing Officer had himself allowed the premium payable on redemption of the bonds as revenue expenditure ; hence, the assessee's claim to deduction thereon had to be allowed. Relied on,Taparia Tools Ltd. v. JT. CIT (2015) 372 ITR

605 (SC) ASST. CIT v. Ashima Syntex Ltd (2009) 310 ITR (A.T) 1 (Ahd) (SB)(Trib). Order of CIT(A) affirmed. *(*AY. 2006-07 to 2010-11)
Spicejet Ltd. v. Add. CIT (2023)102 ITR 58 (Delhi)(Trib)

S. 37(1) : Business expenditure-Capital or revenue training and licensing of Pilots-Entries in books not determinative of nature of expenditure-Allowable as revenue expenditure in year of incurrence.[S. 145]
Held that the expenditure was incurred towards training and licensing of pilots. There was no dispute that the expenditure incurred was of a revenue nature ; however, entries made in the books of account were not determinative of the nature of the expenditure. By incurring the expenses, the assessee could not be said to derive a benefit which could clearly and unambiguously be identified or allocated over a specified future time period. Once it was held to be revenue expenditure, it had to be allowed in the year of incurrence of the expenditure. Hence, the expenses were fully allowed. Relied on Taparia Tools L td. v. JT. CIT (2015) 372 ITR 605 (SC).*(*AY. 2006-07 to 2010-11)
Spicejet Ltd. v. Add. CIT (2023)102 ITR 58 (Delhi)(Trib)

S. 37(1) : Business expenditure-Donation-Contribution-Ministry of Rural Development Instructing Public Sector Banks to lead Institutions in managing and running institutes-Allowable as deduction-Cenvat Credit-Unutilised Cenvat credit charged to profit and loss account-Not allowable as deduction-Bad debt written off-Matter remanded. [S. 36(1)(vii) 80G, Cenvat Credit Rules, 2004.]
The contribution had been made by the assessee to a foundation which had as its objects to set up training centres for educating and training people with a view to create awareness, develop local leadership among the community, development through self help, utilisation of local resources and talents.Allowable as deduction. Unutilised Cenvat credit charged to profit and loss account,not allowable as deduction. Bad debt written off. Matter remanded *(*AY.2016-17)

UOI v. Dy. CIT (2023)102 ITR 235 (Bang) (Trib)

S. 37(1) : Business expenditure-Insurance business-Provisions on standard assets-Allowable as deduction. [S. 44]
Held that the addition in respect of provision for standard assets was to be deleted as similar disallowances were deleted for an earlier assessment year in the assessee's own case. (AY. 2011-12)
Oriental Insurance Co. Ltd. v. Dy. CIT (LTU) (2023)102 ITR 122 (Delhi)(Trib)

S. 37(1) : Business expenditure Prior period expenditure-Expenditure crystallising only during relevant previous year when bills were received-Allowable as deduction-Provisions for expenses at end of previous year-Actually paid after end of previous year-Allowable as deduction-Contributions to provident Funds-Provision for gratuity-Government Provident Fund Established as Per Provident Funds Act, 1925-Allowable as deduction. [S. 36(1)(va) 40A(7) 145, Constitution, Art.12]
Held that the prior period expenses had in fact crystallised in the relevant previous year as bills were received only in the relevant previous year. The claim for prior period expenditure had to be allowed. That undisputedly, the provisions for expenses were in respect of expenditure relating to the month of March, for which bills were received in the month of April. Subsequently, the assessee had accounted for these expenses following the mercantile system of accounting. That the assessee was a wholly owned State Government undertaking

set up for the generation of electricity. The assessee fulfilled most of the conditions for the purpose of the definition of the term ”State” in article 12 of the Constitution. The assessee was a wholly owned Government enterprise and an instrumentality and agency of the State Government. The general fund created by the assessee was a notified fund created by the Government of West Bengal by notification in Official Gazette. The assessee was an authority having custody of the fund and was treated as Government by virtue of section 8(2) of the Provident Funds Act, 1925. Therefore, the assessee maintained two accounts, i. e., the contributory fund which was under the control of the trust and the general fund which was under the control of Government. Part A of the Fourth Schedule to the Act contains provisions for recognised provident funds. Rule 1 thereof provides that, that part would not apply to any provident fund to which the Provident Funds Act, 1925 applied. Therefore, that part would not apply to the assessee's general fund. The provisions of section 43B of the Act would not be applicable to the assessee and even if the provisions of section 43B were to be applied, the contribution would be considered as paid as the account was maintained by the assessee which was an extended arm or instrumentality of the State Government. The same reasoning was applied to the disallowance of contributions under section 36(1)(va) of the Act and to provisions for gratuity under section 40A(7). The computation of the disallowance was to be verified by the Assessing Officer and corrected. (AY. 2007-08, 2009-10, 2012-13, 2014-15)

West Bengal Power Development Corporation Ltd. v.Dy. CIT (2023)102 ITR 453 (Kol)(Trib)

S. 37(1) : Business expenditure-Administrative expenses-No business activity-Insurance premium-Allowable as deduction.

The Hon'ble Tribunal allowed insurance premiums claimed as prepaid expenses incurred in the previous year on the grounds that the Assessee had not claimed any bogus expense and the books of accounts were audited and no defect was pointed out by the Assessing Officer during the assessment proceedings. Further, noting the fact that the Assessee had not been carrying out any business activity, it was observed that expenses claimed by Assessee cannot be said to be ineligible for deduction in the absence of business activity. This is so because the Assessee being a body corporate had to carry out necessary compliance to maintain its status and may incur certain administrative expense for the said purpose. (AY.2014-15)

Oceanic Vehicles Pvt. Ltd. v. DCIT (2023) 102 ITR 70 (SN) (Ahd.)(Trib.)

S. 37(1) : Business expenditure-Project abandoned-Joint venture project-Expenditure incurred relating to a joint venture project later abandoned is allowable in so far as the expenditure is incurred by the Assessee itself and not the joint venture entity.

The Hon'ble Tribunal observed that the Assessee had suitably demonstrated incurring of expenditure by self, by pointing out that the shareholders agreement between the joint venture partners which required the respective parties to the joint venture, to bear costs up to a certain date and the Assessee had till then incurred this cost which is sought to be written off. There was no question therefore of the joint venture company bearing any expenditure up to this cutoff date. The Hon'ble Tribunal thus held that the assessee was entitled to a deduction of project expenses. (AY. 2000-01)

Gujarat State Fertilizers & Chemicals Ltd v. DCIT (2023) 102 ITR 76 (SN) (Ahd.)(Trib.)

S. 37(1) : Business expenditure-Wages is allowed in the year of final settlement and on actual payment only.[S. 145]

Held that the directions of the Tribunal in the first round were to allow claims in respect of wage settlement on the final settlement of the wages and on actual payment. The Assessing Officer pursuant to the remand, denied the claim finding that the sum was not settled by the assessee in the year in question. The assessee had not controverted this factual finding. In view thereof, the Hon'ble Tribunal held that there was no reason to interfere in the order of the Commissioner (Appeals) disallowing the claim of wages. The claim could be allowed in the year in which it was actually paid by the assessee. (AY 2000-01)

Gujarat State Fertilizers & Chemicals Ltd v. DCIT (2023) 102 ITR 76 (SN) (Ahd.)(Trib.)

S. 37(1) : Business expenditure-Assessee, following a consistent method of accounting, has offered EIS to tax on proportionate basis as and when they have accrued over tenure of loan and same has been accepted by revenue-in accordance with RBI norms as well as AS-9-Therefore, keeping in view principle of prudence as well as rule of consistency, no fault could be found with accounting methodology adopted by assessee to recognize revenue under securitization transactionS. [S. 145]

In the present case, the receipt of EIS is uncertain and the same may or may not accrue to the assessee over the terms of the loan. The assessee, following a consistent method of accounting, has offered EIS to tax on proportionate basis as and when they have accrued over the tenure of loan and the same has been accepted by revenue. The said methodology is in accordance with the RBI norms as well as AS-9 which provide that in case the revenue could not be measured with reasonable certainty, a suitable provision thereof should be made. However, in the present case, EIS may not have even accrued to the assessee in future years and thus, no such provision could be made in this year. Therefore, keeping in view the principle of prudence as well as rule of consistency, no fault could be found with the accounting methodology adopted by the assessee to recognize the revenue under securitization transactions. (AY. 2016-17)

Cholamandalam Investment & Finance Co. Ltd. v. ACIT (2023) 102 ITR 685 (Chennai) (Trib)

S. 37(1) : Business expenditure : Genuineness of job work charge-Produced formidable evidences to identify contractors as well as factum of incurring job work expenses, said expenses deserved to be allowed. [S. 131(1)(d), 133(6), Order XVI, rule 19 of CPC, 1908]

AO and CIT(A) rejected the jobwork expenses claimed by the assessee on the ground that the notices issued under Section 133(6) and thereafter summons issued under Section 131 to the Contractors remained uncompiled with.

It is the case of the assessee that since the Contractors are situated at a remote area situated in excess of distance of 500 kms, these witnesses could not be ordered to attend in person before the AO having regard to the Order XVI, rule 19 of CPC, 1908. The right course of action available to the AO was to issue 'commission' under Section 131(1)(d) at the nearest place of the situation of the Contractors for personal attendance, enquiry and local investigations. The assessee's plea is sustainable. The assessee has successfully demonstrated the incurring of job work expenses on the basis of clinching evidences, both direct and circumstantial. No adverse materials to controvert these tell-tale evidences are on record at present. Shorn off the non-compliance of summons served under Section 131, the assessee has filed formidable evidences to identify the contractors as well as the factum of incurring job work expenses as demonstrated by the IT returns of the service providers. TDS has been deducted on such expenses and reflected in the returns of income of the contractors. The increase in turnover, addition of new line of business, i.e., processing of rice and substantial increase in the fixed asset are vital indicators of plausibility of the

explanation offered by the assessee in this regard. In the absence of any culpable evidence in possession of Revenue, the job work expenses are allowable on a standalone basis, as incurred in the ordinary course of business. (AY.2014-15)
United Foods (P) Ltd. v. ACIT [2023] 221 TTJ 1/ 148 taxmann.com 452 (Delhi) (Trib)

S. 37(1) : Business expenditure-Pharmaceutical company-Gifting freebies to dealers and stockiest-Disallowance is not justified-Cannot be disallowed as unexplained expenditure. [S. 69C]
Assessee-pharmaceutical goods company incurred sales promotion expenditure by way of gifting freebies to dealers and stockiest with reference to their performance in achieving sales target and claimed same as deduction under. Assessing Officer, by placing reliance on Circular No 5/2012 dated 1-8-2012 and provisions of section 37(1), held that expenses on account of sales and business promotion by giving freebies to doctors or touts were prohibited. He also held that assessee could not produce bills/vouchers of said sales promotion expenses so debited in profit and loss account. On appeal the Tribunal held that the Assessing Officer had not substantiated that benefit of freebies were given directly or indirectly to medical practitioners and their professional associations which was a prohibited activity in view of abovesaid circular. On facts disallowance of expenses made by Assessing Officer is held to be not justified. The Tribunal also held that addition is also not justified under section 69C of the Act. (AY. 2013-14)
DCIT v. Curosis Healthcare (P.) Ltd. (2023) 200 ITD 431 (Jaipur) (Trib.)

S. 37(1) : Business expenditure-Product development expenses-Capital or revenue-Finance lease-Depreciation-Matter remanded. [S. 32]
Assessee engaged in manufacturing and trading of agro chemicals and lithium products. It incurred product development expenses and claimed same to be business expenditure. Assessing Officer disallowed said expense on ground that it gave an enduring benefit to assessee and was capital in nature. On appeal the Tribunal held that since facts available were not clear as to whether these expenses were routine expenses incurred for expansion of existing business or not, matter was to be restored to Assessing Officer for afresh examination. Tribunal also remanded the issue on allowability claim of depreciation on finance lease. (AY. 2018-19)
FMC India (P.) Ltd. v. NFAC(2023) 200 ITD 354 (Bang) (Trib.)

S. 37(1) : Business expenditure-Employee stock option scheme (ESOP)-Cross charge expenses would be eligible for deduction-Discount-Purchasing goods and selling them to retailers at low cost, profits foregone by assessee by offering discounts to retailers could not be held to be expenditure incurred in creating intangible assets or goodwill.
Assessee is a wholesale dealer of books, mobiles, computers and related accessories.It had claimed deduction of employee stock option scheme (ESOP) cross charge payments made to its holding company based in Singapore. Tribunal held that expenditure incurred by assessee towards ESOP would be eligible for deduction. Purchasing goods and selling them to retailers at low cost, profits foregone by assessee by offering discounts to retailers could not be held to be expenditure incurred in creating intangible assets or goodwill. (AY. 2017-18)
Flipkart India (P.) Ltd. v. ACIT (2023) 200 ITD 670 (Bang) (Trib.)

S. 37(1) : Business expenditure-Interconnect charges, employee cost, professional fees, call centre expenses-Allowable as revenue expenditure.
Dismissing the appeal of the Revenue the Tribunal held that though the assessee had treated expenses in account books as capital expenditure following Accounting Standard but

expenses had been incurred in relation to services provided to existing customers and, therefore, same being incurred wholly and exclusively for purpose of business deserved to be allowed as revenue expenditure. (AY. 2018-19)
ACIT v. Reliance Jio Infocomm Ltd. (2023) 200 ITD 156 (Mum) (Trib.)

S. 37(1) : Business expenditure-Payment to sub contractor-Bad debt-Government contracts-Matter remanded.[S. 36(1)(vii), 36(2)]
Tribunal directed the Assessing Officer was to be directed to consider claim with reference to material on record. As regards bad debts the Assessing Officer is directed to examine contract document and take a view according to law. (AY. 2014-15)
Maytas-Rithwik (JV) v. ACIT (2023) 199 ITD 518 (Hyd) (Trib.)

S. 37(1) : Business expenditure-Interest payment on delayed deposit of Income-tax-Not an allowable expenditure.
The Assessing Officer held that payment of interest on delayed deposit of TDS was not an allowable deduction and accordingly disallowed expenditure. Tribunal held once, deductee pays due taxes, deductor is absolved from said tax liability but not of interest liability on delayed payment. Allowing of such interest payment on delayed deposit of TDS as deduction would defeat very purpose of TDS provisions ensuring deduction of taxes from income of recipient and payment/deposit thereof with Central Government within due time. Therefore, interest payment on delayed deposit of Income-tax, whether TDS or otherwise, was not an allowable expenditure. (AY. 2014-15)
Premier Irrigation Adritec (P.) Ltd. v. ACIT (2023) 199 ITD 342 /222 TTJ 732 (Kol) (Trib.)

S. 37(1) : Business expenditure-Mark-to-market loss on swap contract-loans were converted into foreign currency loan to take benefit of low interest rate-Order of CIT(A) is affirmed. [S. 28(i)]
Held that mark-to-market loss on swap contract was allowable where loans were converted into foreign currency loan to take benefit of low interest rate and loss recognized on account of foreign exchange fluctuation as per notified Accounting Standard 11 was an accrued and subsisting liability and not merely a contingent or hypothetical liability. Allowable as deduction. Order of CIT(A) is affirmed. (AY. 2015-16)
DCIT v. Adani Power Maharashtra Ltd. (2023) 199 ITD 226 (Ahd) (Trib.)

S. 37(1) : Business expenditure-Interest and processing charges-Letting of properties assessed as business income-Allowable as deduction. [S. 28(i)]
Expenses incurred by towards interest and processing charges paid on loan borrowed for buying said let out property is allowable as deduction. (AY. 2015-16)
ACIT v. Tupelo Builders (P.) Ltd. (2023) 199 ITD 58 / 221 TTJ 192 (Delhi)(Trib)

S. 37(1) : Business expenditure-Renovation and repairs-Licence agreement-Allowable as revenue expenditure.
Held that where assessee had entered into a license agreement with Board of Trustees for Port of Kolkata wherein it was entrusted with project of building facilities at dock complex and terms and conditions of license agreement required an obligation on assessee to undertake repairs of damage and destruction and assessee had undertaken repair of ship unloader affected by cyclone, expenditure incurred by assessee in facts of case were on revenue account which had rightfully been allowed. (AY. 2012-13)

DCIT v. International Seaports (Haldia) (P.) Ltd. (2023) 199 ITD 188 /221 TTJ 46 (Kol)(Trib)

S. 37(1) : Business expenditure-Builder-Loan processing charges on behalf of buyers-Allowable as deduction.
Held that loan processing charges borne by assessee-firm, engaged in business of construction of residential units/flats, on behalf of buyers so as to attract buyers for booking flats of assessee being in course of its business is allowable as revenue expenditure. (AY. 2014-15)
ITO v. M.D. House Build. (2023) 199 ITD 153 (Surat) (Trib.)

S. 37(1) : Business expenditure-Sugarcane, purchase-Difference between statutory minimum price and statutory additional price fixed for sugarcane-Component of profit which would be a part of final determination of additional purchase price fixed under clause 5A of sugarcane (Control) Order, 1966-Remaining amount was to be allowed as business expenditure-Matter remanded. [Sugarcane (Control) Order, 1966, Clause 5A]
Held that entire amount of difference between statutory minimum price and statutory additional price fixed for sugarcane per se could not be said to be an appropriation of profit; however, component of profit which would be a part of final determination of additional purchase price fixed under clause 5A of sugarcane (Control) Order, 1966 would certainly be an appropriation of profit and, thus, remaining amount was to be allowed as business expenditure. Matter remanded. (AY. 2011-12, 2013-14)
Shree Khedut Sahakari Khand Udyog Mandi Ltd. v. DCIT (2023) 199 ITD 173 (Surat) (Trib.)
Shree Mahuva Pradesh Sahakari Khand Udyog Mandi Ltd. v. ITO *(*2023) 199 ITD 117 (Surat) (Trib.)
Shree Sayan Vibhag Sahakari Khand Udyog Mandi Ltd. v. DCIT (2023) 199 ITD 161 (Surat) (Trib.)

S. 37(1) : Business expenditure-New hospital same line of business-Common management-Allowable as revenue expenditure. Exempt income-Matter remanded for verifying the expenditure-Consultancy receipts from new hospital unit-Depreciation is allowable. [S. 14A, 32, R.8D]
Assessee-doctor is running a hospital dealing in spine treatment. During year under consideration, assessee started a new hospital in same line.He claimed certain expenses in relation to new unit as revenue expenses.Assessing Officer held that since business of assessee in respect for new (hospital) unit had not commenced, expenses incurred in relation to same were to be disallowed. Tribunal held that opening of new hospital in same line of specialty i.e. spine treatment, would constitute extension/expansion of existing business and since said expansion was in same line of business and same/common management as existing hospital, expenses should be allowed as revenue expenses. In relation to expenses incurred income for earing exempt income, matter remanded for verifying the expenditure. the assessee has shown consultancy receipts from new hospital unit hence depreciation is allowable**.** (AY. 2013-14,2014-15)
Bharatkumar Rajendraprasad Dave. v. ACIT (2023) 199 ITD 553 (Ahd) (Trib.)

S. 37(1) : Business expenditure-Project for offshore and onshore supply of super critical turbines for thermal power project-Provision for foreseeable loss-Contingent liability-Accounting Standard 7-Matter is restored to file of Assessing Officer with direction to examine claim of assessee by calling for relevant detailS. [S. 145]

Assessee was awarded a project for supply of super critical turbines for thermal power project. Contract value consisted of offshore supply and onshore supply. Contract revenue for onshore supply portion was determined at certain sum. However, within some months, cost had been claimed to have escalated and a loss was visualized. Assessee made provision for foreseeable loss as per Accounting Standard 7 relating to construction contracts and claimed deduction. Assessing Officer held it to be a contingent liability and disallowed claim. On appeal the Tribunal held that deduction of expected loss is required to be provided for in books of account and is allowable as deduction.It was obligation of assessee to explain before Assessing Officer as to how cost had escalated by 300 per cent from original estimate and since there was no occasion for Assessing Officer to examine these factual aspects, matter was to be restored to file of Assessing Officer with direction to examine claim of assessee by calling for relevant details. (AY. 2010-11)

L&T MHPS Generators (P.) Ltd. v. Dy.CIT (2023) 199 ITD 621 (Mum) (Trib.)

S. 37(1) : Business expenditure-Business of real estate-Marketing expenses-Not allowable-Expenses which were accumulated in work-in-progress as per Ind AS 115, revenue recognition policy and matching concept of accounting principle, same would be allowed in year in which performance obligation was satisfied. [S. 145]

Assessee is engaged in business of real estate. In relevant assessment year, assessee incurred marketing and sales expenditure with respect to development of real estate project. On appeal to Commissioner (Appeals), assessee filed additional ground claiming deduction of marketing and sales expenses. However, Commissioner (Appeals) held that assessee had not claimed these expenses in his return of income and there was no disallowance made by Assessing Officer, thus, question of allowing same would not arise. On appeal the Tribunal held that the assessee adopted revenue recognition policy prescribed under Ind AS 115 based on satisfaction of performance obligation over time which was satisfied when possession of real estate unit was given to customer. Also all costs were accumulated during course of its completion and same were charged against revenue when control of completed unit was transferred to customer to satisfy criteria of matching concept of accounting. Claim of deduction made by assessee towards marketing and sales expenses would not be allowable in relevant year, however, since these expenses were accumulated in work-in-progress as per Ind AS 115, revenue recognition policy and matching concept of accounting principle, same would be allowed in year in which performance obligation was satisfied. (AY. 2019-20)

Bengal Peerless Housing Development Company Ltd. v. DCIT (2023) 199 ITD 679 (Kol) (Trib.)

S. 37(1) : Business expenditure-Foreign travel expenses-Business of real estate development and construction-To understand global trend of business-Business man point of view-Travel expenditure-Ad-hoc disallowance of 25 percent is not Sales promotion expenses-Allowed as deduction.

Held that the assessee had duly furnished all possible details with relevant supporting evidences to justify incurrence of said foreign travel expenses. The directors of assessee-company had undertaken these foreign trips together with architect and advocate as case might be which itself proved that foreign visits were purely meant only for business purposes and no personal purpose could be established thereon as why would any person take architect and advocate along with him while going on a personal trip abroad. For the purpose of foreign visits was to be decided by assessee and Assessing Officer could not step into shoes of businessman and decide if same was required or not. Since the assessee had furnished all details with supporting evidence so as to show purpose of foreign travel, it could not be concluded that they were only pleasure tours. Disallowance is deleted. Held that the assessee

gave detailed explanation as to purpose of travel, names of persons who travelled, break-up of fuel expenses, etc. together with relevant supporting evidence. There was not any personal element in such expenses. On facts ad hoc disallowance of expenses is directed to be deleted.As regards the sales promotion expenses the Tribunal held that expense was not personal in nature. Assessee had duly furnished all details and supporting evidence along with entire bills issued by various vendors. On facts disallowance made by Assessing Officer is held to be unjustified. (AY. 2012-13)
Well Wisher Construction (P.) Ltd. v. DCIT (2023) 198 ITD 268 (Mum) (Trib.)

S. 37(1) : Business expenditure-Capital or revenue-Premium paid on foreign exchange forward contracts-Amortized as revenue expenditure over life of contract. [Accounting Standard (AS)-11]
Assessee claimed expenditure on account of premium paid on foreign exchange forward contracts entered into by assessee for purpose of repayment of foreign exchange loan taken for its projects.Assessing Officer disallowed same on ground that premium paid was in relation to foreign currency loan taken for execution of projects and it was capital in nature.Tribunal held that as per Accounting Standard (AS)-11 premium paid on foreign exchange forward contracts to be amortized as revenue expense over life of contract. Therefore, assessee was entitled to claim amortization of premium paid on foreign exchange contracts entered into by it for purpose of repayment of loan. (AY. 2014-15 to 2016-17)
CLP Wind Farm (India) Ltd. v. DCIT (2023) 198 ITD 690 (Ahd) (Trib.)

S. 37(1) : Business expenditure-Business of cinema photographic films, Legal fees-Dispute of film-Allowable as deduction whether the film would release or not would be irrelevant-Abandoned project-Service charges paid to a marketing company related to a film-film which was subsequently abandoned and never released-Allowable as business loss-Interest expenditure-Project abandoned-Capital or revenue-Allowable as deduction[S. 28(i), 36(1)(iii) Rule 9A]
Tribunal held that as long as expenses were incurred wholly and exclusively for purpose of business, whether film would release or not would be irrelevant, thus, said expenses is to be allowed. Tribunal held that since film was subsequently abandoned and never released, entire expenditure incurred on said project, including service charges were business loss and were to be allowed as such.Assessee claimed interest expenses with respect to borrowed funds. Assessing Officer held that said borrowed funds were used for film production and film was not released during year and as such expenses is were capital in nature. Tribunal held that since said project was eventually an abandoned project and film was never released, very basis of disallowance ceased to hold good in law and interest expense being incurred wholly and exclusively for business purpose was to be allowed as deduction. (AY. 2013-14)
Steller Films (P.) Ltd. v. ACIT (2023) 198 ITD 682 (Mum) (Trib.)
S. 37(1) : Business expenditure-Employee Stock Option Plan-(ESOP)-Allowable as revenue expenditure.
Assessee Company issued ESOP and RSU plans to its employees in India. The ESOP expenses resulted from the difference between the fair market value of the shares of the associate parent entity (AE) on the date of the grant and the exercise price. Since the AE first incurred these expenses, it charged them back to the assessee by issuing a debit note. The Assessee booked this cost as employee benefit expenses in its books of accounts. AO denied these expenses under the grounds that these were notional expenses and hence not allowable u/s 37. AO further held that the transaction was a colourable device to shift profits out of India. The Tribunal held that the scheme was for the employees of the assessee; hence, the assessee was the one who had to bear the difference in the cost of shares. By relying upon the

coordinate bench, it also held that since the expenditure was for retaining and rewarding the employees, these were revenue expenses.(AY. 2015-16)
Northern Operating Services (P.) Ltd. v. JCIT(2023) 200 ITD 145 (Bang) (Trib)

S. 37(1) : Business expenditure-Employee Stock Option Plan-(ESOP)-Allowable as revenue expenditure.
Assessee Company issued ESOP and RSU plans to its employees in India. The ESOP expenses resulted from the difference between the fair market value of the shares of the associate parent entity (AE) on the date of the grant and the exercise price. Since the AE first incurred these expenses, it charged them back to the assessee by issuing a debit note. The Assessee booked this cost as employee benefit expenses in its books of accounts. AO denied these expenses under the grounds that these were notional expenses and hence not allowable u/s 37. AO further held that the transaction was a colourable device to shift profits out of India. The Tribunal held that the scheme was for the employees of the assessee; hence, the assessee was the one who had to bear the difference in the cost of shares. By relying upon the coordinate bench, it also held that since the expenditure was for retaining and rewarding the employees, these were revenue expenses.(AY. 2015-16)
Northern Operating Services (P.) Ltd. v. JCIT(2023) 200 ITD 145 (Bang) (Trib)

S. 37(1) : Business expenditure-Commercial expediency-Professional and consultancy charges-Matter remanded.
The burden of proving commercial expediency of expenditure and establishing a nexus between expenditure and business lies with the assessee. The assessee claimed a deduction towards professional and consultancy charges, however the same was disallowed on grounds that payment was not supported by proper evidence to establish commercial expediency and nexus with business. The income has been offered as 'Compensation received' under the head 'Income from Other Sources' and not as professional fees. The main ground on which the expenditure is disallowed by the AO is that the assessee could not substantiate the claim in terms of commercial expediency to incur the expenditure and the nexus between the expenditure and the business. Matter was remitted back to the CIT (A) (AY. 2011-12)
Dinesh Devraj Ranka v. Addl. CIT [2023] 200 ITD 731 (Bang)(Trib.)

S. 37(1) : Business expenditure-Capital or revenue-Capital asset-Payment to its Indian counterpart for acquiring part of its business relating to debt collection service-Expenditure incurred for acquiring completely new business set up was income generation tool-Capital in nature. [S. 32]
Tribunal held that payment to its Indian counterpart for acquiring part of its business relating to debt collection service since assessee was not in debt collection service business before acquiring said business, expenditure incurred for acquiring completely new business set up was income generation tool and, hence, capital in nature.(AY. 2010-11)
Genpact Services LLC. v. DCIT (IT) (2023) 200 ITD 48 (Delhi)(Trib)

S. 37(1) : Business expenditure-Free samples and distribution of infant and children's nutrition food-Not allowable as deduction-Expenditure incurred on arranging conferences and seminars-Not allowable as deduction.[Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (Relevant Act), S. 4]
Assessee Company was engaged in manufacturing nutritious food for infants and children. It incurred expenses on free samples and distribution of children's nutrition food. This activity is prohibited under the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation

of Production, Supply and Distribution) Act, 1992 (Relevant Act). Thus, these expenses were disallowed. Similarly, expenses incurred by the assessee on conducting conferences and seminars of doctors and medical professionals were also disallowed. The assessee justified the business expediency of the expenses by submitting that the expenses enable the healthcare professional to gather technical knowledge and commercial insights about the products. However, by relying on the Apex Court's judgement in the case of Apex Laboratories (P) Ltd v. Dy.CIT (2022) 442 ITR 1/ 286 Taxman 200 (SC0 these expenses were also disallowed. In the incidental matter where CIT(A) opined that the assessee had conclusively violated the provisions of the relevant Act and initiated the penalty proceedings without offering any opportunity to the assessee, the matter was remanded back to CIT(A).(AY. 2012-13)

Mead Johnson Nutrition (India) (P.) Ltd. v. ACIT (2023) 200 ITD 234 / 225 TTJ 827 (Mum) (Trib.)

S. 37(1) : Business expenditure-Reimbursement of service tax-Commercial expediency-Allowable as revenue expenditure.

Tribunal held that neither the AO nor the CIT(A) disputed the fact that the assessee made payment of service tax to its distributors who had actually paid the amount of service tax to the exchequer and, thus, it was a kind of reimbursement of service tax liability of the assessee to its distributor. It was further noted that application of new taxation of law such as GST and the issue as to whether such liability was to be borne by the distributors of the assessee-company or the assessee was not settled up to that point of time. The ITAT therefore held that CIT(A) was right in concluding that the payment made by the assessee are directly related to the business activity of the assessee and it was incurred wholly and exclusively for the purpose of business of the assessee due to commercial expediency and the same was allowable as business expenditure. Accordingly Department's appeal was dismissed. (AY. 2012-13)

Addl. CIT v. Amway India Enterprises (P) Ltd. (Delhi) 201 ITD 229(Delhi)(Trib)

S. 37(1) : Business expenditure-Insurance premium of director paid by Company-Not incurred wholly and exclusively for the purpose of business-Not allowable as deduction-Bogus purcahses-Entire bogus purchase cannot be added-Addition restricted to 12.5% of alleged bogus purchaseS.-Delay of 177 days was condoned. [S. 133(6), 254(1)]

Held that the insurance premium of director paid by Company was personal liability of directors. Not incurred wholly and exclusively for business, not allowable as deduction. As regards disallowance of bogus purcahses the disallowance was restricted to 12.5% of the alleged bogus purchases. Delay of 177 days in filing the appeal was condined considering the affidavit of taxation manager.(AY.2010-11, 2011-12)

Lokhandwala Kataria Construction Pvt. Ltd. v. DCIT (2023)104 ITR 84 (Mum) (Trib)

S. 37(1) : Business expenditure-Equity Stock Option Plan-ESOP expenses-Failure to consider the submissions-Matter remanded. [S. 17(2)(vi(c), 192]

Tribunal held that CIT(A) failed to consider various contentions raised by the assessee that ESOP expenditure was a revenue expenditure in the hands of assessee – employer and no reasons were forthcoming for invoking provisions of Section 17(2)(vi)(c), mater was remanded to CIT(A) for reconsideration. (AY. 2017-18)

Nuvama Wealth and Investment Ltd. v ACIT [2023] 201 ITD 242 (Hyd)(Trib)

S. 37(1) : Business expendirure-Amortisation of preliminary expenses-Capital or revenue expenditure-Expenditure in connection with increase in authorised capital-Not allowed as revenue expenditure-Assessee cannot capitalise it and claim depreciation thereon-Mercantile system of accounting-Interest to be taxed on accrual basiS. [S. 32, 35D, 37(1), 145]

With respect to expenditure incurred in connection with increase in authorised capital. The assessee claimed that such expenditure was incurred prior to commencement of commercial production and was transferred to the asset account along with the financial charges. The AO disallowed the same on the ground that once expenditure was capitalised, the depreciation would be indefinitely claimed by the assessee and the assessee was required to charge such expenditure as revenue expenditure which he disallowed. The ITAT upheld the CIT(A) order wherein he has partly allowed the assessee's appeal holding that the AO cannot compel the assessee to compute such expenditure as revenue expenditure and thereby make disallowance, when the assessee had capitalised the expenditure in its books of account. However, since the assessee had admitted that such expenditure was treated as part of fixed assets and depreciation had been claimed in respect thereof, since expenditure was not allowed as revenue expenditure on increase in authorized capital, the assessee could not claim such expenditure by capitalising it and claiming depreciation thereon. Mercantile system of accounting-Interest to be taxed on accrual basis**.** (AY.2014-15)

Dy. CIT v. H. K. Ispat P. Ltd. (2023) 103 ITR 12 (SN)(Ahd) (Trib)

S. 37(1) : Business expenditure-Club membership fees-Club membership used by representatives of assessee for entertaining present and prospective customers-Commercial expediency-Allowable expenditure.

It has been held by the Hon'ble Appellate Tribunal that the club membership had been obtained in the name of the assessee and the representatives of the assessee used the club for entertaining present and prospective customers. This was certainly meant for the purpose of business of the assessee and to be construed as an expenditure incurred as a measure of commercial expediency. Hence, AO was not justified in treating the expenditure on club membership as personal in nature. (AY. 2014-15)

Cherry Hill Interiors P. Ltd. v. Add. CIT [2023] 105 ITR 34 (Delhi)(Trib)

S. 37(1) Business Expenditure-Capital or revenue-Non-Compete fee-In the first year of payment, proportionate deduction disallowed holding the same as capital expenditure-Rule of consistency is to be followed.

The assessee acquired running businesses of various bottling companies restricting them from sharing their knowledge and know-how in relation to the acquired business for a specified period. The assessee claimed deduction of the non-compete fee paid to them as deferred revenue expenditure on amortised basis over the period of non-competition. In the assessment order for the AY 2001-02, being the first year of payment, the AO disallowed the proportionate deduction on the ground that the non-compete fee was capital expenditure, resulting in benefit of enduring nature. The CIT(A) upheld the order of the AO. Similar findings were given in AY 2002-03. The ITAT following the rule of consistency and dismissed this ground of the assessee.(AY. 2004-05 to 2007-08)

Hindustan Coca-Cola Beverages P. Ltd v. Dy. CIT (2023) 103 ITR 67 (SN)(Delhi)(Trib)

S. 37(1) : Business expenditure-Assessee carrying on business in veterinary pharmaceuticals-Products registration expenses-Allowable as revenue expenditure :

The assessee-company, engaged in the business of manufacture, trading and marketing of healthcare products especially for veterinary needs, was in the business of veterinary

pharmaceuticals since 2002. For the A Y. 2017-18, the Assessing Officer disallowed the products registration expenses to the tune of Rs.47,21,095 claimed by the assessee. The Commissioner (Appeals) dismissed the appeal of the assessee. On appeal the Tribunal held, that the products registration expenses were allowable as revenue expenditure and the finding of the Commissioner (Appeals) was to be set aside. (AY.2017-18)
Ashish Life Science P. Ltd. v. Asst. CIT (2023)103 ITR 557 (Mum) (Trib)

S. 37(1) : Business expenditure-Joint Venture-Payment towards engineering and development cost each year dependent upon volume of production. Intellectual property rights remaining with companies, Payment not resulting in intangible asset capable of capitalization, said payment for use of technology revenue in nature.
The assessee was a joint venture between a Mauritius corporation, and a company in Japan, and engaged in the manufacture and sale of seats for passenger cars. The assessee claimed deduction towards engineering and development costs. The assessee furnished a copy of the engineering and recovery agreement under which such payment was made. The AO held that the amount paid was capital expenditure and hence, not deductible. The AO treated it as an intangible asset and allowed depreciation at 25 per cent. after capitalisation, which resulted in a disallowance.
The Tribunal held that, the relevant clauses of the engineering recovery agreement clearly mentioned the licence to the assessee to use the engineering development work done by the two joint venture companies was non-exclusive, payment by the assessee towards engineering and development cost each year was directly dependent upon the volume of production in such year using the technology, there was no obligation on the assessee to make any payment dehors the production in any later year in the eventuality of closing down of its business notwithstanding the fact that the two joint venture companies initially determined the amount payable per unit of production on the basis of aggregate targeted volume over the life of the project, similarly, the assessee was not eligible for any exemption from payment after a specific period on recoupment of costs by the two joint venture companies. It was manifest that the assessee did not have any dominion and control over the intellectual property rights of the technology developed by the Mauritius and Japanese companies, which was simply licensed to it on non-exclusive basis. Thus, the payment did not result in acquiring and owning the engineering and development technology for it to be characterised as an intangible asset capable of capitalisation. The payment in the nature of royalty for the use of such technology, being an item of revenue nature. Disallowance was not sustainable. (AY.2012-13)
Lear Automotive India P. Ltd. v. Asst. CIT (2023)105 ITR 4 (SN) (Pune)(Trib)

S. 37(1) : Business expenditure-Bogus Purchases-Information received from investigation wing Entire bogus purchase cannot be added-Addition restricted to 12.5% of alleged bogus purchases-Insurance premium of director paid by Company-Not incurred wholly and exclusively for the purpose of business-Not allowable as deduction. [S. 133(6)]
The assessee is engaged in business of development and construction of residential units. Taxation manager of the assessee company did not informed CA about Order due to inadvertent oversight and the same was supported by an affidavit from Taxation Manager. Further, insolvency proceedings before NCLT. There exists sufficient cause and delay of 177 days was to be condoned.
AO made addition by disallowing entire purchases of Rs. 94.02 Lakhs. Notice u/s. 133(6) to supplier returned “unserved”. Assessee contended that purchases were made through brokers. Payments made through banking channel. CIT(A) relied on judgement of Hon’ble SC in NK

Proteins (SLP No. 759/2017 dated 16.01.2017) and upheld entire addition. On appeal ITAT held that without purchase of construction material, business could not have been carried out. Therefore, disallowance was restricted to 12.5% of the alleged bogus purchase. Judgement of Bombay HC in the case of PCIT vs Paramshakti Distributors Ltd. (ITA No. 413/2017 dated 15.07.2019) relied upon. Insurance premium of director paid by Company was personal liability of directors. Not incurred wholly and exclusively for business. Therefore, not allowable u/s. 37(1). (AY 2010-11, 2011-12)

Lokhandwala Kataria Construction Pvt. Ltd. v DCIT (2023)104 ITR 84 (Mum)(Trib)

S. 37(1) : Business expenditure-Income from undisclosed sources-Bogus purchases-Expenditure on commission paid-Allowable as deduction. [S. 133(6), Prohibition of Benami property Transactions Act, 1988, S. 24]

On the basis of information received from the Investigation Directorate that the assessee-company had made bogus payment of Rs. 10.32 crores to RA and RS which were paper companies engaged in providing accommodation entries or sending bogus foreign remittances to entities based in Hong Kong and the U. A. E. in the guise of bogus import purchases.

The Assessing Officer stated that the assessee had failed to produce the parties as well as the new address of that party and therefore no independent verification could be done and hence the purchases were unproved.

Similarly, commission paid to four parties, which were not traceable at the addresses given in the return of income, the assessee submitted copies of the ledger account, the bills, invoices, debit notes and the bank statement to show the payment. Three parties did not respond. Accordingly, the Assessing Officer disallowed commission paid to all four parties.

With respect to the commission expenditure, the Commissioner (Appeals) held that the Assessee had submitted the debit notes, details of tax deducted at source, bank statements and financial statements along with the income tax return of those parties, that in all cases of the recipients of the commission, the commission income had been accepted. The Commissioner (Appeals) further noted that even in the proceedings initiated u/s. 24 of the Prohibition of Benami Property Transactions Act, 1988 initiated against the recipients of the commission these entities were not held bogus and accordingly deleted the addition of Rs. 83,15,211/-.

On appeal to the Tribunal, challenging the reversal of the additions on account of bogus purchases of Rs. 11.66 crores on account of accommodation entries and the addition on account of commission expenditure or Rs.82,15,211/-it was held that there was no infirmity in the finding of the Commissioner (Appeals). Even if it was held that the purchases from these parties were bogus, the proper course would be to determine the profit arising from the purchases by looking at the corresponding sales. If the alleged bogus purchases showed a gross profit higher than the regular gross profit shown by the assessee, no further addition was required to be made in the hands of the assesse.

[Applied: *CIT v. Sundaram Gems P. Ltd. (I. T. A. No. 6785 of 2010, dated November 30, 2011) (Bom)(HC)*

That all the four entities who received commission were assessed by the same Assessing Officer, who, in scrutiny assessments, had taxed the commission income as income from other sources, in their hands. All these parties had responded to the notice issued u/s. 133(6) of the Act, submitted the ledger confirmation reflecting the details of the transactions with the assessee as well as the debit note of the working of the commission with their return of income.

The assessee had produced details of other commission expenditure incurred by the assessee which were also identical. There was no infirmity in the order of the Commissioner (Appeals) in deleting the disallowance of Rs.83,15,211 of commission expenditure.(AY. 2012-13)

Dy. CIT v. Asian Star Co. Ltd. (2023) 154 taxmann.com 13 /104 ITR 639 (Mum) (Trib)

S. 37(1) : Business expenditure-Non-compete fee being a capital expenditure resulting in enduring benefit cannot be allowed as revenue expenditure.

Assessee Company is a manufacturer and trader of non-alcoholic beverages. Assessee had acquired running business of various bottling companies and restricted them from sharing their knowledge and know-how in relation to the acquired business for specified period. Assessee claimed deduction for such payment as deferred revenue expenditure on amortized basis over the period of non-competition. The AO disallowed the proportionate deduction on the ground that non-compete fee was capital expenditure, resulting in enduring benefit and therefore not allowable as revenue expenditure. The CIT (A) upheld the order of the AO. Given the fact that for AY 2002-03, the said view was upheld by the Tribunal and following the rule of consistency, the Hon'ble Tribunal upheld the order of the CIT (A) in the present case as well. (AY.2004-05 to 2007-08)

Hindustan Coca-Cola Beverages Pvt. Ltd. *v*. DCIT (2023) 103 ITR 67 (SN)(Delhi)(Trib)

S. 37(1) : Business expendirure-Explanation 2, disallowing CSR expenditure is not retrospective in nature.

Assessee incurred CSR expenditure on activities like installation of handpumps, distribution of shoes, uniform etc. to school students, drought relief measures etc. The AO disallowed such expense on the ground that Explanation 2 to section 37(1) of the Act though inserted w.e.f 01.04.2015, to be clarificatory in nature. On appeal the Hon'ble Tribunal by referring to various other decisions held that the Explanation was retrospective**.** (AY.2004-05 to 2007-08)

Hindustan Coca-Cola Beverages Pvt. Ltd. v. DCIT (2023) 103 ITR 67 (SN)(Delhi)(Trib)

S. 37(1) : Business expendirure-Capital or revenue-Expenditure incurred on ice boxes being made for acquiring or bringing into existence an asset for enduring benefit of business was of capital nature.

The Assessee had incurred expenditure on sign board, ice boxes etc. provided to vendors which were accounted under the head "marketing expenses". The CIT (A) allowed the claim of sign board as revenue expenditure, however, treated the ice boxes as part of plant and machinery and allowed depreciation in assessee's own case for AY 2002-03. Upon appeal, the Tribunal also disallowed the expenses on the ground that expenditure was being made for acquiring or bringing into existence an asset for enduring benefit of business and therefore was capital in nature for the AY 2002-03. The Hon'ble Tribunal followed the decision of the coordinate bench decision for AY 2002-03 and disallowed the expense in the present case. (AY. 2004-05 to 2007-08)

Hindustan Coca-Cola Beverages Pvt. Ltd. v. DCIT (2023) 103 ITR 67 (Delhi)(Trib)

S. 37(1) : Business expenditure-Authorised capital-Depreciation cannot be claimed on expenditure incurred towards increase in authorized share capital.[S. 32]

Assessee incurred certain expenditure in connection with increase in authorized capital prior to commencement of production. The same was capitalized in the books and depreciation thereon was claimed by Assessee. The AO disallowed such expenditure on the ground that the Assessee was required to charge such expenditure as revenue expenditure. In appeal the CIT(A) partly allowed the Assessee's appeal by holding that the AO cannot compel the Assessee to record such expenditure as revenue expenditure and thereby make disallowance, when the Assessee had capitalised expenditure in its books of accounts. Further, the CIT(A) was of the view that since expenditure on increase in authorized capital cannot be allowed as revenue expenditure, the Assessee cannot claim such expenditure by capitalising the same

and claiming depreciation thereon. The Hon'ble Tribunal upheld the order of CIT (A).(AY. 2014-15)
DCIT v. H.K Ispat Pvt. Ltd. (2023) 103 ITR 12 (SN)(Ahd)(Trib)

S. 37(1) : Business expenditure-Free samples and distribution of infant and children's nutrition food-Not allowable as deduction-Expenditure incurred on arranging conferences and seminars-Not allowable as deduction.[Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (Relevant Act), S. 4]
Assessee Company was engaged in manufacturing nutritious food for infants and children. It incurred expenses on free samples and distribution of children's nutrition food. This activity is prohibited under the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (Relevant Act). Thus, these expenses were disallowed. Similarly, expenses incurred by the assessee on conducting conferences and seminars of doctors and medical professionals were also disallowed. The assessee justified the business expediency of the expenses by submitting that the expenses enable the healthcare professional to gather technical knowledge and commercial insights about the products. However, by relying on the Apex Court's judgement in the case of Apex Laboratories (P) Ltd v. Dy.CIT (2022) 442 ITR 1/ 286 Taxman 200 (SC0 these expenses were also disallowed. In the incidental matter where CIT(A) opined that the assessee had conclusively violated the provisions of the relevant Act and initiated the penalty proceedings without offering any opportunity to the assessee, the matter was remanded back to CIT(A).(AY. 2012-13)
Mead Johnson Nutrition (India) (P.) Ltd. v. ACIT (2023) 200 ITD 234 (Mum) (Trib.)

S. 37(1) : Business expenditure-Employee Stock Option Plan-(ESOP)-Allowable as revenue expenditure.
Assessee Company issued ESOP and RSU plans to its employees in India. The ESOP expenses resulted from the difference between the fair market value of the shares of the associate parent entity (AE) on the date of the grant and the exercise price. Since the AE first incurred these expenses, it charged them back to the assessee by issuing a debit note. The Assessee booked this cost as employee benefit expenses in its books of accounts. AO denied these expenses under the grounds that these were notional expenses and hence not allowable u/s 37. AO further held that the transaction was a colourable device to shift profits out of India. The Tribunal held that the scheme was for the employees of the assessee; hence, the assessee was the one who had to bear the difference in the cost of shares. By relying upon the coordinate bench, it also held that since the expenditure was for retaining and rewarding the employees, these were revenue expenses.(AY. 2015-16)
Northern Operating Services (P.) Ltd. v. JCIT(2023) 200 ITD 145 (Bang) (Trib)

S. 37(1) : Business expenditure-Commercial expediency-Professional and consultancy charges-Matter remanded.
The burden of proving commercial expediency of expenditure and establishing a nexus between expenditure and business lies with the assessee. The assessee claimed a deduction towards professional and consultancy charges, however the same was disallowed on grounds that payment was not supported by proper evidence to establish commercial expediency and nexus with business. The income has been offered as 'Compensation received' under the head 'Income from Other Sources' and not as professional fees. The main ground on which the expenditure is disallowed by the AO is that the assessee could not substantiate the claim in

terms of commercial expediency to incur the expenditure and the nexus between the expenditure and the business. Matter was remitted back to the CIT (A) (AY. 2011-12)
Dinesh Devraj Ranka v. Addl. CIT [2023] 200 ITD 731 (Bang)(Trib.)

S. 37(1) : Business expenditure-Capital or revenue-Capital asset-Payment to its Indian counterpart for acquiring part of its business relating to debt collection service-Expenditure incurred for acquiring completely new business set up was income generation tool-Capital in nature. [S. 32]

Tribunal held that payment to its Indian counterpart for acquiring part of its business relating to debt collection service since assessee was not in debt collection service business before acquiring said business, expenditure incurred for acquiring completely new business set up was income generation tool and, hence, capital in nature.(AY. 2010-11)
Genpact Services LLC. v. DCIT (IT) (2023) 200 ITD 48 (Delhi)(Trib)

S. 37(1) : Business expenditure-Interest-delayed payment of tax deduction at source-Compensatory in nature-Allowable as deduction.[S. 43B]
Held that interest paid on late payment of Tax deduction at source is compensatory in nature and is an allowable deduction. Followed M.L.Reality v.ACIT ITA No. 796/ Mum/ 2019 dt. 24-3-2021.(2023 Taxcan (ITAT) 778 dt. 24-3-2023)(AY. 2015-16)

Delhi Cargo Service Centre v.ACIT (2023) BCAJ-May-P. 34 (Delhi)(Trib)

S. 37(1) : Business expenditure-Sales and business promotion expenses-Gifting freebies to dealers and stockists-Performance in meeting sales targets-Allowable as deduction-Circular No 5 of 2012 dt. 18-2012 prohibits the benefit of freebies directly or indirectly to medical practioners and their professional associations and not to dealers and stockistS.
Dismissing the appeal of the Revenue the Tribunal held that Gifting freebies to dealers and stockists based on performance in meeting sales targets is allowable as deduction. Circular No 5 of 2012 dt. 18-2012 prohibits the benefit of freebies directly or indirectly to medical practioners and their professional associations and not to dealers and stockists. (ITA. 352 / JPR / 2022 dt.14-2-2023)(AY. 2013-14)
Dy.CIT v. Curosis Healthcare Private Limited (Jaipur)(Trib) www.itatonline.org.

S. 37(1) : Business expenditure-Travel expenses-No evidence to support claim-Expense not allowable.
Held, that the assessee could not produce anything in support of the claim hence the appeal is dismissed. (AY. 2014-15).
Saranya Agro Foods Pvt. Ltd. v ITO (2023)101 ITR 60 (SN)(Chennai) (Trib)

S. 37(1) : Business expenditure-No documents in support of claim of quantum of expenses-Disallowance sustained.
Held, that no proper documents to support such claim having been filed by the assessee before the Assessing Officer, disallowance of expenses made by the Assessing Officer under various heads of expenses was sustained. (AY. 2017-18)
Asst. CIT v. Dhar Construction Co. (2023) 199 ITD 124/ 101 ITR 49 (SN)(Gauhati) (Trib)

S. 37(1) : Business expenditure-Debit of cash discount prior to crystalising during year and not in prior or subsequent year-Deduction allowable.[S. 145]
Held that debit of cash discount prior to crystalising during year and not in prior or subsequent year allowable as deduction. (AY. 2011-12)
Ganesh Ginning Factory v.Asst. CIT(2023)101 ITR 90 (SN) (Ahd) (Trib)
Gajanand Ginning and Pressing Pvt. Ltd v. ITO (2023)101 ITR 90 (SN) (Ahd) (Trib)
Premjibhai Vallabhbhai Kukadiya v. ITO (2023)101 ITR 90 (SN) (Ahd) (Trib)

S. 37(1) : Business expenditure-Interest on foreign currency loan-Loss on fluctuation of rates-Foreign exchange gains offered to tax-loss arising of the same to also be allowed.[S. 28(i)]
Held, that the assessee having offered the foreign exchange gains in respect of the same loan to tax it was only correct that the loss arising out of the same loan be allowed. The loss incurred on fluctuation of foreign currency was to be allowed.(AY. 2013-14).
Praxair India P. Ltd. v.Dy. CIT (2023)101 ITR 640 (Bang)(Trib)

S. 37(1) : Business expenditure-Provision for scheme not contingent-Made on scientific basis-Own orders in earlier years-No contrary findings-Addition to be deleted.
Held, that an identical issue with regard to the sales incentive payable-under the Shahenshah Scheme arose in the assessee's own case for earlier-AY.s, before the Tribunal, which had decided the issue in favour of the assessee by pointing out that the provision for the scheme was made on scientific basis. In the year under consideration also, the Revenue had not produced any new material to bring out any distinguishing feature to show otherwise. The addition was not justified. (AY. 2014-15).
Havells India Ltd. v. ACIT (LTU) (2023)101 ITR 81 (Delhi) (Trib)

S. 37(1) : Business expenditure-Prior period expense-Reversal of income offered when finalising accounts for later years-Prior period income no to be taxed again-Matter remanded to avoid duplicity of additionS. [S. 145]
Held, that the prior-period income had already been offered to tax in an earlier AY. and ought not be assessed to tax in the year under consideration, to avoid double taxation. The Assessing Officer was directed to verify the details submitted by the assessee to check whether there was duplicity of addition, and to remove the addition, if so. (AY. 2012-13 to 2015-16).
Matrimony.Com Ltd. v. Asst. CIT (2023)101 ITR 253 (Chennai) (Trib)

S. 37(1) : Business expenditure-Money embezzled by director-CIT(A) accepted loss but denied deduction for want of details-AO to verify recovery and allow balance of losS. [S. 28(i)]
Held, that the Commissioner (Appeals) had accepted that the loss was allowable but he had not allowed the deduction for want of details. The assessee had clearly said that it had not made any debit of expenditure as embezzlement loss. It was only a note in the account explaining the loss from which the authorities had come to the conclusion that the assessee had debited the embezzlement loss. On the facts, this issue needed to be remitted back to the file of the Assessing Officer. The Assessing Officer was to factually verify the recovery and allow the balance of loss. (AY. 2014-15)
Wieden+Kennedy India Pvt. Ltd. v Dy. CIT (2023)101 ITR 63 (SN) (Delhi) (Trib)

S. 37(1) : Business expenditure-Provision for royalty-Matter remanded-Educational cess-Not allowable as deduction. [S. 40(a)(ia),

Held that provision for additional amount payable as royalty, allowable as deduction. Matter remanded. Education cess paid on Income-Tax and dividend distribution tax is not allowable expenditure. *(*AY 2012-13, 2013-14, 2016-17)
T. M. International Logistics Ltd. v.Dy. CIT (2023)101 ITR 51 (SN)(Kol)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Reimbursement of mobilisation and demobilisation costs to a foreign company-Subsequently the foreign company was held liable to tax in India-Not liable to deduct tax at source-Cannot be treated as assessee-in-default-DTAA-India-NetherlandS. [S. 9(1)(vi), 195, Art. 12, Art. 136]
The assessee is a wholly owned subsidiary of VOAMC, reimbursement of mobilisation and demobilisation costs to a foreign company. The Assessing Officer the disallowed the amount by applying the provision of section 40(a)(i) of the Act on the ground that the asssesee had defaulted in deducting tax at source under section 195 of the Act while making payment to VOAMC. High Court held that the assessee was not liable to deduct tax at source in respect of amount reimbursed, however, if assessment proceedings in case of foreign were reopened and final view taken was that it was assessable to tax, then the assessee would also be treated as assessee-in default, attracting consequences provided under section 40(a)(i) of the Act. On appeal the Court held that once the assessee was held to be not liable to deduct tax at source, merely because subsequently, foreign company VOAMC was held liable, the assessee could not be treated as assessee in default. order of the High Court was quashed and set aside. (AY. 2003-04)
Van Oord ACZ India (P) Ltd v. CIT (2023) 453 ITR 214 / 292 Taxman 405/ 226 DTR 89 / 332 CTR 851 (SC)
Editorial : Van Oord ACZ India (P) Ltd v. CIT (2010) 323 ITR 130/ 189 Taxman 232 (Delhi)(HC), para 4 is set aside.

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Commission-Not having Permanent Establishment or carrying on any business in India-Not liable to deduct tax at source. [S. 195, 260A]
Dismissing the appeal of the Revenue the Court held that the Tribunal had found that the export commissions were paid to overseas agents who had procured orders abroad. It had held that the commission paid did not accrue in India on the purchase orders being serviced by the assessee and that the assessee was not liable to deduct tax on such commissions. No question of law arose.(AY.2013-14)
PCIT v.Maharani Enterprises (2023)457 ITR 15/295 Taxman 464 (Delhi)(HC)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Royalty-Advertisement agency-Website owner-Not royalty-Not liable to deduct tax at source-DTAA-India-Ireland.[S. 9(1)(vi), 195, Art.12]
Assessee, an internet advertising agency, had paid certain amount of consideration to Facebook Ireland Ltd. (FIL) for uploading and display of banner advertisement for its clients. Assessing Officer held that that FIL allowed assessee right to use or access Facebook Ad Platform, thereby constituting payment made by assessee as royalty under section 9(1)(vi) as well as under article 12 of India Ireland DTAA.He disallowed same applying provisions of section 40(a)(i).Commissioner (Appeals) confirmed disallowance. Tribunal held that on similar issue Tribunal in Urban Ladder Home Décor Solutions (P.) Ltd. v. Asstt. CIT [IT(TP) Appeal Nos. 615 to 620 (Bang.) of 2020, dated 17-8-2021] had held that main purpose of making payment was to place advertisements only and not to use facilities provided by non-resident company and thus payments made by assessee to non-resident company could not be

considered as royalty payments. Therefore, there was no requirement to deduct tax at source from advertisement payments made for using information technology facility under section 195. (AY. 2015-16)
Interactive Avenues (P) Ltd v. Dy.CIT (2023) 225 TTJ 403/ (2022) 143 taxmann.com 445 (Mum)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Payment of re-insurance premium foreign insurers-Foreign Insurance company has no business or branch in India-No violation of provisions of Insurance Act-No obligation to deduct tax at source. [S. 9(1)(i), 195]
Held that payment of re-insurance premium foreign insurers. Foreign Insurance company has no business or branch in India. No violation of provisions of Insurance Act. No obligation to deduct tax at source. (AY. 2015-16)
Tata AIG General Insurance Co.Ltd v. Dy. CIT (2023) 224 TTJ 724 / (2022) 141 taxmann.com 70 (Mum)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Interest-Interest on loans paid to Indian and Foreign banks-Legal fees-Not liable to deduct tax at source-Disallowance is not justified-DTAA-India-USA-Rebate for early payment is not interest-Not liable to deduct tax at source.[S. 2(28A), 194A, 195, Art. 12]
Held that interest on loans paid to Indian and Foreign banks and payment of legal fees is not liable to deduct tax at source. Disallowance is not justified. (AY. 2009-10 to 2012-13)
Dy.CIT v. CLP India.P. Ltd (2023) 108 ITR 248 (Ahd)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-No disallowance can be made for short deduction of tax at source.
Held that the assessee, had deducted tax at source at two per cent. and that section 40(a)(i) did not cover short deduction. The Commissioner (Appeals) had taken the correct decision..*(*AY.2012-13)
Dy. CIT v. PTC India Financial Services Ltd. (2023)104 ITR 1 (SN)(Delhi)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Fes for technical services-Sales support service-Located in Dubai-Marketing of products-Train resources of marketing partner to provide pre-sale and after sale product services to customers-Fees for technical services-Liable to deduct tax at source-Disallowance is justified.[S. 9(1)(vii), 195]
Assessee is in business of providing software solutions and services to various industries. It entered into marketing agreement with a non-resident company located in Dubai for marketing its products in Middle East Asian countries. Agreement specified that assessee will train resources of marketing partner to provide pre-sale and after sale product services to customers and marketing partner will retain 25 per cent of project value as charges for rendering services. Assessing Officer held that services rendered by marketing partner were in nature of fees for technical services (FTS) as per Explanation 2 to section 9(1)(vii) and having noticed that assessee had remitted charges for rendering services to marketing partner without deduction of tax at source under section 195 disallowed payment made to marketing partner applying provisions of section 40(a)(i). Order is affirmed by CIT(A).On appeal the Tribunal held that since assessee was in business of providing software solutions and services to various industries, said services definitely required technical expertise and knowledge. When marketing partner provided pre-sale services and post-sale services to customers, employees of marketing partner should be expertise in technical knowledge of products.

Therefore the services rendered by marketing partner would come under FTS as per Explanation 2 to section 9(1)(vii) of the Act. Since services rendered by marketing partner were in nature of FTS, assessee ought to have deducted tax at source in terms of section 195 and since assessee failed to deduct tax at source, said payment had been rightly disallowed under section 40(a)(i) of the Act. (AY. 2016-17)

Sunsmart Technologies (P.) Ltd. v. ACIT (2023) 198 ITD 347 / 222 TTJ 893 (Chennai) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Fes for technical services-Reimbursement of expenses made by assessee to its parent company for salary paid to expatriate employees, was in nature of salary cost and was subjected to TDS under section 192, such reimbursement could not be treated as FTS-DTAA-India-Japan [S. 9(1)(vii), 192, 195, Art. 12]

The assessee was subsidiary of Japanese Company.Reimbursement of expenses to its parent company. AO held it to be payment for Fees for Technical services and disallowed the same u/s. 40(a)(i) as the assessee failed to withhold tax u/s. 195 of the Act. Terms of assignment agreement between parent company and assessee made it clear that assigned employees, in respect of whom, disputed payments had been made by assessee were under complete control and supervision of assessee during tenure of assignment agreement and thus, there was employer-employee relationship between assessee and assigned employees. Reimbursement of expenses made by assessee to its parent company for salary paid to expatriate employees, was in nature of salary cost and was subjected to TDS under section 192, such reimbursement could not be treated as FTS under section 9(1)(vii) and article 12 of India Japan DTAA.(AY. 2015-16)

Yamazen Machinery and Tools India (P.) Ltd. v. ACIT (2023) 200 ITD 205 / 107 ITR 113 (Delhi) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Royalty-Connectivity charges-Taxable as royalty-Liable to deduct tax at source-DTAA-India-UK.[S. 9(1)(vi), 195, Art. 13]

Assessee is engaged in business of running a data & call centre for export of services & domestic BPO. Assessee had made payment with regard to connectivity charges for co-location and connectivity service provided by a UK based company for purpose of connecting assessee with various customers in UK towards making voice and data connectivity. It did not deduct TDS on same. Assessing Officer held that assessee was liable to deduct TDS under section 195 as these payments were in nature of royalty even though deductee did not have any PE in India. He disallowed the charges under section 40(a)(i). On appeal the tribunal held that connectivity charges paid by assessee were for process of connecting assessee with various customers for making voice and data connectivity and, thus, same being for use of process, was to be taxable as royalty. Order of the AO is affirmed. (AY. 2012-13 to 2015-16)

Allsec Technologies Ltd. v. DCIT (2023) 199 ITD 712 (Chennai) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Royalty-Fes for technical services-Make available-Payment to holding company-Not liable to deduct tax at source-DTAA-India-UK.[S. 9(1)(vi, 9(1)(vii), 195, Art. 13(4)]

Assessee had paid certain amount to its holding company CPP, UK but did not deduct tax at source claiming that services availed by assessee-company did not fall under definition of FTS under article 13. Referring to definition of FTS, as mentioned in article 13(4) of DTAA, Assessing Officer held that nature of services availed by assessee company did fulfil 'make

available' criteria. Accordingly the Assessing Officer held that assessee is liable to withhold while making payment. On appeal the Tribunal held that since there was no transfer of skill or technical services and rendition of these services by UK company did not enable recipient-assessee to provide similar services without recourse to UK company in future, assessee-company would not be liable to withhold tax while making payment to UK company. (AY. 2017-18)

CPP Assistance Services (P.) Ltd. v. CIT NFAC (2023] 199 ITD 659 (Delhi) (Trib.)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Payment of licence fee to holding company-Assessee submitted Certificate from Chartered Accountant and return and computation of income of payee which Showed that payee had disclosed payment in its return and paid taxes thereon-Held, as per Indo-Israel DTAA Income in question not chargeable to tax in India in hands of Non-Resident-No disallowance can be made-DTAA-India-Israel. [S. 201]

The assessee-company was a wholly owned subsidiary of C Ltd. of Israel. During the assessment proceedings, for AYs 2016-17, 2017-18 and 2018-19 it was found that the assessee-company had paid licence fee to C Israel. The AO held that the payment made by the assessee to C Israel was in the nature of royalty taxable in India and since, the assessee had not deducted tax at source while making the said payment, he disallowed the sum under section 40(a)(i) of the Act. The ITAT observed that the assessee had filed the certificate from the chartered accountant in form 26A, ROI and computation of income of the payee before the CIT(A) in support of its submission that C Israel had disclosed the payment in its return of income and paid the taxes due thereon. The ITAT followed the decision of the ITAT in the assessee's own case for AY 2014-15 to the effect that that the payee had declared the income and claimed refund of the withholding tax because the income earned by the payee was not chargeable to tax in India as per the Indo-Israel DTAA. Thus, there was no infirmity in the order passed by the CIT(A). (AY.2016-17, 2017-18, 2018-19)

ACIT v. Celltick Mobile (India) P. Ltd. (2023) 103 ITR 77 (SN) (Mum)(Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Royalty-Income deemed to accrue or arise in India-Payment towards availing of facilities subject to placements of advertisements-Not for license or right to use-Not Royalty-Not liable to deduction of tax at source. [S. 9(1)(vi), 195, 201 (1).

Held, that there was no requirement to deduct tax at source from the advertisement charges paid to F as the main purpose of making payment was only to place advertisements and not to use the facilities provided by F. The payment made did not fall within the meaning of "royalty". The Assessing Officer was directed to delete the disallowance.(AY. 2012-13 to 2015-16)

Matrimony.Com Ltd. v ACIT (2023)101 ITR 253 (Chennai) (Trib)

S. 40(a)(i) : Amounts not deductible-Deduction at source-Non-resident-Interest-Royalty-Fes for technical services-Advertisement expenses-Server for advertisement located outside India-No control with assessee over functioning of interface provided-No element of Fee for technical services or Royalties-Not liable to deduct tax at source. [S. 9(1)(vii), 195]

Held that for the purpose of uploading the banner advertisement the advertisement related information was put up at the interface provided by Ireland. While uploading the advertisement, the assessee-company did not have any control over the functioning of the interface provided by F, Ireland. The entire operation and maintenance of the server while providing the advertisement platform was under the control of F, Ireland. The assessee was

taking the privilege of platform of F, Ireland which was not either in the nature of royalty or technical services. The payment terms defined in the payment agreement with F, Ireland clearly indicated that F, Ireland would provide platform banner for advertisement to the assessee-company. Thus, there was no element of fees for technical services or royalty involved. The Assessing Officer as well as the Commissioner (Appeals) had erred in holding that the services came under the purview of fees for technical services or royalty. (AY. 2014-15, 2015-16)

Play Games 24×7 P. Ltd. v. Dy. CIT (2023)101 ITR 241 (Mum) (Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Non-resident-Shipping business-Where agents act on behalf of non-resident ship-owners or charterers, they would step into shoes of principal and hence, provision of section 172 would apply and not provision of sections 194C and 195-Not liable to deduct tax at source.[S. 171, 194C, 195, 260A]

Dismissing the appeal of the Revenue the Court held that where agents act on behalf of non-resident ship-owners or charterers, they would step into shoes of principal and hence, provision of section 172 would apply and not provision of sections 194C and 195. Not liable to deduct tax at source. (AY. 2010-11)

PCIT v. Bajaj Herbals (P.) Ltd. (2023) 335 CTR 530 / 148 taxmann.com 147 (Guj)(HC)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Real employer of seconded employees was Indian entity-Disallowance is not justified.[S. 192, 195]

Held that the assessee had deducted tax at source under section 192 and section 195 had no application once the nature of payment was determined as salary and deduction had been made under section 192. The Tribunal held that the real employer of the seconded employees continued to be the Indian entity and not the overseas entity. Order of Tribunal is affirmed.(AY. 2015-16)

PCIT v. Boeing India Pvt. Ltd. (2023)457 ITR 84/146 taxmann.com 131 (Delhi)(HC)

Editorial : SLP dismissed, PCIT v. Boeing India Pvt. Ltd.[2024] 158 taxmann.com 214 (SC). Affirmed, Boeing India Pvt. Ltd v. ACIT (2020) 81 ITR 94 (Delhi)(Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Credit card processing fees-Not commission-Not liable to deduct tax at source.[S. 194H]

Held that the amount retained by the banks or credit card agencies for rendering credit card processing service would not amount to commission within the ambit of section 194H of the Income-tax Act, 1961 and that the assessee was not required to deduct tax on charges retained by them out of sale consideration of tickets booked through credit or debit cards. (AY.2011-12, 2012-13, 2013-14)

PCIT v. Spice Jet Ltd. (2023)457 ITR 595 (Delhi)(HC)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-TDS was deducted on provision-Provision was reversed in next year-Parties are not identified-Addition for failure to deduct tax was held to be not justified [S. 194J]

Allowing the appeal of the assessee the Court held that provisions made at the end of the accounting year were reversed at the beginning of the next year and no payees were identified nor the exact amount payable was identified. Accordingly, the addition u/s 40(a)(ia) for non-deduction of TDS on year-ended provision was set aside. (ITA.No. 787 of 2017 dt. 22-12-2022)

Subex Ltd v. DCIT (2023) The Chamber's Journal-March P. 119 (Karn)(HC)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Contractors-Delay in filing Form 26Q-Filed before the competition of assessment-Order of Tribunal deleting the addition was affirmed [S. 194C, Rule 31A]

Assessee made payments towards freight charges to transporters without deducting TDS as the assessee had filed PAN number of transport contractors. The assessing Officer held that Form 26Q in terms of rule 31A was belatedly filed hence the assessee was liable to deduct tax at source on said payment hence disallowed the payment. On appeal, the Tribunal held that the assessee has filed Form No 226Q before completion of the assessment delay being technical disallowance was deleted. On appeal, High Court affirmed the order of the Tribunal. (AY. 2012-13)

PCIT v. L.G.W. LTD. (2023) 290 Taxman 250 (Cal.)(HC)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Certificate by Chartered Accountant-Recipient included the income in their assessment-Certificate in Form No 26A is furnished-Disallowance is deleted-Cannot be treated as an assessee in default. [S. 194A, 201(1)]

Held that recipient included the income in their assessment, Certificate in Form No 26A and Chartered Accountant is furnished hence disallowance is deleted and assessee cannot be treated as an assessee in default. (AY. 2013-14)

Desimus Financilals Ltd v. ITO (2023) 223 TTJ 232 (SMC) (Pune)(Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Tax paid before due date of filing of return though beyond stipulated time limit-Cannot be disallowed.[S. 139(1)]

Held that in view of retrospective amendment of section 40(a)(ia) made by the Finance Act, 2010, tax deducted at source which was paid before filing of return under section 139(1) though beyond the stipulated time limit cannot be disallowed under section 40(a)(ia). (AY. 2005-06, to 2007-08, 2011-12)

Infab Infrastucture (P) Ltd v. Dy.CIT(2023) 222 TTJ 421 (Ahd)(Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Provision for various expenses-Not in apposition to identify the parties /creditors-Provisions which were made on estimate basis were reversed in month of April i.e. in subsequent financial year and that when payments were made based on actual invoices, tax was deducted at source as per provisions of Act-Disallowance is deleted. [S. 145]

Assessee had made a provision towards various expenses on which no tax was deducted at source. The Assessing Officer disallowed the expenses on the ground that no tax is deducted. The assessee contended that the provision towards expenses for year-end was made on estimate basis and company was not in a position to identify parties/creditors to whom payment was to be made at time of making provision.Provisions which were made on estimate basis were reversed in month of April i.e. in subsequent financial year and that when payments were made based on actual invoices, tax was deducted at source as per provisions of Act. Held that since in respect of payments made at fag-end of year tax had been detected in subsequent year when bills are booked, provisions of tax deducted at source were not applicable.(AY. 2014-15)

Tata Consultancy Services Ltd. v. Dy. CIT (2023) 154 taxmann.com 372 / 226 TTJ 361 (Mum)(Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Certificate from Chartered Accountant that payee has included amount in question in his return and paid tax thereon-Assessee is not in default-Disallowance is deleted. [S. 194A, 201(1)]

Held, that under the second proviso to section 40(a)(ia) of the Act applicable from April 1, 2013, if an assessee fails to deduct tax at source, but is not deemed to be assessee in default under the first proviso to sub-section (1) to section 201, it is to be deemed that section 40(a)(ia) has been complied with. The proviso was retrospective in nature. Before the Commissioner (Appeals) the assessee provided a certificate from the chartered accountant to fulfil the condition laid down in the first proviso to section 201(1) of the Act. Therefore, no disallowance under section 40(a)(ia) of the Act is required to be made on account of non-deduction of tax. Relied on CIT v. Ansal Land Mark Township P. Ltd.(2015) 377 ITR 635 (Delhi)(HC) *(*AY.2013-14)

Meridian Telesoft Ltd. v. Asst. CIT (2023)108 ITR 37 (SN)(Ahd) (Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Below taxable income-Disallowance is not justified-Payment to Truck owner-Matter remanded. [S. 192, 194C(6)]

Assessee made payment towards salary of employees. He did not deduct TDS on the ground that the salary is blow taxable income. Disallowance is deleted.Assessee had made payment towards freight expenses incurred for hire of trucks that were used for its business purposes. Assessing Officer held that list of trucks used by assessee did not seem to be genuine in nature as it was not supported by proper documentary evidence, and further, assessee had taken service from only one truck provider. Matter remanded to the Assessing Officer. (AY. 2017-18)

Bhagwan Dass Jagan Nath. v. DCIT (2023] 203 ITD 400 (Chd) (Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Amendment made in section 40(a)(ia) by Finance (No. 2) Act, 2014 is curative in nature-Disallowance under section 40(a)(ia) had to be restricted to 30 per cent instead of 100 per cent. [S. 194C]

Assessee made payment for work of land filling and levelling, however, failed to deduct TDS under section 194C.Assessing Officer and Commissioner (Appeals) made disallowance. On appeal the Tribunal held that benefit of proviso to section 40(a)(ia) could not be given as assessee had failed to prove that payee had included amount received in its income. However the amendment made in section 40(a)(ia) by Finance (No. 2) Act, 2014 is curative in nature, thus, having retrospective application, hence, disallowance under section 40(a)(ia) had to be restricted to 30 per cent instead of 100 per cent. (AY. 2012-13, 2014-15)

Niteshkumar Maganbhai Patel. v. ITO (2023) 202 ITD 323 (Ahd) (Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Business expenditure-Reimbursement of medical expenses and tea allowances incurred by employees-Performance of their duties during banking hours-Allowable as deduction. [S. 37(1)]

Assessee-co-operative bank paid certain sum towards reimbursement of medical expenses and tea allowances incurred by bank employees. Assessee claimed said allowances as expenses. Assessing Officer disallowed the claim by invoking section 40(a)(ia) on ground that allowances were compensation paid to employees and disallowance was to be made for failure to deduct TDS. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that allowances were given for tea and coffee in performance of their duties during banking hours only. Also medical expenses were reimbursed by virtue of agreement between employees and bank. Since reimbursement of medical expenses and tea allowance were incurred while doing business, same were allowable as expenses. (AY. 2011-12)

Surat District Co.op. Bank Ltd. v. ACIT (2023) 202 ITD 624 (Surat) (Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Cost of products manufactured-Not chargeable to tax-Not liable to deduct tax at source-DTAA-India-USA [S. 9(1)(v), 9(1)(vi), 195, Art. 12]

Assessee company entered into an agreement with company, namely, HSC, USA vide project agreement for manufacturing products for their new engine program called pure power program, However, Indian facility of assessee was not established in its full strength during period. In order to get this work done, assessee approached its sister concern based in USA which was well equipped with necessary facilities for carrying out manufacturing work. Invoices were raised by sister concern to assessee and then reimbursement of expense incurred by sister concern towards pure power project was made by assessee. The Assessing officer disallowed the amount on account of failure to deduct tax at source. CIT(A) deleted the disallowance. On appeal the Tribunal held that since there was no element of income in alleged payments made by assessee to its sister concern and it was purely reimbursement of expenses incurred by sister concern towards cost of products manufactured by sister concern on behalf of assessee, no tax at source was deductible by assessee on alleged payments to sister concern.

DCIT v. Trusted Aerospace Engg. (P.) Ltd. (2023) 201 ITD 797 /226 TTJ 126 (Chennai) (Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Cost of products manufactured-Not chargeable to tax-Not liable to deduct tax at source-DTAA-India-USA [S. 9(1)(v), 9(1)(vi), 195, Art. 12]
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DCIT v. Trusted Aerospace Engg. (P.) Ltd. (2023) 201 ITD 797 /226 TTJ 126 (Chennai) (Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Disallowance of business expenditure-Transport-Revision of order by the tribunal-Held amendment was done to remove hardship caused to the assessee-Amendment not clarificatory in nature.
Decision of coordinate Bench of the tribunal dismissed an appeal saying that the amendment to Section 40(a)(ia) of the Act by the Finance Act (No.2) Act, 2014 was retrospective in operation and the disallowance on account of the non-deduction of TDS was liable to be restricted to 30% as against 100 made by the AO and confirmed by the ld. CIT(A). It is recalled citing the decision of the Hon'ble Supreme Court in the case of Shree Choudhary Transport Company (2020) 426 ITR 289 (SC) stating that there has been an

apparent mistake in interpretation. The Tribunal held that the disallowance of 100%, by the said amendment was restricted to 30%, thus, clearly the amendment was brought in to remove the hardship caused to the assessee. The AO is directed to restrict the disallowance u/s.40(a)(ia) of the Act to 30%. (AY. 2014-2015)
Om Sri Nilamadhab Builders (P) Ltd. v. ITO,(2023) 221 TTJ 21 (UO (Cuttack)(Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Contractors/sub-contractors-Obtained PAN of transporters-Mere violation of provisions of S. 194C(7) would not attract disallowance. [S. 194C(6), 194C(7), R. 31A(4)(vi)]
Tribunal held that in accordance with S. 194C(7) r.w.r. 31A(4)(vi) of the Rules, the assessee had filed the TDS return giving the details of payment made towards transporters on which TDS has not been made. Apart from the same as per S. 194C (6), no tax needs to be deducted at the time of making payments to the transporters, if the transporter furnished his PAN to the person making the payment. In this connection, PAN of the parties have been submitted before the AO and the assessee had duly submitted TDS returns giving the details of the payments made to transporters on which no TDS was deducted and a statement showing expenses not in the nature of transportation expenses. Therefore, even if there is a violation of S. 194C (7), disallowance u/s 40(a)(ia) does not arise if assessee had complied with S. 194C(6). In the instant case, the assessee had obtained PAN of the transporters and duly complied with S. 194C (6). Therefore, TDS was not required to be deducted by the assessee. *Soma Rani Ghosh v. Dy. CIT Trib [2016] 74 taxmann.com 90 (Kol.)* relied upon. (AY. 2013-14)
Addl.CIT v. Quippo Oil & Gas Infrastructure Ltd. (Delhi) 201 ITD 47(Delhi)(Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Additional evidence-NBFC had taken into account interest paid by the assessee while computing the income-Matter remanded to the file of the Assessing Officer. [Form No 26A]
The Assessee produced Form no. 26A as additional evidence certifying that NBFC had taken into account interest paid by the assessee while computing the income. Matter restored to the AO for de novo consideration after taking into account the details produced by the assessee. (AY. 2012-13)
Vivek Bhole Architects (P.) Ltd. v. DCIT (2023) 201 ITD 467 / 104 ITR 33 (SN) (Mum (Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Contractors-Handling charges-Not liable for deduction of deduction of tax at source on demurrage and railway sidling charges for delayed clearance. [S. 194C]
Held that the handling contractor was not responsible for deducting TDS under section 194C on demurrage and railway siding charges that were charged by Dock authorities on importer for delayed clearance (AY. 2012-13)
DCIT v. International Seaports (Haldia) (P.) Ltd. (2023) 199 ITD 188 / 221 TTJ 46(Kol)(Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Late payment charges-Delayed payment to broker for share trading activity-Not interest-Not liable to deduct tax at source.[S. 2(28A), 194A]
Assessee paid certain sum towards late payment charges for delayed payment to broker for share trading activity, since there was no contractual obligation or other terms and conditions applicable to borrowing, sum paid was not interest within meaning of section 2(28A). The assessee is not liable to deduct tax at source under section 194A on said payment made to

broker and, consequently, impugned payment could not be disallowed under section 40(a)(ia) (AY. 2015-16, 2016-17)
Muthian Sivathanu. v. ITO (2023) 199 ITD 801/ 223 TTJ 991/ 224 DTR 281 (Chennai) (Trib.)
Subbulakshmi Sivathanu v.ITO(2023)223 TTJ 991/ 224 DTR 281 (Chennai) (Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Salary to partners-Not liable to deduction of tax at source-Deletion of disallowance is affirmed. [S. 15, Explanation 2,192 194D]
Held that salary, bonus, commission or remuneration received by a partner under the head "salary" and given under section 15 of the Act, there was no infirmity in the findings of the Commissioner (Appeals) that there was no requirement under the provisions of the Act for deduction of tax at source by the partnership firm on salary, bonus, commission or remuneration, etc., or whatever name called given or credited to a partner of a firm. Not liable to deduct tax at source (AY. 2017-18)
ACIT v. Dhar Construction Co. (2023)101 ITR 49 (SN)(Gauhati) (Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source- Payment of freight charges to transporters after obtaining PAN of transporters-No disallowance is called for. [S. 194C(6), 194C(7)]
Tribunal held that the provisions of section 194C(6) and 194C(7) are independent of each other. As per the provisions of section 194C (6), the assessee had collected PAN of the transporters. Therefore, just because there is violation of provisions of section 194C(7) disallowance of u/s 40(a)(ia) does not arise if the assessee complies with the provisions of section 194C(6) of the Act. (AY. 2011-12)
Sukumar Solvent (P.) Ltd. v. ACIT v ACIT (2023) 200 ITD 614 (Kol (Trib.)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Commission-Sale of prepaid sim card at discounted price to distributors-Difference between maximum retail price and discounted price not commission on which TDS is required-disallowance of discount not justified. [S. 194H]
In the present case the assessee sells the prepaid SIM Card with available talk time worth Rs.100/-at a discounted price of Rs. 70/-to the distributors. The discount charges of Rs 30/- (100-70) were disallowed by the AO on the ground that relationship between the assessee and its distributors would be that of Principal and the Agent. Accordingly, difference between the maximum retail price and discounted price i.e., Rs.30/-, amounts to commission warranting deduction of tax at source in terms of section 194H of the Act. Since, no tax was deducted on the said transaction, the AO treated the discount charges on prepaid SIM Card as not allowable in terms of section 40(a)(ia) of the Act. On the order hand the assessee contended that its relationship with the distributors is that of Principal to Principal. Accordingly, no tax would be deductible on the said discount charges.
It has been held by the Hon'ble Appellate Tribunal that the provisions of section 194H are not attracted to the discounts given to distributors. Hence, section 40(a)(ia) would not be applicable. Hence, disallowance of discount is not justified. (AY.2013-14,2014-15)
Asst. CIT v. Bharti Haxacom Ltd. (2023) 105 ITR 74(SN) (Delhi) (Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-CIT(A)'s deletion of additions made by Assessing Officer for non-deduction of TDS on Labour Contract Expenses, accepting that subcontractors had declared and paid taxes on the income stands ratified.

The appeal is against the order of the CIT(A) by the revenue. The primary issue is the deletion of addition made by the Assessing Officer under section 40(a)(ia) of the I.T. Act due to the assessee's failure to deduct TDS on Labour Contract Expenses and secondly, the restriction of the adhoc disallowance of expenses to 10% from the proposed 20% by the Assessing Officer.The assessee is a firm engaged in construction. They filed a return for A.Y. 2013-14. The Assessing Officer noted discrepancies in the assessee's expenses and income declarations, especially regarding contract expenses. The CIT(A) accepted the assessee's contention that the sub-contractors had declared the income in their returns and paid taxes on it. The CIT(A)observed that return of income had been filed by 9 out of 11 subcontractors and the CIT(A) deleted the additions made in these cases. As regards two subcontractors, they hadn't filed returns due to income being below the taxable limit and the death of one of them. Without prejudice, the assessee proposed that the addition on their payments (two cases) be restricted to 30% of sub-contract payment in view of amendment to first proviso to Section 40(a)(ia) by the Finance Act, 2014 which has been held as retrospective. The CIT(A) directed the deletion of the addition for these two subcontractors as well. Upon appeal by the revenue, The Hon'ble Tribunal observed that the Assessing Officer based on adverse remark in audit report by the auditor that no TDS was made on such subcontract payment, disallowed the entire expenses. However, considering the decision of the CIT(A) which was based on the remand report furnished by the Assessing officer, the Hon'ble Tribunal affirmed the decision of the CIT(A) as far as cases where returns of income were filed and the income was declared and taxed paid. Further as regards the two cases where returns of income weren't filed, assessee's alternate plea to restrict the addition to 30% was found acceptable bringing about modification to CIT(A)'s order to this extent. (AY.2013-14)

ITO v. Satyam Enterprise (2023) 103 ITR 56 (SN) (Surat)(Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Business expenditure-Disallowance-Remuneration to directors-Prior to 01.04.2015-Deduction allowable-Audit fees-addition justified.

Held, that That prior to April 1, 2015 the amount payable towards the salaries was not covered by the provisions of section 40(a)(ia) of the Act. Therefore, the addition on account of non-deduction of tax at source on the remuneration paid to the directors could not be sustained. Further, the addition on account of audit fee was justified by the provisions of section 40(a)(ia) of the Act and, therefore, did not warrant any interference.(AY. 2014-15)

Profarm Seed India P. Ltd. v. ITO (2023)101 ITR 120/ 198 ITD 113 (Hyd) (Trib)

S. 40(a)(ia) : Amounts not deductible-Deduction at source-Documentation charges-Payment paid by assessee-Shown in return of receipts and taxes paid-Disallowance not warranted.[S. 194C]

Held, that the payment made by the assessee to Satyam Services had duly been disclosed in the return of income of the recipient and due tax was also paid. Therefore, no disallowance under section 40(a)(ia) warranted. The order of the Commissioner (Appeals) was set aside and the Assessing Officer was to delete the addition.(AY. 2011-12).

Umananda Rice Mill Ltd. v. Asst. CIT (2023)101 ITR 140/ 148 taxmann.com 211 (Kol) (Trib)

S. 40(a)(ii) : Amounts not deductible-Rates or tax-Education cess-Not allowable as business expenditure-Amended by Finance Act, 2022 with retrospective effect from 1-4-2005 (2022) 442 ITR 91 (St). [S. 37(1)]

On appeal against the decision of the High Court affirming the order of the Tribunal to the effect that expenditure of education cess of Rs. 2,41,59,485 was not disallowable under section 40(a)(ii) of the Income-tax Act, 1961, held, allowing the appeal, that in view of the

concession of the assessee in view of the amendment to section 40(a)(ii) of the Act by the Finance Act, 2022 with retrospective effect from April 1, 2005, the education cess paid by the assessee was not allowable as an expenditure under section 37 read with section 40(a)(ii) of the Income-tax Act, 1961. (AY-2009-10)
JCIT v. Chambal Fertilisers and Chemicals Ltd. (2023) 450 ITR 164/ 330 CTR 109 (SC)
Editorial : ACIT v. Chambal Fertilisers and Chemicals Ltd (2018) 61 ITR 33 (Jaipur)(Trib)

S. 40(a)(ii) : Amounts not deductible-Rates or tax-Education cess-Not allowable as deduction. [S. 37(1), 40(a)(ii)(b) Art.136]
Allowing the appeal of the Revenue the Court held that education cess cannot be allowed as deduction in computing income chargeable under head 'profits and gains of business or profession.(AY. 2008-09)
JCIT v. Sesa Goa Ltd. (2023) 295 Taxman 236/ 335 CTR 991 (2024) 460 ITR 4 (SC)
Editorial : Sesa Goa Ltd v.JCIT (2020) 423 ITR 426/ 117 taxmann.com 96 (Bom)(HC), reversed.
S. 40(a)(ii) : Amounts not deductible-Surcharge on sales tax or turnover tax paid by assessee-company to State Government was not a 'fee or charge'-Review petition was dismissed. [S. 37(1), 40(a)(iib)]
Assessee-company, engaged in wholesale and retail trade of beverages, had debited its profit and loss account with respect to amount of surcharge on sales. AO made disallowance of such surcharge under section 40(a)(iib). Supreme Court held that surcharge on sales tax was introduced only as an increase in tax payable and such increase could not be equated with 'fee or charge' and thus surcharge on sales tax or turnover tax paid by assessee-company was not 'fee or charge' coming within sweep of section 40(a)(iib). Review petition filed by Revenue was dismissed. (AY. 2014-15, 2015-16)
ACIT v. Kerala State Beverages Manufacturing and Marketing Corporation Ltd (2023) 291 Taxman 357/ 333 CTR 14/ 224 DTR 479 (SC)
Editorial : Refer Kerala State Beverages Manufacturing and Marketing Corporation Ltd v. ACIT (2022) 440 ITR 492 / 286 Taxman 1 (SC)

S. 40(a)(ii) : Amounts not deductible-Rates or tax-Tax includes Cess-Education cess is not deductible.
That education cess paid was not an allowable deduction in computing total income by virtue of the amendment to section 40(a)(ii) of the Act with retrospective effect by the Finance Act, 2022, whereby education cess was brought within the scope of the term “tax”. *(*AY. 2013-14)
Srei Infrastructure Finance Ltd. v. Asst. CIT (2023)105 ITR 371 / 154 taxmann.com 650 / 225 TTJ 211 (Kol) (Trib)

S. 40(a)(ii) : Amounts not deductible-Rates or tax-Education cess-Not allowable
Retrospective amendment brought in by Finance Act, 2022, deduction of education cess was not allowable. (AY. 2010-11)
Dy. CIT v. National Bank for Agriculture & Rural Development [2023] 221 TTJ 25/221 DTR 369 (Mum)(Trib)

S. 40(b)(i) : Amounts not deductible-Partner-Salaries-Bonus-Commission-Remuneration-Income from other sources-Business income-Unexplained excess stocks-Survey-Excess stocks chargeable to tax as business income-Eligible for deduction for remuneration payable to partnerS. [S. 133A]
Held that the excess stocks found during survey were nothing but stocks relating to the business carried on by the assessee not declared in the books. Since there was a direct nexus

between the type of stocks found during survey and the business carried on by the assessee, these excess stocks were to be treated as chargeable to tax under the head income from business and not under the head income from other sources. Since the excess stocks were chargeable to tax under the head business income, the assessee was eligible to claim deduction of remuneration paid to the partners in accordance with the provisions of section 40(b) of the Act. The Assessing Officer could not deny the benefit available to the assessee.(AY.2009-10)
Rajhans Paper Co. v.ITO (2023)108 ITR 176 (Mum) (Trib)

S. 40(b)(iv) : Amounts not deductible-Partner-Interest-Interest payment to legal heirs of dead partner-Already subjected to tax deducted at source-Cannot be disallowed on the ground of passing of entry-Remanded. [S. 36(1) (iii), 194A]
Held that the claim of interest paid to the legal heirs in the nature of loan and the interest, was already subjected to tax deduction at source, it could not be disallowed merely on the ground of passing an entry or on the ground that it was not a loan amount. Accordingly, the order of the Commissioner (Appeals) was modified and the matter was remanded to the record of the Assessing Officer for readjudication of this issue as per law. (AY. 2011-12)
Savla Agencies v. JCIT (2023)101 ITR 57 (SN) (All) (Trib)

S. 40(b)(v) : Amounts not deductible-Partner-Remuneration-Not stipulation in partnership deed-Not allowable as deduction. [S. 260A]
Since the Tribunal is the final fact-finding authority has held that there is no stipulation in the partnership deed of the amount payable to the partners hence no allowance can be made under the said section. (AY. 2001-2002)
Egg Guard v. ITO (2023) 457 ITR 762/ 291 Taxman 615 /331 CTR 794/ 224 DTR 5 (Telangana)(HC)

S. 40(b)(v) : Amounts not deductible-Partner-Remuneration-Supplementary deed operates retrospectively if the deed is in accordance with the law-Disallowance of remuneration was deleted [S. 40(b)(ii)]
The AO disallowed the remuneration paid to partners on the ground that the remuneration was not paid in accordance with the original deed of partnership. The disallowance was affirmed by CIT(A) on the ground that the supplementary deed was only a self-serving document. On appeal, the Tribunal held that the assessee was entitled to modify remuneration as per the amended provision based on the supplementary deed giving effect retrospectively. Accordingly, the disallowance of remuneration of Rs 90, 27,721/ affirmed by the CIT(A) was deleted. Relied on Durgadas Devknandan v.ITO (2012) 342 ITR 17 (HP)(HC) (ITA No. 2596/Mum/ 2022 dt 9-3 2023)(AY. 2018-19)
Jetkool Exports India v. NFAC (Mum)(Trib) www.itatonline.org.

S. 40(b)(v) : Amounts not deductible-Partner-Remuneration-Payments as per partnership deed-Permissible limit-Disallowance is not justified. [S. 15, 192]
Held that salary, bonus, remuneration or commission are collectively termed "remuneration" and the remuneration paid during the year was within the permissible limit provided Thus, there was no infirmity in the findings of the Commissioner (Appeals). *(*AY. 2017-18)
Asst. CIT v. Dhar Construction Co. (2023)199 ITD 124/ 101 ITR 49 (SN)(Gauhati)(Trib)

S. 40A(2) : Expenses or payments not deductible-Excessive or unreasonable-Management fees-International Transactions-Transfer Pricing-Res Judicata-

Commercial expediency-Principles of consistency and rule of finality applied. [S. 40A(2)(b), 92A(3),144C 260A]
Dismissing the appeal of the Revenue the Court held that the principle of consistency and rule of finality applied. The Tribunal was right in allowing the management fees paid to its associated enterprises.(AY.2010-11)
PCIT v. Nippon Leakless Talbros Pvt. Ltd. (2023)455 ITR 335/ 153 taxmann.com 279 (P&H)(HC)

S. 40A(2) : Expenses or payments not deductible-Excessive or unreasonable-Joint venture-Assessing Officer had not brought any comparable figures to disallow expenditure-Addition is deleted. [S. 40A(2)(b)]
Held that section 40A(2)(b) had no application to income aspect of the assessee-joint venture. The Assessing Officer had not brought any comparable figures to disallow the expenditure, moreover with the structure of the joint venture, the provisions of section 40A(2)(b) were not attracted. Hence, the Assessing Officer had fallen into error in determining the profit at 8 per cent. and invoking the provisions of section 40A(2)(b) and the Commissioner (Appeals) had also erred in determining the profit of the assessee at 3.78 per cent. equal to the profit of one of the parties to the joint venture. Addition is deleted. (AY.2014-15)
Tapi Jwil JV v.ITO (2023)108 ITR 27 (Delhi) (Trib)

S. 40A(2) : Expenses or payments not deductible-Excessive or unreasonable-Paid interest at rate of 18 per cent-Disallowed interest paid in excess of 12 percent-Disallowance is deleted. [S. 40A(2)(a), 40A(2)(b), 40 (b)(iv)]
Assessee paid interest at rate of 18 per cent to a related party covered under section 40A(2)(b) on unsecured loan and claimed deduction. Assessing Officer considered rate of interest as allowed under section 40(b)(iv), wherein payment of interest to any partner was allowed upto 12 per cent, as fair market value of rate of interest and in view of specific provisions of section 40A(2)(a) disallowed interest paid in excess of 12 per cent. Tribunal held that the assessee paid interest to other parties at rate of 9 per cent to 18 per cent on unsecured loans availed by it. Since Assessing Officer while partly disallowing interest paid to aforesaid party had not followed provisions of section 40A(2)(a), which required comparison with fair market of goods, services or facilities, which in instant case was loans availed by assessee from other parties, hence part disallowance of interest is deleted. (AY. 2014-15)
Genxt Mobile LLP. v. ACIT (2023) 203 ITD 794 (Mum) (Trib.)

S. 40A(2) : Expenses or payments not deductible-Excessive or unreasonable-Rent paid for residential accommodation excessive in comparison to market rate-Assessing officer's reliance on material obtained from internet unreliable-Deletion of addition by commissioner (appeals) upheld.
Held that the source and authenticity of the information obtained by the Assessing Officer about the prevailing market rate of rent through a search in the internet remained doubtful and could not be said to be an authentic source to conclude that the rent paid by the assessee was excessive. Order of CIT(A) is affirmed. *(*AY. 2006-07 to 2010-11)
Spicejet Ltd. v. Add. CIT (2023)102 ITR 58 (Delhi)(Trib)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Payments to cultivator, grower or producer of dairy produce-Payments for purchase of cream-Disallowance is justified. [R. 6dd(f)(ii)]

Dismissing the appeal the Court held that payments made for purchases of cream from two companies would not be a payment made to a cultivator or grower or producer of a dairy product so as to bring the cash transaction within the mischief of rule 6DD(f)(ii) of the Rules. The Tribunal was right in affirming the disallowance. (AY.2001-02)
Sri Murugan Ghee Store v. ITO (2023)455 ITR 669/334 CTR 564 (Telangana)(HC)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Rice trading-Failure to demonstrate any business expediency-Directed to estimate profit on disputed purchases at 10 per cent and make additionS. [R.6DD]
Assessee, a trading firm in business of rice, had made cash payments exceeding Rs. 20,000 in a day to a single person for purchase of rice, in violation of section 40A(3). Assessing Officer disallowed these cash payments under section 40A(3). Commissioner(Appeals) upheld disallowance, stating that exceptions provided under rule 6DD did not apply to assessee's case. Tribunal held considering entirety of facts, an estimation of profit at rate of 10 per cent of disputed purchases disallowed by Assessing Officer by invoking provisions of section 40A(3) will meet ends of justice. Assessing Officer is directed to estimate profit on disputed purchases at 10 per cent and make additions. (AY. 2012-13 to 2017-18)
M. Shyamalanathan & Co. v. ITO (2023) 202 ITD 64 (Chennai) (Trib.)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Cash payments to transporters in excess of RS. 20,000 in a single day to a person-Disallowance is justified.[R.6DD]
Held that the assessee had not justified that such payment fell under any of exception provided under rule 6DD. On facts disallowance under section 40A(3) of cash payment was justified. (AY. 2016-17)
R.K. Powergen (P.) Ltd. v. ACIT (2023) 200 ITD 427 (Chennai) (Trib.)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Bearer cheques-Payments to agent not substantiated-Failure to show reasonable cause-Disallowance is held to be proper. [R.6DD(k)]
Held that since assessee could not make out a case of business exigency and other relevant factors which compelled him to make payment through bearer cheques and further his claim that payment was made through agent was not substantiated, no exceptions could be made out from proviso to section 40A(3) and, hence, findings by lower authorities is upheld. (AY. 2019-20)
B. Saravanan v. ITO (2023) 200 ITD 755/222 TTJ 898/ 224 DTR 97 (Chennai) (Trib.)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Lorry transport business-Sub-contractors-Did not come under any exception-Disallowance is affirmed. [R.6DD]
Held that assessee, engaged in lorry transport business, paid in cash to sub-contractors for hiring lorries in excess of prescribed limit provided under section 40A(3) as reasons given by assessee for making cash payments did not come under any exception as provided under rule 6DD, cash payments had been rightly disallowed under section 40A(3) (AY. 2011-12)
SLP Lorry Transport Service. v. ITO (2023) 199 ITD 132 (Chennai) (Trib.)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Purchase of old vehicles through agent-Disallowance is deleted.[R.6DD(k)]
Assessee is engaged in business of purchase and sale of used vehicles. It purchased old vehicles from five persons through an agent and made payment in cash exceeding prescribed

limits to agent, who in turn paid to sellers of vehicles. Assessing Officer made disallowance. Tribunal held as situation envisaged in clause (K) of rule 6DD was clearly satisfied, assessee is entitled to exemption. Addition is deleted. (AY. 2015-16)
Piprani Equipment (P.) Ltd. v. ITO (2023) 199 ITD 218 (Ahd) (Trib.)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Real estate developer-Purchase of land as capital asset-Commercially exploited later as stock in trade-Provision of section 40A(3) cannot be applied.[S. 45(2)]
Assessee-firm is engaged in business of real estate development. The assessee purchased land for which certain cash payments were made exceeding Rs. 20,000-Assessing Officer held that land shown as fixed asset in balance sheet was acquired by assessee not for investment but as stock-in-trade for purpose of constructing housing project. Assessing Officer held that cash payment made by assessee was liable to be disallowed under section 40A(3) of the Act. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that where land purchase was claimed as investment and formed part of its fixed asset in balance sheet, then merely because assessee was a real estate builder it could not be presumed that said land would be commercially exploited by assessee later for constructing/developing housing project and such presumption would not trigger applicability of section 40A(3) of the Act. The Tribunal also held that even if there was subsequent conversion or treatment of aforesaid capital asset as a stock-in-trade, provisions of sub-section (2) of section 45 would get triggered, and same would not lead to invocation of section 40A(3) of the Act. (AY. 2015-16)
C G Housing Company. v. ITO *(*2023) 198 ITD 42 (Raipur) (Trib.)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Purchase of land-Payment of cash on demand by seller-Seller admitted the receipt of cash-Disallowance is deleted. [R.6DD]
Assessee purchased land and on demand of sellers made payment in cash amounting to Rs. 12.50 lacs and Rs. 1.33 lacs towards part of sale consideration which was incorporated in sale deed. Assessing Officer disallowed payment applying provisions of section 40A(3). On appeal the Tribunal held that sellers were identified and admitted receipt of cash payment before registering authority under due process and Assessing Officer did not dispute same. On facts disallowance of cash payment is deleted. under section 40A(3) deserved to be deleted. (AY. 2012-13)
Monika Chitrasen Patil. (Mrs.) v. ITO (2023) 198 ITD 508 (SMC) (Pune) (Trib.)

S. 40A(3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Business expediency-Claim not rebutted-Disallowance quashed.[R. 6DD]
Held that since the assessee had made clear averments regarding business expediency and the department had not rebutted them, the Assessing Officer was directed to delete the disallowance. (AY.2016-17)
Raju Kashyap v. Asst. CIT (2023) 152 taxmann.com 183 / 101 ITR 37 (SN)/ 222 TTJ 269 (SM) (Delhi) (Trib)

S. 40A (3) : Expenses or payments not deductible-Cash payments exceeding prescribed limits-Additional evidence-No reasonable cause for admitting additional evidence.[ITATR. 29.]
Held, the vouchers and bills for payment towards freight charges were available with the assessee even at the time of assessment proceedings or even at the time of first appellate proceedings but it did not produce them, without any reason. Since there was no reasonable

cause for admitting the petition, the application was to be rejected and since there was no evidence for the claim of freight expenses, they were not allowable. (AY. 2014-15)
Saranya Agro Foods Pvt. Ltd. v ITO (2023)101 ITR 60 (SN)(Chennai) (Trib)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Liability is converted into loan and repaid-Deletion of addition is justified.
Held that the liability which was converted into an unsecured loan and subsequently stood repaid had not been challenged by the Department in the appeal. Order of Tribunal deleting the addition is affirmed. (AY.2013-14)
PCIT v. Arvind Kumar Arora (2023)457 ITR 258 /156 taxmann.com 266 (Delhi)(HC)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-No evidence of cessation of Liability-Order of Tribunal is affirmed.
Dismissing the appeal of the Revenue the Court held that the creditors had given a written reply in response to the summons reiterating their liability as also the fact that the assessee had settled some of the creditors even after March 31, 2001. The duty on the Assessing Officer is to prove that the liability has ceased to exist which he had failed to do.(AY.2001-02)
PCIT v.Soorajmul Nagarmull (2022) 145 taxmann.com 245 (2023)457 ITR 470/ 335 CTR 832/ 226 DTR 265 (Cal)(HC)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Sundry creditors-Confirmation of account filed-Addition cannot be made.
Held that the Assessing Officer in his remand report stated that the assessee had filed party-wise details of the amount outstanding shown in the balance-sheet, the ledger account showing the name, address, telephone number, permanent account number, with contra accounts from the parties concerned to verify the genuineness of the transactions with the creditors. The assessee had filed confirmation account along with the list of creditors with copy of account as per books. The Assessing Officer further stated that the assessee had filed necessary details and documents to establish the identity, creditworthiness and genuineness of the creditor. There was no infirmity in the order passed by the Commissioner (Appeals) in deleting the addition under section 41(1) of the Act. (AY.2014-15)
ITO v. Umed Meghraj Jain (2023)108 ITR 58 (SN) (Ahd) (Trib)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Loan-Never claimed as trading liability-Interest was claimed-Only interest can be added.
Assessee took an unsecured loan from during financial year 2001-02. During same year, an interest of certain amount was debited on which TDS was deducted and net credit balance stood at certain amount which was being carried forward year-to-year-During relevant assessment year, Assessing Officer noting that alleged sum of outstanding loan had remained unpaid from financial year 2001-02 onwards till relevant assessment year 2011-12 invoked provisions of section 41(1) and added same to income of assessee. Tribunal held that since outstanding principal loan amount was never claimed as trading liability, Assessing Officer was not justified to invoke provisions of section 41(1) for such loan amount. However, only interest amount which was claimed as expenditure in one year is liable to be added to income of assessee. (AY. 2011-12)
Shimmer Textiles (P.) Ltd. v. ITO (2023) 203 ITD 769 (Kol) (Trib.)
S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Waiver of loan-Amount of loan was never claimed as expenditure nor as trading liability in any

previous year-Waiver of such loan would not attract provisions of section 41(1) or section 28(iv). [S. 28(iv),36(1)(iii), 41(1)(a)]

Assessee had acquired loans for working capital requirement.Due to financial crisis assessee availed one time waiver on said loan amount.Waiver amount was exclusive of interest amount and was credited to capital account of partners. Assessing Officer held that since assessee had availed loan for working capital requirement, waiver on loan amount and benefit accruing from it to assessee should be offered to tax, and accordingly, added amount of loan waived of as income of assessee under section 41(1)(a) of the Act. CIT(A) deleted the addition. On appeal the Tribunal held that loan amount was never part of profit and loss account of assessee in any previous year and was capital in natur.SSince loan amount was neither claimed as expenditure nor as trading liability by assessee in any previous year, waiver of such loan which was otherwise capital in nature could not be chargeable to tax under provisions of section 41(1). Tribunal also held that since benefit on waiver of loan was not in kind of money, i.e., cash receipt, section 28(iv) also would not apply. (AY. 2013-14, 2014-15)

DCIT v. Ramani ExportS. (2023) 202 ITD 368 (Mum) (Trib.)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Outstanding credit balance-Expenses claimed-Order of CIT(A) deleting the addition is affirmed-Order of CIT(A) deleting the addition is affirmed.

During assessment proceedings, Assessing Officer held that assessee had failed to prove genuineness of outstanding credit balance pertaining to one PSM. He held that said party had categorically denied entering into any transaction with assessee and even bank statement of said party revealed no transaction undertaken with assessee. Assesssing Officer held that said creditor was a bogus creditor and therefore, proceeded to add outstanding balance reflected in accounts of said party by assessee by invoking provisions of section 41(1), holding that liability had ceased to exist. Commissioner (Appeals) held that in preceding assessment year 2012-13 when assessee had undertaken transactions with said party leading to impugned outstanding credit balance, transactions had been found to be genuine by Assessing Officer. Commissioner (Appeals) held that party being genuine, there could be no case of cessation of any liability relating to said party so as to invoke section 41(1) and deleted disallowance so made. On appeal the Tribunal affirmed the order of the CIT(A). Expenses claimed order of CIT(A) deleting the addition is affirmed. (AY. 2014-15)

DCIT v. Shanti Super Buildcon. (2023) 200 ITD 299/107 ITR 88 (Ahd) (Trib.)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-liability of sundry creditor-Capital asset-Capital expenditure-Neither put to use nor claimed depreciation-Addition cannot be made.

Assessee had shown in account books for assessment year 2016-17 liability of sundry creditor outstanding against purchase of machinery in assessment year 2011-12 and machinery was defective and it was never put to use and supplier was asked to take back its machinery. Assessing Officer added amount to assessee's income as per provisions of section 41(1) by holding that assessee had not demonstrated that liability was on account of capital expenditure. On appeal the Tribunal held that the lower authorities had not disputed about purchase of machinery and no adverse evidence was brought on record that liability was other than purchase of machinery which is Capital asset which was neither put to use nor claimed depreciation. Addition is deleted. (AY. 2016-17)

Marvelore Mining & Allied Industries (P.) Ltd. v. ITO (2023) 198 ITD 629 (Surat) (Trib.)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Sundry creditors outstanding for more than three years-Credit not written off in assessee's books-Not to be treated as income. [S. 4, 28 (i)

Held that sundry creditors outstanding for more than three years. Credit not written off in assessee's books. Not to be treated as income.(AY. 2015-16)

Dy. CIT v. Wahid Sandhar Sugars Ltd. (2023)104 ITR 60 (SN)(Delhi) (Trib)

S. 41(1) : Profits chargeable to tax-Remission or cessation of trading liability-Amount ceasing to be liability-Necessary details not supplied to AO-Evidence produced for the first time-Matter remanded.[S. 254(1)]

Held that the amounts involved had ceased to be the liability of the assessee for a considerable long period of time. The Commissioner (Appeals) had accepted the assessee's contention that the Assessing Officer did not make necessary enquiry but there was nothing in the statute which prohibited the Commissioner (Appeals) from making further enquiry as he deemed necessary. Thus, the matter was remanded to AO consider the issue afresh after taking into account and examining the factual veracity of submissions of the assessee and material produced. *(*AY. 2010-11 to 2015-16)

Asst. CIT v. Ansal Landmark (Karnal) Township Pvt. Ltd. (2023)101 ITR 6 (SN)(Delhi) (Trib)

S. 41(2) : Profits chargeable to tax-Balancing charge-Sale of machinery-Once profit embedded in sales taxed, same sales cannot be taxed again-Income from undisclosed-Once sales are accepted purchases cannot be disallowed-Disallowance is deleted.[S. 69C]

Held that the assessee accounted for sales at full figure and no relevance to loan granted by bank. Once profit embedded in sales taxed, same sales cannot be taxed again. Once sales are accepted purchases cannot be disallowed. Order of CIT(A) deleting the addition is affirmed.*(*AY.2011-12)

Asst. CIT v.Northern India Alcobru Systems (2023)108 ITR 1 (SN)(Surat) (Trib)

S. 43(1) : Actual cost-Depreciation-Amalgamation of Banks Amalgamating Bank Ceases To Exist-Tribunal Right In Allowing Depreciation On Assets Taken Over Pursuant To Amalgamation With Assessee [S. 32, 43(1), Explanation 7]

Pursuant to amalgamation sanctioned by a court of law the Bank of Thanjavur Ltd., was amalgamated with the assessee-bank. The assessee-bank claimed depreciation on assets taken over from the amalgamating bank, on the basis of the value fixed pursuant to arrangement between the assessee and the amalgamating bank. The Assessing Officer allowed depreciation on assets in accordance with the provisions of Explanation 7 to section 43(1) of the Income-tax Act, 1961, but disallowed excess depreciation claimed by the assessee. The Commissioner (Appeals) allowed depreciation claimed by the assessee on the ground that the value of asset has been fixed by the Government of India pursuant to arrangement between the assessee's bank and the amalgamating bank, and Explanation 7 to section 43(1) of the Act had no application. On appeal, the Tribunal reversed the findings of the Commissioner (Appeals). On further appeal, the High Court set aside the order of the Tribunal in the light of arguments of the assessee that Explanation 7 to section 43(1) of the Act did not apply, because even after amalgamation, the amalgamating bank was still functioning and only part of the business of the bank was transferred. On appeal by the Revenue the Tribunal held that the assessee, during the course of hearing had agreed that the amalgamating bank had ceased to exist consequent upon amalgamation and the findings recorded by the Tribunal in light of provisions of Explanation 7 to section 43(1) of the Act were in accordance with law and the

bank did not want to continue the litigation. There was no error in the findings given by the Tribunal in upholding the action of the Assessing Officer in allowing depreciation on assets taken over pursuant to amalgamation of amalgamating bank with the assessee and the decision rendered by the Tribunal did not call for any interference. Appeals of Revenue are allowed. (AY.1991-92 to 2002-03)

Dy. CIT v. Indian Bank Ltd. (2023)103 ITR 700 (Chennai)(Trib)

S. 43(1) : Actual cost-Subsidy cannot be deducted from W.D.W of block of asset. [Explanation-10]

The Hon'ble Tribunal held that the subsidy received by the assessee could not be deducted from the written down value of the block of assets in terms of Explanation 10 to section 43(1) of the Act. (AY. 2014-15, 2015-16)

Asst. CIT v. Electrosteel Casting Ltd. (2023)101 ITR 359 (Kol) (Trib)

S. 43(5) : Speculative transaction-Trading in derivatives-Not speculative transactions-Entitle to set off loss in respect of trading derivatives against normal business income. [S. 70]

Assessee suffered loss in respect of trading in derivatives and adjusted same with its normal business income. Assessing Officer held that loss was on account of speculative business transaction and did not allow claim of assessee to adjust loss with its normal business income. Since transaction in respect of derivatives, as inserted in proviso (d) to section 43(5), would not be a speculative transaction in view of judgment of Supreme Court in case of Snowtex Investment Ltd. v. PCIT (2019) 265 Taxman 3/414 ITR 227 (SC), Assessing Officer is directed to allow claim of assessee to set off loss against its normal business income. (AY. 2013-14)

Kippy Engineering (P.) Ltd. v. DCIT (2023) 202 ITD 87 (Kol) (Trib.)

S. 43(5) : Speculative transaction-Hedging transactions-Trading in edible oils-Connected commodities-Bad debt-Receivable from high seas transactions-Matter remanded. [S. 36(1)(vii)]

Held that whether hedging transaction in edible oils was against another hedging transaction in coal or it was to guard against risk of merchandise in stock falling in value. Matter remanded, CBDT Circular No. 23 (XXXIX-4). As regards bad debts the matter was to be restored to Assessing Officer for verification as to whether assessee offered such an amount in earlier years as income and this amount was properly written off in account books. (AY. 2012-13)

Leo Edibles & Fats Ltd. v. ACIT (IT) (2023) 199 ITD 277 (Hyd) (Trib.)

S. 43(5) : Speculative transaction-Derivatives-Matter remanded back to the Assessing officer for verification.

Assessee claimed profit/loss on share trading activity under head income from business or profession. Assessing Officer held that transactions of purchase and sale of shares were made under STT code no. 03 which exclusively applied to speculative transactions and, thus, he treated loss derived from share trading activity as speculative in nature. Assessee contended that she was trading in derivatives but not in future and options trading which comes under speculative transactions, therefore, said transactions could not be brought under purview of provisions of section 43(5). The Tribunal held that neither assessee nor broker furnished any details asked for by Assessing Officer to verify assessee's claim that transactions were outside ambit of speculative transaction (i.e., in nature of derivatives). The Assessing Officer never held that these transactions were speculative in nature, however arrived at a reasonable

conclusion on basis of ITR information due to non-availability of information to verify claim of assessee. Matter remanded. (AY. 2015-16, 2016-17)
Muthian Sivathanu. v. ITO (2023) 199 ITD 801/223 TTJ 991/ 224 DTR 281 (Chennai)(Trib)
Subbulakshmi Sivathanu v.ITO(2023)223 TTJ 991/ 224 DTR 281 (Chennai) (Trib.)

S. 43(5) : Speculative transaction-Foreign exchange fluctuation-Hedging-loss arising on forwards contract cancelled by the assessee prior to the date of settlement-Not speculative-Allowable as business losS. [S. 28(i), 43(5)(a)]
Tribunal hedl that the CIT (A) held that the assessee had entered into a forward contract to safeguard against the foreign exchange fluctuation on its revenue receipts from foreign parties. These transactions were in the nature of hedging transactions and they fall under the exempted category of speculative transactions u/s 43(5)(a). The CIT(A) also held that the quantum of hedging was reasonable having regard to the export turnover and that it was actual loss which the assessee had incurred on account of cancellation of forward contracts entered with banks to safeguard realization of export proceeds. Order of Tribunal is affirmed (AY. 2012-13)
ACIT v. Gimpex (P) Ltd. (Chennai)(2023) 202 ITD 784 / 106 ITR 44 (SN) (Chennai)(Trib).

S. 43A : Rate of exchange-Foreign currency-Capital assets-Amendment with effect from 1-4-2003-Adjustment on account of Foreign Exchange rate fluctuation required to be made to actual cost at end of every year-Not liable to tax. [S. 145]
Held that the assessee having borrowed funds for external commercial borrowing to acquire capital assets, in the restatement of the account to be made every year, there was bound to be a change in the value of the borrowings in view of fluctuation in the foreign exchange. The Tribunal had rightly held that the adjustment on account of foreign exchange rate fluctuation was required to be made to actual cost at the end of every year after the amendment of section 43A with effect from April 1, 2003 and had upheld the order of the Commissioner (Appeals) that the gains arising on account of foreign exchange fluctuation were not liable to tax as it was on the capital account. (AY.2010-11)
PCIT v.Bangalore International Airport Ltd. (2023)459 ITR 158 /154 taxmann.com 394 (Karn)(HC)
S. 43A : Rate of exchange-Foreign currency-Gain arising on account of exchange fluctuation is not liable to tax as it is on capital account foreign exchange.
Dismissing the appeal of the Revenue, High Court held that foreign exchange rate fluctuation is required to be made to actual cost at end of every year after amendment to section 43A with effect from 1-4-2003 and gain arising on account of exchange fluctuation is not liable to tax as it is on capital account foreign exchange rate fluctuation is required to be made to actual cost at end of every year after amendment to section 43A with effect from 1-4-2003 and gain arising on account of exchange fluctuation is not liable to tax as it is on capital account.SLP of Revenue is dismissed. (AY. 2010-11)
PCIT v. Bangalore International Airport Ltd. (2023) 459 ITR 158 459 ITR 158 / 154 taxmann.com 394 (Karn)(HC)
Editorial : SLP of Revenue is dismissed, PCIT v. Bangalore International Airport Ltd. (2023) 294 Taxman 590 (SC)

S. 43A : Rate of exchange-Foreign currency-Accounting Standard-Reinstatement of accounts-Loss is not claimed in earlier years-Gains not taxable as income of year. [S. 45, 145]

Reinstatement of accounts as required under Accounting Standard resulting in gains on foreign exchange valuation at year-end rate. Loss in earlier years on reinstatement of accounts neither claimed as deduction nor allowed.Gains not taxable as income of year. .(AY.2011–12)

ACIT v. Privi Speciality Chemicals Ltd. (2023) 152 taxmann.com 105 / 102 ITR 1 (SN)/ 222 TTJ 367 (Mum) (Trib)

S. 43B : Deductions on actual payment-Electricity duty-A Licensee-An agency to collect electricity duty from consumers and to pay it to State Government-Disallowance not attracted-SLP of Revenue is dismissed. [Art. 136]

Dismissing the appeal of the Revenue the Court held that the assessee is merely an agency assigned with a statutory function to collect electricity duty from the consumers and to pay it to the State Government, and that therefore, the provisions of section 43B of the Act would not be applicable to the assessee. (AY. 2008-09)

PCIT v. Dakshin Haryana Bijli Vitran Nigam Ltd. (2023)454 ITR 801/ 293 Taxman 426 (SC)

Editorial : PCIT v. Dakshin Haryana Bijli Vitran Nigam Ltd(2022) 449 ITR 605 (P&H) (HC), affirmed.

S. 43B : Deductions on actual payment-Contributions to provident fund and employees' state insurance-Not deposited in respective fund within stipulated time-Not allowable as deduction. [S. 36(1)(va)]

Allowing the appeal of the Revenue the Court held that, contributions to provident fund and employees' state insurance which are not deposited in respective fund within stipulated time is not allowable as deduction. Followed Checkmate Services P. Ltd (2022) 448 ITR 518 (SC)

PCIT v. Strides Arcolab Ltd. (2023) 450 ITR 129/ 291 Taxman 530 (SC)

Editorial : Decision of Bombay High Court, reversed, CIT v. Strides Arcolab Ltd (ITA No. 376 of 2017 dt. 22-3 2019.

S. 43B : Certain deductions only on actual payment-Leave travel allowance-Provision of section 43B(f) is would not apply.[S. 43B(f)]

Dismissing the appeal of the Revenue the Court held that Leave travel allowance (LTA) was not in nature of sum payable by employer in lieu of any leave at credit of his employee, provisions of section 43B(f) would not apply. (AY. 2012-13)

PCIT v. Heavy Engineering Corporation Ltd. (2023) 295 Taxman 349 (Jharkhand)(HC)

S. 43B : Deductions on actual payment-Any sum received from employees-No deduction is available to employer in respect of deposit of employees' contribution of PF and ESI beyond due date prescribed in relevant ActS. [S. 36(1)(va), 260A)

The petitioner contended that once contribution amount was paid even if with delay, same could not have been charged as income of assessee since amount was not retained by assessee for its benefit It was also contended that the income tax authority including Tribunal erred in appreciating scope of section 36(1)(va) and section 43B introduced in Finance Act, 2021. Dismissing the appeal the Court held that in view of law emerging from decision of Supreme Court in Checkmate Services (P.) Ltd. v. [2023]290 Taxman 19/[2022] 448 ITR 518 (SC), contentions raised by the petitioner could be said to be no longer res integra and law as holding field operated against the assessee. (AY. 2019-20)

Diversified Services v. ITO (2023) 293 Taxman 48 (Guj.)(HC)

S. 43B : Deductions on actual payment-Bonus-Pre-existing liability paid in previous year-Not allowed in earlier years-Allowable in the year of payment. [S. 139, 145]

Held, that the amount was disallowed in the return of income filed for the assessment year 2018-19 and was not claimed by the assessee in the immediately previous assessment year. The assessee is entitled to deduction in the year of payment. (AY.2019-20)
Adani Power Ltd. v Assessing Officer (2023)107 ITR 13 (SN) (Ahd) (Trib)

S. 43B : Deductions on actual payment-Provision for leave encashment-Disallowance is upheld.[S. 43B(f)]
Held that the disallowance under section 43B in respect of the provision for leave encashment is upheld. *(*AY. 2013-14)
Srei Infrastructure Finance Ltd. v. Asst. CIT (2023)105 ITR 371 / 154 taxmann.com 650 / 225 TTJ 211 (Kol) (Trib)
S. 43B : Deductions on actual payment-Interest capitalised and not charged to profits-Work in progress-Disallowance could not be made. [S. 37(1), 139(1)]
Held that though the interest accrued was not paid before the due date for filing the return of income under section 139(1) of the Act. However, the amount of interest accrued which became payable was in fact capitalised to capital work-in-progress and was never charged to the profit and loss account. The provisions of section 43B of the Act were thus not applicable. The addition was to be deleted..*(*AY. 2007-08, 2009-10, 2012-13, 2014-15)
West Bengal Power Development Corporation Ltd. v.Dy. CIT (2023)102 ITR 453 (Kol)(Trib)

S. 43B : Deductions on actual payment-Deduction allowed in the year in which the Assessee settles the outstanding electricity dues by way of payment out of the government grants, which is provided for the very purpose of aiding settlement.[S. 145]
It is vide resolution dated May 16, 2006 of the Government of Gujarat, the Assessee was sanctioned a subsidy which was to be adjusted against electricity duty payable by Assessee to the state government for the subsequent financial year 2006-07. For the AY 2006-07, the Assessee claimed to have adjusted the outstanding balance of electricity duty against the grant received from the Government. The Commissioner (Appeals) disallowed the deduction under section 43B of the Act considering the fact that the subsidy had been granted for settlement of dues pertaining to the financial year 2006-07 and due to lack of evidence substantiating such adjustment for the impugned year before the due date of filing of the return, no deduction under section 43B was warranted.
Before the Hon'ble Tribunal, the Assessee made an alternate claim to allow such expense in the succeeding year since the Assessee was able to sufficiently demonstrate that the electricity dues outstanding as at the end of AY 2006-07 was not outstanding at the end of the succeeding year. The Hon'ble Tribunal post inspecting the financials of the Assessee took a view that it can be safely presumed that the outstanding electricity liability for the month of March 2006 were not outstanding and thus stood adjusted against the Government grant. Accordingly, the alternate claim of the Assessee was accepted, and the claim was allowed in the succeeding year. (AY. 2006-07)
Madhya Gujarat Vij Company Ltd. v. ACIT (2023)102 ITR 56(SN) (Ahd.)(Trib.)

S. 43CA : Transfer of assets-other than capital assets-Full value of consideration-Stock in trade-Agreement value-Stamp valuation-Benefit of proviso available retrospectively, Addition to be determined on the basis of fair market value determined by DVO.[S. 50C]
The Assessee is a builder and promoter. Assessment proceedings were initiated, in the course of which AO made certain addition under section 43CA of the Act on account of sale

consideration being less than the stamp duty value w.r.t 9 properties. The AO passed the assessment order, pending DVO report in respect of fair market value.
The Hon'ble Tribunal perused the difference between sale consideration and stamp duty value and proposed to restrict the additions made only to those properties in which the difference exceeded 10% in terms of proviso to section 43CA(1) of the Act. For doing so, the Tribunal referred to the judgements in the case of V.K.Developers [ITA No. 923/Pun/2019] and Sai Bhargavanath Infra [ITA No. 1332/Pun/2019], wherein it was held that proviso to section 43CA(1) would have retrospective effect. However, upon request of the Assessee, the matter was remanded to AO for determination of addition in terms of fair market value determined by DVO. (AY.2015-16)
Dugad Properties v. DCIT (2023) 103 ITR 65 (SN) (Pune) (Trib)

S. 43D : Public financial institutions-Amendment by the Finance Act, 2017-Interest on sticky loans-Taxable on receipt basis and not on accrual basis [S. 145]
The assessee was a non-scheduled bank. The assessee took the stand that tax was payable on interest accrued on loans categorized as non-performing assets (NPA)/sticky loans only on receipt basis because the assessee bank was not certain about recovery of principal amount or interest. However, Assessing Officer held that the same was taxable on accrual basis because the assessee followed mercantile system of accounting. High Court held that the amendment made by the Finance Act, 2017 whereby the scope of section 43D was expanded to cover non-scheduled banks was retrospective in nature. Accordingly, assessee was required to pay tax on interest on the sticky loans/NPAs only on receipt basis.(AY 2012-13, 2013-14)
PCIT v. Kangra Central Co-op Bank Ltd.(2023) 291 Taxman 566 / 330 CTR 133/ 221 DTR 1 (HP)(HC)

S. 44 : Insurance business-Computation of profits-The rules contained in the First Schedule appended to the Act will determine the manner in which the profits and gains of insurance business are to be ascertained. [S. 14, 28, 43B, 199]
Allowing the appeal of the assessee, the court held that section 44 of the Act provides for a statutory mechanism for computing profits and gains of an insurance business and includes, in this context, business carried on by a mutual insurance company or even by a co-operative society. In that sense it moves away from the usual and general method of computing income chargeable to tax by bearing in mind the heads of income of income referred to in section 14 of the Act. This is plainly evident, since there is a specific reference to section 199, (which broadly deals with granting credit to the person from whose income tax has been deducted at source) and the sections spanning between sections 28 and 43B. The rules contained in the First Schedule appended to the Act will determine the manner in which the profits and gains of insurance business are to be ascertained. Followed, PCIT v. Sahara Life Insurance Co.Ltd (2021) 432 ITR 84 (Delhi)(HC) (AY.2014-15)
Sahara India Life Insurance Co. Ltd. v. ACIT (2023)457 ITR 548/150 taxmann.com 23(Delhi)(HC)

S. 44 : Insurance business-Depreciation-Allowable to insurance company. [S. 30 to 43B]
Held that deductions that are otherwise specified under section 30 to 43B are allowable to an insurance company hence the depreciation is allowable.s(AY. 2015-16)
Tata AIG General Insurance Co.Ltd v. Dy. CIT(2023) 224 TTJ 724 /(2022) 141 taxmann.com 70 (Mum)(Trib)

S. 44AD : Presumptive basis-Civil construction-Best judgement-Books of account not audited-Estimation at 4% is held to be justified. [S. 44AB, 144]
Assessee executed works contract for State Public Works Department relating to road construction. The assessee did not get his accounts audited and furnished income at 3 per cent turnover based on estimates. Assessing Officer held that since assessee had not maintained accounts, determined income at 8 per cent as per section 44AB, resulting in enhancement of income. On appeal, Commissioner (Appeals) scaled it down to 4 per cent without depreciation. Tribunal up held the order of CIT (A). On appeal by the Revenue, High court affirmed the order of the Tribunal (AY. 2015-16)
CIT v. Srinivasan Devendran (2023) 292 Taxman 350 (Mad.)(HC)

S. 44AD : Presumptive basis-Incentive earned for achieving the sales target as per franchise agreement-Part of business turnover-Includible in turnover business-Not chargeable to tax under the head income from other sources-Reimbursement of expenses-Failure to file evidence-Income from house property-Not includible as gross receipts-Interest on fixed deposit-Income from other sources-Cannot be included in business receipts for estimating net profit under section. 44AD. [S. 22, 56, 194IB]
Held that incentive earned for achieving the sales target as per franchise agreement is part of business turnover which is includible in turnover business, not chargeable to tax under the head income from other sources. As regards reimbursement of expenses failure to file evidence assessable as income from house property and not includible as gross receipts. Interest on fixed deposit assessable as income from other sources cannot be included in business receipts for estimating net profit under section. 44AD. (AY. 2017-18)
Euro Homes v. Dy. CIT (2023) TTJ 17 (UO) (Chennai) (Trib)

S. 44AD : Presumptive basis-Civil contractor-State Public Works Department relating to road construction-Estimate of net profit at 4 percent on turnover basis is affirmed.[S. 44AB, 144]
Assessee executed works contract for State Public Works Department relating to road construction. Assessee received payments from various Government departments from which TDS had been deducted by payer departments.The assessee did not get his accounts audited and furnished income at 3 per cent turnover based on estimates. Assessing Officer held that since assessee had not maintained accounts, determined income at 8 per cent as per section 44AB, resulting in enhancement of income liable to tax. On appeal, Commissioner (Appeals) scaled it down to 4 per cent without depreciation. On appeal the Tribunal upheld estimation of profit at 4 per cent by Commissioner (Appeals). (AY. 2016-17)
DCIT v. Srinivasan Devendran. (2023) 198 ITD 495 (Delhi) (Trib)

S. 44AD : Presumptive basis-Dissolution of partnership firm-Partner carried on business in capacity as proprietor-Amount taxed in the assessment of firm-Matter set aside to AO for verification of factS. [S. 44ADA, 194 J, Form No. 26AS]
Partnership firm dissolved w.e.f. 01.04.2005 vide dissolution deed dated 31.03.2005. Partner filed affidavit stating that he has been carrying out business of erstwhile partnership firm as proprietor. AO taxed entire amount in the assessment of firm-On appeal, CIT(A) rejected the claim that showing such income in the individual capacity cannot absolve the appellant from filing its own ITR when it is receiving amount in the same PAN. However, directed the AO to treat 50% of the gross receipts u/s 194J of the Act and 8% of the gross receipts u/s 194C of the Act as appearing in Form 26AS of firm as income of the appellant in congruence to provisions of Sec. 44ADA and 44AD of the Act. Before ITAT, appellant submitted that CIT(A) rejected claim of assessee without considering reconciliation statement and applied

provisions of S. 44ADA, which was not applicable in AY. 2011-12. In view of the fact that dissolution deed was submitted before AO, ITAT remitted back the matter to AO for fresh verification. (AY. 2011-12)

Mathur Ugam and Associates v.ITO (2023) 153 taxmann.com 504 /104 ITR 442 (Delhi)(Trib)

S. 44AD : Presumptive basis-Demonetisation-Unexplained cash deposits during demonetisation period-Cash deposits explained-Held, addition is unsustainable. [S. 68, 69A]

The assessee missed an order passed by the Commissioner (Appeals) as it was recieved in the "spam" folder. The delay in filing appeal was condoned because the assessee was a small business woman, not privy to technicalities. For the A.Y. 2016-17 and 2017-1, the assessee earned her income from taking tuitions and running a beauty parlour. She declared her return of income of Rs. 34,130 upon which was called to disclose her sources of income, copy of bank statements and sources of various cash deposits made during the demonetisation period. The AO noticed several cash deposits of demonetised currency and proceeded to make an addition of Rs. 10,00,000 as unexplained money u/s 69A of the Act. The Commission (Appeals) confirmed the addition. The same was challenged before the Tribunal. Held that the assessee had sufficient funds in her account. The assessee properly explained that the money in her possession came from her profession as a tutor and owner of a beauty salon. The Assessing Officer and the Commissioner (Appeals) had access to all the material, but the authorities ignored it without looking it over and went forward with the addition. The addition made was not sustainable because the assessee's cash deposit of demonetization currency was properly declared and explained. (AY.2017-18)

Sanjana R. Jain (Mrs.) v. ITO (2023)103 ITR 546 (SMC) (Mum)(Trib)

S. 44AD : Presumptive basis-Cash credits-Not required to maintain books of account-Addition cannot be made as cash credits-Provisions of section 115BBE is not applicable. [S. 68, 115BBE]

The assessee an individual carrying on trading activity. The assessee filed return under section 44AD of the income tax Act. The Assessing Office made an addition in respect of opening capital under section 68 of the Act, towards unexplained sundry creditors.On appeal CIT (A) affirmed the order of the Assessing Officer. On appeal the Tribunal deleted the addition and also held that section 115BBE comes in to operation only in case of income referred in sections 68/69/69A/ 69B/ 69C/ and 69D of the Act, which is not applicable on the issues raised, hence provision of section 115BBE can not be applied. (ITA No. 176 / jodh /2019 dt. 24-3-2023)(AY. 2015-16)

Sunil Gahlot v.ITO (2023) BCAJ-May-P. 35 (Jodhpur)(Trib)

S. 44B : Shipping business-Non-residents-Computation-Inland haulage charges-Part of income from operation of ships in international traffic-Charges received from transportation of cargo through feeder vessels-Not taxable in India-income from IT support services-Matter remanded-DTAA-India-France. [S. 9(1)(vii), Art.9(1), 13]

Held that inland haulage charges received by assessee, engaged in business of operation of ships shall form part of income from operation of ships in international traffic and accordingly article 9 of India-France DTAA shall apply to it. Freight charges received from transportation of cargo through feeder vessels being part of shipping income in international traffic was covered under article. Tribunal held that DRP rejected claim of assessee by following its own order in earlier year which had been reversed by Tribunal, matter remanded. (AY. 2020-21)

CMA CGM SA. v. ACIT (2023) 201 ITD 808 (Mum) (Trib.)

S. 44BB : Mineral oils-Computation-Presumptive tax-Non-resident-Service tax collected-Not includible in gross receipt-SLP of Revenue is dismissed [S. 44BB(2)]
Held that the service tax collected by in the course of provision of services and facilities in connection with or supply of plant and machinery on hire, in the prospecting for or extraction or production of mineral oils in India is not to be included in the amount paid or payable for the purpose of computation of the presumptive taxable income. SLP of Revenue is dismissed.
CIT v. Transocean Offshore International Ventures Ltd (2023] 459 ITR 609/ 157 taxmann.com 203 /(2024) 296 Taxman 570 (SC)
Editorial : CIT (IT) v. B. J. Services Co. Me Ltd (2022) 145 taxmann.com 430/ (2023)457 ITR 80 (Uttarakhand)(HC)

S. 44BB : Mineral oils-Computation-Presumptive tax-Non-resident-Service tax collected-Not includible in gross receipt. [S. 44BB(2)]
Held that the service tax collected by in the course of provision of services and facilities in connection with or supply of plant and machinery on hire, in the prospecting for or extraction or production of mineral oils in India is not to be included in the amount paid or payable for the purpose of computation of the presumptive taxable income.
CIT (IT) v. B. J. Services Co. Me Ltd (2022) 145 taxmann.com 430/ (2023)457 ITR 80 (Uttarakhand)(HC)
Editorial :SLP dismissed, CIT v. Transocean Offshore International Ventures Ltd (2023] 459 ITR 609/ 157 taxmann.com 203 (SC)

S. 44BB : Mineral oils-Computation-Presumptive tax-Revenue received on account of provision of facilities and services of seismic data acquisition, planning and carrying out of pre-survey study, taking marine data and confirming prospects, maintenance/upgradation/support of software licences-Not fees for technical services-Reimbursement of service tax-Not includible in gross turnover for computing taxable income. [S. 9(1)(vii), 44DA]
Held, that the revenue received by the assessee on account of provision of facilities and services of seismic data acquisition, planning and carrying out of pre-survey study, taking marine data and confirming prospects, maintenance, upgradation and support of software licences, was not in the nature of fees for technical services as it was covered by the exclusion provided in Explanation 2 to section 9(1)(vii) of the Income-tax Act, 1961 being consideration received for "mining or like projects" and was therefore, taxable under section 44BB and not under section 44DA. The amount received by the assessee as reimbursement of service tax was not included in the gross turnover for the purpose of computing taxable income under section 44BB of the Act. (AY.2011-12)
Dy. CIT (IT) v. Western Geco International Ltd. (2023)108 ITR 23 (SN)/225 TTJ 1009/ 157 taxmann.com 736 (TM) (Delhi) (Trib)

S. 44BB : Mineral oils-Computation-Vessels to be used in Seismic support duties and transport of coated pipes in India-Receipts are covered under section 44BB-Excluded from the definition. of royalty-DTAA-India-Singapore. [S. 9(1)(vi), Explantion 2 (via),115JA, Art. 12]
Assessee, a non-resident corporate entity based in Singapore, entered into charter hire agreements with PDMCC and LT for vessels to be used in Seismic support duties and transport of coated pipes in India respectively. Tribunal held that activities of seismic duties and transport of coated pipes would be covered under Section 44BB and it could not be

treated as royalty under Explanation 2(iva) to Section 9(1)(vi). Followed: Valentine Maritime (GULF) LLC (2017) 163 ITD 37 (Mum) (Trib) Dy. CIT v.. Western Geco International Ltd. TS-943-ITAT-2022, Larsen & Toubro Ltd. v. Girish Dave DIT (IT) 442 ITR 217 (Bom)(HC). (AY. 2012-13)
Pacific Crest Pte. Ltd. v. Dy. CIT (IT) [2023] 201 ITD 11 (Delhi)(Trib)

S. 44BB : Mineral oils-Computation-Non-resident-Business profits-Supply/lease/hire of rigs to be used for drilling and exploration of mineral oils-Amount received is covered under provisions of section 44BB and taxable on gross basis at rate of 10 per cent-DTAA-India-Malaysia. [S. 9(1)(vi), 115A, Art. 12]
Assessee, a non-resident corporate entity, is a tax resident of Malaysia. It entered into a contract with an Indian company for supply/lease/hire of rigs to be used for drilling and exploration of mineral oils and received certain amount of consideration.Assessee offered income from hiring/leasing of rigs as business profits to be taxed on gross/presumptive basis under section 44BB at 10 per cent. However, DRP held that amounts received by assessee were in nature of royalty under section 9(1)(vi) read with section 115A as well as article 12 of India-Malaysia DTAA. On appeal the Tribunal held that section 44BB is a special provision applicable to certain categories of income earned by a non-resident from activities related to business of extraction/exploration of mineral oils and one of activities coming under said provision relates to giving on hire/leasing of equipments to be used in exploration or extraction of mineral oil. Since assessee had given on hire/lease equipments used or to be used in extraction/exploration of mineral oils, amounts received by assessee were fully covered under provisions of section 44BB and taxable on gross basis at rate of 10 per cent. (AY. 2012-13 & 2017-18)
UMW Sher (L) Ltd v. Assessing Officer (2023) 199 ITD 692 (Delhi)(Trib)
Editorial : Affirmed, in CIT v. UMW Sher (L) Ltd (2024) 160 taxmann.com 695 (Delhi) (HC)

S. 44BBB : Foreign companies-Civil construction-Turnkey power projects-Not engaged in turnkey project-Provisions not applicable-Section 44BBB(2) overrides 44BBB(1)-Maintains books of accounts u/S. 44AA which are audited-AO could not have estimated NP @10%-44BBB(1) not applicable-DTAA-India-Italy. [S. 44AA, 44BBBB, Art. 5, 7]
AO estimated profit @10% of gross receipts which is in violation of principles of natural justice without considering that assessee has maintained books of accounts which have been audited. Further, provisions of Section 44BBB(1) not applicable to the assessee and assessee setup PE for expansion of oil refinery project and not related to turnkey project approved by Central Government. Even otherwise, if assumed that 44BBB(1) applicable, then 44BBB(2) overrides 44BBB(1). Where assessee had maintained books of accounts as per 44AA and audited as per 44AB, then provisions of S. 44BBB(1) not applicable. AO could not have estimated net profit @10%. Addition made by AO is deleted. (AY. 2019-20)
Technip Energies Italy v. DCIT (2023) 150 taxmann.com 525 / 104 ITR 592/225 TTJ 562 (Delhi) (Trib)

S. 45 : Capital gains-Transfer-Possession was handed over-Subsequent termination of contract by mutual consent and returned back the sale consideration received-Liable to capital gains tax in the year of handing over of possession of property-Benefit of the tax scheme (Vivad se Vishwas Scheme-SLP dismissed. [S. 2(47)(v), Transfer of Property Act,1929, S. 53A,Registation Act 1908, 17(1A)]
High Court held that it was not disputed that possession was handed over in pursuance of agreement to sell and provisions of section 2(47) would squarely apply, therefore, mere fact

that contract was subsequently terminated by mutual consent, would not improve case of assessee to wriggle out of purview of section 2(47). Assessee availed the benefit of the tax scheme (Vivad se Vishwas Scheme.SLP dismissed. SLP filed against impugned order of High Court was to be dismissed. (AY. 1999-2000)

Harbour View v. CIT (2023) 295 Taxman 405 / 460 ITR 493 (SC)

Editorial : SLP dismissed, CIT v. Harbour View (2018) 409 ITR 599/ 261 Taxman 330 (Ker)(HC)

S. 45 : Capital gains-Retirement-Firm-Excess of amount due-Goodwill-No discussion in the judgement-Matter remanded to the High court for reconsideration.

The Assessing Officer assessed the excess amount received by the partner as capital gains. Tribunal deleted the addition. On appeal by the Revenue High Court affirmed the order of the Tribunal. On appeal by the Revenue the assessee contended that the excess amount was towards goodwill. The Court held that there was no discussion in the judgment of the High Court on any submission on the lines addressed before the court. Court held that the High Court would bear in mind the state of the law and the amendments engrafted later on. The matter remanded to the High Court for reconsideration (AY.2009-10)

PCIT v. R. F. Nangrani HUF (2023)454 ITR 426/ 293 Taxman 511/ 332 CTR 510/ 225 DTR 217 (SC)

Editorial: Order of High Court is set aside and remanded, CIT v. R. F. Nangrani HUF (Bom)(HC) (ITA No. 33 of 2016 dt 18-4 2018)

S. 45 : Capital gains-Capital loss-Capital asset-Loan given to its subsidiary in India-Short-term capital loss-Order of High Court affirmed-SLP of Revenue dismissed. [S. 2(14), Art. 136]

The High Court held that the loan given by the assessee to its subsidiary in India constituted a capital asset within the meaning of section 2(14) of the Income-tax Act, 1961 and the consideration received when it was assigned was a short-term capital loss. On a petition for special leave to appeal to the Supreme Court dismissing the petition the Court held that the Tribunal had given strong reasons for holding that the transaction would come within the meaning of section 2(14) of the Act. Order of High Court affirmed. (AY. 2002-03)

CIT (IT) v. Siemens Nixdorf Information Systemse Gmbh (2023)453 ITR 741 / 293 Taxman 1 (SC)

Editorial : CIT v. Siemens Nixdorf Information Systemse GmbH (2020) 114 taxmann.com 531 (Bom)(HC) affirmed.

S. 45 : Capital gains-Land-Joint Development Agreement-Possession of land only for purposes of development-No transfer of land in 2008-Order of Tribunal is reversed. [S. 2(47)(v), Transfer of Property Act, 1882, S 53A]

The assessees were joint owners of a piece of land. They entered into a joint development agreement dated November 27, 2008 with Ashed properties and Investments Pvt Ltd., for development of the property. In the said agreement, land owners were entitled to 60 per cent. of the built up area with proportionate undivided interest and the developer to the remaining 40 per cent. The assessees filed returns of income in respect of the assessment year 2009-10. The Assessing Officer held that joint development agreement was executed in the financial year relevant to the assessment year and they were liable to pay capital gains tax. This was upheld by the Tribunal. On appeal the Court held that a combined reading of clauses 6.2, 14.1 to 14.3 and 21 of the joint development agreement made it clear that the delivery of possession to the developer was only for the performance of development and construction. Therefore, the view taken by the Assessing Officer and the Tribunal that the transfer was

effected in the assessment year 2009-10 and making the assessees liable for payment of capital gains tax was perverse and untenable. Tax could not be levied on capital gains in the assessment year 2009-10.(AY.2009-10, 2010-11)

Margrit Goverdhan (Mrs.) v. ITO (2023)458 ITR 91 (Karn)(HC)

Arvind Goverdhan (Dr.) v. ITO (2023)458 ITR 91 (Karn)(HC)

Monika Goverdhan (Mrs) v. ITO (2023)458 ITR 91 (Karn)(HC)

Anita Goverdhan Loebbert (Mrs) v. ITO (2023)458 ITR 91 (Karn)(HC)

Editorial : Order of Tribunal in ITO v. Arvind Goverdhan (Dr.) (2018) 61 ITR 159 (Bang)(Trib) is reversed.

S. 45 : Capital gains-Agreement for joint development of land-Giving power of attorney to land owner-No conveyance in year of agreement-No liability to capital gains tax in the year of development agreement.[S. 2(47)]

Dismissing the appeal, of the Revenue the Court held that a combined reading of clauses 3.1 and 13 of the agreement showed that parties had specifically agreed that the assessee shall continue to own the entire joint development property until conveyance took place. Clause 13 was in consonance with clause 3.1. There was no material on record to show that any conveyance had taken place in the assessment year 2014-15. Unless there was material to establish that there was any conveyance, the view taken by the Assessing Officer was perverse and the view had rightly been reversed by both the Commissioner (Appeals) and the Tribunal.(AY.2014-15)

PCIT v. Sri Sai Lakshmi Industries Pvt. Ltd. (2023)458 ITR 373 /157 taxmann.com 172 (Karn)(HC)

Editorial : Order of Tribunal in, Dy.CIT v. Sri Sai Lakshmi Industries Pvt. Ltd. (2023) 33 ITR (Trib)-OL 225 (Bang)(Trib)

S. 45 : Capital gains-Holding period of shares-Date of transfer-Acquisition of the dematerialised shares is to be taken as the date of purchase when the broker issued his contract note and not the date of entry in the demat account-Circular NoS. 704, dated 28-4-1995 and 768, dated 24-6-1998 apply equally to securities held in physical as well as in dematerialised form. [S. 10(38) 45(2A), 260A]

Allowing the appeal of the assessee the Court held that Circular Nos. 704, dated 28-4-1995 and 768, dated 24-6-1998 apply equally to securities held in physical as well as in dematerialised form, and, thus, date of transfer and period of holding of securities is to be determined in view of such circulars even in case of shares held in dematerialised form. Therefore, relevant date of transfer and period of holding of securities is to be determined in accordance with said circulars even in case of shares held in dematerialised form. Accordingly, Tribunal was incorrect in holding that said circulars were not applicable to dematerialised share scripts and date of acquisition would be date only when dematerialised share scripts were entered into assessee's demat account with depository (AY. 2005-06)

Nawal Kishore Kejriwal v.CIT (2023) 335 CTR 97 / 151 taxmann.com 117 (Cal)(HC)

S. 45 : Capital gains-Non-Resident-Sale of debt instruments in India-Certificate of Singapore Tax Authorities that income from foreign exchange transactions in India be taxable in Singapore-Entitled to exemption-DTAA-India-Singapore. [Art. 13(4), 24]

Dismissing the appeal of the Revenue the Court held that the property alienated was debt instruments and the income would come under article 13(4) of the Double Taxation Avoidance Agreement according to which gains from alienation of any property be taxable only in Singapore, of which the alienator (the assessee) was a resident. Therefore, the entire capital gains was taxable in Singapore. The exemption or reduction of tax to be allowed under the Double Taxation Avoidance Agreement in India shall only apply to so much of the

income as is remitted to or received in Singapore where the laws in force in Singapore provides that such income is subject to tax by reference to the amount which is remitted or received in Singapore. When under the laws in force in Singapore the income is subject to tax by reference to the full amount thereof, whether or not remitted to or received in Singapore, article 24(1) would not apply. The certificate issued by the Singapore tax authorities would constitute sufficient evidence for accepting the legal position. No questions of law arose. (AY.2010-11)

CIT (IT) v. Citicorp Investment Bank (Singapore) Ltd. (2023)457 ITR 203 /151 taxmann.com 501 (Bom)(HC)

S. 45 : Capital gains-Long term capital gains from equities-Penny stocks-Shares of Shree Nath Commercial and Finance Ltd-No evidence available on record suggesting that assessee or his broker was involved in rigging up of price of script-Order of Tribunal allowing the exemption is affirmed. [S. 10(38), 56, 260A]

Assessee had sold shares of Shree Nath Commercial and Finance Ltd (SNCFL) and earned long-term capital gains and claimed exemption under section 10(38) of the Act.The Assessing Officer treated purchase as bogus and added it to total income. Commissioner (Appeals) examined all relevant documents provided by assessee, including bills of purchases, broker account copies, bills for sales, and bank statements and held that purchases were made through a recognized broker via cheque, establishing their genuineness and, thus, he directed Assessing Officer to delete addition of LTCG claimed as exempt under section 10(38). Tribunal upheld Commissioner (Appeals) decision stating that there was no evidence implicating assessee or broker in any wrongdoing related to SNCFL script. On appeal by the Revenue High Court affirmed the order of the Tribunal.(AY. 2013-14)

PCIT v. Mamta Rajivkumar Agarwal (2023) 295 Taxman 512 (Guj.)(HC)

S. 45 : Capital gains-Long term capital gains from equities-Survey-Report from investigation wing-Accommodation entries-Kolkata based companies-Order of Tribunal allowing the claim is affirmed.[S. 10(38), 68, 69, 133A]

The Assessee filed revised return wherein exemption claimed under section 10(38) was withdrawn and entire income was offered for tax as income from other sources. During scrutiny proceedings the assessee claimed that revised return was filed under duress during survey and claim made under section 10(38) in original return was valid. On the basis of Investigation report on the group companies the Assessing Officer denied the exemption claimed under section 10(38) of the Act and treated same as bogus on the ground that receipts constituted accommodation entries. On appeal the Tribunal considering the details of purchase and sales were placed before Assessing Officer along with contract notes for purchase and sale, demat account and bank statement allowed the claim of the assessee. Tribunal also held that no incriminating material were found during survey and statements relied upon were recorded much before date of survey conducted at premises of assessee. On appeal by the Revenue, High Court affirmed the order of the Tribunal. CBDT No. 286/98/2013, dated 09-01-2014. (AY. 2014-15 2015-16)

PCIT v. Dipansu Mohapatra (2023) 293 Taxman 173 (Orissa)(HC)

S. 45 : Capital gains-Memorandum of understanding dated 16-6-2007 agreeing to sell their shares-Substantial consideration was received-Share certificates were not delivered to transferees-Transfer of shares shall take place only after registration by Registrar of company-Order of Tribunal deleting the addition was affirmed. [Companies Act, 1956, S. 29]

Assessees entered into a memorandum of understanding dated 16-6-2007 agreeing to sell their shares in favour of two parties and received substantial part of consideration between 18-6-2007 to 16-10-2007 as advance sale consideration towards sale of shares. The Assessing Officer held that assessees were liable to pay long-term capital gains tax on sale of shares in assessment year 2008-09. Tribunal held that since share certificates were not delivered to transferees during previous year relevant to assessment year 2008-09, assessees could not be subjected to capital gains tax in assessment year 2008-09. On appeal High Court held that in view of settled position of law that transfer of shares shall take place only after registration by Registrar of company. Order of Tribunal is affirmed. Relied on Vasudev Ram Chandra Shelat v. Pranlal Jayanand Thakar [1974] 2 SCC 323, wherein the Court held that a share certificate is a prima facie evidence under section 29 of the Companies Act, 1956 of the title of a share. (AY. 2008-09)

PCIT v. Poornima Shailendra Babu (Smt) (2023) 292 Taxman 340 / 335 CTR 208 (Karn.)(HC)

PCIT v. Shailendra Babu (2023) 292 Taxman 340 / 335 CTR 208 (Karn.)(HC)

S. 45 : Capital gains-Penny Stock-Cash credits-Accommodation entries-DMAT account and contract note showed details of share transaction-Assessing Officer had not proved said transaction as bogus, capital gain earned on said transaction can not be treated as cash credits-Addition as cash credit was deleted-Order of Tribunal allowing the exemption was affirmed. [S. 10(38), 68]

The Respondent had shown sale proceeds of shares in scrip Ramkrishna Fincap Ltd. (RFL) as long term capital gains and claimed exemption under the Act. Respondent had claimed to have purchased this scrip at Rs.3.12/-per share in the year 2003 and sold the same in the year 2005 for Rs.155.04/-per share. The Assessing Officer held that investigation has revealed that the scrip was a penny stock and the capital gain declared was held to be accommodation entries. A broker Basant Periwal & Co through whom these transactions have been effected had appeared and it was evident that the broker had indulged in price manipulation through synchronized and cross deal in scrip of RFL. SEBI had also passed an order regarding irregularities and synchronized trades carried out in the scrip of RFL by the said broker. The Assessing Officer made addition under section 68 of the Act. On appeal the CIT(A) deleted the addition. On appeal by the Revenue, the Tribunal Affirmed the order of the CIT(A). Tribunal followed the order of Jurisdictional High Court in CIT v. Shyam R. Pawar (2015) 54 Taxmann.com 108/ 229 Taxman 256 (Bom)(HC). On appeal by the Revenue, dismissing the appeal the Court held that The Tribunal while dismissing the appeals filed by the Revenue also observed on facts that these shares were purchased by respondent on the floor of Stock Exchange and not from the said broker, deliveries were taken, contract notes were issued and shares were also sold on the floor of Stock Exchange. Order of Tribunal is affirmed. (ITA No. 454 of 2018 dt.12-7-2023)(AY. 2005-06) (Arising out of ITA No. 5168/M/2014 dt.27-5-2016).

PCIT v. Indravadan Jain, HUF (2023) 156 taxmann.com 605 (Bom)(HC) www.itatonline.org

S. 45 : Capital gains-Capital asset-Owner-Development agreement-Assessable as capital gains and not as business income.[S. 28(i)]

Dismissing the appeal of the Revenue the Court held that in exchange of land the assessee was entitle to get 45 percent of the constructed area and remaining portion of the land shed continued to be used by the assessee for its own workshop purchase. Tribunal was right in holding that there was no intention of treating the land as stock in trade. Order of Tribunal is affirmed. (ITA No. 160 of 2011 dt. 20-2-2023)(AY. 2005-06)

CIT v. Machino Techno Sales Ltd (2023) BCAJ-May-P. 47 (Cal)(HC).

S. 45 : Capital gains-Sale of Non-Convertible Debentures With Detachable Warrants-Valuation of cost of detachable warrants-Valuation was accepted by assessee-Tribunal affirming the cost-Order of Tribunal affirmed.

Dismissing the appeal the Court held that when the assessee itself had accepted the cost at Rs. 2.175 the authorities had rightly concluded since it was based upon the assessee's representation itself. According to the assessee itself some value had to be ascribed to the detachable warrants and when such cost was accepted and agreed to at Rs. 2.175 which had led the Commissioner (Appeals) to pass the order his order had been rightly affirmed by the Tribunal. No error had been committed and its order affirming the order of the Commissioner (Appeals) need not be interfered with.(AY.1993-94)

Deepak Nitrite Ltd. v. Dy.CIT (2023)452 ITR 10/ 330 CTR 680/ 222 DTR 193/ 292 Taxman 357 (Guj)(HC)

S. 45 : Capital gains-Long term capital gains-Penny stock-Accommodation entries-Unaccounted income-Purchases accepted as genuine-Shares were traded on stock exchange after paying securities transaction tax and money had been received through banking channels-Capital gains cannot be assessed as bogus long term capital gains-Deletion of addition by the Tribunal is affirmed [S. 10(38) 133A 260A]

The AO based on the report of the Investigation wing held that the transaction was bogus and denied the exemption and assessed as unaccounted income. On appeal the CIT(A) allowed the claim of the assessee. Appeal of the Revenue the Tribunal held that when the shares were purchased for trading purposes in earlier years, the profit generated was accepted as genuine and when these scripts were converted in to investment and sold during the year and sold they could not be treated as bogus transactions. The fact that shares were traded on stock exchange after paying securities transaction tax and money had been received through banking channels demonstrated that they were not bogus transactions. Tribunal affirmed the order of CIT(A). On appeal by the Revenue High Court affirmed the Order of Tribunal. (ITA No. 13 of 2023/ ITA No. 14 of 2023 dt. 12-1023) (AY. 2008-09 2009-10)

PCIT v. Rajat Finevest (2023) BCAJ-March-P. 48 (Bom)(HC)

S. 45 : Capital gains-Business income-Trading or investment-Two separate portfolios-Order of tribunal reversing order of Commissioner (Appeals) and holding gains as business income was set aside. [S. 28(i)]

The AO treated the short term capital gains on sale of shares as business income. CIT(A) accepted the contention of the assessee. On appeal the Tribunal reversed the order passed by the Commissioner (Appeals). On appeal High Court held that Tribunal was not right in reversing the order passed by the Commissioner (Appeals) and holding that the gain made by the assessee on sale and purchase of shares was business profit and not short-term capital gains. (AY-2005-06)

Indi Stock Pvt. Ltd v. CIT (2023) 450 ITR 327 (Cal)(HC)

S. 45 : Capital gains-Search-Land dealings-Agreement for sale of land-Benamidar-Protective assessment-Executor of sale, and beneficiary of sale proceeds and other sellers were puppets controlled by assessee-Capital gains taxable in the hands of assessee. [S. 2(14), 2(47), 132,153C, 292C]

A search was conducted by revenue in group cases of Dr. AM and S Group of medical stores and connected cases. An agreement for sale of land was found and seized from residence of

Dr. RA between AM and LG of one part (as buyers) and assessee, and 4 others of second part (as sellers). Sale consideration mentioned in agreement was higher than registered sale deeds executed subsequently.Assessing Officer brought to tax income in respect of a portion of land and assessed capital gains in hands of assessee and protectively in hands of other sellers, claiming they were benamidars of assessee. Tribunal held that the assessee was owner of land, executor of its sale, and beneficiary of sale proceeds and other sellers were puppets controlled by assessee. Tribunal also observed that all four sellers were closely associated with assessee and lacked capacity to purchase land also found that agreement was valid and its cancellation as well as defect leading thereto, were completely unevidenced. Accordingly revenue was justified in considering assessee as beneficial owner of subject land and assessment of capital gains in assessee's hands was also justified. (AY. 2008-09)

Dy.CIT v T.G. Chandrakumar (2023) 223 TTJ 469 / 152 taxmann.com 623 (Cochin)(Trib)

S. 45 : Capital gains-Penny stock-Purchase and sale through banking channel-Addition as cash credit is deleted. [S. 10(38) 68,]

During year, assessee sold shares of company GIFL and earned long-term capital gains (LTCG) of certain amount which was claimed as exempt. Assessing Officer held that GIFL was involved in providing bogus LTCG entries through listed penny stocks on Bombay Stock Exchange. Moreover, said company did not have any financial standing/base of its own to justify as to why price of share rose substantially in a short span of time Accordingly, he added entire LTCG claimed as exempt to income of assessee holding it as bogus. Tribunal held that the assessee had placed on record copies of contract memos in connection with purchase and sale of shares. Besides above shares, assessee had also held shares of 84 other companies which were not considered non-genuine.No material was brought on record to suggest that assessee was involved in any price rigging. Name of assessee was not specifically mentioned in list of beneficiaries-No material was brought on record to support finding that there had been collusion or connivance between broker and assessee for introduction of his own unaccounted money. Purchase of shares was through proper banking channel-Whether, on facts, impugned addition made by Assessing Officer was to be deleted. (AY. 2014-15, 2015-16)

Dy. CIT v. Rajnikant Prabhudas Mandavia (2023) 157 taxmann.com 316 / 226 TTJ 778 (Ahd)(Trib.)

S. 45 : Capital gains-Business income-Sale of shares-Shown as investment-Assessable as capital gains and not as business income.[S. 28(i)]

Held that the purchase of shares in the earlier years shown as investment which was accepted by the Revenue. The intention being investor, the sale of shares has to be assessed as capital gains and not as business income. (AY. 2007-08, 2010-11)

Amritlal Batra v. Add. CIT (2023) 226 TTJ 917 / (2024) 110 ITR 127 / 160 taxmann.com 236 (Amritsar)(Trib)

S. 45 : Capital gains-Property converted into stock in trade-Sale agreement entered into-General power of attorney-Sale is not registered-Sale is not complete on handing over of possession-Sale cannot be chargeable to capital gains tax. [S. 2(47)(v) 28(i), 153C, Transfer of Property Act,1882, S. 53A]

The assessee converted the property into stock in trade which is accepted by the Revenue. The assessee agreed to sale portion of the property by executing the power of Attorney. The Assessing Officer assessed the 78.3 percent of the total consideration as capital gains. On appeal the CIT(A) directed the Assessing officer to allow index cost.On appeal the Tribunal

held that the sale agreement was entered into though General power of attorney. Sale is not registered. Accordingly the Tribunal held that sale is not complete on handing over of possession hence the sale cannot be chargeable to capital gains tax. (AY. 2016-17)
Chennai Properties & Investments Ltd v. ACIT (2023) 222 TTJ 355 (Chennai)(Trib)

S. 45 : Capital gains-Additional evidence-Transfer-Development agreement-Possession of land was not handed over-Encroachment in land-Matter remanded to the Assessing Officer.[S. 2(47), 254(1)]
Held that the assessee produced additional evidence for the first time before the Tribunal in support of the contention that the development rights in respect of the land have not been transferred to the developer. The matter is remanded to the Assessing Officer (AY. 2016-17)
Bhausaheb Sopanrao Bhor v.ITO(2023) 225 TTJ 367 (Pune)(Trib)

S. 45 : Capital gains-Right to sue-Amount received as per consent decree in the suit for specific performance of agreement to sell-Arrangement amongst the parties-Not relinquishment of any right in favour of partners-Not assessable as capital gainS. [S. 4, 2(14)]
Held that the assessee had acquired any right, title or interest in the immoveable property when it into an agreement to purchase the property. The amount received by the assessee pursuant to the consent decree passed by the High Court in the suit for specific performance filed by the assessee following the default committed by the vendor by selling the said property to its tenants instead of assessee is not taxable under the head capital gains. Followed Sterling Construction & Investments v. ACIT (2015) 374 ITR 474 (Bom)(HC) (AY. 2011-12)
Mahendra Corporation v.Dy.CIT(2023) 224 TTJ 777 (Mum)(Trib)

S. 45 : Capital gains-Sale of land-Cost of improvement-Encroachments on land-Compensation for removal of encumbrance-Entitled to deduction.[S. 48]
Held that a large population of India stays unauthorizedly in the land parcel belonging to others and move out of such land parcels only on payment of some sort of compensation. The legal remedy for removal of the encroachments, at times, is quite slow and it takes many years through such course. The land owners are thus compelled to pay compensation by force of circumstances to obtain clear possession for sale or use. One cannot put blinkers on such unstated but prevalent eco-system. Thus, where at least one party has accepted the factum of receipt of compensation and payments to other parties are also reflected in the bank statement of the assessee to be the beneficiary of payments, the plea of the assessee requires a benign consideration. Allowed the deduction. (AY.2012-13)
Sanmati Realtors P. Ltd. v. Asst. CIT (2023)107 ITR 376 (Delhi) (Trib)

S. 45 : Capital gains-Business income-Sale of flats-Intention to hold the same as investment-Income chargeable to tax as capital gains and not business income-Unsold flat generating rental income cannot be treated as stock-in-trade-Res Judicata-No material changes in facts and law-Revenue is not permitted to take different view in subsequent yearS. [S. 28(i)]
Held that both the main objects clause as well as the other objects clause of the memorandum of association of the assessee-company contained provisions to enable the assessee to let out the apartments on hire which established the intention of the assessee to hold the properties as investment and not as stock-in-trade. Even after altering the memorandum of association, the assessee continued to hold the apartments for a period of approximately 3.5 years before making first sale. The project was spread over 13 years from the date of acquisition, which

was unusual in the case of business. The conduct of the assessee was more to earn lease rent from the property and not to exploit these properties as business assets. Income chargeable to tax as capital gains and not business income. Unsold flat generating rental income cannot be treated as stock-in-trade-Res Judicata. No material changes in facts and law. Revenue is not permitted to take different view in subsequent years**.** Ashok Kumar Jalan v. CIT (1991) 187 ITR 316 (Bom)(HC), applied. *(*AY. 2015-16 to 2018-19)

Aurum Platz P. Ltd. v. Dy. CIT (2023)105 ITR 615 / 225 TTJ 771 / 152 taxmann.com 85 (Mum) (Trib)

S. 45 : Capital gains-Entity forming consortium with equal shares-Assessee transferring shares in consortium-Cost indeterminate Deleting addition-Order of CIT(A) deleting the addition is affirmed.

Held that the action of the Commissioner (Appeals) in deleting the addition of short-term capital gains on the sale of shares in the consortium was to be upheld as the Departmental representative could not point out any distinguishable fact on law. *(*AY. 2013-14)

Srei Infrastructure Finance Ltd. v. Asst. CIT (2023)105 ITR 371 / 154 taxmann.com 650 / 225 TTJ 211 (Kol) (Trib)

S. 45 : Capital gains-Immovable property-Compensation to get property registered in his name-Capital asset-Taxable under the head capital gains-Initial paid amount should be treated as cost of acquisition. [S. 2(14), 48, 56]

Assessee entered into a property purchase agreement in 2005, paying Rs. 14 lakhs.However, due to a title defect, property couldn't be transferred, and seller refunded Rs. 28 lakhs in 2012-It was noted that upon seller's inability to execute sale deed for land in favour of assessee, both parties reached a compromise to resolve dispute amicably. They mutually decided to abandon their claims under initial agreement to sell, with assessee relinquishing right to have land registered in their name. In exchange, assessee received a payment of Rs. 28 lakhs.The payment received by assessee was acknowledged as relinquishment of their rights to have property registered in their name, initially acquired through agreement to sell. The Assessing Officer assessed the amount as income from other sources. CIT(A) up held the order of the Assessing Officer.On appeal the Tribunal held that act of relinquishment qualified as a capital asset, making it eligible for treatment under head capital gains.Accordingly the-compensation for such relinquishment so received is chargeable to tax under head Capital gains and amount initially paid would be treated as cost of acquisition for acquiring such rights. Therefore, income had been rightly offered to tax under head Capital gains and same could not be brought to tax under head Income from other sources. (AY. 2012-13)

Sukhwant Singh. v. ITO (2023) 202 ITD 722 (SMC (Chd) (Trib.)

S. 45 : Capital gains-Co-owner-Transfer-Development agreement-AIR information-Reassessment is valid-Transferred development rights in the year 2008 and handed over the passion-Sale deed executed in 2010-Capital gains cannot be taxed in the Assessment year 2010-11 [S. 2(47), 147, 148]

Assessee along with 17 other co-owners entered into a development agreement dated 18-1-2008 with a builder in respect of a plot of land for consideration and transferred development rights in land to builder and also handed over possession of land. Thereafter an agreement for sale was entered amongst parties on 30-3-2010.Assessee in response to notice issued under section 148 filed return for assessment year 2010-11 and submitted that land was sold on 18-1-2008 and, therefore, no capital gain arising in transaction is assessable in assessment year 2010-11.Assessing Officer held that although assessee entered into a development agreement

on 18-1-2008, but agreement for sale was entered amongst parties on 30-3-2010, and assessed 1/18th of capital gain arising in transaction in hands of assessee in assessment year 2010-11. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that even though agreement for sale was executed on 30-3-2010, land was already transferred on 18-1-2008 at time of execution of development agreement and, therefore, capital gain, if any, could not be taxed in assessment year 2010-11. Reassessment notice is valid. (AY. 2010-11)

Gajanan Parshuram Khismatrao. v. ITO (2023) 202 ITD 604 (SMC) (Mum) (Trib.)

S. 45 : Capital gains-Long-term capital gains-Survey-Papers found in the premises of advocate-Satakat bearing name and details of assessee-No corroborative evidence to support material.

Allowing the appeal the Tribunal held that the addition in the assessment was based on the alleged satakat found at the business premises of the advocate. The Tribunal also held that without investigation from purchasers or providing a copy of satkat to assessee or examination of advocate addition. is not justified. (AY.2013-14)

Mukesh Agarwal v.ITO (2023)104 ITR 35 (SN)(Surat) (Trib)

S. 45 : Capital gains-Long-term capital gains from equity shares-Securities transaction tax paid-Entitle for exemption-Depreciation-Matter remanded. [S. 10(38), 44, Sch.I.R.5(B)]

Held that investments as required by Regulations of Insurance Regulatory and Development Authority in secure modes to avoid loss to insured.Assessee could carry on no business other than business of general insurance. Equity shares could not be termed Stock-In-Trade. Exemption from capital gains. As regards the depreciation matter remanded. (AY. 2011-12)

Oriental Insurance Co. Ltd. v. Dy. CIT (LTU) (2023)102 ITR 122 (Delhi)(Trib)

S. 45 : Capital gains-long-term securities-Penny stock-Scrip was not black listed by SEBI at relevant period-Paid STT-Denial of exemption is not justified-Addition as cash credits is deleted. [S. 10(38), 68]

The assessee claimed exemption in respect of sale of long term capital gains in respect of VAS Infrastructures Ltd. The Assessing held that the assessee carried out sale transactions in penny stock scrip and there was a report from Dy. Director (Inv.), Mumbai that there was manipulation of prices in respect of penny stock companies. He denied exemption under section 10(38) and added same under section 68 as unaccounted cash deposit. On appeal the Tribunal held that the said scrip was not black listed by SEBI at relevant period and brokers details and other relevant documents were filed and on these transactions assessee had paid STT. Assessee purchase share online through various brokers and payments made to brokers were reflected in bank account. The Assessing Officer had not given any detailed finding as to how assessee was dealing with penny stock. Accordingly the Assessing Officer is not right in disallowing claim of exempt income under section 10(38) in making addition under section 68 of the Act. (AY. 2011-12)

Atulbhai Amritlal Mehta. v.DCIT (2023) 201 ITD 132 (SMC) (Ahd) (Trib.)

S. 45 : Capital gains-Purchase and sale of shares-Off market purchases-Adventure in the nature of trade-Penny stock-Assessable as capital gains and not as business income.[S. 10(38), 28(i)]

Assessee purchased 1 lakh shares of Panchal Marketing Ltd at rate of Rs. 1 per share. Purchase of shares of PML was an off-market purchase. Said company was amalgamated with Kailash Auto and consequent to amalgamation, 1 lakh shares of Kailash Auto were

issued to assessee in lieu of 1 lakh shares in Panchal Marketing Ltd held by assessee. Subsequently, shares of Kailash Auto were sold at an average price of about Rs. 38 per share and assessee disclosed Rs. 38 lakhs received by it as exempt under section 10(38). Assessing Officer denied exemption and made additions to income of assessee. On appeal to Tribunal held that the assessee was doing business of purchase and sale of shares and thus earned her income from transaction in shares. Just because assessee had shifted from IPOs and had made a purchase of shares in MPL, would not shift head of income from 'capital gains' to 'Adventure in nature of trade', insofar as assessee was an investor in shares and was not in business of dealing in shares. Addition is deleted. Referred PCIT v. Swati Bajaj (2022) 446 ITR 56/ 288 Taxman 403 (Cal)(HC) (AY. 2014-15)

Ridhi Bagaria. v. ITO (2023) 201 ITD 581 (Cuttack) (Trib.)

S. 45 : Capital gains-Purchase of shares-Reflected in account books-Payment was made to broker subsequent date-Capital gains cannot be assessed as income from undisclosed sourceS. [2(29AA,) 2(29B), 68, 69]

Assessee purchased shares of two companies on 4-5-2005 and 10-5-2005 and made payments to brokers on 29-9-2006, 12-5-2005 and 14-12-2006 and sold said share between 10-10-2006 and 13-12-2006. Assessee claimed capital gain arising from sale of shares partly as short-term capital gain and partly as long-term capital gain.Assessing Officer treated gain as income from undisclosed sources. On appeal the Tribunal held that since contract notes clearly showed date of purchase of shares as 4-5-2005 and 10-5-2005 and purchases were duly reflected in account books for financial year 2005-06 ending on 31-3-2006, merely because payments were made to brokers on subsequent dates would not make capital gain as income from undisclosed sources. Assessing Officer is directed to consider gain as long-term capital gain. (AY. 2007-08)

Bhuwaneshwar Prasad Singh v. ITO (2023) 201 ITD 865 /105 ITR 564/ 226 TTJ 600 (Delhi) (Trib.)

S. 45 : Capital gains-Charge of tax-Convertible preference shares-Preference shares transferred by original allottees-Shares redeemed and issue of equity shares by assessee against credit to security premium account-Gains on conversion of preference shares into equity shares accrue in hands of shareholder-Not in hands of assessee. [S. 2(47)]

Held that the conversion of preference shares into equity shares was in the hands of the shareholder, S. Thus, gains, if any, arising from such a conversion would only be taxable in the hands of the shareholder. Therefore, there was no infirmity in the findings of the Commissioner (Appeals). Followed Anarkali Sarabhai v. CIT (1997)224 ITR 422 (SC) Kartikeya V. Sarabhai v. CIT (1997) 228 ITR 163 (SC) (AY.2011–12)

ACIT v. Privi Speciality Chemicals Ltd. (2023) 152 taxmann.com 105 / 102 ITR 1 (SN)/ 222 TTJ 367 (Mum) (Trib)

S. 45 : Capital gains-Penny stock-Sale of shares-No evidence to prove that assessee directly involved in price manipulation of shares-Addition based on surmise, suspicion, and conjecture and by making baseless allegations, assessee entitled to exemption. [S. 10(38), 68]

Held that, merely because a particular scrip was identified as a penny stock by the Department, it did not mean all the transactions carried out in that scrip would be bogus. The assessee claimed exemption under section 10(38) in respect of long-term capital gains derived from sale of shares. The documentary evidence submitted by the assessee was found to be genuine and no adverse inferences were drawn by the Revenue thereon. The

transactions were carried out by the assessee in the secondary market through a registered share broker at the prevailing market prices. Payments were received by the assessee by account payee cheques from the stock exchange through the registered broker. Amounts received on sale of shares were duly subjected to levy of securities transaction tax at the applicable rates. Merely on the basis of Investigation Wing report came to a conclusion that the transactions carried out by the assessee were bogus. No evidence had been brought on record to establish any link between the assessee either with the directors or any other person named in the assessment order or in the SEBI order, as being involved in any price rigging or the exit provider. (AY. 2015-16)
Pravin C. Bokadia v. ITO (2023) 102 ITR 43 (SMC) (Mum)(Trib.)

S. 45 : Capital gains-Business income-If during preceding years, returned income had been accepted as assessed income without reclassification of income then during the previous year under consideration income by way of capital gains cannot be reclassified into business income. [S. 28(i)]
Assessee had maintained two separate and distinct DMAT accounts for his two portfolios of investment and trading in shares for past several years. Also, assessee had transacted in two portfolios in distinct manner from respective DMAT accounts and had accordingly maintained his books of accounts based on which respective income had been reported in the return of income. It had also been demonstrated evidently that there is no change in the material facts and circumstances as well as the applicable law during the year under consideration when compared with the preceding years. During the preceding years, the return of income had been accepted as the assessed income without any reclassification of income. Accordingly, the Tribunal held in favour of the assessee disregarding the reclassification of capital gains into profits and gains of business done by the Department. (AY. 2015-16).
ACIT v. Chandravadan Desai (2023) 221 TTJ 658/221 DTR 359 (Kol) (Trib)

S. 45 : Capital gains-Family arrangement-Transfer of shares under family arrangement-Transfer of shares as per direction of Company Law Board (CLB)-Not transfer-Not liable to capital gains tax.[S. 2(47)]
Assessee along with other family members was holding shares in a company NPIL under family business group. Due to dispute in functioning of company NPIL and other group concerns and in order to restore peace and harmony in family, all agreed to family arrangement by filing petition before CLB. Based on direction of CLB, assessee transferred shares in company NPIL to another company under a buy back agreement. Assessee claimed that no tax should be levied on long-term capital gain (LTCG) arising from transfer of shares out of family arrangement as per CLB order, although same was included in total taxable income calculated by assessee in his return. The Assessing Officer held that LTCG arose on transaction of selling of shares of NPCL by assessee was taxable. CIT(A) affirmed the order of the Assessimg Officer. On appeal the Tribunal held that partition or family settlement is not transfer and since assessee had transferred shares under family arrangement only as per direction of CLB, no capital gain tax was liable to be paid on such transaction even if tax was paid by assessee under mistaken belief that such transaction was taxable. (AY. 2007-08)
Sujan Azad Parikh. v. DCIT (2023) 198 ITD 83 (Mum) (Trib.)

S. 45 : Capital gains-Income deemed to accrue or arise in India-Business connection-Capital gains-Non-Resident-Cost of acquisition-Short term capital loss-TRC produced-Matter remanded to the file of Assessing Officer-DTAA-India-USA.[S. 9(1)(i), Art. 13]

Assessee, an NRI, had declared 'short-term capital loss' from sale of shares.The Assessing officer has not allowed the loss on the ground that the Assessee has not produced TRC. On appppeal the Tribunal held that since assessee had produced TRC as per directions of DRP, in interest of justice issue is restored to files of Assessing Officer and Assessing Officer was directed to examine TRC and if same was found to be in order, cost of acquisition would be taken as claimed by assessee in his return of income. (AY. 2019-20)
Biplab Adhya. v. ITO (2023) 198 ITD 643 (Bang) (Trib.)

S. 45 : Capital gains-Oral agreement-No oral agreement can outweigh the registered document as per provisions of Section 93 of the Indian Evidence Act-The capital gain is taxable in the year of the registered sale deed. [S. 2(47(v),269UA(d), Indian Evidence Act,1872, S. 93)
The Hon'ble Tribunal held that the transfer of immovable property through the oral agreement does not fall in any of the limb of section 2(47). The instant case is neither a case of sale nor exchange nor relinquishment or extinguishment of any right in the assessment year 1995-96. In fact, the registered sale deed was executed by the assessee in favour of the purchaser in 2003. Therefore, the transfer has taken place in the assessment year 2004-05. Further no oral evidence can be given as against the registered document as per provisions of section 93 of the Indian Evidence Act. Moreover, in case of conflict between the oral statement and the written document, the contents of written document shall prevail as against the oral statement/agreement. Further the letter furnished by the Assessee of the Purchaser does not bear the date of taking over the possession of the land and the letter is also undated. In the said letter it was mentioned that the possession was taken over through the Irrevocable General Power of Attorney in the year 1994. However, no such power of Attorney was produced by the assessee. Further the assessee had not brought on record the evidence to show that the land was the capital asset in the records of the purchaser with effect from 1994 nor was any capital gain declared. The Hon'ble Tribunal thus held that considering the case from any point of view, the order of the Commissioner (Appeals) is affirmed. (AY. 2004-05)
Allam Adavaiah v. ACIT (2023) 200 ITD 557 (Hyd) (Trib.)

S. 45 : Capital gains-Agriculrural land-Joint development agreement-Licence to enter property for purpose of carrying out development-Capital gain offered in the year 2013-14-Assessing the capital gain in the year 2011-12 was deleted. [S. 2(47)(v), 48, Transfer of Property Act, 1882, S. 53A]
Held that the assessee entered into a joint development agreement with a developer vide registered agreement dated 16-9-2010 in respec of agricultural land for formation of sites and received certain amount, since joint development agreement regarding possession clearly stated that what was given was not possession contemplated under section 53A of Transfer of Property Act and that it was merely a license to enter property for purpose of carrying out development, invocation of provisions of section 2(47)(v) on basis of joint development agreement was not proper. The assessee rightly offered the capital gains tax in the assessment year 2013-14. (AY. 2011-12)
K.V. Satish Babu [HUF] v. ITO (2023) 201 ITD 876 (Bang)(Trib)

S. 45 : Capital gains-Conversion of capital asset into stock in trade-MOU with co-owners is notarised-Not submitted accounting entry Conversion of land as stock-in-trade is not proved-Sale is treated as capital asset Liable to capital gains tax-Amendment in third proviso to section 50C would be applicable retrospectively-The AO is directed to consider valuation difference of 10% of tolerance limit while computing the capital gainS. [S. 44AB,45(2), 50C]

The assessee sold non-agricultural land and claimed that said land was converted into stock-in-trade by entering into MoU with co-owners before its sale, since MoU was not notarized and also assessee had not submitted any accounting entry passed in books of account for such conversion on date of MoU and failure to obtain such audited books of account clearly proved that entire theory of conversion of agricultural land as stock-in-trade was baseless and afterthought and, therefore, Commissioner (Appeals) was justified in holding that non-agricultural land sold by assessee were capital asset. Tribunal also held that the amendment in third proviso to section 50C would be applicable retrospectively.(AY. 2013-16)
Girdharbhai Haribhai Gajera v. ITO (2023) 200 ITD 485 (Surat) (Trib)

S. 45 : Capital gains-Joint development agreement (JDA)-Only permissible possession of land transfered to the developer while executing JDA-Ownership had not been transferred-, No taxable event happened-Not liable to capital gains taxation. [S. 2(47)(v), 48, Transfer of Property Act, 1882, S. 53A]
The assessee has entered into a joint development agreement (JDA) with developers for the development of a property. The assessee has received a sum in Feb, 2010 as a refundable deposit and a sum of Rs. 1 crore as a non-refundable deposit on Oct, 2010. The AO computed the capital gain by considering the guideline value and the non-refundable deposit of Rs. 1 crore as the full value of consideration. The Tribunal held that, from the relevant clauses of the JDA, it becomes clear that the assessee has given only the permissible possession of the land to the developer at the time of executing the JDA and the ownership is not transferred. Further the assessee offered the capital gains to tax as and when the developer handed over the flat as per the JDA. Overall view that no taxable event happened during the year under consideration and the basis on which the capital gain is computed by the AO is not tenable. The capital gain computed by the AO needs to be deleted. (AY. 2011-12)
Dinesh Devraj Ranka v. Addl. CIT [2023] 200 ITD 731 (Bang)(Trib.)

S. 45 : Capital gains-Business income-Mere fact that assessee-AOP purchased and made construction thereon itself would not be sufficient to hold that income earned on such sale of property would qualify as business income and same would be taxable as capital gainS. [S. 2(31)(v), 28(i)]
Assessee, an association of persons (AOP), purchased a property-Assessee got permission to do construction on said property and later sold it. Members of assessee-AOP, in their return, offered consideration received from sale of said property as capital gains. Assessing Officer held that investment in said property, from very beginning was an adventure in form of business activity by assessee-AOP and, thus, income from its sale is assessable as business income. CIT (A) deleted the addition as business income. On appeal the Tribunal held that the buyers were identifiable and, thus, whole purpose of purchase and subsequent construction was for purpose of selling same and not earning any rental income. Mere fact that assessee-AOP purchased land and made construction thereon itself would not be sufficient to hold that income earned on sale of such property would qualify as business income. Income from sale of property would be taxable as capital gains and not business income. AY. 2007-08)
ACIT v. Shree Ami Office Owner's Association. (2023) 199 ITD 670 (Ahd) (Trib.)
S. 45 : Capital gains-Agreement for sale-Conveyance was made on 22-5-2007-Capital gains taxable in the assessment year 2008-09. [S. 2(31)(v), 2(47)(v)]
Assessee, an association of persons (AOP), entered into an agreement of sale of a property via sale deed dated 10-1-2007 which was executed between members of assessee-AOP and a potential buyer. Thereafter, final conveyance deed was entered into between parties on 22-5-2007. Members of assessee-AOP offered income from sale of said property in their returns of

income for assessment year 2008-09. Assessing Officer held that income from sale of property was taxable in relevant assessment year 2007-08 since sale agreement was entered into in January 2007. CIT(A) deleted the addition. On appeal the Tribunal held that only agreement to sell was entered into and part consideration was paid. Since complete payment was made in subsequent year 2007-08 i.e. on 22-5-2007 and registered sale deed as well as possession of property was also transferred in subsequent year, year of taxability of sale proceeds of property sold was assessment year 2008-09. Order of CIT(A) is affirmed. (AY. 2007-08)

ACIT v. Shree Ami Office Owner's Association. (2023) 199 ITD 670 (Ahd) (Trib.)

S. 45 : Capital gains-Land sold after a gap of 13 years-Assessable as capital gains and not as business income-Cost of acquisition-Matter remanded. [S. 28(i), 55]

Held that the intention of assessee was to hold asset as capital asset and hence the order of CIT(A) assessing the consideration as capital gain is affirmed. As regards the allowability of cost of construction of shed, the matter is remanded back to the file of the Assessing Officer for granting an opportunity of hearing. (AY. 2011-12)

ACIT v. Pravin Mnailal Sanghvi. (2023) 199 ITD 534 (Pune) (Trib.)

S. 45 : Capital gains-Agreement to sale of agricultural land-Capital asset-Subsequently the land use was changed as non agricultural land-Possession was given when the sale deed is executed-Relevant date is execution of sale deed-Liable to capital gainS. [S. 2(14), 2(47) 47, 50C]

Assessee entered into an agreement to sale with a party for sale of his agricultural land on 2-7-2008. Thereafter land use was changed on 10-7-2008 and land was declared to be a non agricultural land. Subsequently sale deed was executed on 18-9-2008. Possession of land was given when sale deed was executed. Assessing Officer held that land sold by assessee was in nature of an industrial plot and sale consideration was chargeable to tax under head capital gains. Tribunal held that for purpose of determining nature of capital assets and consequent calculation of capital gains relevant date would be when right, title or interest got extinguished in vendor and in substance same vested in vendee. On facts as per section 2(47)(i), relevant date is execution of sale deed and as on date of execution of sale deed land was not of nature of agricultural land and stood converted as industrial plot, benefit of section 2(14) could not have been extended. Appeal of assessee is dismissed. (AY. 2009-10)

Bhagvat Singh. v. ITO (2023) 199 ITD 108 (Delhi) (Trib.)

S. 45 : Capital gains-Land situated within jurisdiction of municipality and population was more than 10,000-Not an agricultural land-Sale proceed out of compulsory acquisition of land was not exempt under section 10(37). [S. 2(14)(iii)(a), 10 (37), Land Acquisition Act, 1894]

Assessee's land situated in village Jasola was acquired in year 1995-96 vide compulsory acquisition under provisions of Land Acquisition Act, 1894. Assessee claimed proceeds out of compulsory acquisition of land as exempt under section 10(37)-Assessing Officer held that since land was situated within jurisdiction of municipality, as per section 2(14)(iii)(a) exemption under section 10(37) is not applicable. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that since assessee's land was situated within jurisdiction of municipality and population was more than 10,000, it was not an agricultural land referred to in section 10(37) read with section 2(14)(iii)(a). Assessee is not eligible for exemption under section 10(37) of the Act. (AY. 2016-17)

Sobhi Lal Saini. v. ACIT (2023) 199 ITD 794 (Delhi) (Trib.)

S. 45 : Capital gains-Share Swap Transaction-The value of investments in SRL and the value of shares issued are at the same value on the assets and liabilities side, thus, there is no question of earning of any capital gain-Not liable to be taxed as short term capital gainS. [S. 4]

The Assessing Officer brought to tax as short-term capital gains. On appeal the Tribunal held that there is no sale of any capital asset. Further, it is noted that when the valuations of shares and allotment of shares are done as per SEBI guidelines and certified by an independent person and the shares have been issued and exchanged at that value, then there is no germination of any capital gain. It is further noticed that in the appellant's financial statements, the value of investments in SRL and the value of shares issued are at the same value on the assets and liabilities side, thus, there is no question of earning of any capital gain. The ITAT further observed that the facts and circumstances for AY 2010-11 and AY 2009-10, with the only difference that the swap ratio in the preceding year was in favor of shareholders of SRL and in this year it is in favor of the appellant. It is strange that the AO has chosen to make addition in both the years on these transactions, which are financially opposite in nature to each other, which is incorrect. (ITA No.234/Mum/2021, dated 25/05/2023] AY 2010-11] AY 2010-11)

ITO v. Sigrun Holdings Ltd. (Mum)(Trib)

S. 45 : Capital gains-Sale of shares held as investment-Indexed cost of acquisition-Cannot be assessed as business income-Issue of bonus shares is held to be justified-Sale of shares at cost-Short term capital loss allowable to be set off against long term capital gains-Transaction cannot be held to be colourable device to set off the long term capital gains-Loss was allowed to be set off. [S. 28(i), 70, 71]

The Assessee has sold the 49% of the shares in the joint venture company and offered the income as long term capital gains. The Assessee company issued bonus shares and sold the part of the original and bonus shares to the Employee Welfare Trust. The cost of original shares were taken at cost and indexation and bonus shares were valued at nil cost. The loss w set off against the long term capital gains. The Assessing Officer assessed the sale of the shares of the joint venture company as business income. On appeal the CIT(A) held that the sale of the shares were assessable as capital gains. On appeal by the Revenue, dismissing the appeal of the Revenue the Tribunal affirmed the order of the CIT(A) on the grounds that the shares were held as investments which were held for more than 8 years, the intention was to hold the shares as investment, accordingly the gains arising from the transfer of equity shares are rightly assessed as long term capital gains and allowed to claim of the indexed cost of acquisition. Order of CIT(A) is affirmed. As regards the claim of short term capital loss on sale of shares to JM Financial Group Employees Welfare Trust is concerned the shares were sold at cost of Rs.10 per share after ignoring rounding off which was Rs. 10. 40 per share on 31-12 2007. The purpose for sale of shares sale to the Welfare Trust was explained as being administrative convenience and for grant of ESOP. The Assessing Officer held that the sale was colorable device to artificially created, a loss to cancel the part of profit earned on sale of 49% of joint venture and thereby evade the tax. The Assessing Officer relied on Macdowell & Co Ltd v. GTO (1985) 154 ITR 148 (SC) disallowed the loss. Order of the CIT(A) was affirmed by the CIT(A). On appeal the Tribunal held that the financial position of the company was fully justified for the issue of bonus shares out of share premium account. The actual consideration was received from the JM Financial Group Employees Welfare Trust and the employees have exercised options to the extent of 14.82 % of the shares. The Honouable Tribunal followed the ratio in CIT v. Walfort Share & Stock Brokers (P) Ltd (2010) 326 ITR 1 (SC). and held that loss is allowed to be set off. (ITA NO. 3987/Mum/ 2015 / 3925 /Mum/ 2015 dt. 4-8-2023)(AY. 2008-09)

J.M. Financial Ltd v. Dy.CIT (2023) 226 TTJ 729 (Mum)(Trib) www.itatonline.org

S. 45 : Capital gains-Transfer-Family arrangement-Sale /Transfer of shares under family agreement as per the directions of CLB (Company law Board)-Not chargeable to capital gains tax. [S. 2(47)]

The assessee individual along with other family members was holding shares in a company NPIL under family business group. Due to dispute in functioning of company NPIL and other group concerns, in order to restore the peace and harmony in family, all family members agreed to family arrangement by filing petition before CLB. Based on direction of CLB, the assessee transferred shares of NPIL to another group company under a buy back agreement. The assessee claimed that Long-Term Capital Gain (LTCG) arose from sale of shares was not taxable. The Assessing Officer rejected the claim of assessee and held that the transaction of selling of shares of the Natar Parikli Co. Ltd. (NPCL) by the assessee could not be termed as family arrangement and the same was exit of the large stakeholder/director from the company which was taxable as LTCG.CIT(A) affirmed the order of the AO. On appeal the Tribunal held that there is no doubt that there is a family arrangement and based the condition specified in the order passed by CLB, the shares were transferred to the company on the buyback terms. Partition or family settlement is not transfer. When there is no transfer there is no capital gain and consequently no tax on capital gain is liable to be paid. In the given case, the assessee has transferred the shares based on the family settlement as per the direction of CLB. Accordingly the Tribunal directed the Assessing Officer to allow the claim of the assessee even though the assessee has paid the tax by calculating the capital gain under mistaken belief that this transaction is taxable. Relied on Ram Char-in Das v. Girja Nandini Devi [AIR 1966 SC 3231, Kale v. Deputy Director of Consolidation, MIR 1976 SC 8071, Mrs. P. Sheela v. Income-tax officer 120091 308 ITR (A, T,) 350(Bang)(Trib), CIT v. R. Nagaraja Rao (2013) 352 ITR 565 (Karn)(HC) (AY. 2007-08)

Sujan Azad Parikh v. Dy.CIT (2022) 145 taxmann.com 167(2023 198 ITD 83 (Mum)(Trib)

S. 45 : Capital gains-Transfer-Developer-Joint development agreement-Part performance-Only licence was granted to the developer-Not liable to be assessed as capital gains [S. 2(47)(v), Transfer of Property Act, S. 53A]

The assessee entered in to joint development agreement with developer. The AO held that the assessee is liable to capital gains by invoking section 2(47)(v) of the Act. On appeal the CIT(A) deleted the addition. On appeal by the Revenue the Tribunal affirmed the order of the CIT(A). Referred ITO v. Balbir Singh Maini (2017) 398 ITR 531 (SC) Dr. Krishna Prasad Mikkilmeni v.DCIT, ITA No 929/ Bang/ 2018 dt. 31-1-2022 (Bang) Trib)(ITA No. 1624/ Bang / 19 dt. 15-3. 2022 (AY. 2014-15)

DCIT v. Sri Sai Lakshmi Industries Pvt Ltd (2023) The Chamber's Journal-January P. 90(Bang)(Trib)

S. 45 : Capital gains-Allotment of property-Date of acquisition of property to be reckoned with from date of allotment i.e., in year 1998-99, and thus sale of said office premises on 19-5-2012 would result in long term capital gains. [S. 2(29AA), 2(29B)]

The assessee was engaged in the business of manufacture and trading in cut and polished diamonds. By sale deed dated May 19, 2012 the assessee sold office premises and declared the computation of income under the head "Capital gains". The Assessing Officer treated the capital gains as short-term capital gains on the ground that the assessee had shown acquisition of property in the financial year 1998-99 and in subsequent years the assessee had carried out improvements in the property, that the assessee had received allotment of the

premises only on July 29, 2010 and that the asset transferred was a short-term capital asset on the date of transfer, i. e., May 19, 2012. On appeal the Tribunal held that since record submitted from books of trade body clearly indicated that assessee had been allotted office space in year 1998 and subsequently it made several payments, date of acquisition of office premises was to be reckoned from date of allotment i.e., in year 1998-99. (AY. 2013-14)
Sumit Export v.Asst. CIT (2023)101 ITR 62 /148 taxmann.com 475 (Mum.)(Trib)

S. 45(2) : Capital gains-Conversion of a capital asset in to stock-in-trade-Land converted into stock-in trade-Earmarked land for road and other common amenities purpose in terms of municipal regulations-No transfer-Neither capital gains nor business profitS. [S. 45, 47 (iii)]
Assessee is in business of real estate development. She converted her land into stock-in-trade. Thereafter, she earmarked certain land for road and other common amenities purpose in terms of municipal regulations. Assessee had executed a gift deed and handed over land in favour of Municipality. Assessing Officer held that the assessee had relinquished her right in land earmarked for road and other common facilities which was transfer as per section 47(iii) and, thus, computed capital gains on same and made additions to income. The Assessing Officer also invoked section 45(2) on ground that when land was converted into stock-in-trade, assessee was liable to pay tax on business profits in year in which such land was transferred. CIT (A) deleted the addition. On appeal the Tribunal held that the land earmarked for public utility purpose in terms of municipal regulations while forming residential layout could not be brought to tax either under section 47(iii) or 45(2) because relinquishment of right in such land could not be considered as extinguishment of any right in property which could be considered as transfer under section 47(iii). Since the assessee had executed a gift deed of land without any consideration, question of computing long-term capital gains on such land and also business profit in terms of section 45(2) would not arise. Order of CIT(A) deleting the addition is affirmed. (AY. 2015-16)
ACIT v. Sarojini B. Nair. (Smt.) (2023) 199 ITD 538 (Chennai) (Trib.)

S. 45(2) : Capital gains-Conversion of a capital asset in to stock-in-trade-Long term capital gains at FMV computed by indexation of Stamp Duty Valuation as on date of sale, rather than entire sale consideration is justified-Jurisdiction of Commissioner (Appeals) does not extend to introducing an altogether new source of income. [S. 28(i), 45, 251]
The appellant has not disclosed the value at which he had transferred his capital asset in to stock in trade as on 7-4 2007. The appellant has also not disclosed the fair market value of land as on the date of conversion. The Assessing Officer assessed the entire consideration as long term capital gains. On appeal the CIT(A) held that the capital gain on the conversion of asset in to stock in trade is taxable in which the stock in trade is sold. The cost of acquisition as on 1-4-1981 is worked out on the basis of sale instance. The CIT(A) has also directed the Assessing Officer to assesss business profits and also capital gains. On appeal the Tribunal held that section 45(2) is a specific provision wherein capital gains arising from conversion of capital asset to stock-in-trade are assessed in year of actual transfer of stock-in-trade. Accordingly the FMV of land as on date of its conversion into stock-in-trade can be computed by indexation of Stamp Duty Valuation as on date of sale, therefore, where assessee had not disclosed value at which he transferred his capital asset into stock-in-trade, Commissioner (Appeals) action of assessing impugned long-term capital gains in assessee's hand at FMV, rather than entire sale consideration is justified. Tribunal also held that the bifurcation capital gains and business income to the extent of business profits is held to be not valid. (AY. 2012-13)

Rangnathappa Govindappa Zharkhande v. ITO (2023) 198 ITD 290 / 225 TTJ 621 (Pune) (Trib.)

S. 45(3) : Capital gains-Transfer of capital asset to firm-Transfer of land to partnership firm by way of capital contribution-Consideration to be taken as per section 45(3) and not as per section 50C of the Act-Cost of land-Interest paid-Additional evidence-Matter remanded-Compensation paid to a waiving of its absolute right-Added to cost of improvement. [S. 45, 48, 50C]

During year, assessee sold 5 percent of land owned by it and remaining 95 per cent of land was transferred to partnership firm as partner's capital contribution at certain amount (assessee's share). Assessing Officer, considering market value of 5 per cent of land, believed that remaining land had been transferred to partnership firm at higher amount instead of lesser amount as shown by assessee.The Assessing Officer invoked provision of section 50C and treated consideration on transfer of land to firm in hand of assessee at such higher amount. On appeal the Tribunal held that land transferred by assessee to partnership firm as capital contribution was a specific transaction between partnership firm and partner, same would be taxed as capital gain and consideration for same would be taken as per provision of section 45(3) and not as per provisions of section 50C of the Act.As regards interest paid the assessee produced additional evidence hence the matter remanded. As regards compensation paid to a waiving of its absolute right is directed to added to cost of improvement. (AY.2014-15)

Nareshbhai Ishwardas Patel. v. ITO (2023) 203 ITD 250 (Ahd) (Trib.)

S. 45(3) : Capital gains-Transfer of capital asset to firm-AOP-BOI-Transfer undivided title and rights in a land capital asset to AOP-Capital contribution-Amount credited to capital account-Transfer of capital asset-Taxable under section 45 (3) [S. 2(47 (ii)]

Assessee contributed his undivided title and rights in land as its capital contribution to a duly registered AOP formed by it with two other entities vide an article of agreement. Amount was credited to capital account of assessee. Assessing Officer held that there was transfer of capital asset as per section 2(47) and added as business income of the assessee. CIT(A) deleted the addition. On appeal the Tribunal held that the assessee had relinquished its right in land in favour of AOP and, therefore, as per section 2(47) there was a transfer of capital asset.Accordingly, transaction of land introduced by assessee as his share of capital in AOP was taxable under section 45(3) and value of land which was credited in books of account of AOP would be deemed to be full value of consideration as a result of transfer of land. (AY. 2013-14)

DCIT v. Ghanshyamdas J Sukhwani (HUF) (2023) 201 ITD 473 (Pune) (Trib.)

S. 45(3) : Capital gains-Transfer of capital asset to firm-Land-Stock in trade-Transferring the assets at nil value-Revaluation by the Firm and crediting the accounts of the partners in latter years-Addition cannot be made in the hands of the partners in the year of revaluation and crediting in the account of partner-Order of CIT(A) deleting the addition is affirmed. [S. 45, 48, 147, 148]

The partner introduced the land which was held by him as capital asset to the firm as stock in trade at nil value in the assessment year 2011-12. In the assessment year 2013-14 the firm revalued the assets and credited in the account of the partner at Rs. 13.96 crores. The Assessing Officer reopened the assessment of the partner and charged the capital gains at Rs 13-96 in the hands of the partner in the Assessment year 2013-14. On appeal the CIT(A) deleted the addition on the ground that the asset was transferred in the assessment year 2011-12 and not in the assessment year 2013-14. On appeal by the Revenue, Tribunal dismissing

the appeal of the Revenue, held that section 45(3) does not seek to substitute by any other figure the value agreed between the partners at which the asset is transferred to the firm. As the appeal of the Revenue is dismissed, other legal grounds on reassessment was not dealt with. (ITA No. 1658/Mum/ 2023 / CO.No.83/Mum/2023 dt 21-12-2023, Bench "A") (AY. 2013-14)
DCIT v. Abdulsattar Suleman (Mum)(Trib) www.itaatonline.org.

S. 45(4) : Capital gains-Distribution of capital asset-Transfer-Firm-Dissolution of firm-Revaluation of assets and credit to capital accounts of partners-Introduction of new partners-Withdrawal of credit from capital account-Otherwise-Firm is liable to pay capital gains tax as short term capital gains-Review petition is dismissed. [S. 2(47)(ii), 47(ii), 50]
Dismissing the review petition of the assessee the Supreme Court held that crediting of the amount (on revaluation of assets) to capital account of partners in their profit sharing ratio could be said to be effect of distribution of assets to partners and that since amount credited to capital account of partners was available for withdrawal assets on revalued and credited to capital account of respective partners could be said to be 'transfer' which would fall in category of ' otherwise ' and provision of section 45(4) of the Act would be applicable. No error apparent on face of record, accordingly the review petition was dismissed. (AY. 1993-94, 1994-95)
Mansukh Dyeing and Printing Mills v. CIT (2023) 293 Taxman 516 /334 CTR 479 (SC)
Editorial : Refer CIT v. Mansukh Dyeing and Printing Mills (2022) 449 ITR 439 / 220 DTR 189 / 329 CTR 673 / 145 taxmann.com 151/ / (2023) 290 Taxman 354 (SC)

S. 45(4) : Capital gains-Distribution of capital asset-Dissolution of firm-Firm-Partners-Revaluation of assets-Amounts credited to partners capital account-Conversion of firm in to company-Not chargeable to tax in the hands of the partnerS. [S. 2(47), 45, 47(xiii)(b)]
Assessees were partners in a firm engaged in land development and construction. Capital accounts in partnership firms were credited with amounts resulting from revaluation of land. Revaluation of land took place during financial year 2008-09 and increased value of land was reflected as current capital of Partners on credit side of balance sheet of firms. Partnership firms had been converted to Private Limited Companies with effect from 23-9-2008 and capital account appearing in Partnership Firms (revaluation reserve) had been transferred to unsecured loan received from shareholders. Converted companies amalgamated with Takshashila Gruh Nirman (P) Ltd. with effect from 1-4-2010. Assessing Officer held that assessee earned income on revaluation of land; but he did not follow provisions prescribed under section 47(xiii)(b) at time of conversion of firm into Company; thus he made addition of capital gain arising on revaluation of land in hands of partners-assessees. On appeal, Commissioner (Appeals) deleted additions on account of capital gain made in hands of partners as he was of opinion that applicability of section 47(xiii)(b) at time of conversion of partnership firms into Companies could be considered only in hands of partnership firms to which land belonged. Sale of business of assessee-firm as a going concern to company for consideration of paid up share capital does not amount to transfer liable to tax as capital gains. Since in instant case only change that had taken place on firm being transformed into a company was that shares of partners were reflected in form of share certificates and beyond that, there was no physical distribution of assets, in said circumstances, addition made on account of capital gain on revaluation of land in hands of assessees-partners were not sustainable in law. (AY. 2009-10)
ITO v. Jatin Kanubhai Kotadia (2023) 225 TTJ 663 /155 taxmann.com 617 (Ahd)(Trib)

ITO v. Narendrabhai D. Kanani (2023) 225 TTJ 663 155 taxmann.com 617 (Ahd)(Trib)

S. 45(5A) : Capital gains-Joint development agreement-Constitutional validity-Amendment by Finance Act, 2017providing for taxation of capital gains from Joint development agreements-Amendment valid-Different classes of assesses-Amendment is with effect from 1-4-2018 and not retrospective. [S. 2(47)(v), 45,48, Transfer of Property Act, 1882, S. 53A, Art. 14, 226]

The petitioner filed the writ petition on the ground that the amendment is discriminatory and also prospective in nature. The Court held that though there are different class of assessees under the Act, they cannot be considered to be equal, merely for reason of their being assessed under that Act. The amendment is valid. The Court also held that it was expressly stated that the amendment would be effective from April 1, 2018. There is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than that expressed in the language. It cannot be related back to the date of enactment of the original provisions, as an amendment supplying a remedial effect. Section 2(47)(v) read with sections 45 and 48 remains as such, applicable to all assessees who transferred a capital asset coming within the definition of section 53A of the Transfer of Property Act, except those individuals and Hindu undivided families, who by virtue of a joint development agreement transferred the capital assets after April 1, 2018.

Pankaj Kumar v. CIT (2023)455 ITR 583/333 CTR 242/ 226 DTR 169 (Pat)(HC)

S. 47(xiii) : Capital gains Transaction not regarded as transfer-Capital gains-Conversion of firm in to company-Non-resident company (Umicore) purchased 99.96 per cent shares of said converted Indian company-AAR ruled that no capital gain accrued or arose at time of conversion of partnership firm into private company and High Court affirmed view point of AAR-No liability was attracted towards capital gain, whether short-term or long-term. [S. 2(47), 47,47(xiii)(d)]

A partnership firm was converted into a private company and, thereafter, a non-resident company (Umicore) purchased 99.96 per cent shares of said converted company. Conversion of partnership firm was not regarded as a transfer within meaning of section 2(47) and no capital gain was charged to tax in assessment year 2006-07 Assessing Officer held that, by acquisition of entire share capital by Umicore, it violated mandate of proviso to clause (d) of section 47(xiii) and hence, exemption from capital gain enjoyed by assessee-firm upon conversion into company became chargeable to tax. Umicore approached AAR on taxability of such capital gain. AAR ruled that no capital gain accrued or arose at time of conversion of partnership firm into private company and position did not change in terms of non-compliance of section 47(xiii) by reason of premature transfer of shares. Revenue filed writ against said ruling. Assessing Officer held that there was short-term capital gain to assessee. Tribunal held that since AAR ruled that no liability towards capital gain was attracted and High Court affirmed said view point of AAR, no liability could be said to be attracted towards capital gain, whether short-term or long-term. (AY. 2009-10, 2011-12)

Umicore Autocat India (P.) Ltd. v. ITO (2023) 203 ITD 694 (Panaji) (Trib.)

S. 47(xiiib) : capital gains-Transaction not regarded as transfer-Capital gains-Conversion of firm in to LLP-Good will-Books of account of predecessor company did not include goodwill in accumulated profits, there was no violation of clauses (c) and (f) of section 47(xiiib) and additions made under section 45 treating assessee to be in violation of clauses (c) and (f) of section 47 could not be sustained.[S. 45]

Assessee, engaged in construction activities, had filed its return of income after being converted from a private company to LLP. Assessing Officer made additions under section 45 on account of asset being goodwill brought into books of account after conversion holding that assessee was in violation of clauses (c) and (f) of section 47(xiiib). Clause (c) refers that no direct or indirect benefit should be passed on to shareholders in any form or manner, other than by way of share of profit and capital contribution in LLP and said clause operates only till date of conversion. Tribunal held that on perusal of pre-conversion and post-conversion balance sheets of assessee, it was clear that shareholders had not received any such consideration or benefit thus, assessee was not in violation of clause (c). Clause (f) refers to amount paid to partner of LLP, out of balance of accumulated profits standing in accounts of company on date of conversion. Since commercial expediency explained by assessee had not been controverted by Assessing Officer and accumulated profits did not include amount of goodwill in books of predecessor company, there could not be any violation of clause (f) either. Additions made by Assessing Officer on mere presumption could not be sustained and deleted. (AY. 2016-17)

ITO v. Brizeal Realtors and Developers LLP. (2023) 199 ITD 208 (Mum)(Trib.)

S. 48 : Capital gains-Mode of Computation-Amount paid for professional advice-Allowable as deduction. [S. 45, 48(i)]

Allowing the appeal of the assessee the Court held that under article 8 of the articles of association of the company a shareholder desirous of selling his shares must notify the number of shares, a "fair value" and the proposed transferee. The assessees specific case was, that they had engaged the services of the professionals for the purpose. The transfer of shares was not disputed by the Department. The assessee had engaged the services of professionals who had identified the investor, negotiated the value and structured the transaction. Therefore, the transaction had an inextricable nexus with the transfer of shares. The expenditure incurred was deductible in computing the capital gains.(AY.2016-17)

Chincholi Gururajachar Venkatesh v. ACIT (2023)456 ITR 459/149 taxmann.com 90 / 333 CTR 552 (Karn)(HC)

Satish Kumar Pandey v. ACIT (2023)456 ITR 459/149 taxmann.com 90 / 333 CTR 552 (Karn)(HC)

S. 48 : Capital gains-Mode of Computation-Sale of shares gifted by promoters-BIFR cannot sanction any modification to scheme directing the Income tax department to give further tax concession without department being consenting to grant additional concession.[S. 45, Sick Industrial Companies (Special Provisions) Act, 1985, 3(1)(o), 17, 18, 22A, Art. 226]

BIFR declared respondent-company as a sick industrial company within meaning of section 3(1)(o) and appointed Central Bank of India as operating agency to prepare a rehabilitation package for company. Draft rehabilitation scheme was approved by BIFR. Said scheme had set out reliefs and concessions to be provided by income-tax department (ITD). Respondent sought an additional relief from ITD in respect of sale of shares, which were gifted by promoters of company as a part of their promoters' contribution, which had resulted in capital gains, chargeable to income tax. Said request was opposed by ITD on ground that it had granted all reliefs and concession as envisaged in scheme. BIFR by order modified said scheme, requiring ITD to consider grant further additional concession. On Writ by the ITD It was contended that obligation to extend further concessions could not be imposed on Central Government (ITD) without its consent. Court held that in instant case, ITD had not consented for extending any further concession and, therefore, order requiring ITD to consider grant of further concessions, could not be interpreted as making it obligatory on ITD to grant such

concessions. Further, BIFR's order did not indicate that it had examined transactions, which had led to capital gains arising in hands of company or context in which additional concessions were sought. The order is set aside.ITD was not required to grant any further concession contrary to IT Act, to company.
PDGIT v. Indian Plywood Mfg. Co. (P.) Ltd [2023] 153 taxmann.com 416 / [2023] 240 COMP CASE 282 (Delhi)(HC)
Editorial : SLP is granted against the order of High Court, Indian Plywood Mfg. Co. (P.) Ltd. v. PDGIT (2024) 296 Taxman 576 (SC)

S. 48 : Capital gains-Mode of Computation-Registration expenses for sale of land-Brokerage-Allowable as deduction-Matter remanded to the Assessing Officer for verification. [S. 45]
Held that the assessee incurred entire registration expenses, stamp duty, etc, on sale of land as per mutual consent of the parties her claim for deduction of expenditure is allowable, however for verification of expenses the matter remanded to the Assessing Officer. (AY. 2012-13)
Kiran Agrawal (Smt) v. ACIT (2023) 223 TTJ 626 (Raipur)(Trib)

S. 48 : Capital gains-Mode of Computation-Brokerage-Allowed as deduction. [S. 45]
Held that the assessee had submitted copies of the aadhaar cards showing name and address of the five persons and payment vouchers and signed receipts of brokerage payment as proof. There was no requirement of getting signature or putting the name or signature of the broker on the sale document, as this was not part and parcel of the agreement and it was nowhere indicated in the registry about the name of the broker. The brokerage was paid by the assessee on completion of the job. Hence, there was no justification in the disallowance as it was a mutual agreement between the purchaser and broker and the brokerage is allowable.(AY.2016-17)
Ashok Singh v. Asst. CIT (2023)108 ITR 49 (SN)(Jaipur) (Trib)

S. 48 : Capital gains-Mode of Computation-Cost of improvement-Payment to sub-contractor-Not given opportunity to cross-examine sub-contractor-Payment is allowable as deduction. [S. 45, 131]
Held that the Assessing Officer had not reproduced in full the statement recorded under section 131 of the Act in his assessment order. The basis for disallowing the claim of the assessee had to be confronted to the assessee. But he had not done so. Accordingly the payment is allowable as deduction (AY.2013-14)
Meridian Telesoft Ltd. v. Asst. CIT (2023)108 ITR 37 (SN)(Ahd) (Trib)

S. 48 : Capital gains-Mode of Computation-Indexed cost of construction/improvement of certain amount Cost of construction-Failure to produce bills-Matter remanded to examine the valuation report.[S. 45]
Assessee sold a property and while working out long-term capital gains (LTCG) claimed indexed cost of construction/improvement of certain amount. Assessee contended that amount had been withdrawn from capital account of a finance company for making investment in construction and a copy of capital account and withdrawals so made were submitted before Assessing Officer However, assessee had not produced bills and vouchers in support of investments so made by it. Accordingly, out of total amount, certain amount was not considered eligible as cost of construction/improvement while working out LTCG and an addition was made on account of same under head LTCG. Tribunal held that the assessee had filed a copy of valuation report in support of his claim for construction and

improvement cost wherein value of construction of property was determined at certain amount, however, same was not considered hence the issue is set aside matter to file of Assessing Officer to examine such valuation report and decide matter afresh. (AY. 2013-14)
Pawan Aggarwal. v. DCIT (2023) 202 ITD 712 (Chd) (Trib.)

S. 48 : Capital gains-Mode of Computation-Residential flat-Date of acquisition of residential flat has to be reckoned from date of allotment letter, benefit of indexed cost of acquisition should be available to assessee based on payments made beginning from financial year 2005-06. [S. 45]
Residential flat was allotted to assessee vide allotment letter in 12-12-2005 and beginning from financial year 2005-06 till financial year 2014-15 assessee had made payments towards purchase of flat. During relevant year assessee had sold said property and after deducting an amount towards indexed cost of acquisition under section 48, assessee offered long-term capital gain and claimed that since allotment letter was issued in favour of assessee in respect of said property in financial year 2005-06, she was entitled to claim indexed cost of acquisition based on payments made in each financial year beginning from financial year 2005-06. Assessing Officer rejected assessee's claim of deduction of indexed cost of acquisition and on estimate basis allowed, 1/4th of sale consideration as deduction towards indexed cost of acquisition. DRP found that assessee executed apartment buyers agreement with builder on 4-8-2010 falling in financial year 2010-11 and held that financial year 2010-11 was year in which assessee acquired property and directed Assessing Officer to allow deduction towards indexed cost of acquisition on payments made from financial year 2010-11 onwards. Since date of acquisition of residential flat had to be reckoned from date of allotment letter, benefit of indexed cost of acquisition should be available to assessee based on payments made beginning from financial year 2005-06 and not from execution of apartment buyers' agreement, as directed by DRP. (AY. 2019-20)
Renu Khurana. (MS.) v. ACIT (IT) (2023) 200 ITD 130 (Delhi) (Trib.)

S. 48 : Capital gains-Computation-Cost of acquisition-Fair market value on 01.04.1981-Correct F.M.V. to be considered-Assessee's computation to be accepted. [S. 45, 50C, 55]
Held, that the Tribunal accepted the contention of the assessee that the higher cost of acquisition was to be considered. The Commissioner (Appeals) failed to record any categorical finding on both these issues. Both the lower authorities erred in rejecting the calculation submitted by the assessee regarding the cost of acquisition. They calculated the long-term capital gains by simply applying section 50C ignoring all other provisions. The Assessing Officer was directed to calculate capital gains on the basis of the computation made by the assessee.(AY. 2014-15)
Puran Pradhan v. ITO (2023)101 ITR 266 (Kol) (Trib)

S. 49 : Capital gains-Mode of Computation-Indexed cost-Acquired under will-Previous owner-Computed with respect to year in which previous owner first held asset and not in year in which assessee became owner of asset-Brokerage and commission-Legal expenses-Allowable as deduction-Payment of compensation to vacate the premises-Allowable as deduction. [S. 45, 48]
Dismissing the appeal of the Revenue the Tribunal held that while computing capital gains arising on transfer of capital asset acquired by assessee under will, indexed cost of acquisition has to be computed with respect to year in which previous owner first held asset and not in year in which assessee became owner of asset. Held that the brokerage expenses having been incurred wholly in connection with transfer of property under section 48 would be fully allowable as deduction while computing capital gains of assessee and the Assessing Officer

cannot merely restrict allowability of same on basis of excessiveness. Payment to solicitors to look after legal aspects of transaction of transfer of subject property and claimed it as deduction, only works which were carried out by solicitors in connection with transfer of subject property would be allowable as deduction. **C**ompensation paid to licensee to get premises vacated before lock in period of 12 months so that vacant possession of property could be given to buyer, would certainly be construed as an expenditure incurred in relation to transfer of property and therefore, allowable as deduction (AY. 2016-17)
ITO v. Sohrab Fali Mehta (2023) 200 ITD 694(Mum)(Trib)

S. 49 : Capital gains-Previous owner-Cost of acquisition-Release deed-Indexation-Property acquired through the release deed-Indexation only from the date of execution of the release deed. [S. 45, 48]
The assessee inherited one-fourth of the property upon his father's death. His sisters executed release deeds for the remaining three-fourth share in the property in favour of the assessee much later. Upon the sale of the property, the assessee claimed the indexation benefit on all four parts of the property from the date of acquisition by his father. The Department objected to the calculation of the assessee on the grounds that s. 49 of the Act does not recognise the acquisition of an asset by way of a release deed to consider the cost of acquisition from the date from which the previous owner held the asset. Concurring with the view of the Department, Hon'ble ITAT held that the cost of acquisition and indexation for the one-fourth share in the property will be from the date on which it was acquired by the assessee's father and in the rest of the case, it will be from the date on which the sisters executed a release deed in favour of the assessee. (AY. 2012-13)
R. Mohan v. ITO (2023) 200 ITD 98 / 224 TTJ 261 (Chennai)(Trib.)

S. 50B : Capital gains-Slump sale-Sale of each asset-No liability was transferred-Not a Slump sale-Question of fact.[S. 2(19AA), 2(42C), 45, Art. 136]
The High Court dismissed an appeal by the Revenue holding that the Tribunal rightly held that the sale could not be regarded as a slump sale. The price had been received by the assessee by different account payee cheques during the previous year relevant to the A.Y. 2009-10, that on the date of transfer apart from the assets which were sold and transferred, the chemical unit had several other assets which were never sold or transferred to the purchaser, and that none of the liabilities were transferred to the purchaser and these continued to be the liabilities of the assessee to be discharged and were discharged by the assessee. SLP of the Revenue was dismissed.(AY 2009-10)
PCIT v. Hindusthan Engineering and Industries Ltd. (2023)453 ITR 763 / 293 Taxman 507 (SC)
Editorial : Order of High Court in PCIT v. Hindustan Engineering and Industries Ltd. (2023)453 ITR 758 / 151 taxmann.com 431 (Cal)(HC) is affirmed.

S. 50B : Capital gains-Slump sale-Sale of each asset-No liability was transferred-Not a Slump sale-Question of fact.[2(19AA), 2(42C), 45, 260A]
Dismissing the appeal of the Revenue the Court held that the Tribunal had examined the documents made available before it. The Tribunal after going through the agreement and the addendum to the agreement, found that the unit itself was never sold or transferred as a going concern in toto but assets of the unit were sold and transferred to the purchaser at a pre-determined and agreed price for each type of asset being sold and transferred, and that the consideration fixed for all the assets was not in lump sum. The Tribunal found that the price had been received by the assessee by different account payee cheques during the previous year relevant to the A.Y. 2009-10 and that on the date of transfer apart from the assets which

were sold and transferred, the chemical unit had several other assets which were never sold nor transferred to the purchaser and none of the liabilities were transferred to the purchaser and these continued to be the liabilities of the assessee to be discharged and were discharged by the assessee. Order of Tribunal was affirmed. Relied on Kwality Ice Creams (India) Ltd. v. CIT (2011) 336 ITR 100 (Cal)(HC) .(AY. 2009-10)
PCIT v. Hindustan Engineering and Industries Ltd. (2023)453 ITR 758 (Cal)(HC)
Editorial : SLP of Revenue dismissed, PCIT v. Hindusthan Engineering and Industries Ltd. (2023)453 ITR 763 (SC)

S. 50B : Capital gains-Slump sale-long-term capital loss-audit report-Copy of Form No. 3CEA during assessment proceedings-Denial of exemption is not valid. [S. 139(1), R.6H, Form No 3CEA]
Assessee suffered long-term capital loss from slump sale and claimed allowance of same under section 50B. Assessing Officer disallowed claim for reason that audit report in Form No. 3CEA was not uploaded on Income Tax Portal along with return of income. Tribunal held that since assessee duly furnished copy of audit report in Form No. 3CEA before Assessing Officer during assessment proceedings, Assessing Officer ought to have treated same as sufficient compliance for purpose of allowing claim. (AY. 2018-19)
Wellman Coke India Ltd. v. DCIT (2023) 203 ITD 687 (Kol) (Trib.)

S. 50B : Capital gains-Slump sale-Failure to examine evidence-Matter remanded.[S. 2(42C)]
Assessee-company sold its capacitor business and component business on slump sale basis and declared capital gain under section 50B. Assessing Officer made various disallowances. Commissioner (Appeals) partly upheld disallowances. On appeal the Tribunal held that lower authorities had not examined evidences submitted and had not verified terms of agreement, issue of various adjustments disallowed by lower authorities required to be remitted to Assessing Officer for de novo verification of facts and decision afresh.(AY. 2010-11)
MHM Holding (P.) Ltd. v. ACIT (2023) 199 ITD 265 (Bang) (Trib.)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Compulsory acquisition of land and buildings-S. 2(47), 45, Transfer of Property Act, 1882, The Indian Registration Act, 1908, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, S. 96]
Dismissing the appeal of the Revenue the Court held that the property was acquired under the provisions of the National Highways Act, 1956. The property vested by operation of the statute and there was no requirement for payment of stamp duty in such vesting of property. As such there was no necessity for an assessment of the valuation of the property by the stamp valuation authority. Section 50C was not applicable. Central Board of Direct Taxes Circular No. 36 of 2016 ([2016] 388 ITR (St.) 48), it was clarified that compensation received in respect of an award or agreement which has been exempted from the levy of Income-tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall also not be taxable under the provisions of the Income-tax Act, 1961 even if there is no specific provision of exemption for such compensation in the Income-tax Act, 1961. (AY. 2015-16)
PCIT v. Durgapur Projects Ltd. (2023)454 ITR 367/ 333 CTR 158/ 227 DTR 35 (Cal)(HC)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Compulsory acquisition of a capital asset-Land or building-[S. 2(47), National Highway Act, 1956]

Dismissing the appeal of the Revenue the Court held that in case of a transfer by way of compulsory acquisition, the capital asset being land or building or both vests upon the government by operation of the provisions of the relevant statute governing such acquisition proceedings and subject to the terms and conditions laid down in the said statute being followed. In case of compulsory acquisition the transfer of property takes place by operation of law and the provisions of the Transfer of Property Act or the Indian Registration Act do not have any manner of application to such transfers. The question of stamp duty also does not arise in such cases. On the facts the property was acquired under the provisions of the National Highways Act, 1956. The property vests by operation of the said statute and there is no requirement for payment of stamp duty in such vesting of property. As such there was no necessary for an assessment of the valuation of the property for stamp valuation of the property by the stamp valuation authority. Accordingly the provisions of section 50C of the Act cannot be applied. Order of Tribunal was affirmed. (ITAT No. 282 of 2022 (G.A.No. 2 of 2022 dt 24-2-2023) (AY. 2015-16)

PCIT v. Durgapur Projects Ltd (2023) BCAJ-May-P. 47 (Cal)(HC)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Objection by the Assessee-Matter remanded to the Assessing Officer to refer the matter to District Valuation Officer-Reassessment is held to be valid. [S. 45, 147, 148]

Held that the reassessment is held to be valid. As regards stamp valuation when the assessee has raised the objection the Assessing Officer is directed to refer the matter to District Valuation Officer. (AY. 2006-07)

Ramdoss Ramvijay Kunar v.ITO(2022) 222 TTJ 39 (UO) (Chennai) (Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation Only where sale consideration is less than value adopted by Stamp Valuation Authorities-Sale consideration is more than stamp valuation-Reference to Valuation Officer is not sustainable-Addition is not justified.[S. 45]

Held that the assessee had reported a sale consideration which was equal to the stamp valuation adopted by the stamp valuation authorities in other words the circle rate, and not less than the circle rate. Thus, the reference to Valuation Officer in the case of the assessee is bad in law and the addition made to the long-term capital gains is not valid.(AY.2018-19)

Akash Garg v Dy. CIT (IT) (2023)108 ITR 69 (SN)/ (2024) 204 ITD 507 (Delhi)(Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Order set aside and matter restored to Assessing Officer for adjudication De novo after seeking valuation report from Valuation Officer.[S. 45,48, 50C(2)]

Held, that the value adopted by the stamp duty authority exceeded the value of the property on the date of transfer and the value so adopted was also not in dispute in any appeal, revision, or reference before any authority, court or the High Court. Even the Assessing Officer accepted that in the suit pending before the High Court, only the ownership of the land was in dispute and not the valuation of the land. Thus, when both the conditions of section 50C(2) of the Act were fulfilled, there was no basis in the findings of the Assessing Officer, which had been upheld by the Commissioner (Appeals).The issue is restored to the Assessing Officer for adjudication de novo after seeking a valuation report from the Valuation Officer in terms of section 50C of the Act.(AY.2015-16)

Bombay Samachar P. Ltd. v.Asst. CIT (2023)107 ITR 57 (SN)(Mum) (Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation Long-term capital gains-Sale of immovable property-Difference in registered sale deed price and stamp

duty valuation price of property sold-Rectify mistake new gift deed has been made on 15-2-2016, wherein mentioned that land transferred without any consideration-Gift deed, a self-serving document and could not be accepted-Addition is justified. [S. 45, 47(iii),56(2)(vii)]

The assessee submitted that the assessee along with other joint holders had transferred the land to his daughter-in-law on September 20, 2012, but inadvertently the amount was mentioned at Rs. 51,000 for administrative and stamp duty purposes, however, the land was transferred without any consideration, that to rectify the mistake, new gift deed had been made on February 15, 2016, wherein it had been mentioned that the land was transferred without any consideration, that the gift given was not considered as "transfer" under section 47(iii) of the Act, and was not taxable in the hands of his daughter-in-law in view of the provisions of section 56(2)(vii) of the Act. However, the Assessing Officer did not agree with the submissions of the assessee and added the sum of Rs. 30,53,684 as long-term capital gains in the hands of the assessee invoking the provisions of section 50C of the Act. On appeal, the Commissioner (Appeals) confirmed the additions on the grounds that the sale deed was registered on September 29, 2012 and the assessee filed its return on March 28, 2015, that there was no mention of gift to daughter-in-law in the return of income or the computation of income attached with return, that capital loss had been computed in the return from the sale of plots, that the claim of gift to daughter-in-law was an afterthought and could not be accepted as credible and reliable, that the gift deed was a self-serving document, hence liable to be rejected and the assessee was liable to full application of provisions of section 50C of the Act. On appeal Tribunal affirmed the order of CIT(A). (AY.2013-14)

Karamshi Karsan Bhavani v.ITO (2023)107 ITR 27 (Trib) (SN) (Rajkot)(Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation Sale of property within three and half months of purchase-Assessing Officer ought to have referred valuation to District Valuation Officer-Order set aside and issue remanded with the direction to call valuation report. [S. 45, 48(1), 50C(2)]

Held that once the fact was brought to the notice of the Assessing Officer that this property was purchased for a sum of Rs. 2.38 crores and it was actually being sold after three and half months for Rs. 2.80 crores before deeming its sale value at Rs. 3,90,00,000 the Assessing Officer ought to have applied his mind and ought to have got its value determined by the District Valuation Officer. Both orders were to be set aside and the issue remanded to the Assessing Officer for readjudication. The Assessing Officer was to call for a valuation report under section 50C(2) for determining the fair market value of the property on the date of transfer. The Assessing Officer was also to decide whether the gains were to be assessed as a capital gains or business income as the assessee claimed.(AY.2013-14)

Wideangle Construction Co. P. Ltd. v. ITO (2023)104 ITR 10 (SN)(Kol) (Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Reference to DVO-Assessing Officer ought to have referred the matter to the district valuation officer to get the market value of the property, applying a circle rate meant for commercial property-Addition deleted. [S. 45, 55A]

Held that, the assessee had purchased the property as commercial property and sold the property as residential property. The stamp duty authority had accepted the property as residential property. The assessee had sold the property according to the value assessed by the stamp valuation authority. The assessee had furnished a certificate from the Assistant Town Planner that the property in question fell in a residential area. The Assessing Officer ought to have referred the matter to the District Valuation Officer but he himself applied

the value of the circle rate of commercial property. Since the value shown by the assessee had been accepted by the stamp duty authority and further the Assessing Officer had not referred the matter to the District Valuation Officer to get the market value of the property, there was no justification on the part of the Assessing Officer to have himself made the additions by applying circle rate meant for commercial property. The addition made was to be deleted. (AY.2014-15)

Rajesh Kumar Gupta v. ACIT (2023) 102 ITR 259 (Chd.)(Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Additional ground is admitted-Matter remanded to the CIT(A). [S. 45]

Tribunal remanded the matter to CIT (A) and provide another opportunity to the Assessee without getting into merits, albeit at a cost. (AY. 2010-11)

Ahmed Ali Khan v. ITO (2023) 200 ITD 707 (SMC (Jaipur)(Trib.)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Date of agreement to sell-Date of registration-Amendment by way of Finance Act, 2016 effective from 01.04.2017-insertion of proviso to S. 50C(1) is clarificatory in nature-Applicable on pending matters-Sale value lesser than stamp duty valuation-addition made by the AO is deleted. [S. 45]

The issue before the ITAT was whether the stamp duty valuation has to be taken on the date of agreement to sell or on the date of sale deed, since both the dates are falling within the same FY. It was not disputed that the stamp duty was actually paid on the date of agreement to sell as per the circle rate prevailing at that point of time. The ITAT followed the decision given in the case of *Amit Bansal vs. ACIT (2018) 100 taxmann.com 334/ 174 ITD 349* wherein it was held that the amendment to S. 50C, by way of insertion of proviso to S. 50C(1), is clarificatory in nature and can be applied on pending matters and where the date of the agreement fixing the amount of consideration and the date of registration regarding the transfer of the capital asset in question are not the same, the value adopted or assessed or assessable by the stamp valuation authority on the date of the agreement is to be taken for the purpose of full value of consideration. Accordingly, Revenue's appeal was dismissed. (AY. 2014-15)

ACIT v. Thomson Press (India) Ltd. (Delhi) 202 ITD 149 (Delhi)(Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Reference to District Valuation Officer-Determined value higher than consideration but less than stamp duty value-Remanded to the AO to re-determine the fair market value with specific directionS. [S. 45]

The Assessee sold a property for a consideration lower than stamp duty value of the property. The Assessing Officer made a reference to the District Valuation Officer ('DVO') wherein the fair market value of the property was estimated at lower value than stamp duty value but higher than the consideration. The assessee objected to the valuation since highest sale instance was considered ignoring the other three sale instances noted by the DVO. Also, value of car parking was separately added wherein no separate consideration was received by the assessee for car parking. The Tribunal remanded the matter back to the Assessing Officer to take into consideration the average of three instances in the valuation report and also add the fair market value of the covered car parking instances while estimating the fair market value of the property.(AY.2016-17)

Shrim Software P. Ltd. v. ACIT (2023) 103 ITR 28 (SN)(Delhi) (Trib)

S. 50C : Capital gains-Full value of consideration-Stamp valuation-Reference to D.V.O.-Value in report of D.V.O. lower-Report submitted after assessment order-CIT(A) ought to have considered the value of the report. [S. 45, 48]

Held, that the Assessing Officer had adopted a total sale consideration higher than that determined by the District Valuation Officer. The assessee brought the report of the District Valuation Officer to the notice of the Commissioner (Appeals), which submission was noticed by the Commissioner (Appeals). However, the Commissioner (Appeals) failed to take cognisance of this report. Considering that the reference to the District Valuation Officer was made during the pendency of the assessment proceedings, the Commissioner (Appeals) failed in his duty to follow the correct procedure required for the disposal of the appeal. (AY. 2014-15)

Puran Pradhan v. ITO (2023)101 ITR 266 (Kol) (Trib)

S. 54 : Capital gains-Profit on sale of property used for residence-Invested a portion of capital gains-Sale of old property on 23-10-2018-Possession of new flat on 24-12-2018-Date of possession of flat would be actual date of purchase for claiming exemption under section 54-Entitle to exemption. [S. 45]

Assessee, a non-resident Indian, had sold his bungalow and earned long-term capital gain. He invested a portion of capital gains towards purchase of a new residential flat and claimed exemption under section 54. Assessing Officer held that since new property was purchased by assessee on 21-12-16 i.e. beyond one year preceding to sale of old property, he was not entitled for deduction under section 54. On appeal the Tribunal held that the assessee had sold old property on 23-10-2018 and had entered into agreement to purchase new flat on 21-12-2016 wherein he had only received right to get flat from developer. It was only on 24-1-2018 that assessee received possession letter of said new property after construction was completed. The new property shall be deemed to have been acquired only when it was ready, full consideration had been paid and possession was received by assessee and, therefore, where at time of execution of agreement, residential property was not in existence, date of possession of flat would be actual date of purchase for claiming exemption under section 54. Since assessee had received possession of new flat on 24-12-2018, which was within prescribed time limit under section 54 from date of sale of old residential house i.e. 23-10-2018, assessee was entitled for claiming benefit of exemption under section 54. (AY. 2019-20)

Sanjay Vasant Jumde. v. ITO (2023) 200 ITD 285/222 TTJ 409 / 223 DTR 316 (Pune) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Purchase-Agricultural land which was to be converted into non-agricultural property-Amount paid to builder before filing of return-House is registered beyond prescribed period-Eligible to claim exemption. [S. 45]

Assessee sold a property and invested capital gain for purchasing an agricultural land which was to be converted into non-agricultural land by developer/builder and assessee was entitled to receive a built up house property from builder. Assessee had paid builder for new house property before filing return and claimed exemption under section 54 of the Act. Assessing Officer denied exemption on ground that new residential house was registered in name of assessee beyond stipulated period of 2 years as per provisions of section 54 of the Act. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that since the assessee had paid to developer to acquire new house property within specified time, assessee was eligible to claim exemption under section 54 even if new house property was

registered in his name later as new house was eventually acquired out of same capital gains. (AY. 2015-16)
Dr. Sheela Puttabuddi. v. ITO (2023) 198 ITD 48/223 TTJ 499 (Bang) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Purchase or construction-Exemption should be allowed if amount is invested on or before due date of filing of return under section 139(4).[S. 45,54(2), 139(1),139(4)]
Assessee had sold immovable property on 26-5-2011 and purchased a new property on 30-4-2013 and claimed deduction under section 54 of the Act. The Assessing Officer disallowed claim of assessee on ground that assessee had failed to purchase house property before due date of filing of return as per section 139(1) of the Act.CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that assessee had purchased new property well before deadline given in section 139(4) i.e. 30-4-2013 and therefore, disallowance of exemption under section 54 should be vacated. (AY. 2012-13)
Dr. Dharmista Mehta. v. ITO (2023) 198 ITD 106 (Mum) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Invested entire amount of sale consideration towards construction of new house-Delay of 31 days in depositing the amount in capital gains account-Denial of exemption is not justified. [S. 45, 139(1)]
Assessee sold 1/4th share in a residential house and invested sale consideration for construction of a new house. He claimed exemption under section 54 of the Act. The Assessing Officer denied the claim on the ground that assessee had failed to deposit sale consideration in CGAS before due date of filing of return under section 139(1) and same was deposited after a delay of 31 days.CIT(A) allowed the claim. On appeal the Tribunal held that since the assessee had invested sale consideration towards construction of new house well within stipulated period of three years from date of sale in compliance with section 54(1), he could not be denied benefit of section 54 merely because he deposited sale consideration amount in capital gain account with a delay of 31 days. (AY. 2016-17)
ITO v. Vinod Gugnani (2023) 198 ITD 233 (Delhi)(Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-claim of benefit could not be disallowed only on ground that same was not claimed in return-Commissioner (Appeals) have powers to consider claim of assessee which was left half way by Assessing Officer. [S. 139, 251]
Assessee sold a property and thereafter purchased a residential plot and constructed a residential house. He claimed deduction under section 54 of the Act. The Assessing Officer rejected assessee's claim and made an addition on account of long-term capital gain (LTCG). Commissioner (Appeals)held that claim of benefit under section 54 could not be disallowed only on ground that same was not claimed in return. On appeal the Tribunal held that the Assessing Officer had taken into consideration information like cost of construction and other costs, provided by assessee to index income and calculate capital gains, however, Assessing Officer had left assessment half way by not inquiring into deduction if any claimed as applicable. Order of CIT(A) is affirmed.The Tribunal also held that the Commissioner (Appeals) have powers to consider claim of assessee which was left half way by Assessing Officer.(AY. 2014-15)
ACIT v. Mayur Batra (2023) 198 ITD 333 / 222 TTJ 526 (Delhi) (Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-Bonafide mistake-Claim made under section 54F-Entitled to avail the benefit. [S. 45, 54F]

While filing the Income Tax Return, the assessee made a claim under S. 54F against the sale of a residential property. Later on, when the case was picked up for scrutiny, the assessee submitted that the claim should be accepted under S. 54 instead of S. 54F. Since S. 54F is not applicable in the case of the sale of residential property; AO not submitting to the assessee's view made an addition to the income. CIT(A) also concurred with the AO's view. On appeal the Tribunal held that the assessee had not made any fresh claim in any of the proceedings so far. Also, the lower authorities had not taken the view that, based on the facts of the case, the assessee was not eligible for benefit under S. 54 as requested by the assessee. The Tribunal held that since this was a genuine mistake by the assessee, the claim was to be allowed under S.54 of the Act. (AY. 2016-17)

M.M.Pandit HUF v. ACIT (2023) 201 ITD 104 (Lucknow)(Trib.)

S. 54 : Capital gains-Profit on sale of property used for residence-AO deputed inspector for inspecting the property-AO made the deduction as per the inspector report and added the rest income to be taxed-Assessee contented that the two units were not independent-Held, the two units were separated residential houseS. [S. 45]

The assessee after selling two immovable property, purchased another property which consisted of five floors. The ground and first floor was let out and the rest was used as his residence. According to Section 54 of the Income Tax Act of 1961, the assessee claimed an exemption on the proportionate capital gains exemption of Rs. 78,19,945. The Assessing Officer noted that the third and fourth floors were two independent residential units, with the third floor being kept for the assessee's usage and the fourth floor being rented out after recording the inspection officer's statement. In light of this, the Assessing Officer determined the amount that qualified for a deduction under Section 54 of the Act and rendered the remaining amount subject to tax. There was also an indexed cost of improvement assessed by the AO and after examining the bills, it was restricted at Rs. 2,46,888. The Commissioner (appeals) confirmed the same and the assesee appealed against the order.

The tribunal held that the assessee had failed to establish how the third and fourth floor were not independent and the AO had restricted the deduction u/s 54 correctly. With respect to the indexed cost of improvement, the tribunal held that it was common to do basic repair and maintainance work with respect to masonry work. Therefore, the payments for cost of improvements should be allowed. (AY.2015-16)

Mohamed Ibrahim v. ITO (IT) (2023)103 ITR 329 (Chennai)(Trib)

S. 54B : Capital gains-Land used for agricultural purposes-Purchased land in name of wife-Not entitle to exemption-Order of High Court affirmed-SLP dismissed. [S. 45]

Assessee and his three brothers sold jointly owned land and for his 1/4th share, assessee purchased land in name of his wife and claimed exemption under section 54B.High Court held that purchase of agricultural land in name of his wife would not entitle to exemption. Relied on CIT v. Dinesh Verma [2015]233 Taxman 409 (Punj. & Har.) (HC).SLP filed by assesse was dismissed.

Bahadur Singh v. CIT (Appeals) (2023) 295 Taxman 313 (SC)

Editorial : Bahadur Singh v. CIT (Appeals) (2023) 154 taxmann.com 456 (P& H)(HC)

S. 54B : Capital gains-Land used for agricultural purposes-Purchased land in name of wife-Not entitle to exemption. [S. 45]

Assessee and his three brothers sold jointly owned land. The assessee purchased land in name of his wife and claimed exemption under section 54B of the Act. Exemption was denied which is affirmed by the High Court.

Followed CIT v. Dinesh Verma (2015) 233 Taxman 409(P& H)(HC)

Bahadur Singh v. CIT (Appeals) (2023) 154 taxmann.com 456 (P& H)(HC)
Editorial : SLP dismissed, Bahadur Singh v. CIT (Appeals) (2023) 295 Taxman 313 (SC)

S. 54B : Capital gains-Land used for agricultural purposes-Co-owner-Both seller and purchaser confirmed the transaction-There is requirement that the assessee should execute sale deed for claiming the exemption [S. 45, 48, 55(2)(b)]
Held that both seller and purchaser confirmed the transaction. There is requirement that the assessee should execute sale deed for claiming the exemption. Order of CIT(A) allowing the exemption is affirmed. The assessee has taken market value of the agricultural land as on Ist April, 1981 for computing the capital gains and the Assessing Officer has provided the evidence hence the order of CIT(A) is affirmed. (AY. 2013-14)
ITO v.Badri Prasad (2023) 226 TTJ 106 (UO) (Jodhpur)(Trib)

S. 54B : Capital gains-Land used for agricultural purposes-Mistakenly offered as taxable income-Assessing Officer accepted the return-Appeal filed before the CIT(A) on the ground that the income was shown mistaken belief that the same is taxable-CIT(A) dismissed the appeal-Held that dismissal of appeal is not justified-Article 265 of Constitution of India prohibits tax to be collected without authority of law.[S. 2(14)(iii), 139(1), 246A, 250, Art. 265]
Assessee sold agricultural land and offered profit for taxation as long-term capital gain. Assessing Officer accepted income as offered by assessee and completed assessment.Subsequently assessee having noticed that proceeds from sale of agricultural land will not attract tax filed appeal before Commissioner (Appeals).Commissioner (Appeals) dismissed appeal in limine without admitting same. On appeal the Tribunal held that even though inadvertently assessee offered long-term capital gain on sale of land, he ought to have been allowed to urge claim before Commissioner (Appeals) because since article 265 of Constitution of India prohibits tax to be collected without authority of law. Matter is remanded to Assessing Officer for examination afresh. (AY. 2010-11)
Madanlal Mohanlal Sakhala. v. ACIT (2023) 202 ITD 751 (Mum) (Trib.)

S. 54B : : Capital gains-Land used for agricultural purposes-AO made addition as per unexplained cash deposits-No purchase of land-Deduction not available-Cash deposit in bank-Addition is justified [S. 45, 69]
The Appellant is a salary drawing individual and filed a return of income declaring Rs. 2,83,360 as total income. The AO during assessment made addition of Rs.17,59,750/-as capital gains brought to tax and also a sum of Rs.28,42,000/-as unexplained cash deposits in the bank account as the assessee failed to offer any explanation. It was held that the appellant is not entitled for deduction in respect of section 54B of the Act as there was no purchase of the land/property in the name of the assessee. Submissions made in context of deduction u/s 54F are rejected as it is does not have any supporting evidence and is devoid of any merits. Cash deposited in banks, no supporting documents addition is justified. (AY. 2011-12)
Popat Manaji Rahinj (Through Legal Heir Mr. Datta Popat Rahinj) v. ITO (2023) 151 taxmann.com 257 / 221 DTR 433/ 221 TTJ 668 (Pune) (Trib)

S. 54B : Capital gains-Land used for agricultural purposes-Order of CIT(A), allowing the claim is affirmed.[S. 45]
Tribunal hedl that Commissioner (Appeals) on basis of agriculture income and other evidence shown in earlier years held assessee eligible for deduction under section 54B,

finding of Commissioner (Appeals) being based on appreciation of evidence about claim of deduction under section 54B was justified.(AY. 2014-15)
ITO v. Bharatkumar Laljibhai Tejani (2023) 201 ITD 550 (Surat)(Trib)

S. 54B : Capital gains-Land used for agricultural purposes- Purchasing of agricultural land in the name of third person (i.e. wife)-Not entitled to claim exemption. [S. 45]
The assessee purchased agricultural land in the name of his wife and claimed exemption against the capital gains earned by him on sale of his urban agricultural land. However, the AO denied the exemption to the assessee for the reason that the legislature had not intended to advance the benefit of the said section to an assessee who purchases agricultural land in the name of a third person. The CIT(A) upheld the view taken by the AO. The Tribunal, by following the judgments in the case of Kamal Kant Kamboj v. ITO [2017] 88 taxmann.com 541/397 ITR 240 (Punj. & Har.)(HC) Jai Narain v. ITO [2008] 306 ITR 335 (Punj. & Har.)(HC) and CIT v. Dinesh Verma [2015] 60 taxmann.com 461/233 Taxman 409 (Punj. & Har.)(HC) confirmed the order passed by the CIT(A). (AY. 2012-13)
Surta Ram v. ITO [(2013) 201 ITD 459 (Chd) (Trib)

S. 54B : Capital gains-Land used for agricultural purposes-Documents on basis of which assessee purchased land valid and enforceable in law, disallowance of exemption for want of registration of land not sustainable. [S. 45]
The Honourable Tribunal allowing the appeal, held that, the registration of the purchased land was pending for court permission because two of the co-sellers were minor at the time of purchase of the land but both parties upon attaining majority had executed notarized declarations of accepting the transactions and confirmed the enforceability of the documents in form of the sale agreement and possession letter signed by their guardians on their behalf. Hence, the documents on the basis of which the assessee had purchased the land were valid and enforceable in law. Hence, the claim u/s. 54B was allowable as the transaction was enforceable in the eyes of the law for the amount already paid for the purchase of new agricultural land. (AY. 2016-17)
Kristina Nathabhai Krichchan v.Dy. CIT (2023) 154 taxmann.com 102 /105 ITR 44 (Surat) (SN)(Trib)

S. 54B : Capital gains-Land used for agricultural purposes-Land sold for residential purposes as per sale deed-Land recorded as agricultural land as per revenue record-Assessee, not applied for change of land-AO failed to enquire whole land in survey number converted to non-agricultural purpose or land falling to share of assessee-CIT(A) is directed to allow additional evidence-Matter Remanded. [S. 2(14) (iii), R. 46A]
Held, that the Assessing Officer had fallen in error in reading the revenue records without seeking due clarification from the assessee. The Commissioner (Appeals) had not allowed the assessee to produce further evidence to show that land falling in the share of the assessee was not converted, before its transfer by the assessee. The crucial point needed to be restored to the Commissioner (Appeals) to allow the additional evidence of the assessee and to let the assessee establish that the land falling in the share of the assessee which was sold by the impugned sale deed was not converted to non-agricultural purposes by any order of the Revenue authorities. If that was established the fact that it was sold for the purpose of residence of the vendor or that it was valued for the purpose of stamp papers by the registered authority as a non-agricultural land would not be material and the assessee would be entitled to benefit of section 54B of the Act. Matter remanded. (AY. 2011-12)
Vipin Kumar v.ITO (2023)101 ITR 68 (SN)(Delhi) (Trib)

S. 54EC : Capital gains-Investment in bonds-Investment in NHAI bonds before sale of property out of advance money received-Entitle to deduction. [S. 45]

Held that investment in NHAI bonds before date of sale of property out of advance money received, is entitled to deduction in regard to investment made in NHAI bonds. (AY. 2014-15)

Mukesh Arvindlal Vakharia. v. ITO (2023) 202 ITD 1 (Surat) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Non-resident India-Sale of residential flat-Invested sale proceeds from same, in a residential house in USA within specified period-Entitle to exemption-Amendment in section 54F by Finance (no.2) Act of 2014 imposing condition that assessee should invest sale proceeds arising out of a sale of capital asset in a residential property situated 'in India' within stipulated period is prospective in nature-Rejection of revision application is not valid-Entitle to exemption. [S. 5(2), 139(5), 143(1), 254, 264, Art. 226]

The assessee was a Non-Resident Indian working in the USA. During the relevant year, he sold a residential flat in India and purchased another residential flat in the USA out of capital gain on the sale of property within the time limit prescribed by section 54F and claimed exemption under section 54F. Under a mistaken presumption, he deposited an amount higher than the amount of LTCG into a Capital Gain Account Scheme (CGAS). He therefore brought to the notice of the revenue the position as mentioned above and sought issuance of a certificate to the bank for release of sum of certain amount which was deposited in the CGAS. Revenue, rejected his claim on the ground that the assessee was not eligible for deduction under section 54F as the investment was made in a house property situated outside India. He relied upon an amendment in section 54F(1) by the Finance (No.2) Act, 2014 which inserted the words 'in India' in the said provision. The Assessee filed writ against the rejection order passed under section 264 of the Act. Allowing the petition the Court held that the Amendment in section 54F by Finance (no.2) Act of 2014 imposing condition that assessee should invest sale proceeds arising out of a sale of capital asset in a residential property situated 'in India' within stipulated period is prospective in nature and cannot be applied to transactions prior to 1-4-2015.On the facts the assessee, a non-resident India working in USA, sold a residential flat in India and invested sale proceeds from same, in a residential house in USA within specified period, same satisfied conditions stipulated in section 54F as it stood and was applicable to relevant assessment year and thus, assessee was to be allowed exemption under section 54F. Rejection order passed by the Commissioner is sat aside. (AY. 2014-15)

Hemant Dinkar Kandlur v. CIT (IT) (2023) 295 Taxman 644 (Bom.)(HC)

S. 54F : Capital gains-Investment in a residential house-Payments were made before the sale of an original asset-Test ought to be when construction of the residential house was completed-Matter remanded to CIT(A). [S. 45]

The assessee had purchased land in 2007 along with his husband and the same was transferred in March 2013. She purchased another land for the construction of a residential house, which went on from 2007 to 2015. Accordingly, on the sale of the original asset, the assessee claimed exemption under section 54F. The Assessing Officer denied the claim on the ground that since payment for the purchase and construction of the residential house was made six years before the original asset was sold, exemption towards the same was not allowable under section 54F. CIT(A) allowed the exemption. Tribunal reversed the order of the CIT(A). On appeal, the Court held that the Tribunal has given importance only to the time

of the payments made by the assessee or sanction of the loan by the Bank in favour of the assessee's husband. The test ought to be when the residential house was completed. Accordingly, the matter was reamended to the file of CIT(A) to decide in accordance with the law. (AY. 2013-14)
Bindu Premanandh v. CIT (2023) 290 Taxman 457 (Ker.)(HC)

S. 54F : Capital gains-Investment in a residential house-Deposit in specified account-Utilised before date specified under section 139(4)-Entitle to exemption-Refurnishing of new residential house-Habitable-Eligible for deduction [S. 45, 54F(4), 139(4)]
Held that outer limit for the purchase or new construction of the new asset as per section 54F(4), is the date of furnishing of the return under section 139 of the Act. Since the assessee has appropriated the amount of the net consideration of the property sold by her for purchase of new residential property before the date contemplated in section 139(4), deduction is allowable. Expenditure incurred after purchase of new house for rendering it habitable is eligible for deduction. (AY. 2012-13)
Kiran Agrawal (Smt) v. ACIT (2023) 223 TTJ 626 (Raipur)(Trib)

S. 54F : Capital gains-Investment in a residential house-Date of agreement to be considered as date of sale-Amount paid for purchase of new property is more than the amount of sale consideration-Entitle to exemption. [S. 45]
Held that date of agreement to be reckoned as the date of sale of the property for considering the allowability of exemption. Amount paid for purchase of new property is more than the amount of sale consideration the assessee is entitle to exemption.(AY. 2013-14)
Muthu Daniel Ranjan v. ACIT(2023) 222 TTJ 498 (Chennai)(Trib)

S. 54F : Capital gains-Investment in a residential house-Only part of consideration is utilised for purchase of property before due date of filing of return-Balance consideration is not deposited under Capital gains Account Scheme-Exemption is not available.[S. 54B,54F(4)139(1)]
Held that only part of consideration is utilised for purchase of property before due date of filing of return. Balance consideration is not deposited under Capital gains Account Scheme hence the exemption is not available. As regards the sale of agricultural land only the portion of the sale consideration is utilised towards purchase of new agricultural land which was purchased beyond due date of filing of return. Denial of exemption is affirmed. (AY. 2009-10)
Santosh Maruti Borate v.ITO (2023) 221 TTJ 422 (Pune)(Trib)

S. 54F : Capital gains-Investment in a residential house-Co-owner of more than one house-Eligible for deduction-Precedent-When there are conflicting decisions of High Courts the view in favour of the assessee has to be followed. [S. 45, 54]
The assessee is an individual, claimed deduction under section 54F of the income-tax Act. The Assessing Officer disallowed the exemption on the ground that the assessee owned interest in more than one residential properties and therefore, he was not entitled for deduction u/s 54F of the Act. The Assessing Officer relied on the decision in M.J. Siwani v. CIT [2015] 53 taxmann.com 318 (Karn)(HC)). On appeal, the CIT(A) upheld the finding of the Assessing Officer. On further appeal the Tribunal held that the assessee is eligible for deduction relied on Ashok G Chauhan v. ACIT (TAT Mumbai A Bench) ITA No 1309/Mum/2016, DCIT v. Shri Dawood Abdulhussain Gandhi (ITAT "F' Bench Mumbai ITA No 3788/Mum/2016, ITO v. Rasiklal N Satra [TAT “A “ Bench Mumbai (98 ITD 0335 and the Judgement of Madras High Court in Dr. P.K. Vasanthi Rangarajan v. CIT (2012) 252

CTR 336. (Mad)(HC).The Tribunal also held that when there are conflicting decisions of High Courts the view in favour of the assessee has to be taken. CIT v. Vegetable Products Ltd. 88 ITR192. (SC). Accordingly the appeal of the assessee was allowed. (ITA 545/M/2023 dt.22-5-2023) (AY. 2016-17)
Zainul Abedin Ghaswala v. NFAC (2023)201 ITD 829 / 224 TTJ 569 (Mum)(Trib) www.itatonline.org

S. 54F : Capital gains-Investment in a residential house-Capital asset-Receipt on relinquishment of assessee's share in firm-Liable to capital gains-Reinvestment on residential flat allowable deduction. [S. 2(14), 45]
Held, allowing the appeal, that under section 2(14) of the Act "capital asset" means property of any kind held by the assessee, whether or not connected with his business or profession, but does not include stock-in-trade, raw materials held for the purpose of business or profession. The receipt of Rs. 70,38,450 on relinquishment of the assessee's share from firm was a capital gains wherein the claim of reinvestment on residential flats of Rs. 26,52,000 is an allowable deduction under section 54F of the Act. Referred, CIT v. Mansukh Dyeing and Printing Mills (2022) 449 ITR 439 (SC), CIT v. A.N.Naik Associates (2004) 265 ITR 346 (Bom)(HC) (AY.2013-14)
Bipinbhai V. Patel v. ITO (2023)107 ITR 63 (SN) (Ahd)(Trib)

S. 54F : Capital gains-Investment in a residential house-Sale of inherited property-Agreement for purchase-Failure to construct-Pendency of litigation-Assessee can not be compelled to treat unutilized portion of funds kept under Capital gains account Scheme as taxable. [S. 45]
Assessee sold a 60 per cent share in an inherited property and computed capital gains.Net capital gains for relevant year were declared and corresponding taxes were paid. Assessing Officer nheld that assessee had invested in same project from same builder for a consideration of Rs. 12.52 crores and an amount of Rs. 5.86 crores was paid before date of agreement and balance amount of Rs. 6.66 crores was deposited in capital gains account scheme, with intention to pay builder when demanded. However, assessee was able to invest only Rs. 2.22 crores within three years from transaction date. Remaining unutilized amount was initially included in taxable income but was later claimed as exempt by assessee, citing that builder had halted construction and failed to provide possession of flats as per agreement. Aggrieved with same, assessee had also filed a suit in High Court-Assessing Officer brought unutilized portion of capital gains. Commissioner (Appeals) sustained additions. On appeal the Tribunal held ton record that funds were still in bank account unutilized and case was also pending before High Court and till case was decided or issue was resolved by High Court, assessee was not in a position to utilize funds kept in bank account under capital gains account scheme. Unless and untill, issue was resolved, assessee could not be compelled to treat unutilized portion of funds as taxable. (AY. 2017-18)
Dhananjay Madhukar Naik. v. DCIT (2023) 203 ITD 30/(2024) 229 TTJ 240 (Mum) (Trib.)

S. 54F : Capital gains-Investment in a residential house-One house in his name and two properties jointly with his family members-Jointly held property cannot be said to be owner of the property-Entitle to deduction-Other expenses-Matter is remanded to the Assessing Officer. [S. 37(1), 45]
Assessee owned one house in his name and owned other two properties jointly with his family members.He sold his house and claimed deduction under section 54F. Assessing Officer denied deduction on ground that assessee owned three properties. Tribunal held that

in view of judicial precedent on subject that where assessee held property jointly with her husband in equal proportion, it could not be said that she was owner of house property at time of sale for availing deduction under section 54F, assessee was entitled to deduction under section 54F. Grievance of assessee was that he was not granted sufficient opportunity to explain nature of these expenses, matter was to be remitted back to Assessing Officer for passing speaking order after affording opportunity of being heard. (AY. 2014-15)
Mukesh Arvindlal Vakharia. v. ITO (2023) 202 ITD 1 (Surat) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Constructed residential buildings comprising of two rooms, kitchen, toilet having electricity and water connection which was being used as residential unit-Denial of exemption is not justified-Cost of improvement-Documentary evidence not filed-Disallowance is affirmed. [S. 45, 48, 55]
Assessing Officer disallowed the exemption claimed by holding that assessee was merely possessing a piece of land without any construction thereon. On appeal the Tribunal held that valuation report and other documentary evidence clearly revealed that assessee had constructed residential buildings comprising of two rooms, kitchen, toilet having electricity and water connection which was being used as residential unit, exemption under section 54F should be allowed. As regards cost of improvement no documentary evidence was produced hence the disallowance is affirmed. (AY. 2016-17)
Girish Mohan. v. ACIT (2023) 202 ITD 221 (Delhi) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Monthly tenancy-Owner entering into development agreement-Development of building-Two flats in new building is allotted to assessee and spouse-Market value as consideration-Relinquishment of tenancy rights in lieu of allotment of new flat-Entitle to exemption-Power of Tribunal-Death of the assessee during pendency of appeal-Tribunal has the power to decide the appeal on the relevant material [S. 45, 254(1), ITAT R.1963, R.26]
The assessee and his spouse were residing on monthly tenancy for more than thirty years Owner entering into development agreement for development of building. Two flats in new building is allotted to assessee and spouse. The Assessing Officer taxed the entire market value as consideration as income of the assessee. on appeal the CIT(A) held that relinquishment of tenancy rights in lieu of allotment of new flat is entitle to exemption under section 54F of the Act. On appeal by the Revenue, the Tribunal affirmed the order of the CIT(A). The Tribunal also held that there is no mechanism to ascertain the details of the legal representative of the assessee, except seeking the help of the Assessing Officer. Since more than 18 months had passed, there was no option but either to dismiss the appeal for want of proper prosecution at the end of the Revenue, or decide the appeal on the relevant material available. The Tribunal decided the appeal on merits. (AY. 2014-15)
ITO v. Bejoy Kumar Chirimar (2023) 103 ITR 1(SN)(Kol)(Trib)

S. 54F : Capital gains-Investment in a residential house-Construction delayed due to litigation-Exemption cannot be denied-Proportional deduction is allowed. [S. 45]
During relevant assessment year, assessee sold a plot of land on 8-9-2014. Assessee invested entire sale consideration towards purchase of two residential sites developed by Bangalore Development Authority (BDA). In return of income, long-term capital gain was worked out and deduction under section 54F was claimed. Assessing Officer held that since assessee had not constructed a residential house within a period of three years after date of sale of capital asset and not deposited unutilized amount in capital gain account before filing return of income she was not eligible for exemption under section 54F. Assessee contended that

receipts from sale of capital assets were invested in purchase of two plots from BDA. First plot was purchased on 31-10-2014 and Plot No. 2 was purchased on 5-12-2018. Accordingly, sum were invested towards purchase of residential plot and construction of house building respectively. Further contended that since original landlord filed writ petition before High Court and did not allow construction to go through whose land was acquired by BDA to form layout, assessee was unable to construct residential house within stipulated time as per section 54F. On appeal the Tribunal held that the assessee had genuine reason for not constructing building within due date as prescribed by section 54F, though intention of assessee was to construct residential house building. The assessee would be eligible for proportionate deduction as per section 54F, since entire sale proceeds were not used for new assets. (AY. 2015-16)

Sharada Mohan Shetty. v. ITO (2023) 201 ITD 21 (Bang) (Trib.)

S. 54F : Capital gains-Investment in a residential house-More than one residential property on date of transfer of capital asset-Not entitle to deduction.[S. 45]

Assessing Officer denied claim on ground that assessee owned more than one residential property on date of transfer of capital asset other than new asset acquired On appeal the Tribunal held that since all five properties were situated in residential societies and assessee could not prove with evidence that these flats situated in residential societies were in fact used for commercial purposes, assessee is not entitled to benefit of deduction under section 54F of the Act. (AY. 2010-11)

Surendra Babu Sabbineni. v. DCIT (2023) 199 ITD 544/ 222 TTJ 206/ 223 DTR 153 (Hyd) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Two residential house-One unit co-owned by assessee and wife-Ownership of more than one house-Not absolute owner-Denial of exemption is not valid-Under construction house-Income cannot be assessed as income from house property-Till time of possession condition stipulated in clause (b) of proviso to section 54F(1) was not satisfied-Denial of exemption is not valid. [S. 22, 45]

Assessee sold a land owned by him and purchased a residential property jointly with his wife. Assessing Officer denied exemption under section 54F holding that on date of transfer of land original asset, assessee was owner of two residential properties. Allowing the appeal the Tribunal held that merely on fact that said property was co-jointly owned by assessee and his wife, assessee could not be treated as absolute owner of said property and exemption cannot be denied. The Tribunal also held that Indiabull's property was under construction and possession was handed over to assessee only on 28-12-2016, till such time income from said property was not chargeable under head income from house property. Accordingly the denial of exemption is not justified. (AY. 2013-14)

Anant R Gawande. v. ACIT (2023) 198 ITD 58 (Mum) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Co-owner of more than one house-Eligible for deduction-Precedent-When there are conflicting decisions of High Courts the view in favour of the assessee has to be followed. [S. 45,54]

The assessee is an individual, claimed deduction under section 54F of the income-tax Act. The Assessing Officer disallowed the exemption on the ground that the assessee owned interest in more than one residential properties and therefore, he was not entitled for deduction u/s 54F of the Act. The Assessing Officer relied on the decision in M.J. Siwani v. CIT [2015] 53 taxmann.com 318 (Karn)(HC)). On appeal, the CIT(A) upheld the finding of the Assessing Officer. On further appeal the Tribunal held that the assessee is eligible for deduction relied on Ashok G Chauhan v. ACIT (TAT Mumbai A Bench) ITA No

1309/Mum/2016, DCIT v. Shri Dawood Abdulhussain Gandhi (ITAT "F' Bench Mumbai ITA No 3788/Mum/2016, ITO v. Rasiklal N Satra [TAT "A " Bench Mumbai (98 ITD 0335 and the Judgement of Madras High Court in Dr. P.K. Vasanthi Rangarajan v. CIT (2012) 252 CTR 336. (Mad)(HC).The Tribunal also held that when there are conflicting decisions of High Courts the view in favour of the assessee has to be taken. CIT v. Vegetable Products Ltd. 88 ITR192. (SC). Accordingly the appeal of the assessee was allowed. (ITA 545/M/2023 dt.22-5-2023)(AY. 2016-17)

Zainul Abedin Ghaswala v. NFAC (2023)201 ITD 829 (Mum)(Trib) www.itatonline.org

S. 54F : Capital gains-Investment in a residential house-Capital gains account-Paid the purchase price of property and construction thereon were within relevant period-Denial of exemption is not valid.[S. 45]

The assessee sold a plot of land and invested the Long-Term Capital Gains earned thereon in a residential house. The AO allowed the claim of the assessee u/s. 54F of the Act after making disallowance in respect of indexed cost of acquisition. On appeal, CIT(A) disallowed entire exemption on the ground that the construction timeline was not being met. The CIT(A) also observed that the assessee had not deposited any amount in the capital gains scheme account whereas the amounts were duly deposited in the capital gains scheme account and duly utilized from the said account only.The Tribunal quashed the order of the CIT(A) and held that since the amounts for property purchase and construction were paid within the relevant period from the Capital Gains Account, the disallowance lacked basis. It emphasized that completion of construction or possession within the stipulated time is not crucial. The appeal was allowed.(AY. 2015-16)

Subramanian Swaminathan v. ACIT (IT) (2023) 201 ITD 487 /104 ITR 19 (SN.) (Delhi) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Non-Resident-Co-owner of a property at USA-Not entitled to the benefit of deduction. [S. 45, 54F(a), 54F(b)]

The assessee is a resident of USA, sold certain immovable properties and claimed exemption under section 54F. The AO denied the exeption.CIT(A) allowed the exemption. On appeal by the Revenue the Tribbunal held that since the assessee was a co-owner of a property situated in USA where assessee habitually resided and had also disclosed address of said property in its passport, assessee was not entitled to benefit of deduction under section 54F as assessee owned more than one residential house at time of transfer of original asset. The Tribunal also held that, the provisos (a) and (b) to s.54F,makes it clear that if the assessee owns more than one residential house other than the new asset on the date of transfer of an original asset, the benefit of deduction u/s. 54F cannot be availed by the assessee.(AY. 2011-12)

Dy. CIT v. Babu Rajendra Prasad Vadlamudi [2023] 201 ITD 704 / 226 TTJ 820 (Vishakha)(Trib.)

S. 54F : Capital gains-Investment in a residential house-Deduction claimed from selling flats-Transfer for reversal of such deduction made after three years-Matter remanded to verify if there was double taxation.[S. 45]

The assessee entered into an agreement with a Mr. N to construct 52 flats on a sharing ratio of 65:35. He failed to file his return of income for A.Y. of 2012-13 in respect of the 52 flats. In addition to the 29 flats that were already sold in the assessment year 2014–15, the assessee sold and transferred 23 of his 52 apartments to developer N under new agreements of sale with an irrevocable general power of attorney with possession in the A.Y. 2015–16. He did not file his return for this assessment year as well. Finally, a notice u/s 148 was issued the assessee filed his return of income. The AO assessed the income from the flats in the A.Y.

2016-17 to which the assessee objected saying that the same should be added to the A.Y. 2015-16. After the AO rejected the said objects, the same was referred to a dispute resolution panel who partly allowed the assessee's objection and also upheld the additions by the AO. The AO calculated the assessee's total income after deducting short-term capital gains from the sale of 23 apartments before the end of the three-year period and adding back the deduction the assessee was given under section 54F for this sale. The assessee challenged the said order contending that there was double taxation.

The tribunal held that since the proceeds from the sale of the apartments were subject to tax in the assessment year 2014–2015, adding the same amount in the year under examination would have resulted in an illegitimate double addition. The AO was also directed to verify if the said amount had been brought to tax in the A.Y. 2014-15 and if yes then delete it from the A.Y. 2015-16. The tribunal further observed that the AO, while passing the final order, ignored the direction of the panel to take into account the cost of acquisition to the assessee. The Assessing Officer reversed the deduction that had been given to the assessee under section 54F for the sale of 23 apartments during the assessment year 2012–2013 on the grounds that the assessee had sold the apartments within three years. However, the transfer was made only after a period of three years-on March 24, 2015 and the joint development agreement was signed on January 13, 2012; as a result, the Assessing Officer was not justified in proposing to revoke the deduction under section 54F.(AY.2015-16)

Madhu Kumar Patel v. Asst. CIT (IT) (2023)103 ITR 112 (Hyd) (Trib)

S. 54F : Capital gains-Investment in a residential house-Inheritance of land-Six owners-Construction of six flats-Five flats were occupied by other Co-owners-Entitle to exemption.[S. 45]

The assessee along with other five family members had inherited land on which all members constructed six flats which were occupied by each owner. The assessee claimed exemption under section 54F in respect to flat constructed by her against capital gain earned during the previous year relevant to AY.2016-17. The assessee also produced electricity bills to establish that other flats were owned by respective members of the family. The AO, after referring to decision of Hon'ble Supreme Court of India in the case of M.J. Siwani v. CIT Income-[2015] 232 Taxman 335 (SC) denied exemption on ground that assessee owned six residential house properties though jointly i.e. more than one residential house contemplated in section 54F of the Act. Before the Tribunal, the assessee relied on series of decisions in favour of the assessee and contended that the where there are different views of non-jurisdictional High Court, then one favourable to the assessee has to be followed. Referred Dr.(Smt).P.K.Vasanthi Rangarajan v.CIT (2012) 209 Taxman 628 (Mad)(HC) The Tribunal held that the assessee is entitle to claim exemption since there was no material to show that assessee was exclusively owner of other five flats.(AY. 2016-17)

Zainul Abedin Ghaswala v. CIT(A) NFAC (2023)201 ITD 829(Mum) (Trib.)

S. 54F : Capital gains-Investment in a residential house-Exemption-Sale of immoveable property and purchase of a residential house-Harmonious construction-Proviso cannot be construe to defeat intent-Restriction on ownership-Houses outside of India cannot be considered.[S. 45]

Held, that a proviso must be construed harmoniously with the main statute so as to give effect to the legislative objective. Section 54F should be read as a whole inclusive of the proviso in such manner that they mutually throw light on each other and result in a harmonious construction. The legislative intent behind granting relief to the assessee through section 54F was to incentivise investments in residential house in India. Therefore, the proviso imposing the conditions could not be read in isolation and should be construed harmoniously with the

main section. The proviso to section 54F which contains the condition that the exemption is not available if the assessee owns more than one residential house, other than the new asset, should be interpreted to mean ownership of residential houses in India. Therefore, the ground on which the exemption under section 54F was denied was not tenable. The assessee was entitled to claim exemption under section 54F for investments made in India in one residential house within the time limit stipulated under that section. *(*AY. 2015-16).
Maries Joseph (Smt.) v. Dy. CIT (IT) (2023)101 ITR 629 /199 ITD 631 / 221 TTJ 607 (Cochin) (Trib)

S. 54F : Capital gains-Investment in a residential house-Purchase of land-Using advance received with respect to sale of property-Deduction cannot be denied merely because sale deed for sold out property was executed beyond period of a year.[S. 45]
Out of advance received against sale of property owned by assessee under an unregistered sale agreement dated 15-5-2013, assessee purchased land and building on 29-11-2013. Later, on receiving full sale consideration, possession of sold out property was handed over by assessee on 15-10-2014 while sale deed was executed on 23-2-2015. Assessee started construction of residential building and claimed deduction under section 54F. Assessing Officer held that no deduction would be available under section 54F as date of purchase of property fell beyond one year from date of sale of property. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that since assessee had purchased land on date which fell within a year from receipt of full sale consideration as well as handing over of possession, merely because sale deed had been executed beyond period of one year, deduction could not be denied. (AY. 2015-16)
D. Vijayalakshmi. (Mrs.) v. ITO (2023) 199 ITD 797 (Chennai) (Trib.)

S. 54G : Capital gains-Shifting of industrial undertaking from urban area-Sale of an industrial plot in Bengaluru-Urban area-Entitle for the benefit.[S. 45 280Y(d)]
Allowing the appeal of the asseessee,the High Court held that by virtue of Notification No. S.O. 3419 dated 22-9 1967, under section 280Y(d) of the Act dated 22-9-1967, Bengaluru Corporation was declared as Urban area. Hence, relying on the ratio laid down by the Apex Court in Fibre Boards (P.) Ltd. v. CIT (2015) 376 ITR 596 (SC)/ 10 SCC 533 Bengaluru continues to be an Urban area for the purpose of section 54G of the Act. (AY.1998-99)
Fabsun Engineering (P.) Ltd. v. ITO (2022) 291 Taxman 478 (Karn)(HC)
Editorial : Section 280Y, omitted by the Finance Act, 1990, w.e.f 1-4-1990.

S. 55A : Capital gains-Reference to Valuation Officer-Calculation without referring to D.V.O.-On the basis of own assumption-Ought to have referred to D.V.O.-Order set aside-Matter remanded and referred to D.V.O. for considering cost of acquisition. [S. 55(2) (b)]
Held, that the assessing authority had passed the order beyond his jurisdiction by calculating the cost of acquisition on the basis of his own assumption. Therefore, the entire issue was set aside to the Assessing Officer and referred to the Departmental Valuation Officer for considering the cost of acquisition of the property before computing the total income. That the Assessing Officer shall provide proper and adequate opportunity of being heard to the assessee in set aside proceedings.(AY. 2010-11)
Savitri Devi (Smt.) v. ITO (2023)101 ITR 34 (Amritsar) (Trib)

S. 56 : Income from other sources-Valuation of shares-Book value of assets-.Formula adopted by the Assessing Officer is not applicable to the relevant assessment year-

Order of Tribunal deleting the addition is affirmed by the High Court.[S. 56(2)(viib), R.11UA]

Assessee purchased 48 per cent shares of a company from three entities at a price of Rs. 5 per share. Assessing Officer applying formula contained in rule 11UA, valued the shares at Rs. 45.72 per share and made addition of difference amount to assessee's income Tribunal deleted the addition on the ground that formula applied by Assessing Officer to arrive value of subject shares was not applicable to assessment year 2014-15.Formula became effective only from 1-4 2018 (AY. 2018 19). Order of Tribunal is affirmed. (AY. 2014-15)

PCIT v. Minda SM Technocast (P.) Ltd. (2023) 295 Taxman 517 / 334 CTR 920 / (2024) 460 ITR 7 (Delhi)(HC)

S. 56 : Income from other sources-Shares at premium-Valuation of report by the Chartered Accountant-DCF method-Deletion of addition is affirmed. [S. 56(2) (viib), R.11UA]

Held that the assessee has justified share premium on the basis of valuation report who has applied DCF method. Order of CIT(A) deleting the addition is affirmed. (AY. 2013-14)

ITO v. Goodyield Farming Ltd (2023) 223 TTJ 121 (Mum)(Trib)

S. 56 : Income from other sources-Share premium-Valuation report by the Chartered Accountant-Considering net-worth of two step down subsidiaries-Acquired after valuation date-Addition is affirmed.[S. 56(2)(viib), R.11UA]

Assessee company which was said to be incorporated on 7-11-2012 issued shares at a premium on 16-11-2012 and charged premium of Rs. 25 per share on preference shares of face value of Rs. 100 each and Rs. 2.5 per share on equity shares having face value of Rs. 10 each. Assessee obtained a valuation report from registered valuer, prepared as per rule 11UA(2)(b), justifying charging of said share premium. Said report was considered by Commissioner (Appeals) and claim of assessee was accepted by deleting addition made by Assessing Officer. On appeal, revenue submitted that inclusion of subsidiary companies for preparing valuation report was not justified as they had been acquired after valuation date. Since in valuation report prepared by CA, fair market value of equity share and preference share had been arrived at mainly after considering net-worth of two step down subsidiaries, however, fact of acquiring wholly owned subsidiaries/step down subsidiaries after cut-off date of valuation of share was not provided to CA, results arrived at in valuation report could not have been accepted. Share premium of Rs. 2.50 per share on issue of equity share capital and share premium of Rs. 25 per share received on issue of preference share capital along with face value of each equity share at Rs. 10 and each preference share at Rs. 100 was in excess of fair market value of Rs. 10 per equity share and Rs. 100 per preference share for preference and therefore, provisions of section 56(2)(viib) had rightly been invoked by Assessing Officer for making addition towards share premium in hands of assessee. (AY. 2013-14)

ITO v. LNB Renewable Energy (P.) Ltd. (2023) 222 TTJ 336 / 145 Taxmann.com 269 (Kol)(Trib)

S. 56 : Income from other sources-Right shares-Allotted to proportionate to shareholding in company-Provision is not applicable in respect of allocation of rights shares allotted below FMV proportionate to his shareholding in company-Gifts-Additional shares received on account of renunciation of rights issue by wife and father-Relatives-Excluded from purview of operation of section 56(2)(vii)(c)-Renunciation of rights shares by third party shareholders in favour of assessee, allowing to gain controlling interest results in disproportionate allocation of rights shares in favour of

assessee-Section 56(2)(vii)(c) shall apply, and income would be taxable-Share premium-Balance sheet-Balance sheet is not drawn up on date of allotment, for arriving at FMV of shares under section 56(2)(vii)(c)(ii), previous balance sheet which is audited and approved in AGM has to be taken into consideration, before allotment of share. [S. 56(2)(vii)(c), R.11UA(1)(c)]

Tribunal held that provisions of section 56(2)(vii)(c) is not applicable in respect of allocation of rights shares allotted to assessee below FMV proportionate to his shareholding in company. Section 56(2)(vii)(c) cannot be invoked in respect of additional shares received by assessee on account of renunciation of rights issue by assessee's wife and father in favour of assessee, since wife/father fall within definition of relatives which are excluded from purview of operation of section 56(2)(vii)(c). Renunciation of rights shares by third party shareholders in favour of assessee, allowing assessee to gain controlling interest results in disproportionate allocation of rights shares in favour of assessee and therefore, in respect of these shares, section 56(2)(vii)(c) shall apply, and income would be taxable.In case balance sheet is not drawn up on date of allotment, for arriving at FMV of shares under section 56(2)(vii)(c)(ii), previous balance sheet which is audited and approved in AGM has to be taken into consideration, before allotment of shares. (AY. 2013-14)

Jigar Jashwantlal Shah v.ACIT (2022)142 taxmann.com 200 / 226 TTJ 161 (Ahd)(Trib)

Editorial : Affirmed, PCIT v. Jigar Jashwantlal Shah [2023] 154 taxmann.com 568 /[2024] 460 ITR 628 (Guj)(HC)

S. 56 : Income from other sources-Gift received from Hindu Undivided Family (HUF)-Group of relatives-Exempt under section 56(2)(vii) of the Act-Amount received by member of HUF exempt under section 10(2) [S. 10(2), 56(2)(vii)]

Held that Hindu Undivided Family (HUF) is a group of relatives hence the gift received by an individual from HUF is exempt under section 56(2)(vii) of the Act.Followed, CIT v. Ateev V. Gala (ITA No. 1906/ Mum/ 2014 dt. 19 th April 2017, Panki Garg v.PCIT (2019) 201 TTJ 378 /181 DTR 305/ 178 ITD 282 (Chd)(Trib). The Tribunal also held that the assessee being member of HUF as gift from current year's income is exempt under section 10(2) of the Act. (AY. 2012-13)

Pandya Munde (Smt) v. CIT(A) (2023) 226 TTJ 49 (UO) (Mum)(Trib)

S. 56 : Income from other sources-Stamp duty valuation-Date of agreement-Valuation as on the date of allotment of the transaction value recorded in the registration document has to be considered-Matter remanded.[S. 56(2)(x)]

Held that valuation as on the date of allotment of the transaction value recorded in the registration document has to be considered. Matter remanded. (AY. 2018-19)

Sulochana Saijani Moodi v.ITO (2023) 225 TTJ 861/ 152 taxmann.com 56 (Mum)(Trib)

S. 56 : Income from other sources-Capital gains-Sale of land-Stamp value-Cost of acquisition and improvement-Directed to allow the deduction. [S. 45, 48, 56(2)(vii)(b)]

Held that while computing the capital gains deduction towards cost of acquisition and improvement is directed to allow the deduction. (AY. 2016-17)

Bhausaheb Sopanrao Bhor v.ITO(2023) 225 TTJ 367 (Pune)(Trib)

S. 56 : Income from other sources-Shares at premium-DCF method-Market value determined by Valuer-Assessing Officer has no right to change the method of valuation-Deletion of addition is affirmed.[S. 56(2) (viib), R.11UA]

Held that the Assessing Officer has not pointed out any infraction of methodology in the valuation made by the valuer.Deletion of addition by the CIT(A) is affirmed. (AY. 2016-17)

ACIT v. Gama Pizzakraft (Overseas) (P) Ltd (2023) 224 TTJ 545 (Delhi)(Trib)

S. 56 : Income from other sources-Shares at premium-FMV-Addition is deleted. [S. 56(2)(viib), R.11UA]

Held that the assessee issued equity shares of face value of Rs.10 at Rs.50 per share while the fair market value of the shares as per R.11 UA(a) was 50.39 per share. Addition made the Assessing Officer is deleted. (AY. 2011-12, to 2013-14)

Dy.CIT v. Devi Iron & Power (P) Ltd (2023) 224 TTJ 59 (Raipur)(Trib)

S. 56 : Income from other sources-Receipt of shares of closely held company for inadequate consideration or without consideration-Amalgamation-Shares received by assessee-company on account of amalgamation for price lower than fair market value-Not within ambit of specific exclusions-Charge attracted-Matter of valuation remanded-Receipt of shares does not stipulate transfer of shares-Interpretation of taxing statutes-Specific charging provision-General provision will give way to specific Provision-Assessment-Protective or Precautionary addition permissible. [S. 2(IB), 2(14) 47(vi), 56 (2)(viia)]

Held that for the purpose of attracting the rigours of section 56(2)(viia) of the Act, the crucial date is the date of receipt of any property being shares of the amalgamated companies. Undoubtedly, the assessee received the property on account of approval of the scheme of amalgamation in the year under consideration and therefore, the income was required to be charged in the year under consideration. The Assessing Officer had rightly charged the income under section 56(2)(viia) of the Act. The principle that there has to be a substantive addition before a protective addition can take place is not universally applicable and is required to be applied with caution and on case to case basis. Admittedly no proceedings were pending at the time of passing of the assessment order dated December 31, 2016 and therefore it was not possible to make the addition on substantive basis for the AY. 2012-13. Further, there was a time-limit provided under the Act for the completion of assessment under section 143(3) for the AY. 2014-15 and the assessment proceedings for the AY. 2014-15, on the basis of protective addition, could not be put in abeyance till the additions were made on substantive basis for the AY. 2012-13. The assessee did not exist in the AY. 2012-13 and no addition could have been made for the AY. 2012-13 as it was not in existence in that AY.. The assessee's contention that the substantive addition should precede the protective addition was not tenable. Moreover since the substantive additions had later been dropped for the AY. 2012-13, the protective addition made in the AY. 2014-15 was required to be converted into a substantive addition. Relied,Lalji Haridas v. ITO (1961) 43 ITR 387 (SC). Held that the scheme of amalgamation provided that pursuant to the order of the High Court or any other appropriate authority sanctioning the scheme the assets be transferred and were deemed to be transferred to and vested in the transferee company. The shares of the amalgamating companies with the underlying assets (including quoted and unquoted shares, preferential shares, etc.) were received in terms of the transfer scheme by the amalgamated company. The amalgamated company had not paid any fair market value of the assets received by it in the form of shares to the amalgamating companies. The requirement under the provision is the receipt of any property being shares of a company without or inadequate consideration which is less than the fair market value. Admittedly, the assessee was a company in which public were not substantially interested and had received "any property" being shares of a company during the previous year relevant to the AY. below the fair market value. Due to the scheme of amalgamation, the assessee received the shares of the amalgamating companies with underlying properties including the shares of various companies and in consideration thereof, had allotted the number of shares at face value of Rs. 10 to various shareholders of the eleven amalgamating companies. Thus, not only had the

transfer of the eleven amalgamating companies taken place but also the transfer of unlisted, listed shares and preferential shares below the market rate. In fact, as mentioned in the scheme of amalgamation, the transfer of shares preceded the receipt of shares by the transferee company. In view thereof, the finding recorded by the Commissioner (Appeals) was incorrect and the view of the Assessing Officer invoking the provisions of section 56(2)(viia) of the Act was in accordance with the law.(AY. 2013-14)
Asst. CIT v. Vertex Projects LLP (2023)105 ITR 105 /225 TTJ 489 / 150 taxmann.com 109 (Hyd) (Trib)

S. 56 : Income from other sources-Interest on enhanced compensation-Seven beneficiaries-Matter is remanded back to Assessing Officer to compute only 1/7th portion of total interest income and TDS credit thereon in hands of assessee. [S. 23, 57]
Assessee received enhanced compensation and interest thereon against a property in which there were seven beneficiaries. Further, TDS was also deducted on same at rate of 10 per cent. Assessee disbursed respective shares to other beneficiaries as per their entitlements. However, said fact was not disclosed before lower authorities,therefore, entire amount of receipts is taxed in hands of assessee. Accordingly the matter is remanded back to Assessing Officer to compute only 1/7th portion of interest income and TDS credit thereon in hands of assessee. (AY. 2017-18)
Rajaram Ganapati Bhat. v. ITO (2023) 203 ITD 789 (Bang) (Trib.)

S. 56 : Income from other sources-Buy back of own shares-Provision of section 56(2)(x) and consequentially rule 11UA would be inapplicable.[S. 56(2)(x), R. 11UA]
During year, assessee company made buy back of its equity shares at rate of Rs. 313.40 per share. Assessing Officer held that fair market value of shares as per rule 11UA was Rs. 370.46 per share.He held that buyback of share resulted into acquisition of property, namely, shares, and therefore, section 56(2)(x) and rule 11UA applied to assessee.Accordingly, he treated the difference as income of assessee under section 56(2)(x) of the Act. CIT(A) deleted the addition. On appeal the Tribunal held that since assessee had bought back its own shares under buy back scheme and same had been extinguished by reducing paid up capital of assessee company, Commissioner (Appeals) was justified in holding that provisions of section 56(2)(x) and consequently rule 11UA would not be applicable. (AY. 2018-19)
DCIT v. Globe Capital Market Ltd. (2023) 203 ITD 758 (Delhi)

S. 56 : Income from other sources-Share premium-DCF-Net assessed liability method-Assessing Officer cannot change the method of accounting. [56(2)(viib), R.11UA]
Assessee-company issued 1,42,856 equity shares at face value of Rs. 10 and for premium of Rs. 130 per share Assessee adopted DCF method to determine share premium and face value amount of shares.However, Assessing Officer discarded method adopted by assessee and he adopted net assessed liability method and determined fair market value of shares at Rs. 5.80 per share Accordingly, he made addition on account of such difference between amount of share premium as income from other sources under section 56(2)(viib). On appeal the Tribunal held that in o Pr. CIT v. Cinestaan Entertainment (P.) Ltd. [2021] 433 ITR 82 (Delhi) ((HC) it was held that since methodology adopted by assessee for valuation of shares was a recognized method of valuation and revenue was unable to show that assessee adopted a demonstrably wrong approach or that method of valuation was made on a wholly erroneous basis or assessee committed a mistake which went to root of process, Assessing Officer could not discard method of valuation of shares adopted by assessee-Whether in view of same, Assessing Officer erred in discarding DCF method of valuation of shares adopted by assessee

and adopting net assessed liability method and accordingly, the addition is directed to be deleted. (AY. 2015-16, 2016-17)
Thinkstations Learning (P.) Ltd. v. ACIT (2023) 106 ITR 1 / 203 ITD 384 (Delhi) (Trib.)

S. 56 : Income from other sources-Allotment of shares at a premium-DCF method-Valuation report of Chartered Accountant-Addition deleted by the CIT(A) is affirmed. [56(2)(viib), R.11U, 11UA]
Assessee-company had allotted equity shares at a premium. It had valued same on basis of DCF method supported with valuation report prepared by Chartered Accountant. Assessing Officer rejecting valuation made by assessee made an addition under section 56(2)(viib) applying book value method.CIT(A) deleted the addition. On appeal Tribunal following the order in Dy. CIT v. Kilitch Healthcare India Ltd. [IT Appeal No. 7061 (Mum) of 2019, order dated 22-3-2022] had held that if method adopted by assessee was in accordance with rules contained in Explanation (a)(i) to section 56(2)(viib) by obtaining a report from a merchant banker or an accountant, Assessing Officer cannot disregard same without cogent reasoning. Order of CIT(A) is affirmed. (AY. 2015-16)
ACIT v. Lifestyle Probuild (P.) Ltd. (2023) 203 ITD 585 (Delhi) (Trib.)

S. 56 : Income from other sources-Share premium-Incorrect report of Chartered Accountant Matter remanded. [S. 56(2)(viib).]
Assessee issued shares of face value of Rs. 10 each and received premium at rate of Rs. 240 per share and submitted valuation report issued by Chartered Accountant. Assessing Officer held that whole of premium at rate of Rs. 240 per share was based on incorrect report of Chartered Accountant and added it to assessee's income under section 56(2)(viib). On appeal the Tribunal held that since Tribunal in case of associate company of assessee held that addition made by Assessing Officer on account of alleged premium was unjustified as those very shares were sold in next financial year at much higher amount, issue was to be remitted to Assessing Officer to examine afresh. (AY. 2013-14)
Clearmedi Healthcare (P.) Ltd. v. ACIT (2023) 203 ITD 656 (Delhi) (Trib.)

S. 56 : Income from other sources-Market value of shares-Discounted Cash Flow method(DCF)-No defect is pointed out-Option is with the assessee-The Assessing Officer cannot change the valuation. [S. 56(2)(viib), R. 11UA 2(a), 11UA(2))(b)]
Assessee issued 9,20,000 shares at rate of Rs. 10 each and further of Rs. 40 each raising total share capital including share premium of certain amount.Assessee had opted to determine FMV of shares by following discounted cash flow (DCF) method under rule 11UA(2)(b).The Assessing Officer determined FMV of shares at Rs. 27.3 per share based on method prescribed under rule 11UA(2)(a), and accordingly, added differential amount under section 56(2)(viib). CIT(A) up held the order of the Assessing Officer. On appeal the Tribunal held that the assessee had produced on record a report of C.A., who had calculated FMV of shares at Rs.50/-per share as per DCF method.The Assessing Officer had not pointed out any defect or infirmity in aforesaid DCF method followed by assessee. Tribunal held that it is at option of assessee to follow either clause (a) or clause (b) of rule 11UA (2), and assessee had followed DCF method prescribed under clause (b) of rule 11UA(2), action of Assessing Officer in determining FMV of shares by following method as per clause (a) of rule 11UA(2) was not justified. (AY. 2014-15)
Deep Jyoti Wax Traders (P.) Ltd. v. ITO (2023) 202 ITD 718 (Kol) (Trib.)

S. 56 : Income from other sources-Purchase of property by participating in e. tender, being highest /successful bidder-Considered as fair market value for the purpose of stamp duty. [S. 45, 50C, 56(2)(x)]

Assessee-firm purchased a property from certain Co-operative Bank for Rs. 3,53,70,000 in auction as aforesaid bank went into liquidation. Assessing Officer held that fair market value as per records available was Rs. 5,84,99,000, therefore difference of Rs. 2,31,29,000 being difference in fair market value and consideration of Rs. 3,53,70,000 was brought to tax under section 56(2)(x). On appeal the CIT(A) deleted the addition relying on circular dated 30-6-2005 issued by the Government of Maharashtra. On appeal the Tribunal held that from valuation report, that valuer valued property at Rs. 3,51,00,000 after considering distressed value of property since it was about 111 years old. Further, assessee, was highest bidder with a price of Rs. 3,53,70,000, and process of bidding was carried out under supervision of a senior-level government functionary acting as a liquidator, and property under consideration was purchased only pursuant to e-tender floated by aforesaid bank.In view of Circular dated 30-6-2005 issued by Government of Maharashtra, while registering document in respect of sale conducted by government/non-government organisation by public auction, highest price as certified in sale certificate or other order issued by such authority should be considered as fair market value for purposes of stamp duty. Order of CIT(A) is affirmed. Relied on Registrar of Assurance & Anr appellants v. ASL Vyapar Private Ltd (CANO 8282 of 2022 Arising out of SLP (C) No.22197 of 2010, wherein the Court held that in case of public auction monitored by the Court, the discretion would not be available to the Registering Authority under section 47A of the Act. (AY. 2020-21)
ITO v. Mahavir EnterpriseS. (2023) 202 ITD 253 (Mum) (Trib.)

S. 56 : Income from other sources-DCF method for valuation-Method could not be rejected without brining any defect in methodology of valuation. [S. 56(2)(viib)]
Assessee issued certain shares at premium and followed DCF method for valuation of share premium. The Assessing Officer rejected valuation of shares made by assessee and treated amount as assessee's income from other sources under section 56(2)(viib) of the Act. On appeal the Tribunal held that lower authorities had not brought out any defect in methodology of valuation of shares and summarily rejected valuation, hence the addition is deleted.(AY. 2015-16)
Balgopal Cold Storages (P.) Ltd. v. ITO (2023) 202 ITD 362 (Delhi) (Trib.)

S. 56 : Income from other sources-Valuation of shares-Two methods-NAV or DCF-Choice with the assessee-The Assessing Officer cannot question valuation per se. [R.11UA]
Tribunal held that valuation of unquoted equity shares in terms of rule 11UA can be determined by assessee as per either NAV Method or as per Discounted Free Cash Flow Method and, Assessing Officer is bound to follow same unless by bringing cogent material on record, Assessing Officer establishes perversity in method adopted by assessee. Once value of shares had been determined by adopting any of two methods, i.e. NAV or DCF, then such value shall be deemed to be FMV of assessee company and Assessing Officer could not have questioned valuation per se. (AY. 2014-15 to 2017-18)
Caddie Hotels (P.) Ltd. v. PCIT *(*2023) 202 ITD 351 (Delhi) (Trib.)

S. 56 : Income from other sources-Purchase of land-Violation of principle of natural justice-Show cause notice proposing additions was received after assessment order was passed-Order is set aside. [S. 50C, 56(2)(vii)]

AO made additions under section on account of difference in consideration paid by assessee on purchase of lands and value determined by Stamp Valuation Authority, since show cause notice proposing additions was received by assessee after assessment order was passed, assessment order is set aside. (AY. 2014-15)
Shailesh Mohanbhai Patel AT & PO. v. ITO (2023) 202 ITD 650 (Surat) (Trib.)

S. 56 : Income from other sources-Immovable property-Tolerance band-Amendment to section 56(2)(x) by Finance Act, 2020 with effect from 1-4-2021-Increase in tolerance band for variation between stamp duty valuation and actual consideration from 5 per cent to 10 per cent is clarificatory/curative in nature having retrospective effect-No addition can be made. [S. 56(2)(x)]
During year, assessee purchased a property and paid consideration which was 5.93 per cent less than stamp duty valuation. Difference between two was added to income of assessee as income from other sources under section 56(2)(x), by Assessing Officer since it did not fall within tolerance band of 5 per cent as available under said section. Amendment in section 56(2)(x) pertaining to increase in tolerance band for variation between stamp duty valuation and actual consideration from 5 per cent to 10 per cent by Finance Act, 2020 is clarificatory/curative in nature having retrospective effect.Therefore, since difference in instant case was less than 10 per cent, no addition could be made in respect of difference between stamp duty valuation and actual consideration during relevant year. (AY. 2018-19)
Sandeep Kumar Poddar. v. ITO (2023) 201 ITD 344 (Kol) (Trib.)

S. 56 : Income from other sources-Purchase of shares for consideration less than market value-Buy-Back of shares-Reduction of share capital-Does not amount to purchase or acquisition of any property-Addition is not justified.[S. 2(22)(d), 56(2)(viia), 115-O, R.11UA]
Held, that the assessee had bought back its own shares from its shareholder and there was reduction of the share capital by such buy-back and hence, this would not amount to purchase or acquisition of any property as envisaged under section 56(2)(viia) of the Act. By receiving its own shares for a consideration less than the book value, the assessee could not be said to have earned hidden asset from the parent company by giving up its right to obtain the true value of its shares transferred, because the provisions of section 2(22)(d) read with section 115-O of the Act would not apply to the assessee, since the shareholders had received the money in lieu of buy-back of shares by the assessee of the parent company. Order of CIT(A) is affirmed. (AY. 2011-12)
Dy. CIT v. Venture Lighting India Ltd(2022) 195 ITD 109/ (2023)102 ITR 354 (Chennai)(Trib)

S. 56 : Income from other sources-Interest on compensation-Enhanced compensation-Compulsory acquisition of agricultural land-Not taxable. [S. 56(2), 145A, Land Acquisition Act, 1894, S. 28]
Agricultural land of assessee was compulsarily acquired under Land Acquisition Act, 1894 and assessee received compensation for same. Assessee also received interest under section 28 of 1894 Act on said compensation from date of acquisition of land till date of payment of compensation to him. Assessing Officer hedl that as per amendments to provision under section 145A, said interest received by assessee would be deemed to be income of year in which it was received and, thus, 50 per cent of interest received on enhanced compensation during year was made taxable. Held that interest granted under section 28 of Land Acquisition Act, 1894 on enhanced compensation received from date of acquisition of land till date of payment of compensation was part of compensation itself and same would not fall

within ambit of expression 'interest' as envisaged under section 145A read with clause (iii) of section 56(2). Therefore, amendment by way of substitution of section 145A and insertion of clause (iii) in section 56(2) would have no applicability on instant case so as to bring said interest to tax. (AY. 2013-14)
Sanjay Bhimrao Patil. v. ITO (2023) 200 ITD 575 (Pune) (Trib.)

S. 56 : Income from other sources-Cumulative preference shares at premium-Produced valuation report for justifying the issue of shares at premium-Deletion of addition by CIT(A) is affirmed. [S. 56(2)(viib), R.11U, R.11UA]
Dismissing the appeal of the Revenue the Tribunal held that the assessee produced valuation report issued by Chartered Accountants, in compliance with sub-clause (c) of rule 11UA(1), wherein, valuation of preference shares. The valuation arrived at by Assessing Officer was a negative figure. Order of CIT(A) is affirmed. (AY. 2015-16)
ACIT v. Rodic Sikkim Project (P.) Ltd. (2023) 200 ITD 32 (Kol) (Trib.)

S. 56 : Income from other sources-Purchase of plots of land at lower price than determined by DVO-Not stock in trade-Provision is applicable-Payment made on cash-Failed to substantiate the cash payment-Credit cannot be given-Estimate by Valuation Officer-Encroachment-DVO is directed to consider the impact of encroachment on land if not already considered in valuation report. [S. 56(2)(vii)(b), 142A]
Assessee purchased three plots of land at lower price than determined by DVO. Commissioner (Appeals) made addition of difference amount to income of assessee under section 56(2)(vii)(b). The Assessee contended before Tribunal that provisions of section 56(2)(vii)(b) were not applicable because plots were purchased for purpose of subsequent sale and, therefore, same were held as stock-in-trade. The Tribunal held that as prior to this transaction of purchase of plots assessee was never engaged in trading of plots of land and he had not demonstrated that he fulfilled criteria for treating purchase of plots as stock-in-trade of his business, provisions of section 56(2)(vii)(b) were applicable. The Tribunal also held that as assessee failed to substantiate the cash payment made by party had been made to seller on his behalf. Appeal is dismissed.As regards valuation determined by the DVO, the Tribunal directed DVO to consider the impact of encroachment on land if not already considered in valuation report. (AY. 2014-15)
Ranjit Shivram Raut. v. ITO (2023) 199 ITD 98 (Mum) (Trib.)

S. 56 : Income from other sources-Share premium-Issue of shares-Not based on audited balance sheet-Fair market value drawn by the Assessing Officer on the basis of Audit Balance sheet could not be faulted.[R. 11UA]
During relevant year, in spite of zero business activities, assessee-company issued shares to two companies in consideration of 60,000 shares received from two companies and submitted valuation report for said shares at Rs. 75 per share. Report filed by assessee was not accepted by Assessing Officer on ground that basis of valuation being balance sheet as on 31-3-2014 was not adopted in Annual General Meeting of company and, hence, it was not as per rule 11UA. Accordingly, Assessing Officer proceeded by valuing shares on basis of audited balance sheet drawn up as on date immediately preceding valuation date and determined price at 65.6447 per share and made additions. Addition is affirmed by the CIT(A). Tribunal held that since Assessing Officer computed fair market value of shares as per audited balance sheet of 31-3-2013 which was as per provisions of Income-tax Act read with relevant IT Rules, same could not be faulted with. (AY. 2014-15)
Sagitarius Securities (P.) Ltd. v. ITO (2023) 199 ITD 809/221 TTJ 545 (Delhi) (Trib.)

S. 56 : Income from other sources-Shares issued at premium-Matter remanded to the Assessing Officer to consider the valuation report submitted by the assessee. [S. 56(2)(viib) R.11U, 11UA]

Assessee-company issued equity shares at face value of Rs. 10 with a premium of Rs. 6/Rs. 9. The AO held that the valuation itwas not as per rule 11UA or not as per any certificate furnished by Chartered Accountant or Merchant Banker as prescribed under rule 11U.He made addition by invoking provisions of section 56(2)(viib) of the Act. Commissioner (Appeals) confirmed order of Assessing Officer. On appeal the Tribunal held that provisions of section 56(2)(viib) did not prescribe only one method for valuation of fair market value of shares and assessee could also justify fair market value of shares based on valuation of its assets as on date of issue of shares including both tangible and intangible assets. The finding of lower authorities that valuation of fair market value of shares as per rule 11UA was not correct was not in accordance with law. Matter remanded to the Assessing Officer to consider the valuation report submitted by the assessee. (AY. 2015-16)

Jayshri Propack (P.) Ltd. v. ACIT *(*2023) 198 ITD 17 (Ahd) (Trib.)

S. 56 : Income from other sources-Stamp duty-Valuation report-Difference between DVO value and consideration paid for purchase of property was to be assessed as income of purchasers in terms of section 56(2)(vii)(b) of the Act. [S. 56(2)(vii)]

The assessee and others purchased a property and there was a difference between consideration paid for purchase of property as per registered document and guideline value of property fixed by authorities for payment of stamp duty.The Assessing Officer referred valuation of property to DVO, difference between DVO value and consideration paid for purchase of property was assessed as income of purchasers in terms of section 56(2)(vii)(b) of the Act. Order of the Assessing Officer is affirmed by the Tribunal. (AY. 2017-18))

S. Ramesh. v. DCIT (2023) 198 ITD 275 (Chennai) (Trib.)

S. 56 : Income from other sources-Valuation of shares-Premium-DCF method-Minor difference in projected and actual financials-Rejection of DCF method adopted is unjustified.[S. 56(2)(viib)

The assessee issued shares at premium valuation determined was on basis of discounted cash flow (DCF) method. The Assessing Officer rejected DCF method on ground that there was huge difference in projected and actual financials for relevant period considered by assessee for adopting DCF method and changed valuation method to NAV and treated excess amount received by assessee as share premium as income under section 56(2)(viib) of the Act. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that the assessee had justified premium charged with help of valuation report. Assessee had explained difference between projected operating profits and actual financials for financial year 2014-15 to financial year 2018-19. There was a minor difference in projected financials and actual financials. Addition is deleted. (AY. 2015-16)

SB Industrial Engineering (P.) Ltd. v. ACIT (2023) 198 ITD 282 /223 TTJ 651 (Chennai) (Trib.)

S. 56 : Income from other sources-Gift from uncle-Constructive gift from uncle-Addition is deleted.[S. 56(2)(vii), 68]

Assessee received a gift of Rs. 50 lacs from his uncle and claimed same as exempt. The Assessing Officer invoked provisions of section 56(2)(vii) on ground that assessee failed to furnish capacity of donor and genuineness of transactions and thus made addition to assessee's total income. CIT(A) affirmed the addition. On appeal the Tribunal held that the

gift had been received as per instructions of assessee's uncle through transfer by his son and daughter-in-law, residing at Singapore. The donor-uncle had confirmed that gift was out of love and affection for welfare of brother's son and family. Since son and daughter-in-law were not alien to donor-uncle but very close relatives, it could be construed that gift was given by son and daughter-in-law first to uncle and thereafter it was remitted to assessee and, thus, gift so received by assessee could be construed as a constructive gift from uncle. Therefore, addition is deleted. made under section 56(2)(vii) could not be considered to be income of assessee and same was liable to be deleted. (AY. 2014-15)
P. Srinivasan. v. ITO (2023) 198 ITD 287/223 TTJ 902 (Chennai) (Trib.)

S. 56 : Income from other sources-Share premium-DCF method-Holding company-Bringing the premium received from the holding company to tax net under these deeming fictions would tantamount to stretching the provision to an illogical length and will lead to some kind of absurdity in taxing own money of shareholders without any corresponding benefit-Addition is deleted. [S. 56(2)(viib) R.11 UA]
The Assessee Company issued certain shares to its holding company against a face value of Rs. 10 per share. It adopted the discount cash flow (DCF) method for the determination of fair market value (FMV) of shares as per the valuation report of the independent valuer. The AO held that the FMV of shares determined as per the DCF method was without any sound factual basis and computed the fair market value of shares at Rs.11.54 per share by applying the NAV method and considering the difference between FMV as per DCF method qua NAV method a chargeable income of assessee u/s. 56(2)(viib) and added amount in assessee's income. On appeal the Tribunal held that S. 56(2)(viib) creates a legal fiction whereby the scope and ambit of expression 'income' has been enlarged to artificially tax a capital receipt earned by way of premium as a taxable revenue receipt. Hence deeming fiction ordinarily requires to be read to meet its purpose of taxing unaccounted money and thus needs to be seen in the context of peculiar facts. The legal fiction has been created for a definite purpose and its application need not be extended beyond the purpose for which it has been created. Bringing the premium received from the holding company to tax net under these deeming fictions would tantamount to stretching the provision to an illogical length and will lead to some kind of absurdity in taxing own money of shareholders without any corresponding benefit. Held that the action of AO was contrary to provisions of section 56(2)(viib) and therefore addition deleted. (AY. 2016-17)
Dy. CIT v. Kissandhan Agri Financial Services (P.) Ltd. [2023] 201 ITD 159 (Delhi)(Trib.)

S. 56 : Income from other sources-Share application-Date of allotment-Provision can be invoked on the date of allotment and not on the date of share application-The Assessing Officer can refuse method of valuation after proving that methodology resorted by assessee is incorrect or not as per standards laid down. [S. 56(2)(viib), R. 11UA(2)]
Tribunal held taht share allotment date and not share application, is relevant date to trigger provisions of section 56(2)(viib) as after a subscriber entity advances amount for allotment of shares, subscriber entity has every right to withdraw or cancel its request for allotment Therefore, where assessee received money for allotment of shares in assessment year 2011-12 and shares were allotted in assessment year 2015-16, provisions of section 56(2)(viib) had to be invoked when assessee allotted shares on finalization of share allotment.Tribunal also held that Rule 11UA(2) prescribes two methods-Book Value method and DCF method for valuation and lays down that option to choose method to be adopted to determine FMV of unquoted shares is not with Assessing Officer but with assessee. However, Assessing Officer

can refuse method of valuation after proving that methodology resorted by assessee is incorrect or not as per standards laid down.(AY. 2015-16)
ITO v. Appealing Infrastructure (P.) Ltd (2023) 201 ITD 719 (Delhi)(Trib)

S. 56 : Income from other sources-Share premium-Discounted cash flow method (DCF)-Not justified in rejecting the method followed by the assessee-Matter remanded. [S. 56(2) (viib), R. 11 UA]
Tribunal held that, the DCF method followed is one of the permissible method of valuation of shares in terms of rule 11UA of IT Rules, 1962 and said method is based on free cash flow of future years on the basis of projected financial statements. The projected financials under DCF method need not be equal to the actual performance of the company in subsequent years. However, there should be some degree or fair estimation and assumption while arriving at projected free cash flow. only on the ground that there was a vast difference between projected financials and actual performance of the company for two assessment years. The issue set aside to the file of the AO and directed to re-consider the issue of addition towards share premium u/s. 56(2) (viib). The AO is free to examine method followed by the assessee, however, he does not have power to change method followed by the assessee from DCF method to NAV method, and to decide the issue in accordance with law. (AY. 2015-16)
Brio Bliss Life Science (P.) Ltd. v. ITO [2023] 200 ITD 167 (Chennai)(Trib.)

S. 56 : Income from other sources-Stamp valuation-Circle rate-Unexplained investments-Purchase was done at circle rate-Reference to valuation officer is not valid-Addition is deleted [S. 56(2) (vii), 69]
The assessee had purchased four properties with his brothers at circle rate/stamp duty value and had 1/4th share in all four properties. The AO has referred the valuation of the property purchased by the assessee to the DVO and assessed the difference between the purchase price i.e. circle rate/stamp duty value and the value determined by the DVO treated as income of the assessee u/s 56(2)(vii) r.w.s. 69. The CIT(A) upheld the order of the AO. The Tribunal accepted the contention of the assessee that the purchase was done at circle rate and there was no understatement of purchase rate whatsoever and therefore, section 56(2) (vii) could not be invoked. The Tribunal further held that property could be referred to DVO only if assessee disputes stamp duty value of property Therefore, impugned invocation of section 56(2)(vii) was unjustified and said addition made by Assessing Officer was to be deleted.(AY. 2017-18)
Vinit Kumar v. Dy.CIT (2023) 201 ITD 499 (Delhi)(Trib.)

S. 56 : Income from other sources-Capital gains-Income from house property-lease agreement-Forfeiture of part of advance rent received-No extinguishment of rights as the right to the rent-Neither assessable as capital gain nor income from house property-Assessable as income from other source.[S. 22,45]
The assessee had leased its property and received an advance rent. The said lease agreement was cancelled and certain amount was retained by the assessee. The assessee treated the same as capital gains, being extinguishment of rights and offered the same to tax at a concessional rate of 20%. AO assessed this income as being 'income from other sources' and subjected to tax at normal rates of tax. The ITAT concurred with the findings of CIT(A) and held that there is no extinguishment of any right as the right to rent is not transferred to anyone by the assessee and also because the assessee can very well rent the property to any other person as it wishes after the forfeiture of deposit. Further, the amount was received as a security deposit and a part of the same has been forfeited by the assessee, which changed its character and the same becomes an income of the assessee and cannot be assessed as capital gains. The same

could not be taxed under 'house property' as the amount received did not remain like 'advance rent' therefore, the income was liable to be taxed as 'income from other source'. (AY. 2012-13)
ACIT v. Gimpex (P) Ltd. (Chennai)(2023) 202 ITD 784 / 106 ITR 44 (SN) (Chennai) (Trib).

S. 56 : Income from other sources-Interest received under section 28 of Land Acquisition Act, 1894-Chargeable to tax. [S. 56(2)(viii), 145A(b), Land Acquisition Act, 1894,.28, 33, Right to Fair Compensations and Transparency in Land Acquisition, Rehabilitation and Re-Settlement (RFCT TLAAR) Act, 2013]
Tribunal held that the land was acquired much earlier and received enhanced compensation before the enactment of RFCTAAR law. Accordingly the interest received is chargeable to tax under section 56(1) (vii) read with section 145A(b) of the Act. Followed Shivjirao v. State (WP No. 5042 of 2013 dt 27-8-2013 (Bom)(HC). (AY. 2013-14)
Azizuddin Latiphoddin Kazi v. ITO (2023) 203 ITD 152 (Pune) (Trib)

S. 56 : Income from other sources-Relative-Individual-Private discretionary trust-Gift of equity shares to trust-Trust crested for the benefit of self and relatives-Any sum received without consideration, aggregate value of which exceeds fifty thousand rupees-Pass through entity-Provision of section 56(2)(x) is not applicable [S. 56(2)(x))]
The assessee is a private discretionary trust. Settlor Mrs Archana Miglani settled moveable assets (Value of equity shares) in favour of the trust. The beneficiaries of the Trust are, self, co-sister in law, Mother in law, children of Mrs Archana & Children of Mr Anuj Miglani, Children of Mrs Priyanka & Mrs Ankit Nephew & Nice of Miglani. The Assessing Officer treated the entire value of moveable assets (Value of equity shares) settled by settlor of the Trust, Smt Archana Miglani in favour of trust by treating the same as income under section 56(2)(x) of the Act. On appeal the CIT(A) deleted the addition. On appeal by Revenue,dismissing the appeal of the Revenue the Tribunal held that, the discretionary trust created by Smt. Archana Miglani for the benefit of her self, her co-sister in law, mother in law, own children, nephew and niece any sum of money received by the assessee trust is not covered under section 52(2)(x) by virtue of the proviso, which reads as under :-
" Provided that this clause shall not apply to any sum of money or any property received.-
(1) to (ix)---------

(x) from an individual by a trust created or established solely for the benefit of relative of the individuals ;"

Tribunal also held that assessee in this case a pass through entity and it was the settlers money/ property which is given to the private discretionary trust for benefit of herself and her relatives. Order of CIT(A) is affirmed. (ITA No. 2829/Mum/ 2022 dt 23-2-2023)(AY. 2018-19)
ITO v. Aam Family Private Trust (Mum)(Trib) www.itatonlline.org

S. 56 : Income from other sources-Agreement value less than stamp valuation-Property purchased-Slum area-Valuation report of valuer was filed-Not referred to valuation Officer-Request to send back the matter to Assessing Officer to refer the matter to DVO was rejected-Addition was deleted [S. 56(2)(vii))(b)]
Assessee has purchase a property of 19,50,000/-. The Assessing Officer held that the circle rate of the flat in question (as per the Stamp Valuation Authority) was 41,34,330/-. Hence added the difference of 21,84,330/-u/s 56(2)(vii) (b) of the Act. CIT (A) confirmed the

addition. On appeal the Tribunal held that the Assessee has submitted the valuation report from Registered Valuer. It was argued by the Revenue to restore the matter back to AO for referring the valuation of flat to DVO. Tribunal held that referring the matter back to DVO will tantamount to condoning the erroneous action of AO and consequently allowing a second inning for no fault of assessee and would tantamount to breathing fresh life to an order which on the facts on records exposes the arbitrary and whimsical action of AO and so is unsustainable in law. Therefore, the addition made by AO to the tune of 21,84,330/-u/s 56(2)(vii)(b) was directed to be deleted. (ITA No. 51/Mumm/2023 dt. 31-3-2023)(AY. 2018-19)

Manohar M.Paliwal v. ITO (2023) The Chamber's Journal-May-P. 107 (Mum)(Trib)

S. 56 : Income from other sources-Redevelopement-Rent-Allternative accomodation-Rent Received from builders on account of redevelopment for alternate accommodation-Hardship allowance-Not taxable as income from other sourceS. [S. 4]

During the assessment proceedings, AO observed from the capital account that assessee has shown a receipt as a capital accounts receipt from the builders. It was submitted that such amount is a monthly rental compensation from the builder for rent of alternate accommodation as his building has gone for redevelopment.

The ITAT observed that the assessee has received Rs. 3,73,191/-from the builder for alternate accommodation. However, assessee has not utilized these funds for any accommodation. However, he adjusted and lived with his parents. It clearly indicates that even though assessee has not utilized the rent received for his accommodation, however, assessee has faced hardship by vacating the flat for redevelopment and also adjusted himself during the period. Coordinate Bench in case of *Smt. Delilah Raj Mansukhani vs. ITO (ITA No. 3526/Mum/2017)* was also relied upon. It was concluded that receipt of compensation for hardship is in the nature of capital receipt and accordingly addition was deleted. [ITA No. 2823/ Mum/2022 dt. 03/04/2023 (AY 2013-2014)

Ajay Kothari v. ITO (Mum)(Trib.) (UR)

S. 56 : Income from other sources-Share premium-Valuation of shares-Share premium reflected in balance-sheet-Figures reflected in books of account or in balance-sheet prepared in accordance with Companies Act, 1956-AO does not have power to disturb-Share premium to be included in "reserves and surplus"-AO under "liability approach" ignoring share premium in balance-sheet under "reserve and surplus"-Under "asset approach", treating share premium as liability-Both workings flawed-Net asset value method adopted by assessee recognised method-Taxation of share premium u/S. 56(2)(viib) of the Act is only by way of deeming fiction.-Addition unsustainable : [S. 56(2)(viib), **Rule**,**11UA]**

The assessee, incorporated in 1999 and engaged in computer industry, had issued 50 lakhs shares of Rs. 20 per share comprising of face value of Rs. 10 and share premium of Rs. 10 each. However during the previous year relevant to the AY 2013-14, the assessee received only Rs. 10, which included share premium of Rs. 7.50 per share and face value of Rs. 2.50 per share. Accordingly the subscribed share capital of the assessee-company increased from 8,67,000 shares to 58,67,000 shares. The paid-up share capital increased from Rs. 86,70,000 to Rs. 2,11,70,000 resulting in an increase of Rs. 1,25,00,000 (50 lakhs shares × Rs. 2.5 per share). The A.O. valued the shares of the assessee-company using the net asset value method as on March 31, 2012 by ignoring the share premium figure of Rs. 62 lakhs reflected in the "reserves and surplus" on the premise that the assessee had no active business and derived only interest income. Accordingly, he determined the fair market value of the shares of the assessee-company at Rs. 14 as against the issue price of Rs. 17.50 per share and brought the

excess of Rs. 3.50 per share to tax as income u/s. 56(2)(viib) of the Income-tax Act, 1961. This action was upheld by the Commissioner (Appeals). On appeal, the Tribunal deleted the addition made by the A.O. The Tribunal held that the A.O. had under the "liability approach" ignored share premium of Rs. 62 lakhs lying in the balance-sheet as on March 31, 2012 under "reserve and surplus". Under the "asset approach", the A.O. treated the share premium of Rs. 62,00,000 as a liability and computed the net asset value. Both workings of the A.O. were completely flawed as they were neither in consonance with the mandate of the Companies Act, 1956, nor the provisions of rule 11UA of the Rules. Since no mistake was found in the valuation adopted by the assessee, the addition made by the A.O. would have no basis. In any case, the net asset value method adopted by the assessee was one of the recognised methods provided in rule 11UA of the Rules. Accordingly, the addition made by the A.O. in the sum of Rs. 1,75,00,000 u/s.56(2)(viib) of the Act, was unsustainable. Rule 11UA does not prohibit inclusion of share premium as part of reserves and surplus. Even if the recipient company does not justify receipt of share premium, the share premium reflected in the balance-sheet cannot be ignored. Taxation of share premium u/s. 56(2)(viib) of the Act is only by way of deeming fiction. In any case, what is required for the purpose of valuation of shares is the figures reflected in the books of account or in the balance-sheet prepared in accordance with the Companies Act, 1956 which the A.O. does not have power to tinker with. Only any reserve that has been set apart towards depreciation would not get included under "reserves and surplus". In other words, such reserves set apart for depreciation would partake of the character of a liability for the purpose of determination of fair market value of shares. Hence, the share premium would be included in the "reserves and surplus" even under rule 11UA of the Rules. It is wrong on the part of the A.O. to ignore it while valuing the shares of the assessee-company both under the "liability approach" and considering the same as a liability under "asset approach". (AY. 2013-14)

CNR Leading Softek P. Ltd. v.ITO (2023)104 ITR 26 (SN)(Delhi)(Trib)

S. 56 : Income from other sources-Assessee's plant at pre-operation stage, interest accruing on fixed deposits after business set up, deposits linked with projects would not alter character of income after business set up. [S. 28(i)]

The Tribunal dismissed the appeal and held that, there was a difference between setting up of business and commencement of business. Once the business is set up though it may not have yet commenced, the assessee would be eligible to claim the business expenditure as revenue expenditure. Any income arising after setting up of the business would be revenue in nature and assessable to tax. The interest income had accrued on fixed deposits made by the assessee and had accrued after the business has been set up. In fact, the assessee itself had offered a part of the interest income to tax but claimed to set off the remaining interest from capital work-in-progress on the reasoning that deposits were linked with the project. When the assessee had generated business income and claimed revenue expenditure including finance cost, mere fact that the deposits were linked with projects would not alter the character of the income after the business has been set up. The interest arose only because of creation of fixed deposits which was assessable only as income from other sources. (AY. 2011-12, 2012-13, 2014-15)

RKM Powergen P. Ltd. v. Asst. CIT (2023)105 ITR 68 (SN)(Chennai)(Trib)

S. 56 : Income from other sources-Gift from relative-There need not be any occasion for receipt of gift from relative [S. 56(2)(v), 68]

The assessee received gift of shares and the amount from his brother who is residing at USA. The Assessing Officer added the amount of gift as income of the assessee on the ground that there was no occasion of gift in the absence of any family function, namely marriage etc. CIT

(A) deleted the addition. On appeal by Revenue the Tribunal up held the order of CIT(A). Relied on Dr. Vempala Bala Manohar v.ITO [2017] 88 taxmann.com 410 (Visakhapatnam)(Trib), Pendurthi Chandrasekhar (2018) 91 taxmann.com 229 (AP)(HC) (ITA No. 379/ Ahd/ 2020 dt.19-10 2022)(AY. 2012-13)
ITO v. Dr. Satish Natwarlal Shah (2023) BCAJ-January-P. 33(Ahd)(Trib)

S. 57 : Income from other sources-Deductions-Failure to comply the various notices-Reasonable cause-Matter remanded-Quantum is remanded back-Penalty is quashed.[S. 56, 271 (1)(c)]
AO disallowed deductions claimed under section 57 and under Chapter VIA for non-compliance with notice issued to assessee and Commissioner (Appeals) dismissed appeal as same remained unrepresented. On appeal the Tribunal held that since assessee had shown reasonable and plausible explanation for non-compliance before lower authorities, the matter is restored back to Assessing Officer to pass a speaking order. Tribunal held that issue relating to addition made in quantum assessment had been restored back to Assessing Officer to pass a speaking order, penalty levied under section 271(1)(c) world not survive. (AY. 2011-12)
Gauri Dhirenkumar Shah. v. ITO (2023) 203 ITD 293 (Surat) (Trib.)

S. 57 : Income from other sources-Deductions-Interest income on fixed deposits-Interest expenditure had not given rise to corresponding interest income-Not allowable as deduction. [S. 56, 57(iii)]
Held that in absence of any live nexus between expenditure and corresponding income, revenue authorities had rightly disallowed claim of interest expenses having regard to narrower scope of deductions eligible under section 57(iii) of the Act. (AY. 2010-11)
RRPR Holding (P.) Ltd. v. DCIT (2023) 201 ITD 781/226 ITR 559 (Delhi) (Trib.)

S. 57 : Income from other sources-Deductions-Shortfall in sale consideration for transaction of Sale Of Equity Shares-Burden of fees paid for sale transaction claimed during year of sale-Genuineness of expenditure not in doubt and facts narrated by assessee found correct-Not to be disallowed merely because paid in earlier year.[S. 56(2), 57(1)]
AO had disallowed the shortfall in the sale consideration of sale of shares by the assessee and brought this sum to tax. He also disallowed the sum paid as cost incurred for effecting sale of equity shares on the ground that the major portion of the professional fees was paid in the preceding year and could not be allowed during the year under appeal. The CIT(A) deleted the disallowances. The ITAT observed that clause (viia) to section 56(2) of the Act inserted with effect from 1.06.2010 deals with the consideration received against sale of equity shares below the fair market value or without consideration and if it exceeds the said consideration such excess amount is subjected to tax. The fact remained that there had been a change in the sale consideration, as what was received was less than what was agreed. The transaction having entered through an agreement, there must have been some correspondence between both the parties to agree to the rate of Rs. 16.93 per share. It further noted that the assessee failed to file any documentary evidence to explain the reason for the shortfall. The CIT(A) had placed the burden of proof on the AO which was not justified. Thus, it was held that this issue of addition regarding shortfall of receiving sale consideration from sale of equity shares was restored to the AO for examination afresh for which necessary details shall be filed by the assessee so as to enable the AO to decide in accordance with law.

It was further held that the expenditure towards professional fees paid for the sale transaction had been rightly claimed during the year under appeal, because the genuineness of the expenditure was not in doubt and the facts as narrated by the assessee were found to be correct. Therefore, the findings of the CIT(A) allowing the claim of cost incurred for effecting transaction of sale of equity shares was to be confirmed. (AY.2013-14)
ACIT (LTU) v. Tamilnadu Petroproducts Ltd. (2023) 103 ITR 92 (SN) (Chennai)(Trib)

S. 57 : Income from other sources-Deductions-Compulsory acquisition of property-Interest on enhanced compensation-Assessable as income from other sources and not as business income-Real estate business is not relevant-Entitled to deduction of 50 Per Cent. [S. 28(i), 56(2)(viii), 57(iv), 145B(1)]
The AO disallowed the claim of deduction @ 50% under section 57(iv) of the Act in respect of interest received on enhanced compensation on the ground that as the assessee is in the business of real estate the interest income arising from compulsory acquisition of property is taxable under the head profit and gains of business and profession (PGBP) and not income from other sources. CIT (A) up held the disallowance. On appeal the Tribunal held that in view of overriding nature of provisions of Section 56(2)(viii), assessee's nature of business was of no relevance, and, consequently, assessee was entitled to statutory deduction under Section 57(iv) in respect of interest received on enhanced compensation for compulsory acquisition of property. Assessable as income from other sources and not as business income. (AY. 2015-16)
Philia Estates Developers (P) Ltd. v. ACIT[2023] 201 ITD 239 /104 ITR 15 (SN) (Delhi) (Trib)

S. 57: **Income from other sources-Deductions-Interest earned on fixed deposit-Nexus between expenditure incurred and the income earned [S. 56, 57(iii)]**
According to the provisions of Section 57(iii) of the Act, all the expenditure laid out or expended wholly and exclusively for the purpose of making or earning income has to be allowed as deduction.
The Assessing Officer noted that the assessee had earned interest amounting to Rs.1,03,23,788 on fixed deposits receipts. Out of the interest on fixed deposits receipts, the assessee claimed expenses of Rs. 46.76 lakhs which the Assessing Officer disallowed and this was confirmed by the Commissioner (Appeals).
Held, (i) that the income of the assessee fell under the head "Income from other sources".
(ii) That there should be a nexus between the expenditure incurred and the income earned. The employee remuneration, salary, legal expenses, board meeting expenses, director sitting fees were not attributable to the interest earned from the fixed deposits. The order of the Commissioner (Appeals) was justified. (AY. 2015-16)
Avantha Consulting Services Ltd. v. Dy. CIT (2023) 153 taxmann.com 182/ 104 ITR 723 (Delhi)(Trib)

S. 57 : Income from other sources-Deductions-Premature encashment of Fixed Deposit-Loss on interest-No expenditure incurred to earn interest income-Deduction disallowed-No evidence that loan taken from third party with whom deposit placed had connection with earning of any interest.[S. 56, 57(iii)]
Held, that the loss of interest income on account of premature encashment of fixed deposits was not an expenditure incurred by the assessee to earn interest income. Therefore, CIT (A) was justified in disallowing deduction. Furthermore, assessee had failed to produce any evidence before the Assessing Officer or before the Commissioner (Appeals) to prove that

the loan taken had connection with earning of interest income. Thus, deduction was rightly disallowed by the CIT (A). (AY. 2014-15).
Jatinder Kumar Suri v. Dy. CIT (IT) (2023)101 ITR 47 (SN) (Delhi) (Trib)

S. 57 : Income from other sources-Deductions-Purchase of land for construction of hotel building-Capitalisation of project and preoperative expenses pending-FDs receipts purchased for letter of credit and bank guarantees given to various suppliers-Interest income not income from other sources-AO to consider interest as part of capital receipt and to be deducted from cost of project.[S. 56, 57(ii)]
Held, that the assessee had filed complete details of fixed deposits and has provided details of letters of credit and bank guarantee against which fixed deposit was taken and that the interest earned on fixed deposit was inextricably linked to the setting up of the hotel as such. Therefore, the findings of the Commissioner (Appeals) in treating interest of as income from other sources was erroneous and against the facts of the case. The Assessing Officer was to consider the interest of as part of capital receipt to be deducted from the cost of project. (AY. 2009-10)
Vatika Hotels P. Ltd. v. Asst. CIT (2023)101 ITR 21/ 199 ITD 741 (Delhi) (Trib)

S. 60 : Transfer of income where there is no transfer of assets-Revocable transfer-Reduction of share capital and subsequently, conversion of FCD into equity shares-Written off its investment in its Profit and Loss account-There is no generation of income in the transaction of reduction in share capital and conversion of FCDs into shares-Addition is deleted.[S. 63]
The assessee, TBHPL, had invested in shares of Group Company named TGSPL. Under the scheme duly approved by High Court, TGSPL carried out reduction of capital. Hence, the assessee had written off its investment in its Profit and Loss account as exception item. Subsequent to reduction of capital, TGSPL issued shares to Serco Netherlands and Serco International on conversion of FCDs held by them. The AO held that reduction in share capital by TGSPL of the shares allotted to the assessee, has resulted in benefit to another group company Serco International SARL and made addition u/s. 60 r.w.s. 63 of the Act by taking into account FMV of shares of TGSPL. The CITA(A) confirmed the addition. On further appeal, the addition was deleted by the Tribunal holding that there is no generation of income in the transaction of reduction in share capital and conversion of FCDs into shares. (AY. 2016-17)
Teleperformance BPO Holdings (P.) Ltd. v. NFAC (2023)200 ITD 60 / 222 TTJ 997 (Mum)((Trib.)
S. 64 : Clubbing of income-Minor child-Deduction of tax source-Interest-Accrual-Tax to be deducted by bank as and when interest accrued even before child attained majority-Method of accounting-The provisions of section 64(1A) are not ultra vires the Constitution of India. [S. 64(IA), 145, 194A, 197(1), 264]
Dismissing the petition the Court held that harshness in a statutory provision is no ground to hold that it should not be applied in a given case. If the income of the minor child was to be taxed only after she attained majority, the financial burden on her when she attained the age of majority would be huge and it would be practically impossible to get credit of the tax deducted at source by the bank in the year in which the minor attained majority. Further, the financial hardship to the assessee was not as great as projected. The tax deducted by the bank under section 194A at (10 per cent.) would be available as credit under rule 37BA of the Income-tax Rules, 1962. The benefit of threshold exemption was also available. Considering that the assessee would have to bear the tax only on the balance amount and also considering that the interest income on the sum of Rs. 60 lakhs could not create a huge financial burden

on the assessee the plea of extreme prejudice or difficulty was rejected. The provisions of section 5 had no relevance. The assessee's daughter being a minor, the question of her following a system of accounting under section 145 regularly being employed by the assessee did not arise for consideration. The Court held that the provisions of section 64(1A) are not ultra vires in the Constitution of India. K. M.Vijayan v. UOI (1995) 215 ITR 371 (FB) (Mad) (HC) wherein the Court held that, A statutory provision can be declared unconstitutional only on the following grounds : (i) violation of the fundamental rights guaranteed under Part III of the Constitution ; (ii) lack of legislative competence ; (iii) violation of the basic structure doctrine; and (iv) manifest arbitrariness. Shayara Bano v. UOI [2017] 9 SCC 1. (AY.2013-14)

Sibi Joy v. ITO (TDS) (2023)452 ITR 71 / 332 CTR 651/ 226 DTR 105 (Ker) (HC)

S. 68 : Cash credits-Bank deposit-Failure to prove the nature of the source-Order of High Court is affirmed-SLP of assessee dismissed.[Art. 136]

High Court held that that though the assessee had disclosed source of deposit but could not establish nature thereof. Three conditions required to be proved could not be proved, the addition was affirmed. SLP of assessee is dismissed.

Rupal jain (Mrs) v. CIT (2023) 454 ITR 813 / 294 Taxman 261 (SC)

Editorial : Affirmed, Rupal jain (Mrs) v. CIT (2023) 152 taxmann.com 345 (All)(HC)

S. 68 : Cash credits-Long term capital gains-Penny stock-No adverse comment by stock exchange-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 10(38) 45, Art. 136]

The Assessing Officer disallowed exemption claimed by assessee under section 10(38) and made additions, alleging involvement in penny stock which were being misused for providing bogus accomodation of LTCG. Tribunal deleted the addition. On appeal High Court affirmed the order of the Tribunal on the ground that there was lack of adverse comments from stock exchange and officials of company involved in these transactions and no material relating to assessee was found in investigation wing report. SLP of revenue is dismissed. (AY. 2014-15)

PCIT v. Renu Aggarwal (Smt) (2023) 456 ITR 249 /294 Taxman 521 (SC)

Editorial : PCIT v. Renu Aggarwal (Smt) (2023) 153 taxmann..com 578 (All)(HC)

S. 68 : Cash credits-Advanced by partners of Firm-Unexplained Cash credits cannot be treated as income of firm.[S. 260A]

Three persons, out of whom two were partners of the assessee-firm, made investments in the assessee-firm which were transferred to the unsecured loan account by way of a journal entry. The Assessing Officer came to the conclusion that they did not have the creditworthiness to advance the cash credit and doubted the genuineness of the transactions. Order of the the Assessing Officer is affirmed by the Tribunal.On appeal the Court held that the unexplained cash credits would have to be assessed at the hands of the partners of the firm and not the firm itself. Such amounts could not have been treated as income of the firm relying upon section 68 of the Act. The Tribunal was not justified in upholding the investments made by the two partners as addition on the ground that the investment made by the partners is undisclosed income of the firm.(AY.1998-99)

Nova Medicare v. ITO (2023)459 ITR 477 /150 taxmann.com 363/ 333 CTR 748 (Telangana)(HC)

S. 68 : Cash credits-Long-term capital gains-Penny stock-Accommodation entries-Deletion of addition by the Tribunal is affirmed-No substantial question of law. [S. 45, 115BBE, 260A]

Dismissing the appeal of the Revenue the Court held that the Assessing Officer had not made any independent inquiry. The additions were made merely relying on the report of the Investigation Wing of the Department. Relied on PCIT v. Krishna Devi (Smt) (2021) 431 ITR 361 (Delhi)(HC).*(*AY.2015-16)

PCIT v. Karuna Garg (2023)457 ITR 591 (Delhi)(HC)

S. 68 : Cash credits-Bogus purchases-Estimate of 5% of alleged bogus purchases confirmed by the Tribunal is affirmed-No substantial question of law.[S. 69, 260A]

Dismissing the appeal of the Revenue the court held that order of the Tribunal estimate of 5% of alleged bogus purchases (AY.2010-11)

PCIT v. Jigisha Satishkumar Mehta (2023)456 ITR 661/ 155 taxmann.com 279 (Guj)(HC)

Satish Kumar Pandey v. ACIT (2023)456 ITR 459/149 taxmann.com 90 (Karn)(HC)

S. 68 : Cash credits-Setttlement Commisssion-Undisclosed income-Bogus share capital-Undisclosed income taxed in the assessment of flagship company-Deletion of addition by the Tribunal is affirmed. [S. 132(4), 245D, 260A]

The undisclosed income of group was surrendered by flagship company before Income-tax Settlement Commission (ITSC) with specific pleadings that profit made outside books was utilized for making investments in share capital of group companies. ITSC settled income. Assessing Officer on basis of statement of director, held investment in form of share capital in various companies as accommodation entry and made additions under section 68 and also estimated the commission.Tribunal deleted the addition on the ground that flagship company specifically declared that undisclosed income which was offered before Settlement Commission had been applied by way of share capital to group entities. Therefore, undisclosed income already having been taxed in hands of flagship company could not again be subjected to tax in hands of assessee companies in form of application of said income as their share capital. On appeal by the Revenue High Court affirmed the order of the Tribunal. (AY. 2013-14, 2014-15)

PCIT, Central v. Surya Agrotech Infrastructure Ltd. (2023) 295 Taxman 745 (Delhi)(HC)

S. 68 : Cash credits-Long term capital gains-Penny stock-No adverse comment by stock exchange-Order of Tribunal is affirmed. [S. 10(38) 45, 260A]

The Assessing Officer disallowed exemption claimed by assessee under section 10(38) and made additions, alleging involvement in penny stock which were being misused for providing bogus accommodation of LTCG. The Tribunal deleted the addition. On appeal High Court affirmed the order of the Tribunal on the ground that there was lack of adverse comments from stock exchange and officials of company involved in these transactions and no material relating to assessee was found in investigation wing report. Tribunal also relied on various judgements of lucknow Benches wherein the Tribunal relied on Judgement of Delhi High Court in Krishan Devi.(ITA No. 205 of 2020 dt. 6-7-2022 (Lucknow Bench) (Trib) (SMC) (AY. 2014-15)

PCIT v. Renu Aggarwal (Smt) (2023) 153 taxmann.com 578 (All)(HC)

Editorial : SLP of Revenue is dismissed, PCIT v. Renu Aggarwal (Smt) (2023) 456 ITR 249 /294 Taxman 521 (SC)

S. 68 : Cash credits-Bank deposit-Failure to prove the nature of the source-Addition is confirmed. [S. 260A]

High Court held that that though the assessee had disclosed source of deposit but could not establish nature thereof and failed to prove i. e. identity of the creditor ; (ii) capacity of such creditor to advance money ; and genuiness of the transactions. Accordingly order of tribunal is affirmed. Followed, Anil Rice Mills v. CIT (2006) 282 ITR 236 (All)(HC)

Rupal jain (Mrs) v. CIT (2023) 152 taxmann.com 345 (All)(HC)

Editorial : SLP of Revenue is dismissed, Rupal jain (Mrs) v. CIT (2023) 454 ITR 813 / 294 Taxman 261 (SC)

S. 68 : Cash credits-Sale of shares-Capital gains-Penny stock-Finding of investigation wing-Exemption-Sham transaction-transactions were done through recognized stock exchange-There was no evidence that assessee had paid cash in return of receipt through cheque-Order of Tribunal deleting the addition was affirmed. [S. 10(38), 45, 69C]

Assessee claimed exemption under section 10(38) in respect of long-term capital gain earned on sale of shares of Global Securities Ltd Assessing Officer denied exemption on ground that transactions in purchase and sale of shares were sham transactions and treated sale proceeds of shares as undisclosed income under section 68 of the Act. The statement of Shri Anil Keemka was also referred in the assessment order. Commissioner (Appeals) also upheld addition. On appeal the Tribunal held that the Assessing Officer had not found any fault in documents produced by assessee, payments were received through account payee cheques and transactions were done through recognized stock exchange, and there was no evidence that assessee had paid cash in return of receipt through cheque held that transactions were genuine and deleted addition. On appeal by Revenue High court affirmed the order of the Tribunal. (AY. 2013-14, 2014-15)

PCIT v. Sandipkumar Parsottambhai Patel (2023) 457 ITR 368/ 292 Taxman 579 (Guj.)(HC)

Editorial : Order of Tribunal in Sandipkumar Parsottambhai Patel v. ACIT (2022) 137 taxmann.com 373 (Surat)(Trib. (ITA Nos 8 &9 (STR) of 2019 dt.29-11-2021 is affirmed.

S. 68 : Cash credits-Loan for purchase of land-Explained the source-Remand report was obtained-Order of Tribunal deleting the addition is affirmed. [S. 133A, 260A]

Dismissing the appeal of the Revenue the Court held that the only question was with regard to the creditworthiness. Both the authorities have concurrently held that the initial burden, even if not discharged at the level of the Assessing Officer, but by production of documents before the Commissioner (Appeals) where two remand reports have been called for, every transaction having been made through banking channel, there was no reason to also question the creditworthiness. Order of Tribunal is affirmed. (AY. 2014-15)

PCIT v. Neotech Education Foundation (2023)458 ITR 150/ 292 Taxman 199 (Guj.)(HC)

S. 68 : Cash credits-Share capital-Statement during search-Statement was retracted-Order of Tribunal deleting the addition was affirmed. [S. 132(4), 260A]

Assessing Officer on basis of such statement made during search proceedings made additions by treating share application money of assessee as undisclosed income. On appeal the CIT(A) deleted addition based on the retracted statement of the director and also on the ground that the Assessing Officer had failed to bring on record any evidence in support of writing with pen on printouts taken out from pen drive and there was no cash trail or any other corroborative evidence or investigation. Tribunal upheld the order of the Commissioner

(Appeals). On appeal by the revenue dismissing the appeal the court held that since entire matter revolving on facts had been appreciated and re-appreciated by both Commissioner (Appeals) and Tribunal, no substantial question of law arose for consideration. (AY. 2013-14, 2015-16)
PCIT v. Golden Goenka Fincorp Ltd. (2023) 292 Taxman 159 (Cal.)(HC)

S. 68 : Cash credits-Failure to produce the farmers from whom the loan was taken-Direction of the Tribunal is not complied with-Order of Tribunal confirming the addition is affirmed. [S. 254((1), 260A]
In the set aside proceedings the Assessing Officer directed the assessee to produce creditors for verification of loan repayments. The assessee did not produce farmers from whom he had borrowed unsecured loan nether filed any fresh affidavit. The Court held that since assessee failed to comply with directions of Tribunal, addition were justified. (AY. 2007-08)
Unideep Food Processing (P.) Ltd. v. ITAT (2023) 457 ITR 552 / 292 Taxman 213/ 331 CTR 345/ 223 DTR 485 (Orissa)(HC)

S. 68 : Cash credits-Proved the identity, creditworthiness and genuineness of the transactions-Deletion of addition is justified. [S. 260A]
The Hon'ble ITAT has given clear findings about the identity, genuineness and creditworthiness of the investors and also the investors had the capacity to make the investments. The valuation report produced by the assessee's chartered accountant is conclusive. No substantial question of law arises. Appeal of Revenue was dismissed. (AY.2015-16)
PCIT v. Enrich Agro Food Products (P.) Ltd. (2023) 455 ITR 664 / 291 Taxman 606 (Delhi)(HC)

S. 68 : Cash credits-Search-No cash was found-Memorandum of understanding (MoU)-Statement under section 131-Deletion of addition by the Appellate Tribunal was affirmed.[S. 131 132]
Dismissing the appeal of the Revenue the Court held that the Assessee was not named in Memorandum of understanding (MoU) either as a party or as a witness. Further, no cash was found or seized during search conducted on premises owned by assessee. Order of Tribunal deleting the addition was affirmed. (AY. 2012-13)
PCIT v. Trilok Chand Choudhary (2023) 291 Taxman 462 (Delhi)(HC)

S. 68 : Cash credits-Purchase and sale-Genuineness of the Transactions was established-Order of Tribunal deleting the addition was affirmed.[S. 37(1), 260A]
Dismissing the appeal of the Revenue the Court held that the assessee assessee had produced all the relevant documentary evidence to establish the genuineness of the transaction and there was no contrary evidence to doubt the correctness of the evidence produced by the assessee. Therefore, treating the transaction of purchase and sale as sham was not justified. No question of law arose.*(*AY. 2014-15)
PCIT v. Gaurav Bagaria (2023)453 ITR 513 (Raj)(HC)
Editorial : SLP of Revenue is dismissed, PCIT v. Gaurav Bagaria (2023) 452 ITR 412 (St) (SC)

S. 68 : Cash credits-NRI gifts-Search and seizure-Denial by donors-Addition was as cash was affirmed [S. 132]

Dismissing the appeal the Court held that the Donors have affirmed that they have not given a gift and it was an arrangement of commission. Order of Tribunal was affirmed (AY. 2002-03)
P.R. Ganapathy v. Dy. CIT (2023) 290 Taxman 68/ 335 CTR 565 (Mad.)(HC)

S. 68 : Cash credits-Loans-Search-Accommodation entries-Through banking channels-Deletion of addition by the Tribunal was affirmed [S. 132]
Held that the assessee disclosed loans in returns filed and during search accounts of assessee proved that disclosed loan amount was received through banking channels. No incriminating material was found during the search. Order of Tribunal was affirmed.(AY. 2012-13 and 2013-14)
PCIT (C) v. E-City Projects Lucknow (P.) Ltd. (2023) 290 Taxman 281/ 223 DTR 468/ 332 CTR 857 (Orissa)(HC)

S. 68 : Cash credits-Sundry creditors-Bogus purchases-Sundry creditors-Credit sales-Books of account not rejected-Sales accepted as genuine-Order of Tribunal deleting the addition was affirmed.
The assessee had purchased goods from sundry creditors on a credit basis. The Assessing Officer treated the transactions as bogus purchases and made additions. CIT(A)deleted the addition on the ground that the assessee has produced sufficient documentary evidence during the course of assessment proceedings to prove the identity and creditworthiness of creditors and the genuineness of transactions of purchases and no defect was pointed out by the Assessing Officer in same. Tribunal also upheld the finding of the Commissioner (Appeals). High Court affirmed the order of the Tribunal. (AY. 2014-15)
PCIT v. Attire Designers (P.) Ltd. (2023) 455 ITR 697 / 290 Taxman 551 (Delhi)(HC)

S. 68 : Cash credits-Identity, creditworthiness and genuineness of loan transactions were established-Notice issued under section 133(6) was responded-Order of Tribunal deleting the addition was affirmed [S. 133(6)]
Dismissing the appeal of the Revenue the Court held that the assessee has established identity, creditworthiness and genuineness of loan transactions. Notice issued under section 133(6) was responded to by lenders. Order of Tribunal affirmed. (AY. 2012-13)
PCIT (C) v. Ambe Tradecorp (P.) Ltd. (2023) 290 Taxman 471 (Guj.)(HC)

S. 68 : Cash credits-Share premium and share capital-Identity creditworthiness and genuineness of transactions were established-Order of Tribunal affirmed [S. 260A]
Dismissing the appeal of the Revenue the Court held the assessee had established the identity, creditworthiness and genuineness of transactions. Appellate authorities also recorded that the entire amount had been received by assessee by account payee cheques or demand drafts. Order of Tribunal affirmed (AY. 2012-13)
PCIT v. Satkar Infrastructure (P.) Ltd. (2023) 290 Taxman 400 (Delhi)(HC)

S. 68 : Cash credits-Violation of the principle of natural justice is not fatal-Issue on the identical issue pending before Appellate Authority-Writ petition against the assessment order was dismissed.[Art. 226]
The assessee challenged the assessment order on the ground of violation of the principle of natural justice wherein the Assessing Officer made an addition in respect of the Loan received from Mr. R. Srnivasan. Dismissing the petition the Court held that the lender has given the loan to the Company in which the assessee is also one of the directors. The appeal of the company is pending before the CIT(A). The court held that on the facts the violation of

the principle of natural justice is not fatal. The assessee was directed to file an appeal before the CIT(A). The Court also held that the powers of an appellate authority are co-terminus with that of an Assessing authority to ensure that the asseee was granted the full opportunity to put forth the case in appeal. (AY. 2012-13) (SJ)
Kariyagoundanur Muthusamy Chettiar Chinnadurai v. ACIT (2023) 290 Taxman 308 (Mad.)(HC)

S. 68 : Cash credits-Income from undisclosed source-Income declared under IDS, 2016-Telescoping-Matter remanded to the Assessing Officer.[S. 69, 69A]
Held that the assessee has disclosed certain income under the Income Declaration scheme 2016 and paid the tax as per the Scheme he is entitle to benefit of telescoping of the income declared under IDS against the additions under sections 68, 69, and 69A made by the Assessing Officer. Matter remanded to the Assessing Officer. (AY. 2015-16)
Sai Prasad Baruah v. ACIT(2023) 223 TTJ 897 (Gauhati)(Trib)

S. 68 : Cash credits-Agricultural income-Lease agreement furnished-Deletion of addition is affirmed-Un secured loan-Discharged the burden-Deletion of addition is justified. [S. 10(1), 133(6)]
Tribunal held that the assessee has established the identity of the land owners, filed the copies of lease agreements. Accordingly the deletion of addition by the CIT(A) is affirmed.As regards unsecured loan the assessee has established the identity, creditworthiness and genuineness of the transaction. Order of CIT(A) deleting the addition is affirmed. (AY. 2013-14)
ITO v. Goodyield Farming Ltd (2023) 223 TTJ 121 (Mum)(Trib)

S. 68 : Cash credits-Sale of shares-Penny stock-Long term capital gains-Report of investigation wing from Kolkata-Pine Animation Ltd-Purchase of shares, payment for purchase of shares through banking channel-Genuineness of transaction is proved-Cannot be assessed as cash credits-Entitle to exemption.[S. 38, 45]
Assessee had sold shares of Pine Animation Ltd and claimed exemption in respect of long term capital gains. Assessing Officer held that statement of some persons were recorded by DDIT, Kolkata to show that Pine Animation Ltd was a company engaged in providing bogus accommodation entries hence made addition under section 68 of the Act. CIT(A) affirmed the addition. On appeal the Tribunal held that since assessee had submitted details of purchase of shares, payment for purchase of shares through banking channel, and had produced order of SEBI where assessee along with others had been exonerated in any manipulation, it clearly proved genuineness of transaction Since the Assessing Officer had not made any inquiry about genuineness of these transaction on documents submitted by assessee and relied only on evidences collected by DDIT Kolkata which were good only for reopening of assessment and for making an addition holding that transaction were bogus, Assessing Officer should have made inquiries on documents submitted by assessee. In view of categorical finding of regulator SEBI exonerating assessee, and absence of any inquiry by Assessing Officer, addition is deleted. (AY. 2014-15, 2015-16)
Gopal Nihchaldas Pariani v. ITO (2023) 223 TTJ 361 / 152 taxmann.com 252 (Mum)(Trib)

S. 68 : Cash credits-Share application-Furnished names, address PAN, copies of bank account etc of investor companies-Addition is deleted.
Held that the assessee has furnished names, address PAN, copies of bank account etc of investor companies. Addition is deleted. (AY. 2006-07 to 2012-13)

Dy.CIT v. Mahavir Ashok Enterprises (P) Ltd (2023) 223 TTJ 947 (Raipur)(Trib)

S. 68 : Cash credits-Payment of insurance premium-Payment though bank-Addition is deleted.

Held that the payment of insurance premium was made though bank hence addition is not valid.(AY. 2012-13)

Kamal Binani v. ITO(2023) 222 TTJ 17 (UO) (SMC) (Mum)(Trib)

S. 68 : Cash credits-Explanation of source of deposit is accepted partially and remaining addition is affirmed.

Held that considering the status and family back ground explanation of source of deposit is accepted partially and remaining addition is affirmed. (AY. 2010-11)

Farsha S. Kadri v. ITO (2024) 222 TTJ 31 (SMC)(Surat)(Trib)

S. 68 : Cash credits-All parties appeared in response to summons and submitted income tax return and bank statements-Order of CIT(A) deleting the addition is affirmed.

Held that all parties appeared in response to summons and submitted income tax return and bank statements – Order of CIT(A) deleting the addition is affirmed. (AY. 2018-19, 2019-20)

Dy.CIT v. Hi-Tech Engineers (2023) 222 TTJ 785 (Mum)(Trib)

S. 68 : Cash credits-Creditworthiness and genuineness of transaction is established-Addition is deleted.

The assessee has established the creditworthiness and genuineness of transaction is established by filing confirmation ledger Account Aadhar card, income tax return, balance sheet etc. Addition is deleted. (AY. 2016-17)

Alwar General Finance Co (P) Ltd v. ACIT (2023) 222 TTJ 665 (Jaipur) (Trib)

S. 68 : Cash credits-Search and survey-Demonetization-Cash deposits-Negligible stock-in-trade-Anonymous buyers-Addition is affirmed. [S. 131, 292C, Indian Evidence Act, 1872, S. 26, 31, 34, 92]

During search and survey operation conducted on premises of assessee-company huge deposits were found in its bank account after demonetization was announced and assessee claimed source of said deposit receipt of advances of less than Rs 2 lakhs from 2153 customers for purchase of bullions. The Assessing Officer made addition under 68 of the Act. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that the assessee had no/negligible 'stock-in-trade' of gold as on 8-11-2016 and no orders were place on 8-11-2016 and 9-1-2016 after announcement of demonetization, it was difficult to infer that there was a sale agreement between assessee and annonymous buyers and therefore, additions made under section 68 treating deposit of demonetized notes as unexplained credit is justified. (AY. 2017-18)

Vaishnavi Bullion (P.) Ltd. v ACIT (2023) 222 TTJ 909 / 145 Taxmann.com 197 (Hyd)(Trib)

Musaddila Gems & Jewels P. Ltd v ACIT (2023) 222 TTJ 909 / 145 Taxmann.com 197 (Hyd)(Trib)

S. 68 : Cash credits-Sale of ancestral gold and savings-Addition is deleted-Reassessment notice is not justified.[S. 147, 148]

Held that since it was apparent from affidavit of assessee's father that he sold ancestral gold for Rs. 5.60 lacs and handed over money to assessee and other amount of Rs. 1,03,000 was taken by assessee from small savings of his minor children, addition made under section 68 is not justified. Tribunal also held that the assessee filed original return declaring income at Rs. 1.52 lacs and subsequently he filed revised return declaring income at Rs. 4.91 lacs, since assessee had submitted account books, etc. and Assessing Officer did not reject them, addition made under section on account of difference in original return and revised return was not according to provision of law.(AY. 2014-15)
Dhanpat Raj Khatri v.ITO (2023) 222 TTJ 382 / 154 Taxmann.com 58 (Jodhpur)(Trib)

S. 68 : Cash credits-Cash deposited out of agricultural income-Sufficient cash balances-Addition is deleted.
Held that the assessee has earned agricultural income and produced the cash book which shows sufficient cash balances. Merely because the agricultural income was earned by her in a distant place, addition cannot be made as cash credits. Addition is deleted. (AY. 2012-13)
Pandya Munde (Smt) v. CIT(A) (2023) 226 TTJ 49 (UO) (Mum)(Trib)

S. 68 : Cash credits-Share transaction-Sale of shares of Parraneta Industries Ltd (Known as Aadhar Ventures Ltd)-Report from Investigation wing-Capital gain-Penny stock-Accommodation entries-Shirish C. Shah-No specific finding against the assessee-Addition is deleted-Entitle to exemption. [S. 10(38), 45]
Held that the assesssee has produced evidence to substantiate that she purchased and sold the shares at the stock exchange through brokers by paying and receiving the sale proceeds through her bank account, the addition as cash credit is not justified by making reference to the modus operandi of the bogus entry providers without giving any specific finding regarding the transactions carried by the assessee. (AY. 2011-12, 2016-17)
Mamta Mehta v.ITO (2023) 226 TTJ 97 (UO) (Mum)(Trib)

S. 68 : Cash credits-Share capital-Report by DDI(Inv)-Notices issued unserved-Failure to prove creditworthiness-Addition is confirmed-Additional evidence-Written submission and affidavit is filed after the conclusion of hearing-Admitted as additional evidence.[S. 131, ITAR 1963, R. 18]
Held that the assessee has failed to prove the credit worthiness and the parties have not attended in response to summons issued to them. Addition is confirmed. Tribunal admitted the additional evidence in the form of written submission and affidavit which was filed after conclusion of hearing. (AY. 2014-15)
Trimurti Finvest Ltd v. Dy.CIT(2023) 225 TTJ 625 (Raipur)(Trib)

S. 68 : Cash credits-Cash deposited in bank account-Demonetisation-Trading and processing of food grains-Maintained regular books of account-Addition is deleted.[S. 44AB, 115BBE]
Assessee-company is engaged in trading and processing of food grains. Assessee had made cash deposits of specified bank notes of certain amount in bank during demonetization period. Assessing Officer proceeded to make addition in respect of such cash deposits as unexplained cash credit under section 68 read with section 115BBE of the Act. Thee assessee is maintaining regular books of account which were duly subjected to statutory audit under Companies Act, 2013 and tax audit under section 44AB. Tribunal held that cash deposits made by assessee were duly sourced by cash sales and recovery of trade debts from sundry debtors in cash, and hence, source of cash deposits were properly explained by assessee. To extent of cash sales made, corresponding stocks had been duly reduced in stock register.

There is no reason to dispute to fact that cash deposits in bank account had been sourced out of either cash sales made by assessee during demonetization period or cash recoveries made from its customers prior to demonetization period, therefore addition made by Assessing Officer on account of same was unjustified and deleted. (AY. 2017-18)
J.R.Rice India (P) Ltd v.ACIT (2023) 225 TTJ 69(UO) / 157 taxmann.com 337 (Delhi)(Trib)

S. 68 : Cash credits-Share premium-Existing share holders-Capacity and creditworthiness is proved-Addition is deleted.
Held that the assessee has proved the capacity and creditworthiness of the existing share holders. Addition is deleted. (AY. 2012-13, 2013-14)
Hiranandani Health Care (P) Ltd v.CIT(A)(2023) 225 TTJ 397 /157 taxmann.com 551 (Mum)(Trib)

S. 68 : Cash credits-Gifts from foreign remittances-Declaration of gift is filed-Identity and creditworthiness is proved-Deletion of addition is affirmed.
Assessing Officer held gifts to be non-genuine being of view that donor had no capacity to make gift as he had meager income and assessed as unexplained. CIT(A) deleted the addition.On appeal the Tribunal held that his major income was from abroad in capacity of NRI, hence genuineness of transaction should not be doubted. Assessee had also furnished various documentary evidences viz. copy of gift deed, copy of confirmation of donor, copy of income proof, copy of balance sheet and capital account, source of gift etc., to establish identity and creditworthiness of donor and to establish genuineness of transaction. Order of CIT(A) is affirmed. (AY. 2014-15)
ACIT v. Pravin Pannalal Shah (2023) 225 TTJ 145 / 156 taxmann.com 216 (Surat)(Trib)

S. 68 : Cash credits-Search and Seizure-Remand report-Copies of balance sheets acknowledgement of documents of lenders such as IT return bank statements PAN card etc-Addition made without giving an opportunity of cross examination is deleted. [S. 131]
Held that in the remand proceedings the assessee has produced Copies of balance sheets acknowledgement of documents of lenders such as IT return bank statements PAN card etc. Addition was made without giving an opportunity of cross examination is deleted. Order of CIT(A) is deleted. (AY. 2009-10, 2012-13)
ACIT v. Rukhana Enterprises (2023) 224 TTJ 29 (UO) (Mum)(Trib)

S. 68 : Cash credits-Share application-Proved identity and capacity of the investors-Addition is deleted.
Held that all investors have produced their copy of income tax return, PAN copies bank accounts and also audited financial statements etc. Order of CIT(A) deleting the addition is affirmed. (AY. 2011-12, to 2013-14)
Dy.CIT v. Devi Iron & Power (P) Ltd (2023) 224 TTJ 59 (Raipur)(Trib)

S. 68 : Cash credits-Cash deposited in bank account-Demonetisation-Manufacture of gold and diamond jewellery-Currency notes-No defects in the books of account-Deletion of addition is affirmed. [S. 145]
Held that the Assessing Officer has not pointed out any discrepancy in the books of account and stock purchases and sales shown in the books of account. Order of CIT(A) deleting the addition is affirmed. (AY. 2017-18)

Dy.CIT v. Bawa Jewellers (P) Ltd (2023) 224 TTJ 705 (Delhi)(Trib)

S. 68 : Cash credits-Unsecured loans-Commercial transactions-Genuineness is proved-Addition is deleted.
Held that that the transactions were commercial, transparent, and identifiable in tax records. The addition made by the Assessing Officer was flawed due to his failure to consider the rotation of money and the low peak credit. Order of CIT(A) is affirmed.(AY.2015-16)
Asst. CIT v.Evermore Stock Brokers P. Ltd. (2023)108 ITR 13 (Delhi) (Trib)

S. 68 : Cash credits-Share capital-Established source and source of source-Addition is deleted.
Held that the assessee has produced evidence to substantiate both source and source of source hence the deletion of addition is affirmed.(AY.2015-16)
Dy. CIT v.Qcap Securities P. Ltd. (2023)108 ITR 228 (Surat) (Trib)
Dy.CIT v. Quant Capital P. Ltd (2023)108 ITR 228 (Surat) (Trib)

S. 68 : Cash credits-Deposits in the bank-Cash sales-Addition is deleted.
Held that there is no bar on making cash sales. The Assessing Officer had wrongly held that no goods in cash were sold during the earlier year as he himself had admitted that sales had taken place then. Closing stock which stood accepted in earlier years had to be taken to be the actual stock available with the assessee. Where once the proceeds from cash sales were admitted as income, adding the cash deposits again under section 68 of the Act would amount to double taxation. The addition is deleted.(AY.2017-18)
Himalaya Spinning Mills v. ITO (2023)108 ITR 694 (Amritsar) (Trib)

S. 68 : Cash credits-Unsecured loans-Proved identity, creditworthiness and genuineness of transaction-Order of CIT(A) deleting the addition is affirmed.
Held that the assessee has furnished Income-Tax Return, confirmation, Balance-Sheet, extracts of bank statement of loan creditor. Bank statement of creditor company clearly stating creditor company enjoying overdraft limit and sum remitted in favour of assessee. Identity, creditworthiness and genuineness of transaction proved. Order of CIT(A) deleting the addition is affirmed.(AY.2014-15)
Asst. CIT v. Ecocat India P. Ltd. (2023)108 ITR 30 (SN)(Delhi) (Trib)

S. 68 : Cash credits-Established identity, creditworthiness and genuineness of creditor-Addition is deleted.
Held that the Assessing Officer in his remand report having found that since the assessee had filed necessary details and documents which established the identity, creditworthiness and genuineness of the creditors, the source of credit in the books of account of the assessee credited from the parties in question was explained, the addition under section 68 was liable to be deleted. (AY.2014-15)
ITO v. Umed Meghraj Jain (2023)108 ITR 58 (SN) (Ahd) (Trib)

S. 68 : Cash credits-Share application money-Furnished names, addresses, Permanent Account Numbers of shareholders, confirmation letters, and copies of share certificate, money credited through banking channels-Addition is deleted.
Held that the assessee had furnished names, addresses, permanent account numbers and confirmation of the shareholders and copies of share certificate issued to them. The money was credited in the books of the assessee through the banking channels. The Assessing Officer and the Commissioner (Appeals) without considering these and making independent

inquiry whatsoever held that the assessee failed to explain the nature and sources of credit of share capital. This was not justified. The assessee having provided necessary details, the onus shifted on the Department to carry out independent inquiry or investigation and bring contrary material, but the Assessing Officer failed to do so. Addition is deleted.(AY.2013-14)
Meridian Telesoft Ltd. v. Asst. CIT (2023)108 ITR 37 (SN)(Ahd) (Trib)

S. 68 : Cash credits-Share Premium and share capital-Assessee Identity and creditworthiness of subscribers and genuineness of transaction is established-Assessing Officer not making independent enquiry or pointing out discrepancy or insufficiency in evidence furnished-Addition is not justified-Order of CIT(A) is not speaking order. [S. 131]
Held that once the assessee had submitted the documents relating to identity and creditworthiness of the subscribers and genuineness of the transaction, the Assessing Officer was duty-bound to conduct an independent enquiry to verify these. However, the Assessing Officer had not made any independent enquiry to verify the genuineness of the transactions. The assessee had furnished all the details and documents before the Assessing Officer and the Assessing Officer had not pointed out any discrepancy or insufficiency in the evidence and details furnished by the assessee before him. The assessee having discharged the initial burden upon it to furnish evidence to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidence furnished and make independent inquiries and thereafter to state on what account he was not satisfied with the details and evidence furnished by the assessee and confronting the assessee with them. The additions is not warranted. That the Commissioner (Appeals) had not discussed anything about the material facts of the case. He had not pointed out any defect and discrepancy in the evidence and details furnished by the assessee but simply upheld the order of the Assessing Officer in a mechanical manner. The order of the Commissioner (Appeals) was a non-speaking order and was not sustainable at law.(AY.2012-13)
Rainbow Vincom P. Ltd. v. ITO (2023)108 ITR 19 (SN)(Kol) (Trib)

S. 68 : Cash credits-Amount deposited on account of sale of agricultural produce-Department could not rebut arguments of Assessee-Addition is deleted-Real estate business-Assessee on protective basis is not justified
Held, that the Department could not rebut the arguments of the assessee. Therefore, there was no justification on the part of the lower authorities in making or confirming the addition. Held, that the name of the other persons were mentioned in the sale deeds, and this proved that the other persons were co-sharers who shared the profits from the sale or purchase of the land in question. Therefore, the addition made on protective basis in the hands of the assessee was to be deleted.(AY.2009-10)
Tejinder Singh v.ITO (2023)108 ITR 50 (SN)(Chd) (Trib)

S. 68 : Cash credits-Unsecured loans-Identity, creditworthiness of lender and genuineness of transaction proved beyond doubt-Addition is deleted.
Tribunal held that the assessee has proved identity, creditworthiness of lender and genuineness of transaction proved beyond doubt. Addition is deleted. (AY.2008-09)
Birla Transasia Carpets Ltd. v. Dy. CIT (2023)107 ITR 472 (Delhi) (Trib)

S. 68 : Cash credits-Share application money-Documents and confirmation letter filed, received through banking channels-Genuineness of transaction proved-Addition is not justified.

Held that the documents and confirmation letter filed by the share applicant-company would show that the identity and creditworthiness of the transactions were proved addition is deleted and the consequential addition of estimated commission income is also deleted. (AY.2005-06)
Kainya and Associates P. Ltd. v. Dy. CIT (2023)107 ITR 683 (Mum) (Trib)

S. 68 : Cash credits-Credit worthiness of parties proved-Addition is deleted.
Held that the assessee has proved the credit worthiness of parties hence the addition is deleted. *(*AY.2009-10, 2011-12 to 2015-16)
Pravinchandra R. Patel v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)
Ansuben P.Patel (Smt) v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)
Neothech Education Foundation v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)

S. 68 : Cash credits-Agricultural income-Agricultural income is not disputed-Cash deposits cannot be assessed as cash creditS. [S. 10(1)]
Held that a sum found credited in the bank passbook could not be treated as an unexplained cash credit under section 68 of the Act, since the bank account of the assessee was not considered as part and parcel of the books of account. The authorities were not legally correct in invoking section 68 of the Act against the agricultural income shown by the assessee.(AY.2017-18)
Chandubhai Ramjibhai Kathiriya v. CIT (2023)107 ITR 54 (SN)(Rajkot) (Trib)

S. 68 : Cash credits-Remittance from its Singapore based holding company-Source of the source not required to be proved-Addition is not justified.
Held that the money in the form of investment was received not in the previous year but last financial year. The remittances received from the holding company had been shown on March 3, 2014, and the relevant financial year started from April 1, 2014. Merely because there was allotment of shares in the relevant financial year, invoking of provisions of section 68 is not sustainable.(AY.2015-16)
Asst. CIT v. Experion Hospitality P. Ltd. (2023)107 ITR 22 (SN)(Delhi)(Trib)

S. 68 : Cash credits-Share capital and share premium-Proved source and also source of source-Addition is not justified. [S. 133(6)]
Held, that the assessee filed replies of all 17 companies to the notice issued under section 133(6) of the Act. In order to substantiate the identity of these companies, the assessee also furnished Income-tax returns filed by these companies for the year under consideration and placed on record the assessment orders passed under section 143(3) of the Act in respect of some of these companies. Further, in the case of three companies in whose case notices issued under section 133(6) of the Act were returned, scrutiny proceedings under section 143(3) of the Act were concluded either in the preceding or subsequent years. Moreover, despite the return of the notices, the Assessing Officer did not raise any other objection or doubt questioning the identity of these investors. Thus no material had been brought on record to deny the claim made in the replies to notices issued under section 133(6) of the Act. The fact that some of the directors were common in some of the companies that have invested in shares of the assessee had not been shown to have led to the manipulation and the identity of such directors had not been questioned. There was no prohibition on these companies having the same auditors. No evidence or material had been brought on record by the Department that the assessee in any manner controlled the affairs of these companies. The allegations in the assessment orders of those companies were not in respect of investment made in the assessee-company nor did the assessment orders pertain to

the year under consideration. The assessee has placed on record the source of funds received by all 17 companies for investing in the shares of the assessee. An isolated transaction by one of the alleged entry operators in one of the investor companies would not taint the entire share transaction in the assessee-company in the absence of corroborative material. The funds were received, inter alia, from the sale of equity shares of some other companies by these investors or from the refund of advances for the purchase of shares. Thus, the assessee had also proved the source of source of the investors to satisfy the test of creditworthiness of the investor and genuineness of the transaction. There was no infirmity in the order passed by the Commissioner (Appeals).(AY. 2010-11)

ITO v. Albatross Share Registry P. Ltd. (2023)105 ITR 20 (SN)(Mum) (Trib)

S. 68 : Cash credits-Unsecured loans-Filed confirmations, copies of returns, bank statements-Burden discharged-Order of CIT(A) deleting the addition is affirmed.

Held that that the assessee filed, in respect of all six creditors, confirmations, copies of the Income-tax returns, computations of total income showing complete details, and bank statements. All the creditors were regular assessees. The credits in all cases were received through banking channels. The source in the hands of those six parties was also verifiable being the receipts on account of the credits in their respective bank accounts through the transfer entries received from other parties. The initial burden had been discharged by the assessee in respect of the identity of investors and their existence. The burden had shifted to the Revenue to prove otherwise. Order of CIT(A) deleting the addition is affirmed. (AY. 2015-16)

Dy. CIT v. Prahalad Rai Rathi (2023)105 ITR 673 (Jodhpur) (Trib)

S. 68 : Cash credits-Capital gains-Penny stock-Failure to prove the genuineness-Denial of exemption is affirmed.[S. 10(38), 45]

Assessee claimed exemption under section 10(38) for long-term capital gains on sale of shares of Greencrest Financial services Ltd,originally purchased in the name of Marigold Glass Industries Ltd. Assessing Officer held that the assessee in fraudulent transactions with an entry provider who was associated with certain company. Investigation revealed fraudulent practices and misuse of stock exchange systems. Despite opportunities, assessee failed to prove genuineness of transactions. Commissioner (Appeals) upheld Assessing Officer's order by invoking doctrine of human probability. On appeal the Tribunal up held the order of lower Authorities. (AY. 2015-16)

Archana Rajendra Malu. v. ITO (2023) 203 ITD 567 / 106 ITR 109 (SN) (Pune) (Trib.)
Rajendra Babulal Malu (HUF) v.ITO (2023) 203 ITD 567 106 ITR 109 (SN) (Pune) (Trib)

S. 68 : Cash credits-long-term capital gain-Sale of equity shares of NCL Research and Financial Services Limited-Penny stock-Capital gains treated as bogus-Denial of exemption is affirmed. [S. 10(38), 45]

Assessee, claimed exemption under section 10(38) for long-term capital gain from sale of equity shares of NCL Research and Financial Services Limited. Assessing Officer held that Company's name also appeared in list of 84 penny stock companies listed with Bombay Stock Exchange, which were found to be managed by unscrupulous brokers, entry operators, and money launderers involved in providing bogus accommodation entries of long-term capital gain and short-term capital loss. Based on these findings, Assessing Officer treated claim of long-term capital gain as bogus and not eligible for exemption under section 10(38) and made addition under section 68. Tribunal held that since income under section 10(38) in respect of long-term capital gain arising from sale of equity shares from listed companies,

were found to be penny stock companies and long-term capital gain so claimed found to be bogus in nature, lower authorities were justified in treating assessee's claim of long-term capital gain claim as bogus, and making additions. (AY. 2013-14, 2014-15
Saroj Baid. v. ITO (2023) 203 ITD 521 (Kol) (Trib.)

S. 68 : Cash credits-AIR information-Interest-Neither claimed credit for interest nor credit for tax deduction at source-Addition is deleted. [S. 133(6), 194A]
An AIR information available through system revealed that assessee had received payment of certain amount as interest on which TDS of certain amount under section 194A was deducted by payee. However, payee did not respond to notice under section 133(6) and it was received back unserved. Assessing Officer made an addition under section 68 of the Act. Assessee contended that it did not recognize any interest income during relevant assessment year and had not claimed benefit of TDS. On appeal the Tribunal held that copy of return of income filed by assessee and computation clearly revealed that neither assessee had shown any amount as interest income nor had claimed benefit of TDS thereon as picked up by Assessing Officer for making addition in hands of assessee. Addition is deleted. (AY. 2010-11)
Balaji Tirupati Buildcon Ltd. v. ITO (2023) 203 ITD 326/(2024)110 ITR 711 (Delhi) (Trib.)

S. 68 : Cash credits-Interest-free unsecured loan-Un secured interest free loan from NRI-Not taken approval from competent authority-No formal agreement-Violation of certain other statute cannot be used to draw inference against the assessee-Discharged primary by furnishing various documents-Addition is deleted.
Assessee received interest-free unsecured loan from his NRI close friend. The amount was received through banking channel and also furnished confirmation letter The Assessing Officer treated credit of loan as unexplained cash credit since the assessee had not furnished proper details of lender such as address as well as return of income. Commissioner (Appeals) also confirmed addition made by Assessing Officer even though assessee had made submissions for proving lender's identity, creditworthiness and genuineness by furnishing, inter alia, audited financial statement of lender's firm. On appeal the Tribunal held that as the assessee had discharged his primary onus cast upon him by furnishing copy of PAN, confirmation, bank statement, copy of return filed in India, etc., and onus shifted on revenue to bring any contrary material, but revenue failed to discharge its onus, impugned addition to be set aside. The Tribunal also held that absence of any formal agreement or repayment schedule cannot be a basis for treating credit of loan as deemed income under section 68.In case of acceptance of fund from NRI by foreign direct remittance, not taking approval from competent authority under any other statute could not be used to draw an inference that amount received represent unexplained cash credit more so when identity, creditworthiness and genuineness of transaction had already been proven in favour. (AY. 2012-13, 2014-15)
Niteshkumar Maganbhai Patel. v. ITO (2023) 202 ITD 323 (Ahd) (Trib.)

S. 68 : Cash credits-Capital gains-Penny stock-Purchased shares of HPC Biosciences Ltd for RS. 5 per share and sold for Rs 591-74-Genuineness is doubted-Denial of exemption is affirmed-Purchased in the Assessment year 2013-14 alleged expenditure on commission is deleted. [S. 10(38), 45, 69C]
Assessee earned long-term capital gains on sale of shares and claimed exemption of long-term capital under section 10(38) of the Act. The Assessing Officer held that assessee earned Rs. 1.17 crores long-term capital gains on sale of shares of a company which were purchased in 2013 for Rs. 5 per share and sold at Rs. 591.74 per share. Assessing Officer held that steep escalation in value of shares within a short span of time was not justified and also relied on

Investigation Report of Pr. DIT (Inv.) Kolkata wherein HPC Biosciences Ltd was identified as stock used for generating bogus long-term capital gain and exemption under section 10(38) was denied. SEBI, through various orders, had restrained company from accessing securities market by issuing prospectus, offer document or advertisement soliciting money from public in any manner for eight years. On appeal the Tribunal held that since the assessee could not satisfactorily explain source and nature of credits and failed to prove genuineness of transaction, Assessing Officer/Commissioner (Appeals) was perfectly justified in treating impugned transactions as sham and discarding assessee's explanation as not satisfactory. Tribunal also held that merely because transaction was through account payee cheque alone would not convert a non-genuine transaction into a genuine transaction. Addition is affirmed. As regards the alleged commission since shares were purchased in assessment year 2013-14 and not assessment year 2015-16 under consideration, addition made under section 69C in subject assessment year was not justified. (AY. 2015-16)
Sangeeta Devi Jhunjhunwala. v. ITO (2023) 202 ITD 165 (Delhi) (Trib.)

S. 68 : Cash credits-Cash deposited-Demonetization-Considering entire withdrawal of family and also giving weightage to family expenses, demonetized cash deposit was to be treated as explained-Addition is deleted.[S. 115BBE]
Held that taking into consideration entire withdrawals of family and also giving weightage to family expenses, demonetized cash deposit was to be treated as explained and thus, addition made by Assessing Officer is deleted.(AY. 2017-18)
Abdul Razaak. v. ITO (IT) (2023) 202 ITD 161 (Chennai) (Trib.)

S. 68 : Cash credits-Share application money-No enquiries made nor any evidence to reject documents filed by assessee, addition is not called for.
Allowing the appeal the Tribunal held that since there were no enquiries made nor any evidence to reject documents filed by assessee, addition is not called for. (AY. 2015-16)
Balgopal Cold Storages (P.) Ltd. v. ITO (2023) 202 ITD 362 (Delhi) (Trib.)

S. 68 : Cash credits-Bogus purchases-Providing accommodation entries by way of circular transactions of bogus purchases and sales-Addition cannot be made as cash credits-Only commission income can be assessed as income.
Dismissing the appeals of the Revenue the Tribunal held that the admitted position was that the assessee was engaged in providing accommodation entries by way of carrying out the circular transaction of bogus purchases and sales. The explanation offered by the assessee about the sum found credited in the books of account, i. e., received on account of bogus sale and immediately transferred against bogus purchases after retaining commission, was not found unsatisfactory by the Assessing Officer. The assessee was not the beneficiary of the amount received by it on the sales made to KGN as the amount of sales received by the assessee was utilised against the purchases from B Ltd. The bank statement showed that whatever amount was received by the assessee against the sales was utilised immediately for the purchases. Thus, there could not be any addition under section 68 of the Act in the given facts and circumstances for the bogus purchases shown by the assessee. What best could be added in the given facts and circumstances was the real income earned by the assessee. To determine the real income, there was no standard formula prescribed under the provisions of law. The assessee was just acting as a middleman and carrying out circular transactions. Thus, at the most commission income could be brought to tax. The order of the Commissioner (Appeals) did not call for interference.(AY.2010-11)
ITO v.KFC Industries P. Ltd (2023)104 ITR 6 (SN.)(Ahd) (Trib)
ITO v. KFC Exports P. Ltd. (2023)104 ITR 6 (SN.)(Ahd) (Trib)

S. 68 : Cash credits-Income from undisclosed sources-Cash deposits in Bank Account-Withdrawal from one account and deposited in another bank account-Addition is not justified-Payment in cash of stamp duty for purchase of property-Addition is not justified.

Held that that cash deposits in Bank Account.Withdrawal from one account and deposited in another bank account. Addition is not justified. Payment in cash of stamp duty for purchase of property Addition is not justified. *(*AY. 2015-16)

Poonam Garg v.ITO (2023)104 ITR 68 (SN.)(Delhi) Trib)

S. 68 : Cash credits-Unaccounted money-Substantial addition is made-Deletion of addition is justified.

Held that the Assessing Officer had accepted that the investments were the unaccounted money of an individual of the V. M. group which had gone through the books of BIEL and consequently, to the assessee. Once it was accepted that this money was the unaccounted income of that individual, no addition could be made in the hands of the assessee. All the documents pertaining the assessee vis-a-vis BIEL had been duly furnished by the assessee and no deficiency had been noted therein by the Assessing Officer. The Assessing Officer also admitted that the transactions between BIEL and the assessee-company were genuine. This being so, there was no case for an addition under section 68 of the Act as the assessee had duly proved all the three necessary ingredients of section 68. (AY.2013-14, 2014-15)

Welspun Steel Ltd. v. Dy. CIT (2023)103 ITR 354 / 152 taxmann.com 62 (Mum) (Trib)

S. 68 : Cash credits-Unexplained sundry creditors-Summons issued to creditors returned-Unsigned copies of ledger accounts-Confirmations signed only by assessee and not by creditors-Matter remanded. [S. 131(1)(d)]

Onus on assessee to prove genuineness and establish identity and creditworthiness of lenders. Assessing Officer finding issue of cheque favouring assessee preceded by deposit of cash in lenders' Bank Accounts. Tribunal held that the-Commissioner (Appeals) erroneously granted relief. Matter restored to Assessing Officer for fresh adjudication. (AY.2012-13)

Neeraj Agrawal v. Dy. CIT (2023)103 ITR 398 / 152 taxmann.com 632 (All)(Trib)

S. 68 : Cash credits-Undisclosed Foreign Income and Assets-Protective addition-Addition made under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015-Addition cannot be made as cash credits under section 68 of the Income-tax Act, 1961 [Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, S. 10]

Assessing Officer made addition asper the provisions of Black money (undisclosed foreign income and assets) and imposition of tax Act, 2015 and made addition under section 10(3) on ground that assessee was director of foreign company and had offshore assets.The Assessing officer also held that final orders were yet to be passed under said Act and therefore, to safeguard interest of revenue protective addition had been made under section 68 of the Act. CIT(A) deleted the addition. On appeal the Tribunal held that once additions have been made under Black Money Act same addition could not be made under Income-tax Act on same set of facts, and therefore, addition is deleted. (AY. 2013-14, 2014-15)

DCIT v. Ashok Kumar Singh. (2023) 201 ITD 278 (Delhi) (Trib.)

S. 68 : Cash credits-Search and seizure-Addition is justified.[S. 132, 153A]

The Tribunal observed that the assessee is required to explain cumulatively about the identity and capacity/credit worthiness of the creditors along with genuineness of the

transaction to the satisfaction of the Assessing Officer. In the given case, the assessee had merely submitted the confirmation letter of the creditor along with his PAN. The assessee had neither submitted copies of bank statement of the creditor nor the agreement of sale entered into with the creditor for sale of property. The Tribunal also observed that the said amount which is claimed to have been returned was actually returned after a gap of 3 years in three tranches and that too after the assessee was searched. Further, the assessee had not submitted cancellation deed for cancelling the deal for sale and reasons for such cancellation.

Thus, the Tribunal held that since the assessee failed to establish the identity, genuineness and creditworthiness of the creditor, the addition made by the Assessing Officer to the total income of the assessee to the tune of Rs.2.5 crore is upheld. (AY. 2011-12)

ACIT v. Sunshine Infraestate (P). Ltd (2022) 139 taxmann.com 60 / (2023) 221 TTJ 919 (TM) (All) (Trib)

S. 68 : Cash credits-Demonetization-Sales-The treatment of cash deposit in the bank account during demonetization period as unexplained cash credit was not justifiable because the said amount was in the nature of cash sales duly recorded in audited books of accounts and such sales were made out of stock-in-trade and cash sales were duly supported by relevant billS. [S. 115BBE, 143(3)]

The Tribunal observed that the cash sales transaction was recorded in regular books of accounts and sales were made out of stock-in-trade. The assessee had also filed copies of sales invoice. The Ld. CIT (Appeals) had also observed that the Assessing Officer had treated the cash deposited in the bank during the demonetization period in demonetized currency as unexplained cash credit under section 68 although the nature and source of the cash deposits being proceeds arising out of cash sales was evident from the entries in the audited books of accounts of the assessee. The books of accounts of the assessee had been duly audited by an independent auditor. The cash sales and receipts were duly supported by relevant bills which were produced before the Assessing Officer. Tribunal was of the view that it cannot be said that the figures of sales and purchases were not supported by the quantitative details. Neither the Assessing Officer had made any enquiry in respect of the material supplied by the assessee nor the Assessing Officer had brought any material on record to establish that the sales bills were bogus.

Consequently, the Tribunal held that the Assessing Officer was not justified in making an addition under section 68. (AY. 2017-18)

ACIT v. Chandra Surana (2023) 221 TTJ 515/104 ITR 503 (Jaipur)(Trib)

S. 68 : Cash credits-Survey-Loose documents found in Survey-genuineness of share capital subscribers-Assessee must establish creditworthiness of subscriberS. [S. 133A, 143(3)]

A survey u/s 133A of the Act was conducted at the business premises of the assessee and some loose documents/sheets were impounded. Assessee did not file return of income for A.Y. 2014-15 and the case was selected for compulsory scrutiny. Assessing Officer completed the assessment on 31.12.2016 by making an addition of Rs.64,10,599/-u/s 143(3) of the Act on account of difference in Cost of Construction as per valuation Report u/s 69 of the I.T.Act,1961 and also added Rs.1,29,10,000/-as unexplained share capital money appearing in the balance sheet as on 31.03.2014 assessed u/s.68 of the I.T. Act after reducing initial Share Application Money invested during the F.Y.2012-13. Assessee filed appeal with the ld. CIT(A) and was granted relief. Revenue appealed. The ITAT held that the law is now absolutely clear that unless the assessee is able to establish the identity of the subscribers, their creditworthiness as well as the genuineness of the transaction will be

regarded as non-genuine for the purposes of Section 68 of the Income Tax Act, 1961. There are plethora of decisions consequent to the decision of Lovely Exports. It is also well-settled law that onus of proving credits in its book of accounts lies squarely on the assessee and such proof consists of proving the identity of the subscriber or creditor, capacity of such creditor or subscriber to make payment and also to prove the genuineness of the transaction. It is only when the assessee discharges this primary onus, that onus shifts to the Department. Merely establishing the identity of the creditor is not sufficient. (AY. 2014-15)
ITO v. Pritham and Prathik Hospitals Pvt. Limited(2023) 221 TTJ 911/ 223 DTR 177 (Hyd)(Trib)

S. 68 : Cash credits-Bogus purchases-Addition is justified-Not responded to summons-All goods purchased are returned.[. S. 44AB, 133(6)
Where assessee-company had made purchases of textile items, i.e., fabrics worth Rs. 19 crores (approx.) from a large number of entities (vendors) but entries showing credits in names of certain vendors and existence and means of these vendors were not proved and genuineness of transactions were not established and, thus, none of three necessary ingredients of a credit, i.e. existence of creditor, means of creditor and genuineness of transaction is to be established. On facts the Tribunal held that the Assessing Officer is fully justified in making addition under section 68. (AY.2009-10)
ITO v. Solid Machinery Co. (P) Ltd. (2023) 221 TTJ 1006 / 143 taxmann.com 293 (Mum) (Trib)

S. 68 : Cash credits-Income from other sources-Agricultural income-Lease rent-Addition made in earlier year-Taxing the said income again is deleted.[S. 56]
In assessment year 2011-12 assessee declared agricultural income and also shown as advance lease rent received on lease of land. Assessing Officer treated agricultural income as unexplained and added same to assessee's income as income from other sources. He also treated advance lease rent as unexplained cash credit under section 68 and added same to assessee's income. Commissioner (Appeals) upheld additions.In return filed for assessment year 2012-13 the assesee has shown the amount taxed in earlier years as opening balance. Assessing Officer added as income from undisclosed sources. On appeal the Tribunal deleted the addition as the addition was made in earlier year the income sourced in the relevant year. (AY. 2012-13)
Ganigara Rekha Venugopal. (Smt.) v. ACIT (2023) 200 ITD 141 (SMC) (Bang) (Trib.)

S. 68 : Cash credits-Share application money-Share premium-Share holders had sufficient fund-Addition is deleted.
Assessee-company in account books had shown receipt of share capital and share premium from different private limited companies and furnished required documents to prove identity and creditworthiness of share subscribers and genuineness of transactions. Assessing Officer treated share capital and share premium as unexplained income and added same to assessee's income under section 68. Commissioner (Appeals) confirmed addition. On appeal the Tribunal held that the assessee had established that share application money was received through proper banking channels; shareholders had sufficient fund for purpose of investment and investments were reflected in their books of account and bank accounts of shareholders confirmed transactions. Addition is directed to be deleted. (AY. 2012-13)
BST Infratech Ltd. v. DCIT (2023) 199 ITD 6 (Kol) (Trib.)

S. 68 : Cash credits-Purchase of material-Payments were made in subsequent years-Deletion of addition is affirmed. [S. 133(6)]

Assessing Officer held that assessee had not paid any amount during relevant financial year and, further, some of these creditors had not replied to notices under section 133(6) issued upon them and some notices were returned with remarks like incomplete address or not found hence made addition under section 68 of the Act. CIT (A) held that all details of creditors were furnished by assessee before Assessing Officer and in subsequent year most of payments were made and this was not doubted by Assessing Officer. Once payment in subsequent assessment year was accepted in scrutiny assessment as genuine, same could not be left as treated in-genuine especially when the TDS was deducted against payment of labour contractors wherever applicable. On appeal the Tribunal affirmed the order of the CIT(A). (AY. 2014-15)

ITO v. M.D. House Build. (2023) 199 ITD 153 (Surat) (Trib.)

S. 68 : Cash credits-Construction of flats-Amount received from members-Confirmation letter is filed-Source of the source not required to be proved-Addition is deleted. [S. 131]

Deleting the addition the Tribunal held that the assessee had filed confirmation letter the authorities could not demand assessee society to prove source of source but they could summon members if they did not appear on request of assessee society, the addition is deleted. (AY. 2011-12)

Gullistan Co-Op Group Housing Society Ltd. v. ITO (2023) 199 ITD 236 (Delhi) (Trib.)

S. 68 : Cash credits-Corpus donation-Kolkata based companies-Donor companies were struck off by order of Registrar of Company-Addition is held to be justified.[S. 11, 115BBC, 115BBE]

Assessee-trust had received corpus donation from three companies located in Kolkata. Assessing Officer made addition of donation amount under section 68 and levied tax under sections 115BBC and 115BBE on ground that said entities were being presently struck off record of registered companies. Commissioner (Appeals) held that during assessment proceedings, notices under section 133(6) were issued and credentiality of these three corporate bodies were verified from financial statements, filed returns, existence of PAN etc.-However, he also held that Government had taken strong actions against alleged shell companies for introducing unaccounted funds to different entities in form of donations, share application etc.. The assessee failed to bring on record any evidence to prove existency of any relationship between corporate entities located in Kolkata, giving donations to assessee based in Jalandhar. On appeal the Tribunal held that since identity of donor companies were not established satisfactorily as assessee-trust brought no material on record to show that any steps were being taken under Companies Act to reinstate these companies on Register of ROC, CIT(A) was justified in upholding additions made under section 68 treating donated amounts as being received from shell companies. (AY. 2014-15)

Mayor Foundation. v. ACIT (2023) 199 ITD 370 (Amritsar) (Trib.)

S. 68 : Cash credits-Capital gains-Long term capital gains on sale of shares-Penny stock companies-Failed to establish genuineness of rise of price of shares within a short period of time that too when general market trend was recessive-Addition is affirmed.[S. 10(38), 45]

During relevant year, the assessee sold shares resulting in substantial amount of LTCG in a short span and same was claimed as exempt. Assessing Officer received report from Investigation Wing wherein modus operandi of rigging prices of penny stock and generation of capital gain/trading loss was studied. Assessing Officer held that LTCG earned by assessee were fabricated and sale of shares which fell under category of penny stocks was to be treated

as bogus. The Assessing Officer assessed the gain as cash credits. CIT (A) affirmed the addition. On appeal following the judgement in PCIT v. Swati Bajaj (2022) 288 Taxman 403/ 446 ITR 56 (Cal)(HC) wherein it was held that since assessee failed to establish genuineness of rise of price of shares within a short period of time that too when general market trend was recessive, additions made under section 68 were justified. (AY. 2014-15, 2015-16)
Shyam Sunder Bajaj. v. ITO (2023) 198 ITD 253 (Kol) (Trib.)

S. 68 : Cash credits-Cash received deposited in bank account-Turn over is not disputed-Addition is deleted.

Assessee had made cash deposits of certain amount in his bank account. Assessing Officer made additions on account of same on ground that source of same was not explained by assessee.Order of Assessing Officer is affirmed. On appeal the Tribunal held that turnover was not disputed by Assessing Officer, since all these invoices were part of total sales, Commissioner (Appeals) was not justified in confirming the additions. Tribunal deleted the addition. (AY. 2013-14)
NECX (P.) Ltd. v. ITO (2023) 198 ITD 406 (Hyd) (Trib.)

S. 68 : Cash credits-Cash received deposited in bank account-Turn over is not disputed-Addition is deleted.

Assessee had made cash deposits of certain amount in his bank account. Assessing Officer made additions on account of same on ground that source of same was not explained by assessee.Order of Assessing Officer is affirmed. On appeal the Tribunal held that turnover was not disputed by Assessing Officer, since all these invoices were part of total sales, Commissioner (Appeals) was not justified in confirming the additions. Tribunal deleted the addition. (AY. 2013-14)
NECX (P.) Ltd. v. ITO (2023) 198 ITD 406 (Hyd) (Trib.)

S. 68 : Cash credits-Unsecured loan-Proved identity, genuiness and creditworthiness of the loan transactions-Order of CIT(A) deleting the addition is affirmed.

Held that by submitting PAN number, address, income tax returns, audited financial statements of creditors and bak statement of share applicants had discharged onus to prove identity, creditworthiness and genuineness of its loan transactions with various companies and source of source had also been proved by assessee, accordingly the loan transactions could not be treated as unexplained cash credit under section 68 of the Act. (AY. 2013-14)
ITO v. Mega Collections (P) Ltd(2023) 201 ITD 404(Surat)(Trib)

S. 68 : Cash credits-Assessee filed confirmation of parties and repayment-Matter Remanded for fresh adjudication.

Held that the CIT (A) had not taken cognisance of reconciliation filed by the assessee. Therefore, matter was remanded for fresh adjudication. (AY. 2011-12)
Ganesh Ginning Factory v.ACIT (2023)101 ITR 90 (SN) (Ahd) (Trib)
Gajanand Ginning and Pressing Pvt. Ltd v.ITO (2023)101 ITR 90 (SN) (Ahd) (Trib)
Premjibhai Vallabhbhai Kukadiya v. ITO (2023)101 ITR 90 (SN) (Ahd) (Trib)

S. 68 : Cash credits-Burden of proof-Receipts of sums of deposits, receipts of sums refunded furnished by the assessee-Details not untrue-Burden discharged-Additions is not justified. [S. 292C]

Held, that the explanations submitted by the assessee before the authorities revealed that the assessee has, given the details of the amount received, the receipt number and the details of the amount which were refunded including the cheque number and date Thus, the assessee had discharged the onus cast upon it. The presumption under section 292C of the Act was a

rebuttable presumption and could not be applied mechanically ignoring the facts of the case and the surrounding circumstances. Thus, the additions were deleted. (AY. 2011-12)
Godwin Construction Pvt. Ltd. v. ACIT (2023)101 ITR 74 (SN) (Delhi) (Trib)

S. 68 : Cash credits-Unexplained money-Demonetisation-Books of account is audited-Matter remanded. [S. 69]
In the course of assessment proceeings the assessee submitted the details called for along with the cash book, bank statement, balance sheet, and profit and loss account for the years ending 31-3-2017 and 31-3-2016. The sale figures and cash deposits were also furnished for the aforementioned periods. However, AO proceeded to hold that the assessee company had tried to show the bogus sales to substantiate its cash deposit made during the demonetisation period under the well-thought process and thereby treated the cash deposit during demonetisation as unexplained income under s. 69A of the Act. When the matter reached ITAT, AR submitted that the AO did not take into consideration all the documents provided to him along with the Audit Report but rejected it on the ground that the ITR of the earlier year ended on 31-03-2016 was filed by the assessee on 24-03-2017. The AR further argued that neither the closing balance as of 31-03-2016 nor the balance reported on 31-03-2017 was disputed by the AO while making additions to the income. The matter was remanded back for a fresh examination of submissions made by the assessee.(AY. 2017-18)
Moss Hospitality (P.) Ltd. v. ITO (2023) 201 ITD 726 (Mum (Trib.)

S. 68 : Cash credits Unexplained money-Shares-Accomodation entries-Penny stock-Bogus entries of long term capital gains-Tax on specified income-Determination of tax in certain cases-Addition is affirmed under section. 115BBE of the Act. [S. 45, 69, 69A, 115BBE, 133(6)]
Assessing Officer held that the assessee had obtained bogus entries of Long Term Capital Gain (LTCG) from purchase and sale of CCL International Ltd shares. After thorough verification it was determined that assessee had introduced undisclosed funds in garb of said transaction. Seven accommodation entry providers / brokers of bogus companies had in their respective statements admitted and confirmed that shares of CCL International Ltd were bogus scrip of a penny stock company which were used for providing bogus accommodation entries to various beneficiaries. The fact that 3000 shares of CCL International Ltd were sold by assessee to Genuine Dealtrade Pvt.Ltd i.e. a paper company whose one of the Director was also Director of broker company from whom assessee have purchased shares clearly demolished its claim of having entered into genuine transaction of sale and purchase of said shares. It was held that assessee had not carried out any genuine transaction of sale and purchase of shares and obtained bogus entry of Long Term Capital Gain. It was held as unexplained money under Section 69A which it was routed back through banking channel in form of sale consideration, hence, the impugned amount was taxed under Section 115BBE. (AY. 2015-16)
Rahul Gupta (HUF) v. ACIT [2023] 201 ITD 302 (SMC) (Raipur)(Trib)

S. 68 : Cash credits Demonetization-Withdrwals of family members-Addition is deleted. [S. 69, 115BBE]
Tribunal held that considering that the assessee was able to explain the entire cash withdrawal of the family and also giving weightage to the family expenses, and in the absence of any proof that the assessee has spent the the entire available funds for personal needs, the demonetized cash deposit stands explained. Further, though the CIT (A) has restricted the disallowance to 50% and the balance was treated as unexplained, no reason was

given by the CIT(A) as to how the assessee has spent the amount of said family withdrawals. Addition is deleted. (AY. 2017-18)
Abdul Razak v. ITO (IT) (Chennai) 202 ITD 161 (SMC) (Chennai)(Trib)

S. 68 : Cash credits-Unexplained money-Demonetization-Cash deposits in the bank accounts were not abnormal as compared to the transaction in the earlier period-Appeal is allowed.[S. 69. 69A]
The assessee is engaged in the business of financial services and has dealerships of IFTSPL and FRPL. Thus the assessee was a distributor and used to act as a commission agent for promotion, marketing and distribution of various cash products. The primary issue raised by the assessee was with respect to high-pitch addition made by the AO on account of cash deposit made during the demonetization period ignoring the business carried out by the Appellant. The facts of the case are that in the course of business, the assessee used to deposit daily cash collected from retailers who were working under the assessee and used to deposit the same in the bank account which was transmitted into bank of IFTSPL and FRPL through RTGS/NEFT which is evident from the bank statement. All the deposits were sale proceeds of distributorship. The assessee had placed the relevant agreements with the aforesaid two entities and their bank statement. The ITAT observed that the perusal of bank accounts clearly show that the cash deposited by the assessee prior to the demonetization period was immediately transferred to the accounts of FTSPL and FRTPL. Further, the cash deposits in the bank accounts were not abnormal as compared to the transaction in the earlier period. Therefore, the AO wrongly taxed the deposits u/s 115BBE as the deposits in bank accounts were a part and parcel of their business or transaction. (AY. 2017-18)
Abhishek Bipinbhai Naik v. ITO (Surat) 201 ITD 858/ 226 TTJ 945 (SMC) (Surat)(Trib)

S. 68 : Cash credits-Cash deposits-Demonetization-Burden is on the AO to prove.
In the course of assessment proceedings the assessee submitted that the cash deposit was actually the cash which withdraw before two months of demonetisation for purchase of land. The Assessing Officer made the addition as cash credits. The Tribunal held that the assessee has shown withdrawals for cash deposits during demonetization period and discharged the burden cast upon him. If at all, the AO doubted the source for the cash deposits, he should have found through detailed enquiry that the withdrawals are not deposited in the same bank of the assessee. However, in this case, no such enquiry has been carried out and moreover; the AO has not doubted the genuineness of the transactions. It was held that, the assessee had explained the source of cash deposits sufficiently and addition is to be deleted as AO cannot prove why the explanations offered by assessee are incorrect. [ITA No. 982/ Chny/2022], dated 24/03/2023.)
Emgee Integrated Logistics Private Limited v. ACIT (Chennai)(Trib)

S. 68 : Cash credits-On money received for sale of units in housing projects-Improbable to make profits upto 50%-Properties sold not high end-On money element added at 50% of booked price very high-Additions to be restricted to 15%.-Order to be not treated as precedent.[S. 153C]
Held that it was highly improbable in this line of business to make profits up to the extent of 50 per cent. or more of the turnover on sale of small sized properties. Therefore, making addition of the entire on-money received by the assessee was not justified. Directed the A.O. to restrict the addition by estimating gross profit on the on-money receipts, at the higher of the rate in this line of business or as agreed to by the assessee before us at 15 per cent. Thereof. [The Tribunal clarified that this decision having been rendered in the peculiar facts

and circumstances of the case was not to be treated as precedent in any other case. (AY. 2013-14, 2015-16, 2016-17)
Padmavati Housing Corporation v. Dy. CIT (2023)101 ITR 62 (SN) (Ahd) (Trib)

S. 68 : Cash credits-Cash deposits-Demonetization-Cash sales-Jewellery-Provided PAN and complete address of buyers-Stock register is maintained-Failure to enquire by the Assessing Officer under section 131 or 133(6)) of the Act-Addition is deleted. [S. 131, 133(6)]
Tribunal held that none of the documents submitted by assessee have been denied by the lower authorities and that cash sales register and stock register are completely matching. It was also observed that the AO has failed to show that gross profit shown by the assessee is abnormally high or low and that cash sales have resulted in profit to the assessee which was offered to tax. The nature and source of cash sales have been explained by the assessee. The AO has not made any further inquiry with the customers of assessee by issue of summons u/s. 131 or inquiry u/s. 133(6). It was held that addition cannot be made in the hands of assessee merely for the reason that those customers have not transacted with the assessee post or pre demonetization. This could be the trigger point for investigation, but the AO, despite having complete address and PAN of customers did not make any such inquiry. [ITA No. 1407/Mum/2021 & ITA No.331/Mum/2022] dt. 14.07.2023)((AY.2017-18) **DCIT v. Mangal Bullion Pvt. Ltd (Mum.) (Trib.) (UR)**

S. 68 : Cash credits-Unexplained money-Demonetization-Cash deposits in the bank accounts were not abnormal as compared to the transaction in the earlier period-Appeal is allowed.[S. 69. 69A]
The assessee is engaged in the business of financial services and has dealerships of IFTSPL and FRPL. Thus the assessee was a distributor and used to act as a commission agent for promotion, marketing and distribution of various cash products. The primary issue raised by the assessee was with respect to high-pitch addition made by the AO on account of cash deposit made during the demonetization period ignoring the business carried out by the Appellant. The facts of the case are that in the course of business, the assessee used to deposit daily cash collected from retailers who were working under the assessee and used to deposit the same in the bank account which was transmitted into bank of IFTSPL and FRPL through RTGS/NEFT which is evident from the bank statement. All the deposits were sale proceeds of distributorship. The assessee had placed the relevant agreements with the aforesaid two entities and their bank statement. The ITAT observed that the perusal of bank accounts clearly show that the cash deposited by the assessee prior to the demonetization period was immediately transferred to the accounts of FTSPL and FRTPL. Further, the cash deposits in the bank accounts were not abnormal as compared to the transaction in the earlier period. Therefore, the AO wrongly taxed the deposits u/s 115BBE as the deposits in bank accounts were a part and parcel of their business or transaction. (AY. 2017-18)
Abhishek Bipinbhai Naik v. ITO (Surat) 201 ITD 858(Surat)(Trib)

S. 68 : Cash credits-Cash deposits-Demonetization-Stock register-Tallied with quantity item of sales-Addition is deleted. [S. 133(6)]
Tribunal held that addition u/s.68 on account of cash deposits cannot be made simply on the reason that during the demonetization period, cash deposits vis-a-vis cash sales ratio is higher. If the parties during the period of demonetization has purchased huge quantity of jewellery on cash which has been duly recorded in the books of accounts of the assessee and also tallying with the quantity of stock, then simply because there was a huge cash sales in that particular month cannot be the reason for treating it as undisclosed income from

undisclosed sources. The parties to whom notices u/s. 133(6) were issued have confirmed the purchases but also filed the purchase bills. The ld. AO cannot disbelieve the purchases made from the assessee simply on the ground that those parties could not submit the source of their funds which is not the requirement of the assessee to prove specifically when assessee is a retail seller of jewellery and even law does not prohibit any cash sales or there is any requirement to seek any further detail. For this compliance assessee has also filed Form 61A before the ld. AO. Once, it has been established that sales representing outflow of stocks is duly accounted in the books of accounts and there are no abnormal profits during the year, then there is no justification why AO should treat the deposits made in the bank account out of cash sales to be income from undisclosed sources.**.** [ITA. 1600/M/2023 & CO. 63/M/2023 Dated 26/07/2023.)(AY. 2017-18)

ACIT v. Ramlal Jewellers Pvt. Ltd (2023) 154 taxmann.com 584 (Mum) (Trib)

S. 68 : Cash credits-Share premium-Share application-Statement recorded by the investigation wing is retracted-The assessee prima-facie has complied with the ingredients required u/s 68 of the Act of genuineness, identity and creditworthiness-The A.O has failed to make further enquiries and relied only on statement of the key person, which was retracted subsequently-Addition is deleted. [S. 132]

The assessee has received the share application money from M/s Empower Industries Ltd and due to search u/s 132 of the Act on the group, the statements were recorded by the investigation wing that they are only providing accommodation entries and no business activity is conducted. The A.O based on the statements recorded in the course of the search of the group, has made addition of share capital including premium in the hands of the assessee and estimated unexplained expenditure. The A.O over looked the various documentary evidences filed by the assessee in support of investments including the confirmation letter, PAN Card, Audited financial statements, bank statement reflecting the transactions, copy of share application form, copy of Form.No 2 filed with the R.O.C. etc. In spite of assessee filing all the details, prima-facie the A.O has not conducted any investigation or enquiry in respect of the information submitted by the assessee and relied only on the information of a third party whose statement was not cross examined or tested. Remand report was called. The assessee prima-facie has complied with the ingredients required u/s 68 of the Act of genuineness, identity and creditworthiness. The A.O has failed to make further enquiries and relied only on statement of the key person, which was retracted subsequently. (ITA 1863/M/2021 Dt: 25/08/2023)

ITO v. AMS Trading & Investment (Mum) (Trib) (UR)

S. 68 : Cash credits-Share capital and share premium received from companies-Replies of all companies to notice u/S. 133(6) filed-Burden of proof-Source of source of investors provided-Genuineness of transaction satisfied-Addition is not juustiifed. [S. 133(6)]

Dismissing the appeal of the department the tribunal held that, the assessee filed replies of all companies to the notice issued u/s. 133(6) to substantiate the identity of the companies, the assessee also furnished Income-tax returns filed by these companies for the year under consideration as well as placed on record the assessment orders passed u/s. 143(3) of some of these companies. Further, in three companies in whose case notices issued u/s. 133(6) were returned, and scrutiny proceedings u/s. 143(3) were concluded either in the preceding or subsequent years. Moreover, despite the return of the notices, the AO did not raise any other objection or doubt questioning the identity of these investors. The companies that have invested in shares of the assessee had not been shown to have led to the manipulation and the identity of such directors had not been questioned. No evidence or material had been brought

on record by the Department. The assessee has placed on record the source of funds received by all companies for investing in the shares of the assessee. The funds were received, inter alia, from the sale of equity shares of some other companies by these investors or from the refund of advances for the purchase of shares. Thus, the assessee had proved the source of source of the investors to satisfy the test of the creditworthiness of the investor and the genuineness of the transaction. (AY. 2010-11)
ITO v. Albatross Share Registry P. Ltd. (2023)105 ITR 20 (SN)(Mum)(Trib)

S. 68 : Cash credits-Burden of Proof discharged by producing Lenders sworn statement admitting granting of loan, turnover alone could not be considered source of loan, credits could not be taxed.
The Tribunal allowing the appeal of the Assessee, held that, the assessee had discharged its primary onus of fulfilling the three important ingredients of s. 68. The lender, in a sworn statement, admitted the fact of granting of loan, burden is discharged. In the absence of such a fact-based finding to prove that the assessee's own money was routed through banking channels in the garb of loan, the addition is not sustained in law.
Sasi Enterprises v. Dy. CIT (2023)105 ITR 29 (SN)(Chennai) (Trib)

S. 68 : Cash credits-Share application money-Assessee is A Listed Company-Assessee Submitting Confirmations, Bank Statements, Returns of income and allotment advice of the allottees before AO-Primary Onus On Assessee To Establish Identity, Genuineness And Creditworthiness Of Creditors Proved Beyond Doubt-Assessee also provided source of source of investments-Addition is not valid.
During the FY relevant to AY 2013-14, the assessee received share application money from four parties. To verify the genuineness of the share application money, summons were issued to the above parties. The ITAT observed that the first proviso to S. 68 was introduced by the Finance Act, 2012 w.e.f. 1.04.2013 which specifically says "where the assessee is a company, not being a company in which public are substantially interested". Therefore, the CIT(A) had clearly held that the assessee was a listed company in which public were substantially interested and invocation of section 68 was not applicable. Further the assessee submitted confirmations, bank statements, returns of income and allotment advice, before the AO. Thus, the primary onus that lay on the assessee to establish the identity, genuineness and creditworthiness of the assessee was proved beyond doubt by the assessee. Further, the assessee also proved the source of the source of the investment made by the three parties. The AO could not disprove this with necessary evidence. Therefore, the question of invoking section 68 did not arise. There was no illegality in the order passed by the CIT(A) deleting the addition made under section 68 of the Act. (AY.2013-14)
ACIT v. Lesha Industries Ltd. (2023) 103 ITR 76 (SN)(Ahd) (Trib)

S. 68 : Cash credites-Income from undisclosed sources-Sundry Creditors-reason for outstanding amount explained, consideration not in doubt and no evidence that parties paid from undisclosed sources, outstanding amount cannot be treated as bogus sundry creditorS. Not always necessary that creditors should remain present in assessment of debtors, no reason to sustain addition to that extent. Non-receipt of confirmation could not result in addition. [S. 69, 133(6)]
The Tribunal allowing the appeal of the Assessee held that, a sale deed of agricultural land was entered into for purchase of land by the assessee at a total consideration from nine different parties. All those parties were agriculturists. As the assessee was a builder and agricultural land was required to be converted into non-agricultural land, a sum was paid at the time of the sale agreement and the balance amount was to be paid at the time of sale deed.

All sellers had put their thumb impressions, on their photograph, identified themselves by producing their identity cards and also appeared before the sub-registrar. The AO had no case that the amounts outstanding against their names was bogus. Non reply to enquiry letter u/s.133(6) could not result into an addition in the hands of the assessee, when the parties were identified, the transaction of purchase of land was accepted, and the reason for the outstanding amount was explained, the consideration for the land was not in doubt, there was no evidence that parties had been paid from undisclosed sources. No addition for undisclosed income is sustainable for bogus sundry creditors.
Sudarshan Nirman Co. v. ITO (2023)105 ITR 6 (SN)(Mum)(Trib)

S. 68:**Cash credits**-**Cash deposit-Demonetisation period-Cash sales-Books not rejected-Genuineness of sales not doubted-Addition deleted.[S. 69, 143(3)]**
The Assessing Officer made an addition to the declared income of the assessee u/s. 68 of the Act holding that the cash deposited by the assessee in his bank account during the demonetisation period was undisclosed income under the garb of cash sales. The Trinunal held that, it was not the case of the Assessing Officer that the assessee did not have sufficient stocks for making the sales. It could not be said that the figures of sales and purchases were not supported by quantitative details. The Assessing Officer neither brought any material on record to establish that the sale bills were bogus nor provided any evidence to show that such sales were bogus. The assessee had duly substantiated his claim with documentary evidence. The Assessing Officer had not rejected the books of account of the assessee as no material was available with him so to do. Section 68 of the Act is not applicable to sale transactions recorded in the books of account as such sales would already be a part of the income credited to the profit and loss account. The Assessing Officer was not justified in making the addition. The addition was rightly deleted by the Commissioner (Appeals) (AY. 2017-18)
ACIT v. Chandra Surana (2023) 149 taxmann.com 379 / 104 ITR 503 (Jaipur)(Trib)

S. 68 : Cash credits-Share capital and share premium-relevant documentary evidence of the companies in the form of replies to the notices issued under section 133(6), income tax returns as well as assessment orders furnished-addition made under section 68 not justified.[S. 133(6)]
In the present case, Hon'ble appellate tribunal held that the assessee had furnished replies to the notices issued under section 133(6) of the Act as well as income tax returns and assessment orders passed for the respective companies who had invested in the assessee company. The AO has not raised any doubt with respect to the documentary evidences furnished by the assessee. Thus, the assessee had discharged the onus cast upon it to prove the genuineness of transaction and therefore, addition made under section 68 of the Act is not justiifed. Hon'ble appellate tribunal further held that an isolated transaction by one of the alleged entry operators in one of the investor companies would not taint the entire share transaction in the assessee-company in the absence of corroborative material. The funds were received, inter alia, from the sale of equity shares of some other companies by these investors or from the refund of advances for the purchase of shares. Thus, the assessee had also proved the source of source of the investors to satisfy the test of creditworthiness of the investor and genuineness of the transaction. (AY.2010-11)
ITO v. Albatross Share Registry P. Ltd. (2023) 105 ITR 20(SN) (Mum) (Trib)

S. 68 : Cash credits-Credit balance in the name of the company-amount received through banking channels-assessee furnished account confirmation-treating the said amount as income from undisclosed sources unjustified.

In this case the assessee reflected credit balance of Rs. 45 lakhs in the name of the company. During the course of assessment proceedings, the assessee filed reply only for Rs. 15 lakhs. Hence, the AO added the remaining credit balance to the income of the assessee. The Ld. CIT(A) deleted the addition. On further appeal, the Hon'ble appellate tribunal held that the amount of Rs.15 lakhs as accepted by the AO has similarly been received by the assessee through banking channels by cheques. Hence, there is no reason why the remaining amount is to be considered as unexplained cash credit. The assessee had also placed account confirmation from the party. Therefore, the addition made by AO is unjustified. (AY. 1996-97)

Dy. CIT v. N. Sasikala (Smt.) (2023) 105 ITR 25 (SN) (Chennai)(Trib)

68 : Cash credits-Remand report-CIT(A) failed to examine the objections of the AO-Matter remanded to the AO for fresh adjudication.

The case of the assessee was re-opened on account of receipt of huge share premium from 8 parties. The AO made addition of Rs. 8,95,44,000 under 68 as unexplained cash credit. The CIT (A) granted relief of Rs.8,82,03,600 and upheld addition of Rs. 19,80,000 as not explained. The Tribunal noted that the CIT(A) granted partial relief for certain parties, however, failed to adjudicated objections made by the AO in the remand report. The Tribunal restored the matter to file of the AO for de novo adjudication after examining and necessary verification of the issues noted in the appeal. (AY.2009-10)

ITO v. RTG Exchange Ltd. (2023) 103 ITR 45 (SN) (Mum)(Trib)

S. 68 : Cash credits-Unexplained money-Cash deposit during demonetisation-Cash sales-Books of accounts accepted-No defect pointed out-Deletion of addition is valid. [S. 115BBE]

For the A.Y. 2017-18, the Assessing Officer made addition u/s. 68 read with section 115BBE of the Act of the large cash deposit of demonetised currency made by the assessee, treating it as his undisclosed income.

Tribunal held that it was apparent from the summary of the assessee's cash book that the cash balance was generated from cash sales and such sales were part of the total sales credited in the trading account, the income wherefrom had already been offered by the assessee by reducing the cost of sales from the sales. The Assessing Officer had not pointed out any defect in the cash books and other books of account. The sales were duly supported by the sale bills and invoices and duly verifiable from the books of account including the stock register. Further, the availability of stocks in hand showed that the sales made by the assessee were genuine and duly recorded in the books of account. Moreover, the cash sales conformed to the assessee's own previous history and trend, indicating an increase over the previous year of 14.89 per cent., which was quite reasonable. Additions rightly deleted by the CIT(A).(AY. 2017-18)

ACIT v. Mahendra Kumar Agarwal (2023)104 ITR 455 (Jaipur) (Trib)

S. 68 : Cash credits-No addition can be made on account of cash deposits, if the AO cannot prove why the explanations offered by assessee are incorrect.

The Assessing Officer found cash deposits of Rs. 1,05,55,000/-during the demonetization period. The assessee submitted that the cash deposit was actually the cash which withdraw before two months of demonetisation for purchase of land. The ITAT held that the assessee has shown withdrawals for cash deposits during demonetization period and discharged the burden cast upon him. If at all, the AO doubted the source for the cash deposits, he should have found through detailed enquiry that the withdrawals are not deposited in the same bank of the assessee. However, in this case, no such enquiry has been carried out and moreover;

the AO has not doubted the genuineness of the transactions. It was held that, the assessee had explained the source of cash deposits sufficiently and addition is to be deleted as AO cannot prove why the explanations offered by assessee are incorrect. (ITA No. 982/ Chny/2022], dated 24/03/2023.) (AY.)

Emgee Integrated Logistics Private Limited v. ACIT (Chennai)(Trib)

S. 68 : Cash credits-Demmonetisation-Cash sales-Cash deposited during demonetisation period-Books of account not rejected-Deletion of addition is affirmed. [S. 115BBE]

The assessee-company derived income from manufacture and trading of jewellery. The Assessing Officer reduced the sum of Rs. 12,17,48,500 deposited in the demonetisation currency out of the total sales of Rs. 2,09,09,94,399 declared by the assessee and treated the sum of Rs. 12,17,48,500 as unexplained cash credit of the assessee u/s. 68 of the Act and taxed it according to the provisions of section 115BBE of the Act.

The Commissioner (Appeals) deleted the addition of Rs. 12,17,48,500, upheld the rejection of books of account and the estimation of net profit at the rate of 2.59 per cent. as against 2.36 per cent. declared by the assessee.

On appeal by the Assessee and Department, the Tribunal held that all the details required to prove the sales made by the assessee were provided in the assessment proceedings. As regards the receipt of cash from customers such amount standing in the books of account of the assessee would not attract section 68. There was no fault in the detailed reasoned finding in the order of the Commissioner (Appeals. Further, observed that the rejection of the books of account on the basis of insignificant defects in all respects, was not justified and the books of account deserved to be accepted. It was apparent from records that all the amounts realised from debtors and received as advance from customers during the period November 3, 2016 to November 8, 2016 were genuine and verifiable from the accounts and there was no cogent reason to treat them as not genuine.).Relied on Harshila Chordia Smt. v. ITO [2008 298 ITR 349 (Raj)(HC) (AY. 2017-18)

Asst. CIT v. Motisons Jewellers Ltd. (2023)104 ITR 304 (Jaipur) (Trib)

S. 68 : Cash credits-Unsecured loans and advances-On failure to substantiate with evidence and on failure to make representation, the order of the CIT(A) confirming the addition made by the A.O. u/S. 68 of the Act and deleting the protective addition was upheld by the Tribunal.[S. 69A,133(6)]

The A.O. caused enquiry related to credits of Rs.19,35,39,366 appearing in the assessee's books by issuing notices u/s. 133(6) of the Act to bank that apart from the assessee, five other concerns are operating from the same address but the Ward Inspector upon a field visit reported that none of them were found to be operating from the addresses. Notices issued to three parties u/s. 133(6) of the Act returned unserved. During the assessment proceedings, the assessee was repeatedly asked to provide details of the Indian clients to whom the services of ad or film shooting, were provided by the overseas entities but the assessee did not provide any details in this regard to substantiate its claim establishing the genuineness of the receipts from Indian clients. Therefore, for failure of the assessee to provide necessary details in support of credits appearing in the books, bank statements and other issues like deposits in cash during demonetization, the A.O. completed the assessment by making additions u/s. 68 and 69A of the Act. Except for the protective additions made in the hands of the assessee, the CIT(A) upheld the additions made by the A.O. On further appeal, for want of representation and failure to lead any evidence in support of credits appearing in the books, the Tribunal upheld the additions sustained by the CIT(A). (AY. 2017-18)

5th Element Digital Media Solutions P. Ltd. v. ITO (2023)104 ITR 49 (SN) (Mum) (Trib)

S. 68 : Cash credits-Bogus long-term capital gain-Commmission-Accomodation entries-Sale of shares-Admission by third parties-Report from investigation wing-Neither the statement nor an opportunity cross examination was not given-Deletion of addition by CIT(A) is affirmed. [S. 10(38), 45, 131, 132(4)]

The Assessing Officer observed that it had been established beyond doubt that unaccounted income had been routed back to the assessee camouflaged as long-term capital gains which had been proven to be bogus. These sums were thus added to the assessee's income as unexplained cash credits u/s. 68 of the Act. The Assessing Officer also added commission paid in lieu of these allegedly bogus entries on the basis of admissions of various persons.

Held that:

(i) With respect to the allegedly bogus long-term capital gains, the transactions of purchase and sale undertaken by the assessee had been fully substantiated by the assessee through legally acceptable third party evidence.

(ii) The observations of the Assessing Officer that the transactions were bogus was solely dependent on the report of the Investigation Wing with no specific reference of the assessee's transactions. The evidence of the assessee was third-party evidence which could not be said to have been manipulated. The Assessing Officer did not state that cash from the assessee was received and routed back to the assessee through the bank account. Under the circumstances, no addition could have been made to the income of the assessee, specifically when the entire basis of the addition was the investigation report, which was never confronted to the assessee, and the statements of persons, who were neither examined by the Assessing Officer nor permitted to be cross-examined by the assessee although a request was made for copies of the report as well as of the statements of those persons.

(iii) The addition of commission paid for the accommodation entries was consequential to the issue of bogus long-term capital gains. Considering that the purchases and sales of shares and the consequential long-term capital gains could not be treated as bogus, the addition on account of notional commission would not be sustainable either (AY. 2014-15)

Dy. CIT v. Vigyan Lodha (2023)104 ITR 210 (Jaipur)(Trib)

S. 68 : Cash credits-Bogus expenses-Un accounted monies-Sub-contractor-Job work-Shown 8% of the receipts-Addition is deleted-[S. 115BBE, 132]

The assessee was engaged in the business of carrying out painting of pavements, roads and runways on job work as a sub-contractor. The Assessing Officer reopened the assessee's assessment on receiving information from the Joint Commissioner following a search action taken u/s. 132 of the Income-tax Act, 1961 on a D group company during which it was gathered that D had generated unaccounted money by way of booking bogus expenses on sub-contractors and materials. The assessee was one of the entities who was shown to have received amounts against sub-contractor expenses by D. The Assessing Officer taxed the assessee's receipts in terms of section 68 read with section 115BBE.

Tribunal held that the Assessing Officer had not cross-verified the averments of the assessee with the relevant organisation but instead made the addition to the assessee's total income based merely on the information gathered from the search, which was of a general nature. The records produced by the assessee were neither disputed nor tested for their correctness. A decision could not be made merely based on some information based on which no grounds were discussed, nor the assessee confronted. The assessee had demonstrated that the work order was issued by D and to be carried out at the military organisation wherein entry and

attendance were strictly monitored. There was no reason to believe, nor could the Revenue prove, that the work had not been carried out.

As regards the estimation of the assessee's profit, in the case of a civil contractor declaration of profit at 8 percent was considered reasonable and, hence, the addition made by the Assessing Officer was to be vacated as the assessee had already declared profit at 8% of the receipt. (AY. 2013-14)

Deepak Jain v.ITO (2023)104 ITR 61 (Jaipur)(Trib)

S. 68 : Cash credits-Cash sales-Trade advances-Addition made on mere conjectures and surmises-Unsustainable.

Held, that the order under appeal was a result of mere conjectures and surmises and not sustainable in the eyes of law and the addition made by the Assessing Officer was to be deleted. The accounts of the creditors which appeared in the ledger were produced before the Assessing Officer. The Assessing Officer was well within his powers to ask for verification of the transactions from the parties. This, however, was not done, though the assessee had specifically stated that the deposits were on account of advances of cash by the customers, who were direct customers, and only a few of them were dealers, for the supply of goods to them. The Assessing Officer had himself admitted in the assessment order that the identity of some persons had been provided by the assessee. It had also not been disputed that the goods dealt in by the assessee were of fluctuating rates. It would be a normal business practice for customers to book goods in advance, so as to secure supply of the goods at the rates prevailing on a particular date. some of the persons had furnished confirmations, admitted having advanced the money to the assessee for the supply of the goods. The accounts, in these cases, were settled by supplying the goods, or otherwise. The books, bills and vouchers were produced before the Assessing Officer and were test checked. No defect therein had been pointed by the auditors and the Assessing Officer had admitted that the goods were supplied to the customers, against which, the advances were received, and there was only a small amount of advance which remained outstanding and adjusted at the end of the year. The Assessing Officer observed that the assessee had no money in hand to make the deposits in its bank accounts and deposits were made out of the advances received from the customers. No attempt had been made to establish the source of the money to make the deposits, without refuting the receipts of the amounts as trade advances. (AY.2012-13)

Girish Kumar and Sons v. ITO (2023) 155 taxmann.com 208 / 105 ITR 424 /224 TTTJ 767 (Chand) (Trib)

S. 68 : Cash credits-No discovery of incriminating material-Assessment on basis of third-party statement-Addition is deleted.[S. 132]

The Assessing Officer made addition u/s. 68 on account of unexplained deposits and unsecured loans from Z and disallowed interest paid on the unexplained deposits apart from making addition on account of unrecorded sales. The assessee had discharged its onus of proving the genuineness of the loans, that the adverse material relied upon by the Assessing Officer for making the addition of unaccounted sales receipts pertained to some other transaction of the assessee. The Commissioner (Appeals) applied a net profit rate of 17.5 per cent. of the assessee's turnover for estimating the profits based on the disclosure made by other group entities. On appeals by the Revenue and the assessee:Held that in the absence of any incriminating material remained unchallenged by the Revenue there was no reason to reject the book results and make an estimation of the net profit rate. Accordingly, the addition made on account of the net profit was directed to be deleted. Dismissing the Revenue's appeal and the assessee's cross-appeal and allowing the assessee's appeal that the order of the Commissioner (Appeals) was in conformity with the proposition laid down by the jurisdictional High Court. Therefore, the Revenue's contention was to be dismissed. (AY. 2012-13 to 2014-15)

Dy. CIT v.Heaven Associates (2023) 154 taxmann.com 595 / 105 ITR 186 (Ahd)(Trib)

S. 68 : Cash credits-Demonetisation-Large Cash deposited during demonetization period-Assessee claimed that cash deposited from sale proceedS. Bill wise details submitted, books of accounts accepted, each sale bill less than RS. 2 LakhS. Addition cannot be made merely because bills did not contain name of customerS. Addition is deleted.[S. 115BBE]

Assessee is engaged in business of sale of gold and silver ornaments and deposited Rs. 84 Lakhs in bank account. Cash transactions are duly recorded in books of accounts. Stock register produced before AO. Sales made in cash are out of stock in trade and complete quantitative details maintained by assessee. Books of accounts of the assessee are audited by an independent chartered accountant. Where assessee has admitted the sales as revenue receipts, there is no case for making addition u/s. 68 or to tax the same u/s. 115BBE. Addition u/s. 68 of Rs. 80 Lakhs made by AO without rejecting books of accounts u/s. 145(3) deleted. (AY.2017-18)

Mahesh Kumar Gupta v. ACIT (2023) 151 taxmann.com 339 /
104 ITR 519 / 223 TTJ 393 (Jaipur) (Trib)

S. 68 : Cash credits-Demonetisation-Jewellery/gold cash sales-Cash deposited during demonetisation-Assessee provided PAN and complete address of buyers, with stock register-Lack of inquiry by AO u/S. 131 or 133(6)-Held that addition ought to be deleted as nothing proved against assessee.[S. 131, 133(6)]

The Hon'ble ITAT observed that none of the documents submitted by assessee have been denied by the lower authorities and that cash sales register and stock register are completely matching. It was also observed that the AO has failed to show that gross profit shown by the assessee is abnormally high or low and that cash sales have resulted in profit to the assessee which was offered to tax. The nature and source of cash sales have been explained by the assessee. The AO has not made any further inquiry with the customers of assessee by issue of summons u/s. 131 or inquiry u/s. 133(6). It was held that addition cannot be made in the hands of assessee merely for the reason that those customers have not transacted with the assessee post or pre demonetization. This could be the trigger point for investigation, but the AO, despite having complete address and PAN of customers did not make any such inquiry. (ITA No. 1407/Mum/2021 & ITA No.331/Mum/2022, dt.14.07.2023) (AY. 2017-18)

DCIT v. Mangal Bullion Pvt. Ltd (Mum.) (Trib.)

S. 68 : Cash credits-Deonetisation-Cash deposited during demonetization period-With regard to the availability of stock and quantity of items shown in the stock register and the corresponding sales, no addition can be made-Books of account not rejected-Addition is not justified.[S. 69,131, 133(6), 145]

The Hon'ble ITAT observed Addition u/s.68 on account of cash deposits cannot be made simply on the reason that during the demonetization period, cash deposits vis-a-vis cash sales ratio is higher. If the parties during the period of demonetization has purchased huge quantity of jewellery on cash which has been duly recorded in the books of accounts of the assessee and also tallying with the quantity of stock, then simply because there was a huge cash sales in that particular month cannot be the reason for treating it as undisclosed income from undisclosed sources. The parties to whom notices u/s. 133(6) were issued have confirmed the purchases but also filed the purchase bills. The ld. AO cannot disbelieve the purchases made from the assessee simply on the ground that those parties could not submit the source of their funds which is not the requirement of the assessee to prove specifically when assessee is a retail seller of jewellery and even law does not prohibit any cash sales or there is any requirement to seek any further detail. For this compliance assessee has also filed Form 61A

before the ld. AO. Once, it has been established that sales representing outflow of stocks is duly accounted in the books of accounts and there are no abnormal profits during the year, then there is no justification why AO should treat the deposits made in the bank account out of cash sales to be income from undisclosed sources. (ITA. 1600/M/2023 & CO. 63/M/2023 Dated 26/07/2023) (AY. 2017-18)
ACIT v. Ramlal Jewellers Pvt. Ltd [2023] 154 taxmann.com 584 (Mum) (Trib)

S. 68 : Cash credits-Share premium and share application-Cross examination was not provided-Confirmation letter, PAN Card, Audited financial statements, bank statement reflecting the transactions, copy of share application form, copy of Form.No 2 filed with the R.O.C. etc-Deletion of addition is affirmed. [S. 132]
The assessee has received the share application money from M/s Empower Industries Ltd and due to search u/s 132 of the Act on the group, the statements were recorded by the investigation wing that they are only providing accommodation entries and no business activity is conducted. The A.O based on the statements recorded in the course of the search of the group, has made addition of share capital including premium in the hands of the assessee and estimated unexplained expenditure. The A.O over looked the various documentary evidences filed by the assessee in support of investments including the confirmation letter, PAN Card, Audited financial statements, bank statement reflecting the transactions, copy of share application form, copy of Form.No 2 filed with the R.O.C. etc. In spite of assessee filing all the details, prima-facie the A.O has not conducted any investigation or enquiry in respect of the information submitted by the assessee and relied only on the information of a third party whose statement was not cross examined or tested. Remand report was called. The assessee prima-facie has complied with the ingredients required u/s 68 of the Act of genuineness, identity and creditworthiness. The A.O has failed to make further enquiries and relied only on statement of the key person, which was retracted subsequently. (ITA 1863/M/2021 Dt: 25/08/2023)
ITO v. AMS Trading & Investment (Mum) (Trib)

S. 68 : Cash credits-Share capital and share premium-The Tribunal considering gaps in the assessee's documentation for the share premium being treated as unexplained income by the Assessing officer, remands for fresh examination.
The appeal is against the order of the CIT (A). The primary contention is regarding the addition made by the Assessing Officer under section 68 of the Income Tax Act, 1961.
The Assessing Officer noted that the assessee company issued shares of face value Rs.10 at a premium of Rs.90/-during a period where the company had no business income. Despite multiple notices and summons, there was a lack of compliance on the part of the assessee.
The Assessing Officer, based on the available records, treated the share capital along with share premium as unexplained income. The CIT (A) upheld the Assessing Officer's decision, noting that the share capital subscribing company did not have any financial credibility. The assessee argued that the investor company's source was from the sale proceeds of shares, but no such details were provided to the lower authorities.
The Hon'ble Tribunal decided that the entire issue needs to be re-examined by the Assessing Officer, offering the assessee an opportunity to present its case. (AY.2012-13)
MK and SK Medicare (P.) Ltd v. ITO; (2023) 103 ITR 58 (SN)(Kol.) (Trib.)

S. 68 : Cash credits-Considering the lapses on establishing creditworthiness of the investors by the Assessee and verification of the year of payment by the Assessing Officer, the Tribunal remanded the matter to the file of the Assessing Officer for de-novo adjudication.[S. 148,250]

The cross-appeal challenges the order passed under section 250 of the Income Tax Act, 1961 by the CIT (A). The primary contention is regarding the addition made by the Assessing officer under section 68 of the Income Tax Act, 1961. The Assessing officer observed that the assessee company had received share premium during the year under consideration.
Further reassessment proceedings were initiated based on the information received and a notice was issued under section 148 of the Act. The Assessing Officer treated the entire amount of share premium and share capital as bogus and unexplained cash credit, adding the aggregate amount to the total income of the assessee under section 68 of the Act.
The CIT (A) granted partial relief to the assessee, directing the deletion of significant portion as genuine share application money and further held certain amount as unexplained. The Assessee raised an objection against the CIT (A)'s decision in confirming the addition on account of unsecured loans, stating that the said sum was received by the assessee in earlier years and not during the year under consideration.
The Hon'ble Tribunal observed discrepancies in the submissions and evidence provided by the assessee and the Assessing Officer's findings. The Tribunal thus remanded the matter back to the Assessing Officer for a fresh examination and verification. (AY. 2009-10)
ITO v. RTG Exchange Limited (2023) 103 ITR 45 (SN)(Mum) (Trib)

S. 68 : Cash credits-Appellate Tribunal-Powers-Delay was condoned-Accountant inadvertently filed return declaring income u/S. 44AD and cash balance as at end of year-Onus upon department to disprove contention of assessee-No material brought on record to show cash generated by assessee from other activity subject to tax-Order bringing cash to tax as unexplained cash credit unsustainable.[S. 44AD, 115BBE, 253]
The Tribunal held that advancement of substantial justice is the prime factor while considering the reasons for condoning the delay. Further, there was no allegation from the Revenue that the appeal was deliberately not filed within the time. Accordingly, the delay in filing the appeal by the assessee deserved to be condoned.
The assessee filed a return of income for the first time declaring an income of Rs. 2,66,710 under section 44AD of the Act and also disclosing a closing cash balance at Rs. 7,81,648 as on March 31, 2015. The assessee, however, claimed that the accountant had inadvertently filed the return under section 44AD, that the assessee being an agriculturist was not under obligation to file the Income-tax return. However, the AO treated the amount of Rs. 7,81,648 shown as closing cash balance as unexplained cash credit under section 68 of the Act. The Tribunal deleted additions as there was no evidence available on record to indicate that the case of the assessee was covered under the provisions of section 44AD except that in the Income-tax return the income was disclosed under the provisions of section 44AD. The Department failed to discharge the onus imposed upon it to disprove the contention of the assessee. Thus, whatever cash was available with the assessee was out of agricultural activity carried out in earlier years. Accordingly, the finding of the authorities was not sustainable.
Shailesh Popatbhai Katrodiya v. ITO (2023) 103 ITR 63 (SN)(Ahd) (Trib)

S. 68 : Cash credits-Failure to cross-examine deponent of affidavits-Directed to delte the addition. [S. 254(1)]
For the A Y. 2013-14, the Assessing Officer made addition of Rs. 4,00,000 on the ground that the assessee had produced the Jamabandi and Girdawari but no bills of sale of agricultural products were produced. The Commissioner of Income-tax (Appeals) confirmed the addition of Rs. 2,00,000 and balance amount of Rs. 2,00,000 was deleted. The Hon'ble Tribunal considering the totality of facts, they were of the view that the amount seized from the assessee did not belong to the assessee, but belong to Lux Industries Ltd. Therefore, the Hon'ble Tribunal deleted the additions. (AY. 2013-14)

Amar Singh Saharan v.ITO(2023)104 ITR 195 (Jodhpur)(Trib)

S. 68 : Cash credits-Burden of proof-Share Application money and share premium-Availability of sufficient funds-Statements of directors recorded, confirmed decision of the board to invest in assessee-Burden of proof of assessee to prove identity and creditworthiness discharged-A.O not making any inquiry or finding any discrepancy in evidence-Proviso requiring assessee to prove source of credits not applicable-Additions are not justified.

Held that details were filed by the assessee, i. e., bank account, Income-tax return, audited balance-sheet of the investor companies at the time of subscribing to the equity shares of the assessee to show the sufficient availability of funds during the year and most importantly the statements of the directors of the assessee as well as investor companies had been recorded by the Assessing Officer, wherein, the transaction had been confirmed to have been carried out between the investor companies and the assessee pursuant to a decision in the board meeting to invest in the equity share capital of the assessee at a premium. Thus, all the limbs of section 68 required to be fulfilled about the identity and creditworthiness of the share subscriber and genuineness of the transaction had been successfully proved. The assessee having discharged initial burden upon it to furnish the evidence to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidence furnished and even make independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidence furnished by the assessee and confronting with the same to the assessee. The Assessing Officer had not made any independent enquiry to verify the genuineness of the transactions nor pointed out any discrepancy or insufficiency in the evidence and details furnished by the assessee before him. The proviso inserted in section 68 of the Act by the Finance Act, 2012 that the assessee receiving share capital and share premium is required to prove the source of the source of the credits to the satisfaction of the Assessing Officer having been inserted with effect from April 1, 2013 was not applicable in the case of the assessee for the AY 2012-13. Thus, additions was to be deleted. (AY. 2012-13)

Toplink Developers Consultancy Pvt. Ltd. v ITO (2023)101 ITR 24 (SN) (Kol) (Trib)

S. 68 : Cash credits-Income from undisclosed source-Cash deposited in the bank account-Claim that cash deposited was out of cash withdrawals-No document to substantiate claim-Link not established-Addition is justified.[S. 69]

Held, that apart from referring to this bank statement to substantiate his claim that the cash deposited in the bank account was out of cash withdrawals, no other document was placed on record to prove the utilisation of cash withdrawn by the assessee. The assessee had also not established the link between cash withdrawals and cash deposits in his bank account. There was no proof regarding other transactions in the bank account. Merely because cash withdrawals by the assessee were more than the cash deposited in the bank account that could not lead to the conclusion that the cash deposit was out of the cash withdrawal without complete details of the utilisation of money. Thus, in the absence of necessary explanation and details, there was no infirmity in the findings of the Commissioner (Appeals) (AY. 2012–13)

Zakir Ali Yarbali Khan v. ITO (2023)101 ITR 35 (SN.)(Mum) (Trib)

S. 68 : Cash credits- Penny stocks-Report of Kolkata Investigation Directorate-Shares held for morethan 15-25 years-Not justified in doubting the transactions-Order of

CIT(A) deleting the addition is affirmed-Issue not raised before the CIT(A) cannot be raised under rule 27 of the ITATRules, 1963.[S. 10(38), 45, ITATR. 27]

Assessee had purchased the shares of ETTL in FY 1999-00 and sold the same in FY 2014-15. She had also received some shares as a gift from her son who was holding the same since 1989-90. Thus the shares were held for around 15-25 years before they were sold in the market through stock exchange. The AO on the basis of a report of Kolkata Investigation Directorate and other circumstantial evidence alleged that the assessee had entered into a colourable device to evade tax by obtaining accommodation entry in the form of LTCG on sale of penny stocks and held the same liable to tax u/s 68 of the Act. The ITAT observed that, a taxpayer will not wait for 15-20 years to convert their black money through some non-genuine price-rigging in the very distant future. The ITAT further observed that the genuineness of transactions is doubted merely on the basis of the report of investigation wing and recording of statement of various unidentified promoters/ brokers/ associated persons/ intermediaries, etc. who were neither shown to be linked to the assessee nor any allegation was shown to be made qua the assessee or the transaction under consideration. It was further observed that no SEBI report or Stock Exchange report or cross examination of the operators / intermediaries was provided/ carried out. Thus the ITAT held that the AO had taken action against the assessee on the basis of generalised inputs received by him without taking cognizance of the overwhelming fact of the holding period of shares and without showing any nexus or live link with the assessee, which facts, according to the ITAT, were recognized by the CIT(A). The ITAT therefore held that the overwhelming factor of extraordinary period of holding shares prior to sale transcends all other considerations and exonerates the assessee from any kind of impropriety. Revenue's appeal was accordingly dismissed. The assessee filed an application under Rule 27 of the ITAT Rules 1963 and contened that section 68 could not have been invoked in the absence of books of books of account. The Tribunal held that the issue not raised before the CIT(A) cannot be raised under rule 27 of the ITATRules, 1963 (AY.2015-16)

ACIT v. Anju Jain (Smt.)(2023) 200 ITD 389/ 226 TTJ 146 (Delhi)(Trib)

S. 68 : Cash credits-Share capital-Share premium-Discharged the burden by filing copy of ITR, balance sheet of invvestors, PAN address, confirmation of account, bank statement and valuation report-DCF method-Addition is deleted.[S. 56(2)(viib), 133(6) R.11UA]

During the assessment proceedings, the notice u/s 133(6) was sent to the investing companies, which were returned without any response. In response to the show cause notice issued to the assessee, the assessee submitted copies of the investing companies' ITR, balance sheet, bank statements, and incorporation documents. The AO made an addition to the assessee's income ignoring these submissions and merely because investing companies did not respond to the notices and without making any additional and independent enquiries. It was held that since AO did not bring anything to the contrary to what was submitted by the assessee, the onus to prove the transaction was not genuine shifted to authorities. Hence, the addition made by the AO was not considered sustainable without any contrary evidence. The registered valuer of the assessee applied one of the permissible valuation methods as per Rule 11UA, via. DCF method. AO did not concur with the method used and made the addition u/s 56(2)(viib). It was held that since the legislature itself allows any of the valuation methods and in the absence of any mechanism wherein the AO can adopt the other valuation method, the addition made was not sustainable.(AY. 2016-17)

Movefast Automobiles (P.) Ltd. v. Income-tax Officer (2023) 201 ITD 766 (Delhi) (Trib.)

S. 68 : Cash credits-Unexplained money-Demonetisation-Cash available in old demonetised currency-Withdrawal from bank upto November 8, 2016-Disallowance to that extent not sustainable-Balance disallowance of cash is proper.[S. 69]

The Hon'ble Tribunal held that cash in hand till November 8, 2016 in old currency notes alone could be considered to have been deposited by the assessee on December 1, 2016. To this extent, the disallowance was to be deleted. As regards the balance amount, the assessee having not given a satisfactory explanation, the disallowance was to be affirmed. (AY. 2017-18)

Shail Jayesh Shah v.ITO (2023)101 ITR 38 (SN.) (Mum) (Trib)

S. 68 : Cash credits-demonetization-Large cash deposited-Sale bills-Each sale bill less than RS. 2 Lakhs-Books of account is not rejected-Addition cannot be made merely because bills did not contain name of customerS. [S. 115BBE, 145(3)]

Assessee is engaged in business of sale of gold and silver ornaments and deposited Rs. 84 Lakhs in bank account. Cash transactions are duly recorded in books of accounts. Stock register produced before AO. Sales made in cash are out of stock in trade and complete quantitative details maintained by assessee. Books of accounts of the assessee are audited by an independent chartered accountant. Where assessee has admitted the sales as revenue receipts, there is no case for making addition u/s. 68 or to tax the same u/s. 115BBE. Addition u/s. 68 of Rs. 80 Lakhs made by AO without rejecting books of accounts u/s. 145(3) deleted. (AY. 2017-18)

Mahesh Kumar Gupta v. ACIT (2023) 151 taxmann.com 339 / 104 ITR 519 / 223 TTJ 393 (Jaipur) (Trib)

S. 68 : Cash credits-Protective assessment-Addition made under Black money Act-Not attained finality-Deletion of addition was affirmed. [S. 143(3), Black Money (Undisclosed Foreign Income and Assets) and Imposition Act 2015, S. 10(1), 10(3)]

Search and seizure action was conducted on 7-4 2016, on the basis of the information under Information Exchange Agreement and thereafter information received from competent Authority of Singapore, the notice was issued under 10(1) of the Black Money (Undisclosed Foreign Income and Assets) and Imposition Act 2015 and assessment order was passed making addition under section 10(3) of the Act. The order has not attained the finality. The Assessing Officer passed protective assessment under income tax Act, making addition under section 68 of the Act. On appeal against protective assessment, the CIT(A) deleted the addition made on protective assessment. On appeal by the Revenue, dismissing the appeal of the Revenue, the Tribunal held that once additions have been made under Black Money Act, the same can not be made under the Income-tax Act on the same set of facts. (ITA No. 426 & 427 /Del/2022 dt. 19-4 2023)(AY. 2013-14, 2014-15)

DCIT v. Ashok Kumar Singh (2023) BCAJ-May-P. 35 (Delhi)(Trib)

S. 68 : Cash credits-Penny stock-Long term capital gains-Merely on the basis of surmises, suspicion and conjecture, without any independent verification addition cannot be made as cash credits-Denial of exemption is not justified-Estimated commission u/s 69C of the Act was also deleted.[S. 10(38), 46, 69C]

The assessee purchased the shares of company named Radford Global Ltd & Blazon Marble Ltd through off market on preferential allotment. The assessee submitted before the Assessing Officer, bank details, statements, allotment letters, DEMAT statements, contract

notes, STT payment invoices ledgers etc. The Assessing Officer considered the transactions a bogus and mere accommodation entries and treated the sale proceeds as unexplained cash credit under section 68 and added estimated commission u/s 69C of the Act on the ground that the both the companies were investigated by SEBI authorities and the prices were artificially rigged. On appeal the CIT(A) affirmed the addition. On appeal the Tribunal held that the transactions could not be treated as sham merely because they have done in off market, the assessee had discharged his onus of proving fact that shares purchased by him was dematerialised in the DEMAT account. In none of the SEBI orders or investigations, the name of the assesee is directly appearing or alleged. The assessee or broker are not one of the parties who SEBI has proceeded against. Accordingly the Tribunal held that merely on the basis of surmises, suspicion and conjecture, without any independent verification addition cannot be made as cash credits. Accordingly the denial of exemption is not justified. Estimated commission u/s 69C of the Act was also deleted.Decision in PCIT v. Swati Bajaj reported in (2022) 139 taxmann.com 352 /288 Taxman 403/ 446 ITR 56 (Cal) (HC) distinguished.(ITA Nos. 1605/ 1612 /Mum/2021 dt.3-2-2023) (AY. 2015-16)

Yogesh P.Thakkar v. DCIT (2023) The Chamber's Journal-March-P. 111(Mum)(Trib)
Hrasha Nitn Thakkar v. DCIT (2023) The Chamber's Journal-March-P. 111(Mum)(Trib)
Nisha Yogesh Thakkar v. DCIT (2023) The Chamber's Journal-March-P. 111(Mum)(Trib)
Nitin Popatlal Thakkar v. DCIT (2023) The Chamber's Journal-March-P. 111(Mum)(Trib)
Dineshchandra D Chhajed v. DCIT (2023) The Chamber's Journal-March-P. 111(Mum)(Trib)

S. 68 : Cash credits-Cash deposit-Demonetization-Burden is on the Assessing Officer to prove that the explanation offered by the assesee are incorrect-Addition was deleted.

Held that the asseessee has shown withdrawal for cash deposits during demonetization period and discharged the burden cast upon them. The Assessing Officer has not made any further enquiry. The addition was deleted. (ITA No. 982/ Chennai / 2022. dt. 24/03/2023 (AY. 2017-18)

Emgee Integrated Logistics Pvt Ltd v. ACIT (2023) The Chamber's Journal-April P. 140 (Chennai)(Trib)

S. 68 : Cash credits-Search-Draft agreement found on WhatsApp-Sales consideration as per registered agreement has to be accepted as actual sales consideration-Addition was deleted. [S. 132]

During the course of search proceedings a draft agreement on the WhatsApp of the mobile of shri Alkesh Patel the partner of the firm was found where in the sale consideration was shown much higher than the actual sale consideration shown in the registered sale agreement. The Assessing Officer computed the capital gain on the basis of rough draft agreement on the basis of agreement found on the WhatsApp of the partner. CIT(A) affirmed the order of the Assessing Officer.On appeal the Tribunal held that the Assessing Officer has not supported his finding with any corroborative and conclusive evidence in spite of the fact that on mobile whatsApp it was stated that the same was a rough draft proposal. Neither any independent verification from the broker, buyers, nor the Assessing Officer has obtained any independent sources i. e. DVO. Accordingly the Tribunal deleted the addition. (ITA No. 7332 /Mum/ 2018 dt. 30-1-2023)(AY. 2014-15

Prakash Gems v.DCIT (2023) The Chamber's Journal-April-P. 141 (Mum)(Trib)

S. 68 : Cash credits-Non-Resident-Foreign bank accounts-Mentioning wrong status in the return-Once the assessee is non-resident the income or deposit in the foreign bank account cannot be taxed in India-Addition was deleted. [S. 6(1), 56(2)(v), 153A]

The assessee went abroad for studies in the previous year relevant to AY. 2008-09. There was search action on father of the assessee. Notice under section 153A was issued on the assessee. The assessee filed the return of income showing the residential status as resident. The AO taxed the entire credit reflected in Foreign Bank account u/s 68 of the Act by holding that gift from family friend did not fall under section 56(2)(v) of the Act. On appeal the assessee contended that he was non-resident though in the return he has shown as resident. On appeal the Tribunal held that once the assessee is non-resident the income or deposit in the foreign bank account cannot be taxed in India. Addition was deleted. (ITA. Nos 6949 & 6950/Mum/2019 and 576 /Mum/ 2021 dt. 29-12-2022) (AY. 2010-11 to 2012-13)

Ananya Ajay Mittal v.DCIT(2023) BCAJ-March-P. 22 (Mum)(Trib)

S. 68 : Cash credits-Burden of proof-Receipts of sums of deposits, receipts of sums refunded furnished by the assessee-Details not untrue-Burden discharged-Addition is not justified. [S. 292C]

Held, that the explanations submitted by the assessee before the authorities revealed that the assessee has, given the details of the amount received, the receipt number and the details of the amount which were refunded including the cheque number and date Thus, the assessee had discharged the onus cast upon it. The presumption under section 292C of the Act was a rebuttable presumption and could not be applied mechanically ignoring the facts of the case and the surrounding circumstances. Thus, the additions were deleted. (AY. 2011-12)

Godwin Construction Pvt. Ltd. v. ACIT (2023)101 ITR 74 (SN) (Delhi) (Trib)

S. 68 : Cash credits-On money received for sale of units in housing projects-Improbable to make profits upto 50%-properties sold not high end-On money element added at 50% of booked price very high-Additions to be restricted to 15%.-Order to be not treated as precedent.

Held that it was highly improbable in this line of business to make profits up to the extent of 50 per cent. or more of the turnover on sale of small sized properties. Therefore, making addition of the entire on-money received by the assessee was not justified. Directed the A.O. to restrict the addition by estimating gross profit on the on-money receipts, at the higher of the rate in this line of business or as agreed to by the assessee before us at 15 per cent. thereof. The Tribunal clarified that this decision having been rendered in the peculiar facts and circumstances of the case was not to be treated as precedent in any other case. (AY. 2013-14, 2015-16, 2016-17)

Padmavati Housing Corporation v. Dy. CIT (2023)101 ITR 62 (SN) (Ahd) (Trib)

S. 68 : Cash credits-Burden of proof-Share Application money and share premium-Availability of sufficient funds-Statements of directors recorded, confirmed decision of the board to invest in assessee-Burden of proof of assessee to prove identity and creditworthiness discharged-AO is not making any inquiry or finding any discrepancy in evidence-Proviso requiring assessee to prove source of credits not applicable-Additions is not justified.

Held that details were filed by the assessee, i. e., bank account, Income-tax return, audited balance-sheet of the investor companies at the time of subscribing to the equity shares of the assessee to show the sufficient availability of funds during the year and most importantly the statements of the directors of the assessee as well as investor companies had been recorded

by the Assessing Officer, wherein, the transaction had been confirmed to have been carried out between the investor companies and the assessee pursuant to a decision in the board meeting to invest in the equity share capital of the assessee at a premium. Thus, all the limbs of section 68 required to be fulfilled about the identity and creditworthiness of the share subscriber and genuineness of the transaction had been successfully proved. The assessee having discharged initial burden upon it to furnish the evidence to prove the identity and creditworthiness of the share subscribers and genuineness of the transaction, the burden shifted upon the Assessing Officer to examine the evidence furnished and even make independent inquiries and thereafter to state that on what account he was not satisfied with the details and evidence furnished by the assessee and confronting with the same to the assessee. The Assessing Officer had not made any independent enquiry to verify the genuineness of the transactions nor pointed out any discrepancy or insufficiency in the evidence and details furnished by the assessee before him. The proviso inserted in section 68 of the Act by the Finance Act, 2012 that the assessee receiving share capital and share premium is required to prove the source of the source of the credits to the satisfaction of the Assessing Officer having been inserted with effect from April 1, 2013 was not applicable in the case of the assessee for the AY 2012-13. Thus, additions was to be deleted. (AY. 2012-13)

Toplink Developers Consultancy Pvt. Ltd. v.ITO (2023)101 ITR 24 (SN) (Kol) (Trib)

S. 68 : Cash credits-Income from undisclosed source-claim that cash deposited was out of cash withdrawals-No document to substantiate claim-Link not established-Addition is justified.

Held, that apart from referring to this bank statement to substantiate his claim that the cash deposited in the bank account was out of cash withdrawals, no other document was placed on record to prove the utilisation of cash withdrawn by the assessee. The assessee had also not established the link between cash withdrawals and cash deposits in his bank account. There was no proof regarding other transactions in the bank account. Merely because cash withdrawals by the assessee were more than the cash deposited in the bank account that could not lead to the conclusion that the cash deposit was out of the cash withdrawal without complete details of the utilisation of money. Thus, in the absence of necessary explanation and details, there was no infirmity in the findings of the Commissioner (Appeals)(AY. 2012–13)

Zakir Ali Yarbali Khan v. ITO (2023)101 ITR 35 (SN)(Mum) (Trib)

S. 68 : Cash credits-Share capital and premium-Summons served on directors and subscribers-Service of summons sufficient to prove identity of subscribers-Bank statements of subscribers showing sufficient funds prove creditworthiness-Transaction genuine as done through banking channels-onus of assessee discharged-Mere ground that person summoned did not appear insufficient ground for addition.[S. 131]

Held that the mere non-appearance of the directors could not be the basis for treating the share application money as unexplained or non-genuine, particularly where the time allowed for compliance was short. Where the assessee had so discharged its onus, the onus shifted to the Assessing Officer to disprove the documents furnished. In the absence of any investigation by the Assessing Officer, the additions could not be sustained merely on the basis of surmises and conjectures. The addition was deleted. (AY. 2012-13)

Dharmvir Merchandise P. Ltd. v.ITO (2023)101 ITR 279 (Kol) (Trib)

S. 68 : Cash credits-Amounts returned in cheque and other amount returned in cash to square off account-Cannot be unexplained cash credits-Assessee in real estate business-10% profit-Addition would meet ends of justice.[S. 69, 132(4)]

That an admission is an important piece of evidence but it cannot be said that it is conclusive. It is open to the person who made the admission to show that it is incorrect. The seized document clearly showed that this was the account of the assessee as on May 31, 2011 with T.Jangaiah. The total of the first three entries, i. e., Rs. 15,90,000 received by cheque, and Rs. 30,00,000 and Rs. 5,00,000 received in cash, was Rs. 51,86,000. The fourth entry showed that an amount of Rs. 15,00,000 was returned by cheque and other amounts were returned by cash. Thus, the account was squared up during the year itself. Further, the assessee does not maintain any books of account. Therefore, the addition under section 68 was not called for. However, when the assessee was undertaking certain transactions with T. Jangaiah and he was engaged in the business of real estate, he must have earned some income. Since the total amount of receipts including the cheque receipt amounted to Rs. 51,80,000, profit at 10 per cent. of the addition of Rs. 51,80,000 as against Rs. 51,80,000 made by the Assessing Officer and sustained by the Commissioner (Appeals) would meet the ends of justice. (AY. 2012-13 to 2015-16)

Pujala Mahesh Babu v. Asst. CIT (2023)101 ITR 458 (Hyd) (Trib)

S. 68 : Cash credits-Failure by assessee to disclose cash deposits-Assessee submitted power of attorney and agreement before Department-Instrument not accepted-Party who paid cash unable to provide registered deed relating to transfer of property-Matter set aside and remanded to verify purchase of property.

Held, that the party who paid the cash to the assessee for purchasing the land was unable to submit registered deed related to transfer of property. The total transfer of the land was incomplete without a registered deed of the property. But the assessee argued that the source of the cash was proved on basis of this transaction. The issue was set aside to the Assessing Officer for verification.(AY. 2011-12)

Tajinder Pal Kaur (Smt.) v. ITO (2023)101 ITR 292 (Amritsar) (Trib)

S. 68 : Cash credits-Share capital and share premium-Investors engaged in agricultural and farming activities-All subscribers personally appeared and confirmed investments upon summons-No adverse inference drawn in remand report-Addition to be deleted.

Held, that all the investors belonged to far flung areas sans banking facilities and were primarily engaged in agricultural and farming activities. Pursuant to summons issued under section 131, all the share subscribers personally appeared before the Assessing Officer and confirmed their investments in the equity shares of the assessee besides furnishing the evidence as to the source thereof. The Assessing Officer had stated in the remand report that investors were engaged in agricultural operations and the cash deposited in the bank accounts was out of normal business operation and all had filed their Income-tax returns, balance-sheets, personal profit and loss accounts and bank statements who invested in the assessee-company by cheques and those investors who invested in the assessee's shares in cash in small amounts had filed their voter I.D. cards, balance-sheets and confirmed the transactions and there was no bar on buying shares in cash. Nowhere in the remand report was any adverse inference drawn by the Assessing Officer of any kind whatsoever. The sole basis of investments being in cash which could not be a sole ground for making the additions. Therefore, the conclusion of the Commissioner (Appeals) that the assessee had failed to discharge the onus of proving the creditworthiness of all the creditors and genuineness of the transactions could not be accepted and the Assessing Officer was to delete the addition(AY. 2011-12)

Umananda Rice Mill Ltd. v.Asst. CIT (2023)101 ITR 140 (Kol) (Trib)

S. 68 : Cash credits-Search and seizure-Failure to explain receipts-Declaring the receipts to be sale of agriculture land-Cannot be treated as unexplained-Sum to be treated as capital gains and indexation to be allowed-Matter remanded.[S. 45, 48 55]
Held, the assessee having claimed as exempt on account of sale of agricultural land, the assessee's contention that it could not be treated as unexplained cash receipts, was tenable. The alternate contention of the assessee was that it could be treated as capital gains and due indexation benefit be allowed. Therefore, the matter was to be restored to the Assessing Officer with a direction to consider the receipt as sale proceeds of a capital asset and allow consequential indexation benefit and determine the long-term capital gains after verifying the details and giving the assessee due opportunity. (AY. 2012-13 to 2015-16).
Pujala Mahesh Babu v.Asst. CIT (2023)101 ITR 458 (Hyd) (Trib)

S. 68 : Cash credits-Income from undisclosed sources-Bank Statements reflecting receipt on various dates and annual reports substantiating various business interests of remitter-Deletion of addition is justified. [S. 69]
Held that in respect of loans taken from Mr. C.C.Thampi the Assessing Officer had not considered the submissions of the assessee that all contributions had been made through proper banking channels as a foreign remittance from abroad and that T was working abroad for last 30 years being involved in many business ventures in the Middle East. The assessee had submitted the annual reports of various entities in which T was involved but the Assessing Officer had rejected these on the ground that the annual reports pertained to the year ended March 31, 2012 and could not be considered for contributions made during 2007. The assessee having submitted evidence in the form of bank statements where the entries of receipt on various dates were reflected and the annual reports to substantiate the various business interest of T these could not be rejected without verification and any adverse finding to the contrary. The Assessing Officer had not conducted any further enquiry. The Commissioner (Appeals) had considered the facts and circumstances of the case correctly and there was no reason to interfere with his decision.(AY. 2008-09)
Holiday Marketing Pvt. Ltd. v. ACIT (2023)101 ITR 55 (SN) (Cochin) (Trib)

S. 69 : Unexplained investments-Unexplained money-Possession of goods as bailee for carriage of goods-Does not render owner of gods or deemed to be owner-Bitumen is not a valuable article in context of section 69A-Assessee was mere carrier supplying goods (Bitumen) from consignor i.e. oil marketing companies to consignee i.e. road construction department, he could not be said to be owner for purpose of section 69A of the Act-Other Valuable article-Interpretation Of Taxing Statutes-Ejusdem Generis-Noscitur A Sociis-To be construed Ejusdem Generis with money, bullion or jewellery-Additions deleted. [S. 69A,Carriage by Road Act, 2017, S 15,Contract Act, 1872, S. 148, Transfer of Property Act, 1882, S. 54, Indian Penal Code, 1860, S. 405, Sale of Goods Act, 1930, S. 27, 39, Circular No. 20 of 1964, dated 7-7-19964 instruction No. 1916 dated 11-5-1994]
High Court held that assessee, was engaged in contract carriage of goods, lifted goods for delivery but did not deliver them, addition of value of goods short delivered in hands of assessee was justified. On appeal, allowing the appeals the Court held that for the purposes of section 69A of the Act, the deeming effect of the provision will only apply, firstly, if the assessee is the owner of the goods and secondly, for any article to be considered a "valuable article" under section 69A, it must be intrinsically costly, and it will not be regarded as valuable if a huge mass of a non-precious and common place article is taken into account, for

imputing high value. Bitumen was not a valuable article in the context of section 69A and the assessee was not the owner of the bitumen for the purpose of section 69A of the Act. The assessee was engaged as a carrier to deliver the bitumen, after having lifted it from the oil companies, to the various Divisions of the Road Construction Department of the Government of Bihar. It was not the case of either party that the assessee had become the owner of the bitumen in question in a manner authorised by law. On the other hand, the specific case of the assessee was that the assessee never became the owner and it remained only a carrier. However, there had been short delivery, which would mean that the assessee continued in possession contrary to the terms of contract of carriage. Possession of the goods was clearly wrongful when it continued with the assessee contrary to the terms of the contract and the law. The assessee did not possess the power of alienation. The assessee could at no point of time have claimed rights over the bitumen as an owner. The possession of the assessee had its origin under a contract of bailment. The assessee was bereft of any of the rights or powers associated with ownership of property and the Assessing Officer acted illegally in holding that the assessee was the owner. Thus, bitumenas such could not be treated as a valuable article. The assessee was certainly not the owner of the bitumen. Due to short delivery of goods, the possession of the assessee was unlawful. The inevitable conclusion therefore was that the assessee was not the owner, for the purposes of section 69A. Articles of value are a genus of which valuable articles are a species, i. e., a subset of high priced items. To put it differently, an article having value, may not be a valuable article. To categorise all sundry items as valuable articles will be an interpretation foreign to the purpose of the law and the intention of the Legislature in so far as section 69A is concerned. Circular No. 20 of 1964 dated July 7, 1964 stated that the 1964 amendment was enacted not to subject lower middle-class people to taxation by taxing gold or jewellery inherited from forefathers, but was mandated for "big assessees" who convert their black money and unaccounted wealth into gold jewellery and gold vessels and claim these to be heirlooms. The Legislature never intended that any and every article of value should be brought within the ambit of section 69A. The intent of the Legislature through the amendment was to subject articles like gold, jewellery and other valuable items, to Income-tax, where such articles are typically owned with the intention of avoiding Income-tax. When the principle of ejusdem generis is applied, the preceding words in section 69A, money, bullion, jewellery would suggest that the phrase "other valuable article" which follows those words, would justify inclusion of only high value goods. Any other way of reading the phrase "other valuable article" or "valuable article" by ignoring the kind of specific goods mentioned in the preceding part of section 69A, would be incorrect and would do violence to the plain language of the provision and travel beyond the legislative intent. Additionally, the maxim "noscitur a sociis" (i. e., a word is known by its associates) would also support this view that the other valuable articles should be items in the nature of silver bars, or jewellery or money, i.e., only high-priced item. To include bitumen, the residual offshoot material during processing of crude oil, excluding its valuable constituents like petrol, diesel, LPG, aviation fuel, etc., within the expression "other valuable article" in section 69A, would result in absurdities, and was to be eschewed. The principle that a fiscal statute should be strictly construed is well settled. For purposes of interpreting section 69A of the Act the ordinary and literal meaning should be adopted as the words in the statute are clear and unambiguous. The phrase "valuable article" would simply mean an item "worth a great deal of money". It cannot include "any article of value". An ordinary "article" cannot be bracketed in the same category as other high-priced articles like bullion, gold, jewellery mentioned in section 69A by attributing high value to it only on the strength of its bulk quantity.(AY. 1995-96, 1996-97)

D. N. Singh v.CIT (2023)454 ITR 595/ 293 Taxman 550/ 332 CTR 665 / 226 DTR 17 (SC)

Editorial : Decisions in, D. N. Singh v.CIT (2010) 324 ITR 304 (Pat)(HC), D. N. Singh v.CIT (2018) 504 ITR 507 (Pat)(HC), reversed.

S. 69 : Unexplained investment-Bogus purchases-Accommodation entries-Estimation of 12.5 Per cent on alleged bogus purchases is affirmed. [S. 69C]
Dismissing the appeal of the Revenue the Court held that the Tribunal is justified in estimating the gross profit at 12.5 per cent on alleged bogus purchases. (AY.2009-10)
PCIT v. Ashwin Purshotam Bajaj (2023)456 ITR 365 /155 taxmann.com 478 (Bom)(HC)

S. 69 : Unexplained investments-Capital-Loan-No incriminating material was found-Block assessment order-Deletion of addition by the Tribunal is affirmed by the High Court on merit.[S. 68, 148, 260A]
Dismissing the appeal of the Revenue the Court held that,since additions involved were common to block assessment proceedings as well as reassessment proceedings and addition was deleted on merits in the block assessment proceedings, the order of the Tribunal is affirmed. (AY. 2000-01)
CIT v. Deepsons Southened (2023) 295 Taxman 506 (Delhi)(HC)

S. 69 : Unexplained investments-Undisclosed liability-Deletion of addition by the Tribunal is affirmed. [S. 69A, 69B, 69C, 132]
Tribunal deleted the addition on ground that case of assessee was of suppression of liability in audited account books vis-a-vis parallel set of account books maintained on the ground that under law undisclosed investment or undisclosed expenditure could be subject mater of addition either under section 69 or section 69A or section 69B or section 69C but on the facts the case issue was in regard to undisclosed liability. Order of Tribunal is affirmed. (AY. 2014-15)
PCIT (Central) v. Regent Beers & Wines Ltd. (2023) 295 Taxman 565 (MP)(HC)

S. 69 : Unexplained investments-Search-Reference to DVO-DDIT (Inv)-DDIT did not have power to make reference to DVO-Power was acquired only on 1-4-2017 by virtue of Finance Act, 2017 under section 132(9B)-Order of Tribunal deleting the addition was affirmed. [S. 132, 132(9B)]
A search was conducted at premises of assessee on 13-3-2014 Pursuant to same DDIT (Inv) made reference for valuation of assets of assessee to DVO on 11-7-2014. Based on initial valuation report submitted by valuation officer on 18-11-2014, the Assessing Officer made addition as unexplained investment under section 69 On appeal, Tribunal held that DDIT did not have power to make reference to DVO, which power he acquired only on 1-4-2017 by virtue of Finance Act, 2017 under section 132(9B) and deleted the addition. On appeal by Revenue, the High Court affirmed the order of the Tribunal.(AY. 2008-09 to 2013-14)
PCIT v. Narula Educational Trust (2023) 292 Taxman 456 (Cal.)(HC)

S. 69 : Unexplained investments-Search and seizure-Block assessment-Educational institution-Deletion of addition was held to be proper.[10(22), 10(23C)(vi), 11, 132, 158BC, 260A]
Search and seizure operations were conducted under section 132 in the premises of the assessee and in the residential premises of its managing trustee and one of its trustees. In the block assessment order the Assessing Officer made an addition under section 69 of the cash seized during the search to the income of the assessee. On appeal the addition was deleted, which was affirmed by the Tribunal. On appeal High Court affirmed the order of the Tribunal and held that even as regards the cash found during the course of search, it was found to have

been added in the income of the individuals from whose residence it was recovered. Therefore, the cash amount could not have been added to the income of the assessee.
CIT v.Orissa Trust of Technical Education and Training (2023) 450 ITR 276 (Orissa)(HC)

S. 69 : Unexplained investments-Income from undisclosed sources-Assessment-Bogus purchases-Order of CIT(A) restricting disallowance of purchases to 5 per cent of alleged bogus purchases is affirmed. [S. 143(3)]
Held that the Order of CIT(A) restricting disallowance of purchases to 5 per cent of alleged bogus purchases is affirmed. (AY. 2018-19, 2019-20)
Dy.CIT v. Hi-Tech Engineers (2023) 222 TTJ 785 (Mum)(Trib)

S. 69 : Unexplained investments-Unrecorded sales-Only gross profit is estimated-Cash deposited in banks-When profit is estimated further addition is deleted-Reassessment is held to be valid. [S. 147, 148]
Tribunal held that as regards Unrecorded sales, only gross profit is estimated. As cash deposited in banks when profit is estimated further addition is deleted. Reassessment is held to be valid. (AY. 2010-11, 2011-12)
ITO v. Rutuja Ispat (P) Ltd (2023) 225 TTJ 1000 (Pune)(Trib)

S. 69 : Unexplained investments-Cash deposits-Sale of unbranded electric items-Profit is estimated at 10% on alleged unaccounted business.
Tribunal estimated profit at 10% on alleged unaccounted business in respect of cash deposit of sales. (AY. 2011-12)
Harish Kumar Chhabada v. Dy.CIT(2023) 225 TTJ 26 (UO) (Raipur)(Trib)

S. 69 : Unexplained investments-Genuineness of purchases-Parties have not filed the return-No confirmation from the books of account of those parties-Addition is affirmed.
Assessing Officer made an addition in respect of purchases made by assessee being non-genuine. Commissioner (Appeals) directed Assessing Officer to conduct an inquiry to ascertain whether return of income was filed for relevant year by those parties and if so, they had disclosed turnover of business in such returns. Tribunal held that the parties had not filed return of income and assessee also grossly failed in proving geniuses of transaction with said two parties. Proprietor of said two parties were never found at given addresses.Addition is affirmed. (AY. 2009-10)
ACIT v. Meerut Roller Flour Mills (P) Ltd (2023) 225 TTJ 75 (UO)/ 157 taxmann.com 463 (Delhi)(Trib)

S. 69 : Unexplained investments-Income from undisclosed sources-Gift-Father and mother-Affidavits-Accepted as genuine-Gift from grand mother-Failure to produce evidence-Addition is affirmed. [S. 68]
Held that gift from father and mother is accepted as genuine and gift from grand other is treated as non-genuine for failure to produce evidence. (AY. 2009-10)
Hemant Pandya v. ITO (2023) 224 TTJ 610 (Indore)(Trib)
S. 69 : Unexplained investments-Difference in Cost of Construction as per valuation Report-Books of account not rejected-Addition is not justified. [S. 142A(2)]
AO noticed that there is discrepancy in the cost of construction and investment recorded in books of accounts. The AO referred the matter to DVO and thus added the difference of Rs.64.10 lacs. AO had not doubted the cost of construction recorded in the Books. The AO has not brought any material on record to establish that the appellant had made any

unaccounted investment in the construction of the building in question. It was held that without rejecting the books of accounts, it is not open for the Assessing Officer to refer the matter to Valuation Cell for determining different entries and the expenditure incurred by the assessee. (AY. 2014-15)

ITO v. Pritham & Prathik Hospitals (P) Ltd (2023) 221 TTJ 911/223 DTR 177 (Hyd)(Trib)

S. 69 : Unexplained investments-Unexplained money-Search and seizure-Marriage Expenses of daughter-Source of funds for purchase of agricultural land-Gold Jewellery-Set off is given to cash in hand-Partly confirmed. [S. 69A, 132]

The ITAT, on appeal, held that the assessee explained that she held sufficient opening cash balance as on 1.04.2016 amounting to Rs. 7,46,464 and apart from that the assessee disclosed income of Rs. 7,28,080. The assessee's sources were to the tune of Rs. 14.70 lakhs, if the cash-in-hand of Rs. 7,46,464 was included, apart from current year's income. Hence, the assessee could explain the source of purchase of agricultural land at Rs. 7.50 lakhs. The balance Rs. 2.61 lakhs remained unexplained and was added.

Lastly, in respect of the disputed gold jewellery of 316 gms. seized, the CIT(A) had not taken into consideration that 75 sovereigns were received by the assessee from her parents. Hence, the gold jewellery of 316 gms. was explained and the addition therefore, was deleted. (AY.2016-17, 2017-18, 2018-19)

Balusamy Manimekalai (Smt.) v. ACIT (2023) 103 ITR 10 (SN)(Chennai)(Trib)

S. 69 : Unexplained investments-Plant and machinery-Purchase bills furnished-Deletion of addition is affirmed-Power generation-Matter remanded.[S. 80IA]

Dismissing the appeal of the Revenue the Tribunal held that the assessee has furnished copy of purchase bills, accounts were audited and same did not reflect any adverse opinion by auditor. Order of CIT(A) deleting the addition is affirmed. As regards profits derived from power generation, the matter is remanded to the file of the Assessing Officer. (AY. 2017-18)

ACIT v. Mahakaushal Sugar & Power Industries Ltd. (2023) 199 ITD 257 (Jabalpur) (Trib.)

S. 69 : Unexplained investments-Loan received in USD and deposited in Indian bank account-Investment on same day in mutual funds-Source of funds outside India not taxable in India-CIT (A)'s direction to obtain certified true copies of source of income is justified-Order oof CIT(A) is affirmed.

The CIT (A) directed the Assessing Officer to obtain from the assessee, the certified true copies of the above documents from the bank and furnish them before the Assessing Officer while giving effect to the appellate order. The CIT (A) further directed the Assessing Officer to delete the addition after satisfying himself that the source of such investment was from outside India. The Tribunal held that there was no infirmity in the direction issued by the CIT (A). (AY. 2009-10).

ACIT (IT) v. Vijaykumar Vasantbhai Patel (2023)101 ITR 1 (SN) (Ahd) (Trib)

S. 69 : Unexplained investments-Survey-Income from undisclosed source-Discrepancy in stocks-Excess stocks not properly verified by AO-Matter remanded for readjudication. [S. 133A, 145(3)]

Held that the reconciliation filed by the assessee showed that the excess stocks claimed by the Assessing Officer was not properly verified. Therefore, the matter was to be remanded to the Assessing Officer for proper adjudication after taking cognisance of the reconciliation filed by the assessee. (AY. 2011-12)

Ganesh Ginning Factory v.ACIT(2023)101 ITR 90 (SN) (Ahd) (Trib)

Gajanand Ginning And Pressing Pvt. Ltd v. ITO (2023)101 ITR 90 (SN) (Ahd) (Trib)
Premjibhai Vallabhbhai Kukadiya v. ITO (2023)101 ITR 90 (SN) (Ahd) (Trib)

S. 69 : Unexplained investments-Profits from sale of land-Contention that assessee only acted as aggregator and seller offered income as tax-AO to examine contention of the assessee-Matter remanded. [S. 68]
Held that the issue was to go back to the Assessing Officer for both AYs to re-examination of the claim of the assessee in the light of agreement between the parties and the claim of the assessee that seller had offered the income in its hands. Matter remanded. (AY. 2003-04 to 2005-06)
Pawan Green Channels Pvt. Ltd. Dy. CIT (2023)101 ITR 19 (SN) (Chennai) (Trib)

S. 69 : Unexplained investments-Excess Stock found during course of Survey-Taxable as business income and not as undisclosed income.[S. 28(i) 115BBE, 133A]
Survey action 133A of the Act was carried out on the business premises. AO in assessment noted that, during the course of survey proceedings, inventory of stock was prepared and as on the date of survey, in books of account the stock was shown, However, the stock as per the physical inventory was arrived. The stock discrepancy which assessee accepted and offered for taxation as business income. However, AO taxed the excess stock as undisclosed investment u/s 69 and subsequently u/s 115BBE. CIT(A) confirmed the action of AO. Tribunl held that the Assessee offered the difference for taxation as business income, because the excess stock was said to be purely purchase of material for making sweets during the course of the business. If assessee is carrying on business and has some undisclosed stock then same is taxable as an undisclosed business income. It cannot be held it is a case of undisclosed investment. Neither during the course of survey neither in the statement it was found nor has assessee ever stated that there is some undisclosed investment representing in the form of undisclosed assets. It is a case of excess stock found during the carrying of the business and stock is generated out of business income and therefore, the provision of section 69 on the facts of the case has no applicability. (ITA No. 2285/Mum/2022 dt. 11/04/2023) (AY 2019-2020)
Govind Gidomal Lulla v. ITO (Mum)(Trib.) (UR)

S. 69 : Unexplained investments-Demonetisation-Cash withdrawal-Only source of income is pension-Addition is deleted. [S. 68]
Tribunal held that huge withdrawals were made from assessees's accounts since FY 2010-11 and that assessee's only soure of income was from his salary remitted from Qatar to his account held in India and pension received after retirement. It was held, after relying on certain co-ordinate benches decision, that revenue cannot contend that the assessee should have explained how he utilised the cash withdrawn and whether the same was still available with assessee or not and that addition is not sustainable and directed to be deleted. (ITA No. 917/M/2023, dt. 10.07.2023)
Abbasali Chinikamwalla v. ITO, (Mum)(Trib.) (UR)
S. 69 : Unexplained investments-Cash paid to the developer for purchase of land-during the course of survey action developer accepted the receipt of on money and details of the same was provided-in the absence of providing the source, the AO is justified in treating the payment as income from undisclosed sourceS.
It has been held by the Hon'ble Appellate Tribunal that the developer admitted during the course of survey that it has received on-money from various persons, which was kept outside the books of account. The name of the assessee specifically appeared in such a list. It was not only a mere admission by the developer, but corresponding record in this regard was also

found, which duly recorded the name of the assessee with the amount of on-money. Thus, it is proved that the assessee has paid on-money to the developer for purchase of land and therefore, the lower authorities are justified in making the addition. (AY.2011-12)
Anoop Gopikishan Jaju v. Asst. CIT (2023) 105 ITR 22 (SN) (Pune) (Trib)

S. 69 : Unexplained investments-Search-Source of the Jewellery found during the Search/Seizure Operation-Benefit of instruction No.1916 dated 11.05.1994 issued by CBDT.[S. 132]
During the search and seizure action jewellery valuing Rs.8,15,796/-and cash of Rs.21,200/- were found but not seized. The gold jewellery of 281.200 gms was found along with one diamond jewellery and silver 2.51 kg. In the course of search during the statement recorded, assessee stated that jewellery belongs to her and family members which has been received on various occasions including marriage.
The ITAT held that the Instruction No.1916 dated 11.05.1994 issued by CBDT lays down guidelines for seizure of jewellery and ornaments in course of search. Point No. (ii) from the same reads that "In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms. per married lady, 250 gms. per unmarried lady and 100 gms per male member of the family need not be seized." Relying on the above instruction and decisions of various High Courts Hon'ble ITAT deleted the entire addition and observed that "unless anything contrary is shown it can safely be presumed as the source of the Jewellery is explained. (ITA No. 1319/Mum/2021; dated 31/05/2023) (AY. 2017-18).
Tara Kabra v. DCIT, CC-1(3) (Mum)(Trib)

S. 69 : Unexplained investment-Mismatch of dates in customer ledger account-Addition is not justified.
Assessee purchased a property from unitech availing loan from a company named ACE. Held that the assessee sufficiently established that loan transaction by RTGS was same as per loan confirmation. it was concluded that ld. Authorities have fallen in error in not appreciating the fact in correct perspective. Thus there was no justification for making the addition. (AY. 2015-16)
Shalini Gupta v. ACIT (2023) 203 ITD 138 /106 ITR 78 (SN) (Delhi)(Trib)

S. 69 : Unexplained investments-Survey-Excess stock-Assessable as business income and not as undisclosed investment [S. 115BBE, 133A]
Survey action 133A of the Act was carried out on the business premises. There was excess stock which assessee accepted and offered for taxation as business income. The Assessig Officer taxed the excess stock as undisclosed investment u/s 69 read with section 115BBE of the Act. On appeal the CIT(A) confirmed the addition. On appeal the Tribunal held that If assessee is carrying on business and has some undisclosed stock then same is taxable as an undisclosed business income. It cannot be held it is a case of undisclosed investment. Neither during the course of survey neither in the statement it was found nor has assessee ever stated that there is some undisclosed investment representing in the form of undisclosed assets. It is a case of excess stock found during the carrying of the business and stock is generated out of business income and therefore, the provision of section 69 on the facts of the case has no applicability. Addition was deleted. (ITA 4 No. 2285/Mum/2022 dt. 11/04/2023) (AY. 2019-2020)
Govind Gidomal Lulla v. ITO (2023) The Chamber's Journal-May-2023-P. 108 (Mum)(Trib)

S. 69 : Un explained investments-Income from undisclosed sources-Short-term capital gains-Additional income was offered-Capital gains to be recomputed after reducing cost of acquisition from sale proceedS. [S. 45]

Held, that there was no infirmity in the order of the Commissioner (Appeals) in directing the Assessing Officer to recompute the capital gains after reducing the cost of acquisition from the sale proceeds. The Assessing Officer shall give due opportunity of being heard to the assessee while deciding the issue.(AY. 2012-13 to 2015-16)

Pujala Mahesh Babu v.Asst. CIT (2023)101 ITR 458 (Hyd) (Trib)

S. 69 : Unexplained investments-Survey-Discrepancies in stocks-Disclosed during survey duly incorporated in books of accounts of assessee-AO accepted and allowed credit-Addition is deleted.[S. 133A]

Held, that the stocks disclosed during survey were duly incorporated in the books of account of the assessee and the Assessing Officer had accepted them and allowed the credit therefor. Therefore, the order of the Commissioner (Appeals) was set aside and the Assessing Officer was to delete the addition of Rs. 50 lakhs.(AY. 2011-12)

Umananda Rice Mill Ltd. v.Asst. CIT (2023)101 ITR 140 (Kol) (Trib)

S. 69 : Unexplained investments-Appeal to CIT(A)-Additional evidence-Admission-No proof of source of funds for purchase of mutual funds-Deletion of addition by CIT(A) on the basis of additional evidence-No recording of reasons-No opportunity to A.O. to verify submission-Matter remanded. [R. 46A]

Held, that the Commissioner (Appeals) had erred in admitting the additional evidence and in failing to record reasons therefor. During the appellate proceedings, the assessee had not raised any additional ground but only furnished additional evidence. The findings of the Commissioner (Appeals) that he had admitted additional grounds was factually incorrect. The Commissioner (Appeals) had not dealt with the exceptional clauses (a) to (d) of rule 46A. He had accepted the additional evidence in violation of rule 46A, which was not tenable in law. He had erred in admitting that the source of investment for purchase of shares of company F, was the husband of the assessee and also erred in admitting that the source of investment shown as opening balance and other credits in the bank account was held jointly. Even in the remand proceedings the Assessing Officer did not get opportunity to verify the bank details submitted by the assessee and, hence, it was in complete violation of rule 46A. As a result, the matter was remitted back to the Assessing Officer for fresh examination of the documents and details.(AY. 2011-12).

ITO (IT) v. Shehnaz Nurdin Ajania (Smt.) (2023)101 ITR 618 (Surat) (Trib)

S. 69 : Unexplained investments-Investment in land-Unable to explain source of investment-Merely stating sufficient funds does not discharge onus-No Cash flow statement to show fund availability-Assessee not maintaining book of accountS.

Held, that there was no infirmity in the order of the Commissioner (Appeals) on this issue. Admittedly, the assessee could not explain the source of such investment. Further, as mentioned earlier, this land was purchased during the year itself and the onus was on the assessee to explain the source of such investment. Merely stating that the assessee had sufficient funds would not absolve the assessee of his responsibilities especially when no cash flow statement was filed to explain the availability of funds and the assessee was not maintaining any books of account. (AY. 2012-13 to 2015-16).

Pujala Mahesh Babu v. Asst. CIT (2023)101 ITR 458 (Hyd) (Trib)

S. 69 : Unexplained investments-Unexplained expenditure-Additions on the basis of seized documents-Cannot explain source-Amount not pertaining to assessment year-Addition not sustainable-Share of assessee at 30% as per seized documents-Addition to that extent only.

Held that the seized document based on which the addition was made, could not be considered as relating to this AY. The assessee claimed that he has sufficient sources for making payment of the balance amount in the the seized documents. The documents mentioned the assessee's share at 30 per cent. Therefore, out of the remaining amount, only 30 per cent. being the assessee's share as mentioned could be added. (AY. 2012-13 to 2015-16).

Pujala Mahesh Babu v.Asst. CIT (2023)101 ITR 458 (Hyd) (Trib)

S. 69 : Unexplained investments-Loan received in USD and deposited in Indian bank account-Investment on same day in mutual funds-Source of funds outside India not taxable in India-CIT (A)'s direction to obtain certified true copies of source of income-Justified.

The CIT (A) directed the Assessing Officer to obtain from the assessee, the certified true copies of the above documents from the bank and furnish them before the Assessing Officer while giving effect to the appellate order. The CIT (A) further directed the Assessing Officer to delete the addition after satisfying himself that the source of such investment was from outside India. The Tribunal held that there was no infirmity in the direction issued by the CIT (A). (AY. 2009-10).

Asst. CIT (IT) v. Vijaykumar Vasantbhai Patel (2023)101 ITR 1 (SN) (Ahd) (Trib)

S. 69 : Unexplained investments-Profits from sale of land-Contention that assessee only acted as aggregator and seller offered income as tax-AO to examine contention of the assessee-Matter remanded

Held that the issue was to go back to the Assessing Officer for both AYs to re-examination of the claim of the assessee in the light of agreement between the parties and the claim of the assessee that seller had offered the income in its hands. Matter remanded. (AY 2003-04 to 2005-06)

Pawan Green Channels Pvt. Ltd v. Dy. CIT (2023)101 ITR 19 (SN) (Chennai) (Trib)

S. 69 : Un explained investments-Search and seizure-Undisclosed income-Seized documents showing receipts and payments-Assessee in real estate business-Cannot be identified whether money used for purchase of land or loan-Profit at 10% to meet end of justice-Seized documents showing receipts and payments-Additions cannot be made on receipts and payments both-Agricultural Income-No evidence of agricultural activity-Receipt cannot be treated as sale of agricultural property-Cash receipts-Declared in original return-Cannot be taxed again in absence of contrary materialS. [S. 132]

Held, that the entire amount could not be added to the total income of the assessee. The seized document showed certain receipts and payments. Since the assessee was involved in real estate business and the entries in the books of account did not indicate whether it was in the nature of money received for purchase of land or loan, and the assessee had not declared any income from business, considering the totality of the facts of the case, the adoption of a profit rate at 10 per cent would meet the ends of justice. Seized documents showing receipts and payments. Assessee claimed as short term capital gain which is accepted by AO. Additions cannot be made on receipts and payments both. Income shown as agricultural Income,no evidence of agricultural activity. Receipt cannot be treated as sale of agricultural

property. Held, that since the assessee in the original return of income had declared business income and since all the receipts and the business income had already been taxed, there was no infirmity in the order of the Commissioner (Appeals) deleting the addition in the absence of any contrary material. (AY. 2012-13 to 2015-16).
Pujala Mahesh Babu v. Asst. CIT (2023)101 ITR 458 (Hyd) (Trib)

S. 69A : Unexplained money-Loose papers-SLP is dismissed-Order of High Court is affirmed. [Art. 136]
Assessing Officer made additions in hands of assessee on basis of seized loose papers which revealed money transaction between assessee and others relating to a property. High Court dismissed the appeal of the assessee. SLP is dismissed (AY.2007-08, 2008-09)
C. Ramakrishna v. Dy. CIT (2023) 456 ITR 253 / 294 Taxman 609 (SC)
Editorial : C. Ramakrishna v. Dy. CIT (2023) 154 taxmann.com 40 (Karn)(HC)

S. 69A : Unexplained money-Loose papers-Admitted by assessee-Order of Tribunal is affirmed.[S. 260A]
Assessing Officer made additions in hands of assessee on basis of seized loose papers which revealed money transaction between assessee and others relating to a property. High Court dismissed the appeal of the assessee. Followed ITA No. 347 of 2015 and 348 of 2015 dt 5-4-2016 (AY.2007-08, 2008-09)

C.Ramakrishna v. Dy. CIT (2023) 154 taxmann.com 40 (Karn)(HC)
Editorial : SLP of assessee is dismissed, C. Ramakrishna v. Dy. CIT (2023) 456 ITR 253 / 294 Taxman 609 (SC)

S. 69A : Unexplained money-Seizure of gold-Distinctive identification numbers on challans-Deletion of addition by the Tribunal is affirmed.[S. 260A]
During search, gold and jewellery was seized and Assessing Officer made additions under section 69A of the Act on ground that they lacked distinctive identification numbers on challans. Commissioner (Appeals) deleted additions which was affirmed by the Tribunal on the ground that gold and ornaments were given to assessee for purpose of making jewellery or for polishing which was established from challans. On appeal High Court affirmed the order of the Tribunal. Chuharmal v. CIT (1988) 172 ITR 250/ 38 taxman 190 (SC),distinguished. (AY. 2017-18)
PCIT v. Goutam Chakraborty (2023) 294 Taxman 284/ 334 CTR 593 (Cal.)(HC)

S. 69A : Unexplained money-Undisclosed purchases and sales-Tribunal reduced the addition to 10 percent towards purchase on undisclosed sales-Order of Tribunal is affirmed. [S. 147, 148, 260A]
Dismissing the appeal the Court held that Tribunal reduced addition to 10 per cent towards purchase on undisclosed sales. Court held that entire matter was factual and there was no error in decision making process adopted by Tribunal or for that matter by Commissioner (Appeals). Order of Tribunal is affirmed. (AY. 2001-02)
Durgesh Chandra Sarkar v. CIT (2023) 293 Taxman 91 (Cal.)(HC)

S. 69A : Unexplained money-Amounts of investments not fully disclosed in books of account-Unexplained expenditure-Survey-Purchase of goods no explanation was furnished-Excess stock was found-Mahajani Khata-Order of Tribunal confirming the addition is affirmed. [S. 69B, 69C, 133A, 145]

Payments had been made to different parties towards purchase of certain unaccounted goods no explanation was furnished. Order of Tribunal confirming the addition was affirmed. Assessing Officer treated amount so paid as undisclosed income and made addition to assessee's total income. Tribunal upheld said additions on ground that there was no explanation furnished by assessee for not recording payments in books of account. Order of Tribunal is affirmed by High Court. Tribunal gave the finding that the assessee failed to show any separate trade license, sale memo, purchase memo, books of account, etc. to explain excess physical stock so found. High Court affirmed the order of the Tribunal. In the course of survey 'Mahajani Khata' was found. Tribunal held that since assessee did not produce any material to substantiate their submission and/or rebut findings recorded by Assessing Officer, addition was sustained. High Court affirmed the order of the Tribunal. (AY. 1995-96)
Samaddar Brothers v. CIT (2023) 292 Taxman 323 (Cal.)(HC)

S. 69A : Unexplained money-Failure to produce books of account-Justified in making addition.[S. 133(6), 145, 260A]
Dismissing the appeal of the Assessee, the High Court held that on observing the orders passed by lower authorities, it appears that there are concurrent findings of fact arrived by them that the Assessee has failed to produced the books of accounts and other relevant materials which was required by the AO to inquire into the transactions of unsecured loans, expenses, advance for goods. Further, they have given factual finding that there is no material available on record, the claims are also not supported by any documentary evidence and notices u/s 133(6) of the Act were not complied with. No question of law. (AY. 1998-99)
Dhansukhlal Jekisondas (HUF) v. ITO (2023) 456 ITR 650/ 291 Taxman 486 (Guj) (HC)
S. 69A : Unexplained money-The direction of CIT(A) to give credit of Rs 50 lakhs was not complied with by the Assessing Officer-Court directed the petitioner to file an appeal before CIT(A) [Art.226]
The assessee challenged the order by filing a writ petition for not giving credit of Rs 50 lakh. The court that assessee was granted liberty to challenge the order of the Assessing Officer by way of appeal against non-grant of credit of Rs. 50 lacs as directed by Commissioner (Appeals).
SNJ Distillers (P.) Ltd. v. DIT (Inc.) (2023) 290 Taxman 264 (Mad.)(HC)

S. 69A : Unexplained money-Undisclosed professional receipts-40% of expenses are allowed on estimate basis-Interest income from bank addition is justified. [S. 28(i), 37(1)]
Held that where Commissioner (Appeals) allowed 40 per cent of undisclosed professional receipts, i.e., Rs. 26.06 lacs as deduction towards undisclosed/unrecorded expenses from undisclosed professional receipts since assessee during year had withdrawn from undisclosed bank account only Rs. 6 lacs, no further relief could be granted to assessee. Interest from bank which was not offered to tax and Assessing Officer invoking provisions of section 69A treated interest income as assessee's undisclosed receipts and brought same to tax, Assessing Officer is justified in his action. (AY. 2011-12)
Vijay Gautam v. Asst. CIT (2023) 222 TTJ 191 / 151 Taxmann.com 485 (All)(Trib)

S. 69A : Unexplained money-Sale of land-Share holders-Unaccounted cash-Addition is deleted.
Held that the Assessing Officer has failed to substantiate that share holder has received any unaccounted cash payment towards the sale of land / shares by the company. Addition is deleted. (AY. 2012-13, 2013-14)
Dy.CIT v. Shailesh Jivalal Jogani (2023) 225 TTJ 712 (Mum)(Trib)

S. 69A : Unexplained money-Cash deposits from withdrawals-Addition is deleted. [S. 92CA, 144C]

The assessee furnished explanation in support of fixed deposits Material on record clearly indicating money withdrawn from brother's bank account and affidavit from brother affirming his statement. Addition is deleted. *(*AY.2014-15)

Abrar Fakirmohmmad Shaikh v. ITO (IT) (2023)108 ITR 127 / 226 TTJ 721 Pune) (Trib)

S. 69A : Unexplained money-Cash deposit-Demonetisation period-Not explained the source of fund-Addition is affirmed.

Held that the assessee has not explained the source of fund hence the addition is affirmed. *(*AY.2017-18)

Adim Jati Seva Sahkari Samiti Maryadit v. ITO (2023)108 ITR 645 (Raipur) (Trib)

S. 69A : Unexplained money-Search and seizure-Cash belonging to two concerns not functioning from same premises-Could not be considered in hands of assessee-Deletion of addition is proper

Held that all nine group companies were assessed by the same Assessing Officer who had accepted the cash in hand of all the group concerns in their respective assessments. Therefore, the availability of cash with the different companies was sufficient to explain the cash found at the time of search. Order of CIT(A) is affirmed. (AY.2018-19)

Dy. CIT v. Creamy Foods Ltd. (2023)108 ITR 66 (SN)(Delhi)(Trib)

S. 69A : Unexplained money-Search-loose papers-Commodity trade-Recharacterising nature of income offered by assessee-Surrendered income cannot be treated as unexplained money-Provision of section 115BBE cannot be applied.[S. 68, 69, 69A, 69B, 69C 69D, 115BBE]

Held that at the time of search and seizure operation itself, the assessee had explained the source of the amount offered as income to be the profit derived from "commodity trade", which was in the nature of business income. There was nothing on record to suggest that the assessee's explanation had either been doubted or disputed at the time of the search and seizure operation or even during the assessment proceedings. A reading of section 115BBE of the Act makes it clear that the special rate of tax provided under the provision shall be applicable under two conditions. Firstly, where the total income includes any income referred to in section 68, 69, 69A, 69B, 69C or 69D and reflected in the return of income under section 139 of the Act. Secondly, if the income determined by the Assessing Officer includes any income referred to in section 68, 69, 69A, 69B, 69C or 69D, if such income is not covered under the first condition. Admittedly, the assessee had not offered the income under section 69A of the Act. Even, the Assessing Officer had not made any separate addition under section 69A of the Act and had merely recharacterised the nature of income offered by the assessee.. On the facts the income offered by the assessee could not be treated as unexplained money, and the provisions of section 115BBE would not be applicable to the facts of the present AY.2017-18)

Dy. CIT v.Tapesh Tyagi (2023)108 ITR 12 (SN)(Delhi) (Trib)

S. 69A : Unexplained money-High net worth individuals-Sufficiently demonstrating plausibility for holding gold ornaments in excess of limit prescribed by Board's Instruction-Credit to be given for gold, jewellery and ornaments held in custody of Assessee on behalf of sister-in-law-Addition is deleted. [S. 132]

Held that the year-wise income reported by the assessee and her husband signifying their capacity and high status showed that the assessee and her family members were high net worth individuals and having regard to their high status, holding such jewellery found in the custody of members of their families could not be seen to be abnormal and consequently unexplained. Paragraph 3 of the Central Board of Direct Taxes Instruction No. 1916, dated May 11, 1994 provided that the status of the family and customs and practices of the community to which the family belongs, permit an assessee to hold larger quantity of jewellery and ornaments out of the purview of seizure. The Department recognised the holding of high quantity of jewellery as explained where the assessee was in the high Income-tax brackets. The assessee had thus sufficiently demonstrated the plausibility for holding gold ornaments in excess of the limit prescribed by the instruction. The explanation offered by the assessee that credit should be given for gold, jewellery and ornaments held in the custody of the assessee on behalf of the sister-in-law was tenable. Keeping in mind the overall status of the family as demonstrable from the facts of records, the whole of the gold ornaments found at the time of search required to be treated as clearly explained. The addition is deleted. (AY.2021-22)

Kirti Singh v. Asst. CIT (2023)108 ITR 71 (SN)/(2024) 204 ITD 487 (Delhi) (Trib)

S. 69A : Unexplained money-Cash deposits-Demonetization-Sale in the course of business-Addition is deleted.

Tribunal held that assessee had also produced its cash book and bank statement and ledger account of purchases of milk made from Gujarat co-operative milk marketing Ltd. (GCMM) to show that said cash deposits in SBNs were out of collection from sale of milk during demonetization and same was used to make payments for further purchase of milk from GCMM by way of demand drafts as reflected in bank statement of assessee. Assessee had provided explanation about source and nature of said cash deposited in bank account as cash received from sale of milk in normal course of business. Further, Notification No. S.O. 3408(E), provided that old currency notes would continue to be legal tender for purchase of milk at GCMM. Addition is deleted.(AY. 2017-18)

Arun Manohar Pathak. v. ACIT (2023) 106 ITR 14 / 203 ITD 409 (Mum) (Trib.)

S. 69A : Unexplained money-Cash seized-Failure to produce dosimetry evidence-Addition is affirmed. [S. 132]

Certain cash amount was found and seized from assessee while he was travelling from Srinagar to Delhi, in view of fact that though assessee claimed that said cash was for treatment of his mother's illness in a hospital in Gurgaon, however, he had not produced any documents relating to either mother's illness or her treatment in hospital, and further, assessee was changing his statement about source of such cash amount as his addition is held to be justified. (AY. 2020-21)

Nasir Ahmad Rangshu. v. ACIT (2023) 202 ITD 15/224 TTJ 694 (Amritsar) (Trib.)

S. 69A : Unexplained money-Cash deposited-Demonetization period-Gifts received in connection with marriage-NRI-Failure to substantiate the gift-Relief of RS. 50,0000 is granted-Provisions of section 115BBE as amended by Taxation Laws (Second Amendment) Act, 2016 will apply with effect from 1-4-2017 on enhanced rate of 60 per cent instead of rate of 30 per cent. [S,115BBE]

Assessee, a NRI had made cash deposit in his bank account and claimed that sum deposited were gifts of Rs. 1 crore received in connection with his marriage celebrated on 7-12-2015 and claimed same as exempt being gifts received during marriage. Assessing Officer held that assessee had not furnished any material evidence to substantiate that he had received gift

of Rs. 1,00,00,000/-during his wedding in December, 2015 other than wedding invitation card and accordingly, he made addition of Rs. 1,00,00,000/-, deposited during demonetisation period, as unexplained money as per provisions of section 69A and taxed as per section 115BBE of the Act. CIT(A) confirmed the addition. On appeal the Tribunal held that since assessee is an NRI and to prove gifts received on occasion of marriage etc., being nearly impossible, an estimate was to be made and amount of Rs. 50,00,000/-is to be deleted from addition as unexplained money under section 69A. Tribunal also held that provisions of section 115BBE as amended by Taxation Laws (Second Amendment) Act, 2016 will apply with effect from 1-4-2017 on enhanced rate of 60 per cent instead of rate of 30 per cent. (AY. 2017-18)

Karthick Natarajan. v. DCIT, IT (2023) 202 ITD 552/226 TTJ 710 (Chennai) (Trib.)

S. 69A : Unexplained money-Cash deposited-Demonetization-Business of manufacture and retail trading of jewellery items-Actual sales cannot be treated as deemed income-Deletion of addition is affirmed. [S. 143(3), 145(3)]

Assessee, jeweller, had deposited Rs. 3,87,69,800/-in bank accounts during demonetization period i.e., from 8-11-2016 to 30-12-2016 mostly in demonetized old currency notes. On query raised by Assessing Officer, assessee had furnished details of profit & loss account, balance sheet, stock register, list of customers who purchased jewellery on 8-11-2016, VAT returns, cash book, details of cash deposited during demonetization and other related documents etc. The Assessing Officer made certain assumptions and difference of sale determined by Assessing Officer and actual sales by assessee was treated as deemed income of assessee under section 69A of the Act. CIT(A) deleted the addition. On appeal the Tribunal held that since computation method adopted by Assessing Officer was nothing but based on a hypothesis to arrive at estimated probable sales value that could have been made on 8-11-2016 and assumption so made by Assessing Officer was devoid of any scientific basis, addition made by Assessing Officer was to be deleted. (AY. 2017-18)

ITO v. Senco Alankar. (2023) 202 ITD 278 (Kol) (Trib.)

S. 69A : Unexplained money-Loan from Ahuja group-Accommodation entries-Repaid the loan-Tax is deducted at source on interest-Addition is deleted.[S. 147, 148]

During search conducted at premises of Ahuja Properties & Associates unaccounted cash transactions and accommodation entries were found in group's parallel accounts. Reassessment notice is issued and addition is made under section 69A as accommodation entries On appeal the CIT(A) has up held the addition. On appeal the Tribunal held that the Assessing Officer extracted certain portions of statements recorded from one Jagdish Ahuja where he had confirmed maintenance of parallel books of account and giving accommodation entries. No specific finding was recorded which linked impugned loan transaction with recorded statement. The assessee repaid loan with interest after deducting tax at source. Addition is deleted. (AY. 2009-10)

Arun I Keshwarni. v. ITO (2023) 201 ITD 518 (SMC) (Mum) (Trib.)

S. 69A : Unexplained money-Long term capital gains-Penny stock-Paper company-Accommodation entries-Undisclosed income-Assessable under section 115BBE of the Act. [S. 45, 68, 69D, 115BBE]

Assessing Officer held that assessee had obtained bogus entries of Long-Term Capital Gain (LTCG) from purchase and sale of CCL shares. After verification, it was determined that assessee had introduced undisclosed funds in garb of said transactions. As a result, Assessing Officer treated entire sale proceeds as undisclosed funds. It was noticed that seven

accommodation entry providers/brokers of bogus companies, had in their respective statements admitted/confirmed that shares of CCL were bogus scrips of a penny stock company which were used by them for providing bogus accommodation entries to various beneficiaries. One of director, who was also director of broker company from whom assessee claimed to have purchased shares clearly demolished its claim of having entered into a genuine transaction of purchase/sale of aforesaid shares. Tribunal held that the assessee had not carried out any genuine transaction of purchase/sale of shares, and had only obtained an accommodation entry of bogus LTCG. (AY. 2015-16)
Rahul Gupta (HUF) v. ACIT (2023) 201 ITD 302 (Raipur) (Trib.)

S. 69A : Unexplained money-Investment in acquisition of immoveable property-Additional evidence is filed-Matter remanded to Assessing Officer. [S. 254(1)]
Assessee, a non-resident, purchased immovable property and paid sale consideration and also furnished bank account statement. Assessing Officer recorded that assessee did not submit any relevant verifiable source for investment made towards acquisition of property. Addition is made as unexplained investment. DRP affirmed the addition. On appeal the Tribunal admitted the additional evidence and remanded back to Assessing Officer. (AY. 2015-16)
Narasimha Rao Venkata Lakshmi Nandury. v. ITO (IT) (2023) 201 ITD 534 (Hyd) (Trib.)

S. 69A : Unexplained money-Foreign bank account-Bank details for period 1-4-1995 to 31-3-2012-Information called for by revenue could not have been received for period prior to 1-4-2011-Period of limitation cannot be extended-Order is barred by limitation-DTAA-India-Switzerland [S. 90, 132, 143(3), 153A]
Assessment was framed under section 153A read with section 143(3) vide order dated 4-3-2015 in. Assessee challenged the assessment order on ground that assessment order so farmed was barred by limitation, as same ought to have been framed on or before 31-3-2014.CIT(A) affirmed the order of the Assessing Officer. On appeal the Revenue contended that reason for passing assessment order on 4-3-2015 was that a reference under section 90 was made to Swiss authority regarding details of bank account of assessee but no information till time of passing assessment order was received and, hence time limit was extended by one year under Explanation IX to section 153B. However, relevant clauses of DTAA between India and Switzerland showed that same was effective from 1-4-2011 and this was further clarified from Notification No. S.O.2903(E) dated 27-12-2011. Information called for by department from Swiss authorities could not have been received by them for period prior to 1-4-2011. Reference had been made calling for information for period from 1-4-1995 to 31-3-2012 hence period of limitation could not be extended as claimed by revenue and assessments were clearly barred by limitation and quashed. (AY. 2006-07 to 2011-12)
Praveen Sawhney. v. ACIT (2023) 201 ITD 539/ 224 TTJ 46 (Delhi) (Trib.)
Sangeeta Sawhney v. ACIT (2023) 201 ITD 539/ 224 TTJ 46 (Delhi) (Trib.)

S. 69A : Unexplained money-Advocate-Cash fee received from client-Produced cash book, bank statement, professional fees etc-Addition is deleted.
Assessee is a practicing Advocate-While travelling from Mumbai to Delhi to attend two matters in Supreme Court, he was intercepted and was searched at airport and Officer found and seized currency note of Rs. 16 lakhs.Assessing Officer made an addition under section 69A on account of said cash seized. CIT(A) up held the addition. On appeal the assessee contended that said amount was to be paid to a Senior advocate on record as fees to argue case of client of assessee in Supreme Court where client's case was listed and, thus, cash was from professional fees. The assessee had submitted cash book, bank statement and ledger

copy of such professional fees claimed to be received by it etc.-Date-wise breakup of fee received in cash from client and receipt in cheque was also submitted. The assessee had also substantiated from entries in bank statement that cash had been periodically withdrawn from bank account in cash by assessee-Assessee had recorded impugned cash amount in books of account and had also offered same to tax by including it as professional fees. Tribunal deleted the addition. (AY. 2019-20)

Ramchandra Kanu Mendadkar. v. CIT(A) (2023) 201 ITD 492/104 ITR 21 (SN) (Mum) (Trib.)

S. 69A : Unexplained money-Cash gifts-Weddings, Raksha Bandhan, Birthdays and Deepawali-Failure to produce supporting documents-Addition is justified-Pending assessment-The time for summary assessment under section 143(1) and for notice under section 143(2) of the Act had not lapsed, it was a case of pending assessment, which got merged with assessment under section 153A. [S. 153A]

Held that the assessee claimed to have received cash gifts during the years on occasions such as weddings, raksha bandhan, birthdays and deepawali. It was not a case of receiving cash gifts on her own marriage. Apart from giving the details the assessee was under obligation to bring forth information supporting the receipts of these gifts such as gift deeds, source of cash in hand of donors, permanent account numbers and addresses of donors, status of their filing returns of income and their relationship with the assessee. The assessee failed to bring forth evidence sufficiently to discharge the burden under section 69A, addition is affirmed.Held that the Commissioner (Appeals) was right in concluding that as the time for summary assessment under section 143(1) and for notice under section 143(2) of the Act had not lapsed, it was a case of pending assessment, which got merged with assessment under section 153A. (AY.2015-16)

Karina Kunjana Kapoor (Smt.) v. Dy. CIT (2023)102 ITR 82 (SN)(Delhi) (Trib)

S. 69A : Unexplained money-Delay condoned-Covid period-Demonetisation-Ad hoc addition is deleted. [S. 253]

Delay in filing of the appeal is condoned. Tribunal directed the Assessing Officer to delete the addition in respect of cash deposited during Demonetisation period. (AY. 2017-18)

Manju Baheti v. Assessing Officer (2023) 102 ITR 369(SMC) (Kol)(Trib)

S. 69A : Unexplained money-When sufficient explanation for the source of the Cash deposits were provided to the lower authorities, it was incorrect to disregard the same, unless enquiries to prove contrary facts were made & established.

Before the Hon'ble Tribunal, the Assessee reiterated its contentions that the monies pertained to the advances received as against sales consideration of the property being sold. And, that all the evidence pertaining to the said transaction (including the agreement bearing testimony to these cash deposits) had been placed on record before the lower authorities. The Hon'ble Tribunal held that there was sufficient source of cash deposits into the bank accounts of the assessee. Also, that the lower authorities had failed to make enquiries to prove the source of cash deposit was from any other source. The Hon'ble Tribunal thereby directed deletion of the addition made by the Assessing officer.(AY.2017-18.)

Joginder Singh Johal v. ITO (2023) 102 ITR 9 (SN) (Kol) (Trib)

S. 69A : Unexplained money-AO cannot partly accept the books of accounts and partly reject the same and decide the sales as per his choice to categorize into bogus

sales and non-bogus sales-AO cannot determine the bogus sales without disputing the books of accounts or bringing any evidence on record.[S. 115BBE]

During the course of scrutiny proceedings, the assessee had explained before the AO that the cash deposits made in its bank account pertains to cash sales made during the demonetization period. However, the AO alleged that it was an abnormal increase in cash sales which was not in trend with the immediately previous AY sales and made an addition to the total income, which was upheld by the CIT(A). The ITAT observed that the lower authorities had accepted the books of accounts and statutory record of sale-tax department like Vat-15 and Vat-20 without pin-pointing any defect in it and further accepted the GP ratio declared by the assessee. However, he suo moto reduced the GP percentage out of disputed bogus sales which was reduced from the returned income. The ITAT held that the AO cannot partly accept the books of accounts and partly reject the same. The AO cannot sit on the chair of the assessee to decide the sales as per his choice to categorize into bogus sales and non-bogus sales. It therefore held that the cash deposits in bank represent the sales which the assessee has rightly offered for tax after going through the books of accounts. (AY. 2017-18)

Balwinder Kumar v. ITO (2023) 102 ITR 228 (Amritsar) (Trib)

S. 69A : Unexplained money-Merely on the basis of suspicion, howsoever it is strong, the Assessing Officer is not justified in presuming certain facts without having anything to corroborate. Accordingly, the deletion of impugned addition under section 69A made by CIT (Appeals) was upheld by the Tribunal.[S. 133A]

The Tribunal observed that neither incriminating material was found during the course of survey proceedings nor any person had admitted about on-money payment made by the assessee. In the absence of any corroborative evidence to prove that there was any on-money payment made by the assessee, the Ld. Assessing Officer does not have locus standi to assume that the assessee had made payment in cash against purchase of land and had received commission. Merely on the basis of suspicion, howsoever it is strong, the Assessing Officer was not justified in presuming certain facts without having anything to corroborate. Accordingly, the deletion of impugned addition under section 69A made by CIT (Appeals) was upheld by the Tribunal. (AY. 2010-11 to 2012-13)

Sunil Sahu v. ACIT (2023) 221 TTJ 631/ 222 DTR 186 (Indore) (Trib)

S. 69A : Unexplained money-Search-Protective assessment-Unaccounted gold-Statement of supplier-Supplier confirmed-Addition is deleted. [S. 132, 153C]

Assessee is engaged in business of gold jewellery.In the course of search one parcel bearing fine gold sent by a supplier for purpose of job work was found. Based on such information, proceedings under section 153C were initiated against assessee. Assessee contended that he had purchased gold from supplier, namely BMJ and thus furnished documentary evidences in file of copy of tax invoice, ledger copies, bank statements, GST return of supplier. Likewise, supplier had also confirmed fact of having supplied impugned gold to assesse. Assessing Officer disagreed with contention of assessee in absence of Form 402/430 of GST and made addition under section 69A on protective basis. On appeal the Tribunal held that since supplier confirmed to have made sale to assessee and received payment against such sale, merely for reason that supplier behind back of assessee stated that he physically handed over gold to assessee instead of courier, documentary evidences furnished by assessee could not be brushed aside. Addition is deleted. (AY. 2018-19)

Jaliluddin Jummat Ali Shekh. v. ACIT (2023) 199 ITD 613 (Rajkot) (Trib.)

S. 69A : Unexplained money-Additional evidence-Reconciliation statement is filed-Matter remanded to the Assessing Officer.[Form NO. 26AS]

Tribunal held that the assessee had filed details before CIT(A) to reconcile difference between amount of receipts from providing services shown in P&L account and Form 26AS, however, CIT(A) had not given any findings on such reconciliation and upheld addition on account of such difference, same was unjustified and matter was to be remanded to AO for providing one more opportunity to assessee to reconcile such difference. (AY. 2013-14)

NECX (P.) Ltd. v. ITO (2023) 198 ITD 406 (Hyd) (Trib.)

S. 69A : Unexplained money-Compensation on land acquisition-Received on husband's bank account-Withdrawn from and deposited in assessee's bank account-No material to prove that money utilised for other purpose-Addition is deleted.[S. 68]

Held, that it was the explanation of the assessee that the amount was deposited withdrawn from her husband's bank account. The material placed on record showed that in the year under consideration, assessee's husband received an amount towards compensation on land acquisition. The compensation was deposited in the account of the husband. There was no material brought on record that amount withdrawn from the bank account was utilised for some other purposes and was not available with the husband of the assessee. Since, the explanation furnished by the assessee regarding the source of deposits was a plausible explanation, the addition was to be deleted. (AY. 2011-12)

Santosh v. ITO (2023)101 ITR 32 (SN.)(Delhi) (Trib)

S. 69A : Unexplained money-Demonetisation-Cash deposits of specified bank notes during demonetisation period-AO accepting explanation of assessee that receipts from business-however, treating the deposits as unexplained solely on the ground that notes ceased to be legal tender-Unjustified.[S. 132]

The Appellate Tribunal held that the AO, having accepted the explanation of the assessee with regard to source of cash deposits found during the course of search, made the additions only on the ground that legal tender of specified bank notes from November 9, 2016, is illegal. Hon'ble Appellate Tribunal further held that for the purpose of section 69A of the Act, there cannot be any distinction between generation of such money through legal tender or ceased legal tender inasmuch as in the context of the provision of the Act, this is not restricted to a legal source alone. Therefore, the reasons given by the AO to make addition towards cash deposits during the demonetisation period in light of the notification of Ministry of Finance and Reserve Bank of India, is not correct. (AY. 2017-18)

Eagle Fleet Services v. Asst. CIT (2023) 105 ITR 78(SN) (Chennai) (Trib)

S. 69A: **Unexplained money-Ownership of cash found in premises-Protective and substantive assessment pending for determination-Matter remitted to Assessing Officer. [S. 132]**

The assessee, HL, was the erstwhile father-in-law of another assessee A. Search was conducted by the Central Bureau of Investigation and cash was found in the premises of the assessee, HL. The assessment was completed by making additions of Rs.5,50,000/-and Rs. 26,40,100/-. HL explained that the sum of Rs.26,40,000/-related to his son-in-law. Accordingly, a statement and an acceptance letter were submitted by the son-in-law. With regard to addition of Rs.5,50,000/-the assessee explained that the amount originated from the sale of house property. The Assessing Officer made a substantive assessment in the hands of the assessee HL and a protective assessment in the hands of another assessee. Later, A retracted his statement and submitted that cash of Rs. 26,40,100 seized from HL related to his

elder son-in-law, AB. The Commissioner (Appeals) rejected the appeal of the assessee on the ground that the ownership was yet to be determined by the High Court.

Held, that the issue had not yet matured for determination of the ownership of the cash in the case of both assessees. The substantive assessment and protective assessments were alive for determination. Both assessees had filed new documents before the Tribunal which had not yet been verified by the Assessing Officer. Therefore, the issue was remitted back to the Assessing Officer for further adjudication considering the final determination by the High Court. (AY. 2001-02)

Hira Lal Kadlabju v. Asst. CIT (2023)104 ITR 608 /202 ITD 133 (Amritsar)(Trib)
Anish Bhan v. ITO (2023)104 ITR 608 (Amritsar)(Trib)

S. 69A : Unexplained money-Difference between sale consideration shown in registered deed and that deposited in bank account-Appeal arising out of lack of verification-Matter remitted to Assessing Officer for adjudication de novo.

The assessee deposited cash in the bank account amounting to Rs. 90,17,000 and claimed that the amount was received from sale of property. The Assessing Officer assessed the amount as unexplained cash deposit on the ground that that the registered deed showed the sale consideration of Rs. 24,65,000 and confirmed the addition u/s. 69A of the Income-tax Act, 1961. During the assessment, further addition was made on undisclosed interest income amounting to Rs. 60,996 with the total income of the assessee.

The appeal arose out of lack of verification by the Department. With consent of both the parties, the matter was remitted to the Assessing Officer for further adjudication de novo after providing reasonable opportunity of being heard to the assessee in the set aside proceeding. (AY 2011-12)

Hari Chand v. ITO (2023) 155 taxmann.com 492/ 105 ITR 610 (Amritsar)(Trib)

S. 69A : Unexplained money-Advocate-Seizure of cash-Cash withdrawal from Bank-Professional fees received cash-Name of the client from whom cash received was disclosed-The cash amount was disclosed in the books of account-Revenue cannot ask the asseessee to prove the source of the source-Addition was deleted [S. 44AB, 131(IA)]

The assessee is a practicing advocate who maintained regular books of account which is audited as per section. 44AB of the Act. The assessee was carrying cash of Rs 16 lakhs while travelling to Delhi in a matter before the Honourable Supreme Court. In the Airport the cash was seized from the assessee. The statement of the assessee was taken and the assessee explained the source of the cash and also reason for carrying the cash with him. The Assessing Officer held that the explanation offered by the assessee was not satisfactory,hence made addition under section. 69A of the Act. On appeal the CIT(A) confirmed the addition. On appeal the Tribunal held that the assessee has disclosed the professional receipts, the books of accounts are audited and the amounts are disclosed in the books of account, explained the source hence additions cannot be made under section 69A of the Act. Addition was deleted. (ITA No. 163/Mum/ 2023 dt 12-5-2023)(AY. 2019-20)

Ramachandra Kanu Mendadkar v CIT(A) (Mum)(Trib) www.itatonline.org.

S. 69A : Unexplained money-Compensation on land acquisition-Received on husband's bank account-withdrawn from and deposited in assessee's bank account-No material to prove that money utilised for other purpose-Additions to be deleted.

Held, that it was the explanation of the assessee that the amount was deposited withdrawn from her husband's bank account. The material placed on record showed that in the year under consideration, assessee's husband received an amount towards compensation on land

acquisition. The compensation was deposited in the account of the husband. There was no material brought on record that amount withdrawn from the bank account was utilised for some other purposes and was not available with the husband of the assessee. Since, the explanation furnished by the assessee regarding the source of deposits was a plausible explanation, the addition was to be deleted. (AY. 2011-12)

Santosh v. ITO (2023)101 ITR 32 (SN)(Delhi) (Trib)

S. 69A : Unexplained money-Cash available in old demonetised currency-Withdrawal from bank upto November 8, 2016-Disallowance to that extent not sustainable-Balance disallowance of balance cash proper.

The Hon'ble Tribunal held that cash in hand till November 8, 2016 in old currency notes alone could be considered to have been deposited by the assessee on December 1, 2016. To this extent, the disallowance was to be deleted. As regards the balance amount, the assessee having not given a satisfactory explanation, the disallowance was to be affirmed. (AY. 2017-18)

Shail Jayesh Shah v. ITO (2023)101 ITR 38 (SN) (Mum) (Trib)

S. 69A : Unexplained money-Cash deposit during demonetization-Cash from sundry creditors-Not in violation of receiving specified bank notes-Failure by assessee to explain source-Matter Remanded.

The Hon'ble Tribunal that the assessee had received specified bank notes during demonetisation period on November 10, 2016. The amount was received before the appointed day, i. e., December 31, 2016 and was deposited in the bank account. So, the assessee was not in a violation for receiving specified bank notes in terms of the Act. The source was not explained before the Revenue authorities as the assessee was not able to submit evidence before any of the authorities. Therefore, the matter was set aside and remanded to the Assessing Officer for necessary verification de novo. The Assessing Officer shall provide proper and adequate opportunity of being heard to the assessee and the evidence and explanation submitted by the assessee shall be admitted by the Assessing Officer and adjudicated on the merits in accordance with law.(AY. 2017-18)

Jagjit Singh v. ITO (2023)101 ITR 298 (Amritsar) (Trib)

S. 69A : Unexplained money-Search and Seizure-Capital gains-On money-Burden of proof-Sale of land-Entry found in software of company whose premises search showing sale of land by assessee-Sale deed was registered much before date of entry found during search-Burden on Assessing Officer to prove assessee received additional "On-Money" Not Discharged-Addition on basis of entry is not sustainable. [S. 45,68, 132(4A), 133A]

Held that with respect to the addition on account of capital gains the Assessing Officer had not brought anything on record to show that the transaction actually happened for the amount as mentioned in the entry nor recorded any adverse finding with regard to the transaction during the course of survey conducted under section 133A. The Assessing Officer did not establish the nexus that the entry found during the course of search with the assessee and how the amount mentioned therein as received by T was indeed received on behalf of the assessee and not someone else. The assessee was not given proper opportunity to confront the allegations as the Assessing Officer did not furnish the actual details of material seized. The assessee had substantiated by producing the sale deed which was registered much before the date of the entry found during the course of search that the actual transaction happened for an amount of Rs. 90 lakhs only, which according to the registered sale deed had already been paid to the assessee. Given this, the burden was on the Assessing Officer to prove that the assessee received some additional "on-money" payments and the Assessing Officer had not

brought sufficient material on record against the assessee warranting the addition. The Commissioner (Appeals) had given a clear finding while deleting the additions and there was no reason to interfere with his order on this issue. (AY. 2008-09)
Holiday Marketing Pvt. Ltd. v. ACIT (2023)101 ITR 55 (SN) (Cochin) (Trib)

S. 69B : Amounts of investments not fully disclosed in books of account-Sauda Chithhi-Dumb documents-Incriminating documents-Sale of land-Land was not transferred-Deletion of addition by the Tribunal is affirmed. [S. 45, 260A
The Assessing Officer made addition based on the incriminating documents found in search of assessee's premises in the form of written and signed "Sauda Chithhi" treating the unaccounted transactions of land. On appeal the CIT(A) held that land was not transferred. Tribunal treated the document as a dumb document and affirmed the order of CIT(A). On appeal by Revenue High Court affirmed the order of the Tribunal. (AY. 2017-18)
PCIT (C) v. Prabodhchandra Jayantilal Patel (2023) 294 Taxman 440 (Guj.)(HC)

S. 69B : Amounts of investments not fully disclosed in books of account-Inflated stock shown in stock statement submitted to bank-Cash credit facility-Physically stock was not verified-Order of Tribunal confirming the addition was deleted.
Assessee declared value of stock to bank at higher figure than shown in account books and offered explanation that submission of stock statement before bank was a routine affair and stock declared to bank was purely on estimate basis and bank relying upon stock statement granted cash credit facility and never physically verified stock. Assessing Officer held that value of stock declared to bank was higher than in account books made certain addition to assessee's income on account of undisclosed investment in stock. Order was affirmed by the Tribunal. On appeal the Court held that the burden is upon Assessing Officer to show that assessee had undisclosed income and merely by referring to a bank statement assessment could not have been completed. Order of Tribunal is set aside. Followed CIT v. Acrow India Ltd (2008) 298 ITR 447 (Bom)(HC), CIT v. N. Swami (2000) 241 ITR 363 (Mad)(HC) (AY. 2004-05)
Chitta Ranjan Bera v. ITO (2023) 293 Taxman 408 (Cal.)(HC)

S. 69B : Amounts of investments not fully disclosed in books of account-Excess stock-Survey-Amount cannot be treated as unexplained investment-Taxable as business income.[S. 133A]
Held that the assessee derived income from only one source. The Assessing Officer did not go further to disprove the claim of the assessee. It is a general practice in trade that income generated is either ploughed back into the business in the form of stock-in-trade or receivables, or is spent for other purposes like the acquisition of assets outside the business. In this case, during the course of survey, except for the difference of stock, no other investment in any other asset was found. Therefore, the explanation offered by the assessee appeared to be plausible. The excess stock found during the course of survey did not have any independent identity as the asset was a mixed part of the stock found on the business premises of the assessee, which represented business income. The Assessing Officer ought to have accepted that explanation and assessed the income under the head profits and gains of business or profession and not as unexplained investment under section 69B of the Act.(AY.2018-19)
Overseas Leathers v. Dy. CIT (2023)107 ITR 688 / 225 TTJ 271 (Chennai) (Trib)

S. 69B : Amounts of investments not fully disclosed in books of account-Survey-Payment in cash purchase of land-Addition is made in the hands of director-Addition cannot be made in the hands of the company.[S. 133A]

Held that once addition is made in the assessment of director once again addition can not be made in the assessment of the company *(*AY.2009-10, 2011-12 to 2015-16)

Pravinchandra R. Patel v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)
Ansuben P.Patel (Smt) v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)
Neothech Education Foundation v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)

S. 69B : Amounts of investments not fully disclosed in books of account-Undisclosed investment-Failure to furnish statement and opportunity of cross examination-Addition is deleted. [S. 132(4)]

Assessing Officer, based on a handwritten note of one 'NBA' that he received certain sum from assessee against sale of his office premises, made additions in hands of assessee alleging that he had made an undisclosed investment in purchasing office. Addition is affirmed by the CIT(A). On appeal the Tribunal held that since revenue failed to furnish sworn statement of 'NBA' or to provide assessee an opportunity to cross-examine 'NBA' and there was no additions made in hands of 'NBA' in respect of consideration so received from assessee, addition is deleted. (AY. 2005-06)

Nazmin Jamal. v. ITO (2023) 199 ITD 420 (Mum) (Trib.)

S. 69B : Amounts of investments not fully disclosed in books of account-Alleged cash payment-Opportunity of cross examination was not provided-Matter remanded-Directed the Assessing Officer to grant an opportunity of cross examination. [S. 131(1), 148]

Assessee is a NRI and had filed a nil return of income. The case was re-opened based on the report of Directorate Investigation Wing. Summons was issued to assessee and the builder u/s. 131(1). The assessee could not be present for summons as he was working in Merchant Navy. The builder also did not respond. The assessment order was passed making addition u/s. 69B on basis of investigation report and assuming that assessee is one of the beneficiaries of on money cash payments. CIT(A) also confirmed the addition. and dismissed the appeal of the assessee. On appeal the Tribunal held that when the person on whose statements, the re-assessment was framed, did not reply on the summons issued and did not give any explanation of cash received, then assessee did not avail cross-examination was just an empty formality. The Hon'ble ITAT relying on the Apex Courts decisions in case of Andaman Timber Industries v. CCE (2015) 314 ELT 641 (SC) and I. C.D.S Limited v. CIT [2020] 273 Taxman 12 (SC) held that when the issue is regarding the cross-examination, the matter needs to be set aside to the file of the AO to frame the assessment de-novo after providing the assessee all documents which were relied upon during the assessment. The AO was directed to grant opportunity to cross-examine and assessee is allowed to file any documents in support of his contentions. (ITA No: 191/ Mum/2023 dt.12-4-2023 (AY. 2015-16)

Manoj Kumar Chandrama Prasad Pande v. ITO (2023) The Chamber's Journal-May-2023-P. 108 (Mum) (Trib)

S. 69C : Unexplained expenditure-Search and seizure-Duplicate account-Yield in various years-Finding reversed relying on statement-Order of Tribunal is restored. [S. 132, 143(3)]

Allowing the appeal the Court held that The High Court had not considered the conduct of the assessee, which had been considered in detail by the Tribunal, nor the findings of the Tribunal that during search in the case of the assessee and its group concern, duplicate cash

book, ledger and other books showing unaccounted manufacturing and trading by the assessee in diamonds were found, that huge additions were made in the case of assessee's group in the block assessment on the basis thereof and that the assessee was maintaining books of account outside the regular books. The order passed by the Tribunal and the assessment order were to be restored.(AY. 2000-01)

ACIT v. Kantilal Exports (2023)454 ITR 112/ 293 Taxman 531/ 332 CTR 610/ 225 DTR 357 (SC)

Editorial : M. Kantilal Exports v. ACIT (2011) 330 ITR 185 (Guj)(HC), reversed.

S. 69C : Unexplained expenditure-Bogus purchases-Purchases through banks-Material purchased was consumed in executing contract-Order of Tribunal restriction of addition to profit element at 12.5 percent alleged bogus purchases is affirmed. [S. 44AB, 260A]

Dismissing the appeal of the Revenue the Court held that the order of Tribunal restriction of addition to profit element at 12.5 percent alleged bogus purchases is affirmed (AY.2010-11)

PCIT v. Tirupati Earth Neerprima JV(2023)457 ITR 521/154 taxmann.com 197 (Bom)(HC)

S. 69C : Unexplained expenditure-Survey-Bogus purchases-Statement retracted-Deletion of addition by the Tribunal is affirmed.[S. 131, 133A 260A]

In the course of survey partner of the firm admitted to bogus purchases of packing materials. Assessing Officer made additions to assessee's income on basis of said statement which was later retracted. On appeal the Commissioner (Appeals) held that only 7 per cent of purchase of packing material was to be disallowed. Tribunal deleted the additions confirmed by the CIT(A). On appeal the High Court held that the Tribunal was correct to delete the addition made by Commissioner (Appeals). (AY. 2010-11)

PCIT v. Yog Oil Traders (2023) 294 Taxman 480 (Bom.)(HC)

S. 69C : Unexplained expenditure-Bogus purchases-No discrepancy between purchases shown and sales declared-Only gross profit ratio can be applied-Order of Tribbunal is affirmed. [S. 260A]

Assessing Officer added the purchases as bogus. On appeal Tribunal restricted the addition to the extent of gross profit rate on purchases at same rate as applied in other genuine purchases. On appeal high Court affirmed the Order of the Tribunal. Followed, Pr. CIT v. Mohommad Haji Adan & Co (2019) 103 taxmann.com 459 (Bom)(HC),PCIT v. Paramshakti Distributors (P.) Ltd (Bom)(HC). (IT Appeal No. 413 of 2017, dated 15-7-2019]

PCIT v. Anil Jagannath Tiwari (2023) 153 taxmann.com 539 (Bom)(HC)

Editorial : SLP of Revenue is dismissed due to low tax affect, PCIT v. Anil Jagannath Tiwari (2023) 294 Taxman 517 (SC)

S. 69C : Unexplained expenditure-Cash credit-Bogus purchases-Entire purchases cannot be disallowed-Only profit element embedded on alleged purchases can be added. [S. 37(1), 68, 133(6), 145]

The assessee is in the business of road repairs/construction and it had shown purchases from various entities, even if the assessee failed to produce said parties for verification, Assessing Officer could not have treated entire purchases as bogus purchases; only profit element embedded in such purchases to be considered for addition. (AY. 2009-10, 2011-12)

PCIT v. Vishwashakti Construction (2023) 454 ITR 448/ 293 Taxman 455 (Bom.)(HC)

S. 69C : Unexplained expenditure-Bogus purchases-Information was received from Sales Tax Department-Sales was not disputed-Matter remanded to the Tribunal only to the limited extent of going into gross profit rate. [S. 145, 148, 254(1), 260A]

Assessing Officer had not disputed corresponding sales transactions, purchases also could not be bogus and, thus, the addition made on account of bogus purchases to be deleted. Matter remanded to the Tribunal only to the limited extent of going into gross profit rate**.** (AY.2010-11, 2011-12)

PCIT v. Nitin Ramdeoji Lohia (2023) 457 ITR 446/ 291 Taxman 469 (Bom.)(HC)

S. 69C : Unexplained expenditure-Contract business-Civil works for the State Government and semi-Government agencieS. Failure to produce certain suppliers-Estimated net profit at 12. 5 Per cent on alleged bogus purchases-Order of Tribunal affirmed [S. 37(1), 68, 145]

Dismissing the appeal of the Revenue the Court held that the assessee was involved in execution of civil works and it had shown purchases from twelve parties even if assessee failed to produce said parties for verification, Assessing Officer could not have treated entire purchases as non-genuine purchases but only profit element on such purchases and thus, Appellate Authorities were justified in restricting addition by estimating profit of 12.5 per cent on total purchases. (AY. 2010-11)

PCIT v. Ram Builders (2023) 454 ITR 444 / 146 taxmann.com 447 (Bom)(HC)

S. 69C : Unexplained expenditure-Bogus purchases-Business of civil construction-Payment through banking channels-Order of Tribunal deleting the addition was affirmed [S. 260A]

Dismissing the appeal of the Revenue the Court held that where the assessee, engaged in business of civil construction, made certain purchases in course of its business, since assessee had discharged initial burden of proving genuineness of transactions by providing details of parties, and, further, payments for purchases were made through proper banking channels, no addition under section 69C was to be made on account of such purchases. Followed CIT v. Nikunj Eximp Enterprises (P.) Ltd (2013) 35 taxmann.com 394/ 216 taxman 171 (Mag)/ (2015) 372 ITR 619(Bom.). Distinguished, Pr. CIT v. NRA Iron & Steel (P.) Ltd (2019) 103 taxmann.com 48/ 262 Taxman 74/ 412 ITR 161 (SC). (AY. 2010-11)

PCIT v. Sanjay Dhokad (2023) 456 ITR 77/ 293 Taxman 482 (Bom)(HC)

S. 69C : Unexplained expenditure-Bogus purchases-Books of account not rejected-Tribunal restricting the income at 6% of bogus purchases-No substantial question of law [S. 260A]

Dismissing the appeal of the Revenue the Court held that the Assessing Officer had not rejected the books of account of the assessee and had made estimated additions on account of the purchases, the Commissioner (Appeals) had made the addition at 12.5 per cent. of the purchases in question and this had been rightly restricted to 6 per cent. by the Tribunal. Order of Tribunal affirmed. (AY.2009-10)

PCIT v. Surya Impex (2023)451 ITR 395 / 291 Taxman 591 (Guj)(HC)

S. 69C : Unexplained expenditure-Survey-Loose papers-Cash expenses-Unexplained receipts and expenditure-Order of CIT(A) is affirmed. [S. 133A]

Assessing Officer on basis of certain loose papers found during survey observed details of unexplained cash expenses of Rs. 4.04 crores claimed by assessee. Based on dates mentioned, he worked out total expenses pertaining to year under consideration at Rs. 13.26 lakhs and made addition on account of same However, Commissioner (Appeals) observed that actual total expenses on payments side as per loose papers seized during survey came only to Rs.

1.54 crores as against Rs. 4.04 crores and Assessing Officer had himself added an amount of Rs. 2.50 crores on total of payments side so as to make total at Rs. 4.04 crores. Secondly, Commissioner (Appeals) also gave credit to assessee of unaccounted receipts of Rs. 50.71 lakhs from total unaccounted payments/expenses of Rs. 1.54 crores. Accordingly, he directed Assessing Officer to compute addition on account of unexplained expenses and unexplained receipt pertaining to year under consideration on pro rata basis as against Rs. 13.26 lakhs added by Assessing Officer. Tribunal held that since Commissioner (Appeals) had given a detailed basis of partially allowing appeal of assessee, and, revenue had not pointed out to any specific infirmity/factual inaccuracy in said observations made by him, there was no infirmity in order of Commissioner (Appeals). (AY. 2014-15, 2015-16)

Dy. CIT v. Rajnikant Prabhudas Mandavia (2023) 157 taxmann.com 316 / 226 TTJ 778 (Ahd)(Trib.)

S. 69C : Unexplained expenditure-Transactions through Banking Channels-Deletion of addition is affirmed.

Held that all the transactions had been carried out through banking channels including those with the depository participant. The Assessing Officer had not established that the loss on account of share trading was bogus or that it was a sham. The attempt of the Assessing Officer to compare the balance outstanding with the share trading loss was mere suspicion. The Assessing Officer failed to point out any discrepancy or error in the accounts which were not even rejected by him. Deletion of addition is affirmed. (AY. 2015-16)

Dy. CIT v. Prahalad Rai Rathi (2023)105 ITR 673 (Jodhpur) (Trib)

S. 69C : Unexplained expenditure-Document found during search-Cash payment-Statement of manger retracted-Addition is deleted. [S. 132, 132 (4)]

Held that the document found on the computer during the course of search proceedings mentioned in relation to payment of Rs. 20 lakhs for purchases. However, the Department had not identified the purpose of payment, the date of making such payment, by whom such payment was authorised and the identity of person to whom such payment was purportedly made. There was no evidence placed on record to corroborate the loose document and to prove that payment of Rs. 20 lakhs was actually made. The document relied upon by the Department was not even a part of the regular books of account but merely a loose document which did not even have a date. Although being a computer document there was no question of any signature or handwriting, it needed to be corroborated. There was no material on record to show that payment of Rs. 20 lakhs was actually made to a person named "N" as mentioned by V in his statement recorded under section 132(4) of the Act which he subsequently retracted. Addition is deleted. Relied, CBI v. V. C. Shukla [1998 3 SCC 410 ; [1998 AIR 1998 SC 1406, Common Cause (a Registered Society) v. UOI (2017) 394 ITR 220 and CIT v. Lavanya Land P. Ltd (2017) 397 ITR 246 (Bom)(HC). *(*AY. 2015-16 to 2018-19)

Aurum Platz P. Ltd. v. Dy. CIT (2023)105 ITR 615 / 225 TTJ 771 / 152 taxmann.com 85 (Mum) (Trib)

S. 69C : Unexplained expenditure-Bogus purchases-Civil contractor-No specific defects in the books of account-Addition on account of bogus purchases to 10 per cent of turnover is affirmed. [S. 145(3]

AO treated creditors shown by assessee as non-genuine and made addition on account of bogus purchases. CIT (A) restricting addition on account of bogus purchases to 10 per cent of turnover. On appeal the Tribunal affirmed the order of CIT(A). (AY. 2015-16 to 2020-21)

Shiv Shakti Construction. v. ACIT (2023) 202 ITD 655/ 225 TTJ 676 (Delhi) (Trib.)

S. 69C : Unexplained expenditure-Consultancy fees-Matter remanded to the Assessing Officer. [S. 37(1)]

The Assessing Officer disallowed the consultancy fees as unexplained expenditure. On appeal before the Tribunal the assessee submitted that expenditure was already reflected in books of account and sources were explained as out of regular bank accounts and thus invoking section 69C was unwarranted. The matter is remanded to the file of the Assessing Officer. (AY. 2013-14, 2015-16)

Bangalore Beverages Ltd. v. ITO (2023) 201 ITD 380 (Bang) (Trib.)

S. 69C : Unexplained expenditure-Excess stock-Survey-Addition is restricted only to profit element of stock. [S. 133A]

Tribunal held that alleged stock being part of business income. Only net profit of 12% on alleged income is directed to be estimated**.** (AY. 2011-12)

Sukumar Solvent (P.) Ltd. v. ACIT (2023) 200 ITD 614 (Kol.) (Trib.)

S. 69C : Unexplained expenditure-Bogus purcahses-Accommodation entries-information by investigation wing-assessee failed to prove whole purchases as genuine-5 % profit element to be added in purchaseS. [S. 147, 148]

For the assessment years 2009–2010 and 2011–2012, the assessments were reopened u/s section 147 of the Act, 1961, on the grounds that the assessee received accommodation entries from a number of dealers who were alleged to be providing accommodation entries without the transportation of any goods. The assessee was asked to provide proof of the validity of the purchases made from numerous vendors during the reassessment process. The Assessing Officer classified the purchases as non-genuine because he was dissatisfied by the assessee's arguments, in light of the fact that the assessee failed to present the parties and because the parties remained improbable. The Commissioner (appeals) sustained the AO' action of estimation the gross profit at 12.5 per cent.

On further appeal, the Tribunal held that the sales out of the purchases had been treated as genuine which was an undisputed fact. When the sales had been accepted as genuine the entire purchases could not be treated as non-genuine. There should be an estimation of the profit element from these purchases which should be estimated reasonably as the assessee could not conclusively prove that the purchases made were from the parties in the absence of any confirmations from them. The AO was directed to estimate the profit element at 5 per cent for the non-genuine purchases. The disallowance of purchases was also to be restricted to 5 percent and the income was to be computed accordingly. (AY.2009-10, 2011-12)

Sawailal Surtaram Bhatti v.ITO (2023)103 ITR 262 (Mum) (Trib)

S. 69C : Unexplained expenditure-Unexplained investment-Unexplained money-Survey-Cash found less than the amount disclosed in the books of account-Addition cannot be made as an unexplained investment. [S. 69, 69A,115BBE, 133A, 145]

During the survey proceedings in the premises of the Assessee, actual cash of Rs. 11,800/- was found as against the cash in hand of Rs. 18,00,312/-which was shown in the books of account and therefore, there was a shortfall to the tune of Rs. 17,88,512/-The Assessing Officer made addition under section 69C of the Act and also taxed the said amount under section 115BBE of the Act. The addition was affirmed by the CIT(A). The question before the Appellate Tribunal was whether, based on the difference/shortfall between the actual cash found during survey proceedings and the cash shown in the books of account, the addition u/s 69C of the Act is warranted. Following the Judgement in ITO v. Kesarwani Sheetalaya (2019) 110 taxmann.com 415 (All.)(HC), and Sarang & Associates vs. DCIT (ITA No. 1227

to 1229/Mum/2012 decided on 21.03.2018, the Honourable Appellate Tribunal deleted the addition. (ITA No.2110/ Mum/ 2023 dt. 27-9-2023)(AY. 2018-19)
Almech Enterprises v. ACIT (Mum)(Trib) www.itatonline.org

S. 69C : Unexplained expenditure-Capitalisation fee-Admission in medical college-Scribbling made on the back side of two pages which does not reveal that assessee had made any payment-Failure to give an opportunity of cross examination of Dean-Addition was deleted. [S. 132]
The AO issued show cause notice to the Assessee stating that he received an information from the DCIT, Central Circle-2(2), Pune regarding payment of Capitation fee/Donation of Rs.95,00,000/-by the Assessee to Singhad Technical Education Society (STES) for admission of his daughter Smt. Dr. Sai Shrikrishna Pawar for securing admission for the course of Post-Graduation (PG) in Dermatology for academic year 2013-14 and asked the source of the payment. The Assessee denied making any payment of Capitation Fees for securing admission for Dr. Sai for MD. Dermatology. However the Assessing Officer made the addition under section 69C of the Act. On appeal the CIT(A) confirmed the addition relying on the judgement of the Supreme Court in Sushil Bansal v. PCIT (2020) 115 taxmann.com 226 / 274 Taxman 1 (SC). On appeal the Tribunal held that on the facts of the case the Assessee has denied the payment of capitalisation fee and submitted that the addition made by the AO cannot be sustained based on scribbling made on the back side of two pages which does not reveal that Assessee had made any payment of Rs.95,00,000/-as capitation fees for securing admission for assesses daughter (Dr. Sai) for Post-Graduation admission only on the basis of the scribbling, addition cannot be made for two (2) reasons (i) the documents on which these scribbling have been found, has been admittedly seized from the office of the Dean of the Medical College, so, before drawing adverse inference against the assessee it could have been prudent on the part of the AO to have summoned the Dean Dr. Arvind V. Bhore and asked him to explain about the aforesaid scribbling. And if the dean had made any statement which incriminates the Assessee/Dr. Sai, then the AO ought to have given an opportunity to the Assessee to have cross-examined the Dean and if the Dean is able to sustain the cross-examination (i.e, credibility of evidence of Dean couldn't be shaken), then AO could have drawn adverse inference against Assessee/Dr. Sai. Without doing such an exercise, no addition could have been legally made. Secondly, the AO ought to have enquired as to whether capitation/donation is being taken by STES for admitting students; and if so, who collects the same on behalf of STES; and from that person, enquiries should have been conducted as to whether the Assessee/Dr. Sai gave capitation fees for securing admission as alleged by the AO/Investigation Wing. Having not done so, the action of the AO/Ld. CIT(A) to have made the addition simply on the strength of scribbling as noted supra is not sustainable in the eyes of law. The Tribunal also held that the case law relied by the CIT(A) is not applicable to the facts of the appellant. (ITA No. 151 /Mum/2022 dt. 25-4-2023 (AY. 2014-15)
Krishna D. Pawar v. ITO (Mum)(Trib) www.itatonline.org

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation-Amalgamation-Demerger-Sale of windmills-SLP of Revenue is dismissed. [S. (2(19aa), 32, 72A(4)]
Dismissing the appeal of the Revenue the Court held that the Tribunal had recorded that the transactions had taken place on June 15, 2006 and the assessee had offered the income from March 15, 2006 to March 31, 2006 to tax and the assessee was entitled to depreciation on the windmills for the AY. 2006-07 and to set off the brought forward losses under section 72A(4) of the Income-tax Act, 1961. SLP of Revenue is dismissed. (AY. 2006-07)

CIT v. KBD Sugars and Distilleries Ltd. (2023)454 ITR 800 (SC)
Editorial : CIT v. KBD Sugars and Distilleries Ltd (2022) 20 ITR-OL-631 (Kran)(HC) is affirmed.

S. 72A : Carry forward and set off of accumulated loss and unabsorbed depreciation-Amalgamation-Capital gains-Exemption-When the scheme is expired no modification of the Scheme could be sanctioned requiring the Income Tax Department to give further concessions without the Department consenting to grant such an extension; neither the order dt. 26th Feb., 2013 nor the impugned order indicate that the BIFR had examined the transactions, which had led to the capital gains arising in the hands of the company or the context in which additional concessions were sought; impugned order therefore cannot be sustained. [S. 45, 74, Insolvency and Bankruptcy Code, 2016, S. 242, Sick Industrial Companies (Special Provisions) Act, 1985, S. 17, 18, 19, 25, Art. 226]
Court held that in terms of the Scheme, the promoters of the company were required to make good any shortfall in the projections under the Scheme. It is stated that the promoters of the company as a part of their contribution, gifted shares of some other companies to the company. The sale of the said shares would result in capital gains and the company sought to avoid payment of tax on such gains. The Scheme did not envisage the promoters' contributing shares or other assets to make good the shortfall in the projections. The promoters were required to make the shortfall in liquid funds. Thus, the promoters had not complied with the Scheme which they now submit is binding on all other parties. It also appears that the entire exercise of gifting the shares to the company and the company selling the same was with the object of ensuring that the capital gains arise in the hands of the company so as to enable the company to claim further exemption. The promoters could instead of gifting the shares to the company, sell the same and contribute the funds realised for the Scheme. But this would result in the promoters being liable to pay the capital gains tax which it appears, they desired to avoid. Neither the order dt. 26th Feb, 2013 nor the impugned order indicate that the BIFR had examined the transactions, which had led to the capital gains arising in the hands of the company or the context in which additional concessions were sought. In view of the above, the impugned order cannot be sustained. The same is set aside. The IT Department is not required to grant any further concessions contrary to the IT Act, to the company..Company's contention that the Scheme would be operative notwithstanding that the term as indicated in the Scheme has expired is not sustainable; no modification of the Scheme could be sanctioned requiring the pi Department to give further concessions without the Department consenting to grant such an extension; neither the order dt. 26th Feb., 2013 nor the impugned order indicate that the BIFR had examined the transactions, which had led to the capital gains arising in the hands of the company or the context in which additional concessions were sought; impugned order therefore cannot be sustained.
PDGI v. Indian Plywood Mfg. Co. (P) Ltd(2023) 334 CTR 345 (Delhi) (HC)

S. 74 : Losses-Capital gains-Revised return at a higher amount-Acknowledgement of filing return to CPC with condonation of delay-Allowed to be carry forward to next year. [S. 139(1), 139(3), 139(5)]
Assessee filed return electronically for relevant assessment year claiming carry forward of long-term capital loss. Subsequently, filed a revised return claiming said loss at a higher amount. Lower authorities denied assessee's claim on ground that original return filed by assessee was invalid for her non-sending of acknowledgement to Central Processing Unit (CPC) and hence, so-called revised return was, in fact, a belated return filed beyond time under section 139(1) read with section 139(3). CIT(A) affirmed the order of the Assessing Officer. Tribunal held that once a revised return is filed within time permitted under section

139(5), it substitutes original return in all respects hence the enhanced amount of loss would be considered for carry forward to next year and revised return would substitute original return in all respects including aspect of date of filing too. (AY. 2015-16)
Anagha Vijay Deshmukh. v. DCIT (2023) 199 ITD 409 (Pune) (Trib.)

S. 79 : Carry forward and set off losses-Change in share holdings-Companies which public are not substantial interested-Beneficially held more than 51 per cent of voting powers in both the years-The year in which the loss is incurred and the year in which the loss is sought to be set off-Share holding of one share holder is increased from 40 percent to 85 percent-Set off of brought forward losses is allowable.
Assessee is engaged in providing healthcare services. It had two shareholders, viz.,Forties Health care Ltd (FHL) and Forties Heath Care Holdings (P) Ltd (FHHPL). During year, assessee issued equity shares at premium to FHL which resulted in change in share holding pattern between both shareholders i.e., holding of FHL increased to 85 per cent while holding of FHHPL got reduced to 15 per cent. It had claimed set-off of brought forward losses. Assessing Officer held that change in shareholding pattern between two shareholders would be hit by provisions of section 79. Accordingly, he rejected claim of set-off of brought forward losses. Tribunal held that both shareholders, as a group, had beneficially held 51 per cent of voting power in year in which loss was incurred and year in which loss was sought to be set-off. Further, it was noticed that FHHPL was holding company of FHL. Since there was no change in shareholding pattern of group and increase in shareholding of FHL, in any case, would not result in change in voting power of shareholders, provisions of section 79 would not be applicable and, therefore, Assessing Officer is directed to allow set-off brought forward losses. (AY. 2012-13, 2013-14)
Hiranandani Health Care (P) Ltd v.CIT(A)(2023) 225 TTJ 397 /157 taxmann.com 551 (Mum)(Trib)

S. 80 : Return for losses-Capital loss-Revised return filed beyond time limit prescribed under section 139(1)-Capital loss claimed beyond time limit under section 139(1) could not be carried forward under section 74. [S. 74, 139(1), 139(5)]
Assessee filed its original return of income under section 139(1) on 15-10-2010 declaring certain total income. In course of scrutiny assessment, assessee filed revised return under section 139(5) after a lapse of nearly 17 months and put forward a claim towards incurring staggering Long Term Capital Loss(LTCL) and also claimed a carry forward thereof for set off against income that may arise in subsequent assessment years. The Assessing officer denied the set off. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that as per section 80 to be entitled to carry forward business loss or capital loss, assessee is required to file return within time allowed under section 139(1). Since original return filed under section 139(1) did not make reference to existence of any capital loss at all, instead loss had been claimed for first time in revised return filed beyond time limit prescribed under section 139(1), in such circumstances, provision of section 80 would come into play. Accordingly the capital loss claimed beyond time limit under section 139(1) could not be carried forward under section 74 of the Act. (AY. 2010-11)
RRPR Holding (P.) Ltd. v. DCIT (2023) 201 ITD 781/226 TTJ 5599 (Delhi) (Trib.)

S. 80 : Return for losses-Non-resident Indian-Tax audit-Audit as per Reserve Bank of India permission-Due date for filing of return was 30-9-2016-Return was filed on 17-10 2016-Loss not not allowed to be caary forward. [S. 44AB, 72, 139(1), Explantion 2(a)(ii), 139(3)]

Assessee, a NRI, was carrying on business of agencies of shipyards and marine electronics. Accounts of assessee were audited by a Chartered Accountant on 15-10-2016 and return of income for assessment year 2016-17 was filed on 17-10-2016 and assessee claimed business loss. Assessing Officer observed that since return was not filed within due date prescribed under section 139(1), in terms of section 139(3), read with section 80, loss claimed by assessee would not be allowed to be carried forward to subsequent years. Assessee placed on record copy of press release dated 9-9-2016 issued by CBDT extending due date of filing of returns to 17-10-2016 for assessment year 2016-17. It was found that CBDT had sought to extend due date from 30-9-2016 to 17-10-2016 only in respect of those cases where accounts are required to be audited under provisions of Act while filing income tax. Since assessee's case herein did not fall under ambit of Explanation 2(a)(ii) to section 139(1), as assessee was liable for audit under any other law for time being in force, due date for assessee was only 30-9-2016 and not 17-10-2016 and, hence, assessee was not entitled to carry forward business loss incurred during year to subsequent years.(AY. 2016-17)
Gulu Hassanand Raney v. ADIT (IT)(2023) 201 ITD 63/ 225 TTJ 725 (Mum)(Trib)

S. 80AC : Return to be furnished-Audit report-Assessement-Search-A return of income filed in response to notice u/S. 153A of the Income-tax Act, 1961 is to be considered a return filed u/S. 139 of the Act and for all other provisions of the Act, the return u/S. 153A of the Act will be treated as the original return u/S. 139 of the Act-Deduction not to be allowed unless return furnished.[S. 139 (1), 153A, Form, 10CCB]
For the purpose of making an assessment u/s. 153A of the Act, it is mandatory for the Assessing Officer to allow the legally tenable deductions, allowances, claims of expenses, which have been claimed by the assessee in the returns of income filed u/s. 153A of the Act, even though these may not have been claimed by the assessee in its original return of income u/s. 139(1) of the Act. A return of income filed in response to notice u/s. 153A of the Income-tax Act, 1961 is to be considered a return filed u/s. 139 of the Act and for all other provisions of the Act, the return u/s. 153A of the Act will be treated as the original return u/s. 139 of the Act. Once the Assessing Officer accepts the return filed u/s. 153A of the Act, the original return u/s. 139 of the Act abates and becomes non-est. Where the audit report in form 10CCB is furnished on or before the time allowed for filing return of income in the notice issued u/s. 153A of the Act, form 10CCB is to be taken as filed on or before the time permitted u/s. 139(1) of the Act and thus deduction shall be allowed within the time u/s. 80IA(7) read with Section 80AC of the Act. Followed, Shrikant Mohta v. CIT [2019) 414 ITR 270 (Cal)(HC) (AY. 2014-15, 2017-18, 2019-20)
ABCI Infrastructure P. Ltd. v. Asst. CIT (2023) 154 taxmann.com 397 /104 ITR 95 (Guwahati) (Trib)

S. 80AC : Return to be furnished-Co-operative society-Return to be filed within due date-Failure of-Not entitled to deduction-Adjustments to be made while processing return of income. [S. 80 (P) (2) (a) (i), S. 139 (1), 139 (4), 143 (1) (a)]
Held that assessee was required to file its return of income within the due date for claiming the deduction, whereas the assessee had filed its return of income on beyond the due date. Therefore, the assessee was not entitled to claim the benefit of deduction under section 80P(2)(a)(i) of the Act. The adjustment can be made while processing the return of income under section 143(1) of the Act. (AY. 2018-19)
Syndicate Bank Staff Co-Operative Society Ltd. v. Dy. CIT (2023)101 ITR 46 (SN) (SMC) (Bang) (Trib)

S. 80G : Donation-Charitable institutions-Registered under section 12AA is not sufficient-Disqualification for spending more than 5 Per cent of receipts for religious purposes-Matter remanded to the Commissioner Exemption for examining the matter afresh [S. 12AA, 89G(5), Rule 11AA]

On appeal by the Revenue allowing the appeal the Court held that neither the order of refusal of the certificate under section 80G(5B) nor the subsequent order of the Tribunal dealt with essential facts as to the quantum of receipts and the expenditure incurred. While the assessee claimed to continue to hold exemption under section 12AA of the Act, never the less, for the benefit under section 80G(5B), the requirements of that provision have to be satisfied separately. In view of the fact that the Commissioner's order as well as the order of the Tribunal were bereft of any factual details as to the nature of activities which the assessee carried on and the accounts involved, the matter required to be considered afresh by the Commissioner (E) in the light of the contentions to be urged on behalf of the assessee. It was open to the assessee to rely on the fact that it was recipient of the benefit under section 80G(5B) for subsequent periods (assessment years 2022-23 to 2026-27.

CIT (E) v. Sant Girdhar Anand Parmhans Sant Ashram (2023)452 ITR 52 /292 Taxman 472 / 331 CTR 473/ 223 DTR 265 (SC)

Editorial : CIT (E) v. Sant Girdhar Anand Parmhans Sant Ashram (2018) 408 ITR 79 (P& H)(HC), set aside.

S. 80G : Donation-Capitalisation fee-Show cause notice for cancellation of registration-Remanded to Commissioner to pass a fresh order on an application filed by assessee after further order was passed in show cause notice seeking to cancel the registration granted. [S. 12A, 80G(5), R. 11A]

The application for a grant of approval under section 80G(5) was rejected by the Commissioner. The tribunal allowed the application of the assessee. On appeal, the Revenue contended that a show cause notice was issued to the assessee with respect to the cancellation of recognition granted under section 12A. Assessee challenged the same in the writ petition and consequential order was passed remanding the matter before Commissioner. The court held that since issue as to whether assessee was eligible for deduction under section 80G would depend on the continuance of registration granted to assessee under section 12A(a) which was the subject matter of a show cause proceeding and was pending before the Commissioner in terms of the order passed in the writ petition, the order passed by Tribunal was quashed and the case was remanded to Commissioner to pass afresh order in accordance with law after deciding the issue of registration.

CIT v. Madras Medical Mission (2023) 290 Taxman 556 (Mad.)(HC)

S. 80G : Donation-Religious purpose-Registered under section 12AA-Directed to grant approval under section 80G(5) of the Act. [S. 12AA, 8OG(5) (vi))]

Held that the Trust is registered under section 12AA of the Act. Tribunal held that the approval under section 80G(5)(vi) of the Act cannot be denied only on the ground that it has received the donation for construction of temple and the temple was not constructed on the date of application. The assessee has given undertaking that the construction of temple would take place and the maintenance fund for the temple is in accordance with law. CIT(E) is directed to grant the approval under section 80G.

Santshrehtha Gnjajan Maharaj sevabhavi Sanstha v.CIT(2023) 221 TTJ 251 (Pune)(Trib)

S. 80G : Donation-Accumulated substantial funds for building construction-No clear alignment with its charitable objectiveS. [S. 2(15),12AA]

Assessee had been given registration under section 12AA and filed an application for approval under section 80G. Application filed by assessee was rejected by Commissioner (E) on ground that assessee's true intention was primarily to construct a building, with no clear alignment with its stated charitable objectives for which section 12AA registration was granted. Assessee accumulated substantial funds for building construction, even though funding was supposed to come from Member of Parliament Local Area Development Scheme (MPLADS) and construction was to be carried out by Government of Haryana. Assessee failed to provide evidence that funds raised were transferred to Government of Haryana as intended.It was found that Commissioner (E) relied on agreement entered into between Government of Haryana and assessee society in concluding that construction was to be undertaken by Government of Haryana till building was handed over to society in accordance with law and no error was found in said observation. Order of CIT(E) in rejecting approval under section 80G.

Gurjar Kalyan Parishad. v. CIT (2023) 203 ITD 212 (Delhi) (Trib.)

S. 80G : Donation-Donations which formed part of spend towards CSR-Allowable as deduction. [S. 37(1)]

Assessee donated/contributed a certain sum towards CSR which was debited to profit and loss account to institutions/organizations registered under section 80G and accordingly, it claimed deduction. Assessing Officer disallowed deduction under section 80G stating that CSR expenditure incurred under section 135 of Companies Act was categorically disallowed under section 37(1) and, therefore, on similar logic deduction under section 80G could not be allowed. On appeal the Tribunal held that since assessee satisfied conditions of section 80G, assessee is entitled to claim deduction under section 80G in respect of such donations which formed part of spend towards CSR. (AY. 2017-18, 2018-19)

Optum Global Solutions (India) (P.) Ltd. v. Dy.CIT (2023) 203 ITD 14 (Hyd) (Trib.)

S. 80G : Donation-Objects of general public utility-Trade,commerce or business related to such objects-Receipts does not exceed 20 percent of total receipts-PCIT is directed to adjudicate matter of approval in light of amended provisions of section 2(15) of the Act. [S. 2(15), 80G(5)]

Assessee-trust had filed an application for approval under section 80G(5)of the Act. CIT (E) rejected application for grant of approval under section 80G(5) on ground that appellant failed to establish any nexus between fund so raised by way of donation, school fee, Bus fee etc., and its application to activities/object of trust for charitable purpose to public at large. On appeal the Tribunal held that interpretation of section 2(15) had undergone a change and amended definition of section 2(15) states that in course of achieving object of general public utility, concerned trust, society, or other such organization, can carry on trade, commerce or business or provide services in relation thereto for consideration, provided that activities of trade, commerce or business are connected to achievement of its objects of general public utility and receipt from such business or commercial activity or service in relation thereto, does not exceed quantified limit i.e. 20 per cent of total receipts of previous year. Therefore, assessee was required to file fresh application for grant of registration under section 2(15) and consequently, application for approval under section 80G(5) of the Acct. Accordingly the matter is remanded back to PCIT to adjudicate matter of approval of section 80G(5) in light of amended provisions of section 2(15), on filing a fresh application by assessee-trust in prescribed format as per law.(AY. 2017-18)

Alnoor Charitable Educational Trust. v. CIT (2023) 202 ITD 375 (Amritsar) (Trib.)

S. 80G : Donation-Not started activities-Application is filed beyond six months-Rejection of application is not valid.[S. 80G(5) Form 10AB]

Where assessee-trust filed an application dated 11-1-2023 in Form No. 10AB for approval under section 80G(5) and Commissioner (E) rejected the application on the ground that it had been filed beyond six months of commencement of activities, since words 'within six months of commencement of its activities' used in sub-clause (iii) of the proviso to section 80G(5) applied for those trusts which had not started charitable activities at the time of obtaining provisional approval and not for those trusts including assessee which had already started activities before obtaining provisional approval, the application filed by assessee was within prescribed time limit and thus valid

Bhamashah Sundarlal Daga Charitable Trust v. CIT (E) (2023) 226 TTJ 961 / (2024) 109 ITR 418 (Jodhpur) (Trib)

S. 80G : Donation-Additional evidence-Rectification application is pending-Matter is remanded back to Assessing Officer to examine assessee's claim with reference to supporting evidence filed by it. [S. 154]

During year, assessee claimed deduction under section 80G in return of income, however, Assessing Officer disallowed same. Before Commissioner (Appeals) assessee did not raise any specific ground on this issue, however, in written submission assessee not only raised issue but furnished supporting evidence by way of requisite approval and certificate of donee to support its claim under section 80G. Commissioner (Appeals) ignored submissions of assessee. Assessee had also filed a rectification application with Assessing Officer which was pending. Tribunal remanded back to Assessing Officer to examine assessee's claim with reference to supporting evidence filed by it. (AY. 2020-21)

Lakshmikumaran & Sridharan. v. DCIT (2023) 199 ITD 488 (Delhi) (Trib.)

S. 80G : Donation-Approval-Commissioner cannot impose condition while granting approval.[S. 12A, 80G(5)]

Assessee-trust sought approval under section 80G and applied for approval under clause (i) of first proviso to sub-section (5) of section 80G. Principal Commissioner granted approval subject to certain conditions to be complied with by assessee. On appeal the Tribunal held that role of Principal Commissioner while according registration under section 12A and approval under section 80G is only to make himself satisfied about genuineness of activities to be carried out by assessee-trust and compliance of such requirement of any other law for time being in force by trust or institution material to achieve its objects and then to accord registration and approval. When assessee had come up under clause (i) of first proviso to sub-section (5) of section 80G, no such condition could be imposed by Principal Commissioner. Approval granted by Principal Commissioner to assessee was to be made absolute sans conditions. (AY. 2022-23 to 2026-27)

Sir Ratan Tata Trust. v. CIT(E) (2023) 198 ITD 669/224 TTJ 1000 (Mum) (Trib.)
Sir Dorabji Tata Trust. CIT(E) (2023) 198 ITD 669/224 TTJ 1000 (Mum) (Trib.)

S. 80G : Donation-Rejection of application-object of a general public utility-Section 2(15) allows trust to carry on trade, commerce, or business in the course of achieving the object of a general public utility provided the receipts do not exceed 20 percent of total receipts in the previous year-PCIT is directed to adjudicate matter as per the provisions of the Act. [S. 2(15), 11, 80G(5)]

Commissioner has rejected the application for grant of approval under section 80G(5) of the Act. On appeal the Tribunal held that Section 2(15) allows trust to carry on trade, commerce, or business in the course of achieving the object of a general public utility provided the

receipts do not exceed 20 percent of total receipts in the previous year. Accordingly the PCIT is directed to adjudicate matter as per the provisions of the Act. (AY 2017-18)
Alnoor Charitable Educational Trust v. CIT (E) [2023] 202 ITD 375 (Amritsar) (Trib.)

S. 80G : Donation-Spent more than 5 percent for religious purposes-Violation of section 80G(5B)-Commissioner is justified in denying the exemption.[S. 12AA, 80G(5B)]
Held that the assessee trust registered under section 12AA, had spent more than 5 per cent for religious purposes from its total income, there was clear violation of section 80G(5B) and thus Commissioner was correct in denying exemption under section 80G of the Act.
Kalaram Sansthan v. CIT (E) (2023) 201 ITD 749(Pune)(Trib)
S. 80G : Donation-Registration-selecting of wrong section code while filling the application for registration on provisional basis, not ground to deny permanent registration. Matter remanded back as CIT (A) duty-bound to cross-verify details submitted by assessee at time of issuance of provisional certificate, and issue notice pointing out wrong selection of section code and Grant permission to rectify mistake and consider application for grant of permanent registration. [S. 11, 80G (5)(iii)]
The Tribunal allowing the appeal of the Assessee Society held that, the assessee being a society was registered even prior to March 31, 2021 and thereafter had applied for registration on provisional basis. Though the assessee had committed a mistake in selecting the wrong section code 11 while making an application at the first instance, for such a mistake, the permanent registration could not be denied. The CIT (E) was duty-bound to cross-verify the details, submitted by the assessee at the time of issuance of provisional certificate and should have issued a notice pointing out the wrong selection of section code. Thus, the assessee as well as revenue were both at fault. Hence, appropriate to remand the matter to the CIT (Exemptions) with a direction to to rectify the mistake in submitting the application form and with a further direction to consider the application of the assessee for grant of permanent registration. (AY. 2023-24)
Telangana State Chapter Indian Radiological and Imaging Association v.ITO (E) (2023)105 ITR 13 (SN)(Hyd) (Trib)

S. 80G : Donation-Donation to charitable institutions-Unaccounted income from deemed sales-Direct cost-total cost-held, AO to revise computation of estimated profit-AO to verify deduction under section 80G.
The assesee revised its return for assessment years in 2011-12 to 2013-14 and declared a lower income. The assessee entered into a development project with a co-operative housing society for construction of residential buildings which was later on cancelled and the power of attorney of the assessee was revoked. According to the orders by the ICAI, the Assessing Officer applied the appropriate percentage of profits for the year to the unaccounted income from deemed sales to determine the total income. He also estimated a profit percentage of 12% rather than 10% on the assessee's declared gross receipts. He also decreased the assessee's capital work-in-progress. The Commissioner (Appeals) deleted the addition and asked the AO to apply the completion method to derive profits. In addition to asking for review of the valuation of unsold apartments at cost and the disallowance of the deduction claimed under section 80G, the assessee requested revision of the projected cost of repairs and renovations due to project delay and building damage.
The tribunal, on appeal, held that in order to account for the direct costs spent for the purchase of transferable development rights, stamp duty, Municipal Corporation fees, etc., the assessee was justified in adjusting the anticipated project cost upward. Administrative costs were to be removed from this because they could not be included. The latter had to be taken out of the saleable area because it was the portion that had been demolished. It was

necessary to calculate both the project's net profit and the proportion of construction that had been finished. The cumulative profit might be calculated for the assessment years 2012–2013 and 2013–2014 while taking into account the project's delay and the rising cost of the renovations. The AO was directed to adopt the percentage completion method to arrive at the net profit. ASST. CIT v. S. S. Enterprises (I. T. A. No. 2649/Mum/2018, dated October 28, 2019) relied on.

The Tribunal observed that the estimated cost of repairs and renovation had arisen due to a delay in a period subsequent to the assessment year in consideration and the estimates could only be made in the year subsequent to the year under consideration. The increase in the estimated cost of construction had arisen due to the changed in circumstance which cannot be overlooked. The Tribunal sustained the proposed figure of 22 per cent by the Commissioner (appeals). (AY.2011-12 to 2013-14)

Sandhu Builders v. Asst. CIT (2023) 154 taxmann.com 361 /103 ITR 130(Mum)(Trib)

S. 80HHC : Export business-Amendment in 1991 with Effect from 1-4-1992 is prospective-Sale of shares-Business income-to be included in total turnover-Interest earned from deposit of surplus funds in banks-Income from other sources"-to be excluded in computation of deduction. [S. 56, 80HHC(3)]

Court held that the amendments made to section 80HHC of the Income-tax Act, 1961 by the Finance (No. 2) Act, 1991, substituting sub-section (3) of section 80HHC and prescribing a different formula, are applicable with effect from April 1, 1992. The amendments do not have retrospective effect, that the judgment of the High Court applying the substituted and amended provisions of section 80HHC(3) was unsustainable.

Court also held that for the AY. 1989-90 on the head under which income from sale of shares was taxable, which finding had attained finality, the income from sale of shares should be treated as "income from business" for computation of deduction under clause (b) of section 80HHC(3) of the Act. Once the income from sale of shares was included under the head "income from business", the amount was also to be included in the total turnover of the business. Held that interest income should be taxed as "income from other sources". The finding of the Commissioner (Appeals) that the surplus funds were "transitory surplus funds" and utilisation thereof for earning interest income could not take away its character as "business income", was fallacious and wrong. The surplus funds, when deposited in a bank or otherwise to earn interest, were not taxable under the head "income from business", but under the head "income from other sources". This income did not have direct nexus nor was it earned by way of business activity. Accordingly, the interest income was not to be treated as "income from business" for computation of the deduction in terms of clause (b) of section 80HHC(3) of the Act. Followed Prabhakar P. R v. CIT (2006) 284 ITR 548 (SC) (AY. 1989-90 to 1991-92)

Magnum International Trading Co. (P.) Ltd. v.CIT (2023)454 ITR 141/ 293 Taxman 305 / 332 CTR 206/ 224 DTR 385 (SC)

Editorial : Magnum International Trading Co. (P.) Ltd. v.CIT (Delhi)(HC) (ITA Nos. 1141/1149 /1150/ 1560 of 2006 dt. 29-10-2019).Applying the substantial and amended provision of section 80HHC (3) was unsustainable.

S. 80HHC : Export business-Profits of business-Derived from-Must be derived from export of goods and merchandise-Foreign remittances credited into exchange earners foreign currency account-Gains from foreign currency fluctuations-Not derived from export but independent of export earnings-Cannot be treated as income from business of export eligible for deduction-Interpretation Of Taxing Statutes-Strict construction.

[Foreign Exchange Regulation Act, 1973, S. 73(3), Notification No. FERA.112/92/RB Dated 12-3-1992(1972) 74 Comp Cas 144 (St)

The assessee was a hundred per cent. export-oriented unit. With respect to the foreign exchange earned from the exports of goods, instead of converting the exchange immediately to Indian currency, the assessee credited a percentage of the foreign exchange to the Exchange Earners Foreign Currency account. The assessee received gains from the amount credited to the Exchange Earners Foreign Currency account due to an upward revision in the exchange rate at the end of the financial year. The assessee treated the gains on account of foreign currency fluctuations credited to its Exchange Earners Foreign Currency account as income earned in the course its export of goods out of India, i. e., profits of business from exports outside India and claimed deduction under section 80HHC of the Income-tax Act, 1961 thereon. The Assessing Officer disallowed the deduction and the Commissioner (Appeals) affirmed this. The Tribunal set aside the disallowance but the High Court restored the disallowance of the deduction under section 80HHC of the Act. On appeal the Court held that the profits earned by the assessee due to price fluctuation, in the facts and circumstances of the case, could not be included or treated as derived from the business of export income of the assessee. That as the controversy was whether the profit earned on the foreign exchange fell under business income or income from other sources, the interpretation of clause (baa) of the Explanation in section 80HHC was not attracted to the case on hand.(AY.2000-01, 2001-02)

Shah Originals v. CIT (2023)459 ITR 385 /156 taxmann.com 695 / 335 CTR 745 (SC)

Editorial : Refer, CIT v. Shah Originals (2010) 327 ITR 19 /191 Taxman 81 / 39 DTR 145 / 232 CTR 228 (Bom)(HC)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Market value-Captive power plant-Power supplied to own units-Rate to be adopted at which assessee supplies surplus power to State Electricity Board-Not determined in normal course of Trade and competition but under statutory contract. [S. 80IA ((4) (iv) 80IA(8), Electricity (Supply) Act, 1948, S. 43, 43A 44]

Dismissing the appeal of the Revenue the Court held that the determination of tariff between the assessee and the State Electricity Board could not be said to be an exercise between a buyer and a seller in a competitive environment or in the ordinary course of trade and business, i. e., in the open market. Such a price could not be said to be the price determined in the normal course of trade and competition. The market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board supplied power to consumers in the open market and not that at which it was sold to a supplier, i. e., sold by the assessee to the State Electricity Board, as this was not the rate at which an industrial consumer could have purchased power in the open market. The rate at which power was supplied to a supplier could not be the market rate of electricity purchased by a consumer in the open market. On the contrary, the rate at which the State Electricity Board supplied power to the industrial consumers had to be taken as the market value for computing deduction under section 80-IA of the Act.. the Tribunal had rightly computed the market value of electricity supplied by the captive power plants of the assessee to its industrial units after comparing it with the rate of power available in the open market, i. e., the price charged by the State Electricity Board while supplying electricity to industrial consumers. Therefore, the High Court was justified in deciding the appeal against the Department. The definition of the expression “market value” in the Explanation below sub-section (6) of section 80A of the Act was not applicable inasmuch as sub-section (6) was inserted in the statute with effect from April 1, 2009, much after the assessment year in question. *(*AY.2001-02, 2006-07)

CIT v. Jindal Steel and Power Ltd (2023) 335 CTR 1017/. (2024)460 ITR 162/ 297 Taxman 253 (SC)
CIT v. Reliance Industries Ltd 9 2023) 335 CTR 1017/. (2024)460 ITR 162/ 297 Taxman 253 (SC)
Editorial : Decisions of the Punjab and Haryana High Court in CIT v. Jindal Steel and Power Ltd(20024) 460 ITR 159 (P&H) (HC), the Bombay High Court in CIT LTU v. Reliance Industries Ltd (2020) 421 ITR 686 (Bom) (HC) and the Gujarat High Court in PR. CIT v. Gujarat Alkalies and Chemicals Ltd.(2017) 395 ITR 247 (Guj)(HC) affirmed on this point. Decisions of the Calcutta High Court in CIT v. ITC LTD (2016) 7 ITR-OL 166 / 286 CTR 400 /134 DTR 293 (Cal)(HC) and CIT v. Tata Metaliks Ltd (2016) 387 ITR 411 (Cal)(HC) impliedly disapproved.

S. 80IA : Industrial undertakings-Telecommunication Services Change in shareholding-Block of ten consecutive years-Losses which have lapsed cannot be taken into account for purposes profits of undertaking. [S. 79, 80IA(5)]
Dismissing the appeal of the Revenue, the High Court held that the AY. 2005-06 was the first year in the block of ten consecutive AYs for claiming deduction under section 80IA(1) of the Act. Circular No. 1 of 2016 ([2016] 381 ITR (St.) 1) would be applicable to the facts of the case. The lower Authorities were not justified in applying section 80IA(5) so as to ignore the losses which had already lapsed by operation of section 79. SLP of Revenue was dismissed (AY. 2005-06)
ACIT v. Vodafone Essar Gujarat Ltd. (2023)453 ITR 755 /149 taxmann.com 1 (SC)
Editorial : Vodafone Essar Gujarat Ltd v. ACIT (2020) 424 ITR 498 (Guj)(HC) is affirmed.

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Audit report-Not filed along with the return-Amendment with effect from 1-4-2020-Not raised before the Tribunal-Cannot be raised first time before High Court. [S. 44AB, 80IA(4)(v), 80IA(7) 80AC, 260A, Form No 10CCB]
The Assessing Officer disallowed the deduction claimed by the assessee under section 80IA of the Income-tax Act, 1961 on the ground that such deduction was not claimed in the original return but was claimed in the revised return. This was upheld by the Commissioner (Appeals). The Tribunal remanded the matter for verification. On appeal the Court held that the Tribunal without examining whether such an amendment could apply to the assessee's case had directed to the Assessing Officer to verify such a matter. Such an issue was never raised by the Department at any earlier point of time. In any event such point could not have been put against the assessee when it was never the case of the Department before the Tribunal. The order of the Tribunal was not valid. Appeal of the assessee is allowed.(AY.2014-15)
Winro Commercial (India) Ltd. v. PCIT (2023)457 ITR 418 / 330 CTR 598/ 221 DTR 425 /147 taxmann.com 123 (Cal)(HC)

S. 80IA : Industrial undertakings-Books of account not rejected-
Capping of profits by Assessing Officer is not proper. [S. 80IA(10), 145]
Held that the Tribunal being the final fact finding authority, had drawn the conclusions on the basis of records. There was nothing in the order of the Assessing Officer to show that the books of account of the assessee had been rejected. Further, the orders passed by the Assessing Officer with respect to capping of profits earned by the assessee at 7 per cent. only on the alleged basis of comparison with the accounts of K coupled with deduction of amount equivalent to 10 per cent. of the total sales towards non-payment of know-how charges and

towards usage of goodwill had rightly been rejected by the Tribunal being without any legal material or evidence. Order of the Tribunal is affirmed.
CIT v. Usha Infrasystems (2023)456 ITR 163 /146 taxmann.com 473 (HP)(HC)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Generation of power-Interest on Bonds issued by Grid Corporation in lieu of unpaid energy bills-Eligible for deduction. [S. 80IA (iv)(a),80IB, 80IC]
Allowing the appeal the Court held that the assessee had no other source of income except through generation and sale of power. All its receipts and expenditure related to a single activity of power generation. The interest received from the bonds issued by the Grid Corporation had a direct nexus with its essential business activity and, therefore, was income derived from interest is eligible for deduction.(AY.2002-03, 2003-04, 2007-08 to 2009-10)

Odisha Power Generation Corporation Ltd. v. ACIT (2023)456 ITR 495 /[2022] 138 taxmann.com 341(Orissa)(HC)

S. 80IA : Industrial undertakings-Infrastructure development-Market value of electricity supplied by CPP Unit to general unit would be same being charged by GEB from consumers and it ignored rate on which power generating company supplied its power to GEB.[S. 80IA(8)]
Assessee had a CPP Unit generating electricity, which was supplying it to a general unit. Electricity generated was being supplied to other consumers also.CPP unit charged Rs. 5.40 ps. per unit from general unit. The Assessing Officer applying sub-section (8) of section 80IA restricted same to Rs. 5.32 ps. per unit and, thereby, restricted deductions claimed by assessee under section 80IA. This restriction was primarily on basis that rate of Rs. 5.40 ps. charged by Gujarat Electricity Board (GEB) was inclusive of 8 paise per unit of electricity duty. This component of electricity duty Assessing Officer discarded for purposes of ascertaining market value of electricity generated by CPP Unit and supplied to its general unit.Tribunal reversed orders passed by revenue authorities and held that market value of electricity supplied by CPP Unit to general unit would be same being charged by GEB from consumers and it ignored rate on which power generating company supplied its power to GEB. High Court affirmed the order of the Tribunal.(AY. 2014-15)
PCIT v. Gujarat Flurochemicals Ltd. (2023)459 ITR 242 / 295 Taxman 200 (Guj.)(HC)

S. 80IA : Industrial undertakings-Infrastructure development-Initial assessment year-loss or unabsorbed depreciation, which had already been set-off prior to initial year, would not be notionally carried forward and adjusted against profits of eligible business in order to determine deduction. [S. 32, 72, 80IA(5)]
Hon'ble Delhi High Court held that Sub-clause (5) of Section 80IA of the Act do not create any fiction that losses which have already been absorbed, will be notionally carried forward and adjusted against the profits derived from the eligible business to quantify the deduction that the assessee could claim under section 80IA of the Act. (AY. 2016-17)
PCIT v. Sterling Agro Industries Ltd. (Delhi) (2023) 455 ITR 65 / 335 CTR 521 /151 taxmann.com 203 (Delhi)(HC)

S. 80IA : Industrial undertakings-Infrastructure development-Survey-Incumbent on part of Assessing Officer to grant deduction once the Central Government has granted approval-[S. 80IA(4)(iii), 133A, 153A]
The Assessing Officer disallowed claim of deduction under section 80-IA(4)(iii), on basis of letter from Under Secretary, Ministry of Commerce and Industry, which stated that on basis

of State Government's Report, building in which Industrial Park was being developed by assessee's proprietary concern did not belong to an individual but belonged to a partnership firm and assessee had admitted to aforesaid fact in Statement recorded during survey action under section 133AA of the Act. However, prior to survey the, assessee had applied for a review of rejection to Empowered Committee and Empowered Committee had reconsidered its earlier rejection and granted approval. Assessee had also clarified issue regarding development of Industrial Park by an individual and not by partnership firm, which was also evident from approval granted by Ministry of Commerce and Industry. Tribunal allowed the claim of the assessee. On appeal the Court held that once Central Government granted approval, it was incumbent on part of Assessing Officer to grant claim of deduction. Order of Tribunal is affirmed. (AY. 2009-10, 2010-11)

PCIT (C) v. Punit Chettiar alias Punit Balan (2023) 457 ITR 32 / 294 Taxman 567 (Bom.)(HC)

S. 80IA : Industrial undertakings-Infrastructure development-Inland container depot and container freight station-Entitled to the deduction.[S. 80IA(4), 260A]

Dismissing the appeal of the Revenue the Court held that assessee, a State Government undertaking, had set up Inland Container Depot (ICD) and Container Freight Station (CFS) in vicinity of Jawaharlal Nehru Port Trust (JNPT), such ICD and CFS being infrastructural facility, assessee was entitled to deduction in terms of section 80-IA(4). Order of Tribunal affirmed**.** (AY.2011-12)

PCIT v. Maharashtra State Warehousing Corporation (2023) 451 ITR 178 /149 taxmann.com 372 (Bom)(HC)

S. 80IA : Industrial undertakings-Infrastructure development-Inland container depot and container freight station-Entitled to the deduction.[S. 80IA(4), 260A]

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PCIT v. Maharashtra State Warehousing Corporation (2023) 451 ITR 178 /149 taxmann.com 372 (Bom)(HC)

S. 80IA : Industrial undertakings-Infrastructure development-Construction of technology park-Leasing of industrial units-notification to be issued by central board of direct taxes is only a formality once approval is granted by government-Order of Tribunal deleting disallowance was affirmed.[S. 80(IA)(4))(iii)]

Dismissing the appeal of the Revenue the Court held that the Tribunal was correct in holding that the assessee was entitled to deduction under section 80-IA(4)(iii) and that the notification issued by the Central Board of Direct Taxes was only a formality once the approval was granted by the Government. For the AY. 2008-09 in the assessee's own case the Tribunal had called for a remand report by the Commissioner (Appeals) and recorded a finding that the assessee had not leased out more than 50 per cent. of the total area in favour of any one of the lessees. (AY.2014-15)

PCIT v. Prasad Technology Park Pvt. Ltd. (2023) 450 ITR 564 (Karn)(HC)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Agreement with State Government /Statutory bodies-Developing new infrastructure

facilitieS. i.e. irrigation projects-Entitle to deduction-Interest on mandatory fixed deposit as security against bank guarantee-Eligible for deduction. [S. 80IA(4)(i)]
Held that the assessee having agreement with State Government /Statutory bodies for developing new infrastructure facilities.i.e. irrigation projects is entitle to deduction. The Tribunal also held that Interest on mandatory fixed deposit as security against bank guarantee is eligible for deduction. (AY. 2005-06, to 2007-08, 2011-12)
Infab Infrastucture (P) Ltd v. Dy.CIT(2023) 222 TTJ 421 (Ahd)(Trib)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Certificate in the month of April/May 1995-started telecommunication services after 1-4-1995 and would be eligible for deduction-Interest and miscellaneous income-Allowable deduction. [S. 80IA(4)(ii), 80IA(2A)]
Held that permissions/clearances for allocation of radio frequency channels for GSM Cellular Network were granted by Department of Telecommunication to assessee after 1-4-1995 and it received Interface/Service approval Certificate for radio paging services in month of April/May 1995, it could be said that assessee started telecommunication services after 1-4-1995 and would be eligible for deduction under section 80-IA. As regards interest income as well as miscellaneous income, in terms of non-obstante clause in section 80IA(2A), deduction on said other income would be allowable. (AY. 2005-06)
Dy. CIT v. Vodafone India Ltd. (2023) 222 TTJ 217 / 152 taxmann.com 660 (Mum)(Trib)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Liquidated damages-Sale of scrap-Miscellaneous income-Sundry creditors written back-Eligible for deduction.
Held that amount received as liquidated damages, sale of scrap, Miscellaneous income,sundry creditors written back are eligible for deduction. (AY. 2009-10, 2010-11)
Gujarat Industries Power Co Ltd v. Dy.CIT(2023) 225 TTJ 333 (Ahd)(Trib)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Late payment surcharge and rebate on power of purchase-Receipts having nexus with profits-Eligible for deduction-Addition made to income of eligible unit-Eligible for deduction in respect of sums added. Central Board Of Direct Taxes Circular No. 37 Of 2016, Dated 2-11-2016.
Held that the late payment of surcharge collected by the assessee pertained to the eligible unit of the assessee. The only purpose of making this recovery was to ensure the collection of electricity dues in time, and hence this receipt also had a possible nexus with the profit derived by the eligible unit and was consequently eligible for deduction under section 80-IA of the Act. Order of CIT(A) is affirmed. Addition made to income of eligible unit-Eligible for deduction in respect of sums added. Central Board Of Direct Taxes Circular No. 37 of 2016, Dated 2-11-2016. (AY.2011-12, 2012-13)
Tata Power Delhi Distribution Ltd. v.Add. CIT (2023)108 ITR 329 (Delhi)(Trib)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Not involved in any other activity other than running of port-Irrespective of various income declared by assessee in nature of duty credit entitlement, interest income, reversal of provision, small scarp sales etc., any income generated out of this port would be eligible for deduction.
Held that the assessee is not involved in any other activity other than running of port, irrespective of various income declared by assessee in nature of duty credit entitlement,

interest income, reversal of provision, small scarp sales etc., any income generated out of this port would be eligible for deduction under section 80-IA. Assessing Officer is directed to treat this miscellaneous income as part of business carried on by assessee. (AY. 2008-09, 2009-10)

Chennai Container Terminal P. Ltd v.Dy.CIT(2023) 108 ITR 147 / 154 taxmann.com 68 (Mum)(Trib)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Developer and contractor-Work of irrigation project and construction and development of road-Not works contractor but developer undertaking projects of Infrastructure Facility-Organisations awarding contracts were 100 Per Cent. owned by State Government-Entitle to deduction-Interest income-Only net interest income to be excluded.[S. 80-IA(4A), 80IA(13)]

Held that the tender document showed that the assessee was to make detailed drawings, design calculations and fabrication, etc., at its own cost ; the assessee was responsible for arranging methods of the execution of work along with detailed drawings, sketches, furnishing the details of sufficient plants, equipment, and labour ; the assessee had to arrange the land for a temporary site office, office laboratory, parking yard, store yard, labour camp, workshop, etc. ; the assessee was duty-bound to protect the environment on and off the staff site and avoid damage or nuisance, etc., to the persons or to the property of the public ; the assessee was to maintain at its own cost sufficient experienced supervisory staff required for the work and arrangement of their housing ; the assessee was to have a field laboratory for testing materials ; the assessee had to arrange for electric power and water supply, provide traffic safety arrangements like sign board, speed limit, speed breakers, diversion board, etc., pay liquidated damages in case of delay in the completion of project and other defaults ; the assessee deployed its resources (material, machinery, labour, etc.) in the construction work and the tender document clearly demonstrated the various risks undertaken by it ; the assessee was to furnish a security deposit to the employer and indemnify at the same time for any losses or damage caused to any property or life in course of execution of works ; the assessee was responsible for the correction of defects arising in the works at its own cost for which purpose, the principal retained the money payable to the assessee. Thus, it could not be said that the assessee had not taken any risk especially when the assessee had undertaken the project as a whole for the development of the road right from the beginning till the end. The assessee was also taking technical risk, subject to liquidated damages, providing technical manpower. Thus, on perusal of the terms and conditions in the tender documents furnished by the assessee, it was clear that the assessee was not a works contractor simply but a developer and had undertaken the projects of infrastructure facility as envisaged under the provisions of section 80-IA(4A) of the Act in the capacity of the developer. Hence, the Explanation to section 80-IA(13) did not apply to the assessee. the organisations which had awarded the contract were 100 per cent. owned by the State Government and therefore it could not be said that these were private parties. The organisations which awarded contracts to the assessee were arms of the State Government. Held, that only net interest income should be excluded while computing the eligible income under section 80-IA(4) of the Act..(AY.2005-06 to 2011-12)

Asst. CIT v. Montecarlo Construction Ltd. (2023)107 ITR 411 (Ahd) (Trib)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Failure to file Form No 10CCB along with the return-Directory and not mandatory. [Form No. 10CCB]

In the return of income the appellant has claimed deduction u/s. 80IA of the Act. The Tax Audit report and Income Tax return were filed within the due dates, however the report of accountant as required u/s. 80IA Form no. 10CCB was e-filed late after the due date. The AO disallowed the claim. On appeal the Tribunal relied on Apex Court in case of CIT v. GM Knitting Industries Pvt Ltd. *(2015)* 376 ITR 456 (SC) where it has been held that that even if the form is not filed with return, but if it is filed before the completion of assessment proceedings, the deduction should be allowed. Based on this decision and various other decisions at HC and ITAT level, the appeal was allowed in favour of the assessee ruling that deduction should be allowed even if the form has not been filed along with return of income. [ITA No. 11/Chny/2023] dated 06/04/2023*)* (AY. 20017-18)
Marudhamalai Sri Dhandapani Spinning Mills v. DCIT (Chennai) (Trib)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Department should take consistent stand in each assessment year.[S.80IA (4)]
In order to avail of a deduction in terms of section 80-IA(4) of the Act, the assessee could either (i) develop, or (ii) operate and maintain, or (iii) develop, operate and maintain the facility. The requirements of developing, maintaining and operating an infrastructure facility are not cumulative, even prior to the amendment to section 80-IA of the Act by the Finance Act, 2001. Thus, the assessee is entitled to deduction u/s. 80-IA(4) of the Act in respect of development of infrastructural facility alone, irrespective of whether it operates and maintains such facility.
The fact that the assessee was a "developer" of infrastructural projects and eligible for deduction u/s. 80-IA(4) of the Act in respect of infrastructural facilities developed by it, having been decided in the assessee's favour in the past, the Department was not entitled to take inconsistent stand in respect of each assessment year on the same set of facts. Moreover, no appeal had been preferred by the Department against the allowance of deduction u/s. 80IA(4)(i) of the Act qua AY. 2020-21. (AY. 2014-15, 2017-18, 2019-20)
ABCI Infrastructure P. Ltd. v. Asst. CIT 154 taxmann.com 397/ (2023)104 ITR 95 (Guwahati)(Trib)

S. 80IA : Industrial undertakings-Enterprises engaged in infrastructure development-Rental income inseparably connected with a business and originates directly from the business of undertaking-Eligible for deduction.
Held that the cargo service agreed between the assessee and the airport included cargo handling services, mailing services and post office mail services. The assessee had entered into a licence agreement for the use of the space in the cargo terminal operated by the assessee with cargo handling agents, airlines, banks and post office. The list of licensees from whom the assessee had received rental income was given. Therefore the service commitment by the assessee to the airport was directly related to the services provided by the licensees who had taken the space in the cargo terminal. In order to meet the requirement of cargo services 365 × 7 × 24, it was essential for the licensees to operate within the cargo terminal so that the assessee could provide uninterrupted cargo service as committed to the airport. The licensees could not use the facility for any purpose other than for supporting the cargo services. Renting of the space was an integral part of the cargo business of the assessee since the licensees used the space to render services that were committed by the assessee to the airport as part of cargo services. That the rental income was inseparably connected with the business carried on by the assessee and emanated directly from the business of the undertaking. Rental income derived from cargo agents, airlines, and banks was eligible for deduction under section 80-IA. (AY.2017-2018)

Menzies Aviation Bobba (Bangalore) P. Ltd. v. ACIT (2023) 102 ITR 373 (Bang)(Trib.)

S. 80IA : Industrial undertakings-Form 10CCB not filed with return of income-The filing of form is directory and not mandatory-Disallowance of exemption is not justified [S. 143(1)]

The appellant filed return claiming deduction u/s. 80IA of the Act. The Tax Audit report and Income Tax return were filed within the due dates, however the report of accountant as required u/s. 80IA-Form no. 10CCB was e-filed late after the due date. Intimation issued u/s. 143(1) did not allow the deduction u/s. 801A, as form 10CCB was not filed before filing the return of income. CIT(A) confirmed the addition. On appeal the Tribunal held that disallowance was not valid. Relied on CIT v. GM Knitting Industries Pvt Ltd. (2015) 376 ITR 456 (SC) where it has been held that that even if the form is not filed with return, but if it is filed before the completion of assessment proceedings, the deduction should be allowed. (ITA No. 11/ Chennai dt.6-4-2023 (AY.2017-18)

Marudhamalai Sri Dhandapani Spinning Mills v. DCIT, (2023) The Chamber's Journal-May-2023 P 110 (Chennai)(Trib)

S. 80IB : Industrial undertakings-derived from-Profits from Duty Entitlement Passbook Scheme and Duty Drawback claims-Not income "Derived From" Industrial Undertaking-Not eligible for deduction. [28(iiib), 28(iiic), Art. 136]

Dismissing the appeal of the aassessee the Court held that in order to settle the dispute whether receipts by way of incentives from the Government in the nature of cash assistance, duty drawback, profits on transfer of duty entitlement passbook schemes, were capital or revenue receipts and would thus, be taxable, the Legislature inserted clauses (iiia), (iiib), (iiic), (iiid) and (iiie) in section 28 of the Income-tax Act, 1961 making these incentives taxable under the head of "Profits and gains of business and profession". Section 80-IB provides for deduction in respect of profits and gains from certain industrial undertakings. For claiming deduction under section 80-IB, it must be on the "profits and gains derived from industrial undertakings" mentioned in section 80-IB. Profits from duty entitlement passbook schemes and duty drawback claims cannot be said to be income "derived from" the industrial undertaking and even otherwise under section 28(iiid) and (iiie), such income is chargeable to tax. The assessee is not entitled to deduction under section 80-IB on the amount of duty entitlement passbook scheme as well as duty drawback schemes. Any contrary decision of any High Court is held to be not good law. Followed CIT v. Sterling Foods (1999) 237 ITR 159 (SC), Liberty India v.CIT (2009) 317 ITR 218 (SC), Explained, CIT v. Meghalaya Steels Ltd(2016) 383 ITR 217 (SC)) (AY. 2008-09)

Saraf Exports v. CIT (2023)453 ITR 625/ 293 Taxman 280/ 332 CTR 188/ 224 DTR 277 (SC)

Editorial : Decision of the Jaipur Bench of the Rajasthan High Court is affirmed, Saraf Exports v. CIT (Raj)(HC) (ITA No. 7 of 2014 dt 4-2-2016)

S. 80IB : Industrial undertakings-Search and seizure-Manufacturing expenses-Bogus purchases-Statement retracted Customs, Excise and Service Tax Appellate Tribunal holding that the assesses engaged in genuine purchases and manufacturing activities-Entitled to deduction.[S. 153A]

Held that the Assessing Officer had relied on the Central Excise Department's investigation and findings, which were made basis to conclude that the assessee-companies were involved in booking bogus purchases through various persons which were found to be non-existing. However, the order of the Assessing Officer was on March 31, 2016 and on December 5,

2018 the Customs, Excise and Service Tax Appellate Tribunal in its order had accepted the claim of the assessee-companies that they were engaged into genuine purchases and manufacturing activities holding that the allegations were based only on assumptions and presumptions and it could not be held that the assessees had not manufactured the goods during the period. Eligible to deduction. (AY.2008-09 to 2013-14)
Asst. CIT v. Ambika International (2023)107 ITR 8 (SN)(Delhi)(Trib)
Asst. CIT v. Jay Ambet Aromatics (2023)107 ITR 8 (SN)(Delhi)(Trib)
Asst. CIT v. Shiva Mint Industries (2023)107 ITR 8 (SN)(Delhi)(Trib)

S. 80IB : Industrial undertakings-Eligible business-No adjustment could be made in respect of expenses relating to other undertaking while computing deduction-Mineral oil, for purpose of claiming deduction under section 80-IB(9) includes natural gas and condensate and therefore profit derived from sale of natural gas and condensate was to be allowed as deduction under section 80IB(9). [S. 80IA(5),80IB(9)]
Held that deduction under section 80IB(9) has to be computed after ascertaining profits and gains of eligible business in terms of section 80IA(5), therefore, there is no scope to adjust expenses relating to other undertaking while computing deduction under section 80IB(9). Term 'mineral oil', for purpose of claiming deduction under section 80-IB(9) includes natural gas and condensate and therefore profit derived from sale of natural gas and condensate was to be allowed as deduction under section 80IB(9). (AY. 2016-17)
Reliance Industries Ltd. v. ACIT (2023) 198 ITD 158 (Mum) (Trib.)

S. 80IB(10) : Housing projects-Separate completion certificate to each unit-Eligible for deduction. [S. 260A]
Assessee had developed a housing project having different units and claimed deduction under section 80IB(10) of the Act on the basis of separate completion certificates for each of units. AO denied the exemption. Tribunal allowed the claim relying on CIT v. B.M. and Brothers [2014] 42 taxmann.com 24/225 Taxman 149 (Mag.) (Guj) (HC). On appeal the Court held that the deduction is available only with respect to those units of housing project, which were approved prior to 1-4-2004 and of which construction had been completed prior to 31-3-2008. (AY. 2009-10)
PCIT v. Shree Jivraj Township (2023) 295 Taxman 619 (Guj.)(HC)

S. 80IB(10) : Housing projects-Failure to complete the housing project-Delay due to dispute of jurisdiction between AMC and AUDA over issuance of BU permission and after resolution of same AMC issued permission before due date of 31-3-2012-Order of Tribunal is affirmed-Return was filed within extended period as required to get TP report-Order of Tribunal allowing the claim was affirmed. [S. 92E, 139(1), 260A]
Assessee claimed deduction under section 80IB with respect to its housing project which was completed before 31-3-2012. Assessing Officer disallowed the claim on ground that assessee had not gotten BU permission for entire project upto 31-3-2012. Commissioner (Appeals) allowed claim of assessee on ground that delay was caused due to dispute of jurisdiction between AMC and AUDA over issuance of BU permission and after resolution of same AMC issued permission before due date of 31-3-2012. Tribunal upheld order of Commissioner (Appeals). High Court affirmed the order. The Assessing Officer also disallowed said claim on ground that assessee failed to file return within stipulated time under section 139(1) of the Act. Commissioner (Appeals) allowed claim of assessee. Tribunal held that the assessee entered into an international transaction with its AE by crediting brokerage commission. Tribunal upheld order of Commissioner (Appeals) on ground that as per provisions of section 92E assessee was required to get TP report and would enjoy

extended period of due date of filing return. High court affirmed the order of Tribunal. (AY. 2012-13)
PCIT (C) v. Venus Infrastructure and Development (P.) Ltd. (2023) 152 taxmann.com 45 (Guj)(HC)
Editorial : SLP of Revenue is dismissed, PCIT (C) v. Venus Infrastructure and Development (P.) Ltd. (2023) 293 Taxman 600 (SC)

S. 80IB(10) : Housing projects-Approved plan of Municipal Authority-All flats were having built up area of less than 1000 square feet-Completion certificate was issued by competent Authority-Order of Tribunal allowing the deduction was affirmed. [S. 80IB(10), 260A]
Assessee developed a residential project and thus claimed deduction in terms of section 80IB(10). The Assessing Officer denied claim on ground that some of flats constructed in Tower 'A' of its housing project had exceeded area of 1000 sq.ft. as envisaged under section 80IB(10). However, the CIT(A) found that assessee was claiming deduction on basis of approved plans of BMC, occupancy certificate issued by BMC, possession letters and agreements for sale of flats entered into with individual buyers. As per approved plans of BMC all flats in 'A' wing of building were having built up area of less than 1000 sq.ft. and as per possession certificate issued to buyers of flats, buyers had been given possession separately for each of individual flats. Further, there was no evidence on record to indicate that assessee had combined two or more flats. Moreover, completion certificate was issued by competent authority, which could not have been issued if there was any violation of approved plans by municipal authorities. The order of the CIT(A) was affirmed by the Tribunal in appeal. On appeal order of Tribunal was affirmed. (AY. 2009-10).
PCIT v. Vardhan Builders (2022) 291 Taxman 450 /(2023) 456 ITR 310 (Bom.)(HC)
Editorial : SLP dismissed (2023) PCIT v. Vardhan Builders (2023 256 taxmann.com. 364 (SC)

S. 80IB (10) : Housing projects-Built up area of less than 1000 square feet-Completion certificate was issued by the Competent Authority-Denial of exemption was not valid. [S. 260A]
As per the approved plan of the Municipal Authority, all flats of the building were having built up area of less than 1000 square feet, moreover a completion certificate was issued by the competent authority, which could be issued only if construction was in accordance with sanctioned plans. Hence the benefit of deduction could not be denied. (AY. 2009-10)
PCIT v. Vardhan Builders (2023) 291 Taxman 450 (Bom)(HC)

S. 80IB (10) : Housing projects-Delay of 365 days in filing of return-Denial of exemption-CBDT rejecting the application for condonation of delay-Order of rejection was set aside-Delay was condoned-Assessing Officer was directed to allow the claim as per law. [S. 119(2)(b), 143(1), Art. 226]
The assessee filed an application for condonation of delay of 365 days in filing return and claimed deduction under section 80IB(10) contending that their tax consultant could not file return on time due to his son's medical urgency, since there was a sufficient cause for said delay and, further, in respect of other assessment years from 2010-11 to 2013-14, authorities had allowed deduction under section 80-IB/(10) of the Act. CBDT rejected the application for condonation of delay. On writ allowing the petition the Court held that the income tax consultant has, stated on oath that his son Master Rishikesh, aged about 15 years having been born handicapped required constant attention and from the first week of October, 2010 his health deteriorated and remained a great concern for him and his other family members. That

since there was no satisfactory response he and his wife had quite a bad time in concentrating on his day to day behavior. That they were laboring under severe mental tension by reason of their sons's detoriating condition. That being a nuclear family except he and his wife no one is at home. That during the very said period his wife was pregnant and also required due care and attention until she delivered a boy in the month of April, 2011. The consultant has also stated on oath that for more than a year he and his wife had to therefore remain watchful about the deteriorating condition of their son. That it is only around February, 2012 that their son could regain normalcy. The affidavit of the income tax consultant which has neither been disputed nor controverted by the respondents is sufficient cause for condonation of delay in filing the application under section 119 (2)(*b*) of the Act. It would be substantial injustice to assessee if benefit of deduction for relevant year was not given to assessee. The delay was condoned. The Assessing Officer was directed to allow the claim as per law. (AY. 2011-12)
Bhatewara Associates Manik v. UOI (2023) 147 taxmann.com 297 (Bom)(HC)

S. 80IB(10) : Housing projects-Completion of project-Deduction is allowed in earlier years-Allocation of common expenses-Rule of consistency is followed.
Dismissing the appeal of the Revenue the Tribunal held that rule of consistency is followed as regards allocation of expenses as well as deduction under section 80IB(10) of the Act. (AY. 2012-13 to 2013-14)
JCIT v. Sheetal Infrastructure Pvt Ltd (2023) 102 ITR 54 (SN) (Ahd)(Trib)

S. 80IB(10) : : Housing projects-No deduction shall be allowed under section 80-IB(10) if not claimed in return of income. [S. 80A(5) 80AC, 139 (1), Form No 10CCB]
Assessee filed return of income electronically within due date and no deduction under section 80-IB(10) was claimed in return. Assessee during assessment proceedings filed another corrected return of income claiming deduction under section 80-IB(10) in physical format and submitted that as it had filed Form No. 10CCB in time, claim for deduction under section 80-IB(10) was validly made. It was held that merely filing Form No. 10CCB was not sufficient compliance to avail deduction under section 80-IB(10). As per section 80A(5) no deduction under Chapter VI-A shall be allowed if not claimed in the return of income. As per section 80AC no deduction shall be allowed unless the return is filed on or before the due date mentioned in section 139(1) for the assessment year. Both the aforesaid conditions need to be satisfied as these are primary conditions. Therefore, assessee was not eligible for deduction under section 80-IB(10), as it had not claimed it in return of income. [AY.2014-15]
ITO v. Jagtap Patil Promoters & Builders (2023) 221 TTJ 617 / 147 taxmann.com 199 (Pune) (Trib)

S. 80IBA : Profits and gains from housing projects-Writ of Mandamus-Availing deduction from 31-3-2022 to 31-3-2023-Completion of housing projects from five years to seven years-Petition was dismissed. [S. 80IAC, 80IBA(2)(b) 115BAB, Art. 14, 226]
The petitioner filed the writ petition for issuance of a writ of Mandamus to direct the Union of India to extend the date of availing deductions by assesses under section 80IBA of the Income-tax Act, 1961 from 31-3 2022 to 31-3-2023 by taking necessary executive legislative steps as may be required. The petitioner further seeks issuance of a writ of Mandamus to direct the Union of India to extend the time period for completion of construction projects from five years to seven years under section 80IBA(2)(b) of the Act. Dismissing the petition the Court held that the petition is grossly lacking in sufficient pleadings as would be required from making out a case of discrimination as claimed by the petitioner. The Court also held that the petition lacks all material particulars required to be stated in the pleadings to draw

some parity or similarity between members of the petitioner and persons stated to be covered by the provisions of section 80IAC of the Act. Accordingly the writ petition was dismissed. Relied on Morey v. Doud (1957) 354 US 457, R.K Garg v. UOI (Five Judge Bench) (1981) 4SCC 675, 1981 SCC (TAX) 30, State of Orissa v. Balram Sahu (2003) 1 SCC 250, State of UP v. Kamla Palace (2000) 1 SCC 557, Supreme Court Employees Welfare v. UOI (1989) 4 SCC 187, V. S.Rice and Oil Mills v. State of A.P etc AIR 1964 (SC) 1781
CREDAI BANM v. UOI (2023) 451 ITR 418 / 332 CTR 303/ 224 DTR 374 (Bom)(HC)

S. 80IC : Special category States-Industrial undertaking-Initial assessment year-Substantial expansion within period of ten years-Eligible deduction-Year of substantial expansion would be initial year for start of 100 Per Cent. deduction. [S. 80IC(8)(ix))
The Tribunal held that the benefit of substantial expansion at 100 per cent. deduction would not be granted to existing units where the assessee had already availed of full deduction at 100 per cent. in the earlier five years and the benefit of deduction at 25 per cent. was available for the remaining period where the substantial expansion had taken place after January 7, 2003 and before April 1, 2012. High Court affirmed the order of the Tribunal On appeal the Court held that assessee having set up a new industry of a kind mentioned in section 80-IC(2) and availing exemption of 100 per cent tax under section 80-IC(3) (which was admissible for five years) could claim exemption at same rate of 100 per cent beyond period of five years if it carried out substantial expansion in its manufacturing unit in terms of section 80-IC(8)(ix) within period of ten years. Referred PCIT v. Aarham Softronics [2019] 261 Taxman 529/412 ITR 623 (SC), (AY.2011-12)
Tejpal Chaudhary v. CIT (2023) 456 ITR 360 / 294 Taxman 523 / 333 CTR 452 (SC)
Friends Alloys v. CIT (2023) 456 ITR 360 (SC)
Editorial : Tejpal Chaudhary v. CIT (2023) 151 taxmann.com 554 (P& H)(HC), Decision in, Admac Faormulations v. CIT (2018) 409 ITR 661 (P& H) is reversed.

S. 80IC : Special category States-Backward area-Value added tax remission-Eligible for deduction.
The assessee had set up its business in a backward area it was entitled to the benefit of a scheme under which collection of value added tax from the customer on sale was entitled to a remission of 99 per cent. as issued by the Commercial Tax Department. The Tribunal held that remission is a business receipt because the assessee is allowed to retain the amount for the growth of the business and, therefore, the value added tax remission in the hands of the undertaking was very much business income and entitle to deduction under section 80IC of the Act. Order of the Tribunal is affirmed. (AY.2007-08 to 2011-12)
CIT v. Barak Valley Cements Ltd. (2023)456 ITR 665/(2022) 145 taxmann.com 28 ((Cal)(HC)

S. 80IC : Special category States-Manufacture-Production-Most of manufacture carried out outside specified area-Not entitled to deduction.
Court held that most of manufacture carried out outside specified area hence not entitled to deduction. The Court also observed that the purpose of incorporation of section 80-IC manifestly was to invite long-term investment and entrepreneurship in areas which were industrially backward. The incentive of the deduction of the income generated from such enterprise for the limited years cannot be used to negate the very purpose of the inclusion of section 80-IC. This facility cannot be allowed to be used to camouflage the production by making only small investment in the areas specified in section 80-IC. The term "manufacture" or "produce" used in section 80-IC has to be construed in the true context of

the object and purpose of the said provision. Referred the notification of CBDT (2003)) 264 ITR (St.) 145)..(AY.2005-06, 2007-08)
CIT v. Usha Infrasystems (2023)456 ITR 163 /146 taxmann.com 473 (HP)(HC)

S. 80IC : Special category States-Eligible business profits-Fluctuation of the rate of foreign exchange-Excise duty refund-Sale of scrap generated in the manufacturing process-Eligible for the deduction. [S. 10A, 56]
Dismissing the appeal of the Revenue the Court held that the Tribunal did not err in deleting the disallowance made on account of deduction on foreign exchange gain, refund of excise duties paid on material and other items purchased for manufacturing purposes holding that the excess duty refund did not represent the income with the first degree of nexus with the manufacturing profits, and the value of scrap generated in the manufacturing process. (AY.2009-10)
PCIT v. Reckitt Benckiser Healthcare India Ltd. (2023)451 ITR 403 (Guj)(HC)

S. 80IC : Special category States-Interest from fixed deposits in entities on account of power and electricity connection-Interest derived from eligible business and eligible for deduction-Interest received on insurance claim not derived from eligible business and not eligible for deduction. Condition precedent-Audit report in form 10CCB and tax audit report in form 3CB/3CD filed within prescribed due date but return claiming deduction filed belatedly-Assessee entitled to deduction.[S. 139(1) Form, 10CCB]
For the AY 2015-16, the A.O. denied the assessee the benefit of deduction u/s. 80-IC of the Act on the ground that the assessee had filed its return of income beyond time prescribed u/s. 139(1) of the Act. Deduction u/s. 80-IC of the Act was denied in respect of (1) interest earned from fixed deposits kept (a) in four entities on account of power and electricity connection taken to run the factory, (b) for guarantee given to the Uttarakhand Environment Protection and Pollution Control Board to get permission to run the plant, (c) for opening a letter of credit for import of goods and (2) interest recovered from customers for credit term allowed against letter of credit and bills were discounted on which interest were also paid. The CIT(A) affirmed the order passed by the A.O. On appeal, the Tribunal held that the assessee was entitled to claim deduction u/s. 80-IC of the Act in respect of the amount of interest was derived from eligible business and was eligible for deduction u/s. 80-IC of the Act. However, the sum of Rs. 54,680 being interest received on insurance claim could not be held derived from eligible business thus the sum was to be reduced for the claim u/s. 80-IC of the Act. The Tribunal also held that the assessee had filed the audit report in form 10CCB and tax audit report in form 3CB/3CD within prescribed due date but filed the return claiming deduction u/s. 80-IC of the Act belatedly. Therefore, even though the return was filed beyond the prescribed time-limit provided under section 139(1) of the Act, the assessee was entitled to claim deduction u/s. 80IC of the Act. (AY. 2015-16)
Canadian Specialty Vinyls v. ITO (2023)104 ITR 76 (SN(Delhi) (Trib)

S. 80IC : Special category States-Special deduction-Apportionment of head office expense among eligible units not justified-No nexus with eligible unitS. [80IB]
Held, that based on the finding of the Commissioner (Appeals) that material facts in this case were similar to those of the earlier years in that expenses had no nexus with eligible units, his order upholding the assessee's eligibility for deduction under sections 80IB and 80IC was sustained. (AY. 2010-11, 2011-12).
Dabur India Ltd. v.Dy. CIT (2023)101 ITR 148 (Delhi) (Trib)

S. 80IC : Special category States-Industrial Undertaking-Special deduction-Income from undertaking-Interest earned from FDs-Inextricably linked to business activity as maintenance of FDs-Entitled to deduction.

Held, that the interest earned by the assessee was inextricably linked to its main business activity as it was earned from fixed deposits which were-required to be maintained by it in terms of the statutory requirements, which had not been controverted by the Revenue. As a result, the Assessing Officer was not justified in denying the assessee the deduction under section 80IC, to which the assessee was entitled.(AY. 2014-15)

Havells India Ltd. v. Asst. CIT (LTU) (2023)101 ITR 81 (Delhi) (Trib)

S. 80ID : Hotels and convention centers in specified area-Revenue Sharing Agreement-Business to be run by parties in Co-ordinate manner and receive respective shares of income-Agreement having clauses of inclusion and exclusion of some of the revenues contractually agreed between parties for sharing of income-Cannot be interpreted as letting of property-Assessee Submitting certifying that it had satisfied all conditions for claiming deduction under Section 80ID-No adverse comment in this regard made by Assessing Officer-Revenue accepting claim of assessee in earlier years-Finding of Commissioner (Appeals) that income shown assessable as income from business and an allowable deduction. [Form 10CCBBA]

The assessee company used to provide hotel services to different hotels. The assessee was required to prove its claim of deduction of Rs. 44,54,647 under section 80-ID of the Act for the period of September 21, 2013, to March 31, 2014, during the assessment. The assessee's explanation was not deemed adequate by the AO. According to the AO, the assessee only got rental revenue from the subletting of its assets after taking the hotel property on rent and subletting it to H. Because the prerequisites outlined in sub-section (2) of section 80-ID were not met, he dismissed the assessee's request for a deduction under that provision of the Act, concluding that simple approval was insufficient. Hence an income of Rs.1,74,00,000 was treated as income from under source. The assessee appealed further after getting an unfavorable order from the Commissioner (Appeals).

The tribunal held that according to the agreement between the assessee and the hotel, both parties were responsible for running the business and getting their share of income from the hotel's gross revenue. The revenue sharing agreement contained clauses for the inclusion and exclusion of specific revenues as contractually agreed upon between the parties for sharing of the income from the hotel. Since these clauses were based on the total revenue from the hotel and its services, they could not be interpreted to mean that the hotel was being rented out. Additionally, the assessee had submitted a form 10CCBBA with a report from a chartered accountant attesting that the assessee had complied with all requirements for claiming a deduction under section 80-ID of the Act. The Commissioner (Appeals) did not make any negative statement on this aspect. (AY.2015-16)

ITO v. VG Properties P. Ltd. (2023) 152 taxmann.com 599/ 103 ITR 38 / 222 TTJ 33 (UO) (Delhi)(Trib)

S. 80IE : Undertakings-North-Eastern states-Belated return-Deduction is not available. [S. 80AC, 139(1)]

As per section 80AC, for claiming deduction under section 80-IE, mandatory/statutory condition is that return should be filed before due date provided under section 139(1)-Held, yes-Assessee, an individual, furnished his return of income claiming deduction under section 80IE. Assessing Officer denied deduction on ground that assessee had not filed return of income before due date prescribed under section 139(1). On appeal the Tribunal held that the assessee had failed to brought forth any communication or any order condoning such delay in filing return of income before due date prescribed under section 139(1). Since assessee had

filed belated return, claim of deduction under section 80IE could not be allowed as assessee was directly hit by provisions of section 80AC of the Act. (AY. 2016-17)
Kailash Modi. v. ITO (2023) 198 ITD 616 /223 TTJ 226 (Gauhati) (Trib.)

S. 80P : Co-operative societies-Co-operative Bank-Entitled to deduction.[S. 80P(2)(i), 80P(2)(d)]
Order of High Court dismissing the appeal of the Revenue is affirmed. SLP of Revenue dismissed. Followed, CIT v. Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi Ltd (2023) 454 ITR 117 (SC)) (AY. 2009-10)
PCIT v. Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi Maryadit Ltd. (2023)454 ITR 528 (SC)
Editorial : CIT v. Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi Maryadit Ltd (Bom)(HC) (ITA No. 1574 of 2017 dt 9-1 2020), affirmed

S. 80P : Co-operative societies-An apex co-operative society within meaning of State Act, 1984-Primary object is to provide financial accommodation to its members who were all other co-operative societies and not members of public-Not a co-operative Bank-Entitle to deduction. [S. 80P(2)(a)(i), 80P(4), Banking Regulation Act, 1949, S. 56, Kerala Co-operative Societies Act, 1969]
Assessee was a state level agricultural and rural development bank governed as a co-operative society under Kerala Co-operative Societies Act, 1969 and is engaged in providing credit facility to its members. Assessing Officer disallowed deduction under section 80P(2)(a)(i) on ground that the assessee was a co-operative bank and, thus, was hit by section 80P(4) of the Act. and would not be eligible for deduction under section 80P(2). The disallowance is affirmed by the Tribunal.Order of Tribunal is affirmed by the High Court. On appeal the Court held that the assessee-society is an apex co-operative society within meaning of State Act, 1984 whose primary object was to provide financial accommodation to its members who were all other co-operative societies and not members of public, it was not a co-operative bank within meaning of section 5(b) read with section 56 of Banking Regulation Act, 1949. Accordingly the deduction under section 80P could not be denied by invoking section 80P(4) of the Act.(AY. 2007-08)
Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer (2023) 458 ITR 384 /295 Taxman 675 / 334 CTR 601 (SC)
Editorial : Reversed, Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer (2016) 238 Taxman 638/ 383 ITR 610(Ker)(HC), Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. ITO (2019) 70 ITR 28 (SN) (Chochin)(Trib) Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. ITO (2019)72 ITR 523 (Cochin)(Trib)

S. 80P : Co-operative societies-Deduction-Notice is issued in SLP filed by the Revenue. [S. 80P(2)(a)(i),80P(4), Regional Rural Development Act, 1976, S. 22]
Assessee a primary co-operative agricultural and rural Development Bank claimed deduction under section 80P on ground that it is a co-operative society in terms of provision of section 22 of Regional Rural Development Banks Act, 1976. Assessing Officer rejected claim on ground that regional rural banks were not eligible for deduction on the ground that Circular No. 319 dated 11-1-1982 issued by Central Board of Direct Taxes, deeming status of Regional Rural Banks as Co-operative Society stood withdrawn Tribunal allowed exemption holding that provisions of Regional Rural Development Bank Act overrides provisions of section 80P(4) of the Act. High Court affirmed the order of the Tribunal. Notice is issued in SLP filed by the revenue. (AY. 2012-13 to 2016-17)

PCIT v. Baroda Uttar Pradesh Gramin Bank (2023) 294 Taxman 433 (SC)
Editorial : Refer, PCIT v. Baroda Uttar Pradesh Gramin Bank (2022) 447 ITR 218/ 138 taxmann.com 449 (All)(HC)

S. 80P : Co-operative societies-Credit societies giving credit to own members-Eligible deduction. [S. 80P(4), Banking Regulation Act, 1949, Art. 136]
High Court dismissed the Department's appeal on the question whether the Tribunal was justified in holding that the assessee, a co-operative credit society, was not a bank for the purpose of section 80P(4) of the Income-tax Act, 1961. On appeal by the Revenue, SLP of Revenue is dismissed. Followed, Mavilayi Service Co-Operative Bank Ltd v. CIT (2021) 431 ITR 1 (SC).(AY. 2010-11)
PCIT v. Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. (2023)454 ITR 117 / 293 Taxman 547/332 CTR 486/ 225 DTR 209 (SC)
Editorial : CIT v. Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd (Bom)(HC) (ITA No. 933 of 2017 dt. 14-10-2019), affirmed.

S. 80P : Co-operative societies-Primary society engaged in supplying milk to federal society-AO is directed to re-examine the issue in the light of the definition of the Tamil Nadu Co-operative Societies Act, 1983 and to pass a fresh order in the light of the definition contained in that Act, within a period of six months from the date of receipt of a copy of this order by the AO. [S. 80P(2)(b)(i), 260A]
On appeal the Court held that absence of finding as to primary society-Expression "primary society" has not been defined in the IT Act, 1961. Expression "primary society" has been defined in s. 2(21) of the Tamil Nadu Co-operative Societies Act, 1983. Only if the assessee is neither an "apex society" or a "central society", it will not be entitled to the benefit of the deduction under s BOP(2)(b)(1)-is no discussion as to whether the assessee is an "apex society" or a "central society"-AO is directed to re-examine the issue in the light of the definition of the Tamil Nadu Co-operative Societies Act, 1983 and to pass a fresh order in the light of the definition contained in that Act, within a period of six months from the date of receipt of a copy of this order by the AO. (AY. 1989-90, 1992-93)
Salem District Co-Operative Milk Producers Union Ltd v. CIT (2023) 333 CTR 696 (Mad) (HC)

S. 80P : Co-operative societies-Banking business-Interest earned from funds utilised for statutory reserves-Entitle to deduction. [S. 80P(2)(a)(i)]
Held, dismissing the appeal, that interest arising from investment made, in compliance with the statutory provisions to enable the co-operative society to carry on banking business, out of reserve fund by such society engaged in banking business, is exempt under section 80P(2)(a)(i) of the Act. Further, the placement of such funds being imperative for the purpose of carrying on banking business the income therefrom would be income from the assessee's business. Therefore, the assessee was entitled to deduction under section 80P(2)(a)(i) of the Act in respect of interest earned from funds utilised for such statutory reserves.(AY.2004-05)
CIT v. Paschim Banga Gramin Bank (2023)459 ITR 491/(2024) 158 taxmann.com 460 (Cal)(HC)

S. 80P : Co-operative societies-Claim for deduction must be made in return filed within time-Return Non est-Not eligible for deduction. [S. 80AC, 80A(5), 139(1), 139(4), 142(1), 148]

Held that a reading of section 80A(5) and section 80AC of the Income-tax Act, 1961, as they stood prior to April 1, 2018, would reveal that the statutory scheme under the Act was to admit only such claims for deduction under section 80P of the Act as were made by the assessee in a return of income filed by him. That return could be under section 139(1), (4), 142(1) or 148, and to be valid, had to be filed within the due date contemplated under those provisions. Under section 80A(5), the claim for deduction under section 80P could be made by an assessee in a return filed within the time prescribed for filing such returns under any of the above provisions. The amendment to section 80AC with effect from April 1, 2018, however, mandated that for an assessee to get a deduction under section 80P of the Income-tax Act, it had to furnish a return of his income for such assessment year on or before the due date specified in section 139(1) of the Income-tax Act. In other words, after April 1, 2018, even if the assessee made its claim for deduction under section 80P in a return filed within time under section 139(4), 142(1) or 148, it would not be allowed the deduction, unless the return in question was filed within the due date prescribed under section 139(1). Thus, it is clear that the statutory scheme permits the allowance of a deduction under section 80P of the Act only if it is made in a return recognised as such under the Act, and after April 1, 2018, only if that return is one filed within the time prescribed under section 139(1) of the Act. On the facts as the returns in these cases, for the assessment years 2009-10 and 2010-11, were admittedly filed after the dates prescribed under section 139(1) and (4) or in the notices issued under section 142(1) and section 148, the returns were non est and could not have been acted upon by the Assessing Officer even though they were filed before the completion of the assessment.(AY.2009-10, 2010-11)

Nileshwar Range Kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT (2023)459 ITR 730/152 taxmann.com 347 / 333 CTR 655 (Ker)(HC)

S. 80P : Co-operative societies-Binding precedent-Not following the decision of Supreme Court-Assessment order is not valid-Alternative remedy-Not absolute bar. [S. 80P(ii)(d), Art.226]

The Assessing Officer denied the deduction under section 80P(ii)(d) of the Act, ignoring the decision. Of Supreme court in Mavilayi Service Co-Operative Bank Ltd. v. CIT(2021) 431 ITR 1 (SC). On writ the Court held that an erroneous assessment occasioned by ignoring a binding judgment of the Supreme Court cannot be trivialised as an order against which an appellate remedy lies that would provide justice to an assessee. Assessment order is quashed and set aside.(AY.2020-21)

Cherthala Taluk Agricultural Credit Co-Operative Society v. ITO (2023)457 ITR 727 (Ker)(HC)

Uzhuva Service Co-Operative Bank Ltd v. ITO (2023)457 ITR 727 (Ker)(HC)

Muttom Service Co-operative Bank Ltd v. ITO (2023)457 ITR 727 (Ker)(HC)

S. 80P : Co-operative societies-No finding on question whether the assessee is a primary society-Matter remanded to the Assessing Officer. [Tamil Nadu Co-operative Societies Act, 1983, S. 2(21)]

The court held that neither the Assessing Officer nor the Appellate Commissioner or the Appellate Tribunal had examined the status of the assessee from the point of the view of the definition of a "primary society" in section 2(21) of the Tamil Nadu Co-operative Societies Act, 1983. Accordingly, the matter was remanded to the Assessing Officer

Salem District Co-Op. Milk Producers Union Ltd. v. CIT (2023)451 ITR 347 (Mad)(HC)

S. 80P : Co-operative societies-Credit facilities to members-Interest on parking surplus funds in fixed deposits-Interest income is allowed as deduction. [S. 80P(2)(a)(i)]
Held that the fixed deposits in banks out of the income derived from the activities listed in section 80P(2)(a)(i) to (vii), interest income is eligible for deduction under section 80P (2)(a)(i). (AY. 2017-18)
ITO v. The Kakateeya Mutually Aided Thrift & Credit Co-Operative Society Ltd (2023) 226 TTJ 333/ 157 taxmann.com 735 (Visakha) (Trib)

S. 80P : Co-operative societies-Tapping toddy from their farms-Sold through licensed shops-Not entitle to deduction. [S. 80P(2)(a), 80P(2)(a)(iii), 80P(2)(a)(vi)]
Held that sale of toddy by the farmers through licensed shops is not entitle to deduction. (AY. 2010-11, 2011-12)
Kasargod Tody Tappers & Shop Workers Co-Operative Society Ltd v.ITO (2023) 224 TTJ 891 (Cochin) (Trib)

S. 80P : Co-operative societies-Requirement of making a claim in return of income under section 80A(5) is directory-Deduction under section 80P(2)(a)(i) and 80P(2)(d) is to be allowed. [S. 80A,80A(5), 80AC, 80P(2)(a)(i), 80P(2)(d), 139(1)]
Tribunal held that provision of section 80AC which deals with denial of deduction in respect of certain provision of Chapter VI-A, if a returned of income was not filed by assessee, would not apply to claim of deduction under section 80P. Requirement of making a claim in return of income under section 80A(5) is directory in nature and since nature of deduction and quantum is not disputed by Assessing Officer, deduction under section 80P(2)(a)(i) and 80P(2)(d) is to be allowed to assessee. (AY. 2017-18)
Wanka Vividh Karyakari Seva Sahkari Mandali Ltd. v. ITO (2023) 203 ITD 779 (Surat) (Trib.)

S. 80P : Co-operative societies-Business of providing credit facility to its members-Matter remanded to the Assessing Officer.[S. 80P(2)(a)(i)]
Held that the assessee is a Co-operative Society registered under Kerala Co-operative Societies Act, 1969 and claimed that its income earned while carrying on business of providing credit facility to its members were eligible for deduction under section 80P(2)(a)(i), Assessing Officer was directed to decide claim in accordance with decision of Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. v. CIT (2021) 279 Taxman 75 / 431 ITR 1 (SC) (AY. 2012-13)
Ochanthuruth Service Co-operative Bank Ltd. v. ITO (2023) 202 ITD 143 (Cochin) (Trib.)

S. 80P : Co-operative societies-Interest income from investments made in various Co-operative Banks-Entitle to deduction. [S. 80P(2)(d), 80P(4)]
Held that mandate of section 80P(4) is to deny benefit of section 80P to co-operative banks and not to other co-operative societies investing their funds in co-operative banks. Since assessee was a Co-Operative Housing Society duly registered under Maharashtra Co-operative Societies Act, 1960, under which it was required to invest or deposit funds in District Central Co-operative Bank or State Co-operative Bank, provisions of section 80P(4) could not be made applicable. Entitle to deduction. (AY. 2017-18, 2018-19)
Pathare Prabhu Co-operative Housing Society Ltd. v. ITO (2023) 202 ITD 464 (Mum) (Trib.)

S. 80P : Co-operative Societies-Since there was no infirmity in the computation of income as computed by the assessee under the head "business income", the assessee is eligible for deduction under section 80P following the judgment of High Court of Kerala in the case of *Chirackkal Service Cooperative Bank Ltd. v. CIT* . [S. 143(1)(a))]

The Tribunal did not find any infirmity in the computation of income as computed by the assessee under the head "business income". Since the assessee is eligible for deduction under section 80P following the judgment of High Court of Kerala in the case of *Chirackkal Service Cooperative Bank Ltd. v. CIT*, the Tribunal allowed the deduction claimed under section 80P. (AY. 2016-17)

Aroor Co-operative Urban Society v. DCIT (2023) 221 TTJ 799/223 DTR 63 (Cochin) (Trib)

S. 80P : Co-operative Societies-Interest income earned from investments made with co-operative banks allowed as deduction. [S. 80P(2)(d)]

The Assessee, a co-operative society claimed interest income earned from investments made with co-operative banks as exempt under section 80P(2)(d) of the Act. The Assessing Officer disallowed the deduction by holding that the provisions of section 80P(2)(d) extended only to co-operative society and not to co-operative banks. The Commissioner (Appeals) upheld the order of the Assessing Officer and dismissed the appeal filed by the Assessee.

The Hon'ble Tribunal by placing reliance of the coordinate bench in the case of Kaliandas Udyog *Bhavan Premises Co-op Society Ltd. v. ITO, ITA No. 6547/Mum. /2017* vide order dated April 25, 2018 allowed the plea of the Assessee and directed the Assessing Officer to grant deduction under section 80P(2)(d) of the Act to the Assessee in respect of interest income earned from investment with co-operative banks. (AY. 2018-19.)

Manikpur Urban Co-operative Society Ltd. v. ITO (2023) 102 ITR 62 (SN) (Mum) (Trib)

S. 80P : Co-operative societies-In the absence of evidence to prove that trading of agricultural equipment was done with persons other than the members, deductions cannot be disallowed. (ii) Section 80P of the Income Tax Act, 1961 : State Government grants are eligible for deduction under the section provided the same is disbursed to members of the society only. (iii) Section 80P of the Income Tax Act, 1961 : Receipts incidental to the main activities of the business also are eligible for deduction under section 80P of the Act. [S. 80P(2)(a)(iii), 80P(2)a)(iv)]

The Hon'ble Tribunal at the outset found all the requisite details needed for claiming exemption to be on record. On the issue of gross profit, it observed that the assessee purchased sugarcane seeds, agricultural equipment, etc., and supplied them to its members in accordance with the objects of the society and profit from such activity was claimed to be exempt under section 80P(2)(a)(iv) of the Act. Given that there was no evidence to suggest that trading in agricultural equipment was done with persons other than the members, the Hon'ble Tribunal upheld the deduction.

As regards the grants received from the state government the Hon'ble Tribunal held that as far as the grants received have been passed on to the members, deduction was to be allowed. Finally, as regards commission income, entry fee, other income, patte (satte) se income, Upaj Badhotri and Vasooli Kharcha and Cheque book fee, the Hon'ble Tribunal found them to be incidental receipts relating to the business of marketing of agricultural produce of the members therefore eligible for deduction u/s. 80P(2)(a)(iii) of the Act. (AY. 2014-15)

ITO v. Sahkari Ganna Vikas Samiti (2023) 102 ITR 38 (Delhi) (Trib.)

S. 80P : Co-operative societies-Return filed after due date-Deduction cannot be denied.[S. 80AC, 139(1), 143(1)(a)(ii), 143(1)(a)(v)]

Assessee filed return after due date prescribed under section 139(1) but within due date permissible under section 139 and claimed deduction under section 80P. Assessing Officer disallowed claim of deduction by making adjustment under section 143(1)(a)(ii). Tribunal held that amendment had been introduced in section 143(1)(a)(v) with effect from 1-4-2021 to provide that claim of deduction under section 80P could be denied in case assessee did not file return within time prescribed under section 139(1). Denial of claim under section 80P would not come within purview of prima facie adjustment under section 143(1)(a)(v) for simple reason that section 143(1)(a)(v) was not in force during period under consideration, i.e., assessment year 2019-20. Accordingly the case of assessee would also not fall within purview of prima facie adjustment under section 143(1)(a)(ii) for reason that scope of adjustment that could be made under section 143(1)(a)(ii) had been elaborated in Explanation to aforesaid section which did not include denial of deduction in case assessee did not furnish return within date stipulated under section 139(1). (AY. 2019-20)

Medi Seva Sahakari Mandali Ltd. v. ADIT (CPC) (2023) 198 ITD 623 (Rajkot) (Trib.)

S. 80P : Co-operative societies-Delay in filing of return-Deedcution cannot be denied. [S. 80IA, 139(1), 139(4), 143(1)(a)(ii) 143(1)(a)(v), 153A]

Assessee is a co-operative society claimed deduction under section 80P & the Assessing Officer denied the said deduction holding that return of income was not filed within due date prescribed under section 139(1). However, the assessee had filed its return of income belatedly on 30-11-2020. It was noted that denial of claim under section 80P would not come within purview of prima facie adjustment under section 143(1)(a)(v) for reason that said section was not in force during period under consideration i.e. assessment year 2019-20. Further case of assessee would also not fall within purview of prima facie adjustment under section 143(1)(a)(ii) since return of income was filed within due date permissible under section 139(4), in which claim for deduction under section 80P was made.(AY. 2019-20)

Lunidhar Seva Sahkari Mandali Ltd v. AO(CPC) (2023) 200 ITD 14 (Rajkot) (Trib)

S. 80P : Co-operative societies-Belated return-Denial of deduction is not valid.[S. 139(1), 139 (4), 143(1)(a)(ii).]

Assessee claimed deduction under section 80P. AO disallowed deduction on the ground that return was not filed within due date under section 139(1) but within due date under section 139(4) of the Act. Tribunal held that the return of income was filed under section 139(4) and provisions of section 143(1)(a)(ii) do not provide for denial of deduction under section 80P even when the return of income is not filed within the time limit as per section 139(1) and, therefore, denial of deduction under section 80P vide intimation under section 143(1) was not valid in law. (ITA No. 186/Rjt/2022; dated 10/02/2023 ITA No. 186/Rjt/2022; dated 10/02/2023) (AY. 2019-20)

Ambaradi Seva Sahkari Mandali Ltd. v. DCIT (Rajkot)(Trib)

S. 80P : Co-operative societies-Delay in filing of return-Failure to file the return on due date-Not entitle to deduction-Adustmentment made while processing return of income is valid-Not entitled to deduction-Liable to pay fee of Rs 5000. [S. 80 (P) (2) (A) (i), 80AC, 139 (1), 139(4), 143 (1) (a),234F]

Held that assessee was required to file its return of income within the due date for claiming the deduction, whereas the assessee had filed its return of income on beyond the due date. Therefore, the assessee was not entitled to claim the benefit of deduction under section 80P(2)(a)(i) of the Act. The adjustment can be made while processing the return of

income under section 143(1) of the Act. For delay in filing of return liable to pay fee of Rs.5000. (AY. 2018-19)
Syndicate Bank Staff Co-Operative Society Ltd. v. Dy. CIT (2023)101 ITR 46 (SN.)(Bang) (Trib)

S. 89 : Relief for income-tax-Arrears or advance of salary-Order of High Court decision was not available when the order was passed-Order of High Court was available subsequently-Entitle for the relief.[.S. 10(10C), 264, Art. 226]
Allowing the petition the Court held that,if the issue involved is covered by a decision of the High court which is not available while passing the order on a 264 petition and is subsequently available, the decision will have to be applied and relief granted to the assessee. (AY. 2001-02)
N.S. R Murthy v. CIT (2023) 291 Taxman 580 / 333 CTR 869 (Telangana) (HC)

S. 90 : Double taxation relief-Agreement or Protocol entered into by Government-Enforceable in courts and Tribunals only after appropriate notification-Most favoured nation-No right to invoke most favoured nation clause when third country with which India has entered into Double Taxation Avoidance Agreement was not yet member of organisation for economic co-operation and development at time of entering into such agreement-Most favoured nation clause comes into effect after notification is issued-DTAA-India-France-Netherlands-Switzerland-Words and Phrases-"Is".-Interpretation-Double taxation Avoidance agreementS. [S. 90(1), Art. 73]
A notification under section 90(1) of the Income-tax Act, 1961, is necessary and a mandatory condition for a court, authority, or Tribunal to give effect to a Double Taxation Avoidance Agreement, or any Protocol changing its terms or conditions, which has the effect of altering the existing provisions of law.
The fact that a stipulation in a Double Taxation Avoidance Agreement or a Protocol with one nation, requires the same treatment in respect to a matter covered by its terms, subsequent to its being entered into, when another nation (which is a member of a multilateral organization such as the Organisation for Economic Co-operation and Development), is given better treatment, does not automatically lead to integration of such term extending the same benefit in regard to a matter covered in the Double Taxation Avoidance Agreement of the first nation, which entered into the Agreement with India. In such event, the terms of the earlier Agreement require to be amended through a separate notification under section 90.
The interpretation of the expression "is" has present signification. Therefore, for a party to claim the benefit of the "same treatment" clause, based on entry into a Double Taxation Avoidance Agreement between India and another State which is a member of the Organisation for Economic Co-operation and Development, the relevant date is that of entering into treaty with India, and not a later date, when, after entering into a Double Taxation Avoidance Agreement with India, such country becomes an Organisation for Economic Co-operation and Development member, in terms of India's practice.
The "most favoured nation" clause contained in various Indian treaties with countries that are members of the Organisation for Economic Co-operation and Development provides for lowering of the rate of taxation at source on dividends, interest, royalties or fees for technical services as the case may be, or restriction of the scope of royalty or fees for technical services in the treaty, similar to concessions given to another Organisation for Economic Co-operation and Development country subsequently.
There is no right to invoke the most favoured nation clause when the third country with which India has entered into a Double Taxation Avoidance Agreement was not yet a member of the Organisation for Economic Co-operation and Development (at the time of entering into

such Double Taxation Avoidance Agreement). The most favoured nation clause comes into effect after a notification is issued.

The following principles are settled by decisions of the court :

(i) The terms of a treaty ratified by the Union do not ipso facto acquire enforceability. (ii) The Union has exclusive executive power to enter into international treaties and conventions under article 73 (read with corresponding entries 10, 13 and 14 of List I of the Seventh Schedule to the Constitution of India) and Parliament holds the exclusive power to legislate upon such conventions or treaties. (iii) Parliament can refuse to perform or give effect to such treaties. In such event, though such treaties bind the Union, vis a vis, the other contracting States, leaving the Union in default. (iv) The application of such treaties is binding upon the Union. Yet, they "are not by their own force binding upon Indian nationals". (v) Law-making by Parliament in respect of such treaties is required if the treaty or Agreement restricts or affects the rights of citizens or others or modifies the law of India. (vi) If citizens' rights or others' rights are not unaffected, or the laws of India are not modified, no legislative measure is necessary to give effect to treaties. (vii) In the event of any ambiguity in the provision or law, which brings into force the treaty or obligation, the court is entitled to look into the international instrument, to clear the ambiguity or seek clarity.

Upon India entering into a treaty or Protocol that does not result in its automatic, enforceability in courts and Tribunals ; the provisions of such treaties and protocols do not therefore, confer rights upon parties, till such time, as, appropriate notifications are issued, in terms of section 90(1).

The status of treaties and conventions and the manner of their assimilation in various countries is radically different from what the Constitution of India mandates. In each of the three countries, Netherlands, France, and Switzerland, every treaty entered into the executive Government needs ratification. Importantly, in Switzerland, some treaties have to be ratified or approved through a referendum. These mean that after intercession of Parliamentary or legislative process, the treaty is assimilated into the body of domestic law, enforceable in courts. However, in India, either the treaty concerned has to be legislatively embodied in law, through a separate statute, or get assimilated through a legislative device, i. e., notification in the gazette, based upon some enacted law. Absent this step, treaties and protocols are per se unenforceable.

State practice subsequent to the adoption of a treaty confirms and solidifies the intent of the parties to the treaty. The goal of treaty interpretation under the Vienna Convention on Law of Treaties is to determine the meaning of the treaty viewed from the perspective of the contemporary shared understanding of the parties to the treaties. However precise the treaty text appears to be, the way in which it is actually applied by the parties is usually a good indication of what they understand it to mean, provided the practice is consistent, and is common to, or accepted by, all the parties. Whilst considering treaty interpretation, it is vital to take into account practice of the parties. There is no dispute that treaties constitute binding obligations upon their signatories. Yet, like all compacts, how the parties to any specific instrument view them, give effect to its provisions, and the manner of acceptance of such conventions or compacts are in the domain of bilateral relations and diplomacy. Much depends upon the relationship of the parties, the mutuality of their interests, and the extent of co-operation or accommodation they extend to each other. In this, a range of interests combine. The issue of treaty interpretation and treaty integration into domestic law is driven by constitutional and political factors subjective to each signatory. Therefore, domestic courts cannot adopt the same approach to treaty interpretation in a black letter manner, as is required

or expected of them, while construing enacted binding law. The role of practice which is not bilateral or joint practice, but practice by one, accepted generally by the international community as operating in that particular sphere, which is relevant, and at times determinative.
The treaty practice of Switzerland, Netherlands and France is dictated by conditions peculiar to their constitutional and legal regimes. In the event of failure of the Swiss Confederation to secure the requisite majority in a referendum or approval by the Swiss Parliament, or in the absence of approval by both houses of the States General in the Netherlands, a Double Taxation Avoidance Agreement provision or trigger event could not be assimilated into executive decrees. Likewise, the treaty practice in India points to a consistent pattern of behaviour when the signatory to an existing Double Taxation Avoidance Agreement, points to the event of a third State entering into Organisation for Economic Co-operation and Development membership, and a resultant trigger event, the beneficial effect given to the later third-party State has to be notified in the earlier Double Taxation Avoidance Agreement, as a consequential amendment, preceded by exchange of communication (and perhaps, negotiation) and acceptance of that position by India. The essential requirement of a notification under section 90 of the consequences of the trigger (or causative) event cannot be undermined.
Assessing Officer (IT) v. Nestle SA (2023)458 ITR 756 /(2024) 296 Taxman 580 (SC)
Editorial : Decisions of Delhi High Court in Nestle SA v. Assessing Officer (IT) (2022) 445 ITR 463 (Delhi)(HC), Steria (India) Ltd v. CIT (2016) 386 ITR 390(Delhi)(HC), EPCOS Electronic Components S.A v. UOI (2019) 14 ITR-OL 535 (Delhi)(HC), Concentrix Services Netherlands B.V.v.ITO (TDS / OPTUM Global Solutions International B.V. v.Dy.CIT (2021) 434 ITR (Delhi)(HC), reversed.

S. 90 : Double taxation relief-Tax credits withheld in USA and Canada-Entitle to credit though the income is exempt under section 10A of the Act-DTAA-India-Canada-USA.[S. 10A,
Held that notwithstanding the section 10A deduction, the assessee would be entitled for tax credit in respect of amounts of tax withheld in the U. S. A. and Canada.(AY.2003-04)
CGI Information Systems and Management Consultants Pvt. Ltd. v ITO (2023)455 ITR 270/153 taxmann.com 527 (Karn)(HC)

S. 90 : Double taxation relief-Taxes deemed to have been payable-Eligible to tax credit-Tax payable-Income by way of dividend, received from its subsidiary in Thailand-Income deemed to accrue or arise in India-DTAA-India-Thailand.[S. 9(1)(i),9(1)(iv), Art. 23(3), 23(5)]
Assessee claimed that it was eligible for tax credit qua tax which, though payable on income by way of dividend, received from its subsidiary in Thailand, was not paid because of statutory regime operating in that country. Assessing Officer contended that because tax was not paid by assessee, it could not be granted tax credit on dividend income, which was otherwise taxable in India at rate of 30 per cent. CIT(A) affirmed the order of the Assessing Officer. Tribunal held that the assessee would be entitle to tax credit at the rate of 10 percent on the dividend income received from the Thai subsidiary. On appeal by the Revenue the Court held that article 23 of India-Thailand DTAA, credit for notional tax was granted as a fillip and/or to incentivize economic development/activity which was a decision taken by treaty partners and unless there was ambiguity, interpretation of expressions 'Thai tax payable' or 'Indian tax payable' was to be based on a plain reading of what was provided in article 23(3) and 23(5). Said provisions exemplify mutuality of interests in giving stimulus to investment for securing economic development in both countries.Concept of tax sparing was

embedded in several DTAAs executed by India, such as with France, Jordan and Oman, apart from Thailand-Insofar as India-Thailand DTAA was concerned, credit for tax sparing worked for residents of Thailand, as well as India. This was a mechanism which was engrafted in DTAAs to incentivize investment for economic development and interdiction of such provisions would be detrimental to larger public interest.Therefore, Tribunal was right in allowing tax credit to assessee on its dividend income from Thai subsidiary based on concept of 'tax sparing'. (AY. 2010-11 to 2013-14)

PCIT v. Polyplex Corporation Ltd (2023) 457 ITR 195/ 294 Taxman 751/ 334 CTR 665 (Delhi)(HC)

S. 90 : Double taxation relief-Agreement-Taxing receipts-Question of fact-No substantial question of law-DTAA-India-USA. [Art. 12, 260A]

Held, dismissing the appeal of the Revenue the Court held that there were two important aspects that the Commissioner (Appeals) touched upon. First, there was no back-to-back arrangement, according to him, between the assessee, and its holding company, in order to deny the assessee the status of a beneficial owner, the Assessing Officer had to find that the assessee was either an agent or conduit for the holding company. The second proposition, as a matter of fact, flowed from the findings of fact returned by the Commissioner (Appeals). The Commissioner (Appeals) had found as a matter of fact that the assessee was playing the role of a service provider after procuring them from other group companies and that it had dominion over the fees received by it. Once it was held that there was no back-to-back arrangement and the assessee had dominion and control over the fees received by it and thus entitled to status of a beneficial owner, then, even according to the Revenue, the provisions of article 12 of the Double Taxation Avoidance Agreement would be attracted. The Tribunal, had sustained the orders passed by the Commissioner (Appeals). No substantial question of law arose in the appeal. (AY.2015-16)

CIT (IT) v. Fujitsu America Inc. (2023)452 ITR 311 / 333 CTR 409/ 225 DTR 513 (Delhi)(HC)

S. 90 : Double taxation relief-Foreign tax credit-Form No. 67 was filed beyond due date of filing of return-Procedural-Not mandatory-Directory-Matter is remanded to Assessing Officer to grant FTC-DTAA-India-Myanmar [S. 139(1), 143(1), R. 128, Art.25]

Assessee received salary from foreign country (Myanmar) and tax deducted in Myanmar was claimed as FTC. Assessing Officer denied relief under section 90 on ground that Form no. 67 was filed beyond due date and after processing of return of income under section 143(1). Tribunal held that section 90 allows double taxation relief and since there is no amendment in section 90 with regard to claim of FTC, rule procedures are directory and not mandatory. Matter is remanded to Assessing Officer to grant FTC. (AY. 2021-22)

Gaurav Singh v.ITO (2024) 158taxmann.com350 / 226 TTJ 25 (UO) (Jabalpur (Trib.)

S. 90 : Double taxation relief-Elimination of double taxation-OECD Model Convention, Art. 25, 23A-No foreign tax paid in India-eligible for tax credit. [S. 40(a)(ii)]

Where respective tax treaty provides for benefit for foreign tax paid even in respect of income on which assessee has not paid tax in India, still, it would be eligible for tax credit under section 90. Assessee, an Indian company, engaged in business of computer software and management consultancy claimed deduction of State taxes paid in overseas countries, Assessing Officer was to be directed to verify whether State taxes paid by assessee overseas were eligible for any relief under section 90 and if it was not found to be so, assessee's claim of deduction was to be allowed. (AY. 2014-15)

Tata Consultancy Services Ltd. v. Dy. CIT (2023) 154 taxmann.com 372 / 226 TTJ 361 (Mum)(Trib.)

S. 90 : Double taxation relief-Long term capital gains-Tax residency certificate-Tax resident of Mauritius with valid TRC and a beneficial owner of income derived from sale of shares, is entitled to treaty benefits, and, thus, capital gain, being exempt under treaty provisions could not be brought to tax in India-DTAA-India-Mauritius [S. 9(1)(1), 45, Art. 13(3A), 13(4)]

Assessee, a tax resident of Mauritius, operated as an investment company for undertaking various investments. Assessee's holding company acquired 5 per cent unlisted equity shares of NSE transferred to assessee in year 2009 and assessee received net long-term capital gain on part disposal of said shares and claimed long-term capital gain to be exempt under article 13(4). Assessing Officer held that assessee-company had no commercial substance and had been set up as a conduit company under a scheme of arrangement to get tax advantage under India-Mauritius tax treaty and ultimately held that assessee could not be treated as a tax resident of Mauritius and, hence, would not be entitled to treaty benefits. Assessee contended that a valid TRC and Category 1 GBL and, moreover, entire process relating to acquisition of shares of NSE and its sale went through a process of scrutiny and approval by various Government authorities. Tribunal held that since various allegations of Assessing Officer regarding residential status of assessee were in nature of vague allegations without backed by substantive evidence, assessee being a resident of Mauritius, and a beneficial owner of income derived from sale of shares, was entitled to treaty benefits.Since shares sold by assesssee in year under consideration were acquired in year 2009, much prior to 1-4-2017, provisions of article 13(3A) of tax treaty would not be applicable and, thus, capital gain derived by assessee from sale of shares would fall within ambit of article 13(4). (AY. 2018-19)

SaifII SeInvestments Mauritius Ltd. v.Asst. CIT (IT) (2023) 154 taxmann.com 617 / 226 TTJ 699 (Delhi) (Trib.)

S. 90 : Double taxation relief-Non-Resident-Salary-Long term international assignment-Salary earned in Singapore offered to tax in Singapore and taxes paid-Salary taxable in country where employment exercised-Income not taxable in India-DTAA-India-Singapore [S. 5(2), 15, Art. 15, 25]

Held, that the assessee was non-resident in India and a resident of Singapore which was evidenced by the tax residency certificates furnished by the assessee. The income in question had already been offered to tax in Singapore and the assessee had paid taxes thereon. No credit for tax paid in India had been taken in Singapore. On these facts, the assessee would be entitled to the benefit of article of the Double Taxation Avoidance Agreement between India and Singapore which provides that the salary would be taxable in the country wherein the employment is exercised. The order of the Commissioner (Appeals) is affirmed subject to verification by the Assessing Officer that this income has already been offered to tax in Singapore and the assessee had paid due taxes thereon and that no credit of taxes paid in India had been taken by the assessee in Singapore.(AY.2019-20)

ITO v. Mani Rajesh (2023)108 ITR 26 (SN)(Chennai) (Trib)

S. 90 : Double taxation relief-Foreign tax credit (FTC) cannot be disallowed for delay in filing Form 67 as filing of Form 67 is a directory requirement-DTAA-India-USA.[R. 128(9), Form, 67, Art. 25,

Tribunal held that rule 128(9) of Rules does not provide for disallowance of Foreign Tax Credit (FTC) in case of delay in filing Form 67 and, therefore, filing of Form 67 is a directory

requirement, but not a mandatory one inasmuch as DTAA which overrides Act as well as Rules, vests a right in assessee to claim credit thereof. (AY. 2019-20)
Ashish Agrawal. v. ITO (2023) 203 ITD 562 (Hyd) (Trib.)

S. 90 : Double taxation relief-Rate of tax-Dividend Distribution Tax (DTAA)-Refund of DDT paid at a rate exceeding that specified in DTAA-Not justified in claiming beneficial rate on dividends, as specified in Double Taxation Avoidance Agreement-DTAA-India-Denmark-Singapore. [S. 115O, Art. 10, 11]
Assessee claimed refund of excess Dividend Distribution Tax (DDT) paid. Assessee contended that beneficial rate on dividends, as specified in Double Taxation Avoidance Agreement (DTAA), should be applied for purpose of calculating DDT Rationale behind this argument was that DTAA provisions take precedence over provisions-Assessee claimed that it should be entitled to a refund of DDT based on more favourable rates provided in DTAA. Assessing Officer dismissed claim. Commissioner (Appeals), upheld order of Assessing Officer by relying on decision of Special Bench of Tribunal in case of Dy. CIT v. Total Oil India Private Ltd (2023) 149 taxmann.com 332 (Mum)(Trib)(SB) wherein it was held that provisions of DTAA did not entitle assessee to a refund of DDT paid at a rate exceeding that specified in DTAA. Tribunal affirmed the order of the CIT(A). (AY. 2017-18)
Dow Chemical International (P.) Ltd. v. DCIT (2023) 203 ITD 575 (Mum) (Trib.)

S. 90 : Double taxation relief-Capital gains-Shares-Compulsorily Convertible Preference Shares-Exempt from tax-DTAA-India-MauritiuS. [. S. 45, Art. 13(3A), 13(3B)]
The assessee had acquired the Compulsorily Convertible Preference Shares before 01.04.2017. The capital gain derived from the sale of such shares would not be covered under Article 13(3A) or 13(3B) of the Treaty. It will fall under Article 13(4) of India-Mauritius DTAA and, hence, would be exempt from taxation as the capital gains are taxable only in the country of residence of the assessee.The Tribunal held that the word ‘shares’ mentioned in the tax treaty is to be understood in a broader sense which will take within its ambit all shares, including preference shares and thus, CCPS acquired before Apr 1, 2017, would fall within the category of shares. (AY. 2019-20)
Sarva Capital LLC v. Asst. CIT (IT) (2023) 202 TTJ 685 / [2024] 109 ITR 330 (Delhi)(Trib)

S. 90 : Double taxation relief-Since, in terms of the permission of RBI, liaison office's activities are confined to the liaison and representative activities and is not permitted to carry out any business/commercial activities in India, the said liaison office cannot be regarded as permanent establishment. [S. 133A]
The assessee is a public company incorporated in Japan which is engaged in the business of import/export as well as domestic sales of dye stuffs, chemicals, plastic, machinery, electronic materials, cosmetics, health foods and medical equipment. In 1974, the assessee opened a liaison office in Mumbai after obtaining necessary approvals from the Reserve Bank of India. In terms of the permission of RBI, liaison office's activities are confined to the liaison and representative activities and it is not permitted to carry out any business/commercial activities in India. under section 143(3) of the Act, AO did not agree with the submissions of the assessee.
The Assessing Officer on the basis of documents/books of accounts and other papers impounded during the course of survey under section 133A of the Act came to the conclusion that liaison office's activities are not confined to the liaison work only, but it is also actively engaged in business activity (i.e. sales in India).

Tribunal found out that nothing has been brought on record to suggest that the RBI has found activities of the liaison office as being non-compliant with the terms and conditions of its permission and, therefore, the said aspect supports the assertion of the assessee that liaison office was performing activities as permitted by the RBI, which were preparatory and auxiliary in nature and not the core business activity independent of the Head Office. Accordingly, the Tribunal held that the liaison office in Mumbai does not constitute permanent establishment of the assessee in India under the provisions of Double Taxation Avoidance Agreement. (AY. 2001-02, 2003-04)
Nagase and Company Ltd. v. ADIT (2023) 221 TTJ 877 (Mum) (Trib)

S. 90 : Double taxation relief-Non discrimination clause-Income to be taxed at the rate 30 % instead of 40% (Plus surcharge and education cess)-DTAA-India-Korea. [S. 9(1)(i), Art. 7(2), 24]
Assessee had eleven Korean expatriate working exclusively for the Indian PE. These employees got salaries in Korea, and, in addition to that salary, when they come to India, they get certain additional amount as compensation for working in India. While the Indian salaries of these expatriates are paid in India and shown in the books of accounts in India and the salaries paid to expatriates in Korea are incurred by the head office. In view of Explanation 1 to Section 90, unless a foreign company makes prescribed arrangements for declaration and payment within India, of the dividend payable out of its income in India, the levy of tax at higher rate cannot be considered a less favourable levy of tax or more burdensome taxation vis-à-vis domestic companies, a Korea based banking company cannot be read down in the light of provisions of DTAA between India and Korea. (AY.2012-13 to 2015-16)
Shinhan Bank v. DCIT (2023) 221 TTJ 148 (Mum)(Trib)

S. 90 : Double taxation relief-Foreign tax credit-Mere delay in filing Form No. 67 as per provisions of rule 128(9), under will not preclude assessee from claiming benefit of foreign tax credit in respect of tax paid outside India.[S. 90A, R. 128(9), Form No.67]
Tribunal held that mere delay in filing Form No. 67 as per provisions of rule 128(9), as they stood during year under consideration, will not preclude assessee from claiming benefit of foreign tax credit in respect of tax paid outside India. (AY. 2020-21)
Bhagwandas Tikamdas Khinani. v. CIT (2023) 199 ITD 481 (Mum) (Trib.)
Bhaskar Dutta. v. DCIT (IT) (2023) 199 ITD 432 (Delhi) (Trib.)

S. 90 : Double taxation relief-Salary-Foreign tax credit-Filing of Form No 67 is not mandatory-DTAA-India-NetherlandS. [R. 128(9), Form no.67, Art. 24]
Assessee-individual offered to tax salary income earned for services rendered in Netherlands and claimed foreign tax credit (FTC) for taxes paid in Netherlands under section 90. Assessee filed return of income along with Form No. 67 in support of claim of FTC. Assessing Officer/Centralized Processing Centre (CPC) rejected assessee's claim of FTC as not allowable. Commissioner (Appeals) upheld disallowance holding that filing of Form No. 67 before due date of filing return of income under section 139(1) was mandatory and failure to do so will result in FTC not being allowed. On appeal the Tribunal held that that rule 128(9) of Income-tax Rules does not provide for disallowance of foreign tax credit (FTC) in case of delay in filing Form No. 67 and filing of Form No. 67 is not mandatory but a directory requirement-Whether, in view of aforesaid legal position, assessee was entitled to FTC. Followed-Ms. Brinda Ramakrishna v. ITO (2022) 193 ITD 840 (Bang)(Trib) (AY. 2020-21)
Sanjiv Gopal. v. ADIT (2023) 198 ITD 411 (Bang) (Trib.)

S. 90 : Double taxation relief-Banking company-Not made arrangement for declaration of dividend-Non-Discrimination-Income is to be charged at a higher rate of tax in India vis-a-vis domestic company and same could not be treated as discrimination on account of fact that assessee belonged to other Contracting State, i.e. Korea-DTAA-India-Korea. [S. 9(1(i), Art. 24]

Assessee, a banking company incorporated in Korea, is carrying on business in India through its PE. Assessee claimed that it would be eligible for benefit as per article 24 and its income was to be taxed at rate of 30 per cent applicable to a resident taxpayer instead of 40 per cent. Assessing Officer denied said claim. On appeal the Tribunal held that Explanation 1 to section 90, which was brought into effect retrospectively from 1-4-1962 stated that charge of tax in respect of a foreign company at a rate higher than rate at which a domestic company was chargeable, would not be regarded as less favourable charge in respect of such foreign company, where company had not made prescribed arrangement for declaration and payment within India, of dividends payable out of its income in India. Since the assessee had not made arrangements for declaration of dividends out of income earned in India, its income was to be charged at a higher rate of tax in India and same could not be treated as discrimination on account of fact that assessee belonged to other Contracting State, i.e., Korea. (AY. 2012-13 to 2015-16)

Shinhan Bank. v. DCIT (IT) (2023) 198 ITD 453 (Mum) (Trib.)

S. 90 : Double taxation relief-Credit for foreign tax paid-Delay in filing Form No. 67-Directed the Assessing Officer to decide the claim of the foreign tax credit n merits, after accepting the Form No. 67 and other related documents filed by the assessee-DTAA-India-Netherland.[S. 90A,154, Form, 67 R. 128(9) Art. 23]

Tribunal held that mere delay in filing Form No. 67 as per the provisions of Rule 128(9), as they stood during the year under consideration will not preclude the assessee from claiming the benefit of foreign tax credit in respect of tax paid outside India. Since the claim of the assessee was denied on technical aspect without going into the merits, therefore, Tribunal deemed it appropriate to direct the jurisdictional Assessing Officer to decide the claim of the foreign tax credit on merits, after accepting the Form No. 67 and other related documents filed by the assessee. Followed, Sonakshi Sinha v. CIT(2022) 197 ITD 263 (Mum(Trib) Anuj Bhagwat v.. DCIT (Mum)(Trib) (ITA No. 1844/1845/Mum/2022 dated 20th September, 2022).(AY. 2019-20)

Priya Savina Murzello v. Dy. CIT [2023] 200 ITD 69 (Mum (Trib.)

S. 90 : Double taxation relief-Filing of Form 67 is a procedural/ directory requirement-Non-filing of Form 67 within the prescribed due date would not extinguish the substantive right of claiming credit of foreign tax credit.[S. 90A, R. 128, Form No 67]

Tribunal held that filing of Form 67 is a procedural/ directory requirement and is not a mandatory requirement. Further, violation of procedural norms would not extinguish the substantive right of claiming credit of foreign tax credit of the Assessee. While holding so, the Tribunal observed that, if the intention of the legislature was to deny foreign tax credit, either the Act or the Rules would have specifically provided that credit would not be allowed if Form 67 is not filed within the prescribed due date. Such language is however not used in Rule 128(9) of the Rules. (AY. 2018-19, 2019-20)

Amitsingh Baid Mehta v. ADIT (2023) 202 ITD 548 (Chennai) (Trib.)

S. 90 : Double taxation relief-Non-resident-agreement with group entity in India-assesee supplying material as per agreement-roles of every member of the consortium agreed

upon-assessee did not carry out operations in India-Held sums not taxable in India-DTAA-India-Chaina. [S. 2(31)]

The assessee argued that because it did not have a permanent establishment in India, the terms of article of the Agreement did not permit taxation of the assessee's revenue in India. The AO determined in a draft assessment order that the assessee formed a consortium with its Indian linked firm to fulfill its contractual obligations. The AO viewed this consortium as an association of individuals under section 2(31) of the Act and determined that the contracts with the two parties were indivisible and composite agreements that could not be divided for supply and commissioning. The AO held that the association could not get the benefit of the Agreement. Additionally, he claimed that the sale was completed in India because the products were delivered there and the assessee had made the offshore supplies on a cost-insurance-freight basis at the Indian port of disembarkation. The Assessing Officer then taxed 5% as income from composite contracts. The dispute resolution panel upheld the addition but held the no assessment finding of the AO as pre mature. The same was appealed.

The Tribunal held that the consideration received in India by the enterprise was already put to tax. The Tribunal observed that even though he treated the consortium as an association, the income was tax only in the hands of the assessee. The property in the items passes to the buyer at the port of shipment when an assessee makes an offshore supply of equipment on a cost-insurance-freight basis. All risks of loss or damage to the goods after they leave the port of shipment are assumed by the buyer. India may only tax the portion of revenue that can be linked to business activities there. The assessee's income was not taxable in India since it did not conduct any operations related to the scope of its work there. (AY.2018-19, 2019-20)

Schindler China Elevator Co. Ltd. v. Asst. CIT (IT) (2023)103 ITR 567 /200 ITD 259 (Mum) (Trib)

S. 92 : Transfer pricing-Arm's length price-Management services, management information services, information resources and system development-Reimbursement of expenses-Order of Tribunal affirmed-DTAA-India-USA [S. 260A, Art. 12(4)(b)]

Dismissing the appeal of the Revenue the Court held that the agreement between the parties had been properly interpreted by the Commissioner (Appeals) and on re-examination, the Tribunal had concurred with the Commissioner (Appeals). No different view was possible.. That the agreement between the parties clearly mentioned that each invoice shall be submitted no later than the 15th day of each calendar month, identify the compensation due to the provider to compensate it for all costs for providing such services and only costs without any mark-up shall be invoiced. This aspect was rightly taken note of by the Commissioner (Appeals) and the Tribunal and the issue was decided in favour of the assessee. That in respect of the services rendered by the third parties, on the facts, the Commissioner (Appeals) and the Tribunal had found that the actuals billed by the third parties were paid by the assessee in the USA and were later reimbursed by TIL to the assessee in India and, therefore, there was no basis for the Assessing Officer to conclude that the payments of reimbursement were in the nature of fees for technical services. The assessee was not the ultimate beneficiary of the sum in question nor did it render any service to TIL. Further, there was no evidence on record to show that the technical skill, knowledge etc. were made available to TIL by the assessee. Furthermore, the Transfer Pricing Officer scrutinised the details of reimbursements while examining the international transaction of reimbursement by TIL to the assessee under section 92 of the Income-tax Act, 1961 and found that the assessee made no profit on such reimbursements and that the reimbursements were at arm's length. The finding having been rendered after a thorough examination of the factual position as well as the terms and conditions of the agreement and article 12(4)(b) of the Double Taxation Avoidance Agreement, there was no ground to take a different view.(AY.2010-11)

CIT (IT) v. Timken Company (2023)452 ITR 80 / 330 CTR 324/ 221 DTR 369 (Cal)(HC)

S. 92B : Transfer pricing-International Transactions-Provision of corporate guarantee-Loan Advanced to Associated Enterprise-Tribunal remanded the matter to Commissioner (Appeals)-Order of Tribunal affirmed by High court-SLP of Assessee is dismissed. [Art. 136]

Transfer Pricing Officer determined the arm's length price of the international transaction relating to the provision by the assessee of a corporate guarantee for the loan availed of by its associated enterprise, applying a commission rate of 4.86 per cent. The Commissioner (Appeals) deleted the adjustment holding that provision of corporate guarantee was not an international transaction and did not consider the issue on the merits. On appeal, the Tribunal held that provision of corporate guarantee towards loan availed of by the associated enterprises constituted an international transaction under section 92B of the Income-Tax Act, 1961 and since the Commissioner (Appeals) had not dealt with the merits of the assessee's submissions, restored the issue to the Assessing Officer for de novo adjudication after due and reasonable opportunity of being heard to the assessee. The High Court dismissed the assessee's appeal holding no question of law arose. SLP of assessee is dismissed (AY.2009-10)

Jubilant Pharmova Ltd. v. Add. CIT (2023)452 ITR 226/ 291 Taxman 439 (SC)

Editorial : Jubilant Pharmova Ltd. v. Add. CIT (2023)452 ITR 39 (All)(HC) affirmed.

S. 92B : Transfer pricing-Corporate guarantee-Overseas Associated Enterprises-Matter remanded by the Tribunal-Amendment made to provisions of section 92B, by the Finance Act,2012 with retrospective effect from 1-4-2002-Order of High Court which affirmed the order of tribunal is affirmed-SLP of the assessee is dismissed. [S. 92C, Art. 136]

The assessee company had provided corporate guarantee in respect of loans availed by its overseas associated enterprises. TPO held that in view of amended provisions of section 92B brought by the Finance Act, 2012, treated the corporate guarantee as an international transaction and determined ALP of same rate of 4.86 per cent. CIT(A) deleted the addition. Tribunal remanded the matter back to the Assessing Officer for de novo adjudication. High Court held that since the matter had been remanded by the Tribunal for de novo adjudication with detailed reasoning there was no substantial question of law involved for consideration. SLP filed by the assessee was dismissed in view of observations recorded by the Tribunal. (AY. 2009-10, 2010-11) (AY. 2011-12)

Jubilant Pharmova Ltd v. Add.CIT (2023) 291 Taxman 439 (SC)

Jubilant Pharmova Ltd v. Add.CIT (2023) 458 ITR 172 / 291 Taxman 527 (SC)

Editorial : Refer Jubilant Pharmova Ltd v. Add.CIT (2023) 146 taxmann.com 319 (All)(HC). Jubilant Pharmova Ltd v. Add.CIT (2023) 146 taxmann.com 222 /458 ITR 170 (All)(HC).

S. 92B : Transfer pricing-Arm's length price-Corporate guarantee-Tribunal remanding matter to Assessing Officer for de novo adjudication-Need not be interfered with.

On appeal, the Tribunal held that since the matter has been remanded by the Tribunal for adjudication de novo, giving detailed reasons for remand, no substantial question of law arose from the order of the Tribunal.(AY.2009-10, 2010-11)

Jubilant Pharmova Ltd. v. Add. CIT (2023)452 ITR 39 (All) (HC)

Jubilant Pharmova Ltd. v. Add. CIT (2023)458 ITR 170 (All) (HC)

Editorial : SLP of assessee dismissed, Jubilant Pharmova Ltd. v. Add. CIT (2023)452 ITR 226 (SC)/ Jubilant Pharmova Ltd v. Add.CIT (2023) 458 ITR 172 / 291 Taxman 527 (SC)

S. 92B : Transfer pricing-International transaction-Arm's length price-Avoidance of tax-Advertisement, marketing and promotion expenses-Burden is on revenue. [S. 92CA(3)]

Held that the Tribunal in the earlier years had held that the onus of proof lay on the Department to prove that there was an international transaction in existence and that the transaction in question was not an international transaction as per the provisions of the law. As there was been no change in the factual matrix of this case, taking a consistent view on this issue, the transfer pricing adjustment was not sustainable.(AY. 2018-19)

L'oreal India P. Ltd. v.ACIT (2023)104 ITR 23 (SN)(Mum) (Trib)

S. 92B : Transfer pricing-Arm's Length Price-Interest free loans to Associated enterprise-Adjustment on account of provision of bank guarantee to associated enterprises-No income earned and commercial expediency not relevant-Adjustment at 0.5% instead of 1.3%.

Held, that the aim was to examine whether there was any anomaly in the transaction which arose out of the special relationship between the assessee-creditor and the associated enterprise-debtor. Hence, the contention of not having actually earned any income could not come to the rescue of the assessee in such a scenario. What was relevant in determining the arm's length price was the comparable uncontrolled transaction rather than commercial expediency. As a result, the adjustment in respect of corporate guarantees provided to the associated enterprises must be determined at the rate of 0.5 per cent. instead of 1.3 per cent. determined by the Revenue. (AY. 2014-15).

Havells India Ltd. v. Asst. CIT (LTU) (2023)101 ITR 81 (Delhi) (Trib)

S. 92BA : Transfer pricing-Specified domestic transaction-Arm's length price-Avoidance of tax-Omitted with effect from Ist April 2017-No saving clause-Order is bad in law.

Held that Section 92BA(i) has been omitted w.e.f.Ist April 2017, without any saving clause. It is deemed that the said clause (i) was never in the statute,therefore reference made to the TPO under section 92CA qua transactions falling under Clause (i) of Section 92BA is invalid. Accordingly the order passed by TPO and Assessing Officer is bad in law. (AY. 2014-15)

Worship Infraprojects (P) Ltd v. Dy.CIT(2023) 226 TTJ 649 (Jaipur)(Trib)

S. 92BA : Transfer pricing-Specified domestic transaction-Arm's length price-Avoidance of tax-International transaction-Business profits-AO failed to demonstrate as to how payments / expenditure was unreasonable / more than FMV-Addition is deleted. [S. 9(1))(i), 40A(2)(a), 40A(2)(b), 44BBB,, 144C]

AO failed to discharge onus under 40A(2)(a) but invoked the provisions of Section 40A(2)(b).Assessee submitted audited financial statements, ledgers, invoices, necessary documents before AO and DRP. Tribunal held that the AO failed to demonstrate as to how payments / expenditure was unreasonable / more than FMV. Addition is deleted. (AY. 2019-20)

Technip Energies Italy v. DCIT (2023) 150 taxmann.com 525 /
104 ITR 592/225 TTJ 562 Delhi) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Determination of ALP by Tribunal can be subjected to scrutiny by High Court in an appeal-Matter remanded to High Court. [Art. 136]

Allowing the SLP of the Revenue the Court held that the High Court can examine in each case whether while determining arm's length price, guidelines laid down under Act and Rules are followed or not and whether determination of arm's length price and findings recorded by Tribunal while determining arm's length price are perverse or not. Matter remanded to the High Court. Followed SAP Labs India (P.) Ltd. v. CIT (2023) 149 taxmann.com 327/ 454 ITR 121 (SC)

PCIT v.Warburg Pincus India (P.) Ltd. (2023) 295 Taxman 417 (SC)

Editorial : PCIT v.Warburg Pincus India (P.) Ltd (2023) 153 taxmann.com 574 (Bom)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Interest-Net monthly balance payable-Justified in not charging interest in delayed payments to non-AEs-SLP of Revenue is dismissed.[Art. 136]

Dismissing the SLP of the Revenue the Court held that the order of High Court wherein the Court held that debtor days given to non-AEs were more than debtor days given to AEs, and assessee had net monthly balance payable to AEs as opposed to monthly balance receivable from AEs assessee was justified in not charging interest on delayed payments by AEs and in not levying any interest on delayed payments made by non-AEs.(AY. 2009-10)

PCIT v. Avery Dennison (I) (P.) Ltd (2023) 295 Taxman 314 (SC)

Editorial : PCIT v. Avery Dennison (I) (P.) Ltd (2023) 154 taxmann.com 454 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Comparable-TPO ought to have arrived at ALP of assessee's sale to its AE by only comparing it with uncontrolled transaction of sale-SLP of Revenue is dismissed.[S. 92, Art. 136]

The assessee had exported finished valves and valves in kit form to its AE and also to its group companies across globe. TPO held that supply of valves and kits to other group companies was at higher price and thus, adjusted profit margin (average) of similar supplies made to group companies to enhance/revise sales price of valves and kits sold to AE. High Court held that since in terms of provision of Act, ALP cannot be determined by comparing prices charged to Group Companies, i.e., controlled transaction, TPO ought to have arrived at ALP of assessee's sale to its AE by only comparing it with uncontrolled transaction of sale and, therefore, approach of TPO was contrary to provisions of law. SLP of revenue is dismissed. (AY. 2004-05)

PCIT v. L and T Valves Ltd (2023) 295 Taxman 585 / 2024) 461 ITR 157 (SC)

Editorial : PCIT v. Audco India Ltd (2019) 264 Taxman 237/(2024) 461 ITR 152 (Bom)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Sale of software-Comaprable-Segmental information was not available-Cannot be accepted as comparable.

Dismissing the appeal of the Revenue High Court held that companies earning revenue from software development services as well as sale of software products about which segmental information was not available, could not be accepted as comparables to assessee-company rendering software development services to AE. SLP of Revenue is dismissed.(AY. 2011-12, 2012-13)

PCIT v. Microsoft India (R&D) (P.) Ltd (2023) 456 ITR 251 / 294 Taxman 342 (SC)

Editorial : Microsoft India (R&D) (P.) Ltd v. Dy.CIT (2021) 431 ITR 483 / 197 DTR 409 / 318 CTR 654 /(2023) 153 taxmann.com 199 (Delhi)(HC), affirmed.

S. 92C : Transfer pricing-Arm's length price-Reasoned order based on cogent reasons-Order of High Court affirmed-Question of law left open.[S. 136, 260A]
High Court dismissed the Department's appeal on the ground that the Tribunal had given cogent reasons for excluding the four companies as comparables to determine the arm's length price hence no question of law arose. On SLP by Revenue the Court held that considering the peculiar facts and circumstances of the case, there was no reason to interfere with the judgment of the High Court. The question of law is left open. (AY. 2012-13)

PCIT v. Evalueserve.Com Pvt. Ltd. (2023)453 ITR 8/ 292 Taxman 155/ 331 CTR 217/ 223 DTR 137 (SC)
Editorial: CIT v. Evalueserve.Com Pvt. Ltd (2022) 444 ITR 674 (Delhi)(HC) is affirmed.

S. 92C : Transfer pricing-Arm's length price-Support services-Cost plus model-Commission based model-Comparable-Question of fact. [Art. 136, 226]
The Tribunal remanded the matter to the Transfer Pricing Officer to undertake a fresh search. On appeal the High Court held that no question of law arose because the Tribunal had consistently followed its orders for the A.Y.s 2006-07 and 2007-08 which were affirmed by the court, that "the assessee was a low risk procurement support service provider" mostly working towards recovering its cost and earning a reasonable mark-up in line with its functions performed, that there was no authority or discretion to the assessee in deviating or changing from the policies and procedures prescribed by the parent company, and accordingly that the assessee had not incurred any significant risk in its functions. On appeal by the Revenue the SLP of the Revenue was dismissed.(AY. 2012-13)
PCIT v. Gap International Sourcing (India) Pvt. Ltd. (2023)453 ITR 770/ 292 Taxman 413 (SC)
Editorial : PCIT v. Gap International Sourcing (India) Pvt. Ltd(Delhi)(HC)(ITA No. 531 of 2019 dt 22-5 2019), is affirmed.

S. 92C : Transfer pricing-Arm's length price-Adjustment on account of interest-free loans-Libor +2 Per Cent.-Corporate guarantee-Write-off of loss on account of investment in equity shares in subsidiary-Book profits-Provision for doubtful debts-No question of law-Order of High Court affirmed-SLP of Revenue is dismissed. [S. 92B, 115JB, Art. 136]
The High Court dismissed the Department's appeal on the questions whether the Tribunal was justified in restricting the adjustment on account of interest-free loans advanced to associated enterprises to prevailing LIBOR +2 per cent., deleting the adjustment on account of corporate guarantee, allowing the write off of loss on account of investment in equity shares of one of its subsidiary, allowing the write-off of investment for the purpose of computing "book profits" under section 115JB, remitting back the issues of disallowance out of provision for doubtful loans to a subsidiary and of disallowance out of bad debts provision claimed in minimum alternate tax to the Assessing Officer for verification. SLP of Revenue is dismissed. (AY. 2009-10)
PCIT v. Vaibhav Global Ltd. (2023)453 ITR 31 (SC)
Editorial : PCIT v. Vaibhav Global Ltd. (2023) 453 ITR 24 (Raj)(HC) is affirmed.

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Comparables, functional similarity-Software products and services-Selected company dealt in software product and high-end technical services which fell under umbrella of knowledge Process Outsourcing (KPO)

services, said company had to be excluded from array of comparables as assessee was rendering software development services-No substantial question of law.[S. 260A]
Dismissing the appeal of the Revenue the Court held that the Assessee-company rendered software development services to its AE. Selected company was in business of software products and services. Since no segmental data was available, selected company was not a good comparable,selected company dealt in software product and high-end technical services which fell under umbrella of knowledge Process Outsourcing (KPO) services, said company had to be excluded from array of comparables to assessee. No substantial question of law. (AY. 2008-09)
PCIT v. Mentor Graphics (India) (P.) Ltd. (2023) 335 CTR 100 / 156 taxmann.com 268 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-PLI vis-a-vis extra-ordinary item-Solar test activity was an extraordinary item and was not part of the regular business of assessee and there was impairment of asset and therefore it had to be excluded for arriving at PLI-No substantial question of law. [S. 260A]
Dismissing the appeal of the Revenue the Court held that the Tribunal was correct in not interfering with the order of the DRP with regard to computation of PLI; DRP has correctly held that the solar test activity was an extraordinary item and was not part of the regular business of assessee and there was impairment of asset and therefore it had to be excluded for arriving at PLI. No substantial question of law. (AY 2010-11)
PCIT v. Schott Glass India (P) Ltd. (2023) 335 CTR 507 (Bom) (HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Rejection of comparables based on findings of fact in respect of functional dissimilarities-Interest on receivables-Working capital-Remanding the matter to Assessing Officer-Order of Tribunal is affirmed.[S. 260A]
Held that the Tribunal had returned findings of fact as to why it had rejected the three comparables. The findings were not perverse and, therefore, the order of the Tribunal need not be interfered with.On account of interest received on receivables and had restored the issue to the Assessing Officer for verifying the assessee's claim, keeping in view its own decision for the assessment year 2015-16 after providing reasonable opportunity of hearing to the assessee. Order of Tribunal is affirmed. (AY.2014-15)
PCIT v. Qualcomm India Pvt. Ltd. (2023)459 ITR 9 /156 taxmann.com 288 ((Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Advertising, marketing and promotion expenditure-Principle of consistency applies-Order of Tribunal is affirmed. [S. 92]
Held, dismissing the appeal, that the order of the Tribunal with regard to the assessee for the assessment years 2007-08 to 2009-10, indicated that applications preferred by the Revenue had been dismissed and the Revenue had not taken any legal remedy. Given this and the fact that there had been no change in the circumstances concerning the assessee, which had been noted by the Tribunal, the principle of consistency would apply. Order of Tribunal is affirmed. (AY.2010-11)
PCIT v. Wrigley India Pvt. Ltd. (2023)459 ITR 2 /156 taxmann.com 245 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Resale price method-Matter remanded to Transfer Pricing Officer for fresh determination of Arm's Length Price. [S. 92CA(3)]

Held that,there were some contradictions in the findings of the Tribunal, with regard to the method adopted by the Transfer Pricing Officer in determining the arm's length price. However, the order passed by the Tribunal, in remanding the matter to the Transfer Pricing Officer for fresh determination of arm's length price, in the facts and circumstances of the case, need not be interfered with. The Transfer Pricing Officer was directed to redo the entire process of determination of arm's length price of international transactions with associated enterprises, without being influenced by any observation made by the Tribunal and render an independent finding with regard to the issues involved herein, after granting due opportunity of hearing to the assessee to put forth its case.(AY.2007-08, 2008-09)

Shasun Pharmaceuticals Ltd. v. Dy. CIT (2023)459 ITR 440/(2022) 142 taxmann.com 457 (Mad)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Benchmarking to be done for only associated enterprises' transactions and not for entire turnover-Order of Tribunal is affirmed.[S. 260A]

Dismissing the appeal of the Revenue the court held that the benchmarking should be done only on the associated enterprises' transactions and not for the entire turnover. Therefore, the Tribunal was correct in holding that the transfer pricing adjustment should be proportionate to the value of international transaction.

PCIT v.Spicer India Ltd. (No. 1) (2023)458 ITR 40 /(2024) 296 Taxman 431 (Bom)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Exclusion of comparables based on occurrence of financial events and functional dissimilarities is correct. [S. 92CA, 260A]

Dismissing the appeal of the Revenue the Court held, that the Tribunal was right in excluding ATPL I-Gate and Infosys on the ground that an extraordinary financial event had occurred rendering them unfit comparable to determine the arm's length price. The services offered by TCS International could not be used as comparable, since the assessee was admittedly, in the business of information technology enabled services, business process outsourcing and financial support services. For each of these services that the assessee offered, it purchased proprietary software and did not develop, maintain and update its own software for the use of customers. Order of Tribunal is affirmed. (AY.2010-11)

CIT v. GE India Business Services Pvt. Ltd. (2023) 457 ITR 486 /152 taxmann.com 517 / 335 CTR 814 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Marketing intangibles-Deletion of addition by Tribunal-Order of Tribunal is affirmed. [S. 260A]

Held that total expenditure towards advertisement, marketing and promotion and selling expenditure had duly been bifurcated at the time of incurrence. This bifurcation of expenditure was ignored by the Revenue. Hence, the Tribunal was right in law in deleting the addition made on upward adjustment on account of arm's length price of marketing intangibles created by the assessee for the associated enterprises. Order of Tribunal is affirmed. (AY.2012-13, 2013-14)

PCIT v.Organon (India) Pvt. Ltd. (2023)457 ITR 540/150 taxmann.com 280/ / 332 CTR 324/ 224 DTR 124 (Cal)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Interest-Net monthly balance payable-Justified in not charging interest in delayed payments to non-AES. [S. 260A]

Dismissing the appeal of the Revenue the court held that where the debtor days given to non-AEs were more than debtor days given to AEs, and assessee had net monthly balance payable to AEs as opposed to monthly balance receivable from AEs assessee was justified in not charging interest on delayed payments by AEs and in not levying any interest on delayed payments made by non-AEs.(AY. 2009-10)

PCIT v. Avery Dennison (I) (P.) Ltd. (2023) 154 taxmann.com 454 (Delhi)(HC)

Editorial : SLP of Revenue is dismissed, PCIT v. Avery Dennison (I) (P.) Ltd (2023) 295 Taxman 314 (SC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Determination of ALP-Comparable-No question of law. [S. 260A]

Dismissing the appeal of the Revenue the Court held that where Tribunal after giving detailed reasons rejected comparables selected by TPO, no question of law arose for consideration.

PCIT v.Warburg Pincus India (P.) Ltd (2023) 153 taxmann.com 574 (Bom)(HC)

Editorial : Matter remanded to High Court, PCIT v.Warburg Pincus India (P.) Ltd. (2023) 295 Taxman 417 (SC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Management support service-Deletion of addition by the Tribunal is affirmed. [S. 260A]

Held that the Tribunal was justified in determining the payment under the head of management support service at arm's length price. The issue had been and in the assessee's own case for the financial years 2007-08, 2008-09 and 2012-13 and the Tribunal had followed its own decisions in favour of the assessee and those orders had become final. The Department had not been able to point out any distinctive feature to take a departure from the consistent manner in which the relief was granted in favour of the assessee..(AY. 2012-13)

PCIT v. Landis GYR(2023) 454 ITR 462 (Cal)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-TNMM-CUP method-Payment of royalty-Detrimental to the interest of both assessee and Revenue-Addition was deleted. [S. 260A]

The assessee-company was engaged in the business of manufacture and sale of internal combustion engines, spares, components (including bought-outs) thereof & generating sets, service of engines & gensets/generating sets & allied equipment, etc. The assessee made payment of royalty to its foreign based AE for providing technical know how and technical knowledge for manufacturing of engines to be sold to the customers. The assessee benchmarked this transaction along with other international transactions of export sales under overall 'manufacturing segment'. It used TNMM to benchmark all its international transaction. The Transfer Pricing Officer segregated the international transaction of payment of royalty from other international transactions of the assessee and used CUP method to benchmark said transaction. Tribunal up held the order of the Transfer Pricing Officer. On appeal High Court held that where the assessee had used TNMM to benchmark all its international transactions, it was not open to TPO to subject only one element, i.e., payment of royalty for use of technology, to an entirely different CUP method as this would lead to chaos and be detrimental to interests of both assessee and revenue. Appeal of the assessee is allowed. Adjustment was deleted. (AY. 2015-16 to 2017-18)

Cummins India Ltd v. ACIT (2023) 294 Taxman 619/ 335 CTR 387 (Bom)(HC)

S. 92C : Transfer pricing-Arm's length price-Outsourcing its manufacturing activity-Advertisement, marketing and promotion expenses-Transfer pricing adjustment is not justified. [S. 92B]

Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in deleting the adjustment made by the Transfer Pricing Officer. (ITAT /16 /2020 dt. 13-3 2023)

PCIT v. Organon India Pvt Ltd (2023) The Chamber's Journal-April-P. 133 (Cal)(HC)

S. 92C : Transfer pricing-Arm's length price-Advertisement, market and business promotion expenses-Not international transaction-No change of facts-Res Judicata-Principle of consistency must be followed.[S. 92B]

Held, that the Department had admitted that the agreement which was the subject matter of scrutiny in the assessment years 2009-10, 2010-11 and 2011-12 was the same agreement. The Tribunal for the assessment year 2009-10 and 2011-12 had given a finding on facts that the advertisement, market and business promotion expenses incurred by the assessee could not be termed an international transaction and that there was no evidence on record to enable the Transfer Pricing Officer to hold that the expenses were not incurred for the business carried out by the assessee in India. The finding of the Tribunal had been upheld by the court in favour of the assessee. Court also held that though the principles of res judicata and estoppel are not applicable in taxation matters. However, it is not appropriate to allow reconsideration of an issue for a subsequent assessment year if the same fundamental aspect permeates in different assessment years. (AY.2010-11)

PCIT v. Amadeus India Pvt. Ltd. (No. 1) (2023)452 ITR 195 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-No international transaction between assessee and its associated enterprises-Band promotion-Advertisement, marketing and promotion-Deletion of disallowance is justified [S. 37(1), 92]

Held that that in respect of both the protective and substantive addition made on account of advertisement, marketing and promotion expenditure, the Tribunal has observed that the order of the Tribunal in the assessee's own case for the assessment year 2011-12, deleting the transfer pricing adjustment made on account of advertisement, marketing and promotion expenditure had been upheld by the court. However, the decision in the appeal would abide by the judgment of the Supreme Court in the special leave petitions filed against those decisions..(AY.2012-13, 2013-14)

PCIT v. Amadeus India Pvt. Ltd. (No. 2) (2023)452 ITR 206 / 290 Taxman 201 (Delhi)(HC)

S. 92C : Transfer pricing-Arms' length price-No addition can be made when any arrangement or transaction is an international transaction.

Dismissing the appeal of the Revenue the Court held that No addition can be made when any arrangement or transaction is an international transaction. (AY. 2012-13)

PCIT v. Amadeus India (P.) Ltd. (2023) 290 Taxman 201 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Bright Line test method-Advertising, marketing and promotion expenditure-Order of Tribunal deleting the addition was affirmed. [S. 92CA(3) 144C, 260A]

The Transfer Pricing Officer applied the Bright Line test method and made an adjustment on account of advertising, marketing and promotion expenditure incurred by the assessee, and

held it to be an international transaction. The assessee filed its objections before the Dispute Resolution Panel and pursuant to the Dispute Resolution Panel directions, the Assessing Officer passed the final assessment order making adjustment on account of advertising, marketing and promotion expenditure incurred by the assessee. On appeal, the Tribunal allowed the assessee's appeal and deleted the arm's length price adjustment. On appeal to the High Court held that the deletion of the transfer pricing adjustment was justified. (AY. 2009-10, 2010-11)

PCIT v. Moet Hennessy India Pvt. Ltd (2023) 450 ITR 555/ 146 taxmann.com 55 / 330 CTR 609 / 225 DTR 361 (Delhi)(HC)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-

International transaction-Property is purchased by an Indian enterprise from its AE and is resold as such without any value addition, it is RPM, being specific method, which would hold field in preference to TNMM-Percentage of related party transactions of expenses of selected company was more than 57 per cent of total expenses incurred by it, selected company could not be held as comparable-Comparable-Assembly activity-Engaged in multi-dimensional ranging business and also into field of constructing-production of electronic weighing scales, currency counting machine-business of manufacturing, marketing and servicing of road and rail weigh bridges-Not comparable. [S. 92CA]

Held that property is purchased by an Indian enterprise from its AE and is resold as such without any value addition, it is RPM, being specific method, which would hold field in preference to TNMM Percentage of related party transactions of expenses of selected company was more than 57 per cent of total expenses incurred by it, selected company could not be held as comparable-Tribunal also held that companies engaged in assembly activity,,engaged in multi-dimensional ranging business and also into field of constructing, production of electronic weighing scales, currency counting machine-business of manufacturing, marketing and servicing of road and rail weigh bridges are cannot be considered as comparable. Addition is deleted. (AY. 2017-18)

Vega India Level and Pressure Measurement (P.) Ltd v.Dy.CIT(2023) 223 TTJ 242/ [2022] 145 taxmann.com 472(Pune)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-TPO accepted cost allocation on basis of average total assets and third party sales, but refused to accept allocation done on basis of head count-Addition on account of management fee is deleted.[S. 92CA]

Assessee entered into international transaction of payment of Management fees with its AE. TPO examined working of allocation of management fees paid by assessee to its AE and noticed that assessee incurred its own separate costs in addition to payment to its AE towards management services fee. He accepted cost allocation on basis of average total assets and third party sales, but refused to accept allocation done on basis of head count and adjustment was proposed in this transaction Held that TPO simply dissected transacted value of international transaction on basis of some working done by him and neither any comparison of payment of management fee in uncontrolled situation was made nor even allocation of third component on basis of head count was done by considering any comparable uncontrolled instance, and ALP was not determined under any of prescribed methods.Such course of action adopted by TPO being contrary to mandatory statutorily stipulated procedure, could not be countenanced and, thus, addition on account of management fee is deleted. (AY. 2016-17)

Franke Faber India (P.) Ltd v.Dy.CIT(2023) 223 TTJ 658/ 149 taxmann.com 105(Pune)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-
International transaction-Comparable-Sale of low volume of exports cannot be considered as valid comparable-Adjustment made adopting the ALP of interest at six moths average of LIBOR plus 3.5 % % is not sustainable.
Held that sale of low volume of exports cannot be considered as valid comparable. Adjustment made adopting the ALP of interest at six moths average of LIBOR plus 3.5 % % is not sustainable. (AY. 2005-06)
Ambuja Cement Ltd v Addl.CIT (2023) 223 TTJ 427 (Mum)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-
International transaction-Sale of electricity from its Power Plant unit to its manufacturing unit-Per unit electricity sold to non-eligible unit at RS. 6.90 per unit was market value, assessee is justified in adopting ALP of electricity supply to its AEs at rate charged by Gujarat Electricity Board (GEB). [80IA(8),92F(ii)]
Assessee is engaged in business of manufacturing and sale of inorganic chemicals, fertilizers and bio fuels and claimed deduction under section 80-IA. It had also entered into Specified Domestic Transaction (SDT) with its Associated Enterprises (AEs) with respect to sale of electricity from its Power Plant unit to its manufacturing unit-It had benchmarked same by comparing same with rate (6.90 per unit) charged by Gujarat Electricity Board (GEB) and claimed that transaction was at ALP. TPO, however, adopted power procurement rate of GEB at Rs. 3.94 per unit as determined by Gujarat Electricity Regulatory Commission (GERC) and made TP adjustment. Tribunal held that price on which eligible unit was selling power, i.e., at Rs. 6.90 per unit was price available in open market and also same manufacturing unit was purchasing it from GEB at same price.Since per unit electricity sold to non-eligible unit at Rs. 6.90 per unit was market value, assessee was justified in adopting ALP of electricity supply to its AEs at rate charged by GEB. (AY. 2017-18)
Tata Chemicals Ltd. v Dy. CIT (2023) 155 taxmann.com 461/ 226 TTJ 973 (Mum) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Transaction Net Margin Method (TNMM)-Tested party-Loan to Associated enterprise-Adjustment of interest-Matter remanded to the file of the Assessing Officer for de novo adjudication after granting due opportunity of being heard.
Assessee-company rendered software development services to its AE.To benchmark said transaction, assessee applied TNMM as most appropriate method and assessee had taken itself as a tested party. TPO held that AE was least complicated entity and, therefore, should be considered as tested party. In earlier years, in assessee's own case Tribunal upheld action of TPO in taking AE as tested party. Order of the AO is affirmed. As regards adjustment of interest the issue was to be remitted to file of Assessing Officer for de novo adjudication after granting due opportunity of being heard. (AY. 2014-15)
Tata Consultancy Services Ltd. v. Dy. CIT (2023) 154 taxmann.com 372 / 226 TTJ 361 (Mum)(Trib.)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Purchase of shares from Associated Enterprise-DCF method-Adjustment is deleted-Transactions under taken by the promoters / share holders of the company-Sale

of shares using CUP method-Gap of three months-Matter remanded to the TPO. [R. 10B(5)]

Held that TPO could not have substituted the actual figures for projected figures in DCF method for the purpose of determining the value of shares purchased by the assessee from its Associated Enterprise. The valuation of shares are determined by the independent valuer by following DCF method is the actual consideration paid by the assessee to its AE. Adjustment is deleted. As regards transactions under taken by the promoters / share holders of the company. Sale of shares using CUP method there was gap of three months. Matter remanded to the TPO to verify on the basis of DEC valuation report furnished by the assessee after verifying the same. (AY. 2017-18)

TPG Growth II Market PTE Ltd v. Dy.CIT(2023) 224 TTJ 789 /153 taxmann.com 368 (Mum)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-Comparable uncontrolled price-Royalty-Other method-Royalty payments made for unique intangibles-Directed to substitute working for other method.[R.10AB]

Held that the method of the assessee could have been categorised as the "other method" provided in rule 10AB read with section 92C(1), and this would have been the most appropriate method in the peculiar facts of the assessee. The "other method" would have been a good substitute for the comparable uncontrolled price as there was a lack of reliable comparables, and considering the fact that the royalty payments were made for unique intangibles, the Transfer Pricing Officer could have been directed to adopt the "other method" as the most appropriate method. However, the working given by the assessee would have to be examined afresh by identifying the costs and profits attributable to the manufacture and sales to the non-associated enterprises and finding out the appropriate allocation of the costs and what could have been the profits on account of royalty that could have been stated to be attributable on account of royalty. The assessee is directed to substitute the working on the basis of the other method.(AY.2014-15)

ASB International P. Ltd. v. Dy. CIT (2023)108 ITR 444 (Mum) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-
International transaction-Comparble-Functionally Dissimilar is to be excluded-High or low turnover not a criterion for acceptance or rejection of company when company functionally similar-Company having substantial rental income with relevant expenditure being unascertained is to be excluded-Company following calendar year as accounting year is to be included as its figures for assessee's financial year could be extrapolated-Company engaged in diverse activities including engineering services, web development and hosting, and business analysis not comparable to software development service provider-Company providing high-end integrated services and having substantial goodwill-These factors not examined by Transfer Pricing Officer-Issue restored to file of Transfer Pricing Officer for re-examination-Interest rate to be considered based on foreign currency and not based on prime lending rate-Transfer Pricing Officer considering foreign branch which had shut down-Issue sent back to Transfer Pricing Officer for fresh decision-Computation of profit level indicator-Foreign exchange gains and losses are operating in nature.

Held that the company AT was engaged in the business of medical transcription and coding, and provided integrated end-to-end software services. The company was remodelling its own business. It was to be excluded as it was functionally dissimilar to the assessee. That the company ES was functionally dissimilar to the assessee as it was a knowledge process outsourcing company providing data analytics, data management and process improvement

solutions. It was to be excluded. That with respect to CG, high or low turnover could not be a criterion for the acceptance or rejection of any company as a comparable when there was no dispute that the company was carrying on the same functions as the assessee. The Transfer Pricing Officer was directed to include this company in the final list of comparables. That with respect to company IT, the direction of the Dispute Resolution Panel and the Transfer Pricing Officer to exclude the company IT from the final set of comparables was to be upheld. That with respect to company RS, considering that the Transfer Pricing Officer did not reject this company on functionality, the Transfer Pricing Officer was directed to include the business process outsourcing segment of company RS as a comparable even if it had a different accounting period if the figures for the tested party's accounting period could be extrapolated from the data available. That with respect to the company IC, where the company was engaged in diversified activities of software development and consultancy, engineering services, web development and hosting, and substantially diversified itself into the domain of business analysis and business process outsourcing, that could not be regarded as functionally comparable with the assessee, which was rendering software development services to its associated enterprises. The Transfer Pricing Officer was directed to exclude IC from the final list of comparables. That with respect to company IB, for the assessment year under consideration, no extraordinary event was brought to the Tribunal's notice. There were no material differences in functions, assets and risks. However, there was an order of the Tribunal for the assessment year under consideration in a different assessee's case holding that IB was not a good comparable as it had significantly large operations and provided high-end integrated services for business platforms, customer service, outsourcing service, functions and accounting on account of resources outsourcing medical process, outsourcing sales and fulfilment, sourcing and procurement outsourcing, etc., and also had substantial goodwill. As these factors had not been examined by the Transfer Pricing Officer, the issue was restored to the file of the Transfer Pricing Officer for re-examination. That with respect to company TE, in view of the assessee's contention that in the other case, certain business characteristics reported in the annual report of the company TE were not brought to the notice of the Tribunal, the matter was restored to the file of the Transfer Pricing Officer for re-examination keeping in view various decisions and the contentions raised by the assessee on functionality, brand value, intangible assets and extraordinary economic events. That the Transfer Pricing Officer considered the engineering design segment of company AC on the ground of functional similarity. This company had been considered a high-end software development company and a knowledge process outsourcing services provider and could not be comparable to a company providing information technology enabled services. When one company was rendering a sophisticated set of services which involved a higher level of skill sets, and the other company did on a lower level, the companies would not be comparable. The Transfer Pricing Officer was directed to exclude the company AC from the final set of comparables. That the issue of risk adjustment was sent back to the Transfer Pricing Officer to decide afresh in view of the decided case law on the subject That in computing the working capital adjustment, interest had to be determined as per the foreign currency and not as per the prime lending rate as applied by the Transfer Pricing Officer. The issue of the consideration of the foreign branch in the computation of the adjustment was restored to the file of the Transfer Pricing Officer for fresh examination in the light of the submission of the assessee that the branch had closed down and that no transactions had been carried out during the relevant previous year. The Transfer Pricing Officer was directed to give adequate opportunity to the assessee along with the proposed workings of the adjustment while recomputing the adjustment. That with respect to the issue concerning the treatment of foreign exchange gains and losses as operating in nature, in the case of the assessee, the gains

and losses were related to the export sale price, which was in dollars. They were to be treated as operating in nature.(AY.2011-12)
Rampgreen Solutions P. Ltd. v. Dy. CIT (2023)108 ITR 392 (Delhi)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Comparable-Duty drawback part of operating profit-Not to be excluded-Export incentive of only current year to be reckoned-Functional difference and involvement in research and development distinguishing factors-Related party transactions-Transfer Pricing adjustment to be restricted to transactions with Associated Enterprises-Organisation for Economic Co-Operation and development guidelines to be followed to ensure broad comparison among comparables-Working capital adjustment to be allowed. [S. 92]
Held that export incentives should be included in the operating profit of the assessee as well as the comparables after ensuring that such export incentives were in respect of turnover of the current year only. The same effect should be given for working out the operating profit of the assessee, that is, the tested party, and the comparables. The duty drawback received against the duty paid should be considered part of the assessee's operating profit. The matter was remitted to the Transfer Pricing Officer to verify that the export incentive was in respect of the turnover of the year under consideration. It was a settled position to apply the research and development filter with a threshold limit of 3 per cent. The Transfer Pricing Officer was directed to exclude L from the list of comparables. The matter regarding the rejection of G as a comparable is remitted to the Transfer Pricing Officer to decide on the merits. That the transfer pricing adjustment should be restricted to the associated-enterprise-related transactions ; the Transfer Pricing Officer was directed to compute the adjustment accordingly Held that in keeping with the Organisation for Economic Co-operation and Development guidelines, working capital adjustment, as claimed by the assessee, should be allowed per actuals. The Transfer Pricing Officer is directed to consider the working capital adjustment and allow appropriate adjustment in arriving at the arm's length price.(AY.2016-17)
Kirloskar Toyota Textile Machinery P. Ltd. v. Assessing Officer (2023)108 ITR 469 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Comparables-Companies with turnover in excess of RS. 200 Crores to be excluded-Delayed realisation of receivables from associated enterprise-Matter Remanded.
Held that seven companies whose turnover in the current year was more than Rs. 200 crores should be excluded from the list of comparable companies. That in terms of the assessee's prayer that the arm's length price of its international transaction with respect to delayed realisation of outstanding receivables from the associated enterprise ought to be determined adopting the internal comparable uncontrolled price method, it was deemed proper to remand the issue to the Transfer Pricing Officer for fresh consideration. (AY.2016-17)
Mindteck India Ltd. v.Dy CIT (2023)108 ITR 199 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Advertisement, marketing and promotion expenses-Adjustment is not valid-Reimbursement of expenses-Adjustment is up held-Royalty-Transfer Pricing adjustment in respect of third party royalty sustainable as the basis is not furnished.

Held that as regards advertisement, marketing and promotion expenses there is no agreement between assessee and its Associated Enterprise mandating incurring of advertisement, marketing and promotion expenses. Transfer pricing adjustment is not warranted. As regards reimbursement of expenses,claim of the assessee that it had derived tangible benefit from expenditure not substantiated with evidence-Transfer pricing adjustment Sustainable. As regards royalty onus to prove that expenses incurred by associated enterprise towards sale of products and not for purpose of creating brand awareness not discharged by assessee. Agreement, if any for reimbursing expenses, reserve Bank of India approval, business necessity or expediency in making payment, basis of calculation not furnished. Transfer Pricing adjustment in respect of third party royalty sustainable. *(*AY.2016-17)
Nike India P. Ltd. v. Dy. CIT (2023)108 ITR 666 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Reimbursing of expenses-No element of profit-Ad hoc adjustment recommended at 10 Per Cent. of expenses is not permissible-Late deposits of employees' contribution to provident fund and employees' State Insurance Corporation is not allowable. [S. 37(1), R.10B]
Held that when there is no element of profit or mark-up in the hands of the associated enterprise in incurring the day-to-day pocket expenses the expenses were not to be benchmarked. The Transfer Pricing Officer had considered the arm's length price at 10 per cent. of the expenses recovered on ad hoc basis without conforming to the methods prescribed under section 92C(1) of the Act is deleted. Late deposits of employees' contribution to provident fund and employees' State Insurance Corporation is not allowable. (AY.2018-19)
Ness Digital Engineering (India) P. Ltd. v.Add. CIT (2023)107 ITR 584 (Mum) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Calculation of margins-Allocation of employee cost-Not proper-Selection of comparables-Turnover filter-Companies failing turnover filter up to RS. 200 Crores to be excluded-Working capital adjustment mandatory requirement if assessee is able to provide reasonable and accurate data of comparable companies-Interest on delayed receivables to be benchmarked separately-Directed for adjustment afresh after applying six months' Libor plus 300 basis points with mark-up of 100 basis pointS. [S. 92CA]
Held that the assessee being engaged in sub-contract works also, these sub-contracting expenses should be apportioned among the relevant segments. The assessee had itself accepted that Rs. 55.36 crores was towards employee cost for the business support services segment which the Transfer Pricing Officer had rightly distributed. The Transfer Pricing Officer was to apportion the rest of the amount of expenses under the head "other expenses" excluding the sub-contracting expenses according to the turnover of the segments of the assessee. The assessee also agreed to the apportionment on the basis of turnover. In the schedule of "other expenses" there were no separate employee benefit expenses, and each head of expenses had been characterised and debited with the amount incurred by the assessee and the assessee had also not provided details of the employee cost of Rs. 55.36 crores. In view of this it could not be said that the employee cost of Rs. 55.36 crores of expenses was included under the head of "other expenses". The Transfer Pricing Officer was to apportion the expenses afresh among the segments of the assessee and re-calculate the margins. That the Transfer Pricing Officer was to exclude the four companies from the final set of comparables on the basis of the turnover filter as sought by the assessee. That working capital adjustment was to be given and it was a mandatory requirement to allow adjustment if

the assessee was able to provide the reasonable and accurate data of the comparable companies. The assessee was to provide the necessary data to substantiate its claim before the Assessing Officer/the Transfer Pricing Officer. That the interest on receivables was an international transactions and interest on delayed receivables was to be benchmarked separately. In view of this the Assessing Officer/the Transfer Pricing Officer was to calculate the adjustment afresh after applying six months' LIBOR plus 300 basis points with a mark-up of 100 basis points and decide the issue in accordance with law. The assessee is to provide the necessary documents.(AY.2017-18)

Quest Global Engineering Services P. Ltd. v.ACIT (2023)107 ITR 546 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Back-Office services-Comparables-Companies functionally different from assessee being routine back-office service provider is to be excluded-Company earning profit in any one of three years can be treated as comparable-Matter remanded for verification of financial statements-Transfer Pricing Officer is bound to follow directions in letter and spirit-Deferred receivables-Interest rate in terms of Libor Plus a mark-up of two hundred basis points to be considered.[S. 92CA]

Held that IB provided services in various areas of sourcing and procurement, customer services, finance and accounting legal process outsourcing, sales and fulfilment, analytics, business platforms, business transformation services, human resource outsourcing, and technology solution optimisation. It also provided services to a wide variety of sectors. The annual report of that company stated that it provided services different from routine back-office services. IB was thus not functionally comparable to the assessee and was to be excluded. Held that ES was involved in high-end knowledge process outsourcing services whereas the assessee was providing information technology enabled services by rendering remote data processing in the field of reinsurance. The functions performed by ES were not similar to that of the assessee even though the assessee carried out certain services on contract basis. ES was thus to be excluded from the list of comparables. That the assessee submitted that SB and AS did not incur continuous losses in the three preceding years. The matter was remitted back to the file of the Assessing Officer/the Transfer Pricing Officer to consider the financials of these companies, given the position that if a company was making profit in any one of the three immediately preceding years, it should be considered as a comparable.Held that the Transfer Pricing Officer is directed to follow the directions of the Dispute Resolution Panel in letter and spirit to include the comparable in the final list.That deferred receivables would constitute an independent international transaction required to be benchmarked independently. Once this was the case, the transaction would have to be looked at by applying commercial principles with regard to international transactions. Accordingly, interest rate in terms of the London Inter Bank Offered Rate plus a mark-up of two hundred basis points would have to be considered. The matter is remitted back to the file of the Transfer Pricing Officer.(AY.2016-17)

Swiss Re Global Business Solutions India P. Ltd. v. Add. CIT (2023)107 ITR 381 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Employees' Stock Option Plan Expenses-Purpose of granting employees restricted stock units to retain and motivate them to continue employment with assessee-Arm's length price of employees stock option plan expenses could not be taken as nil-Arm's length price and transfer pricing adjustment, if any, to be recomputed following method adopted by assessee.

Held that the purpose of granting the employees of the assessee restricted stock units was to retain and motivate them to continue employment with the assessee. The cost incurred by the associated enterprise on exercise of the restricted stock units by the employees of the assessee was the cost reimbursed by the assessee which was initially picked up by the associated enterprise. On the facts, the arm's length price of the employees' stock option plan expenses could not be taken as nil. The transfer pricing addition is set aside and the Transfer Pricing Officer/Assessing Officer is to recompute the arm's length price and the transfer pricing adjustment, if any, following the method adopted by the assessee for determination of the arm's length price of the international transaction of reimbursement of employees' stock option plan expenses.(AY.2018-19)

Booking.Com India Support and Marketing Services P. Ltd. v. Dy. CIT (2023)107 ITR 17 (SN)(Mum) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Additional evidence-Resale method-Notional interest on advances-Matter remanded. [S. 144C, 254]

Admitting the additional evidence the matter remanded to the Assessing Officer to consider resale method and notional interest on advances.*(*AY. 2012-13)

HM Clause India P. Ltd. v. Dy. CIT (2023)105 ITR 32 (SN)/ 153 taxmann.com 209 (Hyd) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Transactions with entity to be considered in consolidated way and not to be bifurcated according to calendar year in that contracting state-Rate applied in Mutual Agreement Procedure for transactions between assessee and United States associated enterprise for period April 2012 to December 2012 to transactions during January 2013 to March 2013.[S. 92CA]

Held, that the transactions with an entity were to be considered in a consolidated way, and could not be bifurcated according to the calendar year prevalent in that contracting State. Therefore, the Assessing Officer/Transfer Pricing Officer was to consider the rate applied in the mutual agreement procedure for the transactions between the assessee and the United States associated enterprise for the period April 2012 to December 2012 to the transactions during January 2013 to March 2013. In respect of transactions with other associated enterprises, the assessee in the transfer pricing study report gave bifurcation of the revenue earned from United States associated enterprise and other associated enterprises. Both the transactions are in respect of the software development segment. The arm's length price was computed only having regard to the United States associated enterprise transactions. In other words, the Transfer Pricing Officer treated the other transactions to be at arm's length. However, in the event there was any transaction with other associated enterprise was considered in a consolidated way in the amount by the Transfer Pricing Officer, it may be considered in accordance with the ratio laid down in J. P. Morgan Services India P Ltd. [2019 105 taxmann.com 40 (Bom) (HC) The grounds relating to transfer pricing raised by the assessee were allowed to be withdrawn pursuant to mutual agreement procedure order. *(*AY. 2013-14)

Harman Connected Services Corporation India P. Ltd. v. Asst. CIT (2023)105 ITR 36 (SN)/ 151 taxmann.com 500 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Payment of technical fees for services rendered-Neither Assessing Officer nor Transfer Pricing Officer nor Commissioner (Appeals) doubted actual Rendering or

utility of services-Not open to Department to question actual rendering of services before Tribunal.-Most Appropriate Method-Transactional Net Margin Method-For immediately preceding and succeeding years payment of technical service fees accepted without Transfer Pricing adjustments-Rule of consistency is followed-Rejection is not justified. [S. 254(1)

Held that t neither the Assessing Officer nor the Transfer Pricing Officer nor the Commissioner (Appeals) had doubted either the actual rendition of services rendered by the associated enterprise or the utility of such services to the assessee. It was not open therefore for the Department to raise any new point as to actual rendition of services at this stage. Relied on, CIT v. Ekl Appliances L td (2012) 345 ITR 241 (Delhi)(HC) Held that the transactional net margin method was the most appropriate method in the absence of a comparable uncontrolled price which was applicable where the nature of the activities involved, assets used, and risk assumed are comparable to those undertaken by an independent enterprise. Tribunal also held that though each AY. is an independent one and the rule of res judicata has no application to the proceedings, rule of consistency has to be followed. Relied on, Radhasoami Satsang v. CIT (1992) 193 ITR 321 (SC) . (AY. 2010-11, 2011-12)

Menzies Bobba Ground Handling Services P. Ltd. v. Dy. CIT (2023)105 ITR 72 (SN.)/ 154 taxmann.com 461 (Hyd) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Comparables-Functionally different-Not comparable.

Held, allowing the appeal, that APITCO provided numerous services which were not provided by the assessee ; the assessee was not involved in to skill development, entrepreneurship development and training, research studies, asset reconstruction and management services, energy related service, tourism infrastructure development and environmental management. Further, going through the financial statement of the company for the financial year 2011-12, it is found that the APITCO was held by public shareholders whereas the assessee was held by a private limited company. The services description suggested that APITCO worked predominantly on Government initiative projects. But the assessee was only engaged in providing project management, cost management and management consultancy services. Thus, functionally APITCO was not a comparable company to the assessee and was to be excluded from the list of comparables selected by the Transfer Pricing Officer for benchmarking international transactions for the assessee-company.(AY. 2012-13)

Turner and Townsend P. Ltd. v. Asst. CIT (2023)105 ITR 43 (Trib) (SN)/ 153 taxmann.com 283 (Delhi)(Trib)

S 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Contracts with third party customers-Tested parties-Difference in margin rate falls within tolerance limit of 5 per cent, in which case, international transactions of assessee should be considered to be at arms length-Adjustment is deleted-Delay in receiving money-Interest was to be computed individually after allowing accepted credit period-Matter remanded.

Assessee is engaged in business of providing information technology solutions to banks and financial institutions worldwide Business model was that overseas subsidiaries entered into contracts with third party customers in their own names and then outsourced same to assessee for execution by entering into marketing service agreement and license agreement. Overseas subsidiaries retained 15 per cent/20 per cent of contract value and remit balance amount to assessee. Assessee contended that its international transaction with AEs was at arms length.

Assessee selected itself as tested party and adopted TNM method as most appropriate method. Net Profit Margin was selected as Profit Level Indicator (PLI) and assessee's margin was 22 per cent. Assessee identified 43 comparable-TPO held that foreign AEs should be taken as "tested parties" and selected three unknown Indian comparable companies Accordingly, he held that assessee should have remunerated AEs at cost plus 10 per cent margin. Accordingly, TPO proposed transfer pricing adjustment of certain amount.Admittedly said approach of TPO was against transfer pricing provisions and in gross violation of principles of natural justice and was accordingly liable to be rejected.Further, net profit margin declared by assessee was 22 per cent and average margin of comparable companies selected by CIT(A) was 22.53 per cent, hence, difference in margin rate falls within tolerance limit of 5 per cent, in which case, international transactions of assessee should be considered to be at arms length and accordingly, no transfer pricing adjustment was called for. Held that TPO had computed interest by taking average quarterly balances but same was not correct method of computing interest on delayed receivables as details of realization of individual bills were available, it would be possible for assessee/TPO to compute interest individually after allowing accepted credit period.Matter remanded.(AY. 2006-07)

Oracle Finance Services Software Ltd. v. ACIT (2023) 202 ITD 266 (Mum) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Comparables-Turnover filter-Turnover filter up to ten times can be applied-Matter restored to the file of Assessing Officer. [S. 92B]

Allowing the appeal, that a turnover filter up to ten times can be applied. The Transfer Pricing Officer accepted the turnover filter selected by the assessee with companies, whose net sales were more than Rs. 1 crore, but without fixing the upper limit of such filter, it would lead to insertion of certain entities, who operated on different scales and economies and rendered themselves unsuitable for comparison. The matter was to be restored to the Assessing Officer to take the range of turnover at ten times at both the ends and to conduct the survey afresh to take a plausible view. Since the assessee's turnover was Rs. 5.17 crores in the software development services, a range of Rs. 52 lakhs to Rs. 52 crores would satisfy the test approved and referred to by the Tribunal. Matter remanded (AY.2015-16)

Imedx Information Services P. Ltd. v Dy. CIT (2023)104 ITR 28 (SN.)(Hyd) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Comparables-Matter remitted with direction to consider quarterly results and work out proportionate profit margin of company.

Held that tt RSI Ltd., the Tribunal in the assessee's own case had considered the issue of inclusion of RSI Ltd., which was excluded for the same reason that the financial year was not the same as the assessee's. Therefore, the issue was to be remitted to the Transfer Pricing Officer with a direction to consider the quarterly results and work out the proportionate profit margin of the comparable after giving a reasonable opportunity of being heard to the assessee.. (AY. 2013-14)

Jardine Lloyd Thompson P. Ltd. v. ACIT (2023)104 ITR 30 (SN.)(Mum) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Reimbursement of expenses on actual-cost basis-Meeting of statutory duties, fees and other charges-Adjustment is not valid. [S. 92CA]

that the Revenue was unable to controvert the fact that none of the expenses made by the assessee on behalf of the associated enterprises involved rendering of services by the assessee

but were merely meeting of expenses of statutory duties dues, fees or charges of the associated enterprises. Neither did the Revenue dispute the fact that all the expenses were made out of advances given by the associated enterprises to the assessee. Order of CIT(A) is affirmed. (AY.2011-12)

Dy. CIT v. Aatash Narcontrol Ltd. (2023)103 ITR 334/ 149 taxmann.com 157 (Ahd)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Comparables-Business process outsourcing services and doing actual work based on specifications provided by Associated Enterprises-Company functionally different and not comparable to be excluded-Extraordinary event of acquisitions renders is not comparable. [S. 92C(3)]

Held that the company IBPM was not only the market leader but had huge brand value which made it functionally different and non-compatible as compared to the assessee. Therefore, IBPM was held functionally different and not comparable on functional basis with the assessee. On the other hand, the assessee was providing business process outsourcing services itself and only doing the actual work based on specifications provided by its associated enterprises. It was nothing compared to the brand value of IBPM and neither was the assessee a market leader nor did it have a high turnover. Therefore, the Transfer Pricing Officer was to exclude IBPM from the final set of comparables while benchmarking international transactions of the assessee-company. That MPS was an e-publishing company and was one of the most trusted vendor partners to the global publishing industries. This company provided complete end-to-end publishing solutions and had successfully powered its service business with smart technology. MPS made three U. S. based acquisitions that were completed through a wholly owned subsidiary in the U. S. A. This extraordinary event itself by way of several acquisitions rendered this company not comparable with the assessee. In view of the factual and legal analysis the Transfer Pricing Officer was to exclude MPS from the final set of comparables while benchmarking international transactions of the assessee-company.(AY.2016-17)

BNY Mellon International Operations (I) P. Ltd. v. ACIT (2023) 103 ITR 43 (SN)/ 150 taxmann.com 527 (Pune) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Functionally different-Comparable to be excluded-Paying Technical support service fees to Associated Enterprise-Matter remanded-External commercial borrowings-Adopting Arm's Length interest rate as per Master Circular of Reserve Bank of India-Transfer Pricing Officer adopting rate based on Libor-Adjustment upheld-Interest cost-Interest On Overdue Receivables from Associated Enterprises-Receivables constitute international transactions-Transactional Net Margin Method-Net Margin computed would consider interest cost-Addition is deleted-Expenses reimbursed-Addition upheld in absence of evidence. [S. 92CD]

Tribunal held that fundamentally dissimilar companies were rejected by the Dispute Resolution Panel for other assessment years in the assessee's case. That the issue concerning the technical support service fee was remitted to the Transfer Pricing Officer to decide the case on the merits subject to the final outcome of the advance pricing agreement with the Central Board of Direct Taxes. That by the master circular, the Reserve Bank of India prescribed maximum caps on interest on external commercial borrowings with different tenures. The Dispute Resolution Panel is right in determining the interest rate as LIBOR plus

two hundred basis points based on precedent. That the receivables are included under the definition of international transaction consequent to amendments made by the Finance Act, 2012. When the transactional net margin method was considered the most appropriate method, the net margin thereunder would take care of notional interest cost. The Transfer Pricing Officer was directed to consider the working capital adjustment and its impact on the profits of the assessee vis-a-vis its comparables. The upward adjustment on the outstanding receivables was to be deleted. The direction of the Dispute Resolution Panel to consider a notional credit period of thirty days was reasonable. That the assessee did not provide any details as to the reworking charges/reimbursed expenses incurred in relation to export with supporting evidence either before the authorities below or before the Tribunal. The transfer pricing adjustment proposed by the Transfer Pricing Officer in this regard was thus upheld. (AY.2017-18, 2018-19)

Teejay India P. Ltd. v. Dy. CIT (2023)103 ITR 52 (Vishakha) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Selection of comparables-Turnover filter-Companies whose Turnover not within range of RS. 200 Crores to RS. 2,000 Crores-Company having abnormally high margin-Not functionally Comparable to be excluded.

Held that companies whose turnover was not within the range of Rs. 200 crores to Rs. 2,000 crores were to be excluded from the list of comparables.

That the margin declared by the company was abnormally high. Therefore, the Transfer Pricing Officer/Assessing Officer was to exclude the company from the list of comparables That the companies were not functionally comparable to the assessee, and were to be excluded from the list of comparables.(AY.2017-18)

Etisalat Software Solutions Pvt. Ltd. v.Dy. CIT (2023)102 ITR 647 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Selection of Comparable-Transactional net margin method-Functionally dissimilar-Software Services-Company engaged in diversified activities but segmental details relating to various segments not available in public domain and providing technical services-Cannot be taken as comparable.

Held that the company into sale of software products. In the absence of segmental details in the financial statements, it could not be treated as comparable to the assessee as it was not functionally similar. The Tribunal in an earlier case had excluded this company from comparables. Therefore, the Assessing Officer was to exclude this company from the list of comparables. (AY. 2014-15)

Qualcomm India Pvt. Ltd. v. Add. CIT (2023)102 ITR 556 (Delhi)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Outstanding receivables-Directed to frame fresh computation.[S. 92CA]

Held that neither of the lower authorities held the entity CV Ltd. not a functionally comparable entity as not satisfying the "FAR" analysis. Even if the outstanding receivables were accepted as having more than four months, that would not affect the relevant profit margin in the segment. Explanation (c) to section 92B treats such receivables as an international transaction. The Transfer Pricing Officer was to frame his fresh computation.(AY.2017-18)

Emerson Climate Technologies (India) Pvt. Ltd. v. ACIT (2023) 147 taxmann.com 359/ 102 ITR 43 (SN)(Pune) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Comparable-Companies with higher turnover to be excluded-Organisation for Economic Co-Operation and Development guidelines to be followed-Working capital adjustment to be allowed.[S. 92CA]

Held that companies with higher turnover to be excluded. Organisation for Economic Co-Operation and Development guidelines to be followed. Working capital adjustment to be allowed. (AY. 2017-18)

IG Infotech (India) P. Ltd v ACIT (2023) 102 ITR 411 (Bang)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-ALP on combined transaction basiS. ALP on combined transaction basis. [R.10A(d)]

According to Rule 10A(d), transactions included a number of closely linked transactions. Therefore, it is clear that if the transactions are closely linked transactions, they should be benchmarked together. OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administration, January, 2022 in paragraph nos. 3.9 to 3.12 deal with the valuation of taxpayer's separate and combined transactions. This also accepts that ideally the transactions should be tested on a transaction by transaction basis. However, in certain circumstances if the transactions are closely linked or continuous that they cannot be evaluated adequately on a separate basis and when it is impracticable to determine pricing for each individual product in those circumstances, it may be more reasonable to assess the ALP for two items together rather than individually. It also considered the portfolio approaches wherein some products are marked by taxpayer with a low profit or even at a loss in portfolio. It also considers the cases where the sale of products is also part of the package deal. In those circumstances, it suggests that it is more practicable to adopt aggregate in those transactions and determine ALP on combined transaction basis. (AY. 2005-06 to 2010-11)

IPCA Laboratories Ltd. v. ACIT[2023] 221 TTJ 319/226 DTR 225 (Mum)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Adjustment on account of interest paid on fully convertible debentureS. [S. 92CA]

Adjustment in respect of international transaction of Payment of Interest on 'Fully Convertible Debentures' by upholding the contentions that LIBOR was not applicable as there was no lending/borrowing in foreign currency and assessee had issued rupee dominated debentures. Also in earlier year, TPO has taken Indian rates for charging interest on FCDs and not LIBOR rate, and therefore the same transaction following/percolating from previous years should not be taxed on different basis. (AY 2011-12)

Altico Capital India Pvt. Ltd v. ACIT (2023) 221 TTJ 365 (Mum) (Trib)
JCIT v. Clearwater Capital Partners (I) (P) Ltd (2023) 221 TTJ 365 (Mum) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Interest on delayed receivables, credit period on invoices-interest on overdue export proceeds not charged from associated and non-associated enterprise-independent third parties on the similar transaction with a similar credit period of similar goods no interest charged-transfer pricing officer deleted adjustment. [S. 92CA]

Held that allowing the appeal, on the bills and invoices itself the assessee had mentioned the credit period on export receivables of the associated and non-associated enterprise. In the case of independent third parties on similar transactions with similar credit periods of

similar goods, no interest was charged. This was proved by the assessee for this year by producing the bills of associated enterprises as well as non-associated enterprises. Non-charging of interest on advances being overdue export proceeds from associated enterprises as per internal comparable uncontrolled price method as for similar time on similar conditions, for an almost similar period no interest was charged from non-associated enterprise. The arm's length price of overdue export proceeds and receivables from associated enterprises was nil. Evidence was not led to show that there was a recession in the business of the assessee in this year or when there was a boom, the assessee was charging interest on such advances. Therefore, the Transfer Pricing Officer/Assessing Officer was to delete the adjustment. (AY. 2010-11)

S. Vinodkumar Diamonds P. Ltd. v. Dy. CIT (2023) 102 ITR 35 (Mum)(Trib.)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Application of turnover filter-Higher threshold limit of INR 200 crores-Excluded. [S. 92CA]

The assessee was engaged in the business of providing Software Development Services to its wholly owned holding company having a turnover of around Rs. 23 Crores. The TPO had excluded from the list of comparable companies chosen by the assessee in its TP study only those companies whose turnover was less than Rs. 1 Crore, which was upheld by the DRP. The assessee's contention was that the AO failed to apply the same yardstick to exclude companies with high turnover compared to the assessee. The ITAT relied on the decision of *Dell International Services India (P) Ltd. v. DCIT (2018) 89 Taxmann.com 44 (Bang-Trib)* which in the similar factual background held that where contrary views on the issue are possible, a view favourable to the assessee should be adopted. The ITAT also relied on the decision of *Autodesk India Pvt. Ltd. v. DCIT (2018) 96 Taxmann.com 263 (Bangalore-Tribunal)* wherein it is held that high turnover is a ground for excluding companies as not comparable with a company that has low turnover. Therefore, the ITAT excluded the 7 companies from the list of comparable companies, as sought by the assessee, whose turnover in the current year was more than Rs. 200 Crores. (AY. 2017-18)

Dover India Private Limited v. DCIT [(2023) 102 ITR 159 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-The benchmarking has to be done based on the prevailing market rate which a normal bank would lend money with the minimum risk. Since the assessee has already mitigated the risk by investing in the fully convertible debentures when the risk is already mitigated one more time, the same risk element cannot be considered for bench marking on the interest payment also. [S. 92CA]

As per the transfer pricing study report, the assessee is engaged in the business of acquiring non-performing loans, other assets and providing medium to long-term finance to corporate borrowers. As the assessee would require finance from time to time to engage in the activities described above, assessee requested its associated enterprises (CCP Cyprus) to provide such finance by subscribing to FCDs issued by the assessee on a private placement basis. All the FCDs issued by assessee to the associated enterprise carried interest at the rate of 12%, during the year under consideration. The assessee benchmarked this international transaction by applying Comparable Uncontrolled Price ('CUP') method as the most appropriate method. Further, the assessee considered the lending rates offered by other banks, as published by RBI on a quarterly basis, in respect of advances other than export credits to be an appropriate benchmark for the rate of interest paid by the assessee to its associated enterprise. Thus, accordingly arm's length rate of interest was worked out to

11.48%. As the assessee was paying interest at the rate of 12% on FCDs issued to the associated enterprise, the assessee claimed the international transaction to be at arm's length. During the course of transfer pricing assessment, TPO noted that the assessee has paid interest at the rate of 12% amounting to Rs. 15,69,82,378 on FCDs issued to its associated enterprise and same has been debited in the books of accounts. The TPO vide order passed under section 92CA(3) of the Act held that similar uncontrolled transaction would have provided FCD for lower interest and thus the international transaction representing issue of FCDs at higher interest rate is not at ALP. Accordingly, TPO computed the ALP by applying the interest calculated on the basis of 6 month average USD LIBOR + 800 basis point (i.e. 8.5% p.a.). As a result, TPO made an upward adjustment of Rs. 4,57,86,527 to the international transaction of 'Payment of Interest on FCDs'. In conformity, the Assessing Officer, inter-alia, passed the order under section 143(3) r.w.s. 144C(3) of the Act. In appeal, learned CIT(A) vide impugned order upheld the upward adjustment made by the TPO. Being aggrieved, assessee is in appeal before Tribunal.

The Tribunal observed that the coordinate bench in assessee's own case for preceding assessment years while considering similar issue upheld the TPO's approach of adopting average PLR of Indian banks. Accordingly, the appeal of the assessee is dismissed. (AY. 2011-12)

Altico Capital India Pvt. Ltd. v. ACIT (2023) 221 TTJ 365 (Mum) (Trib)
JCIT v. Clearwater Capital Partners (I) (P) Ltd (2023) 221 TTJ 365 (Mum) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Allotment of shares-Subscription to preference shares-levy of interest on excess share application money refunded, by treating same as loan was not justified-Legal condition precedent in entering transaction in respective Production Sharing Contract market that AE's affiliates are not allowed to have any mark up on a supply of services to AE, ALP is required to be determined having regard to this condition-Commission on corporate guarantee-Benchmarked commission on corporate guarantee given for its AE by following yield spread approach, based on offer letters issued by banks wherein interest on loan chargeable by banks to AE with assessee's guarantee and without guarantee as compared in rate differential was divided amongst AE and assessee equally, split of 50 : 50 in respect of both short-term and long-term guarantee was justified-Business support services-Functionally comparable, same could not have been held incomparable simply on ground of low turnover, unless it was demonstrated that functions, assets and risk were completely different and incomparable.[S. 92CA]

During relevant previous year, assessee was allotted shares of its AE as part of its capital investment in its subsidiary. Shares were allotted after share application money was remitted. Excess share application money out of remittance made was refunded to assessee. TPO considered entire amount of share application money as well as value of preference shares already issued to assessee as loan and imputed interest by adopting LIBOR plus spread. Commissioner (Appeals) upheld levy of interest in respect of part application money which was returned back by AE without issuance of preference shares by treating same as loan. Held that since transaction of subscribing to preference shares was itself not found to be bogus or sham, Commissioner (Appeals) was not justified in upholding levy of interest on excess share application money refunded, by treating same as loan.The Assessing Officer/TPO was to be directed to delete adjustment on account of levy of interest on excess share application money refunded. Once it's a legal condition precedent in entering transaction in respective Production Sharing Contract market that AE's affiliates are not allowed to have any mark up on a supply of services to AE, determination of ALP is required

to be made having regard to this condition. Therefore, cost to cost rendition of services could indeed be viewed as an arm's length transaction. Assessee had benchmarked commission on corporate guarantee given for its AE by following yield spread approach, based on offer letters issued by banks. In these offer letters, interest on loan chargeable by banks to AE with assessee's guarantee and without guarantee as compared in rate differential was divided amongst AE and assessee equally. Accordingly, guarantee commission was charged by assessee from its AE at 50 per cent of interest rate differential. TPO, though accepted yield spread method adopted by assessee, however, did not accept division of interest rate differential in 50:50 ratio and assigned at least 60 per cent of rate differential to assessee-Commissioner(Appeals) accepted benchmarking done by assessee by following yield spread approach with split of 50:50 in respect of both short-term and long-term guarantee. On appeal, it was found that co-ordinate Benches of Tribunal have consistently held that split of 50:50 in respect of both short-term and long-term guarantee is reasonable. Therefore, there was no infirmity in findings of Commissioner (Appeals). Held that where a company was functionally comparable, same could not have been held incomparable simply on ground of low turnover, unless it was demonstrated that functions, assets and risk were completely different and incomparable. (AY. 2016-17)

Reliance Industries Ltd. v. ACIT (2023) 198 ITD 158 (Mum) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-LIBOR-CUP method-Interest-Interbank transactions-TPO cannot reject independent party transactions, which are valid input for application of CUP Method, simply because transactions are entered at a rate higher than LIBOR.

Tribunal held that LIBOR, even amongst independent banks, cannot always be rate at which intra-bank transactions must take place and it cannot be open to TPO to reject independent party transactions, which are valid input for application of Comparable Uncontrolled Price Method, simply because transactions are entered at a rate higher than LIBOR. (AY. 2012-13 to 2015-16)

Shinhan Bank. v. DCIT (IT) (2023) 198 ITD 453 (Mum) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Corporate guarantee-Capital financing-ALP adjustment in respect of corporate guarantee provided to AEs should be determined at rate of 0.5 per cent.[S. 92B]

Held that a corporate guarantee indeed forms an international transaction. Accordingly adjustment in respect of corporate guarantee provided to AEs should be determined at rate of 0.5 per cent. (AY. 2013-14)

Havells India Ltd. v. DCIT (2023) 198 ITD 610 (Delhi) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Adjustments-Purchases/imports-Specified domestic transaction-Purchase transaction of raw materials with AE-Excess purchases booked in relevant year had to be reduced for purpose of arriving at correct profit and only thereafter profitability ratio of assessee was required to be calculated for the purpose of comparison.

Assessee entered into international transactions for purchase of raw-material (parts/spares) with its AE. TPO made an adjustment of certain amount on account of same after making comparison with that of comparable cases. Assessee contended that profits of assessee had been worked out by taking excess purchases, accordingly, profits were required to be reworked by adjusting excess purchases so considered and after making such adjustment

profitability ratio of assessee would be comparable to that of comparable cases which would require no adjustment to be made to international transactions of purchases of spare parts. Tribunal held that excess purchases booked in impugned year had to be reduced for purpose of arriving at correct profit of assessee and only thereafter profitability ratio of assessee was required to be calculated.Since assessee had fairly demonstrated its international transactions of purchases of parts/spare parts with its AE to be at ALP requiring no adjustment at all, impugned adjustment was to be deleted. (AY. 2005-06)
KHS Machinery (P.) Ltd. v. ACIT (2023) 198 ITD 649 (Ahd) (Trib.)

S. 92C : Transfer pricing-Arm's length price-Selection of comparable-Turnover filter-Turnover of assessee 332 crores-DRP is justified in directing turnover of 200 crores to 2000 crores-Multiple of 10 times turnover could not be adopted. [S. 92CA]
Held, that the Dispute Resolution Panel was justified in its directions that the turnover filter was to be applied and only those companies having turnover of more than Rs. 200 crores and less than Rs. 2,000 crores were to be taken as comparable for the purpose of the transfer pricing study. (AY. 2011-12).
Dy. CIT v. Harman Connected Services Corporation India Pvt. Ltd. (2023)101 ITR 3 (SN)(Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Purchases From AE-Sales By AE To Non-Related Parties-In one Month at price significantly higher than in other months-Difference in prices due to qualitative difference between ingots sold by AE to assessee and those sold to third parties-Substantial evidence to prove quality of products sold-No rationale in making adjustment only for one mnonth-Reversal of adjustment is proper. [S. 92CA]
The assessee-company was engaged in the manufacture of thermo mechanically treated bars and purchased mild steel ingots from its AE. Where for the AY 2014-15, the AO accepted the purchases made by the assessee in the months of December 2013, February, 2014 and March, 2014 but disputed the purchases made in January, 2014 on the ground that the sales made by the AE to non-related parties was at a price significantly higher in comparison with other months. The ITAT noted that the CIT(A) had categorically observed that there was a qualitative difference between the mild steel ingots sold by the AE to the assessee as compared to those sold by the AE to third parties. Further, as the TPO had accepted the contention of the assessee for the months of December, 2013, February, 2014 and March, 2014 there was no rationale in making the adjustment only for the month of January, 2014. Accordingly, the order of CIT(A) was upheld. AY.2014-15)
Dy. CIT v. H. K. Ispat P. Ltd. (2023) 103 ITR 12 (SN)(Ahd) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-No further adjustment required of interest on outstanding receivables where working capital adjustment takes the same into account while benchmarking the main international transaction.
The Assessee is engaged in the business of providing call center and business process outsourcing services. During the relevant AY, the Assessee had international transactions with its Associated Enterprises (AEs). On a perusal of the invoices raised, it was noted by the Transfer Pricing Officer that there was an excess delay beyond the credit period in relation to payment made (i) by AE to Assessee towards the sale invoices; and (ii) payment by Assessee to AEs towards outstanding payables. Consequently, adjustment for interest to be charged on

the outstanding receivables and payables was proposed by Transfer Pricing Officer resulting in a net adjustment of interest receivable.
The Hon'ble Tribunal relied on the decision of the Hon'ble Delhi High Court in the case of ACIT v. Kusum Health P. Ltd. [2018] 99 taxmnn.com 431 (Delhi) and certain other ITAT decisions wherein it was held that where working capital adjustment takes into account the impact of outstanding receivables, no further adjustment is required of interest on outstanding receivables of AEs beyond the agreed credit period if the margin of the assessee is comparable to that of external comparables. The Tribunal in the instant case thereby held the adjustments made to be unwarranted and unjustified. The following facts were noted by the Tribunal in coming to the said conclusion (i) the international transaction of the Assessee with its AEs was bench marked by adopting TNMM which the Transfer Pricing Officer had accepted to be at ALP; (ii) the Assessee had made working capital adjustments to the margin earned while computing TNMM for determining ALP (iii) the difference in operating margin on the international transactions was within the permissible range of 5% of adjusted profits of comparable companies. (AY. 2012-13)
Effective Teleservices P. Ltd. v. DCIT (2023) 103 ITR 74 (SN)(Ahd) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-(i) Insurance claim and foreign exchange fluctuation gain related to raw material consumed by assessee in operation of business is to be added to operating revenue of assessee to arrive at ALP of international transaction. (ii) Adjustment of PLI of comparables should be made at transaction level and not entity level.[S. 92CA]
The main issue revolves around a transfer pricing adjustment made to the international transaction of import of machine parts. The appellant company is involved in the manufacturing of filling and packing equipment for various industries.
The appellant challenges the operating sales figure adopted by the department. It is the claim that the revenue has overlooked the amounts of insurance claim receipt and foreign exchange fluctuation gain. The appellant also contends that the adjustment should have been made at the transaction level and not at the entity level with the necessary backing of various judicial precedents. The Hon'ble DRP in total disregard to the contention of the Assessee has given no directions.
The Hon'ble Tribunal concurring with the appellant's contentions regarding the adjustment to be restricted to the transaction level, directed the Assessing Officer to verify the computation accordingly. Further also held that the department having not controverted the upward revision of the operating revenue, the same is to be added to the operating revenue of the assessee for the purpose of arriving at arm's length price of the international transaction. (AY. 2010-11)
KHS Machinery (P.) Ltd v. DCIT (2023) 103 ITR 72 (SN) (Ahd) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Adhoc addition made by the Transfer Pricing Officer on account of 'Price Penetration Adjustment' by the assessee, treating the same as income is without jurisdiction. [S. 92, 92CA]
The primary contention is regarding the addition made to the "Price Penetration Adjustment" made to its own margin by the Assessee. The assessee company manufactured polypropylene compound resins. The Assessee followed a price penetration policy, selling products to unrelated parties at a reduced price. The Transfer Pricing Officer made adjustment equivalent to the amount of price penetration adjustment by disregarding the contention of the assessee. The CIT(A) confirmed the assessing officer's assertion by sustaining the transfer pricing

adjustment, holding that the Assessee's International Transaction does not satisfy the Arm's Length Principle. Before the Hon'ble Tribunal the assessee contended that there was no dispute regarding the method and margin adopted for benchmarking the international transaction. That the only dispute was of ad-hoc adjustment made by the Transfer Pricing Officer. Further the Assessee also demonstrated before the Hon'ble Tribunal, the margins, before and after the disputed adjustment.

The Hon'ble Tribunal observed that the margin of the assessee is at "Arm's Length" without the price penetration adjustment. That there was no dispute regarding the method and margin adopted for benchmarking the international transaction. Further held that any ad hoc determination of the arm's length price by the Transfer Pricing Officer under section 92 dehors section 92C (1) of the Income-tax Act, 1961 would be unsustainable in law. The Hon'ble Tribunal thus allowed the appeal filed by the assessee and directed deletion of the addition made by the A.O. and upheld by the CIT (A). (AY.13-14)

Mitsui Prime Advanced Composites India P. Ltd. v. DCIT (2023) 103 ITR 35 (SN) (Delhi) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Prices of comparable products on their respective invoice/shipment date as considered in customs valuation would yield a more reliable result in absence of any differences arising out of contract terms and product quality.[S. 92CA]

The primary contention revolves around the Transfer Pricing Officer's enhancement of the appellant's income. This was based on the assertion that international transactions related to the import/export of Agri-commodities with Associated Enterprises did not satisfy the Arm's Length Principle.

The Ld. Transfer Pricing Officer rejected the Comparable Uncontrolled Price (CUP) analysis undertaken by the appellant, which was based on industry reports and independent broker quotes. The Dispute Resolution Panel (DRP) upheld the Transfer Pricing Officer's findings but directed certain adjustments based on the provisions of the Income-tax Act.

The final assessment order, made a Transfer Pricing (TP) adjustment, resulting in an income, compared to the returned loss. The appellant's contention is that the rates published on commodities exchanges are actual prices, which vary daily and that the Transfer Pricing Officer had arbitrarily selected prices from the multiple prices of the commodity available on the same date of the Bill of Entry and that the data shared by the Customs Department does not specify the quality and price variations of the commodities in particular.

The Hon'ble Tribunal observed that the customs data at the port of shipment/delivery would better reflect the price of the commodity as it includes various costs as followed by the revenue. Further that the tariff value notified by customs, based on international prices, constituted a credible arm's length benchmark under CUP. The Hon'ble Tribunal thus dismissed assessee's objection against the use of customs data under CUP. (AY. 2016-17)

Louis Dreyfus Company India (P.) Ltd v. DCIT (2023) 103 ITR 6 (SN) / 222 TTJ 868/ 224 DTR 81 (Delhi) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-When assessee was able to prove the difference in price was due to quality of products sold, no transfer pricing adjustment was warranted.[S. 92CA]

Assessee Company was engaged in the business of manufacturing TMT bars for which it purchased mild steel (MS) ingots from its AE. During the course of transfer pricing assessment, the Transfer Pricing Officer noted that the AE was charging higher price from

the assessee than prices charged by it from non-related parties. The Assessee submitted before the Transfer Pricing Officer that material purchased by it from the AE was of a higher quality as compared to sales made by AE to non-related parties. This argument of the Assessee was accepted by the AO for certain months. However, the AO disputed the purchases made only for the month of January 2014 and thereby made a downward adjustment. On appeal before the CIT(A), the CIT(A) accepted the submissions of the Assessee and thereby deleted the adjustment.

The Hon'ble Tribunal upheld the order of the CIT(A) on the following grounds viz. (i) the CIT(A) has categorically observed that there is qualitative difference between the MS ingots sold by the AE to the assessee as compared to those sold by AE to third parties; (ii) Assessee was able to produce substantial evidence to prove the difference in prices is due to the quality of products sold; (iii) no rationale in making adjustment only for the month of January 2014 when the contention of the Assessee was accepted for the rest of the months. (AY.2014-15)

DCIT v. H.K Ispat Pvt. Ltd. (2023) 103 ITR 12 (SN)(Ahd) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Payment made to non-resident for maintenance of a project under a service agreement-recomputation of Arm's length price-held, claim by the assessee genuine as no such computation was done for previous yearS.

The Transfer Pricing Officer, during the assessment proceedings, noticed that the assessee had a technical services agreement for the upkeep and maintenance of their project and payment of Rs. 1,46,71,277 was paid to that accord. The Transfer Pricing Officer claimed that because CP, USA provided both the know-how and the technical assistance, and the nature of the services under both agreements was similar, the payments for royalties and technical assistance were closely related, that the assessee received only nominal services as a result of which the services were covered by the royalty agreement, that the arm's length price for technical assistance fee claim was excessive, and that as a result, recompense was required. In light of this, the claim for Rs. 1,46,71,277 was denied.

After getting an unfavorable order by Commissioner (appeals), the assessee appealed in the tribunal The tribunal that There was no arm's-length price adjustment for comparable payments made for the assessment years 2001–2002, 2002–2003, and 2003–2004, and the relief given on this issue by the Commissioner (Appeals) for the assessment year 2004–2005 was uncontested. In most cases, it would not be proper to upset a factual finding that was uncontested and undisputedly maintaining a certain position. As a result, the relevant year's arm's length price adjustment is being removed.(AY.2005-06)

SS Oral Hygiene Products P. Ltd. v. Dy. CIT (2023)103 ITR 691 (Mum)(Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-AO drawing an adverse inference without providing an opportunity to explain the working of allocation is in violation of principals of natural justice. [S. 144C]

The Appellate Tribunal held that the AO having not asked the assessee for the working of the allocation, drawing an adverse inference without giving the assessee a chance to explain is in gross violation of principals of natural justice. Hon'ble Appellate Tribunal restored the matter back to TPO to decide the issue afresh after giving the assessee proper and reasonable opportunity of being heard. (AY. 2014-15)

Dassault Systems India P. Ltd. v. Add. CIT (2023) 105 ITR 9 (SN) (Delhi) (Trib)

S. 92C : Transfer pricing-Arm's length price-Bundle of Sport Broadcasting Rights-Most Appropriate Method-CUP Method and Other Method-Report of an independent Valuer-Assessee can resile from the Most Appropriate method selected earlier-The Most Appropriate Method is other Method-On the facts the Assessing Officer was justified in making transfer pricing adjustment in the international transaction of acquiring Bundle of Sport Broadcasting Rights on the basis of deficiencies found by him in the valuation report submitted by the assessee-Majority view. [S. 92, R. 10B, 10C]

The Special Bench was constituted to consider the following question of law.

"Whether on facts and in law, the Assessing Officer was justified in making transfer pricing adjustment anent to the international transaction of acquiring Bundle of Sport Broadcasting Rights, on the basis of deficiencies found by him in the valuation report submitted by the assessee?"

Star India Pvt. Ltd. for acquiring Bundle of Sport Broadcasting Rights (BSB Rights) hitherto held by its US-based Associated Enterprise (AE), namely, ESPN Star Sports Ltd. (ESS) entered into a transaction that was concluded for 1211 USD million by means of a Master Rights Agreement (MRA) entered on 31-10-2013. The assessee furnished a report of an independent valuer determining the total value of BSB Rights at this level by using the 'other method' (Discounted Cash Flow (DCF) method). The assessee claimed deduction of Rs.1013.26 crore on this score for the immediately preceding assessment year, 2014-15. It applied the Comparable Uncontrolled Price (CUP) method to demonstrate that the international transaction of acquiring the BSB Rights was at Arm's Length Price (ALP). For doing so, the assessee adopted the comparable uncontrolled transaction of ESS acquiring such BSB Rights for a total sum of 1338 USD million. The rights acquired by the assessee were by two different means viz., one set of rights was sub-licensed by ESS to the assessee. The second set of rights was by means of novation of the agreements under which the assessee was substituted in place of ESS, becoming liable to make full direct payment to ISBs and recovering 9.5% from ESS. The TPO observed that the Valuer had inflated the amount of cash flows during the `Finite period' valuation of the BSB Rights by 38%. He determined ALP of the international transaction at 411 USD million. This resulted into variation between actual consideration and ALP consideration at 66.06% of the actual consideration. The TPO proposed a transfer pricing adjustment of Rs.669.36 crore for the immediately preceding year. Finally, the TPO extensively discussed and reproduced his order for the immediately preceding assessment year in his order for the instant year, eventually, determining excess payment on the overall basis at 66.06% towards the Full terminal value and the Part finite period value. On appeal the Tribunal held that, the Assessee can resile from the Most Appropriate method selected earlier if the new method is in accordance with applicable provisions, is 'The Most Appropriate Method.'

It was noted that ESS had contracted the liabilities with the third parties in prior years when prevailing market conditions, time period etc., were materially different from the date on which MSA was entered into with the assessee. Since agreed prices were paid by the assessee to various sports bodies by virtue of liabilities assumed under MSA entered into with ESS represented, there was only a discharge of liabilities and was a part of a controlled transaction which was paid to non-AE [Sports Bodies] at the instance of AE [ESS]. Therefore, the said payments would not represent uncontrolled price/transaction under uncontrolled conditions and would not constitute reliable data to undertake CUP analysis. Therefore, it was held that the MAM to benchmark international transactions in the instant case would be 'Other Method' and not 'CUP Method'. Hence, appeal of the assessee was dismissed. Majority view. (ITA No. 7872 /Mum/2019 dt 5-6-2023)(AY. 2015-16)

Star India Private Limited v. ACIT-16(1), Mumbai (2023) 151 taxmann.com 77105 ITR 1 / 224 TTJ 985 / 105 ITR 1 (SB)(Mum) (Trib.) www.itatonline.org

S. 92C : Transfer pricing-Arm's length price-Interest on receivables-Not a separate international transaction-Net margin more than of comparables-Separate Benchmarking not required. Adjustment to be deleted.

Held That though receivables were an international transaction, which needed to be benchmarked separately, as pointed out by the Commissioner (Appeals), the margin of the assessee, both in fast moving commercial goods and non-fast moving commercial goods segment, was much higher than that of the comparables. Since benchmarking under both the segments had been accepted in the transfer pricing study, there was no infirmity in the order of the Commissioner (Appeals), and there was no reason to separately benchmark receivables. (AY.2010-11, 2011-12).

Dabur India Ltd. v. Dy. CIT (2023)101 ITR 148 (Delhi) (Trib)

S. 92C : Transfer pricing-Arm's length price-Fee for corporate guarantee-0.5%-Specified Domestic Transaction-Transfer of power from eligible units to manufacturing units-Adjustment to be deleted.

The Hon'ble Tribunal held that the arm's length price of fee for corporate guarantee should be 0.5 per cent. per annum as determined by the Transfer Pricing Officer. Further, the adjustment made by the Transfer Pricing Officer for specified domestic transactions with respect to transfer of power from eligible units of the assessee to its other manufacturing unit was to be deleted. (AY. 2014-15, 2015-16).

Asst. CIT v. Electrosteel Casting Ltd. (2023)101 ITR 359 (Kol) (Trib)

S. 92C : Transfer pricing-Arm's length price-Royalty-Engaged in the business of industrial gases through plant operated with technical assistance from associated enterprise-Payments made to associated enterprise-Royal at 4% on sales to be taken as arm's length-No contrary evidence to disregard factum of technical services rendered by associated enterprise-Computation of 1% fess by A.O. as arm's length adhoc-Not sustainable-Matter remanded. [S. 92]

That the global supply systems team of the assessee performed design and engineering functions with respect to construction of manufacturing facility to supply industrial gases at the client's place. During the transfer pricing assessment, the assessee submitted the break-up of technical services fees payment and explained the nature of services provided by the associated enterprises. The assessee also submitted invoices issued by the associated enterprises for which technical service fees was paid. The Transfer Pricing Officer had not brought contrary evidence on record in order to disregard the factum of technical services rendered by the associated enterprises. Thus, the fact that the technical services were rendered by the associated enterprises for which payments were made by the assessee had to be accepted. Further, when the agreements for technology licence and the engineering services were juxtaposed, it was evident that royalty was paid for use of technical information, patent rights and trade mark in connection with manufacture and sale of licensed products and licensed processes whereas technical services fees was paid specifically for availing of the technical and engineering services rendered by the associated enterprises for design, construction, maintenance, etc., of the industrial gas plants based on the customer's requirements. The payments of royalty and technical services fees were for different deliverables and there was no duplication as held by the Transfer Pricing Officer. Similarly, the Transfer Pricing Officer had not explained on what basis and under which method of computation of arm's length price one per cent. was determined as the arm's length price for the payment of engineering and technical services fees. The aggregation of these transactions with other transactions on account of close linkage to the manufacturing operations, thereby

warranting the application of the transactional net margin method had not been found fault with or disputed by the Transfer Pricing Officer. The Assessing Officer/the Transfer Pricing Officer was to revisit the transfer pricing analysis of the assessee and determine whether the payments were at arm's length price. Matter remanded. (AY. 2013-14)
Praxair India P. Ltd. v. Dy. CIT (2023)101 ITR 640 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Determination-Payment of interest on compulsorily convertible debentures-Cannot be regarded as loan-Interest cannot be computed on libor-Interest rate of 9 and 12 percent justified.[S. 92]
Held, that the compulsorily convertible debentures could not be categorised as a loan and the transfer pricing study done by the assessee to arrive at the interest rate of nine per cent. and 12 per cent. with regard to payment of interest on compulsorily convertible debentures was proper. (AY. 2013-14)
Praxair India P. Ltd. v. Dy. CIT (2023)101 ITR 640 (Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Selection of comparable-Turnover filter-Turnover of assessee 332 crores-D.R.P justified in directing turnover of 200 crores and less than 2000 croreS.
Held, that the Dispute Resolution Panel was justified in its directions that the turnover filter was to be applied and only those companies having turnover of more than Rs. 200 crores and less than Rs. 2,000 crores were to be taken as comparable for the purpose of the transfer pricing study. (AY. 2011-12).
Dy. CIT v. Harman Connected Services Corporation India Pvt. Ltd. (2023)101 ITR 3 (SN)(Bang) (Trib)

S. 92C : Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Specified domestic transaction-Advertisement and sales promotion expenses-Reimbursement expenses-Royalty-Business expenditure-Allocation of expenses-Additional evidence-Bench marking of expenses-Advances written off-Subsidy-Royalty-workmen-Number of dayS. [S. 4, 28(i), 36(1)(vii),37(1), 80JJAA, R. 10B(1)(a)]
Held that advertisement, marketing and Sales promotion Expenses is not international transactions. Reimbursement of expenses by Associated Enterprise voluntarily. Margin within range of ± Five Per Cent.-Transfer Pricing adjustment to be deleted. Royalty, Premium on licence fixed by Transfer Pricing Officer at 22 Per Cent. restricted to 10 Per Cent. of average rate of royalty of comparable cases-Average Rate of unadjusted royalty of comparables at 4.5 Per Cent. discounted with 10 Per Cent.-Arm's Length Rate of Royalty at 4.05 Per Cent. to be applied-Regional Overhead expenses allocated to assessee. Business expediency of expenditure cannot be considered by Assessing Officer. Expenses incurred for purpose of business of assessee in ordinary course of its business. Transfer Pricing adjustment in respect of allocation of Asian Regional Headquarter expenses not sustainable-Export Commission. Additional evidence showing overseas marketing network developed and maintained by Associated Enterprises and assessee was able to secure orders for exports overseas through network. Assessing Officer to examine additional evidence and decide issue afresh-Reimbursement or warranty service charges received from Associated Enterprises on cost-to-cost basis.Products Imported From Manufacturer And Ultimate Warranty Liability to be borne by manufacturing entity.Entire cost incurred in providing warranty services reimbursed by Associated Enterprises and no basis for assessee charging A Mark-Up-No Transfer Pricing Adjustment Warranted-Payment for design and development services rendered by Associated Enterprises. International Transactions aggregated for benchmarking

Transfer Pricing Adjustment in respect of design and Development charges not warranted-Advance paid to Associated Enterprise for supply of Monitors written off as Associated Enterprise in liquidation and unable to refund advance. Write-Off to be allowed as trading loss and bad debt as advance given in ordinary course of business-Salary paid to expatriate employees.Allowable as deduction. Subsidies is revenue receipts. Royalty paid for right to use technology and know-How for manufacture and sale of goods is allowable as revenue expenditure. Export commission. Additional evidence.Matter remanded.Additional wages of new workmen.Workmen Who joined in preceding year and working for less than 300 Days whose employment equal to or more than 300 Days in relevant previous year.Directed to allow deduction. *(*AY. 2010-11)

L. G. Electronics India P. Ltd. v.Asst. CIT (2023)101 ITR 184 (Delhi)(Trib)

S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-No interest was paid to creditor or supplier nor any interest has been earned from unrelated party-Deletion of addition by the Tribunal is affirmed. [S. 260A]

Held that the Tribunal had deleted the transfer pricing adjustment on account of receivables holding that the assessee was a debt-free company and that no interest was paid to the creditor or supplier nor any interest had been earned from unrelated party. Being a 100 per cent. captive service provider, the revenue of the assessee was 100 per cent. from its associated enterprises. Order of Tribunal is affirmed. (AY. 2015-16)

PCIT v. Boeing India Pvt. Ltd. (2023)457 ITR 84/146 taxmann.com 131 (Delhi)(HC)

Editorial : SLP dismissed, PCIT v. Boeing India Pvt. Ltd.[2024] 158 taxmann.com 214 (SC). Affirmed, Boeing India Pvt. Ltd v. ACIT (2020) 81 ITR 94 (Delhi)(Trib)

S. 92CA : Reference to Transfer Pricing Officer-Arm's Length Price-Payment to associated enterprise for services rendered-TPO cannot question necessity of expenses occurred-Assessee liable to prove that actual services rendered-Assessee failed to prove-no evidence or documentation or agreement between assessee and associated enterprise-No infirmity in the order of TPO-Arm's length price-Nil. [S. 92C]

Held, that admittedly there was no agreement between the assessee and its associated enterprise to incur the expenses in question. The Transfer Pricing Officer had noted that the assessee had not proved with proper documentation and evidence that services were actually rendered. The reimbursement of expenses was guided by the profitability of the associated enterprise and was not based on services rendered by the associated enterprise to the assessee. Accordingly, the Assessing Officer concluded that though arm's length price could not be determined at "nil", such expenditure could be allowed only after the assessee proved conclusively that there was actual rendition of services by the associated enterprise. The assessee had not been able to prove the actual rendering of services and expenditure in respect of the assessee's business by its overseas associated enterprise either by producing the necessary agreement in respect of rendering of services or in the form of any other communication which could convincingly or conclusively establish such rendering of services or incurring expenditure, the Transfer Pricing Officer was justified in determining the arm's length price at "nil". There was no infirmity in the order of the Transfer Pricing Officer or the Dispute Resolution Panel.(AY. 2015-16)

Yanfeng India Automotive Interior Systems Pvt. Ltd. v. JCIT (OSD) (2023) 148 taxmann.com 332/ 101 ITR 78 (SN)/ 222 TTJ 3/ (Ahd) (Trib)

S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-Survey-Notices issued to assessee calling for evidence and explanation with respect to Transfer Pricing Adjustment Proposed By Transfer Pricing Officer-

Failure to furnish details bbefore Assessing Officer-Failure by Assessee to comply with notices issued in spite of several opportunities-Opportunity may be provided to assessee to present its case before Assessing Officer-Assessee to pay cost RS. 25,000 in each appeal. [S. 92CA (3), 133A, 142(1), 144C]

The assessee was an airline company providing for transportation of passengers, cargo and other allied services. The assessee was issued a notice u/s 142(1) of the Act and asked to submit details, documents, evidence, and explanation in respect of its international transactions, with the copy of order under section 92 CA (3) of the Act of the Transfer Pricing Officer proposing a transfer pricing adjustment. The assessee failed to present itself in front of the AO and sent a letter stating that it was undergoing insolvency proceedings hence, the assessment proceedings should be kept in abeyance. When determining an adjustment, the Assessing Officer/Transfer Pricing Officer benchmarked the domestic transactions of the Assessee against specific overseas transactions. Following that, the sum was added to the assessee's overall income, and penalty proceedings were also started. The Assessing Officer passed a draft assessment order under section 143(3) read with section 144C(1) of the Act making the addition. The income computed under section 115JB of the Act, where the income under the normal provisions was considered for computing the assessee's tax due, was less than the addition made by the Assessing Officer of Rs. 42,46,81,14,783.

The said order was challenged and it was held that the assessee (resolution professional) had failed to comply with the notices issued by the AO on account of the insolvency proceedings. Hence a last chance must be given to the assessee to present its case. However, since the exchequer had taken considerable time and effort to conduct the proceedings, the assessee was directed to pay costs of Rs. 25,000 in each appeal within 30 days and was further directed to be present from here on in the fresh proceedings. (AY.2016-17, 2017-18)

Jet Airways (India) Ltd. v. Dy. CIT (2023) 147 taxmann.com 540/ 103 ITR 323 (Mum) (Trib)

S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-Order of Transfer Pricing Officer-Limitation-Period of sixty days to be counted from day prior to date on which period of limitation for assessment expires-Order barred by imitation by one day-Order non est-Assessee ceases to be eligible assessee-Draft assessment order and assessment order void ab initio.[S. 144C, 153]

Tribunal observed that the Transfer Pricing Officer can pass an order u/s. 92CA of the Act at any time before sixty days prior to the date on which the period of limitation u/s. 153 expires. Sixty days are to be counted prior to the last date of the period of limitation u/s. 153. In a case where a reference is made to the Transfer Pricing Officer u/s. 92CA(1), the time limit for completion of the assessment is three years. In the case at hand, in terms of section 153, the time limit for completing the assessment for the A Y. 2012-13 was March 31, 2016. The time limit for passing the order u/s. 92CA of the Act was on or before January 30, 2016, because, if one day prior to the date of limitation u/s. 153 was considered, then sixty days were to be counted from March 30, 2016. The time limit for passing the order u/s. 92CA expired on the midnight of January 30, 2016. The order was passed on January 31, 2016 and was clearly barred by limitation by one day and was to be quashed. It was to be reckoned as if there was no order of the Transfer Pricing Officer and consequently, the entire transfer pricing adjustment proposed by the Transfer Pricing Officer on the international transaction became non est and liable to be quashed.

Tribunal also observed that the assessee was an Indian company and, thus, resident in India u/s. 6 of the Act. Thus, the second condition u/s. 144C(15)(b)(ii) of the Act for qualifying as an eligible assessee, that the assessee be a non-resident not being a company or a foreign

company, was not met. The first condition u/s. 144C(15)(b)(i) of the Act applies where there is a transfer pricing variation arising from an order of the Transfer Pricing Officer u/s. 92CA(3) of the Act. In the case at hand, there was no transfer pricing variation arising as a consequence of an order of the Transfer Pricing Officer as the order was time-barred, non est and void ab initio. There, thus remained no transfer pricing variation arising as a consequence of such an order. The consequence was thus that the assessee could not be said to be an eligible assessee u/s. 144C(15)(b)(ii) of the Act. Accordingly, the very foundation to pass the draft assessment order did not survive.
Consequently, Tribunal held that the draft assessment order passed became legally invalid. All consequential proceedings on the basis of that order failed. Any lapse in treating an assessee as an eligible assessee where it is otherwise not one and vice versa is a jurisdictional defect. The final assessment order passed on January 31, 2017 was beyond the prescribed period of limitation u/s. 153 of the Act which expired on March 31, 2016 and was to be quashed. (AY.2012-13)
Atos India P. Ltd. v. Dy. CIT (2023) 152 taxmann.com 217/ 103 ITR 296/ 222 TTJ 679/ 224 DTR 133 (Mum) (Trib)

S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-Royalty-Assessee earning brand royalty from associated enterprise-Royalty to be quantified in terms of order for earlier years-Service fees at Ad hoc rate to be restricted.
Held, that in terms of the Tribunal's decision in the assessee's own case, the Transfer Pricing Officer was directed to quantify the royalty at nil for D-Nepal and at 0.75 percent of freight on board sales, for both D-UAE and ACC. Further, the service fee was directed to be restricted to 0.30 percent. instead of the ad hoc rate of 0.513 percent proposed by the Commissioner (Appeals). (AY. 2010-11, 2011-12).
Dabur India Ltd. v. Dy. CIT (2023)101 ITR 148 (Delhi) (Trib)

S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax Reference to Transfer Pricing-Loan to overseas subsidiaries in foreign money-Interest to be estimated as foreign-currency loan and not rupee denominated loan-International libor rates to be taken as benchmark.
Held, that in terms of the Tribunal's order in the assessee's own case for the AY.s 2007-08 and 2008-09, the deletion of addition was upheld on the ground that on loans advanced in foreign currency the interest ought to be estimated in terms of a foreign-currency loan and not a rupee-denominated loan. (AY. 2010-11, 2011-12).
Dabur India Ltd. v. Dy. CIT (2023)101 ITR 148 (Delhi) (Trib)

S. 92CA : Transfer pricing-Reference to Transfer Pricing Officer-Arm's Length price-Avoidance of tax-Adopted Transactional net margin method in previous years-Adopted Internal comparable uncontrolled price method in subsequent years as most appropriate-No explanation-Matter remanded to T.P.O to reconsider transfer pricing adjustment to justify appropriate method.
Held, that the assessee in its initial year of operations had adopted the transactional net margin method as the most appropriate method. However, in subsequent AY.s and from the AY. 2012-13 onwards, it had followed the internal comparable uncontrolled price method as the most appropriate and claimed that the Transfer Pricing Officer had accepted internal comparable uncontrolled price method followed by the assessee. If the internal comparable uncontrolled price method was the most appropriate method to be followed to determine

arm's length price of international transactions, then why the transactional net margin method had been selected earlier was not explained by the assessee. The Assessing Officer/Transfer Pricing Officer was to reconsider the issue of transfer pricing adjustment, after giving opportunity of hearing to the assessee to justify its case that the internal comparable uncontrolled price method was the most appropriate method.(AY. 2011-12)
Seoyon E-Hwa Automotive Chennai P. Ltd v. Dy. CIT (2023)101 ITR 130 (Chennai) (Trib)

S. 92CA : Reference to Transfer Pricing Officer-Arm's Length Price-Payment to associated enterprise for services rendered-TPO cannot question necessity of expenses occurred-Assessee liable to prove that actual services rendered-Assessee failed to prove-no evidence or documentation or agreement between assessee and associated enterprise-No infirmity in the order of TPO-Arm's length price-Nil.[S. 37(1), 92C]
Held, that admittedly there was no agreement between the assessee and its associated enterprise to incur the expenses in question. The Transfer Pricing Officer had noted that the assessee had not proved with proper documentation and evidence that services were actually rendered. The reimbursement of expenses was guided by the profitability of the associated enterprise and was not based on services rendered by the associated enterprise to the assessee. Accordingly, the Assessing Officer concluded that though arm's length price could not be determined at "nil", such expenditure could be allowed only after the assessee proved conclusively that there was actual rendition of services by the associated enterprise. The assessee had not been able to prove the actual rendering of services and expenditure in respect of the assessee's business by its overseas associated enterprise either by producing the necessary agreement in respect of rendering of services or in the form of any other communication which could convincingly or conclusively establish such rendering of services or incurring expenditure, the Transfer Pricing Officer was justified in determining the arm's length price at "nil". There was no infirmity in the order of the Transfer Pricing Officer or the Dispute Resolution Panel.(AY. 2015-16)
Yanfeng India Automotive Interior Systems Pvt. Ltd. v.Jt. CIT (OSD) (2023)101 ITR 78 (SN) (Ahd) (Trib)

S. 112 : Tax on long term capital gains-Determination of tax in certain cases-Non-resident-Sale of unlisted shares-Capital gains had to be computed only by reference to provisions of section 112(1)(c)(iii), without giving effect to first and second provisos to section 48.[S. 45, 48, 112(1)(c)(iii)]
Assessee, a UAE-based company, engaged in investment activities, filed its return of income declaring Nil income and claimed long-term capital loss of Rs. 3.63 crores arising on sale of shares of an Indian private company after applying first proviso to section 48. Revenue held that since assessee was a foreign company and had sold unlisted shares of an Indian company, provisions of section 112(1)(c)(iii) were applicable and accordingly computed long-term capital gains without giving effect to first and second provisos to section 48, which was confirmed by DRP Held that section 112(1)(c)(iii) is a special provision for computation of capital gains, in case of a non-resident, arising from transfer of unlisted shares and securities whereas section 48 is a general provision dealing with mode of computation of capital gains in all cases of transfer of capital assets. Section 112(1)(c)(iii) does not provide for re-computation of capital gains for levying tax rate of 10 per cent, therefore, where ingredients of section 112(1)(c)(iii) are satisfied i.e. (a) sale of unlisted shares of Indian company (b) by a non-resident/foreign company and (c) giving rise to long-term capital gains, then capital gains is required to be computed as per manner provided under section

112(1)(c)(iii). Whether Accordingly the revenue's action of computing capital gains under section 112(1)(c)(iii) is justified.(AY. 2018-19)
Legatum Ventures Ltd v. ACIT(IT)(2023) 223 TTJ 589 (Mum)(Trib)

S. 113 : Tax-Block assessment-Search cases-Surcharge-Not leviable on undisclosed income pertaining to a period prior to 1-6-2002 [S. 132, 158BD, 158BFA]
Held that the proviso to section 113 of the Income-tax Act, 1961 inserted by the Finance Act, 2002, has the prospective effect and the assessees were not liable to pay the surcharge thereunder. Followed
CIT v. VATIKA TOWNSHIP PVT. LTD. [2014] 367 ITR 466 (SC). The decision of the Karnataka High Court in CIT v. K. L. SRIHARI [2011] 335 ITR 215 (Karn) reversed this point. (AY.BP. 1-4-1986 to 13-2-1997)
K. L. Swamy v. CIT (2023)451 ITR 1 / 221 DTR 401/ 330 CTR 457 (SC)
K.L. Srihari v. CIT (2023)451 ITR 1 / 221 DTR 401/ 330 CTR 457 (SC)
Khoday Breweries Ltd v.CIT 2023)451 ITR 1 / 221 DTR 401/ 330 CTR 457 (SC)

S. 115A : Foreign companies-Tax-Dividends-Royalty-Technical services fees-Non-resident-Fees For Technical Services-Special rate of tax-Contract, right or property to be effectively connected-Fees for technical services taxable at special lower rate-The addition made under section 44DA of the Act is deleted. **[S. 44DA]**
Tribunal while dealing with a similar issue for the AY 2010-11 in the assessee's own case having held that the Assessing Officer had justified the addition based on "relation" of services to the project office whereas the provisions of section 44DA reuire the contract, right or property to be "effectively connected" as against mere "related", that since in this case, the situs of performance of the activities was outside India, the effective connection was not there with the project office, that the assessee had offered the fee for technical services on gross basis and the activities conducted outside India were not effectively connected with the project office in India, that the assessee had rightly offered the overseas consultancy income as fees for technical services under the provisions of section 115A of the Act, the addition made under section 44DA of the Act was liable to be deleted.(AY. 2011-12)
Dy. CIT (IT) v. Aecom Asia Company Ltd. (2023) 199 ITD 364 / 101 ITR 75 (SN)(Delhi) (Trib)

S. 115A : Foreign companies-Tax-Dividends-Royalty-Technical services fees-Non resident-Addition made under section 44DA of
Held, that the Tribunal while dealing with a similar issue for the AY 2010-11 in the assessee's own case having held that the Assessing Officer had justified the addition based on "relation" of services to the project office whereas the provisions of section 44DA require the contract, right or property to be "effectively connected" as against mere "related", that since in this case, the situs of performance of the activities was outside India, the effective connection was not there with the project office, that the assessee had offered the fee for technical services on gross basis and the activities conducted outside India were not effectively connected with the project office in India, that the assessee had rightly offered the overseas consultancy income as fees for technical services under the provisions of section 115A of the Act, the addition made under section 44DA of the Act was liable to be deleted.(AY. 2011-12)
Dy. CIT (IT) v.Aecom Asia Company Ltd. (2023) 199 ITD 364 / 101 ITR 75 (SN) (Delhi) (Trib)

S. 115AC : Capital gains-Bonds-Global Depository-Foreign currency-Transfer of Shares covered by scheme-Computation of capital gains to be made under provisions of scheme-Subsequent Amendment of provisions in Income-tax Act is not applicable.-Transaction not regarded as transfer-Capital gains-Transfer by way of conversion of bonds in to shares or debentures-Date of acquisition-Foreign currency bonds-Date of acquisition to be date of conversion of bonds into shares-Amendments in 2008 is not applicable-SLP is dismissed. [S. 2(42A) 47, 47(xa), 49(2A), Foreign Currency Convertible Bonds and ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993, Clause 7(4)]

An Indian company issued foreign currency convertible bonds on September 29, 2006, under the Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993. During the financial year 2011-12, the assessee purchased these foreign currency convertible bonds from the original bondholder. In its return of income for the assessment year 2012-13, the assessee, relying on clause 7(4) of the Scheme, computed the capital gains on sale of equity shares considering the closing price of the equity shares in the Indian company on the stock exchange on the date of conversion of the foreign currency convertible bonds into equity shares as the cost of acquisition of the shares. The Assessing Officer held that the provisions of section 49(2A) of the Income-tax Act, 1961, as amended with effect from October 1, 2008 should be considered for the purpose of computing the cost of acquisition of the shares received from the conversion of the foreign currency convertible bonds. On this basis, the Assessing Officer considered the cost of acquisition of the equity shares at the price prevailing on the date of issue of the foreign currency convertible bonds (September 2006) and computed the capital gains. The High Court held that the cost of acquisition in the hands of the non-resident Indian investor would be the conversion price determined on the basis of the price of the shares on the date of conversion of foreign currency convertible bonds into shares and that the period for which the shares should be regarded as having been held by the assessee should also be reckoned to the date of acquisition. Dismissing the petition the Court held that the bonds in question did not answer the description of the Foreign Currency Exchangeable Bond Scheme, 2008, but rather were in conformity with the earlier Scheme relating to the issue of foreign exchange convertible bonds (a scheme introduced in 1993). The distinction between the two Schemes was that one related to issuance of exchange convertible bonds, whereas the other related to foreign currency exchangeable bonds. Order of High Court is affirmed. (AY.2012-13)

CIT (IT) v. Kingfisher Capital Clo Ltd. (2023)456 ITR 775 /294 Taxman 700 /334 CTR 9 (SC)

Editorial : Kingfisher Capital Clo Ltd v.CIT (IT) (2019) 413 ITR 1/ 263 Taxman 198 / 308 CTR 537 / 177 DTR 225 ((Bom)(HC) is affirmed.

S. 115BAA : Tax on income of certain domestic companies-Determination of tax in certain cases-Failure to file Form No.10IC electronically-Higher rate of tax-Directed to move an appropriate application before CBDT for granting leave to file Form No. 10IC. [S. 119(2)(b), Art. 226]

The assessee failed to file Form No. 10-IC electronically, a mandatory condition stipulated under section 115BAA which led to imposition of higher rate of tax. The assessee filed writ before the High Court. High Court directed to move an appropriate application before Central Board of Direct Taxes (CBDT) for granting leave to file Form No. 10-IC, pursuant to powers conferred on it by section 119(2)(*b*) of the Act. (AY. 2021-22)

Jasper Associates (P.) Ltd. v.CPC (2023) 335 CTR 829 / 155 taxmann.com 333 (Delhi)(HC)

S. 115BAA : Tax on income of certain domestic companies-Determination of tax in certain cases-Rate of tax-Form 10-IC-CBDT circular is binding on Revenue-Binding on Revenue-Matter Restored to Commissioner (Appeals) for decision afresh in light of Circular. [S. 143(1)]

Held, the assessee while filing the return of income had not filed the relevant form 10-IC for opting for lower rate of tax as per provisions of section 115BAA. The Central Board of Direct Taxes had issued Circular No. 6 of 2022, dated March 17, 2022 ([2022 442 ITR (St.) 191) condoning the delay in filing of form 10-IC for the assessment year 2020-21. The Assessing Officer in the order passed under section 143(3) had allowed the claim for opting lower rate of tax in terms of the provisions of section 115BAA. Although the circular was available at the time of passing of the order, the Commissioner (Appeals) had not considered it. Under these circumstances and as agreed by both parties, the matter was to be restored to the Commissioner (Appeals) with a direction to decide the issue in accordance with law and pass appropriate order after giving the assessee due opportunity of being heard keeping in mind Circular No. 6 of 2022, dated March 17, 2022 which was binding on the Revenue. (AY.2020-21)

Qvantel Software Solutions Ltd. v. ITO (2023)108 ITR 55 (SN) (Hyd) (Trib)

S. 115BAA : Tax on income of certain domestic companies-Determination of tax in certain cases-Failure to file Form 10IC-Order of the Assessing Officer computing the tax liability at rate of 30 percent as against 22 percent shown by the appellant-Gross receipt or total turnover in financial year 2019-20 did not exceed RS. 400 crore, rate of income tax was to be 25 per cent of total income-Matter remanded.[S. 139(1), 143(1), Form No 10IC]

Assessee-company filed its income tax return availing concessional taxation scheme at rate of 22 per cent. Assessing Office vide intimation issued under section 143(1) made adjustments and further computed tax liability at rate of 30 per cent. Commissioner (Appeals) upheld said assessment order on ground that assessee had failed to file Form 10-IC before due date of furnishing returns. Tribunal held that since the assessee had failed to file Form 10-IC till date, which was mandatory requirement for claiming option available under section 115BAA, order of CIT(A) is affirmed. Tribunal also held that where gross receipt or total turnover of assessee-company in financial year 2019-20 did not exceed Rs. 400 crore, rate of income tax was to be 25 per cent of total income. Matter remanded. (AY. 2020-21)

Bholanath Precision Engineering (P.) Ltd. v. CIT (2023) 198 ITD 211 (Mum) (Trib.)

S. 115BBE : Tax on specified income-Determination of tax in certain cases-Permanent disability-Blind or physically handicapped persons-Disallowance of claim-Tax cannot be imposed under section 155BBE of the Act-Provisions of section 69A cannot be invoked in respect of incorrect claim of deduction under section 80G-Tax cannot be imposed under section 155BBE of the Act. [S. 68 to 69, 69A 80G, 80U]

Assessee claimed deduction under section 80U for permanent physical disability.However, disability of assessee as per certificate issued by medical authority was 55 per cent only. Assessing Officer held that assessee had incorrectly claimed disability deduction under section 80U and therefore, denied excess claim of deduction. Assessing Officer added this amount back to income of assessee under section 69A and computed tax at a higher rate as prescribed under section 115BBE. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that when the AO has not invoked provisions of sections 68 to 69, tax cannot be imposed under a deeming provisions of section 115BBE. Since Assessing Officer made disallowance of deduction claimed under section 80U (permanent disability) without discussing as to how case of assessee was covered by provisions of section 68 or 69,

computation of tax liability under section 155BBE is bad in law. Tribunal also held that provisions of section 69A cannot be invoked in respect of disallowance made under section 80G and without a specific finding that assessee was in possession of any unexplained money, bullion, jewellery or other valuable article in his possession, Assessing Officer could not compute tax liability under section 115BBE with respect to disallowance for incorrect claim under section 80G of the Act. (AY. 2017-18)
Batuk Vithalabhai Donga. v. ITO (2023) 199 ITD 412 (Rajkot) (Trib.)

S. 115BBE : Tax on specified income-Determination of tax in certain cases-Unexplained income-Rate of tax-Assessee did not maintain proper books of account-Excess stock and receivables on account of unaccounted sales and cash generated on account of unaccounted sales was found in survey-Assessee's explanation accepted by survey party-Additional income surrendered by assessee not from unexplained source but from business proceeds-Under peculiar facts surrendered income to be taxed at normal rate applicable to business income and not at higher rate of sixty per cent :
The A.O. assessed the income of the assessee based on the discrepancies noticed during the survey conducted at the premises of the assessee on 23.10.2018. In the statement recorded, the assessee admitted undisclosed income of Rs 40.05 lakhs which was brought to tax by the A.O. by applying income-tax rate @60%. The CIT(A) confirmed the order of the A.O. On further appeal, it was contended before the Tribunal that assessee had booked the said income and paid due taxes as applicable for business income. The survey team noted that the assessee, being small businessman, had not maintained proper books of account and did not doubt about the nature and source of additional income. The A.O. did not rebut it during the assessment proceedins. Considering the facts and circumstances of the case, the Tribunal accepted the contentions of the assessee. The Tribunal held that there was no justification for applying the provisions of section 115BBE of the Act to the surrendered business income of the assessee. [The Tribunal made it clear that its findings were based on the peculiar facts of the case and would not be a binding precedent.] (AY. 2019-20)
Gurdeep Singh Ubhi v. Dy. CIT (2023)104 ITR 79 (SN)(Chd) (Trib)

S. 115J : Company-Book profit-Addition of prior period adjustments-To be included for working out book-Order of Tribunal is set aside. [S. 260A]
Assessee had shown net profit as per profit and loss account prepared in terms of Parts II and III of Schedule VI to Companies Act, 1956. Assessing Officer while computing tax to be levied under section 115J had taken net profit by excluding prior period adjustments. Tribunal affirmed the order of the Assessing Officer. On appeal the Court held that the Assessing Officer could not have taken another figure as net profit instead of net profit shown by assessee as per profit and loss account prepared in terms of Parts II and III of Schedule VI to Companies Act, 1956. (AY. 1990-91)
AP State Seeds Development Corporation v.CIT (2023) 332 CTR 118 / 224 DTR 211/148 taxmann.com 197 (Telangana)(HC)

S. 115JAA : Company-Book profit-Deemed income-Tax credit-Companies-Surcharge and cess- Irrespective of variation in its rate subsequently, would stand to be paid only for year for which tax is payable under regular provisions of Act, i.e., at an amount net of tax credit, and at rate applicable for that year-No question of set off of surcharge/cess, as in case of tax, in absence of specific provisions in its respect. [S. 4, 115JB]
Held that surcharge and cess, irrespective of whether same stand paid along with tax on 'book-profit' (MAT) and, further, irrespective of variation in its rate subsequently, would

stand to be paid only for year for which tax is payable under regular provisions of Act, i.e., at an amount net of tax credit, and at rate applicable for that year, thus, there is no question of set off of surcharge/cess, as in case of tax, in absence of specific provisions in its respect. (AY. 2012-13)
Kerala Feeds Ltd. v. ACIT, CPC (2023) 202 ITD 803 /224 TTJ 641 (Cochin) (Trib.)

S. 115JB : Company-Book profit-Set-off of Loss or unabsorbed depreciation-Entitled to claim set off.
Held that with regard to brought forward book loss in computation of income under section 115JB, Explanation 1(i) of section 115JB made it clear that the amount of loss brought forward or unabsorbed depreciation whichever was less according to the books of account must be permitted to be set off. In view of unambiguous language employed in the statute, no exception could be taken with the Tribunal's order confirming the order of the Commissioner (Appeals) holding that the assessee was entitled to claim set off.(AY.2010-11)
PCIT v.Bangalore International Airport Ltd. (2023)459 ITR 158 /154 taxmann.com 394 (Karn)(HC)

S. 115JB : Book profit-Addition cannot be made on the basis of calculations worked under section 14A of the Act.[S. 14A, R.8D]
Dismissing the appeal of the Revenue the Court held that while computation of book profit under section 115 JB no addition in book profit could be made on basis of calculations worked out under section 14A of the Act. (AY. 2014-15)
PCIT v. Gujarat Flurochemicals Ltd. (2023) 459 ITR 242/ 295 Taxman 200 (Guj.)(HC)

S. 115JB : Company-Book profit-Tender bid-Computation of net worth-Deferred tax liability-Rejection of tender bid-Calculation of net worth is primarily on tender issuing Authority and evaluating committee-Court cannot interfere unless arbitrary and contrary to law. [R. 11UA, Art. 226]
Against the rejection of tender bid on account of computation. Of net worth, the petitioner filed the writ petition. Dismissing the petition the Court held that, calculation of net worth is primarily on tender issuing Authority and evaluating committee.Court cannot interfere unless arbitrary and contrary to law.
Kalinga Commercial Corporation Ltd. v.Steel Authority of India (2023)455 ITR 1 (Delhi)(HC)

S. 115JB : Company-Book profit-Unabsorbed depreciation-Brought forward losses-Whichever is less as per books must be permitted. [S. 32]
Dismissing the appeal of the Revenue, High Court held that clause 2(iii) of Explanation 1(i) of section 115JB makes it clear that amount of loss brought forward or unabsorbed depreciation whichever is less as per books of account must be permitted to be set off and, therefore, cumulative brought forward losses or unabsorbed depreciation should be considered for set off. Circulars and Notifications: Circular No. 495, dated 22-9-1987, (1987) 168 ITR 87 (St). SLP of Revenue dismissed. (AY. 2010-11)
PCIT v. Bangalore International Airport Ltd. (2023) 459 ITR 158 / 154 taxmann.com 394 (Karn)(HC)
Editorial : SLP of Revenue is dismissed, PCIT v. Bangalore International Airport Ltd. (2023) 294 Taxman 590 (SC)

S. 115JB : Book profit-Banking company-Provision is not applicable.

Held, that the Tribunal was right in holding that the provisions of section 115JB of the Income-Tax Act, 1961 were not applicable to the assessee, a banking company.(AY.2011-12)
PCIT v. Atria Power Corporation Ltd. (2023)452 ITR 290 (Karn)(HC)
Editorial : SLP is granted to the Revenue, PCIT v. Atria Power Corporation Ltd (2023) 452 ITR 412 (St)(SC)

S. 115JB : Book profit-Interest subsidy and excise refund-Capital receipt for purpose of book profit [S. 4]
Dismissing the appeal of the Revenue the Court held that Interest subsidy and excise refund should be treated as capital receipts for the purpose of computing book profit. (AY. 2012-13)
PCIT v. Krishi Rasayan Exports (P.) Ltd. (2023) 290 Taxman 567 (Cal.)(HC)

S. 115JB : Book profit-Provision for bad and doubtful debts-Amendment with Effect from 1-4-1998-Order of Tribunal for AY. 1998-99 following the Supreme Court decision for AY. 1997-98-The matter was remanded to Tribunal to consider the amendment. [S. 254(1), 260A]
On appeal by Revenue, the Court held that the Tribunal ought to have examined the issue in the light of clause (g) of the Explanation below sub-section (2) of section 115JA inserted with effect from April 1, 1998 by the Finance (No. 2) Act, 2009 which was relevant. The amendment to the Explanation to section 115JA with effect from April 1, 1998 was not considered by the Supreme Court for the assessment year 1997-98. The decision was therefore not relevant and the order was set aside. The matter was remitted back to the Tribunal to re-examine the issue afresh in the light of the amendment brought to the definition of book profit with effect from April 1, 1998 or otherwise, the amendment would be rendered otiose. (AY.1998-99)
CIT v. Ashok Leyland Ltd. (2023)451 ITR 428 (Mad)(HC)

S. 115JB : Company-Book profit-Business of maintenance and distribution of electricity-Bound to maintain accounts according to Electricity Act-Provision of S. 115JB is not applicable-Additional ground admitted.[S. 254(1)]
That the provisions of section 115JB of the Act were not applicable to the assessee..*(*AY.2011-12, 2012-13)
Tata Power Delhi Distribution Ltd. v.Add. CIT (2023)108 ITR 329 (Delhi)(Trib)

S. 115JB : Company-Book profit-Subsidy-Capital in nature-Not chargeable to tax and not in the nature of income-Cannot form part of book profit.[S. 4]
Held that once a subsidy is categorized as capital in nature and not chargeable to tax under normal provision of Act, same lies outside purview of Act and cannot form part of taxable profit.Therefore, where assessee had declared SFIS subsidy as an additional income without reducing value of subsidy in cost of assets, issue is remitted to Assessing Officer to determine book profit under section 115JB. (AY. 2008-09, 2009-10)
Chennai Container Terminal P. Ltd v.Dy.CIT(2023) 108 ITR 147 / 154 taxmann.com 68 (Mum)(Trib)

S. 115JB : Company-Book profit-Reimbursement of minimum alternative tax liability by customer-Income offered to tax more than minimum alternative tax liability-Method of accounting is accepted in subsequent year-Addition is not justified.[S. 145]

Held that reimbursement of minimum alternative tax liability by customer can not be added as income as the income offered to tax more than minimum alternative tax liability and the method of accounting is accepted in subsequent year. (AY. 2009-10 to 2012-13)
Dy.CIT v. CLP India.P. Ltd (2023) 108 ITR 248 (Ahd)(Trib)

S. 115JB : Company-Book profit-Marked-to-market foreign exchange loss incurred on outstanding forward contracts-Unascertained liability and booked artificially-Provision made is reversed in next year-Liable to be added back. [S. 37(1)]
Held that the computation of income for the assessment year 2010-11 showed that the assessee had made claim as reduction of business income under the head "unrealised foreign exchange on forward contract disallowed in earlier years". The return of income for the assessment year 2010-11 was filed by the assessee much before the conclusion of the first appellate proceedings for the assessment year 2009-10. This being the position, the identical claim raised by the assessee in this year was a misleading claim and merely an attempt to claim the double deduction of the amount in two years. This fact was never brought to the notice during the first round proceedings or during the initial hearing of the appeal. Under these circumstances, the claim made by the assessee was to be rejected, at the outset, being a double claim. Held that the sum was only an unascertained liability and booked artificially. This was further evidenced by the fact that the provision made by the assessee had been reversed by the assessee itself, in the next year. It was, therefore, liable to be added back in terms of clause (c) of Explanation 1 to section 115JB.(AY.2009-10)
Cognizant Technology Solutions India P. Ltd. v. ACIT (2023)108 ITR 24 (SN)(Chennai) (Trib)

S. 115JB : Company-Book profit-Mandatorily transferred to reserve form part of book profits-Income-No diversion of income by overriding title-Contingent provision on standard assets could not be deducted as it was not ascertained liability. [S. 5]
Held that the fact that the assessee was required to transfer a portion of its profits to a special reserve or that there were certain restrictions on using such profits would not be enough to hold that the same were not the income of the assessee. That special reserve belonged to the assessee and was reserved for utilisation in certain eventualities for the safety and benefit of the assessee and its customers. This fund was in the nature of savings that belonged to the assessee. The profits transferred were also not an amount diverted at source by overriding title. That the profits transferred by the assessee to the special reserves would also form a part of book profits under section 115JB of the Act. *(*AY. 2013-14)
Srei Infrastructure Finance Ltd. v. Asst. CIT (2023)105 ITR 371 / 154 taxmann.com 650/ 225 TTJ 211 (Kol) (Trib)

S. 115JB : Company-Book profit-Revaluation of lands-Merger-Clause (J) in Explanation 1 to section 115JB(2), would be applicable from assessment year 2013-14 onwards only and thus, Assessing Officer was not correct in invoking clause (J) of Explanation 1 and making adjustments in book profits on account of revaluation of lands in profit and loss account for assessment years 2011-12 and 2012-13.
Assessing Officer made adjustments to book profit under section 115JB for assessment years 2011-12 and 2012-13 based on revaluation of lands. He invoked clause (J) of Explanation 1 to section 115JB(2), contending that increased land value should be added to book profit for tax calculation purposes. On appeal, Commissioner (Appeals) deleted addition, stating that revaluation reserve could not be reversed while computing book profit under section 115JB, and none of adjustments provided in Explanation to section 115JB applied. No revaluation reserve had been created in hands of assessee-company due to disposal or retirement of any

asset and therefore, no adjustment was deemed necessary under section 115JB. On appeal the Tribunal held that clause (J) in Explanation 1 to section 115JB(2), would be applicable from assessment year 2013-14 onwards only and Assessing Officer was not correct in invoking clause (J) of Explanation 1 and making adjustments in book profits on account of revaluation of lands in profit and loss account for assessment years 2011-12 and 2012-13. Further lands after revaluation, at revised value were transferred to companies which later merged to present assessee-company and assessee had followed Accounting Standard-14 as applicable to it under pooling of interests method and therefore, adjustments made by Assessing Officer in book profit was not in accordance with law and rightly deleted by Commissioner (Appeals). (AY, 2011-12, 2012-13)

DCIT v. Takshashila Gruh Nirman (P.) Ltd. (2023) 203 ITD 131 /2024) 228 TTJ 890 (Ahd) (Trib.)

S. 115JB : Company-Book profit-Insurance business-Assessee Not preparing financial statements as required under Companies Act-Minimum alternate tax not applicable. [S. 44, Sch. I]

Held that from a reading of section 44 and the First Schedule to the Act, it is plain that insurance companies are required to prepare accounts in accordance with the Insurance Act and the regulations of the Insurance Regulatory and Development Authority and not in accordance with the Companies Act. Accordingly, section 115JB would not apply to insurance companies including the assessee.(AY. 2011-12)

Oriental Insurance Co. Ltd. v. Dy. CIT (LTU) (2023)102 ITR 122 (Delhi)(Trib)

S. 115JB : Company-Book profit-Fuel and fixed cost adjustments made to power prices consequent to orders of regulatory commission-Liability ascertained-Expenditure deductible in computing book profit. [S. 37, 145]

Held that the assessee was under regulatory regime where tariff was determined in advance by a regulatory commission and fuel and fixed cost adjustments were unbilled revenue determined as per a formula set out in the applicable regulations. These sums would be recovered after the receipt of the order of the commission. Till then, there was uncertainty in the revenue and unbilled revenue was recognised in the statement of profit and loss. The fact that these provisions were not disallowed by the Assessing Officer under the normal provisions of the Act indicated that the Assessing Officer had accepted these provisions as having accrued during the year. Fuel and fixed cost adjustments were unbilled revenue as firmly set out by the commission. The assessee had unbilled income because of these adjustments. The addition was to be deleted.(AY. 2007-08, 2009-10, 2012-13, 2014-15)

West Bengal Power Development Corporation Ltd. v.Dy. CIT (2023)102 ITR 453 (Kol)(Trib.)

S. 115JB : Company-Book profit-Financial corporation-Not a company-Not liable to be assessed to book profit.[S. 2(17), 2(26), Companies Act, 1956, S. 129]

Dismissing the appeal of the Revenue the Tribunal held that Section 115JB deals with only those companies which are registered under Companies Act and not deemed company as per provision of section 2(17) or 2(26) and, thus, assessee, a financial corporation could not be termed as a company within meaning of section 2(17) and consequently, section 115JB is not applicable. (AY. 2019-20)

DCIT v. Rajasthan Financial Corporation. (2023) 199 ITD 570 (Jaipur) (Trib.)

S. 115JB : Company-Book profit-Upward adjustment-Amount withdrawn from reserve/provision which stood credited in profit and loss account for year and was reduced while computing book profit-Adjustment is deleted. [S. 145]

During assessment, Assessing Officer made adjustment resulting in upward adjustment in book profits. Tribunal held that upward adjustment was with respect to amount which represented amount withdrawn from reserve/provision which stood credited in profit and loss account for year and was reduced while computing book profit since it had already been offered to tax in earlier years, adjustment was to be deleted. (AY. 2019-20)

Bengal Peerless Housing Development Company Ltd. v. DCIT (2023) 199 ITD 679 (Kol) (Trib.)

S. 115JB : Company-Book profit-Adjustment of disallowance made under section 14A could not be added to income for purpose of computation of book profit-Interest on income tax refund-Not credited interest on income tax refund to profit and loss account and reduced same from advance tax disclosed under loans and advances as a consistent accounting practice in view of non-crystallisation of such interest due to appeals pending at various forums in respect of related income tax refunds and assessee had offered interest on income tax refunds to tax under normal provisions-No addition of such interest was to be made to net profit for computing book profit under section 115JB-Direction of CIT(A) to for computation of disallowance as per Rule 8D is affirmed. [S. 14A, R.8D]

Held that adjustment of disallowance made under section 14A could not be added to assessee's income for purpose of computation of book profit under section 115JB of the Act. The assessee had not credited interest on income tax refund to profit and loss account and reduced same from advance tax disclosed under loans and advances as a consistent accounting practice in view of non-crystallisation of such interest due to appeals pending at various forums in respect of related income tax refunds and assessee had offered interest on income tax refunds to tax under normal provisions, no addition of such interest was to be made to net profit for computing book profit. Once assessee’s accounts have been maintained in accordance with Companies Act and same have also been scrutinised and audited by statutory auditor, in absence of any material to negate these facts, Assessing Officer has limited power under section 115JB to make adjustment to book profit only in respect of items provided in Explanation 1 to section 115JB(1). Tribunal affirmed the direction of the CIT(A) directing Assessing Officer to compute disallowance under section 14A, by invoking provisions of rule 8D. (AY. 2016-17)

Reliance Industries Ltd. v. ACIT (2023) 198 ITD 158 (Mum) (Trib.)

S. 115JB : Company-Book profit Unabsorbed depreciation – Adjustment of carried forward business loss or unabsorbed depreciation which ever is lower for purposes of section 115JB.[S. 32 (2), 72, 115JB(2)]

Tribunal held that the assessee has correctly considered the unabsorbed depreciation for Financial Year 2010-11 in its working which portion has remained unabsorbed against the existing book profits of that year. Explanation 1 to Section 115JB(2) used the expression unabsorbed depreciation which has distinct conotations via-a-vis total depreciation. Tribunal held that the claim of the assessee being lower of unabsorbed depreciation and business loss deserves to be set-off against the current year book profit in terms of the provisions of clause (iii) of Explanation 1 of Section 115JB(2) of the Act. The claim of the assessee was allowed. (AY. 2012-13)

PVR Pictures Ltd. v. Dy. CIT [2023] 200 ITD 568 (Delhi) (Trib)

S. 115JB : Company-Book profit Computation under clause (f) of Explanation (1) to section 115JB(2) of the Act, is to be made without resorting to the computation as contemplated u/S. 14A of the Act.[R.8D]

Held that computation under clause (f) of Explanation (1) to section 115JB(2) of the Act, is to be made without resorting to the computation as contemplated u/s. 14A of the Act.(AY. 2013-14)

Manali Petrochemical Ltd. v. Dy. CIT (2023) 201 ITD 317 (Chennai)(Trib.)

S. 115JB : Company-Book Profits-Assessing Officer without discussion computing book profits at higher figure than that computed by assessee-Difference representing provision for current tax-Assessee declaring net amount instead of reporting each item separately-Order set aside and matter remanded to AO for adjudication afresh-Claim under section 80JJAA is also set asde. [S. 80JJA]

For the AY 2018-19 the gross total income of the assessee after setting off brought forward losses was nil and hence, no deduction under Chapter VI-A of the Income-tax Act, 1961 was claimed. However, the A.O. quantified such deduction and disallowed the same. The CIT(A) upheld disallowance on the ground that the assessee had filed belated return. On further appeal, the Tribunal restored the matter to the file of the A.O. to examine the contentions of the assessee and to decide in accordance with law after providing adequate opportunity of being heard.

The A.O. assessed book profit of the assessee at Rs. 14,94,84,614 as against book profits disclosed at Rs. 11,99,54,253 in return of income u/s. 115JB of the Act without discussing it in computation sheet. The difference between the amount computed by the A.O. and that computed by the assessee represented the provision for current tax. The CIT(A) upheld the view taken by the A.O. On further appeal, the Tribunal held that since, there was no examination by the A.O. and no discussion in the assessment order on this issue, the matter was to be restored to the A.O. for examining the contentions of the assessee and adjudication afresh after providing adequate opportunity of being heard to the assessee. (AY. 2018-19)

Denso Ten Minda India P. Ltd. v. Asst. CIT (2023)104 ITR 42 (SN)(Delhi)(Trib)

S. 115JC : Special provisions for payment of tax by certain persons other than a company-Provisions are applicable to projects approved before the introduction of the section. [S. 80OB(10)]

The assesee a non-corporate entity filed its return and claimed deduction u/s 80IB(10) of the Act without giving effect to the provision of section 115JC of the Act. The AO held that the provision of section 115JC which has been introduced w.e.f Ist April 2013 are applicable to the assessee and worked out the adjustment. On appeal, CIT(A) decided the appeal in favour of assessee. On appeal, by the Revenue, the Tribunal held that provisions of section 115JC are applicable to projects approved before the introduction of the section 115JC. Referred CIT v. Calcutta Knitwears, Ludhiana (2014) 6SCC 444 (SC)) CCE v. Dilip Kumar (2018) 9 SCC 1 (FB)(SC) CIT v. Wipro Ltd (2022) 140 taxmann.com 223 (SC), CIT v. B.R. Constructions (1993) 202 ITR 222(AP)(HC) (ITA No. 608/Pune /2029 dt. 10-1 2023)(AY. 2014-15)

DCIT v. Vikram Developers and Promoters (2023) BCAJ-March P. 32 (Pune)(Trib)

S. 115-O : Domestic companies-Tax on distributed profits-Complete Code-DTAA does not get triggered at all when a domestic company pays DDT under section 115-O-Where contracting states to a tax treaty intend to extend treaty protection to domestic company paying dividend distribution tax, only then, domestic company can claim benefit of

DTAA, if any-Machinery provision for recovery-Benefit of DTAA-DTAA-India-France [S. 2(24)(ii),2(43), 4, 9(1)9iv), 90(2),115P, 115Q Art. 10, 26(1), 26(4), 26(5)]

Where dividend is declared, distributed or paid by a domestic company to a non-resident shareholder, which attracts additional Income-tax (tax on distributed profits) u/s. 115-O of the Income-tax Act, 1961, such additional Income-tax payable by the domestic company shall be at the rate mentioned in Section 115-O of the Act and not at the rate of tax applicable to the non-resident shareholder as specified in the relevant Double Taxation Avoidance Agreement with reference to such dividend income. Nevertheless, the sovereign has the prerogative, through mechanism of Double Taxation Avoidance Agreements, to extend protection to domestic companies paying dividend distribution tax. Thus, only where the contracting states to a Double Taxation Avoidance Agreement intend to extend protection to the domestic company paying dividend distribution tax, can the domestic company claim benefit of the Double Taxation Avoidance Agreement, if any.

Sections 115-O, 115P and 115Q an additional Income-tax was levied on the company itself on the sum distributed by way of dividend. The tax paid thereunder was treated as the final tax on dividends and dividends were exempt from any further incidence of tax in India in the hands of shareholders. The additional Income-tax u/s. 115-O is referred to as "tax on distributed profits" commonly referred to as "dividend distribution tax". It is not a tax on "dividend distributed". The point of time at which the additional Income-tax is payable by the domestic company is laid down in section 115-O, viz., within fourteen days from the date of (a) declaration of any dividend; or (b) distribution of any dividend; or (c) payment of any dividend, whichever is earliest. The person liable for payment of such additional tax is the "principal officer of the domestic company and the company". The payment has to be made to the credit of the Central Government.

The dividend distribution tax is neither paid on behalf of the shareholder nor is it a payment of liability of the shareholder, discharged by the domestic company paying dividend distribution tax. The charge u/s. 115-O of the Act of dividend distribution tax is a tax on the distributed profits of a domestic company and is a tax.

Sections 115P and 115Q provide for machinery provisions for recovery. Chapter XII-D is a complete code in itself on dividend distribution tax. They provide for discharge for the payer on payment to the credit of Central Government of the amounts due to the payee. In the event the payer pays excess over and above what he has to pay the payee, he gets a right to recover the tax deducted or collected at source and gets rights of subrogation. Such provisions are absent in the entire scheme of Chapter XII-D of the Act. These features are again an indication that dividend distribution tax is a charge to tax on the profits of the company and not a charge in the hands of the shareholder or tax paid on behalf of the shareholder by the domestic company. These provisions also show that shareholder does not enter the domain of dividend distribution tax at all.(AY.2006-07, 2007-08, 2011-12,2016-17, 2018-19]

Dy. CIT v. Total Oil India P. Ltd. (2023) 149 taxmann.com 332/ 104 ITR 1/ 223 TTJ 529 (SB) (Mum) (Trib.)

Gujarat Gas Co.Ltd v. JCIT (2023) 104 ITR 1 (SB) (Mum) (Trib.)

Maruti Suzuki India Ltd v. Dy.CIT 2023) 104 ITR 1 (SB) (Mum) (Trib.)

S. 115O : Tax on distributed profits of domestic companies-Tax on distributed income to share holders-Buy back of shares-Capital reduction-Deemed dividend-The consideration paid by the assessee to its shareholders for purchase of its own shares was liable to tax as deemed dividend u/S. 2(22)(d) of the Act, and alternatively, u/S. 2(22)(a) of the Act, and consequently, the assessee company was liable for payment of Dividend Distribution Tax (in short "DDT") u/S. 115-O of the Act.-DTAA-India-MauritiuS. [S.

2(22)(a),2(22)(d), 10(34), 46A, 115O, Companies Act 1956, S. 77A, 100, 102, 104, 391 to 393, Companies Act, 2013, 68, Art. 13.]

During the FY.2016-17 relevant to AY 2017-18, the assessee had purchased 94,00,534 equity shares of face value of Rs. 10 each at Rs.20,297/-per share aggregating to Rs.19,080.26 Crs. from its shareholders in terms of Scheme of Arrangement and Compromise (the Scheme) u/s.391 to 393 of the Companies Act, 1956, approved by the Hon'ble High Court of judicature at Madras vide in Company Petition No.102 of 2016 dated 18.04.2016. The Assessing Officer held that the assessee is deemed to be assessee in default u/s.115QA of the Act, for failure to pay tax u/s.115-O of the Act, in respect of consideration paid for purchase of its own shares. The Assessing Officer held that consideration paid by the assessee to its shareholders for purchase of its own shares is nothing but reduction of capital in terms of Sections 100-104/402 of the Companies Act, 1956, and thus, the assessee is liable to pay DDT u/s.115-O of the Act. Order of the Assessing Officer was affirmed by the CIT(A). On appeal affirming the order of the CIT(A) the Tribunal held that the consideration paid by the assessee to its shareholders for purchase of its own shares was liable to tax as deemed dividend u/s.2(22)(d) of the Act, and alternatively, u/s.2(22)(a) of the Act, and consequently, the assessee company was liable for payment of Dividend Distribution Tax (in short "DDT") u/s.115-O of the Act. The consideration paid by the assessee to its shareholders for purchase of its own shares under the 'Scheme of Arrangement & Compromise' u/s.391 to 393 of the Companies Act, 1956, is nothing but dividend within the meaning of Sections 2(22)(a) / 2(22)(d) of the Act. The scheme documents make it clear that the assessee has specifically excluded the provisions of Sec.77A of the Companies Act, 1956, and claimed which is not a buyback of shares as contemplated u/s.77A of the Companies Act, 1956. Therefore, purchase of own shares through any scheme/method available u/s.391 to 393 of the Companies Act, 1956, should invariably fulfill the statutory requirements stipulated u/s.100-104 and 402 of the Companies Act, 1956. To put it in simple words, when purchase of own shares is contemplated under the provisions of Sections 391 to 393 of the Companies Act, 1956, it should be invariably to be r.w.s.100-104/402 of the Companies Act, 1956, or u/s.77A of the Companies Act, 1956, and thus, without invoking provisions of Sections 100-104/402 of the Companies Act, 1956, the provisions of Sections 391 to 393 of the Companies Act, 1956, is inoperative as far as the buyback of shares are concerned. Therefore, consideration paid by the assessee to its shareholders for purchase of own shares through a 'Scheme of Arrangement & Compromise' sanctioned by the Hon'ble High Court of Madras, is akin to distribution by a company of accumulated profit whether capitalized or not, if such distribution entails the release by the company to its shareholders of all or any part of the assets of the company, and thus, said payment is taxable as deemed dividend u/s.2(22)(a) of the Act. Alternatively consideration paid by the assessee to its shareholders for purchase of its own shares, is akin to any distribution to its shareholders by a company on the reduction of its capital to the extent to which the company possess accumulated profits which arose after the end of the previous year ending next before the first day of April, 1983 whether such accumulated profits have been capitalized or not and said transaction comes under the definition of deemed dividend as per u/s.2(22)(d) of the Act. In other words, the consideration paid by the assessee to its shareholders for purchase of its own shares is nothing but reduction of capital in terms of Sections 100-104/402 of the Companies Act, 1956, and thus, the assessee is liable to pay DDT u/s.115-O of the Act. Appeal of the assessee was dismissed. (ITA No.269/Chny/2022 dt. 13-9-2023)(AY. 2017-18)

Cognizant Technology-Solutions India Pvt. Ltd v. ACIT (2023) 225 TTJ 873 (Chennai)(Trib) www.itatonline.org

S. 115Q : Domestic companies-Tax on distributed profits-Deemed to be in default-Assessee buying back shares and paying tax Credit not granted-Application for rectification not disposed of-Assessing Officer is directed to process application in accordance with law-Self assessment tax-Assessing Officer is directed to process application and pass orders in accordance with law. [S. 140A, 154]

Held that the assessee placed on the record a copy of the challan by which the buy-back tax was paid. The assessee made an application under section 115QA of the Act for necessary rectification but it was the contention of the assessee that that issue had not yet been resolved by the Assessing Officer. The Assessing Officer was directed to process the application on the issue at the earliest and decide the issue in accordance with law. The assessee was directed to promptly furnish the necessary details called for by the Assessing Officer to process the application. That in respect of credit for self-assessment tax, the assessee also made an application before the Assessing Officer which had not been disposed of. The Revenue did not point to any factual fallacy in the assessee's contentions. The Assessing Officer was directed to expeditiously process the application filed by the assessee and to pass necessary orders in accordance with law. (AY. 2018-19)

FIL India Business and Research Services P. Ltd. v. Dy. CIT (2023)105 ITR 82 / 154 taxmann.com 251 (Delhi) (Trib)

S. 119 : Central Board of Direct Taxes-Return-Delay in filing-Refund-Condonation of delay-Ignorance of law was not an excuse-High Court holding that there was no genuine hardship or reasonable cause for late filing of return-[S. 119(2b), 237, Art. 136]

On a writ petition against the order under section 119(2)(b) of the Income-tax Act, 1961 seeking condonation of the delay in filing the return, the High Court held that ignorance of law was not an excuse, that the assessee had filed his return for the AY. 2011-12 within the time limit and was aware of the process of filing the return, and that the finding that there was no genuine hardship or reasonable cause for late filing of the return was justified. The court held that the order in question was clear and cogent and had been passed with the approval and sanction of the Principal Chief Commissioner (IT), and that there had been no violation of principles of natural justice. SLP is dismissed. (AY 2011-12)

Puneet Rastogi v. PCIT (IT) (2023)454 ITR 39/ 292 Taxman 69 (SC)

Editorial : Puneet Rastogi v. PCIT (IT) (2023) 454 ITR 37 /148 taxmann.com 362 (Delhi)(HC)

S. 119 : Central Board of Direct Taxes-Instructions-Circular-Refund-Condonation of delay Belated return beyond period specified in section 139-Delay is directed to be condoned-Matter remanded. [S. 119(2)(b), 139 237, 244A, Art. 226]

On writ against the rejection of application for condonation of delay in filing of return and refund, the Honourable Court remanded back to decide on merit condoning the delay in filing of return of 104 days.

K.C. Antony v. PCIT (2023) 330 CTR 338/ 148 taxmann.com 28 (Ker)(HC)

S. 119 : Central Board of Direct Taxes-Instructions-Extension of time for filing of return-Seeking condonation of delay in filing return of income-Principal CCIT should have taken lenient view in considering difficulties faced by assessee-due to Covid-19.[S. 119(2)(a), 139, Art.226]

By way of writ, the assessee challenged the validity of order passed by PCCIT on request for condonation of delay and permission to file return of income for the relevant assessment year 2020-21. The assessee contested that the delay in filing of return was because of Covid-19 pandemic situation that the Accountants and Auditors of the company were not available, and

the Company Secretary was not keeping well, filed an application for condonation of delay in filing return. Dismissing, the order, the Hon'ble Patna High Court stated that the PCCIT should have been more lenient and should have considered the reasons file for condonation of delay under section 119(2)(a) and should have taken a lenient view considering the difficulties, which the persons were facing during the period of Covid-19 pandemic and general lock-down during the period. Therefore, he remanded the matter back to PCCIT to consider the condonation of delay and pass an order with four weeks thereafter. *(*AY.2020-21)

Patna Metro Rail Corporation Ltd. v. PCIT (2023) 150 taxmann.com 434 / 333 CTR 557 (2024) 460 ITR 731 (Patna)(HC)

S. 119 : Central Board of Direct Taxes-Return-Delay in filing return-Genuine hardship-Delay of 15 days-Board is directed to consider the application for condonation of delay. [S. 119(2)(b),139, Form No 10IC, Art. 226]

Held, that the delay was of only about fifteen days. That being the position, this was a fit case where the Central Board of Direct Taxes may exercise its discretion under clause (b) of sub-section (2) of section 119 of the Act and do the needful. (AY.2021-22)

Deeprock Tms Pvt. Ltd. v. PCIT(2023)456 ITR 701 /152 taxmann.com 234/ 333 CTR 198 (Telangana)(HC)

S. 119 : Central Board of Direct Taxes-Form No 10IC-Condonation of delay-Directed to dispose the application within a period of six weeks-Stay application-Assessing Officer is directed to consider and dispose of application within a period of eight weeks [S. 115BAA,220, Art. 226]

Assessee filed an application under section 119(2)(b) dated 6-12-2022 before Chairman, CBDT for condonation of delay in filing Form No. 10-IC under section 115BAA which was pending. On writ the assessee paryaed for issuing the direction to Chairman, CBDT to consider and dispose of its aforesaid application. High Court directed the Chairman, CBDT to consider and dispose the application within a period of six weeks. Court also directed the Assessing Officer to consider and dispose the application for stay application within a period of eight weeks. (AY. 2021-22)

Metroark (P.) Ltd. v. ITO (2023) 459 ITR 788/ 295 Taxman 504 (Cal.)(HC)

S. 119 : Central Board of Direct Taxes-Delay in filing of return-Refund-Genuine hardship-Condonation of delay-Matter remanded to Board to consider the application for condonation of delay in its proper perspective. [S. 119(2)(b), 139(4), Art. 226]

Assessee filed its return of income belatedly and sought refund along with a request for condonation of delay in filing ITR which was rejected on the ground that the order had not been sent to Member, CBDT on whose approval said order was supposed to have been passed, indicating that Board had not considered assessee's application and the reason for delay being one of partners was abroad, but was not supported by any evidence. Allowing the petition. The court held that the assessee is seeking refund of a large amount, refusing to condone delay could result in a meritorious matter being thrown out at very threshold and cause of justice being defeated and the Board not having considered prayer for condonation of delay in its proper perspective the order was quashed and set aside and matter was to be remitted back to Board for de novo consideration. Circular F.No.312/22/2015-OT, dated 9-6-2015(2015) 374 ITR 25 (St). Referred, Sitaldas K.Motwani v. DGIT (2010) 323 ITR 223 (Bom)(HC), Malini (B.M.) v.CIT (2008) 306 ITR 196 (SC), Gujarat Electric Co.Ltd v.CIT (2002) 255 ITR 396 (Guj)(HC), Sehaammal (R) v.ITO (1999) 237 ITR 185(Mad)(HC). (AY. 2016-17)

R.K. Madhani Prakash Engineers J V v. UOI (2023) 458 ITR 48 / 295 Taxman 48 / 334 CTR 500 (Bom.)(HC)

S. 119 : Central Board of Direct Taxes-Refund-Tax deduction at source-Limitation-Condonation of delay-Rectification application filed after over 12 years from the relevant assessment year is barred by limitation. [S. 119(2)(b), 237, Art.226]

Hon'ble Uttarakhand High Court held that with the expiry of limitation, the law bars the remedy even if the right is not extinguished. Therefore, the right of the assessee, to avail of the remedy of rectification, stood barred by the law of limitation. The assessee has only itself to blame for not availing of the remedy available to it within the period of limitation, or even within the period during which the application for condonation of delay could be entertained. Hon'ble High Court, therefore, refused to entertain the petition of the assessee on the ground that the assessee filed an application seeking rectification of assessment and refund of TDS after about 12 years from assessment year. Hence, same is barred by limitation and therefore, not maintainable. Circular No. 9 of 2015 dt.9-6-2015(2015) 374 ITR 25(St) (AY. 2008-09)

Gee Cee Metals Pvt. Ltd. (AOP) v. PCIT (2023) 455 ITR 211/ 334 ITR 332 /152 taxmann.com 31 (Uttarakhand)(HC)

Editorial : SLP dismissed, as withdrawn, Gee Cee Metals (P.) Ltd. (AOP) v. PCIT (2023) 157 taxmann.com 530 (SC)

S. 119 : Central Board of Direct Taxes-Return-Delay in filing of return-Refund-Condonation of delay-Non-Resident-Aware of process of filing return of income-No genuine hardship or reasonable case fir late filing of the return-No violation of principles of natural Justice-Order sustainable. [S. 119(2)b), 139, 237 Art. 226]

The assessee was a foreign citizen and had overseas citizen of India status in India..The assessee had filed his return of income for the AY. 2011-12 within the time limit proved that he was aware of the process of filing the return. Consequently, the finding that there was no genuine hardship or reasonable cause for late filing of the return was proper for the Assessment year 2011-12. The order was clear and cogent and had been passed with the approval and sanction of the Principal Chief Commissioner. On a writ petition challenging the order passed under section 119(2)(b) of the Income-tax Act, 1961, seeking a direction to the Principal Commissioner to condone the delay in filing return of income and grant refund under section 237 of the Act. Dismissing the petition, the Court held that ignorance of law was not an excuse, there was no violation of principles of natural justice since the assessee's contentions had been duly considered and he was heard.(AY. 2011-12)

Puneet Rastogi v. PCIT (IT) (2023)454 ITR 37 /148 taxmann.com 362 (Delhi)(HC)

Editorial : SLP dismissed, Puneet Rastogi v. PCIT (IT) (2023)454 ITR 39/ 292 Taxman 69 (SC)

S. 119 : Central Board of Direct Taxes-Instructions-Delay in filing of return-Application for condonation of delay was filed after 16 years-Delay was rejected-Writ petition was dismissed.[S. 119(2)(b), 139, Art. 226]

Assessee filed return of income belatedly. After 16 years it filed an application with CBDT for condonation of delay in filing return.CBDT rejected application. On writ the Court held that since application for condonation of delay itself had been filed belatedly, CBDT had rightly rejected application. Court also observed that even a declaration of loss would require assessment so that only the genuine loss is recognised and which would be available for carry forward to be set off against future income or to claim refund. Accepting assessee's request for such a huge delay would amount to reopening the assessment of assessment year 1998-99

in assessment year 2023-24.Referred. CBDT Circular No. 9/2015, dated 9-6-2015. (2015) 374 ITR 25 (St). (AY. 1998-99)
Mathuradas Narandas & Sons Forwarders Ltd. v. CBDT, Ministry of Finance, Department of Revenue (2023) 294 Taxman 394 (Bom.)(HC)

S. 119 : Central Board of Direct Taxes-Instructions-Return-Delay of 21 seconds-Disallowance of claim under section 80IA-Delay was condoned. [S. 80IA, 119(2)(b), 143 (1), Art. 226]
For the assessment year 2020-21 the assessee filed the return of income on 00.00.21 am of 16-2-2021, *i.e.,* with a delay of 21 seconds as against due on 15-2-2021 midnight. The Assessing Officer disallowed the claim under section 80IA and issued intimation under section 143(1) of the Act. The application for condonation of delay was rejected by the Principal Commissioner.*On writ allowing the petition the Court held that* the quantum of delay is not substantial, being 21 seconds. Undoubtedly the assessee ought not to have undertaken the exercise of filing of the return literally at the last second, but the 21 seconds delay could be considered to be a human error and condoned bearing in mind the dictates of substantial justice the request for condonation has been considered not by a machine but a human being, who could well have considered the request in proper perspective condoning the delay of 21 seconds. The delay was condoned. The return of the assessee shall be taken to have been filed in time with all consequences thereof. (AY. 2020-21)
Balaji Super Alloys v. PCIT (2023) 294 Taxman 346 (Mad.)(HC)

S. 119 : Central Board of Direct Taxes-Instructions-loss return-Condonation of delay of 36days-Affidavit of Charted Accountant-genuine-hardship-Delay in filing the of loss return was condoned. [S. 119(2)(b), 139, Art. 226]
Assessee filed loss return on 23-3-2021 after delay of 36 days and sought condonation of delay. Principal Chief Commissioner rejected application for condonation of delay. On writ allowing the petition the Court held that since Chartered Accountant of assessee had filed affidavit before Principal Chief Commissioner stating that there was marriage of her elder sister on 16-2-2021 and she was discharging her family obligations and had taken responsibility mentioning that there was failure on her part to file return before due date, case of assessee fell within sweep of phrase 'genuine hardship' used in section 119(2)(b). Accordingly the delay in filing return was condoned. Circulars and Notifications : Circular No. 9/15, dated 9-6-2015 (2015) 374 ITR 25 (St). (AY. 2020-21)
ADCC Infocom (P.) Ltd. v. PCCIT (2023)458 ITR 456 / 293 Taxman 379 / 335 CTR 1009 (Bom.)(HC)

S. 119 : Central Board of Direct Taxes-Application for condonation-Return-Bonafide reasons-Delay in filing of return was condoned-Allowed to file the return within specified time. [S. 119(2b), 139(1), Art. 226]
The Assessee failed to file its return of income due to the change of auditor and Covid 19 pandemic. The Petitioner then applied under section 119(2)(b) seeking condonation of delay in filing the return. The authority rejected the application. The High Court noted that there were bona fide reasons and unavoidable circumstances. Further, the delay was less than 1 year and was not an extraordinary delay or laches on the part of the Assessee. Hence, the Writ Petition was allowed, and the Assessee was allowed to file the return within the specified time. (SJ) (AY 2020-21)
Combined Tracom (P.) Ltd. v. UOI (2023) 291 Taxman 9 (Karn)(HC)

S. 119 : Central Board of Direct Taxes-Intimation-Defective return-Failure to file audit report-Commissioner has the power to condone the delay-Order rejecting the application was quashed. [S. 119(2)(b), Form 3CB, Art.226]

Assessee made an application seeking condonation of delay and claimed that due to health reasons and the non-availability of his auditor, he was unable to comply with rectify the intimation. Principal Commissioner placed reliance on Circular No. 9/2015, dated 9-6-2015 and rejected the application on the ground that the assessee had not filed an audit report in Form 3CB. On writ, the Court held that CBDT Circular No. 9/2015, dated 9-6-2015 indicate that revenue was empowered/authorized to condone delay in terms of said Circular and application could not be rejected merely on basis of said CBDT Circular. Accordingly, the application for condonation of delay was allowed and the assessee was to be directed to submit form 3CB. (SJ)

Narayanan Kollakkil Kutty v. PCIT (203) 290 Taxman 577 (Karn.)(HC)

S. 119 : Central Board of Direct Taxes-Return-Delay of 33 days in filing of return-Application to Chief Commissioner-Refusal to condone the delay was not justified [S. 119(2)(b), 139, Art. 226]

CBDT declined to condone the delay of 33 days in filing of return. On writ, the Court held, that the assessee explained by cogent reasons that the accountant who was handling the work to file returns, etc., suffered the covid 19 virus and due to his indisposed health the completion of work was delayed resulting in the delayed filing of return. The Chief Commissioner could not have been insensitive to the cause which was genuine. The delay was only twenty-three days. The delay in filing the return was condoned and the Assessing Officer was directed to accept the return. (AY.2020-21)

Shailesh Vitthalbhai Patel v. CCIT (2023)451 ITR 504/ 290 Taxman 466 (Guj)(HC)

S. 124 : Jurisdiction of Assessing Officers-Transfer of case from Mumbai to Pune-Order of assessment by Assessing Officer of Mumbai is not valid.[S. 143(3)]

Dismissing the appeal of the Revenue the Court held that that the Tribunal was right in holding that after the Commissioner had passed an order on December 19, 2014, transferring the assessment jurisdiction from Mumbai to Pune, the Assessing Officer at Mumbai had no jurisdiction over the file of the assessee on the date when the order of assessment came to be passed on December 24, 2014 by him.(AY.2010-11)

PCIT v. Capstone Securities Analysis Pvt. Ltd. (2023)457 ITR 775 / 146 taxmann.com 423/320 CTR 565 (Bom)(HC)

S. 127 : Power to transfer cases-SLP dismissed-Observations of High Court to have no reflection on meritS. [S. 127(2),132, 133A Art. 136, 226]

Dismissing the SLP the Court held that the assessee had been afforded effective opportunity to place all materials including an opportunity of personal hearing which had been availed of and that there was no good ground to interfere with the administrative order of transfer. Court also held that the observations in the order of the High Court shall be construed only as a prima facie expression and would have no reflection on the merits of the case.(SLP (C) No. 4348 of 2023 dt. 13-3-2023)

Kamal Nath v. PCIT (2023)453 ITR 748/ 292 Taxman 240 (SC)

Editorial: Kamal Nath v. PCIT (No. 3) (2023) 453 ITR 604 / 292 Taxman 295/ 331 CTR 306/ 223 DTR 73 (Cal)(HC) is affirmed.

S. 127 : Power to transfer cases-From ITO, Udaipur to ITO, Kozhikode-Opportunity of hearing is not given-Order and notice is quashed and set aside. [Art.226]

Allowing the petition the Court held that opportunity of being heard before transferring the case of the assessee from ITO, Udaipur to ITO, Kozhikode was not granted. Transfer order and consequential notices are set aside-Respondents are permitted to resume the proceedings from the stage former to the transfer order was passed. Followed, Murliwala Agrotech (P) Ltd. v. UOI & Ors. (2022) 327 CTR (Raj) 662 (2022) 216 DTR (Raj) 237.
Mahendra Singh Rao v. PCIT (2023) 335 CTR 1108 (Raj) (HC)

S. 127 : Transfer of case-Proceedings for assessment is pending-At the motion stage the Court cannot pass the interim order-Pendency of writ petition will not bar for proceed with assessment proceeding.[S. 148, 148A(d), Art. 226]
Dismissing the petition the Court held that at the motion stage this Court cannot pass the interim order of transferring back the file to Kolkata; let the respondents file affidavit-in-opposition; pendency of this writ petition will not be a bar for the authority concerned to proceed with the assessment proceeding.(SJ)
Nouvelle Advisory Services (P) Ltd. v ACIT (2023) 331 CTR 239/ 223 DTR 449(Cal)(HC)
Editorial : Order of single judge is modified, Nouvelle Advisory Services (P.) Ltd. v. ACIT (2023) 291 Taxman 583/ 331 CTR 235/ 223 DTR 145 (Cal)(HC)

S. 127 : Power to transfer cases-Order transferring case from Delhi to Mumbai was passed but said order did not bear a Document Identification No (DIN), which is a requirement of CBDT Circular No. 19/2019, dated 14-8-2019-Order is set aside. [S. 127(2) 132, 133A,Art. 226]
A search was conducted under section 132 concerning a group in Mumbai-Transfer of cases concerning assessee to Dy. Commissioner, Mumbai was proposed for administrative convenience and co-ordinated investigation carried out qua Suumaya Group and order was passed transferring case of assessee from Delhi to Mumbai.On writ the Court held that since the order did not bear a Document Identification No (DIN,) which is a requirement of CBDT Circular No. 19/2019, dated 14-8-2019, accordingly the order is set aside.
Kamlesh Kumar Jha v.PCIT (2023) 335 CTR 824/ (2024) 296 Taxman 511 (Delhi)(HC)
Sushma Jha v.PCIT (2023) 335 CTR 824/ (2024) 296 Taxman 511 (Delhi)(HC)
S. 127 : Power to transfer cases-Search and seizure-Effective and expeditious completion of search proceedings-Objections considered-Order of transfer is valid. [S. 132, Art. 226]
Dismissing the petition the Court held that a perusal of reasons assigned in the order indicated that they were based on reasonable considerations which had nexus with the ultimate object of public interest sought to be achieved. The principles of natural justice were duly complied with. Order of transfer is held to be valid.
Chhattisgarh Distilleries Ltd. v. UOI (2023)455 ITR 533 (MP)(HC)

S. 127 : Power to transfer cases-Cases transferred from E-assessment unit to Central Circle-Sanction of CBDT is not required as provided in E-assessment Scheme-Writ petition is dismissed.[S. 119, 143(3A, 143(3B), Art. 226]
The assessee challenged the transfer of case from assessment circle to Central Circle. Dismissing the petition the Court held that transfer of assessments from National e-Assessment Centre to Central Circle for co-ordinated investigation by way of the order passed under section 127 was in accordance with law and valid. Some of the relevant findings are here in below:
(a) the concept of Faceless Assessment was introduced in 2020, yet the Jurisdictional Assessing Officer continues to exercise concurrent jurisdiction with the Faceless Assessing

Officer; (b) the powers under the sec. 127 would continue to apply to all cases in an unmodified manner since the Faceless Assessment Scheme has not modified the said section; (c) Prior approval of CBDT as specified in the E-assessment scheme is not required for cases transferred u/s. 127; (d) the power of transfer u/s. 127 is not in any manner barred by the Faceless Assessment Scheme when the transfer is sought to be made from a Jurisdictional Assessing Officer under one Principal Commissioner of Income-tax to another Assessing Officer under a different Principal Commissioner of Income-tax who are not exercising concurrent jurisdiction over the case.(AY. 2018-19)

Sanjay Gandhi Memorial Trust v. CIT(2023) 455 ITR 164 /294 Taxman 130 / 332 CTR 817 (Delhi) (HC)

S. 127 : Power to transfer cases-Search operations-No incriminating material-No connection between the two entities-Transfer is invalid.[S. 132, Art.226]

Following a search and survey operation on entities in Jaipur and the Assessee and its companies in Mumbai, an order was passed transferring the assessment jurisdiction from Mumbai to Jaipur. The Assessee challenged this transfer on the grounds that no incriminating material was found during the survey operation, neither in the case of the Assessee nor in the case of the company in Jaipur.

The Court noted that the affidavit in reply did not contain specific averments about any incriminating material discovered during the search. Additionally, neither the show cause notice nor the transfer order addressed the Assessee's contention that no incriminating material connecting the two entities in Mumbai and Jaipur was found.The Court observed that all the proceedings were initiated based on speculation that the seized documents and data might be related to the Assessee and other entities. When centralizing proceedings, it is crucial to establish the relationship between the two entities. However, the Revenue failed to provide any reasons except speculation for centralizing the case. Accordingly the transfer held to be invalid. (AY. 2021-22)

Kamal Varandmal Galani v. PCIT [2023] 294 Taxman 265 /(2024) 460 ITR 380 (Bom)(HC)

S. 127 : Transfer of case-No show cause notice was issued-Matter remanded to Commissioner for passing speaking order after affording opportunity of hearing.[S. 148, 148A(d), Art. 226]

The High Court in appeal held that if the direction of the single judge is to be maintained that the assessment proceedings would continue till the petition is decided it would amount to rendering the writ petition infructuous. Hence, the order passed by the PCIT ordering transfer of the case is to be treated as an SCN and objections filed within 15 days and the Section 148A(d) order and Section 148 notice be kept in abeyance.

Nouvelle Advisory Services (P.) Ltd. v. ACIT (2023) 291 Taxman 583/ 331 CTR 235/ 223 DTR 145 (Cal)(HC)

Editorial : Order of single judge is modified, Nouvelle Advisory Services (P.) Ltd. v. ACIT (2023) 331 CTR 239/ 223 DTR 449(Cal)(HC)

S. 127 : Power to transfer cases-Kolkata to Delhi-Search and seizure-Survey-Opportunity of hearing was given-Transfer for purposes of Co-Ordinated and detailed Investigation-Order of transfer was valid-The assessee has no right to be assessed under the Income-tax Act, 1961 in a particular area or locality-An order of transfer is purely in the nature of an administrative order passed for consideration of convenience of the Department and no possible prejudice can be involved when the cases have been transferred [S. 127 (2), 132, 133A Art.226]

Held, dismissing the appeal the Court held that in the writ petition elaborately considered the facts and had upheld the order of transfer of case under section 127. The assessee was precluded from stating that the notice was coloured on facts. The notice dated January 11, 2022 issued by the Department disclosed the reasons for proposed transfer of case and the assessee had submitted his response as to how those reasons were not germane for exercise of jurisdiction under section 127. The assessee had been afforded effective opportunity to place all materials including an opportunity of personal hearing which had been availed of. After considering the response given by the assessee, the Principal Commissioner had passed the order of transfer dated February 23, 2022 with elaborate reference to all the factual details of the seized documents, recorded statements of parties indicating that unaccounted money was transferred from the assessee's official residence at Delhi. The source of such money was required to be properly established and could only be identified by proper investigation and assessment. Further the claim of the assessee that such transactions were not linked to his personal income account could not be taken at face value without proper investigation and assessment. Therefore, the authority had opined that the Assessing Officer entrusted with the assessment of all other parties involved in the unaccounted money transactions was the most suitable Assessing Officer to complete the assessment as he was aware of the whole picture of the case and could do justice to the Revenue as well as to the assessee. Upon appreciation of the facts, the onus on the Department to justify the order of transfer had been proved. While examining the correctness of the administrative action, the court could not do the role of an Assessing Officer which was not permissible in a writ proceeding. The factual details which were set out in the court's order were to justify the order of dismissal of the writ petition and could at best be construed to be reasons for refusing to exercise jurisdiction to interfere with the order of transfer and nothing more. The findings rendered therein were only prima facie findings and they could never cause any dent upon the ultimate decision which the Assessing Officer would take after considering the relevant facts and documents furnished by the assessee. There was no material on record to hold that the assessee was only a witness, and such a contention, being self serving was rejected. On account of the facts that the assessee in the writ petition had sought to justify his contention on the reasons recorded, this had necessitated the Department to bring facts on record and the assessee having invited such a response could not raise any complaint in this regard. The court was required only to consider as to whether there were grounds for transfer as emanating from the reasons recorded and there were adequate reasons. The facts that had emerged had showed that there were sufficient reasons assigned in the order of transfer of case. The sufficiency or insufficiency of such reasons were beyond the pale of adjudication in the present litigation, lest it might prejudice the assessee. There was no challenge to the decision-making process. The plea of mala fides had not been pleaded or proved. The plea of inconvenience had been found to be not tenable. Therefore, there was no good ground to interfere with the administrative order of transfer which was upheld. The Court also observed that the assessee has no right to be assessed under the Income-tax Act, 1961 in a particular area or locality. An order of transfer is purely in the nature of an administrative order passed for consideration of convenience of the Department and no possible prejudice can be involved when the cases have been transferred under section 127.Relied on Pannalal Binjraj v. UOI (1957) 31 ITR 565 (SC), Kashiram Aggarwalla v. UOI (1865) 56 ITR 14 (SC).(M.A.T.No.40 of 2023 and C.A.Noo. 1 of 2023 dt. 10-2-2023)

Kamal Nath v. PCIT (No. 3) (2023)453 ITR 604 / 292 Taxman 295/ 331 CTR 306/ 223 DTR 73 (Cal)(HC)

Editorial. Decision of the Single Judge is affirmed, Kamal Nath v. PCIT (NO. 2) (2023)453 ITR 588/ 291 Taxman 532/ 330 CTR 345/ 221 DTR 313 (Cal)(HC).SLP of assessee is dismissed, Kamal Nath v. PCIT (2023)453 ITR 748/ 292 Taxman 240 (SC)

S. 127 : Power to transfer cases-Kolkata to Delhi-Natural justice-Failure to give an opportunity-Order was set aside. [S. 127(2), 132, 133A, Art. 226]

Allowing the petition the Court held that the order dated February 18, 2021 of transfer of the assessee's case under section 127(2) from Kolkata to Delhi having been passed by the Principal Commissioner without giving opportunity of hearing to the assessee and without recording the reasons for not giving opportunity of hearing before passing such order and without considering and disposing of the objections to the notice was illegal, invalid and not sustainable in law and therefore, quashed. The respondents were directed to send back the case of the assessee from Delhi to Kolkata immediately after receipt of communication of this order. Quashing of the order of transfer of the case would not prevent the Principal Commissioner from taking action for transfer of the case in future if it was found that there was cogent material for transferring the case complying with the statutory provisions and by observing the statutory requirements under section 127(2). (W.P. A.No. 11901 of 2021 dt. 27-9-2021)

Kamal Nath v. PCIT (NO. 1) (2023)453 ITR 583 (Cal) (HC)

S. 127 : Power to transfer cases-Kolkata to Delhi-Opportunity of hearing was given-Transfer for purposes of Co-Ordinated and detailed Investigation-Order of transfer was valid. [S. 127 (2), 132, 133A, Art.226]

Dismissing the petition the Court held that the requirements under section 127(2) were fulfilled as proper opportunity had been granted to the assessee to represent his case and a reasoned order had been communicated. Upon perusal of the records it was clear that the Principal Commissioner had clearly delineated the reasons of the transfer under section 127 of the Act in the order for a detailed and co-ordinated investigation of the assessee. One could not say that the present transfer was based only on surmises and conjectures as it was evident that the name of the assessee had been taken by some persons on whom investigation, search and survey was carried out. Furthermore, the statement of certain persons also indicated that there was transfer of cash to the tune of almost Rs. 20 crores from the residence of the assessee at Delhi. It was clear that the present transfer was based on cogent material that required further investigation by the tax authorities. The argument of the assessee that he was willing to co-operate in the investigation, thereby negating the requirement of the transfer, was of no relevance as the officer conducting the co-ordinated search was best suited to investigate and carry out the assessment of the assessee. At the stage of passing an order under section 127, after considering objections of the assessee, the authorities are not required to give out the entire case of the tax authorities. Furthermore, though the assessments of some of the involved persons were complete, that could not itself be a bar for a transfer order under section 127 of the assessee's assessment. Nor could the fact that he had not been subjected to any search or seizure be a bar to transfer. There was enough material garnered from other persons to establish a concrete nexus. The order of transfer was valid. (W.P.No. 3868 of 2022 dt. 6-1-2023 (SJ)

Kamal Nath v. PCIT (NO. 2) (2023)453 ITR 588/ 291 Taxman 532/ 330 CTR 345/ 221 DTR 313 (Cal)(HC)

S. 127 : Power to transfer cases-Jurisdiction-CBDT Notification-Survey cases where material impounded to be centralised-AO was aware of the transfer-Assessment by AO without jurisdiction. [S. 133A]

Held, that by notification, the Central Board of Direct Taxes issued directions that all cases covered under section 133A of the Act having impounded material would be transferred to the Central Charge under section 127 of the Act. The Assessing Officer while framing

assessment was very much aware about the impounded material. It was the duty of the Assessing Officer transferring the file to inform the assessee of the change in jurisdiction and not the other way round. There was almost one month available for transferring the file to the Central Circle. The assessment framed was without jurisdiction. The assessment framed was without jurisdiction.(AY. 2003-04 to 2005-06)
Prabhakar v. Add. CIT (2023)101 ITR 82 (SN)(Chennai) (Trib)

S. 127 : Power to transfer cases-Jurisdiction-CBDT Notification-Survey cases where material impounded to be centralised-Assessee case transferred thereof-AO aware of the transfer-Assessment by AO without jurisdiction-Order is without jurisdiction. [S. 133A]
Held, that by notification, the Central Board of Direct Taxes issued directions that all cases covered under section 133A of the Act having impounded material would be transferred to the Central Charge under section 127 of the Act. The Assessing Officer while framing assessment was very much aware about the impounded material. Thus, assessment framed was without jurisdiction.(AY. 2003-04 to 2005-06)
Prabhakar v. Add. CIT (2023)101 ITR 82 (SN)(Chennai) (Trib)

S. 132 : Search and seizure-Block assessment-Validity of search proceedings-Satisfaction note was not produced before the Court in spite of specific direction given by the Court-All proceedings including the prosecution are quashed-Court also observed that the order does not preclude the Revenue from taking any such proceedings as they may be so advised and to utilise the information or material in such proceedings against the assessee as is permissible in law. [S. 132, 153A, 158BC, 158BFA, 276C, 277, 278B, Art. 226]
A search and seizure action was carried out at Assessee's premises under section 132(1) of the Act. Block assessment order was passed. Penalty has also been levied under section 158BFA and prosecution proceeding has been initiated on basis of such block assessment order and a complaint filed before Court of Additional Chief-Metropolitan Magistrate for offences allegedly committed under section276C and 277 read with section 278B. Assessee objected to passing of block assessment order by filing an additional ground in appeal filed by it before CIT(A) urged that jurisdictional pre-conditions in section 132(1) viz., clauses (a) to (c) thereof had not been fulfilled. Additional ground did not find favour with CIT(A). On appeal the Tribunal directed the Revenue to produce the records containing satisfaction recorded before issue of authorisation of the search warrant under section 132 (1) of the Act. The Revenue did not comply with the direction of the Tribunal. The Revenue filed writ petition seeking writ of certiorari for quashing and setting aside the interim order passed by the Tribunal directing the Revenue to produce the record containing the satisfaction note. The Revenue Contended that Tribunal is not empowered to look in to the said matter hence the direction is invalid. The Court issued rule in the writ petition of the Revenue. The assessee also filed writ petition challenging the validity of the search action and quashing and setting aside the consequent block assessment block assessment order, penalty order and the complaint/prosecution filed before the Magistrate Court. High Court directed the Revenue to produce satisfaction note. The Revenue Could not produce sataisfaction note. Allowing the petition the Court held that it is settled law that if no reason was ascribed for search and seizure action taken under Section 132 it would be illegal. Exercise of power under Section 132 is a serious invasion upon rights, privacy and freedom of tax-payer. Courts have held that this power must be exercised strictly in accordance with law and only for purposes for which law authorizes it to be exercise. Courts, after scrutiny, can decide on correctness of opinion formed by Income Tax Officer where action of officer issuing authorization or of Designated

officer is challenged, the Officer concerned must satisfy Court about regularity of his action. If action is maliciously taken or power under section is exercised for a collateral purpose, it is liable to be struck down by Court. If conditions for exercise of power are not satisfied proceeding is liable to be quashed. Courts have held that it is only at stage of commencement of assessment proceedings after completion of search and seizure, if any, that requisite material may have to be disclosed to assessee. Though it is settled law that while sufficiency or otherwise of information cannot be examined by court in writ jurisdiction, existence of information and its relevance to formation of belief is open to judicial scrutiny because it is foundation of condition precedent for exercise of a serious power of search of a private property or person, to prevent violation of privacy of a citizen. It is also a settled law that court could examine whether reasons for belief have a rational connection or relevant bearing to formation of belief and search warrant could not be issued merely with a view to making a roving or fishing enquiry. Reasons will have to be placed before High Court in event of a challenge to formation of belief of competent authority in which event Court would be entitled to examine reasons for formation of belief, though not sufficiency or adequacy thereof. In other words, Court will examine whether reasons recorded are actuated by malafides or on a mere pretence and that no extraneous or irrelevant material has been considered. Such reasons forming part of satisfaction note are to satisfy judicial conscience of Court. Since satisfaction note which formed very basis for issuance and authorisation of search warrant under section 132(1) has not been made available in spite of a specific direction given by Tribunal way back on 17.06.2002 and repeated by this Court on 30.06.2023 an adverse inference needs to be drawn in respect of same especially having regard to circumstances set out here in before. Since, Revenue has failed to produce satisfaction note search action under section 132(1) and, consequently, block assessment order passed under section 158BC, order levying penalty under section 158BFA and Criminal Case is quashed. Court also observed that the order does not preclude the Revenue from taking any such proceedings as they may be so advised and to utilise the information or material in such proceedings against the assessee as is permissible in law. Referred, PDIT (Inv) v.Laljibhai Khamjibhai Mandalia (2022) 327 CTR 353/ 215 DTR 417/ 140 taxmann.com 282/288 Taxman 361 (SC)/[2022] 446 ITR 18 (SC)

ACIT v. Marico Industries Ltd.(2023) 334 CTR 201 (Bom) (HC)
Marico Industries Ltd v.ACIT (2023) 334 CTR 201 (Bom)(HC)

S. 132 : Search and seizure-Reason to believe-Adequacy of reasons not within scope of judicial review-Writ petition dismissed. [S. 69, 131, 132(1)(bb), 133A]

Writ petition is filed contending that after the search and seizure conducted under section 132 in the year 2015, there could have been no materials for the formation of opinion to conduct another search in the year 2017 and therefore the second search was not bona fide but a mere pretence to cause harassment to the assessee and whether it was in accordance with the provisions of section 132(1)(b) of the Act. Dismissing the petition the Court held that the adequacy of reasons are not within the scope of judicial review.

Sheetal Bamalwa v. UOI (2023)459 ITR 570 (Gauhati)(HC)

S. 132 : Search and seizure-Territorial jurisdiction-Notification No. S. O. 2914(E) Dated 13-11-2014-Extension of territorial jurisdiction only in respect of place of search-No extension of territorial jurisdiction with regard to assesses-Search warrant in form no 45 issued by Deputy Director (Investigation)Bangalore and the assessee is in jurisdiction of Officers of Chennai-Search action is held to be illegal. [S. 120,132(IA), Form No 45, Art. 226]

A writ petition was filed on the ground that the respondent officers situated in Bangalore had entered upon, and conducted search and seizure in the premises of the assessee,at Chennai, in the face of the admitted position that he fell under the jurisdiction of the officers at Chennai and this was illegal and contrary to the Act. Court held that the records showed that the warrant of authorisation dated August 29, 2017 in regard to the search conducted on August 30, 2017 had been issued in form 45, in the name of the assessee, by the Deputy Director (Investigation), Bengaluru. The warrant of authorisation and consequent search proceedings were not valid. Court also held that notification No. S. O. 2914(E) Dated 13-11-2014,Extension of territorial jurisdiction only in respect of place of search and no extension of territorial jurisdiction with regard to assesses.

Anil Jain v. PDIT (Inv) (2023)456 ITR 274 / 223 DTR 241 / 331 CTR 677 / 150 taxmann.com 284 (Mad)(HC)

S. 132 : Search and seizure-Territorial jurisdiction-Notification No. S. O. 2914(E) Dated 13-11-2014-Extension of territorial jurisdiction only in respect of place of search-No extension of territorial jurisdiction with regard to assesses-Search warrant in form no 45 issued by Deputy Director (Investigation)Bangalore and the assessee is in jurisdiction of Officers of Chennai-Search action is held to be illegal..[S. 120,132(IA), Form No 45, Art. 226]

A writ petition was filed on the ground that the respondent officers situated in Bangalore had entered upon, and conducted search and seizure in the premises of the assessee,at Chennai, in the face of the admitted position that he fell under the jurisdiction of the officers at Chennai and this was illegal and contrary to the Act. Court held that the records showed that the warrant of authorisation dated August 29, 2017 in regard to the search conducted on August 30, 2017 had been issued in form 45, in the name of the assessee, by the Deputy Director (Investigation), Bengaluru. The warrant of authorisation and consequent search proceedings were not valid. Court also held that notification No. S. O. 2914(E) Dated 13-11-2014,Extension of territorial jurisdiction only in respect of place of search and no extension of territorial jurisdiction with regard to assesses.

Anil Jain v. PDIT (Inv) (2023)456 ITR 274 / 223 DTR 241 / 331 CTR 677 / 150 taxmann.com 284 (Mad)(HC)

S. 132 : Search and seizure-Release of seized documents-Directions issued for the release of documents pertaining to assessee. [Art. 226]

The assessee filed a writ petition to release of documents pertaining to assessee which were seized from third-party locker. The court directed the concerned statutory authority to issue notice to the assessee and the searched person, to convene on a given date, time and venue, to release the seized documents found in the locker which pertained to the assessee and if after the notice was served the searched person did not join the proceedings, the concerned statutory authority was to release and hand over the documents which concerned the assessee or to its authorized representative.

Munjaal Boutique Homes Pvt. Ltd. v. PCIT (2023)452 ITR 8 (Delhi)(HC)

S. 132 : Search and seizure-Reason to believe-Documents necessary for investigation-Search proceedings valid-Noting information received as well as recording of reasons followed-Notice under section 153A was valid-Satisfaction by jurisdictional Assessing Officer that books of account or documents seized relate to such third person-Notice under section 153C is valid-Transfer of case-Co-ordination and centralisation of assessment proceeding-Transfer is valid-Recovery of tax-Provisional attachment was valid. [S. 127, 153A, 153C, 281B, Code of Criminal Procedure, 1973, Rule 112, Art. 226]

The assessee challenged the search and seizure action and consequential notices. Dismissing the writ petitions the Court held that the files relating to the recording of "information" and "reasons to believe"' showed that the officer had recorded cogent reasons for the initiation of the search itself. The records revealed that the officer had information in his possession to lead to the belief that action under section 132 was warranted. Reasons to believe had been recorded as had the reasons to suspect, based upon which the premises of connected entities and persons had been searched. The procedure to be followed in noting the information received as well as the recording of reasons was in line with the requirements of the Act. Court also held that the search was concluded on August 11, 2019 and notices under section 153A were issued to all the assessees on February 3, 2020. However, it was only on September 10, 2020 that the seized records had been handed over by the officers constituting the search team, to the jurisdictional Assessing Officer. Handing over of the documents beyond 60 days did not vitiate the notices, issued prior to the expiry of the overall limitation provided for completion of assessment. The notices under section 153A were valid. That the proceedings under section 153C were as on date at a very preliminary stage and the assessees had approached the court challenging the very initiation of proceedings by notices. To intervene at this stage would require the establishment of legal error or a high degree of perversity in the proceedings, which threshold had not been achieved in this case. The notices under section 153C were valid. That six assessees had challenged the centralisation of their assessments as being arbitrary, illegal and contrary to the provisions of section 127. A perusal of the files showed that sufficient opportunity had been afforded to the assessees prior to the passing of the impugned orders. With the communication of the reasons and the opportunity granted to respond, the responsibility cast upon the Department by the provisions of section 127 stood substantially discharged. No doubt, the orders of centralisation ought to have been served upon the assessees and the failure to do so constituted a procedural irregularity. However, it was not, on balance, and in the present circumstances, where the assessees had been afforded opportunity to respond and had, in all but one case, not so responded, so grave as to go to the root of the matter and vitiate the proceedings totally. The reasons for centralisation revealed that the consolidation proposed was for reasons of administrative efficiency and convenience and there had been no denial of this aspect of the matter by the assessees. The orders for transfer of cases was valid. That with regard to the challenge to the orders under section 281B though the parties would agree that there had been some extension of the orders passed originally, there was lack of clarity on the number of extensions and the periods that such extensions covered. No material had been placed before the court to the effect that the extensions were contrary to statute. The orders under section 281B were valid. There was no legal infirmity in the notices and orders of assessment. The orders of assessment were valid. (AY-2014-15 to 2019-20)

Chandran Somasundaram v. PDIT(2023) 450 ITR 188 / 330 CTR 237/222 DTR 201/ 145 taxmann.com 6 (Mad)(HC)

S. 132(4) : Search and seizure-Statement on oath-Income from undisclosed sources-Income surrendered during search-Retraction of statement after eight months-Statement cannot be discarded. [S. 131, 132, Art. 136]]

The High Court allowed the Department's appeal against the order of the Tribunal upholding the deletion of the addition of surrendered income, holding that the statement recorded under section 132(4) of the Income-Tax Act, 1961 and later confirmed in the statement recorded under section 131 of the Act, could not be discarded summarily in a cryptic manner simply observing that the assessee had retracted them because such retraction ought to have been generally made within a reasonable time or by filing a complaint to superior authorities or otherwise brought to the notice of the higher officials by filing a duly sworn affidavit or

statement supported by convincing evidence, that such retraction was required to be made as soon as possible or immediately after the statement of the assessee was recorded, that the time when such retraction was made assumed significance which in this case was after almost eight months. On a petition for special leave to appeal to the Supreme Court, dismissing the petition, no case was made out to interfere with the judgment of the High Court.(AY.2013-14)

Roshan Lal Sanchiti v. PCIT (2023)452 ITR 229/ 292 Taxman 549 (SC)

Editorial : PCIT v. Roshan Lal Sanchiti (2023) 150 taxmann.com 227(Raj)(HC), (D.B.I.TA.No. 47 of 2018 dt. 30-10-2018 (Raj)(HC), affirmed.

S. 132(4) : Search and seizure-Statement on oath-Undisclosed investment-Retraction of statement-Opportunity of cross-examination was not given-Merely on the basis of statement addition is not justified.[S. 69, 132, 260A]

Dismissing the appeal of the Revenue the Court held that merely on the basis retracted statement addition was not justified. Order of Tribunal affirmed.

PCIT v. Sanjay Chhabra (2023)453 ITR 516 (Raj)(HC)

S. 132A : Powers-Requisition of books of account-Title over assets-Seizure of cash-Trust-Trustee-Election Commission-Writ is not maintainable. [S. 132B, 246A, Art. 226]

Dismissing the petition the Court held that the issue was to be decided as regards the title over the property. The question of title over the assets (money) was essentially a question of fact which ought to be decided on the basis of the evidence which was to be let in and appreciation of such exercise was beyond the realm of jurisdiction under article 226 of the Constitution of India. However, it would be open to the assessees to avail of the statutory remedy against rejection of the claim of the assessees for return of the assets (money) seized wherein they could raise all the questions including those raised before the court. If the assessees availed of the statutory remedy, the time spent in the writ petition should be excluded while reckoning the period of limitation.(SJ)

Leo Charitable Trust v. P DIT (Inv) (2023)455 ITR 596 / 152 taxmann.com 441 / 333 CTR 858 (Mad)(HC)

Antony Xavier v. P DIT (Inv) (2023)455 ITR 596 / 152 taxmann.com 441 (Mad)(HC)

S. 132B : Application of seized or requisitioned assets-Search and seizure-Return of seized cash-Inordinate delay in returning seized cash-Entitled to interest on amount returned.[S. 132, Art. 226]

Allowing the petition the Court held, that notwithstanding the order of the Tribunal which attained finality on September 25, 2014, the Revenue did not consider it fit to return the cash of Rs. 2,60,000 that was seized on or about July 9, 1996. Moreover, even after the Principal Commissioner passed the order on December 31, 2019 under section 132B of the Act, the Revenue did not consider it fit to process and refund the amount. Even after the petition was filed and served and the lawyer appeared for the Revenue, the Revenue still did not consider it fit to return the money. Therefore, there had been an inordinate delay and this was nothing but a clear case of high handedness on the part of the officers of the Revenue. The assessee would be entitled to interest at 12 per cent. per annum for the post-assessment period, i. e., from September 25, 2014 until payment/realisation. Court also held that the Income-tax Act, 1961 recognises the principle that a person should only be taxed in accordance with law and hence where excess amounts of tax are collected from an assessee or any amounts are

wrongfully withheld from an assessee without authority of law the Revenue must compensate the assessee. (AY.1991-92)

Vinoda B. Jain v.Jt. CIT (2023) 335 CTR 1079 (2024)462 ITR 58 (Bom)(HC)

S. 132B : Application of seized or requisitioned assets- Search and seizure-Adjustment of cash seized from third person Application for such adjustment is mandatory.[S. 132, Art. 226]

The assessee had filed the writ petition for mandamus to direct the third respondent to adjust the cash that was seized from the hands of the assessee's friend on June 20, 2020. Considering the fact that parallel proceedings were pending before the fifth respondent under the Prohibition of Benami Property Transactions Act, 1988, pursuant to the order passed by the court, the assessee had to file an appropriate application before the third respondent in accordance with the provisions of sections 132B of the Act within a period of seven days from the date of receipt of a copy of this order. The third respondent should dispose of the same within a period of eight days thereafter.(AY.2021-22)

Irfanudeen Abdul Munaf v. PDIT (Inv) (2023)459 ITR 566 (Mad)(HC)

S. 132B : Application of seized or requisitioned assets-Failure to deal with application for release of seized articles-Direction by High Court to consider application. [S. 132, Art. 226]

The assessee filed an application on October 26, 2020 before the Assistant Director and Principal Director (Investigation) seeking release of the seized gold ornaments on the ground that it was stock-in-trade and they could not seize the gold ornaments and could only be inventoried. The Principal Director (Inv) had asked the assessee to make application before jurisdictional Assessing Officer citing the provisions of section 132B. The assessee made an application under section 132B(1)(i) of the Act to the Income-tax Officer on March 10, 2021 requesting for release of the seized gold ornaments. However, no reply to the said application was received. On a writ petition to direct the Assistant Commissioner to release the seized gold ornaments weighing 3230.550 grams (including beads weighing 30.280 gms.) of the assessee, the assessee also challenged the unresponsiveness of the Income-tax Officer and the Assistant Commissioner to the application of the assessee made under section 132B of the Act to release the seized gold ornaments. On writ High Court the officer concerned had to decide the assessee's application within period of two weeks from the date of receipt of this order.

Yogeshbhai Chandrakant Pala v. ITO (2023)453 ITR 263 / 292 Taxman 370 (Guj)(HC)

S. 133A : Power of survey-Residential premises-Held to be valid-SLP of assessee is dismissed. [S. 260A, Art. 136]

The High Court dismissed appeals filed by the assessee, holding that the survey conducted on July 14, 2014 at the residential house of R was valid and did not violate the provisions of section 133A of the Income-tax Act, 1961.SLP of Revenue is dismissed. (AY. 2008-09 to 2013-14)

Hillwood Furniture Pvt. Ltd. v. CIT (2023)453 ITR 749 / 294 Taxman 264 (SC)

Editorial : Hillwood Furniture Pvt. Ltd. v. CIT (2023) 152 taxmann.com 326 /21 ITR-OL 634 (Ker)(HC)

S. 133A : Power of survey-Assessment-Residential premises-Portion of residence as office premises-Use of evidence is permissible-Survey at residential premises is held to be valid. [Indian Evidence Act, 1872, S. 65A, 65B]

On appeal, the assessee contended that the survey could not have been conducted at the residence and that conducting a survey at the residence under section 133A was

unauthorized. Accordingly, the documents impounded from the house of Riyaz are in breach of sections 65A and 65B of the Evidence Act, and applying the data alleged to have been retrieved from the three pen drives from Riyaz is impermissible. Affirming the order of the Tribunal the Court held that Explanation to section 133A (1) introduced by Finance Act, 2017 with effect from 1-4-2017 states that a place where any business, profession, or activity for a charitable purpose is carried on shall include any other place, regardless of whether such activities are conducted there or not, therefore, excluding residences from the survey would contradict the language of section 133A and render it ineffective. Order of Tribunal is affirmed.

Hillwood Furniture (P.) Ltd. v. CIT (2023) 152 taxmann.com 326/ 21 ITR-OL 634 (Ker)(HC)

Editorial : SLP of assessee is dismissed, Hillwood Furniture (P.) Ltd. v. CIT (2023) 453 ITR 749 / 294 Taxman 264 (SC)

S. 133A : Power of survey-Surrender of income-Unexplained money-Unexplained expenditure-Excess stocks-Excess stock chargeable to tax as business Income-Deduction of partners' remuneration allowable against income surrendered.[S. 40(b), 69A,69C.]

Held that there being no dispute with regard to the fact that the assets which were found during survey not disclosed in the books of the assessee, pertained to the excess stock in which the assessee conducted business, i. e., bullion, gold, jewellery and ornaments, besides, small quantum of excess cash and details of unaccounted expenditure of renovation of the shop, that in the statement of the partners, recorded during survey, they had admitted to the fact that source of investment in the excess stock found was out of the business income of the assessee only and that the Revenue never questioned this admission of the partners of the assessee-firm and accepted it as such. Order of CIT(A) is affirmed. (AY.2014-15)

ITO v. Riddhi Siddhi Jewellers (2023)107 ITR 662 (Rajkot)(Trib)

S. 139 : Return of income-Revised return after amalgamation-Effect of order of Tribunal or Court in respect of business reorganisation-Provisions of section 170A, as inserted by Finance Act, 2022, would not apply for assessment year 2021-22, but for and from assessment year 2022-23.[S. 139(5), 170, 170A, Art. 226]

Petitioner-transferee company merged transferor company with itself as per approved scheme of amalgamation by NCLT. While revising accounts, etc., post-amalgamation, due date for filing revised return of income had expired, therefore, petitioner filed manual revised return relying upon Supreme Court decision in Dalmia Power Ltd. v. Asstt. CIT (2019) 112 taxmann.com 252/(2020) 269 Taxman 352/420 ITR 339 (SC). However, Department did not accept such return on ground of absence of condonation of delay order of competent authority. On writ the Court held that revised return could not be filed before due date by petitioner since circumstances were beyond control of petitioner, therefore, impugned order is set aside and department is directed to take into account revised return of income filed. Court also held that the provisions of section 170A, as inserted by Finance Act, 2022, would not apply for assessment year 2021-22, but for and from assessment year 2022-23 (AY. 2021-22)

TSI Business Parks Hyderabad (P.) Ltd. v. Dy. CIT (2023) 333 CTR 561 /151 taxmann.com 514 (Telangana) (HC)

S. 139 : Return of income-Private discretionary trust-Status of individual-Central Board of Direct Taxes has authority to Prescribe proper form-Court cannot direct Board. [R. 112, Art. 226]

The assessees, family trusts that claimed the status of private discretionary trusts, filed a writ petition for a mandamus directing the Income-tax Officer, Joint Director (Systems), and the Central Board of Direct Taxes to modify form ITTL-2 in a manner so as to enable the assessees to file returns of income electronically under the status of individual. Court held that rule 112 of the Income-tax Rules, 1962 provides for the prescription of forms by the Central Board of Direct Taxes, and hence it was the Board, which was the appropriate authority to take note of the grievances of the assessee. It did not fall within the domain of the court to structure the forms and contents thereof, as applicable to specific categories of assessees. The assessees were permitted to file representations afresh before the Board, if not already filed, and pursue them in order to obtain remedy, as appropriate.(AY.2019-2020, 2021-22, 2022-23)(SJ)

Mahesh Family Trust v. ITO (2023)459 ITR 739 (Mad)(HC)

S. 139 : Return of income-Permanent Account Number as association of persons-Application for new Permanent Account as charitable organisation-Earlier permanent Account Number is not surrendered-Assessment is valid.[S. 12AA, 139A, Art. 226]

The assessee filed the writ petition to quash the assessment order. dismissing the writ petition, the court held that the earlier return filed relatable to the first permanent account number issued, was as a firm, and not as an association of persons. In the assessment year 2015-16, the assessee filed a fresh application for registering the same institution as a charitable institution under section 12AA of the Act, without surrendering the earlier permanent account number issued in the very same name. This was to avail of the benefit of section 12AA.Court held that the assessee was guilty of misrepresentation and even fraud ; prima facie, from the disclosed facts. (AY.2017-18)

Bright Educational and Welfare Society v.PCIT (2023)456 ITR 406/ 155 taxmann.com 286 /333 CTR 427 (Pat)(HC)

S. 139 : Return of income-Amalgamation-Revised return-Directed the Assessing Officer to accept the manual reurn and pass the order accordingly-170A was applicable only from assessment year 2022-23 onwards, [S. 119(2)(b), 139(5), 170A, Art. 226]

Assessee-company entered into a scheme of arrangement transferring business with Hind Lamps Limited. Approved scheme mandated revised returns of income, tax filings, and accounting adjustments for tax purposes to reflect demerger's effects.Due to COVID-19 lockdowns, preparation of special purpose financial statements and tax audit reports was delayed and assessee manually filed revised income tax returns for assessment years 2014-15 to 2021-22-Assistant Commissioner however, vide order dated 3-6-2022, rejected manual processing of revised returns. He relied on section 119(2)(b) read with Circular No. 9 of 2015, dated 9-6-2015 to state that assessee could file its application before respective authority in granting relief. On writ the Court held that in view of decision of Supreme Court in Dalmia Power Ltd. v. Asstt. CIT [2019] 112 taxmann.com 252/[2020] 26 Taxman 352/420 ITR 339, provision of section 139(5) would not be applicable in a case where revised return could not be filed on account of time taken to grant sanction of Schemes of Arrangement and Amalgamation by NCLT. The Asstt. Commissioner also accepted applicability of said decision but maintained their binding adherence to CBDT Circular, in said circumstances, impugned order dated 3-6-2022 was set aside and revenue authorities were directed to accept and process assessee's manual revised return of income for assessment years 2014-15 to 2021-22. Section 170A was applicable only from assessment year 2022-23 onwards, while assessee's case pertained to assessment years 2014-15 to 2021-22 hence, reliance on new provision and circular would not be applicable in case of assessee. Circular No. 9 of 2015, dated 9th June 2015 and CBDT Circular 19th September 2022. (AY. 2014-15 to 2021-22)

Bajaj Electricals Ltd. v. ACIT (2023) 295 Taxman 449 (Bom.)(HC)

S. 139 : Return of income-Capital loss-Short term capital loss-Carry forward-Entitle to the benefit of extended due date of filing upto 31st October 2019 [S. 74, 80IA(7), 139(1), Expl. 2(a)(ii)]

Held that since the assessee is required to get its accounts audited, the assessee falls in Expln. 2(a)((ii) to S. 139(1) and therefore, it is entitle to the benefit of extended due date of filing of return up to 31 st Oct. 2019 for the assessment year 2019-20. (AY. 2019-20)

Dolli Chandrashekhar Shankar (HUF) v. ACIT (2023) 222 TTJ 1 (Pune)(Trib)

S. 139 : Return of income-Revised return-Original return filed within time-Revised return considered as original return by Centralised processing centre-Denial of loss due to belated filing of return unjustified-No warrant for award of costs under Faceless Regime. [S. 139(1) 139(4), 143(1)]

Held that the assessee had filed its original return on October 30, 2019. The due date for filing the return of income for the year was extended to October 31, 2019. Therefore, the original return filed by the assessee was well within the time. The assessee revised the return on January 15, 2020 and while processing that return the Centralised Processing Centre had considered that return as original and denied the current year losses. the denial of loss is not proper. Tribunal also held that since, the appeal of the assessee had been disposed of under the faceless regime the contention that the officer should be made responsible was not possible under this faceless regime, where personal contact is avoided.(AY.2019-20)

Khadi Grammodhyog Prathisthan v. ACIT (2023)108 ITR 94 /226 TTJ 90 (Jodhpur) (Trib)

S. 139 : Return of income-Foreign tax credit-Assessment-Benefit of tax paid in Kazakhstan is directed to be allowed.[S. 139(4) 143993) Rule, 128(9), Form No 67]

Held that the assessee had filed his return on December 30, 2022, after uploading form on December 29, 2022 and the return was belated under section 139(4) of the Act. Prior to the Income-tax (27th Amendment) Rules, 2022, with retrospective effect from April 1, 2022, the requirement under rule 128(9) of the Income-tax Rules, 1962 was to furnish a statement in form 67 and the certificate or statement from the person responsible for deduction of tax at source specifying the nature of income and the amount of tax deducted thereon on or before the date for furnishing the return of income under section 139(1) of the Act. However, sub-rule (9) of rule 128 was substituted by the Income-tax (27th Amendment) Rules, 2022 ([2022 446 ITR (St.) 52), to provide that the statement in form 67 and the certificate or statement from the deductor shall be furnished on or before the end of the assessment year and the return shall be furnished within the time specified under sub-section (1) or sub-section (4) of section 139. The substitution of sub-rule (9) was given retrospective effect from April 1, 2022, namely, the assessment year commencing from April 1, 2022. The assessment year under consideration being 2022-23, it was governed by the substituted rule 128(9). The assessee furnished the return on December 30, 2022, which was a belated return under section 139(4) of the Act. Thus, the second condition of furnishing the return under section 139 was satisfied. The assessment year under consideration was 2022-23, which ended on March 31, 2023. The assessee furnished form 67 on December 29, 2022 which was well before the time. However, it could not be authentically proved that the relevant certificate or statement of the deductor as per clause (ii) of sub-rule (8) of rule 128 was also furnished with form 67 before March 31, 2023. The order is set aside and the matter restored to the Assessing Officer for examining whether or not the claim of the assessee of having furnished the certificate or statement with form 67 was correct. If it was found to be correct,

the benefit of tax paid by the assessee in Kazakhstan was to be allowed because all other requisite conditions had been found fully satisfied.(AY.2022-23)
Milind Moreshwar Pimpalkhare v. Dy. DIT (2023)107 ITR 73 (SN)(Pune) (Trib)

S. 139 : Return of income-Self assessment tax-Return filed showing tax payable without payment of self-assessment tax-Return not accompanied by the proof of self-assessment tax-Belated return cannot be treated as defective and accordingly, interest u/S. 234A have been rightly computed till the date of filing of belated return. [S. 139(9), 140A, 148, 234A]
The AO computed interest u/s. 234A from due date of filing original return to date of filing return under section 148, treating the belated return filed by the assessee as defective return. The Tribunal held that the return can be considered as defective return only if there is self-assessment tax claimed to have been paid as per Explanation (c)(i) to Sec. 139(9). In absence of the same, the belated return cannot be treated as defective and accordingly, interest u/s. 234A have been rightly computed till the date of filing of belated return.
Nakul Machindra Mhaske v. Income Tax Officer (2023) 103 ITR 37 (SN) (Pune) (Trib)

S. 142(2A) : Inquiry before assessment-Special audit-Reassessment notice issued on the basis of Audit report-Once again notice to Special audit-Notice is quashed by High Court-SLP of Revenue is dismissed. [S. 44AB, 143(3), 148 Art. 136]
The assessment was completed under section 143(3) of the Act. On basis of audit report submitted by PWC, reassessment proceedings were initiated. A notice under section 142(2A) was issued directing assessee to get its accounts audited by a Chartered Accountant. The assessee filed the writ petition challenging the direction. Allowing the petition the Court held that since reassessment proceedings had already been initiated against assessee and, moreover, audit report submitted by PWC was also on record, no useful purpose would be served by getting accounts of assessee audited again.Notice was quashed. SLP of Revenue is dismissed. (AY. 2010-11)
Dy. CIT v. Multi Commodity Exchange of India Ltd. (2023) 456 ITR 772 / 295 Taxman 318 (SC)
Editorial : Multi Commodity Exchange of India Ltd v. Dy.CIT (2018) 100 taxmann.com 180/ 12 ITR-OL 658 / 171 DTR 289/ (2019) 306 CTR 245 (Bom)(HC)

S. 142(2A) : Inquiry before assessment-Special audit-Opportunity of hearing was given-Writ to quash the special audit is dismissed-SLP of the assessee is dismissed. [S. 142(1)]
High Court dismissed the writ petition on the ground that Opportunity of hearing was given. SLP of the assessee is dismissed. (AY. 2017-18)
NBCC (INDIA) Ltd. v. AddI. CIT (2023) 458 ITR 753 /294 Taxman 339 (SC)
Editorial : NBCC (INDIA) Ltd. v. AddI. CIT (2020) 422 ITR 429/ 272 Taxman 65 (Delhi) (HC)

S. 142(2A) : Inquiry before assessment-Special audit-Order must be communicated to the assessee-Order directing special audit never communicated to assessee-Assessment order not passed becoming barred by time-If special audit directed or ordered was communicated to the assessee, time for assessment further extended in terms of provisionS. [Art. 226]
The assessee filed a writ petition against the notice issued by the chartered accountant for undertaking a special audit of the assessee's accounts for the assessment year 2018-19 contending that no speaking order was passed under section 142(2A) of the Income-tax Act, 1961. The High Court dismissed the writ petition holding that no order need be passed, and

only a hearing was required. On appeal allowing the appeal the Court held that, that the reasoning of the High Court was not proper. The Department accepted that the order under section 142(2A) of the Act was never communicated or even uploaded on the portal. The order was required to be communicated to the assessee, so that the assessee could know the reasons, and, if required, exercise the option to challenge the order. This was fundamental. However, the assessment order had not been passed and had become barred by time. Even if filed, the special audit report would be of no avail, as no assessment order could be now passed. The order dated April 19, 2021, directing a special audit under section 142(2A) of the Act was not to be given effect and was to be treated as not passed, as it was never communicated to the assessee. Further, the assessee having consented, time for passing the assessment order was to be extended till December 31, 2023. If the Assessing Officer desired a special audit under section 142(2A) of the 1961 Act, he could either rely upon the earlier notice or issue a fresh notice. If the Assessing Officer relied upon the earlier notice, it was to be so indicated and communicated to the assessee. In either case, a hearing according to the law was to be given. Thereafter if an order under section 142(2A) of the Act was passed, it was to be communicated to the assessee, who would be at liberty to challenge the order in accordance with the law. If a special audit was directed or ordered to be conducted, the date December 31, 2023, would get extended in terms of the provisions of the Act. (AY.2018-19)
Rajiv Gandhi Proudyogiki Vishwavidyalaya v. UOI (2023)451 ITR 170/ 222 DTR 73/ 330 CTR 624/ 292 Taxman 34 (SC)

S. 142(2A) : Inquiry before assessment-Special audit-Remuneration of special auditor to be determined by competent authorities of department-Micro and Small Enterprises Facilitation Council has no jurisdiction to refer to arbitration though Chartered Accountant firm registered as micro enterprise.[S. 142(2D), Rule 14B, Micro, Small and Medium Enterprises Development Act, 2006, S. 2(d), 15,18(3), 20, 24, Art. 226]
The Department has challenged the orders for reference to arbitration passed by the Micro and Small Enterprise Facilitation Council an authority established under section 20 of the Micro, Small and Medium Enterprises Development Act, 2006 on the ground that it had no jurisdiction to deal with claims raised in respect of the fee payable in terms of section 142(2D) of the 1961 Act by special auditor firm engaged under section 142(2A) of the 1961 Act and which was registered as micro enterprise of the Income-tax Act, allowing the petitions, that the invocation of the provisions of the 2006 Act in respect of special audit remuneration under section 142(2D) of the 1961 Act was not tenable and completely misplaced. The 2006 Act had no applicability to the nature of the assignment which had been given to the chartered accountant firm. The determination of the remuneration was solely the prerogative of the Commissioner or the Chief Commissioner and would not be liable to be called into question either in a civil court or in a commercial suit or civil suit as one of recovery of money. The Micro and Small Enterprise Facilitation Council lacked jurisdiction and had even failed to consider as to whether the 2006 Act would itself was applicable or not. Therefore, the references by the Micro and Small Enterprise Facilitation Council, of the claims raised by the chartered accountant firm to arbitration were not sustainable and accordingly set aside.
PCIT v. Micro and Small Enterprise Facilitation Council (2023)456 ITR 207/152 taxmann.com 177 / 333 CTR 572 (Delhi)(HC)

S. 142(2A) : Inquiry before assessment-Special audit-Additional ground is admitted-Order is barred by limitation.[S. 153B, 254(1)
Held that appointment of Special auditor and subsequent proceedings are integral part of the final assessment order, additional ground is admitted. Limitation for original assessment

order was expired on 31 st December, 2008. Order was passed on 21 st August 2009 which is barred by limitation hence quashed. (AY. 2006-07)
Dy.CIT v. Shan Lal Arora (2023) 225 TTJ 289 (Chd)(Trib)
Rajiv Kumar v. ACIT (2023) 225 TTJ 289 (Chd)(Trib)

S. 142(2A) : Inquiry before assessment-Special audit-Referred without examining the accounts-Principle of natural justice-Extended period of limitation is not available-Order is bad in law. [S. 153(3), Explanation1(iii)]
Special audit under section 142(2A) was ordered by Assessing Officer without examining accounts and forming opinion as to complexity of accounts and in violation of principles of natural justice without providing opportunity of hearing to assessee, order appointing special auditor under section 142(2A) was bad in law and extended period of limitation under Explanation 1(iii) to section 153(3) was not available to Assessing Officer and, consequently, assessment order passed in extended limitation period was barred by limitation. (AY. 2006-07)
Rajiv Kumar. v. ACIT (2023] 198 ITD 585/ 225 TTJ 289 (Chd) (Trib.)

S. 142A : : Estimate of value of assets by Valuation Officer-Co-Owner-Assessing officer not assigning reasons why he considered assessee's valuation high so as to necessitate reference, detailed comments on district valuation officer's valuation report not controverted by AO nor reason assigned why report of district valuation officer accepted-FMV determined by assessee's registered valuer in cases of assessee's co-owners accepted in their assessments, addition in case of assessee not warranted. [S. 143(3)]
The Tribunal allowing the appeal held that, the AO had not assigned any reasons why he considered the valuation of the assessee to be high. The AO could not invoke the provisions of s. 142A without assigning tangible basis giving rise to doubt on the fair market value adopted by the assessee on the basis of the report of the registered valuer. When the assessee offered detailed comments on the District Valuation Officer's valuation report asserting that no deficiency in the report of the registered valuer had been pointed out by the District Valuation Officer, that the District Valuation Officer failed to consider the specific features of the property commanding higher value, that the District Valuation Officer did not provide copies of sale deeds of the properties on the basis of which he worked out the average price to be the fair market value as on April 1, 2001, and that the fair market value as on April 1, 2001 as declared on the basis of the assessee's valuation report had been accepted in the case of her two other joint co-owners in assessment orders framed u/s. 143(3). Moreover, the AO had accepted the fair market value as determined by the registered valuer of the assessee in the cases of the assessee's co-owners, her brother and sister. Therefore, the addition in the case of the assessee was not warranted, when the same fair market value had been accepted in the cases of other co-owners.(AY. 2019-20)
Madhurittu Puri, United Kingdom v. Dy. CIT (IT) (2023)105 ITR 66 (SN) (Delhi)(Trib)

S. 143(1) : Assessment-Intimation-Prima facie adjustment Rectification of mistake-Assessing Officer was to be directed to consider application of assessee for rectification afresh and pass a speaking order-Matter remanded. [S. 143(1)(a),154, Art. 226, Form 3CCD]
Allowing the petition against the intimation the Court held that where the assessee in Form 3CD disclosed amount of contingent liability at Rs. 42.94 crores and Assessing Officer while making adjustments under section 143(1)(a) under head 'Amount in Income-tax Returns' reflected figure of '0' instead of Rs. 42.94 crores,. Court directed the Centralized Processing

Centre to consider the application of the petitioner for rectification in the light of the above discussion, within a period of three months and pass a speaking order with respect to the amount of Rs. 42,94,12,920/-.
Sodexo India Services (P.) Ltd. v. CPC (2023) 147 taxmann.com 223 (Bom)(HC)

S. 143(1) : Assessment-Intimation-Invalid return-CPC has no jurisdiction to process the return and disallow the claim.[S. 139(9)]
Held that when the return of assessee was treated as invalid return by CPC under section 139(9), CPC could not have processed said return under section 143(1)(a) by disallowing claim of assessee; processing done by CPC of an invalid return was improper. (AY. 2014-15)
Durgapur Passengers Carriers Association v.ITO (2023) 223 TTJ 1010/ 150 taxmann.com 171 (SMC)(Kol)(Trib)

S. 143(1) : Assessment-Intimation-Employees contribution to Provident fund and Employees' State Insurance-Matter restored to Assessing Officer for verification-If Employees contribution had been remitted within due date from end of month in which salary disbursed entitled to relief. [S. 143(1)(iv)]
Held that the employees' contributions to provident fund and employees' State insurance would have to be added as income of the assessee when they were not remitted within the due dates prescribed under the respective Acts. However, considering the tabulation submitted by the assessee for each of the months in which the salary was actually disbursed, the issue was restored to the Assessing Officer for verification of figures. On verification, if it was found that the employees' contribution to provident fund and the employees' State insurance had been remitted within the due date from the end of the month in which salary was disbursed, the assessee would be entitled to relief and no addition could be made thereon. The Assessing Officer is directed to examine the issue.(AY.2018-19)
P. P. Telecell Marketing P. Ltd. v. Dy. CIT (2023)107 ITR 401 (Delhi) (Trib)

S. 143(1) : Assessment-Intimation-Club membership fee-Auditor has not qualified-Adjustment is not justified. [S. 37(1), 143(1)(a)]
Tribunal held that from records that auditor had given details of payment made to various clubs during year under consideration which were in nature of subscription and auditor had nowhere pointed that expenditure was disallowable. Therefore no adjustment with respect to disallowance of payment made to club could have been made by Assessing Officer in intimation issued under section 143(1) of the Act. (AY. 2018-19)
Ansal Housing Ltd. v. DCIT (2023) 202 ITD 71 (Delhi) (Trib)

S. 143(1) : Assessment-Intimation-Expenses or payments not deductible-Payment to Government-Cash payments exceeding prescribed limits-Payment towards purchase of liquor to a State Government undertaking-CPC Bengaluru would have either accepted said explanation or rejected after giving cogent reasonS. [S. 40A(3), 143(1)(a), R.6DD]
On basis of auditor's qualification that assessee had made payments in a manner otherwise than that prescribed under section 40A(3), CPC, Bengaluru made disallowance without considering assessee's objections. Order of Assessing Officer is affirmed by the CIT(A). On appeal the Tribunal held that the Assessee had claimed that since payments were made towards purchase of liquor from State Government undertaking which did not receive payment in any mode other than cash, therefore, no disallowance u/s. 40A(3) was called for in his hands when payment was made to a State Government undertaking, assessee would fall within realm of rule 6DD(b). Since assessee had made his case fit within exception provided under rule 6DD(b), CPC, Bengaluru is obligated to have either accepted said explanation or

rejected after giving cogent reasons. Since CPC, Bengaluru had not taken into consideration objections filed by assessee, i.e., not complied with 2nd proviso to section 143(1)(a), which rendered entire mechanism provided under section 143(1)(a) as redundant and otiose. Accordingly the matter is restored to file of AO for fresh adjudication after affording a reasonable opportunity of being heard. (AY. 2018-19)
Harshdeep Singh Juneja. v. DCIT (2023) 202 ITD 615 (Raipur) (Trib.)

S. 143(1) : Assessment-Intimation-Co-operative societies-Failure to file return within time prescribed under section 139(1)-Claim of deduction under section 80P could not be denied by making prima facie adjustment.[S. 80P, 139(1), 143(1)(a)(v)]
Held that the Amendment introduced in section 143(1)(a)(v) with effect from 1-4-2021 providing that claim of deduction under section 80P could be denied to assessee, in case assessee did not file its return of income within time prescribed under section 139(1), would not apply to assessment year 2019-20, and therefore, claim of deduction under section 80P during relevant assessment year could not be denied to assessee only on basis of late filing of return. Case of assessee would also not fall within purview of prima facie adjustment under section 143(1)(a)(ii) as it applies only in case of an incorrect claim which is apparent from any information in return. Adjustment is held to be bad in law. (AY. 2019-20)
Chakargadh Seva Sahakari Mandali Ltd. v. DCIT (CPC) (2023) 202 ITD 793 (Rajkot) (Trib.)

S. 143(1) : Assessment-Intimation-Co-operative society-Adjustment is not valid. [S. 80AC, 80P, 139(1), 143(1)(a)]
The amendment to S 80AC, vide the Finance Act, 2018, w.e.f. 01.04.2018, no deduction would be admissible under certain sections of Chapter VIA of the Act, unless the assessee furnishes his return of income for the assessment year on or before the "due date" specified u/s 139(1). No such amendment was made available in sec 143(1)(a) till 01.04.2021. Therefore, no adjustment to the returned income of the assessee to the said effect could have been carried out during the A.Y.2018-19. Thus, the disallowance of the assessee's claim for deduction u/s.80P for a period prior thereto i.e. A.Y.2018-19 could not have been carried out in the garb of an adjustment u/s.143(1)(a) of the Act. (AY. 2018-19)
Jila Alp Sankhyak Bachat Sahakari Sakh Samiti Maryadit v. DCIT(2021) 221 TTJ 404 (SMC) (Raipur) (Trib)

S. 143(1) : Assessment-Intimation-Income from house property or income from business-Mistake of Auditor-Reported clause 16(d) of Form No. 3CD-Addition is not justified.[S. 22,28(i), 143(1)(a) Form No 3CD]
Held that if the income clearly falls outside the scope of business income, a mistake by the tax auditor in including such income in clause 16(d) of Form No. 3CD should not inherently result in an addition or adjustment to the business income. This is particularly pertinent when the assessee has already disclosed this income under the appropriate heads in the ITR.(AY. 2021-22)
Brajesh Agrawal v. Asst. DIT (2023) 201 ITD 135/ 225 TTJ 606 / [2024] 109 ITR 476 (SMC) (All) (Trib)

S. 143(1) : Assessment-Intimation-Charitable Trust-Income should be understood in its commercial sense-Computing total income of assessee equal to total receipts for year was not in accordance with commercial prudence-Addition deleted. [S. 12AA, 143(1)(a)]
If the revenue fails to provide prior intimation to an assessee trust registered under section 12AA, before making an adjustment under section 143(1)(a) to disallow its exemption claim

under section 11, then such an adjustment should be deleted. Further it was held that income should be understood in it's commercial sense and computing total receipts of the assessee as total income is not prudent.(AY.2020-21)
ITO (E) v. Camellia Educare Trust (2023) 201 ITD 616/ [2024] 109 ITR 362 (Kol)(Trib)

S. 143(1) : Assessment-Intimation-Adjustment to the total income returned for the AY. 2017-18-Assessing Officer of CPC made an adjustment denying the credit for the TDS even though appearing in Form 26AS-No notice was issued to the assessee before making such adjustment. The CIT (Appeals) confirmed the Assessing Officer's action for not granting TDS credit merely on the ground that the corresponding income has not been shown by the appellant in the return of income.[S. 143(1)(a), Form. 26AS]
Since the CIT (Appeals), without application of mind, confirmed the order of CPC by ignoring the mandate of law contained in Section 143(1)(a) that before making such adjustment, the notice shall be served upon the assessee, there is no jurisdiction with the CPC and consequently the adjustment done by the CPC is not sustainable in law. Even on merits also, there is no jurisdiction available with the AO, or CPC to make such adjustments. CIT v. Relcom (2015) 62 taxmann.com 190 (Delhi) referred to (AY.2017-18)
Haft Propbuild P. Ltd. v. ITO (2023) 102 ITR 399 (Delhi) (Trib)
S. 143(1) : Assessment-Intimation-Debatable issue-Cannot be disallowed by CPC-Matter is remanded back to Assessing Officer for adjudication afresh. [S. 11(1),11(2) 143(1)(a)]
Tribunal held that debatable issues cannot be adjusted by way of intimation under section 143(1)(a) of the Act. Revenue was not right on their part to unilaterally proceed by disallowing claim without granting opportunity to assessee to put forth its stand. Matter is remanded back to Assessing Officer for adjudication afresh. (AY. 2016-17)
Rajiv Gandhi University of Health ScienceS. v. DCIT (CPC) (2023) 198 ITD 424 /223 TTJ 381 (Bang) (Trib.)

S. 143(1) : Assessment-Intimation-Once auditor had mentioned actual dates of ESI/PF remittance and due dates of ESI/PF remittance by assessee in audit report, then requirement of section 143(1) stood satisfied and Assessing Officer was permitted to make disallowance in terms of section 143(1) [S. 36(1)(va), 143(1)(a)]
Dismissing the appeal of the assessee the Tribbunal held that when the assessee made payment of employees' contribution towards PF and ESI beyond due date specified in respective Acts and auditor had mentioned actual dates of ESI/PF remittance and due dates of ESI/PF remittance by assessee in audit report, disallowance under section 143(1) in respect of late deposit of such PF/ESI was valid.(AY. 2019 _20) (AY. 2018-19)
Kwality Motel Shiraz-1 v. ADIT (Indore) 200 ITD 402(Indore)(Trib)
Sudhakar Rao Dondapati v. ITO [(2023) 201 ITD 264 (Hyd (Trib.)
Prashanti Engineering Works (P.) Ltd. v. ACIT, CPC [2023] 200 ITD 408 (Indore) (Trib)
Ansal Housing Ltd. v. DCIT (2023) 202 ITD 71 (Delhi) (Trib.)
Sentinel Consultants (P.) Ltd. v. ACIT (2023) 202 ITD 154 (Delhi) (Trib.)
Parminder Kumar. v. ITO (2023) 202 ITD 472 (Delhi) (Trib.)
ACIT v. Silkasia. (2023) 202 ITD 542 (Mum) (Trib.)
7 Horses Hospitality LLP. v. ITO (2023) 203 ITD 550 (Jaipur) (Trib.)
ACIT v. Aero Club (2023) 221 TTJ 409 (Delhi)(Trib)
BAS Solutions (P) Ltd v. ACIT (2023) 221 TTJ 409 (Delhi)(Trib)
Krishna Pal v. ACIT (2023) 221 TTJ 409 (Delhi)(Trib)
Salveen Kaur v. ITO (2023) 221 TTJ 409 (Delhi)(Trib)

Mahaveer Bulk Carriers v. ADIT (2023) 221 TTJ 809 (SMC) (Trib)
Osource Global (P) Ltd v. ADIT(2023) 223 TTJ 115 (Mum)(Trib)
Dynasty Modular Furniture (P) Ltd v. Dy.CIT(2023) 224 TTJ 579/ 155 taxmann.com 236 (Jaipur)(Trib)
Narvodaya Times (P) Ltd v. Dy.CIT(2023) 224 TTJ 936 (Amritsar)(Trib)
Nepal Chandra Dey v. ACIT(2023) 224 TTJ 222 (Ranchi)(Trib)

S. 143(1) : Assessment-Intimation-No adjustment could have been made unless notice was issued to assessee-Disallownce is deleted.[S. 80P (2)(a)(i), 143(1)(a)]
Tribunal held that, since assessee had made claim u/s. 80P (2)(a)(i) albeit in Schedule BP clearly filling up column of exempted income of co-operative society, deduction ought to have been allowed. No adjustment could have been made u/s. 143(1) unless notice was issued to assessee. Disallowance was deleted. (AY. 2016-17)
Changanacherry Co-op. Agrl & Rural Development Bank Ltd. v. CIT [2023] 201 ITD 755 (Cochin)(Trib.)

S. 143 (1) : Assessment-Intimation Adjustments-A mere mistake on part of tax auditor in reporting income not forming part of business income-Would not ipso-facto lead to addition or adjustment in business income.[S. 10, 22, 28(i), 44AB, 56, 143 (1)(a), Form No 3CD]
The assessee declared an income comprising of HP Income, Interest Income, and Dividend income under the respective heads of income as well as claimed the interest on PPF and REC tax free bonds as exempt income u/s. 10. The CPC processed the return u/s. 143(1) and based on the tax auditor's report, wherein the auditor had reported the income under clause 16(d) of Form No. 3CD, made addition/adjustment under the head any other item or items of addition u/s.28 to 44DA. The CIT (A) upheld the adjustment.The Tribunal held that, since nature of income in question was non-business income of the appellant, a mere mistake on part of tax auditor in reporting income not forming part of business income in clause 16(d) of Form No. 3CD would not ipso-facto lead to addition or adjustment in business income. As the assessee had already declared said income in return of income under respective heads of income as well as claimed certain income as exempt income. Hence adjustment made by CPC deserved to be deleted. (AY. 2021-22)
Brajesh Agrawal v. ADIT [2023] 201 ITD 135 (SMC) (All)(Trib.)

S. 143(1) : Assessment-Intimation Adjustments-Deduction of tax at source-Credit for tax deducted-Employer deducting the tax and not depositing-Credit cannot be denied-Section 143(1)(c) does not lay down the condition that tax deducted at source has to be paid to the Government for the credit to be allowed as opposed to the case of payment of advance tax.[S. 143(1)(a), 143(1)(c), 199, 209(1)(d), 234B]
The employer deducted the tax for a whole year, but it was not deposited with the Government from May 2018 onwards. Even the salary was not paid to the assessee from October 2018. However, the assessee continued to remain under employment for the entire year. Owing to the stipulation of s. 15, the assessee offered to tax all the salary income (whether paid or not) while filing an Income Tax Return. The CPC did not allow the credit of tax to the extent deducted but not paid. The Tribunal held that credit for the amount of tax deducted at source is not dependent upon its subsequent deposit by the deductor. Once there is a tax deduction at source, the benefit of such tax deduction has to be allowed in the hands of deductee u/s 143(1) of the Act irrespective of its subsequent deposit or non-deposit by the deductor.(AY. 2019-20)

Mukesh Padamchand Sogani v. ACIT(2023) 200 ITD 104/ 224 TTJ 905/ 224 DTR 1 (Pune)(Trib)

S. 143(1) : Assessment-Intimation-Adjustment-Contingent liabilities-Corporate guarantee-No opportunity has been given-Violation of express proviso to Section 143(1)-Matter remanded. [S. 143(1)(a)]

The Hon'ble ITAT consider it expedient to remit the matter back to the file of the Assessing Officer for taking into account the submissions made on behalf of the assessee. Where it is found as a matter of fact that the contingent liability in question do not form part of the P&L account and has not been taken into account while determining the income chargeable to tax, it will be incumbent upon Assessing Officer to reverse the disallowance carried out in the intimation under Section 143(1) in question. It shall be open to the assessee to adduce documents and explanations before the Assessing Officer in support of its contentions. Issue towards disallowance of contingent liabilities is restored back to the file of the Assessing Officer for fresh determination in accordance with law. (ITA N0. 635/Del/2023 dt: 01/08/2023)

Knowledge Infrastructure Systems Pvt. Ltd. v DCIT (Delhi) (Trib.) (UR)

S. 143(1) : Assessment-Intimation-Family trust-Notification of assessing taxes without giving basic exemption and slab benefits to taxpayers who fall under certain associations of people or trust-using basic exemption and slab benefit, the assessing officer will redetermine tax liability. [S. 2(31)(v), 12A, 143(1)(a), 154, Form 5, Form, 7]

As a family trust, the assessee was liable to file its return in form 5 and its return in Form 7. According to section 143(1)(a) of the Income-tax Act of 1961, the assessee received notice that, in the absence of information regarding a section 12A registration, the assessee's income was subject to taxation as an association of persons or body of persons and that tax was assessed without providing basic exemption and slab benefits. In response to this notification, the assessee submitted a request for correction under section 154 to the Assessing Officer. The application was denied by the Assessing Officer. The commissioner (Appeals) rejected the appeal of the assessee on technical grounds. The assesee appealed further.

The tribunal held that the trust was incorporated for the benefit of Smt. L's kin. The trust's beneficiaries' shares were calculated, and the chart for the assessment years 2016–17 to 2019–20 submitted by the assessee demonstrated that the assessee–family trust satisfied the requirements set forth as per the provisions of the Act for claiming basic exemption and slab benefit. The AO was directed to reassess the same after giving the exemption and slab benefits as per the law. The assessee was directed to cooperate with the AO for filling the required information and verify certain claims. (AY.2014-15, 2015-16)

Lajwanti Manchanda Trust v. ITO (2023)103 ITR 647 (Mum)(Trib)

S. 143(1) : Assessment-Intimation-Co-operative society-Denial on the ground of filing of belated return under section 139(4)-, Denial of deduction under section 80P vide intimation under section 143(1) was not valid in law. [S. 80P, 139(4), 143(1)(a)(ii)]

Assessee claimed deduction under section 80P. AO disallowed deduction on the ground that return was not filed within due date under section 139(1) but within due date under section 139(4) of the Act.

The ITAT held that Return of income was filed under section 139(4) and provisions of section 143(1)(a)(ii) do not provide for denial of deduction under section 80P even when the return of income is not filed within the time limit as per section 139(1) and, therefore, denial of deduction under section 80P vide intimation under section 143(1) was not valid in law. (ITA No. 186/Rjt/2022; dated 10/02/2023) (AY. 2019-20)

Ambaradi Seva Sahkari Mandali Ltd. v. DCIT (CPC) (Rajkot)(Trib)

S. 143(1) : Assessment-Intimation-Tax deduction at source-Salary-Tax credit is required to be granted while processing the return u/s 143(1), even if tax deducted was not paid. [S. 143(1), 143(1)(a), 192, 199, 209, 234B]

The assessee was an employee of EWL working as Chief Operating Officer. Return was furnished declaring total income under the head 'Salaries' at Rs. 38.58 lakhs and also claiming credit for deduction of tax at source amounting to Rs. 9.05 lakhs on such salary income. The return was processed under section 143(1) allowing credit for tax deducted at source from salary only to the tune of Rs. 83,483. The remaining amount of tax deducted at source by the employer at Rs. 8.21 lakhs was not allowed credit on account of 'mismatch'. On appeal, the Commissioner (Appeals) countenanced the Intimation under section 143(1) in not allowing credit for Rs. 8.21 lakhs because of Form No. 26AS not reflecting the same. On appeal the Tribunal held that tax credit is required to be granted while processing the return u/s 143(1), even if tax deducted was not paid. (AY. 2019-20)

Mukesh Padamchand Sogani v.ACIT (2023) 200 ITD 104 (Pune)(Trib)

S. 143(1) : Assessment-Intimation-Prima facie adjustments-Business expenditure-Employees' contribution to provident fund-Payment date beyond date but before filing of return of income-Auditor merely stating time of remittance in report-Contribution allowable.[S. 43B, 143(1)(a)]

Held that the tax auditor had not stated to disallow employees' contribution to provident fund wherever it was remitted beyond the due date under the respective Act. The tax auditor had merely recorded facts and made a mere statement in his audit report. Hence, the action of the Assessing Officer in disallowing the employees' contribution to provident fund while processing the return under section 143(1) of the Act was against the provisions of the Act as it would not fall within the ambit of prima facie adjustments. The Assessing Officer was to delete the addition made in respect of employees' contribution to provident fund, in the facts and circumstances of the case.

(AY. 2019-20)

P. R. Packaging Service v. Asst. CIT (2023)101 ITR 8 (SN)(Mum) (Trib)

Paris Elysees India P. Ltd. v.Dy. CIT (2023)106 ITR 294 /222 TTJ 545 (Jaipur) (Trib)

Satpal Singh Sandhu v.Dy.CIT(2023) 224 TTJ 960(SMC) (Raipur)(Trib)

S. 143(2) : Assessment-Notice-Cash credits-Notice did not suffer from any legal infirmity as it satisfied all ingredients under that provision-Writ petition is dismissed. [S. 68, Art. 226)

Where a notice under section 143(2) was issued upon assessee in format normally utilised for this purpose and it was conveyed to assessee that return had been selected for limited scrutiny and issue of share capital/capital was identified for further verification and further, AO proceeded to fix matter for hearing and provided opportunity to assessee to appear and cause evidence in support of return of income, there was nothing further that was required to be set out as far as notice u/s 143(2) of the Act was concerned and, thus, said notice under section 143(2) was complete and did not suffer from any legal infirmity. (AY 2017-18)(SJ)

Anguswamy Gounder Subbu Rathinamun v. ACIT (2023) 294 Taxman 34 (Mad)(HC)

S. 143(2) : Assessment-Notice-Fringe benefits tax-Notice issued after six months from end of relevant financial year-Order of Tribunal quashing the assessment order was affirmed.[S. 115WE, 158BC]

The Assessee filed a return of income for AY 2008-09 on 29-9-2008 that was selected for scrutiny. While a notice u/s 143(2) was issued on 17-9-2009 against the fringe benefits tax

u/s 115WE, no notice u/s 143(2) was issued for regular assessments. Before the Tribunal, the Assessee raised additional grounds as notice u/s 143(2) was not issued for regular assessment. The Tribunal allowed the additional ground and held in favour of the Assessee. The High Court held that the notice u/s 143(2) r.w.s 115WE could not be constructed as a notice u/s 143(2) for regular assessment. Further, it held that the issue of notice goes to the root of the matter. The Tribunal was justified in entertaining the additional grounds filed by the Assessee. Order of Tribunal was affirmed. (AY. 2008-09)

PCIT v. GJ Trading (P.) Ltd. (2023) 291 Taxman 152 (Telangana)(HC)

S. 143(2) : Assessment-Notice-Reassessment-Non-issue of notice within prescribed period-Assessment order is bad in law [S. 147, 148, 153, Art. 226]

Allowing the petition the Court held that the return of income was filed by the assessee in response to notice under section 148 on January 7, 2020 and on January 8, 2020 reasons were sought. On January 10, 2020, the reasons were supplied and on March 4, 2020, the assessee filed its objections. These objections were disposed of only on July 23, 2021 after a period of one year and four months. There was nothing that prevented the Assessing Officer to have called for objections, assigning a time limit to the assessee to file them, and disposing of the objections expeditiously. The notice under section 148 dated December 12, 2019, the order dated July 23, 2021 and the reference to the Transfer Pricing Officer on November 24, 2020 stood vitiated by the non-issue of notice under section 143(2) of the Act and were liable to be quashed. (AY.2016-17)(SJ)

AMEC Foster Wheeler Iberia Slu-India Project Office v. Dy. CIT (IT) (2023)451 ITR 117 (Mad)(HC)

S. 143(2) : Assessment-Notice-Contempt-Not following the judgement of High court order-Liable for contempt-Notice was quashed on ground of jurisdiction as well as consequential orders were also directed to be set aside-Assessing Officer deliberately and intentionally Assessing Officer permitted to continue, outstanding amount operative on web portal till seven months-Reputation of assessee-Assessing Officer is held of Contempt of Court-Directed to pay a fine of Rs 25000 along with simple imprisonment for a period of one week, in case of default one day's further simple imprisonment. [S. 124, Contempt of Courts Act, 1971, S. 12]

Honourable High Court order dated 31-3-2015, notice under section 143(2) issued to assessee by Assessing Officer, Lucknow was quashed on ground of jurisdiction as well as consequential orders were also directed to be set aside. Thereby that Assessing Officer was to take care that entry existing on web portal showing outstanding dues to be paid was to be deleted immediately after passing of judgment and order dated 31-3-2015. The Assessing officer deliberately and intentionally, outstanding of notice of assessment year 2011-12 was operative on web portal till seven months, which ruined reputation of assessee. The Assessee filed contempt petition before the High Court. Allowing the petition the Court held that the act of Assessing Officer was in deliberate and wilful disobedience of judgment and order dated 31-3-2015. Action of Assessing Officer was not only contemptuous but also malicious, coupled with intention and motive to harass assessee.The Court held that the Assessing Officer, Lucknow was guilty under section 12 of Contempt of Courts Act, 1971 and accordingly penalty, along with simple imprisonment for a period of one week was to be awarded to Assessing Officer. (SJ)

Prashant Chandra v. Harish Gidwani Dy. CIT (2022) 145 taxmann.com 496 /(2023) 330 CTR 404/221 DTR 289 (All)(HC)

S. 143(2) : Assessment-Notice under section 143(2) was issued by non-jurisdictional Assessing Officer-Matter remanded to the Assessing Officer to verify as to territorial jurisdiction at the time of issue of notice.[S. 143(2)]

Held that the assessee contended that notice under section 143(2) was issued by non-jurisdictional Assessing Officer Tribunal remanded to the Assessing Officer to verify as to territorial jurisdiction at the time of issue of notice. (AY. 2012-13)

Goyal Construction v. ITO (2023) 223 TTJ 21 (UO)(SMC)(Raipur)(Trib)

S. 143(2) : Assessment-Notice-Order passed without issuing the notice-Bad in law-Estimate of income is deleted. [S. 148, 292BB]

Held that non-issuance of notice under section 143(2) is not a curable defect and failure of Assessing Officer in reassessment proceedings to issue notice under section 143(2) prior to finalizing reassessment order cannot be condoned under section 292BB. Tribunal held that from records, it was clear that Assessing Officer did not verify claim of assessee and proceeded purely on estimate basis which is not justified. (AY. 2003-04)

Major Suresh Yadav. v. ITO (2023) 203 ITD 66 (Delhi) (Trib.)

S. 143(2) : Assessment-Notice-Issue of notice beyond statutory limit-Assessing Officer has no power to issue notice under section 143(2) after expiry of 6 months from end of financial year in which return has been field-Reassessment is bad in law. [S. 143(3), 147, 148, 292BB]

Assessing Officer is under obligation to issue a notice under section 143(2) for making assessment or reassessment as case may be; in case Assessing Officer has not done so, order framed under section 143(3) read with section 147 becomes invalid. Assessing Officer has no power to issue notice under section 143(2) after expiry of 6 months from end of financial year in which return has been field. Any assessment made based on notice which itself is not valid will also become void ab initio. Therefore, where notice under section 143(2) had been issued beyond prescribed time, assessment order framed under section 143(3) read with section 147 would become invalid. Where mandatory notice under section 143(2) was issued beyond statutory time limit prescribed, provision of section 292BB would not extend any benefit to revenue.(AY. 2011-12, 2012-13)

Girishbhai Nanjibhai Solanki v. ITO (2023) 200 ITD 686 (Rajkot)(Trib)

S. 143(2) : Assessment-Notice-Jurisdiction-Condition precedent-Service of noticeu/S. 143(2)-No proof regarding service of notice u/S. 143(2)-Assessment order liable to be quashed for want of jurisdiction. [S. 143(3)]

The Tribunal observed that the assessment record did not contain any proof regarding service of notice u/s. 143(2) of the Act to the assessee. Accordingly, Tribunal held that the assessment order framed by the Assessing Officer was liable to be quashed for want of jurisdiction. However, liberty was given to the Revenue to seek recall of order in accordance with law, if found subsequently that there was proper service of notice u/s. 143(2) of the Act.(AY.2007-08)

Arun Kanhaiya Gupta v. ITO (2023)103 ITR 650 (Mum) (Trib)

S. 143(2) : Assessment-Notice-Validity-Amalgamation of companies-Effect-Fact of amalgamation brought to Assessing Officer's notice during assessment proceedings-Assessment proceedings against amalgamating company after approval of amalgamation void ab initio-Amalgamated company's participation in proceedings not an estoppel against law-Revenue's appeal against order Of commissioner (appeals) infructuouS. [S. 10AA]

The assessee-company, BSS, was amalgamated with BTC by order of the National Company Law Tribunal and came to be known as BGS. The return of income for the AY. 2014-15 was filed in the name of the amalgamating company since the process of amalgamation was not completed. During the course of the assessment proceedings, the assessee-company had brought the factum of amalgamation to the notice of the Assessing Officer, who, however, passed the assessment order in the name of the amalgamating company making disallowance of the excess deduction claimed by the assessee u/s. 10AA of the Income-tax Act, 1961. The Commissioner (Appeals) granted partial relief but dismissed the assessee's objection holding that notice u/s. 143(2) was issued in the name of the amalgamating company much before the amalgamation had come into effect. On appeals by the Revenue and the assessee the Tribunal allowed the assessee's appeal and observed that there was no dispute that the factum of amalgamation was brought to the notice of the Assessing Officer during the course of assessment proceedings. Despite knowing very well that the amalgamating company was not in existence at the time of passing the assessment order, the Assessing Officer had chosen to pass an assessment order in the name of the amalgamating company, BSS. Consequent to the amalgamation, BSS ceased to exist and, therefore, could not be regarded as a "person". The fact that the assessee had participated in the assessment proceedings could not operate as estoppel against law. The assessment order passed by the Assessing Officer in the name of a non-existent entity was null and void ab initio. Accordingly, the assessment order was quashed. As a result, the Revenue's appeal became infructuous.(AY.2014-15)

Dy. CIT v. Barclays Global Service Centre P. Ltd. (2023)103 ITR 100 (Pune)(Trib)

S. 143(2) : Assessment-Notice-Assessment order is invalid due to the non-issuance of the mandatory notice u/s 143(2) of the Act and quashed the assessment order. [S. 142(1) 143(3), 147, 148]

The appeal challenges the order of the CIT(A), National Faceless Appeal Centre (NFAC), Delhi. The primary contention is regarding the validity of the assessment framed u/s 143(3) read with section 147 of the Income Tax Act, 1961, concerning the mandatory issuance of notice u/s 143(2) of the Act.

The Assessee received a notice issued under section 142(1) of the Act, which was the only notice received. The return of income was filed in response to this notice. The Assessment order was passed without issuing any notice under section 143(2) of the Income Tax Act.

The Hon'ble Tribunal observed that the Assessing Officer proceeded with the assessment without issuing the mandatory notice u/s 143(2) of the Act. Further referring to the Supreme Court's decisions in 'Hotel Blue moon' and 'CIT Vs. Laxman Das Khandelwal', which emphasized the mandatory nature of the notice u/s 143(2) of the Act, the Hon'ble tribunal concluded that the assessment order is invalid due to the non-issuance of the mandatory notice u/s 143(2) of the Act and quashed the assessment order. (AY 2012-13)

Manjit Kaur v. ITO (2023) 103 ITR 40 (SN)(Chd)(Trib)

S. 143(2) : Assessment-Notice-Amalgamation-Notice issued in the name of a non-existing entity is bad in law where the assessee had intimated the Department regarding such change-Decisions are to be read in the context in which they are rendered. [S. 143(3), 292BB]

The assessee has intimated the date of the Amalgamation and also filed the scheme of Amalgamation in the course of assessment proceedings. However, the assessment was passed in the name of non-existing company. The order of the Assessing Officer was affirmed by the CIT(A).On appeal, the Tribunal held that where the assessee had intimated to the Department regarding the amalgamation of the assessee company, Notice cannot be issued in the name of the non-existing entity.

The assessee relied on the decision of the Hon'ble Supreme Court in the case of PCIT v. Maruti Suzuki India Ltd(2019) 416 ITR 613 (SC). However, the Department relied on a subsequent judgment of the Hon'ble Supreme Court in the case of PCIT v. Mahagun Realtors (P.) Ltd.(2022) 443 ITR 194 (SC). It was held that in the case of Mahagun (supra), the assessee had not disclosed the change in the assesee's existence and that the subsequent case does not distinguish the case of Maruti Suzuki (Supra).

It was further held that judgments must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court as held in the case of CIT v. Sun Engineering Works Pvt. Ltd(1992) 198 ITR 297 (SC) (ITA 46/Pun/2021 dated January 02, 2023)(AY. 2014-15)
DCIT v. Barclays Global Service Centre Private Ltd (Pune) (Trib) www.itatonline.org

S. 143(3) : Assessment-Notice-Jurisdiction-High Court setting aside notice-Question of limitation is not to be raised-The High Court of the Orissa high court is modified. [S. 124(3), 142(1), 143(2)]
On a writ against issue of notice under section 143 (2) of the Act granted liberty to the authority to issue appropriate notice. Therefore, the Assessing Officer was free to complete the assessment (in case the assessment order had not been issued) within the next 60 days. In such event, the question of limitation shall not be raised by the assessee. Court held that the assessee had participated pursuant to the notice issued under section 142(1) and had not questioned the jurisdiction of the Assessing Officer. Section 124(3)(a) of the Act precludes the assessee from questioning the jurisdiction of the Assessing Officer, if he does not do so within 30 days of receipt of notice under section 142(1). The facts did not warrant the order made by the High Court. At the same time, the High Court had Decision of the Orissa high court is modified.(AY. 2014-15)
Dy CIT (E) v. Kalinga Institute of Industrial Technology (2023)454 ITR 582/ 293 Taxman 493 (SC)
Editorial : Decision of High Court modified, Kalinga Institute of Industrial Technology v. UOI (Orissa)(HC) (W.P.No 898 of 2017 dt.6-3-2019)

S. 143(3) : Assessment-Bogus purchases-Income from undisclosed sources-Report of Sales Tax Department-Appeal dismissed by High Court-SLP of revenue is dismissed. [S. 69C, 145(3) 260A, Art. 136]
High Court dismissed the appeal of the Revenue on the ground that the question of fact. Order of Tribunal deleting the addition was affirmed. SLP of Revenue is dismissed. (AY. 2010-11)
JCIT v. Bhilai Engineering Corporation Ltd. (2023)454 ITR 540 (SC)
Editorial : JCIT v. Bhilai Engineering Corporation Ltd (Chhatisgarh)(HC), (ITA No. 88 of 2017 dt 28-11-2018) affirmed.

S. 143(3) : Assessment-Amalgamation-Revised return-Change of address-Mistake committed by assesseee-Giving old address instead of new address and email-Matter is remanded. [S. 115BBE, 127, 144B, 282, Art. 226]
On writ against the assessment order the Court held that instead of giving new address and the new e-mail id, the assessee has given the old postal address and the old e-mail id. However, the fact also remains that other wings of the IT Department was aware of the shifting of the address of the assessee from old address to new address. Similarly, the respondents were also aware of the change in e-mail id-Respondents were also aware of the

change in e-mail id and address while passing order of refund claim for the subsequent financial year i.e., 2019-20, the notices/orders were sent to the correct address. Assessee has not committed a serious mistake although it has turned out to be fatal to the assessee. Considering the interest of the parties, Court is inclined to quash the impugned assessment order. Matter is remanded for reconsideration. (AY. 2018-19) (SJ)

Vinplex India (P) Ltd. v. Add.CIT (2023) 155 taxmann.com 116 /334 CTR 926 (Mad) (HC)

S. 143(3) : Assessment-limited scrutiny-Conversion into complete scrutiny-Derogation to Instruction No. 5 of 2016, dt. 14th July, 2016-Order of Tribunal quashing the addition is affirmed-No substantial question of law.[S. 119, 142(1), 143(2), 260A]

AO had issued notice under s. 143(2), for a limited scrutiny covering four issues-Subsequently, by notice dt. 20th Feb.. 2017, issued under s. 142(1), the AO called for information on secured and unsecured loan deposits which was not covered by limited scrutiny. Order granting approval for complete scrutiny was passed only on 14th Dec., 2017, Le., much after the enquiry was commenced by the AO. Tribunal held that the procedure adopted by the AO was in complete derogation to Instruction No. 5 of 2016, dt. 14th July, 2016 and held that the assessment order passed by the AO is not sustainable. High court affirmed the order of the Tribunal. No case is made out for interference with the order passed by the Tribunal. Sukhdham Infrastructures LLP v. ITO (2023) 226 TTJ (Kol) 497 affirmed; Venkataswamappa v Special Duty Commr (Revenue) (1997) 9 SCC 128 and CWT v Sharvan Kumar Swarup & Sons (1994) 122 CTR (SC) 380 (1994) 6.SCC 623 distinguished. (AY. 2015-16)

PCIT v. Sukhdham Infrastructures LLP (2023) 335 CTR 476(Cal) (HC)

S. 143(3) : Assessment-Cash credits-Share application money-Recovery-National Company Law Tribunal admitted insolvency petition against assessee-Revenue in terms of Insolvency and Bankruptcy Code, 2016 had not lodged its claim with RP-Revenue could not enforce assessment order and demand notice. [S. 68, 156, 220, 271AAC 272A(1)(d), Insolvency and Bankruptcy Code, 2016 and regulation 7 of the Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 S. 31]

Assessee-company filed return of income on 11-12-2017. In meantime a financial creditor of assessee filed a petition under Insolvency and Bankruptcy Code, 2016 with National Company Law Tribunal (NCLT). NCLT admitted petition and issued directions for appointment of Interim Resolution Professional (RP) and a public announcement dated 31-1-2018 was issued in newspapers. RP filed by a party was approved by NCLT on 18-11-2018. Assessing Officer issued on assessee various notices under sections143(2) and 142(1) between 9-8-2018 and 3-12-2019 and passed assessment order under section 143(3) dated 6-12-2019 and treated amount of share application money pending allotment as unexplained cash credit and added same to assessee's income by invoking provisions of section 68 and issued demand notice. On writ the Court held that since revenue in terms of provisions of section 31 of Insolvency and Bankruptcy Code, 2016 and regulation 7 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Resolutions, 2016 had not lodged its claim with RP despite publication of public announcement inviting claims from creditors, revenue could not enforce assessment order and demand notice. Followed Ghanshyam Mishra & Sons (P) Ltd v. Edelweiss Asset Reconstruction Co Ltd (2021) 9 SCC 65 (AY. 2017-18)

Rishi Ganga Power Corporation Ltd. v.Asst. CIT (2024) 335 CTR 512/ 158 taxmann.com 72 / (2024) 297 Taxman 123 (Delhi)(HC)

S. 143(3) : Assessment-Failure to give reasonable time to reply-Violation of principle of natural justice-Order and notice of demand is set side. [S. 142(1), 144, Art. 226]
Allowing the writ petitions the Court held that the Assessing Officer had inadvertently overlooked the e-mail reply dated July 20, 2022, of the assessee, wherein the assessee had not just sought extension of time till August 5, 2022, to respond but also disclosed vital facts pertaining to its case. Denial of sufficient time to respond was not just an abrogation of jus naturale but also infringed clause B(1) of the Standard Operating Procedure dated November 19, 2020, of the Central Board of Direct Taxes, according to which normally a response time of 15 days has to be given to the assessee in order to respond to the notice under section 142 of the Act. The draft assessment orders dated July 26, 2022, final assessment orders dated September 10, 2022, the demand notices dated September 10, 2022 and the penalty orders dated March 30, 2023 were set aside. The matter was remanded back to the Assessing Officer with the direction to afford a fair hearing to the assessee in accordance with law after issuing fresh notices under section 142(1) of the Act.(AY.2015-16, 2016-17)
Aphv India Investco. Pvt. Ltd. v. ACIT (2023)459 ITR 428/(2024) 158 taxmann.com 544 (Delhi)(HC)

S. 143(3) : Assessment-Valuation Of Closing Stock-Arithmetical error in quantitative analysis of consumption of finished leather-Order of Tribunal is set aside. [S. 254(1)]
Held that the Tribunal had failed to note that this issue arose during the assessment proceedings itself and the Assessing Officer had rejected the assessee's explanation while completing the assessment. Therefore, merely because the revised tax audit report was submitted later when the appeal was pending before the Commissioner (Appeals) that could not be a ground on which the Tribunal could have taken a different view and its observation that the assessee could not point out any mistake as claimed in the tax audit report during the course of the assessment proceedings was factually incorrect. The assessee was able to establish the factual position as to how it was a genuine arithmetical mistake. In the absence of any material to show that it was not a genuine arithmetical mistake, the Tribunal had erred in holding against the assessee on the ground that the mistake ought to have been detected earlier by the assessee itself. The order of the Tribunal is set aside and the order passed by the Commissioner (Appeals) restored.(AY.2004-05)
Sidhant Leather Exports Pvt. Ltd. v. CIT (NO. 1) (2023)459 ITR 315 (Cal)(HC))

S. 143(3) : Assessment-Merger-Intimated to Department Authorities-Order of assessment on company which had merged and ceased to exist-Order is not valid-Not curable defect. [S. 143(2), 292B]
Dismissing the appeal of the Revenue the court held that that even after the Assessing Officer was informed that the amalgamation had taken place, and was furnished a copy of the scheme, he continued to proceed on the wrong path. This error continued even after the Dispute Resolution Panel had made a course correction. This was not a mistake curable by recourse to the powers available under section 292B of the Act. The order of assessment is not valid. (AY.2010-11)
CIT v. Sony Mobile Communications India Pvt. Ltd. (2023)456 ITR 753/150 taxmann.com 145 (Delhi)(HC)

S. 143(3) : Assessment-Directed to disposal of application within six weeks-Assessment proceedings are stayed for four weekS. [Art. 226]
On writ the Court directed the disposal of application within six weeks and assessment proceedings are stayed for four weeks.

Greater Noida Industrial Development Authority v. UOI (2023)456 ITR 202/154 taxmann.com 287 (Delhi)(HC)

S. 143(3) : Assessment-Bogus purchases-Accommodation entries-Trading in diamonds-Cash credits-Unexplained expenditure-Order of Tribunal affirming disallowance of 6 percent of disputed purchases is affirmed. [S. 68, 69]

The Assessing officer made disallowance of 100 percentage of alleged accommodation entries in respect of purchases of diamonds.On appeal the Tribunal restricted the disallowance at rate of 6 per cent of purchases. High Court affirmed the order of the Tribunal. Followed,ITO v. Pankaj A Chaudhary [IT Appeal No. 1152 (AHD) of 2017, dated 27-9-2021 (Ahd)(Trib) PCIT v. Pankaj K. Chaudhary v [Tax Appeal No. 617 of 2022, dated 7-3-2023 (Guj)(HC)]

PCIT v. Vrajendra Jagjivandas Thakkar (2023) 295 Taxman 713 (Guj.)(HC)

S. 143(3) : Assessment-Unexplained expenditure-Bogus purchases-Order of Tribunal directing the Assessing Officer to estimate the gross profit at rate of 12.5 % is affirmed. [S. 69C, 260A]

On the basis of information received from Investigation Wing,the Assessing Officer has made addition. of 60. 24 per cent on alleged bogus purchases. Tribunal directed the Assessing Officer to estimate gross profit at rate of 12.5 per cent on alleged bogus purchases. High Court affirmed the order of the Tribunal.(AY. 2009-10)

PCIT v. Suraj Infrastructures (P.) Ltd. (2023) 295 Taxman 758 (Bom.)(HC)

S. 143(3) : Assessment-Document identification number-Order passed manually-Order is set aside-Remanded to Assessing Officer for de novo consideration and to pass a final assessment order. [Art. 226]

The order passed by the Assessing Officer did not contain document identification number. Assessing Officer stated that assessment order was passed manually due to technical difficulty and he did not explain why endorsement as per format provided in Circular No. 19 of 2019, dated 15-8-2019 was not made in assessment order. On writ the Court held that since the assessment order did not contain document identification number and it having been issued without complying with conditions laid down in Circular No. 19 of 2019, dated 14-8-2019, assessment order was set aside and matter was to be remanded to Assessing Officer for de novo consideration and to pass a final assessment order. (AY. 2020-21)

Royal India Corporation Ltd. v. Dy. CIT (2023) 295 Taxman 485 (Bom.)(HC)

S. 143(3) : Assessment-Amalgamation-Revenue intimated of amalgamation-Non existence company-Assessment not valid. [S. 260A]

Dismissing the appeal of the Revenue the Court held that the assessee was not in existence as on the date of passing of the assessment order and this fact was duly informed and was in the knowledge of the Assessing Officer. The assessment order passed on a non-existent company was bad in law. Order of Tribunal is affirmed. (AY.2011-12)

PCIT v. Mount View Dealmark Pvt. Ltd. (2023)455 ITR 622 /335 CTR 310 (Jharkhand)(HC)

S. 143(3) : Assessment-Search and seizure-Undisclosed income-Incriminating documents relating to period 2014 to 2019-No addition can be made on basis of such documents for the assessment year 2021-22. [S. 132, Art. 226]

On writ against the assessment order the Court held that the documents which were found to the period between 2014 to 2019, cannot be relied on for making addition. for the assessment year 2021-22. Addition was quashed.(AY.2021-22) (SJ)
Mahaboob Sab Moula Shariff v.CCIT (2023)455 ITR 231 (Karn)(HC)

S. 143(3) : Assessment-Amalgamation-Intimated to Income-Tax Authorities-Notice and order in name of company which had ceased to exist-Not valid. [S. 144B, Art. 226]
Allowing the petition the Court held that the amalgamated company had already brought the facts of amalgamation to the notice of the Assessing Officer and yet he chose not to substitute the name of the amalgamated company and proceeded to make the assessment in the name of a non-existing company is not valid. (AY.2018-19)
Inox Wind Energy Ltd. v.Add. CIT (2023)454 ITR 162 (Guj)(HC)

S. 143(3) : Assessment-Order passed on same day of fixing date of hearing-Matter remanded to the Assessing Officer.[Art. 226]
Assessee had passed away on 14-2-2023. Death of original assessee was informed by legal heirs to original authority. Thereafter, original authority had chosen to issue notice to each one of legal heirs on 24-3-2023 fixing date of hearing as 28-3-2023 and further an order was also passed on same day.On writ Court held that original assessee had passed away on 14-2-2023 and hearing was fixed on 28-3-2023 and order of assessment was passed on 31-3-2023, no ample opportunity was given to legal heirs of deceased assessee. Order was set aside and matter was to be remitted back to original authority for affording due opportunity to legal heirs of original assessee. (AY. 2017-18)(SJ)
Prema Rengarajan v. Dy. CIT (2023) 294 Taxman 104 (Mad.)(HC)

S. 143(3) : Assessment-Addition-Order of Tribunal is affirmed.[S. 260A]
High Court held that where addition made to income of assessee were deleted by Commissioner (Appeals) and Tribunal upheld said order, since matter was concluded by concurrent findings of fact, no substantial question of law was involved in impugned order of Tribunal.
PCIT v. Santosh Kumar Agarwal (2023) 153 taxmann.com 638 (All)(HC)
Editorial : SLP of Revenue is dismissed, tax effect was only Rs. 1.75 lakhs, PCIT v. Santosh Kumar Agarwal (2023) 294 Taxman 515 (SC)

S. 143(3) : Assessment-Limited scrutiny-Notice was issued for proposed addition-Notice issued under section 143(2) is held to be valid.[S. 68, 143(2), Art. 226]
The Assessing Officer issued notice under section 143(2) of the Act.On writ the assessee contended that said notice was inadequate as it merely stated that issue of 'share capital/capital' had been identified for examination. Dismissing the petition the Court held that the Assessing Officer had rightly issued notice under section 143(2) in format normally utilised for this purpose and had conveyed to assessee that return had been selected for limited scrutiny and that issue of share capital/capital was what had been identified for further verification. Court also held that there was nothing further that was required to be set out as far as notice under section 143(2) was concerned. (AY. 2017-18)(SJ)
Angusamy Gounder Subbu Rathinamun v. ACIT (2023) 294 Taxman 34 (Mad.)(HC)
S. 143(3) : Assessment-Life insurance premium-Personal hearing-Failure to attend various notices-Writ against the assessment order is dismissed. [S. 80C, 80TT, 142(1)), 143(2), Art. 226]
Assessee claimed deduction of certain amount under sections 80C and 80TTA. Assessing Officer disallowed claim and added amount in assessee's income. The assesseee filed writ

petition against the said order and contended that no personal hearing was afforded to him in assessment proceedings. Dismissing the petition the Court held that since record showed that assessee had failed to respond to several notices issued by Assessing Officer under sections 142(1) and 143(2), he could not contend that he was not afforded personal hearing. Accordingly the writ petition was dismissed. (AY. 2019-20)(SJ)
Suyambulingam Suresh v. ITO (2023)458 ITR 746/ 292 Taxman 522 (Mad.)(HC)

S. 143(3) : Assessment-Life insurance premium-Personal hearing-Failure to attend various notices-Writ against the assessment order is dismissed. [S. 80C, 80TT, 142(1)), 143(2), Art. 226]
Assessee claimed deduction of certain amount under sections 80C and 80TTA. Assessing Officer disallowed claim and added amount in assessee's income. The assesseee filed writ petition against the said order and contended that no personal hearing was afforded to him in assessment proceedings. Dismissing the petition the Court held that since record showed that assessee had failed to respond to several notices issued by Assessing Officer under sections 142(1) and 143(2), he could not contend that he was not afforded personal hearing. Accordingly the writ petition was dismissed. (AY. 2019-20)(SJ)
Suyambulingam Suresh v. ITO (2023)458 ITR 746/ 292 Taxman 522 (Mad.)(HC)

S. 143(3) : Assessment-Jurisdictional issue-Notice issued by an authority who had no jurisdiction at relevant time-Participated in the proceedings-Issue of notice under section 143(2) is not procedural irregularity-Order of Tribunal quashing the order was up held. [S. 143(2), 292BB]
Dismissing the appeal filed by the Revenue, the High Court relying on the decision of Calcutta High Court in case of PCIT v. Oberoi Hotels (P.) Ltd. 96 taxmann.com 104 / 409 ITR 132 (Cal)(HC) held that notice u/s 143(2) of the Act was required to be mandatorily issued and Section 292BB had no manner of operation. Omission on the part of the assessing authority to issue notice under section 143(2) cannot be a procedure irregularity and is not curable and, therefore, the requirement of notice u/s 143(2) cannot be dispensed with. (AY. 2012-13)
PCIT v. Cosmat Traders (P.) Ltd. (2022) 291 Taxman 6 (Cal)(HC)
Editorial : Order of Tribunal in Cosmat Traders (P) Ltd v. ITO (2021) 189 ITD 504 (Kol)(Trib) is affirmed.

S. 143(3) : Assessment-Assessment order without DIN (Document identification number) has not valid in law-Statutory defects in the assessment order cannot be cured by applying the provision of section 292B of the Act-Circular No 19 of 2019 dated 14-8-209 (2019) 416 ITR 140 (St) of CBDT is binding on the Revenue-Order of Tribunal quashing the assessment order was affirmed. [S. 144C, 147, 292B]
Assessment order passed by the Assessing Officer did not bear any DIN and there was nothing on record to show that there were exceptional circumstances as mentioned in 2019, Circular No 19 of 2019 dated 14-8-209 (2019) 416 ITR 140 (St) which would sustain communication of final assessment order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and impugned final order could not be sustained. Court held that the object and purpose of issuance of 2019 Circular was to create an audit trail, thus, communication related to assessments, appeals, orders without DIN (document identification number) would have no standing in law. Order of Tribunal quashing the assessment order was affirmed. (AY. 2011-12)

CIT (IT) v. Brandix Mauritius Holdings Ltd. (2023) 456 ITR 34/ 293 Taxman 385 / 332 CTR 221/ 224 DTR 361 (Delhi)(HC)

S. 143(3) : Assessment-Income-Deduction of tax at source-discrepancy in tax deducted at source certificates-Receipts as in form 26AS generated by department to be taken into consideration and not receipts as in form 16a issued by payer-Order of Tribunal affirmed. [S. 4, 260A, Form 16A, Form 26AS]

The Tribunal observed that the Assessing Officer had taken the figures from the form 16A tax deducted at source certificate issued by the payer company on which the assessee had no control. The Tribunal held that even if the amount was paid it should have been accounted for in the assessee's bank account, which was not the case of the Assessing Officer, that the addition made by the Assessing Officer on the ground that there was difference between the claim of assessee in respect of the tax deducted at source credit and the corresponding income could not be accepted when form 26AS generated by the Department gave a different amount on which also the assessee did not have control and such figures were close to the assessee's contention and accordingly had directed the Assessing Officer to compute the income as shown in form 26AS. On appeal High Court affirmed the order of the Tribunal. (AY-2010-11)

PCIT v. Nirmali Bhadra (Smt.) (2023) 450 ITR 517 (Cal)(HC)

S. 143(3) : Assessment-Disallowance of 20% of gross expenses-Tribunal deleting the addition-Order of Tribunal is affirmed. [S. 143(2) 144, 260A]

Dismissing the appeal of the Revenue the Court held that, the assessment without any relevant material on record, cannot be made within the scope of sub-s. (3) of s. 143. Best judgment assessment made by the AO while exercising power under s. 143(3) is in contravention of the provisions of the IT Act. No substantial question of law.(AY. 2012-13)

Dy. CIT v. Optima Era Infra Joint Venture (2023) 331 CTR 702 702/221 DTR 486(All)(HC)

S. 143(3) : Assessment-Moratorium under Insolvency & Bankruptcy Code-Once the plan is approved under the Insolvency & Bankruptcy Code the resolution applicant starts on a clean slate and it cannot be faced with surprise claims, therefore, the assessment order which is the subject matter of the appeal cannot be enforced any longer, nor the consequential proceedings which arose from the assessment order. [S. 37(1), Insolvency & Bankruptcy Code, 2016, S. 14, 30(6),31, 260A]

The Tribunal affirmed the disallowance of expenses. On appeal the assessee contended that an application was filed by the resolution professional of the corporate debtor before NCLT, dt. 18th Feb., 2019 seeking an approval of the successful resolution plan under S. 30(6) of the Insolvency & Bankruptcy Code. The said resolution plan was approved by the NCLT. Therefore the resolution applicant cannot be faced with undecided claims. Court held that once the plan is approved the resolution applicant starts on a clean slate and it cannot be faced with surprise claims. Accordingly the assessment order which is the subject matter of the appeal cannot be enforced any longer, nor the consequential proceedings which arose from the assessment order. Assessment order passed and all proceedings arising therefrom are held to have been permanently extinguished. Followed Committee of Creditors of Essar Steel Ltd v. Satish Kumar Gupta. (2020) SCC 531 and Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. (2021) 9 SCC 657 (AY. 1995-96)

Minosha India Ltd. v. CIT (2023) 331 CTR 470 /223 DTR 398 (Cal)(HC)

S. 143(3) : Assessment-Limited scrutiny-Central Board of Direct Taxes-Instructions-Binding on Authorities-Notice issued under section 143(2) not in terms of instructions of Central Board of Direct Taxes-Notice and assessment order without jurisdiction. [S. 119, 143(2), 144]

Dismissing the appeal of the Revenue the Court held that the Department had not led any cogent and convincing evidence to prove its case. The Tribunal observed that with respect to the notice, the assessee had submitted a reply in which it had taken up the issue with regard to jurisdiction of the assessing authority to issue such notice. Hence, the Tribunal had rightly observed that it could not be held that the assessee had acquiesced to the jurisdiction. As per Central Board of Direct Taxes instructions, the burden was on the authority assuming jurisdiction to show and establish that such instructions had been duly complied with and satisfied in letter and spirit. Since the notice under section 143(2) was not in terms of the instructions of the Central Board of Direct Taxes, both the notice under section 143(2) and the assessment were without jurisdiction and were accordingly quashed.(AY.2006-07)

CIT v. Crystal Phosphates Ltd.(2023) 332 CTR 215 /152 taxmann.com 232/(2024)461 ITR 289((P&H)(HC)

S. 143(3) : Assessment-Jurisdiction-Assessment order passed by non-Jurisdictional Assessing Officer-Contrary to CBDT instruction No.1 of 2011 dt. 1-4-2011-Order is bad in law.[S. 119,124(3), 143(2)]

Held that the order is passed by the Assessing Officer is contrary to CBDT instruction No.1 of 2011 dt. 1-4-2011 hence the order is bad in law. (AY. 2012-13)

Sudir Kumar Agarwal v.ITO (2023) 221 TTJ 687 (Raipur)(Trib)

S. 143(3) : Assessment-Document Identification Number (DIN)-Assessment order without obtaining Document Identification Number (DIN) is invalid-No jurisdiction-Order passed without issuing the notice u/s 143(2)-Order is quashed.[S. 143(2), 144, 147]

Held that an assessment order passed by Assessing Officer without obtaining Document Identification Number (DIN) is invalid and shall be deemed to have been never passed. Where Assessing Officer passed an assessment order under section 143(3) without issuing notice under section 143(2) only in pursuance with notice issued by another Assessing Officer under section 143(2), who had no jurisdiction over assessee at relevant time, such assessment order was liable to be quashed as no valid notice under section 143(2) was issued by Assessing Officer who held jurisdiction over case of assessee. (AY. 2014-15, 2017-18)

Bangalore Narayan Das v. ITO (IT) (2023) 157 taxmann.com 605 / 226 TTJ 66 (Bang)(Trib.)

S. 143(3) : Assessment-Limited scrutiny-Unsecured loan-Notice beyond scope of limited scrutiny-CBDT Instruction No. 5/2016, dated 14-7-2016-Assessment is bad in law. [S. 36(1)(iii), 37(1), 68, 119]

Assessee's case was selected for limited scrutiny with respect to interest expenses, income from real estate business, sales turnover mismatch and other expenses claimed in the profit and loss account.The Assessing Officer started enquiries in respect of secured and unsecured loans prior to date when limited scrutiny was converted into complete scrutiny and made addition under section 68 of the Act. On appeal the Tribunal held that Instruction No. 5/2016 which provided that while proposing to take up complete scrutiny which was fixed for limited scrutiny, Assessing Officer shall form a reasonable view that there was a possibility of under-assessment of income if case was not examined under complete scrutiny and that plea had to be on existence of credible material not merely on suspicion and conjecture or

unreliable sources. Accordingly the conversion of limited scrutiny to complete scrutiny could not be upheld as same was found to be in total violation of Instruction No. 5/2016. (AY. 2015-16)

Sukhdham Infrastructures LLP v. ITO (2024) 165 taxmann.com 154 / 226 TTJ 497 (Kol)(Trib.)

S. 143(3) : Assessment-Final assessment order is passed-Assessing Officer had no powers to either withdraw or modify or substitute assessment order passed under section 143(3) with another assessment order. [S. 144C]

Assessing Officer initially passed an assessment order under section 143(3) on 15-9-2021, determining total income.Subsequently, a draft assessment order was passed under section 144C(1) on 30-9-2021, with same income figure.Assessing Officer stated that order under section 143(3) was passed on 15-9-2021 inadvertently and therefore, said order might be read as draft order under section 144C. Dispute Resolution Panel (DRP) held that once final assessment order had been passed on 15-9-2021 under section 143(3), same could not be annulled or modified at a subsequent date on ground that same was passed inadvertently.However, instead of complying with DRP's directions, Assessing Officer passed a final assessment order on 27-6-2022, replicating draft order. Tribunal held that once an assessment order has been passed under section 143(3) in respect of any assessment year, Assessing Officer cannot tinker with that assessment, of course, he can either reopen assessment or rectify assessment order after strictly complying with conditions of section 147 and respectively and statute does not confer any powers on Assessing Officer to either withdraw or modify or substitute assessment order passed under section 143(3) with another assessment order Therefore, final assessment order passed by Assessing Officer without complying with directions of DRP was without jurisdiction and deserved to be set aside and quashed. (AY. 2017-18)

Urvashi Narain v.ITO(2023) 225 TTJ 131/ 156 taxmann.com 189 /(2024) 110 ITR 670 (Delhi)(Trib)

S. 143(3) : Assessment-Return-Refund-Amalgamation-Non-existent entity-Credit for taxes paid-Assessing Officer is bound to give credit of taxes paid under section 199 and allow refund of tax in accordance with law. [S. 139, 139(9) 199, 237]

Held that return of income filed in the name of amalgamating company, i.e. a non-existent entity, after amalgamation are non est and therefore,the assessment order passed in the name of non-existent entity is in valid. Tribunal also held that when the Assessing Officer has assessed the income of the assessee independently, i.e. without considering the returns filed, he is duty-bound to give credit of taxes under section 199 and allow refund of tax in accordance with law after verifying the claim of refund. (AY. 2014-15)

Star India (P) Ltd v. ACIT(2023) 224 TTJ 985 (Mum)(Trib)

S. 143(3) : Assessment-Income from undisclosed sources-Deduction of tax at source-Accounts-Difference between turnover reported in Form 26AS and in return-Directed to reconcile accrual of income during and decide in accordance with law. [S. 5, 145, Form No 26AS]

Held that the assessee had recognised sales/receipts and had claimed credit for the entire tax deducted at source. The books of account had been audited by the auditor and the Assessing Officer had accepted the books of account. The details for the financial years 2004-05 to 2014-15 showed that the assessee had claimed credit for the entire tax deducted at source, but had offered the income to tax in prior or subsequent year. Therefore, considering the entire facts and the documents produced by the assessee, the Assessing Officer is to reconcile the accrual of income during the year as claimed by the assessee and decide the

issue afresh according to law, after reasonable opportunity of being heard to the assessee.(AY.2011-12)
Acme Telecom and Network Solutions P. Ltd. v. ITO (2023)108 ITR 29 (SN)(Bang) (Trib)

S. 143(3) : Assessment-Income from undisclosed sources-Documents seized in the course of search-Real estate broker-Addition of peak of transactions reflected in seized material is not sustainable-Estimate of profit of 1 percent of gross receipts is held to be proper. [S. 131, 132, 133(6)]

Held that the Assessing Officer had not brought on record any concrete evidence even remotely to demonstrate that the assessee was an investor and had actually entered into the transactions reflected in the seized material on his own. Prior to making addition in respect of the peak of transactions reflected in the seized material, the Assessing Officer was duty-bound to have brought on record some cogent material to demonstrate that the assessee was an investor and the transactions reflected in the seized material had actually been carried out by the assessee, which the Assessing Officer has failed to do so. Tribunal also held that the brokerage income alone had to be brought to tax, it had to be on the total transactions or total turnover of the assessee. Addition of 1 Per Cent. of total gross receipts is held to be proper (AY.2016-17)
Asst. CIT v. Pankaj Khandelwala (2023)108 ITR 52 (SN)(Surat) (Trib)

S. 143(3) : Assessment-Document Identification Number-Failure to allot and mention in assessment order-Assessment order deemed never to have been passed-Central Board Of Direct Taxes Circular No. 19 Of 2019, Dated 14-8-2019-Order is bad in law-Additional ground is admitted-Order is quashed. [S. 153A, 254(1)]

Held, that there was a clear violation of the specific requirement under the Central Board of Direct Taxes Circular No. 19 of 2019 ([2019 416 ITR (St.) 140) to quote the document identification number in the body of the assessment orders. Para 4 of the Circular which says in unequivocal terms that any communication which is not in conformity with paras 2 and 3 shall be treated as invalid and shall be deemed never to have been issued. Thus, the assessment orders passed by the Assessing Officer under section 143(3) of the Income-tax Act, 1961 read with section 153A of the Act and as a natural corollary, the orders of the Commissioner (Appeals) were non est.(AY.2013-14 to 2018-19)
Panna Lal and Co. v. Dy. CIT (2023)108 ITR 46 (SN) (Delhi)(Trib)

S. 143(3) : Assessment-Document Identification Number-Circular making generation and quoting of mandatory-Assessment order invalid and deemed to have never been passed. [S. 119]

Held that in the body of Assessing Officer's order, no document identification number was mentioned nor were any reasons for not mentioning the document identification number stated. Is such a situation, the Assessing Officer's order would lose its validity. Subsequent separate communication of document identification number was a superfluous exercise. In terms of paragraph 4 of Circular No. 19 of 2019, dated August 14, 2019, the assessment order was invalid and shall be deemed to have never been passed. Central Board of Direct Taxes Circular No. 19 of 2019, dated August 14, 2019 ([2019 416 ITR (St.) 140)(AY.2012-13)
Rhone Associates P. Ltd. v.ACIT (2023)108 ITR 16 (SN)/(2024) 204 ITD 136 (Delhi) (Trib)

S. 143(3) : Assessment-Powers-Tribunal remanding matter to Assessing Officer to consider whether certain receipts constitute fees for technical services-Assessing Officer treating receipts as royalty-Beyond scope of remand-Reimbursement of expenses for

use of software-Not fees for technical service-DTAA-India-USA [S. S. 9(1)(vi), 9(1)(vii), Art. 13(4)]

Held that the mandate of the Assessing Officer was to follow the directions of the Tribunal whereby the matter was set aside to the Assessing Officer for specific adjudication. The scope of the remand was limited to seeing whether the payment made for reimbursement fell within the ambit and scope of "fees for technical services" under article 13(4)(c). The Assessing Officer instead of following the direction of the Tribunal had proceeded to treat the payment as royalty which could not be sustained. Though the Commissioner (Appeals) had accepted this fact, and had co-terminous power with the Assessing Officer, he had chosen not to decide the issue. The assessment order and the order of the Commissioner (Appeals) were unsustainable and deserved to be quashed. Held that the reimbursement of user charges for the "Lotus Notes" software could not be treated as "fees for technical services" under Double Taxation Avoidance Agreement. (AY.2006-07, 2007-08, 2008-09)

Foseco International Ltd. v. CIT (Appeals) (2023)107 ITR 222 (Mum) (Trib)

S. 143(3) : Assessment-Search-Income from undisclosed sources-Jewellery discovered in search-Assessing Officer cannot make separate addition over and above excess identified in search-Rate of tax-Penalties-Levy of tax under section 115BBE not in accordance with law. [S. 5, 69, 115BBE, 132, 132(4), 271AABB, 271AAC]

Held that the search team, while accepting the disclosure of income by the assessee, did not counter the reasonableness of the assessee's holdings of silver items. The search team had considered and accepted the explanation of the assessee, and limited its questions only to the excess over the explained quantity. The Assessing Officer could not have made a separate addition merely based on the facts as they were before the search team. Once the search team had accepted that the silver items were explained, there was no reason for the Assessing Officer and the Commissioner (Appeals) to make and sustain the addition ignoring the primary acceptance by the Revenue at the time of the search. Held that the search was initiated on July 21, 2016. Sections 271AAB and 271AAC deal with penalties where disclosures are made by the assessee in a search. The Assessing Officer had, in passing the assessment order, invoked the provisions of section 271AAB(1)(a) of the Act for undisclosed income unearthed in the course of the search. Section 271AAB of the Act was in operation until the Taxation Laws (Second Amendment) Bill, 2016 ([2016 389 ITR (St.) 14) received the assent of the President on December 15, 2016. The Assessing Officer thus consciously invoked section 271AAB of the Act and not the provisions of section 115BBE of the Act. Once the Assessing Officer had initiated penalty proceedings under section 271AAB of the Act, section 115BBE would not be applicable. The intention of the Legislature was to segregate the taxation of income declared in a search and that of other amounts found and disclosed by the assessee in Cases other than search Cases. The search in this Case was initiated before the Taxation Laws (Second Amendment) Act, 2016 ([2016 389 ITR (St.) 48) received the assent of the President. Once the Assessing Officer had already decided that the Case at hand involved an addition from a search being an amount declared under section 132(4) of the Act, accepted by the Assessee and offered to tax in the return of income filed, the same will be liable to the penal provisions of section 271AAB of the Act. The invocation of the provisions of section 115BBE of the Act is not in accordance with law and is also against the principles of natural justice as no such issue was raised, discussed or confronted to the assessee. The Assessing Officer is directed to give relief accordingly.(AY.2017-18)

Sandeep Sethi v. Dy. CIT (2023)107 ITR 311 /223 TTJ 294 / 226 DTR 148 (Jaipur) (Trib)

Rajiv Nigotiya v. Dy. CIT (2023)107 ITR 311 /223 TTJ 294 / 226 DTR 148 (Jaipur) (Trib)

S. 143(3) : Assessment-Unaccounted expenditure and receipts-Only profit element in unaccounted business receipts and net result of unaccounted receipts and expenditure could be brought to tax-Assessment made substantively in hands of company-Protective addition in hands of director is deleted-Certificate from Gram Panchayat secondary evidence-Primary Evidence of crops, income and expenses unavailable-Fifty Per Cent. treated as agricultural income-Balance treated as income from other sources-Cash available in hands of group-Set off to be permitted-If sufficient cash available after set off and adjustments-No addition is permissible-Depreciation-Value of addition to block-Addition of differential depreciation is deleted. [S. 5, 10(1), 32 56, 69]

Held that when an unaccounted expenditure and receipts are found only profit element in unaccounted business receipts and net result of unaccounted receipts and expenditure could be brought to tax. When the assessment made substantively in hands of company, protective addition in hands of director is deleted. As regards agricultural income certificate from Gram Panchayat secondary evidence. Primary Evidence of crops, income and expenses unavailable hence fifty Per Cent. treated as agricultural income and balance treated as income from other sources.Held that cash available in hands of group hence set off to be permitted. If sufficient cash available after set off and adjustments no addition is permissible. As regards depreciation, value of addition to block of asset,addition of differential depreciation is deleted. Once the addition on substantive basis representing the investment in cash had been upheld, there could not be any addition either in the hands of the company or the assessee. *(*AY.2009-10, 2011-12 to 2015-16)

Pravinchandra R. Patel v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)
Ansuben P.Patel (Smt) v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)

S. 143(3) : Assessment-Entries in the books of account-Sale of land-Entries in books is not conclusive-Right income should be taxed in right hands, under right head of income in right year of assessment-Addition as undisclosed income is deleted. [S. 4, 69, 133(6), 145]

Held that the transaction of sale of property was undertaken by the assessee during the financial year 2006-07 pertaining to the assessment year 2007-08 but the assessee did not record the entry in the books of account and continuously showed the property in the balance-sheet till the assessment year 2012-13. Hence, the books of account of the assessee did not reveal the correct factual position of properties owned by the assessee till 2012-13. In response to notice the purchaser submitted that it had not purchased any property from the assessee during the financial year 2011-12. The sale deed showed that the assessee had sold the land on March 21, 2007 which fell within the ambit of assessment year 2007-08 and the recital in the sale deed stated that the assessee had received sale consideration at the time of execution and registration of sale deed. Entries in the books of account are not determinative of the true nature of the transaction and of the income. Therefore, following the principle of tax jurisprudence that the right income should be taxed in the right hands, under right head of income in the right year of assessment, the Assessing Officer was to tax the income or profits accrued to the assessee from sale of the land or property in the assessment year 2007-08.(AY.2012-13)

Economical Credit and Construction Co. P. Ltd. v.ITO (2023)107 ITR 51 (SN)(Delhi)(Trib)

S. 143(3) : Assessment-Amalgamation-Intimation to Department with the copy of order approving merger-Order passed in name of non-existent entity void and set aside.
Held that the assessment order was passed on October 10, 2016. Therefore, evidently, at the time when the assessment order was passed, the Assessing Officer was aware that the assessee had merged with another company. The contents of the letter filed with the Department had not been denied or disputed by the Department. The order of assessment passed in the name of a non-existent entity was void and liable to be set aside.(AY.2014-15)
Rahil Marketing P. Ltd. v Dy. CIT (2023)107 ITR 48 (SN) (Ahd)(Trib)

S. 143(3) : Assessment-Deduction of tax at source-Mismatch between income shown in profit and loss account and that reflected in Form 26AS-Cannot be assessed as income of the assessee. [S. 5, 145]
Held, that the customer directly made payment of lease rentals to the financier because the lease rentals receivable by the assessee were already assigned to the financier. On completion of the tenure of the lease, the assets were returned. Those assets were sold at the end of the tenure to the respective purchaser of those assets. The assessee offered investment in the unguaranteed residuary account up front. Therefore the income of the assessee was not the rental income but the income earned in the business of acquiring and dealing in unguaranteed residuary interest in assets rented to customers. Thus, the income offered by the assessee was such income and not the rental income appearing in form 26AS. Order of CIT(A) deleting the addition is affirmed. (AY. 2014-15)
Dy. CIT v. Connect Residuary P. Ltd. (2023)105 ITR 46 (SN)(Mum) (Trib)

S. 143(3) : Assessment-Income from undisclosed sources-Estimate of profits-Suppressed sales-Assessing Officer is directed to adopt profit at 3.5 Per Cent. on suppressed saleS. [S. 69C]
Held that some leakage of revenue could not be ruled out. Keeping the fact in view that the Assessing Officer himself had accepted profit at 1.52 per cent. for the sales recorded in the books of account, the Assessing Officer was to adopt profit at 3.5 per cent. on the suppressed sales.(AY. 2015-16)
Rajendra Shankar Singhal v. ITO (2023)105 ITR 41 (SN) (Delhi)((Trib)

S. 143(3) : Assessment-Addition of excess of gross profits As Reconciliation statement-Deletion of addition is affirmed. [S. 28(i)]
Held that in respect of the addition on account of gross profits, it was a matter of record that the assessee maintained complete books of account on a day-to-day basis which were subjected to audit. There was no adverse remark by the auditor in the audit report. Neither were the accounts rejected nor was section 145 of the Act invoked. From the evidence submitted, it was seen that all the transactions shown in the reconciliation statements were verifiable. Order of CIT(A) deleting the addition is affirmed. (AY. 2015-16)
Dy. CIT v. Prahalad Rai Rathi (2023)105 ITR 673 (Jodhpur) (Trib)

S. 143(3) : Assessment-Document Identification Number (DIN)-Final assessment order manually without DIN, assessment order was to be treated as never been issued.
Held that final assessment order passed by Assessing Officer did not bear any Document Identification Number (DIN) and revenue failed to bring on record any exceptional circumstances as mentioned in Circular No. 19/2019, dated 14-8-2019 which would sustain communication of final assessment order manually without DIN, assessment order was to be treated as never been issued Circular No. 19/2019 dated 14-8-2019 has mandated income tax authority with effect from 1-10-2019 for generation, allotment and communication of

computer generated DIN in relation to any assessment, appeals, orders, statutory or otherwise, exemptions, enquiry, investigation, verification of information, penalty, prosecution, rectification, approval etc.. (AY. 2012-13)
Prabhakar Amruta Shillak. v. ITO (2023) 202 ITD 128 (Pune) (Trib.)

S. 143(3) : Assessment-Jurisdiction-Central Board of Direct Taxes, by its Instruction No. 1 of 2011, dated January 31, 2011-Monetary limits-Vest with ITO-Notice under section 143(2) is issued by the Deputy Commissioner is not valid-Assessment is quashed. [S. 119,120, 143(2)]

Held, allowing the appeal, that the Central Board of Direct Taxes, by its Instruction No. 1 of 2011, dated January 31, 2011, had revised the earlier existing monetary limit for assignment of cases to ITOs, Assistant Commissioners and Deputy Commissioners with effect from April 1, 2011, which meant it was applicable to the instant case. In terms of the areas earmarked in the Instruction, the assessee was not located in any of those cities or stations which were categorised as metro cities and, therefore, its case would be that of a non-corporate assessee located in a mofussil area. That being so, the jurisdiction over the case-involving the return filed by a non-corporate assessee located in a mofussil area-was vested with the ITO and not the Deputy Commissioner, who had issued the notice under section 143(2). The notice under section 143(2) issued by the ITO, who was vested with the exclusive pecuniary jurisdiction over the assessee's case for the year under consideration, was made beyond the stipulated time, and, therefore, no valid jurisdiction could have been assumed by him for framing the assessment order under section 143(3). The order passed by the Deputy Commissioner was a non-jurisdictional one. As a result, the assessment framed by the ITO by his order passed under section 143(3) on the basis of the notice under section 143(2) issued by the non-jurisdictional Deputy Commissioner could not be sustained and was liable to be struck down. As the assessment was liable to be quashed, the adjudication of the other contentions advanced by the assessee regarding the additions made by the Assessing Officer, was left open.(AY.2014-15)
Durga Manikanta Traders v. ITO (2023)103 ITR 220 (Raipur) (Trib)

S. 143(3) : Assessment-Accommodation entries-Bogus purchases-Sales accepted-Only profit element embedded in alleged bogus purchases can be added and not value of purchase.[S. 5]

Held that the corresponding sales made out of disputed purchases had not been doubted by the Revenue. The assessee had furnished sufficient evidence to prove the genuineness of the sales made by it. It was not the case of the Revenue that the corresponding sales out of disputed purchases shown by the assessee had to be treated as unexplained cash credits since no purchases were made by the assessee. Since the sales made out of disputed purchases had been accepted as such by the Revenue, it would be just and fair to bring to tax only the profit element embedded in the value of such disputed purchases. (AY.2013-14, 2014-15)
Welspun Steel Ltd. v. Dy. CIT (2023)103 ITR 354 / 152 taxmann.com 62 (Mum) (Trib)

S. 143(3) : Assessment-Survey-Gross profit rate-Unaccounted sales-No material to indicate the assessee indulged in unaccounted sales post survey-Addition reduced considering electricity consumption-Justified. [S. 133A]

Held that the entire edifice of the addition has been made by the Assessing Officer only in the realm of extrapolation of the figures of unaccounted turnover before the date of survey to the period post survey. There was no material to indicate, even remotely, that the assessee

indulged in unaccounted sales during the post survey period as well. The Commissioner (Appeals) reduced the amount of addition considering the electricity consumption. The part deletion by the Commissioner (Appeals) is justified.(AY.2016-17)
ACIT v. Akash Gurudas Talreja (2023)102 ITR 52 (SN)(Pune) (Trib)

S. 143(3) : Assessment-Mismatch of amount-All transaction shown in Form 26AS does not represent income-Addition is deleted.[S. 4, 139,Form, 26AS]
The Hon'ble Tribunal observed that the transaction shown in Form 26AS cannot be taken as the gospel truth that it represents income in the hands of the Assessee especially in a situation where the Assessee has contended that the said amount was reimbursement of expenses. In such a situation, the revenue is expected to be more vigilant before reaching to the conclusion that the Assessee has not shown certain income. Accordingly, the Assessing Officer was directed to delete the addition in the absence of necessary verification and having any doubt on the details filed by the Assessee. (AY. 2014-15)
Oceanic Vehicles Pvt. Ltd. v. DCIT (2023) 102 ITR 70 (SN) (Ahd.)(Trib.)

S. 143(3) : Assessment-Assessment orders passed by Assessing Officer during the moratorium period under the provisions of IBC are void-ab-initio. [S. 153A]
Assessee was a resident corporate entity. Pursuant to search and seizure proceedings, assessment was conducted, and assessment orders were passed under section 143(3) r.w.s 153A of the Act. Appeals were filed before the Commissioner (Appeals) and thereafter before the Tribunal by both the Assessee and revenue. The Hon'ble Tribunal remanded the matter back to the assessing officer for fresh adjudication.
In the meanwhile, on the basis of applications filed by creditors & others, Corporate Insolvency Resolution Process (CIRP) was initiated against the Assessee in National Company Law Tribunal (NCLT). The NCLT, Mumbai Bench passed an order of moratorium, and an Insolvency Resolution Professional (IRP) was also appointed by NCLT in terms with the Insolvency and Bankruptcy Code 2016 (IBC). Accordingly, by the time assessment proceedings were taken up in pursuance to the direction of the Tribunal, the moratorium order of the NCLT had already been passed and IRP was appointed. The IRP thereafter requested the Assessing Officer not to proceed with the assessment proceedings in view of the order passed by NCLT imposing moratorium in terms of section 14 of the IBC. Further, the IRP intimated to the Assessing Officer that the appeal filed by the revenue before the Hon'ble Delhi High Court against the order of the Tribunal was dismissed in view of the moratorium imposed by NCLT. The Assessing Officer, however, proceeded to complete the assessment on the following 2 grounds viz. (i) the proceedings under NCLT are applicable to normal creditors of Assessee and not to proceedings under the Act; (ii) Against the order of the Hon'ble Delhi High Court, the CBDT has given approval for filing SLP before Hon'ble Supreme Court. The Assessing Officer completed the assessment ex-parte by alleging that the Assessee neither appeared nor furnished necessary details as sought during the proceedings. Against the assessment orders passed by the Assessing Officer, the Assessee again preferred appeal before Commissioner (Appeals) which was dismissed.
The Hon'ble Tribunal quashed the assessment orders and held them to be void-ab-initio by taking note of the following facts viz. (i) since the moratorium order of the NCLT had already been passed and IRP had been appointed, the Assessee had no locus standi to appear in the assessment proceedings; (ii) the Assessing Officer went ahead with the assessment disregarding the moratorium imposed by NCLT, though specifically brought to

notice of the Assessing Officer by the IRP; (iii) As per the final order of NCLT, the debt due to various creditors including the Income Tax department were extinguished and determined at Nil as per waterfall mechanism mentioned under section 53 of the IBC. (AY.2010-11, 2011-12)
Monnet Ispat & Energy Ltd. v. ACIT (2023) 102 ITR 29 (SN) (Delhi (Trib)

S. 143(3) : Assessment-Bogus purchases-Inventory and Closing stock not disputed-Addition is deleted. [S. 132(4), 147, 148, 153A]
Consequent upon the search and seizure operation, the assessee firm's assessments were completed u/s 153A(1)(b) r.w.s. 143(3) making addition on account of valuation of stock, which had been deleted by the CIT (Appeals) – Subsequently, on receipt of the information from the Investigation Wing, the AO issued notice u/s 148 for the reasons recorded that certain entities were providing accommodation entries and the assessee firm was one of the beneficiaries from K. Ltd. for the transaction of purchase of jewellery from K. Ltd. for Rs. 10,14,600/– and to treat the same as bogus purchases – In response, the assessee firm submitted the complete details of the purchase transaction with K. Ltd. with cogent and corroborative evidences i.e. copy of purchase bill, delivery challan, bank statements evidencing payment through banking channels, purchases, sales and stock register, confirmation of accounts from K. Ltd., but in vain. The CIT (Appeals) also confirmed the addition made by the AO
The Hon'ble ITAT held that the assessee firm had discharged the onus cast on it by placing the cogent and corroborative evidences, materials, etc. to establish the nature and source of purchases as duly recorded in the books of accounts and shown as part of its closing stock. A statement recorded on oath u/s 132(4) does not carry any evidentiary value, the assessee should be allowed an opportunity to cross-examine the deponent., Merely relying on statement recorded at the back of the assessee and without granting an opportunity of cross-examination, the purchases could not be held bogus, more so when, the purchases equally form part of inventory and closing stock which has not been disputed by the AO either any finding as to such purchases at an inflated value. The addition was deleted in toto. (AY. 2010-11, 2013-14)
Talwar Jewellers v. ACIT (2023) 102 ITR 26 (SN) (Chd) (Trib.)

S. 143(3) : Assessment-Notice issued to a non-existing entity-Amalgamation-AO was informed-Assessment order passed in the name of a non-existent entity is void and liable to be quashed. [S. 144C]
Solvay Pharma filed its ROI for the relevant AY 2008-09 on 30.09.2008. Subsequently, the Hon'ble Bombay High Court vide order dated 15.07.2011 approved the amalgamation scheme, whereby Solvay Pharma India Ltd. amalgamated with Abbott India Ltd. By letter dated 10.08.2011, the assessee had informed the AO about the fact of amalgamation. Despite of this, all the orders by TPO, AO and DRP, including the final assessment order, were passed in the name of Solvay Pharma. The ITAT held that the assessment order passed in the name of the said non-existing entity is void and liable to be quashed. Relied New Age Buildtech (P.) Ltd. v NFAC [2023] 151 taxmann.com 66 (Bom) (HC), PrCIT v. Maruti Suzuki India Ltd.[2019] 265 Taxman 515/416 ITR 613 (SC). PCIT v. Mhagun Realtors (P) Ltd (2022) 287 Taxman 66/443 ITR 194 (SC) is distinguished. (AY. 2008-09, 2009-10)
Abbott India Ltd v. ACIT (2023) 202 ITD 287(Mum)(Trib)

S. 143(3) : Assessment-Purchase of property-Joint owners-Disclosed in the books of accounts of the Company-Transaction cannot be held to be Benami. [Prohibition of Benami Property Transactions Act, 1988, S. 2(9),24)

During relevant previous year, assessee-company along with a person Rajiv Rattan purchased a property. The property purchased by assessee which had 95% stake in property was let out to Raajiv Rattan who had 5% stake in property for a monthly rent. During the course of assessment proceedings, the Assessing Officer alleged that the assessee acted as a Benamidar for beneficial owner of Rajiv Rattan for property purchased and thus provisions of prohibition of Benami Properties Transaction Act were clearly applicable in case of assessee company. Tribunal held that purchase of property by Rajiv Rattan was not inaccurate as he was one of joint owners of property as per registered sale deed. This fact was disclosed by assessee company itself in its books of accounts. Further, having acquired property, assessee company could have given it on rent to anybody and would have received fair market rentals. By giving it to Rajiv Rattan nothing turned against assessee company. Assessee company had duly recorded asset as well as liabilities being source of acquisition of property in its audited books of accounts and assessee company was also seeking to maintain and protect its assets out of its own resources. Accordingly, Tribunal held that it could not be said that assessee company was not real owner of property and transaction entered into by assessee company could not be classified as benami transaction. (AY. 2015-16)

ACIT v. Tupelo Builders (P.) Ltd. (2023) 199 ITD 58 / 221 TTJ 192 (Delhi)(Trib)

S. 143(3) : Assessment-Scope of scrutiny-AO's jurisdiction is not limited to just valuing the closing stock but also determining the project cost, project revenue and closing WIP at the end of reporting period-Thus, AO is justified in making addition by revaluing the stock. [S. 145]

In the present case Hon'ble appellate tribunal held that ~~the~~ under the limited scrutiny the scope of enquiry is not limited to verifying whether the assessee had followed the percentage completion method or not. Rather the scope of the limited scrutiny was to determine whether the assessee had followed the percentage completion method and secondly, how the method had been actually followed while accounting for the real estate transactions undertaken by the assessee during the relevant assessment year. Therefore, the AO had not exceeded the scope of enquiry under the limited scrutiny assessment. Thus, the AO is justified in making addition on revaluation of stock. (AY.2015-16)

Aman City Developers P. Ltd. v. Asst. CIT (2023) 105 ITR 53(SN) (Chd) (Trib)

S. 143(3) : Assessment-Civil construction-Stock in trade-Amount surrendered in the course of survey-Assessable as business income-Addition cannot be made as income from undisclosed income under section 69 of the Act. [S. 69, 133A]

In the course of survey the assessee surrendered stock in trade and credited to P& Loss account. The AO assessed the surrendered amount as income from undisclosed income under section 69 of the Act. CIT(A) affirmed the order of the AO. On appeal the Tribunal held that the amount surrendered qua the investment in the excess stock was liable to be taxed under the head business income and not under the head income from other sources. Relied on Shree Sita Udyog v. DCIT, ITA No. 249 to 259 / RPR/ 2017 dt 22-7-2022. (TS-969-ITAT-2022 dt 12-12-2022)(AY. 2012-13)

Kulkarni & Sahu Buildcon Pvt Ltd v. DCIT (2023) BCAJ-February-P.39 (Rajkot)(Trib)

S. 144 : Best judgment assessment-Non service of notice-Principle of natural justice-New PAN card-Change of address uploaded-Order and penalty notices are quashed and set aside. [S. 271(1)(b), 271 (1)(c), Art. 226]

Assessee shifted to Pune after marriage and also states that she had informed the IT Department about the change of address. Communication seeking issuance of a new PAN

card and change in her address has been uploaded, received and acknowledged on 6th Oct., 2016. On writ allowing the petition the Court held that in the absence of service of notice on assessee at correct address even after intimated by assessee, the impugned orders, both of assessment as well as levying penalties are vitiated by violation of the principles of natural justice and are set aside. (AY. 2011-12) (SJ)
Ramya Vivek Iyer v.ITO (2023) 334 CTR 931 (Mad) (HC)

S. 144 : Best judgment assessment-Question of fact-Alternate remedy-High court cannot investigate into facts-Writ petition is dismissed. [S. 153, Art. 226]
Dismissing the petition the Court held that the order of assessment involved questions of fact and also there was no finding rendered on the issue of jurisdiction which had been raised by the assessee. Moreover the assessee had an alternate remedy by way of appeal. The order of assessment could not be quashed. (AY. 2012-13)
B. Ramamoorthy v. ACIT (2023) 334 CTR 330 (Mad)(HC)
Editorial : Affirmed, in B. Ramamoorthy v. ACIT (2023)457 ITR 544 / 293 Taxman 67 / 334 CTR 326 (Mad)(HC)

S. 144 : Best judgment assessment-Question of fact-Alternate remedy-High court cannot investigate into facts-Writ petition is dismissed.[S. 153, Art. 226]
Dismissing the appeal against single judge the Court held that the order of assessment involved questions of fact and also there was no finding rendered on the issue of jurisdiction which had been raised by the assessee. Moreover the assessee had an alternate remedy by way of appeal. The order of assessment could not be quashed.
B. Ramamoorthy v. ACIT (2023)457 ITR 544 / 293 Taxman 67 / 334 CTR 326 (Mad)(HC)
Editorial : Order of single judge is affirmed, B. Ramamoorthy v. ACIT (2023) 334 CTR 330 (Mad)(HC), (WPNO. 2810 of 2020 dt. 13-9-2022)

S. 144 : Best judgment assessment-Reassessment-Principles of natural justice-Order passed without giving sufficient time for filing objections-Order is set aside. [S. 147, 148, Art. 226]
Allowing the petition the Court held that there was violation of principles of natural justice. The assessee did not get reasonable time to file its objections to the reasons recorded, the assessment order was passed within three working days, since September 25 th and 26 th were Saturday and Sunday. The Assessing Officer was directed to decide the objections by way of a reasoned order in accordance with law.(AY.2013-14)
Grand Reality Pvt. Ltd. v ACIT (OSD) (2023)456 ITR 709 (Delhi)(HC)

S. 144 : Best judgment assessment- Notice issued in a email address which is not in use-Order is set aside-Directed to pass a fresh assessment order after issuance of a formal show cause notice at correct e.mail addresS. [S. 147, 148, Art. 226]
The Assessing Officer passed best judgment assessment order by issuing a statutory show cause notices to assessee at e-mail address which was not in use. On writ High Court quashed the assessment order and the Assessing Officer is given liberty to pass fresh assessment order after issuance of a formal show cause notice at correct e-mail address. (AY. 2014-15)
Bengal & Assam Company Ltd. v. NFAC (2023) 295 Taxman 45 (Delhi)(HC)

S. 144 : Best judgment assessment-Order passed without giving an opportunity to be heard-Violation of principles of natural justice-Order is not valid [S. 142(1), 153, Art. 226]

Allowing the petition the Court held that the order of assessment under section 153 read with section 144 of the Income-tax Act, 1961 had been passed by the Assessing Officer without giving the assessee an opportunity of being heard.The orders were set aside on the ground of not giving opportunity and resultant breach of principles of natural justice. The order was not valid.*(*AY. 2013-14 to 2019-20)

Manishkumar Tulsidas Kaneriya v. ACIT (2023)454 ITR 153 / 293 Taxman 127 (Guj)(HC)

S. 144 : Best judgment assessment-Principle of natural justice-Order set aside.[S. 144B, Art. 226]

The AO passed the best judgment assessment under section 144 r.w.s 144B of the Act. The Assessee contented that due to bona fide reasons and unavoidable circumstances, the Assessee could not provide its submission and documents. Further, the Revenue proceeded without providing the Assessee with a sufficient or reasoned opportunity. Considering the facts and circumstances, the Court set aside the best judgment assessment and granted the Assessee one final opportunity to put forth his defense along with the documents. (SJ) (AY 2018-19)

Sudhakar v. ACIT (2023) 291 Taxman 183 (Karn.)(HC)

S. 144 : Best judgment assessment-One time settlement-Order passed in the years 2016-High Court set aside the ex-parte order-Directed the Assessing Officer provide all the evidences and recorded reasons-Directed the Jurisdictional Assessing Officer to pass a reasoned order.[S. 147, 148,179, 264, Art. 226]

The Assessing Officer passed an ex parte order on the basis of information received from the investigation wing Assessing the income of the appellant company at Rs.9, 59,95, 749 on 3-12-2016 as against returned income was nil. In the year 2020 when the Assessing Officer passed the order under section 179 against one of the Director, the assessee came to know that the ex-parte order was passed against the company. The Revision application filed by the one of the Director against an order under section 179 of the Act was dismissed by the Commissioner of Income tax.The Director has filed writ petition against the said rejection order and also writ against the ex-parte order passed by the Assessing Officer against the company. Allowing the petition of the company the Court held that the notices that were sent to petitioner came back undelivered with the endorsement “Left”. The Assessing Officer appears from the order, was racing against time because the matter would have got time barred and therefore passed the order. High Court set aside the ex-prte order and also order rejecting the revision application against the order under section 179 of the Act. Directed the Assessing Officer to pass a reasoned order after giving a reasonable opportunity to the appellant. (WP L.No. 13837 of 2023 dt. 25-9-2023) (AY. 2009-10) (Uma Devesh Ajmera v.UOI (WP.No. 2496 of 2023 dt. 25-9-2023)

Parina Laboratories Pvt Ltd v.ITO (Bom)(HC) www.itatonline.org.

S. 144 : Best judgment assessment-Rejection of books of account-Estimate of gross profit-No purchases from shell companies-Declared greater profit from earlier years-No addition is warranted.

Held that there was no change in the business activity of the assessee. Accordingly, the differential amount of gross profit was at.35 per cent. (average gross profit of last three years at 19.30 per cent.-current year gross profit at 18.95 per cent.) of the turnover and the Assessing Officer was to make an addition of Rs. 68,36,22,056 being.35 per cent. of Rs. 201,06,53,107 only. Likewise, for the assessment year 2011-12 the assessee had declared

greater gross profit than in the earlier years. Accordingly, no addition was warranted in the given facts and circumstances.(AY.2005-06 to 2011-12)
Asst. CIT v. Montecarlo Construction Ltd. (2023)107 ITR 411 (Ahd) (Trib)

S. 144 : Best judgment assessment-Business expenditure-Transfer pricing-Arm's length price-Avoidance of tax-International transaction-Capacity Utilisation Adjustment-Matter remanded to the Assessing Officer. [S. 92C]
Tribunal set aside the best judgement assessment and also adjustment made on account of capacity utilisation adjustment to the Assessing Officer *(*AY. 2015-16)

Bilcare Ltd. v Dy. CIT (2023)105 ITR 94/ 147 taxmann.com 101
147 taxmann.com 101 (Pune) (Trib)

S. 144 : Best judgement assessment-Search-Incriminating material-Assessment is valid-Best judgement-Failure to issue show cause notice for best judgement assessment-Assessment not valid-Jurisdiction-Order of transfer of jurisdiction challenged before High Court-Stay not granted-Completion of assessment in pendency of proceedings before High Court valid-Statements recorded by Investigation Wing used to support additions made-Failure to give an opportunity to cross-examine witnesses-Addition is not valid-Unsecured loan-Addition is not valid. [S. 68, 139, 144, 153A, 245C]
Held that the plea of the assessee that in the absence of any incriminating material found during the course of search proceedings, no additions could be made under section 153A of the Act could not be accepted. This was not a case where no incriminating material was found. Several incriminating materials were seized which included blank letter heads of various persons, blank cheques, and notes and diaries containing details of payments received and transferred. Evidence relating to unexplained investment made in cash towards the purchase of immovable properties was also seized. The plea was also to be rejected as there was no requirement of incriminating material to assess or reassess the income of the assessee after search proceedings. Therefore, even if it were to be accepted that no incriminating material was found, the argument of the assessee would have to be rejected. That the assessee could e-verify his return of income within one hundred and twenty days from the date of his filing. In the case at hand, the assessment was framed within forty-five days from the date of filing of the return of income, treating the return of income as invalid. This action of the Assessing Officer could not be held to be justified. This was further supported by the fact that the Centralised Processing Centre received the manual acknowledgment for filing the return and treated the return as being valid. Section 144 of the Act makes it incumbent on the part of the Assessing Officer to give the assessee an opportunity to be heard before proceeding with the assessment on best judgment basis. However, no such opportunity was given and no notice under section 143(2) of the Act had ever been issued to the assessee. Besides the initial notice under section 142(1) of the Act, no further show-cause notice was issued which ran contrary to section 144 of the Act. Mandatory statutory notice under section 143(2) of the Act had not been issued by the Assessing Officer either which would invalidate the assessment proceedings. It is a pre-condition to issue a notice under section 143(2) of the Act irrespective of whether the assessment has been framed under section 143(3) or under section 144. The absence of a notice under section 143(2) was not a defect which would be curable under section 292BB of the Act, and this resulted in the assessment being treated as void. Therefore, none of the conditions for invoking jurisdiction under section 144 of the Act was satisfied. The assessee had filed a valid return of income and no notice under section 143(2) was issued before making the assessment. This was a non-curable defect. The assumption of jurisdiction and the subsequent order passed under section 144 of the Act were

bad in law. That although the challenge to the transfer of jurisdiction was sub judice at the time of framing of the assessment, at that time, no stay was in operation and the Assessing Officer was under no obligation to keep the assessments in abeyance. Accordingly, the plea of the assessee that the assessments were invalid on that ground was rejected.That statements were recorded by the Investigation Wing in the course of the search from various persons. These statements were used to support the additions. However, no independent investigation or verification was done by the Assessing Officer and no opportunity to cross-examine these witnesses was provided to the assessee in the assessment proceedings. The statements of the land owners and contractors were never even confronted to the assessee at any stage of the proceedings. The assessee came to know of all these statements for the first time after the receipt of the assessment orders. During remand proceedings before the Assessing Officer consequent to orders of the Commissioner (Appeals), summonses were issued selectively and three persons were cross-examined by the assessee. All three persons denied the contents of their alleged earlier statements.. Weight could not be given to such statements and the statements alone would not be sufficient to support the additions. That the additions have been made by invoking the provisions of section 68, 69 or 69A to 69D of the Act. No substantive additions of this kind could have been made in the hands of the assessee on aggregate basis without establishing that the assessee was the de facto owner of the bank accounts in Nagaland or the bank accounts of the recipients. No nexus between the assessee and those bank accounts had been established by the lower authorities. In these circumstances, the onus of the assessee remained confined to the credits received by the assessee in his own books of account and not any further. The assessee's onus under section 68 in respect of entries in the books or bank accounts of other persons is only secondary, i. e., consequential upon the successful discharge of the primary onus on the Assessing Officer of establishing the assessee to be the actual owner of the books of account or bank accounts held in the names of other persons. Therefore, the credits appearing in the other bank accounts could not be held to be income of the assessee. That section 68 of the Act requires the assessee to prove the identity of the payees, their creditworthiness and the genuineness of the transactions. With respect to these entities or individuals, copies of the permanent account numbers and Aadhar, Income-tax exemption certificates issued under section 10(26) of the Act, copies of work orders issued by the Government, copies of immovable property ownership certificates, audited financial statements, turnover certificates and affidavits affirming the transactions were placed on record. Undisputedly, the sources of such loans were Government contractual receipts as held by the Assessing Officer himself. It was quite evident that the parties in question were engaged as Government contractors for several years and were executing voluminous contracts for the Government. Undisputedly, the transactions had taken place through banking channels. It could thus be said that the onus of the assessee under section 68 of the Act was duly discharged. It was thus the onus of the Revenue to dislodge the same. No cogent material or evidence was on the record so as to dislodge the claim of the assessee. The additions were based more on allegations, surmises, conjectures and mere suspicion. These amounts could thus not be considered to be the assessee's undisclosed income. (AY. 2012-13 to 2018-19)

M. K. Rajendran Pillai v. ACIT (2023)102 ITR 290 (Cochin) (Trib)

S. 144 : Best judgment assessment-Rejection of books-Estimate of net profit at 4 Per Cent. on gross turnover-Justified-Fixed Deposits utilized to acquire bank guarantee-Nexus between interest earned and interest paid-Interest paid to be adjusted against interest received.[S. 56, 57, 145(3)].

Held that the appellate authority had taken a realistic view and determined the net profit at 4 per cent. on the gross turnover of the assessee. The Commissioner (Appeals) properly

clarified that the assessee was unable to explain the reasons for non-submission of the books of account before the assessing authority. Without proper books of account, the appellate authority had determined the net profit at 4 per cent. The assessee maintained the consistency for utilising this interest earned and interest paid in the profit and loss account. There was a nexus between the interest earned and the interest paid in relation to the assessee's business. Considering the factual matrix, the interest paid should be adjusted against interest received which would not be separately assessable.(AY.2015-16, 2017-18)
Ladakh Roadlines v. ACIT (2023)102 ITR 66 (SN)(Amritsar)(Trib)

S. 144 : Best judgment assessment-Demonetization-Books of accounts cannot be rejected without issuing any show cause notice-Stock register-Purcahses verified by the Assessing Officer-Rejectiion of books of account is not justified-Cash sales-Deposited in the Banks-Books of account is audited by Chartered Acccountant-Not justified by estimating income by applying NP Rate and books of accounts were to be accepted. [S. 68, 115BBE, 133(6) 143(3), 145(3)].
Assessee is engaged in manufacturing and trading of jewellery. The assessee-company derived income from manufacture and trading of jewellery. Books of the assessee were audited by an independent chartered accountant and the audit report and statement of profit and loss account were filed by the assessee. Assessee had deposited cash during demonetization period. Assessee claimed that cash deposited out of cash sales, realisation from debtors and advances from customers. AO rejected the books of accounts and made addition by treating the same as unexplained cash credit u/s. 68 r.w.s. 115BBE of the Act. In first appeal, CIT(A) deleted the addition made by the AO u/s. 68 of the Act. However, upheld the rejection of books of account and the estimation of net profit at the rate of 2.59% as against 2.36% declared by the assessee. On appeal the Tribunal held that the AO had verified the purchases, assessee had submitted stock records, all the details required to prove the sales made by the assessee were provided in the assessment proceedings. As regards the receipt of cash from customers such amount standing in the books of account of the assessee would not attract section 68. There was no fault in the detailed reasoned finding in the order of the Commissioner (Appeals). No Show Cause Notice u/s. 144 / 145 of the Act was issued to the assessee and assessment was completed vide Order u/s. 143(3) and not u/s. 144. Further, rejection of the books of account on the basis of insignificant defects in all respects, was not justified and the books of account deserved to be accepted. The CIT (A) had examined the genuineness of purchases from parties and found it to be genuine. Thus, when all the purchases were genuine which have been verified by the AO u/s. 133(6) and which have been correctly recorded in the books of account as well as the stock register, the books of account could not have been rejected under section 145(3) of the Act. Before invoking the provisions of section 145(3) of the Act, the Assessing Officer has to bring on record material on the basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the assessee or the method of accounting employed by it. The instant was not a case where the assessee had not followed either the cash or mercantile system of accounting. The assessee maintained proper books of account audited by a chartered accountant and the profits could have been derived from the audited books of account. Relied on Harshila Chordia (Smt) v. ITO [2008 298 ITR 349 (Raj) (HC). (AY. 2017-18)
ACIT v. Motisons Jewellers Ltd. (2023)104 ITR 304 (Jaipur)(Trib)

S. 144 : Best judgment assessment-Liquor Business-Average Net Profit in this line of of business which varied from 1 to 3 per cent. And applying net profit rate of 2 per cent is correct. No comparative data brought to rebut finding of AO in retail liquor businesS. [S. 145]

The Tribunal dismissed the appeal of the Assessee and held that, the AO had taken the average of net profit which varied from one to three per cent. In the assessee's line of business which was retail sale of liquor and had applied a net profit rate of 2 per cent. The Assesee has not brought on record to rebut the findings of the AO in terms of net profit prevailing in the retail liquor business in terms of any other comparative third party data. The AO had rightly applied the reasonable average of net profit for the business of business assessee. (AY.2017-18)

Satwinder Kaur Balachor v ITO (2023)105 ITR 14 (SN)(Chd) (Trib)

S. 144 : Best judgment assessment-Natural Justice-Cash Credits-Statements of witnesses relied upon without providing opportunity to cross-examine the witnesses, assessment not sustainable. (68, 131, 144)

The Tribunal allowing the appeal held that, the statements of persons were recorded by the AO u/s.131 behind the assessee's back and used against him without granting an opportunity of cross-examination of these witnesses in the ex parte assessment order u/s. 144. The observation of the CIT(A) that failure to provide cross-examination was not a fatal flaw as they were witnesses of the assessee and not independent unrelated parties was in gross violation of principles of natural justice. The matter set as side to AO to decide afresh after granting opportunity of cross-examination of the witnesses whose statements were recorded u/s.131. (AY. 2017-18)

Raj Dev v. ITO (2023) 105 ITR 65 (SN) (Amritsar) (Trib)

S. 144 : Best judgment assessment-AO estimating profits at 8 per cent., CIT(A) observed that turnover above turnover limit for presumptive taxation but restricting profits to 5 per cent. Matter remanded back to AO stating that Authorities bound to disprove claim with corroborative documentary evidence after granting assessee adequate opportunity of being heard.

The Tribunal remanded matter to the AO, as the CIT (A) had observed that the case did not fit into scheme of presumptive taxation as his turnover was well above the turnover limit for presumptive taxation, he had restricted the profits to five per cent. Without analysing the book results vis-a-vis past history and comparable cases to justify the applicability of the correct net profit rate in the case of the assessee. The matter restored to pass assessment de novo after considering the submission and evidence filed on record. (AY. 2018-19)

Mohammad Sidiq Mushtaq Ahmed v. Add. CIT (2023)105 ITR 63 (SN)(Amritsar) (Trib)

S. 144B : Faceless assessment-Amendment by Finance Act of 2022-Does not curtail benefits to the assessee-Amendment valid-Natural justice-Opportunity of the hearing was not granted-Reassessment was not valid-Order was set aside-SLP of assessee is dismissed [S. 144B(7), 144B(9), Art.136]

Assessee challenged amendment brought by Finance Act, 2022 omitting sub-section (9) of section 144B on ground that it was bad in law as it had been given retrospective operation, which seeks to take away vested rights of taxpayer. High Court held that section 144B being a procedural statute, no right much less substantive right can be said to have been conferred by sub-section (9) of section 144B upon taxpayer which provided for proceeding of assessment being non-est if not made in accordance with procedure laid down under section 144B. The amendment is held to be valid. The matter remanded to the Assessing Officer. SLP of Revenue is dismissed. (AY. 2013-14)

Sapna Flour Mills Ltd. v. UOI (2023) 295 Taxman 119 (SC)

Editorial : Sapna Flour Mills Ltd. v. UOI (2023) 451 ITR 521/ 332 CTR 361/ 225 DTR 13 /(2022) 145 taxmann.com 557 (All)(HC)

S. 144B : Faceless Assessment-Failure to issue notice and draft assessment order-Judgment modified and matter remanded to Assessing Officer. [144B(1) (xvib), Art.136, 226]

On appeal by the Revenue the Court held that considering that the assessment order was passed without issuing a show-cause notice with a draft assessment order as was mandatorily required under section 144B of the Act, it could not be said that the High Court had committed any error. However, at the same time, considering the fact that the faceless assessment scheme has been introduced recently, the Department ought to have been allowed to take corrective measures. The judgment of the High Court was modified and the matter remanded to the Assessing Officer to pass a fresh assessment order, after following due procedure in accordance with law under section 144B of the Act.

Add. CIT v. Multiplier Brand Solutions Pvt. Ltd. (2023)453 ITR 233/ 332 CTR 211 (SC)

Editorial : Multiplier Brand Solutions Pvt. Ltd v. ACIT (2022) 442 ITR 202 (Bom)(HC), order of High Court is modified and matter remanded to the Assessing Officer.

S. 144B : Faceless Assessment-Failure to serve draft assessment order-Department was allowed to file Review Petition before High Court to consider effect of omission of Section 144B(9) with effect from 1-4-2021 [S. 144B(9), Art. 136, Art. 226]

On a writ petition against an order of faceless assessment, the High Court set aside the assessment as non est for failure to serve the draft assessment order on the assessee. On appeal to the Supreme Court the Court held that the omission of section 144B(9) of the Act with effect from April 1, 2021 was not before the High Court, the Department was to be allowed to file a review application before the High Court to press into service the effect of the omission of section 144B(9) of the Act with effect from April 1, 2021 on its judgment and the High Court was to pass an order in accordance with law and on the merits after hearing the parties.

Add. CIT v. Parull Isharani (2023)453 ITR 221 (SC)

Editorial : Parull Isharani v. Add.CIT (Bom)(HC), (W.P. (L) No. 13138 of 2021 dt 13-9-2021), Department was allowed to file the Review petition before High Court.

S. 144B : Faceless Assessment-Failure to issue show cause notice and draft assessment order-Order of High Court is not erroneous-Judgment modified and matter remanded to Assessing Officer to pass fresh assessment order. [144B(1) (xvib), Art. 132, 226]

Allowing the SLP of the Revenue the Court held, that considering that the assessment order was passed without issuing a show-cause notice with a draft assessment order as was mandatorily required under section 144B of the Act, it could not be said that the High Court had committed any error. However, at the same time, considering the fact that the faceless assessment scheme had been introduced recently, the Department ought to have been allowed to take corrective measures. The judgment of the High Court was modified and the matter remanded to the Assessing Officer to pass a fresh assessment order, after following due procedure in accordance with law under section 144B of the Act.. (AY. 2018-19)

Dy. CIT v. Abacus Real Estate Pvt. Ltd. (2023)453 ITR 224 / 332 CTR 38 (SC)

Editorial : Abacus Real Estate Pvt. Ltd v. Dy.CIT (2022) 284 Taxman 654 (Bom.)(HC), decision of the Bombay High Court is modified and matter remanded.

S. 144B : Faceless Assessment-Failure to follow procedure-Order declared non-est-liberty is given to the Department to revive the special leave petition in case of difficulty or if the necessity arose. [S. 144B(9), Art. 136, 226]

On a writ petition against an order of assessment under section 144B of the Income-tax Act, 1961, the High Court declared the assessment order non est for failure to follow the procedure as provided in sub-section (9) of section 144B of the Act, but leaving it open to the Department to take steps as advised in accordance with law. The Department filed a petition for special leave to appeal to the Supreme Court. During the pendency of the petition, and pursuant to the liberty reserved by the High Court, fresh proceedings were initiated against the assessee. SLP of Revenue dismissed, in view of the subsequent development with liberty to the Department to revive the special leave petition in case of difficulty or if the necessity arose.

Add.CIT v. Tatwajnana Vidyapeeth (2023)453 ITR 217 (SC)

Editorial : Tatwajnana Vidyapeeth v. Add.CIT (Bom)(HC) (WP.No. 1275 of 2021 dt. 16-9-2021), affirmed.

S. 144B : Faceless Assessment-Failure to serve draft assessment order-Order set aside-Order of High Court affirmed-SLP of Revenue dismissed-Liberty is given to the Revenue to proceed in accordance with the law. [Art. 136, 226]

On a writ petition against an order of faceless assessment, the High Court set aside the assessment order on the ground that the procedure as required under section 144B of the Income-tax Act, 1961, namely, to furnish the draft assessment order upon the assessee had not been complied with. The Department filed a special leave petition contending that the High Court ought to have remanded the matter to the Assessing Officer for a fresh assessment, The Supreme Court disposed of the petition with the clarification and observation, that even if the matter was not remanded to the Assessing Officer, it would always be open for the Department to initiate fresh assessment proceedings in accordance with law and the setting aside of the assessment orders shall not come in the way of the Department.*(*AY. 2018-19)

ACIT v. Trendsutra Client Services P. Ltd. (2023)453 ITR 219 (SC)

Editorial : Trendsutra Client Services P. Ltd v. ACIT (2021) 283 Taxman 558 / (2022) 19 ITR-OL 203 (Bom)(HC)

S. 144B : Faceless Assessment-Draft assessment order-Failure to issue notice and draft assessment order-Non est-Matter remanded to Assessing Officer to assess afresh. [Art. 136, 226]

On SLP by the Revenue the Court held, that considering the fact that the assessment order was passed without issuing a show cause notice with a draft assessment order, as was mandatorily required, under section 144B of the Act, it could not be said that the High Court had committed any error. However, at the same time, considering the fact that the faceless assessment scheme had been introduced recently and the High Court ought to have remanded the matter to the Assessing Officer to pass a fresh order in accordance with law, after following the due procedure, as required under the law.Matter remanded to Assessing Officer.

NFAC v. Automotive Manufacturers Pvt. Ltd. (2023)453 ITR 230 / 331 CTR 717 (SC)

Editorial : Decision of Bombay High Court, modified, Automotive Manufacturers Pvt. Ltd v NFAC (Bom)(HC)(W.P.(L) No. 16281 of 2021 dt. 14-10-2021.

S. 144B : Faceless Assessment-Failure to follow procedure-Subsequent omission of provision-Judgment of High Court set aside and matter remanded to the High Court to consider effect of omission of provision [S. 119, 144B (9), Art. 136, 226]

On a writ petition against an order of assessment the High Court quashed the assessment order, relying upon circular dated August 13, 2020 of the Central Board of Direct Taxes issued under section 119 of the Income-tax Act, 1961 stating that any assessment order which is not in conformity with paragraph 2 thereof, shall be treated as non est and shall be deemed to have never been passed. On appeal by the Department contending that section 144B(9) of the Act, with which the circular was in pari materia, had been omitted with effect from the date on which it came into force. Allowing the appeal of Revenue the Court held that in view of the subsequent development of omission of section 144B(9) of the Act, which was pari materia with paragraph 3 of the Central Board of Direct Taxes circular dated August 13, 2020, the judgment of the High Court was set aside and the matter remanded to the High Court to consider the effect of omission of section 144B(9) of the Act with effect from April 1, 2021 on para 3 of the Central Board of Direct Taxes Circular dated August 13, 2020, which, was prima facie, pari materia with section 144B(9) of the Act.(AY. 2018-19)

NFAC v. Chander Arjandas Manwani (2023)453 ITR 236/ 331 CTR 714 (SC)

Editorial : Chander Arjandas Manwani v. NFAC (2021) 283 Taxman 380 / (2022) 442 ITR 197 (Bom)(HC), set aside and matter remanded.

S. 144B : Faceless Assessment-Failure to follow the procedure-
Certain observations of High Court is expunged-Liberty to Department to seek review in light of omission of section 144B(9)) of the Act. [S. 144B(9), Art. 136, 226]

On appeal the Court held that the appeal had been preferred only against the observations made in the judgment. The observations made in para 9 of the judgment and order passed by the High Court were unwarranted and not required and were ordered to be expunged. The Court also observed that however, as sub-section (9) of section 144B of the Act had been omitted subsequently, the Department was to be permitted to file a review petition before the High Court within six weeks which the High Court would consider in accordance with law and on its own merits and without raising the issue with respect to limitation, subject to giving the assessee opportunity to be heard. (AY. 2018-19)

NFAC v. Mantra Industries Ltd. (2023)453 ITR 239 / 293 Taxman 296 / 331 CTR 712/224 DTR 161 (SC)

Editorial : Mantra Industries Ltd v. NFAC (2021) 283 Taxman 459/ 323 CTR 249/ 207 DTR 161/ (2022) 441 ITR 467 (Bom)(HC), observation of the High Court was expunged.

S. 144B : Faceless Assessment-Draft assessment order-Failure to serve copy of draft assessment order-Assessment invalid-SLP of Revenue is dismissed.[S. 144B(1)(xvi) Art. 136]

On a writ petition challenging the assessment order as in violation of the provisions of section 144B of the Income-tax Act, 1961 on the ground that it had been passed without issuing a draft assessment order as envisaged in section 144B(1)(xvi) of the Act. SLP of Revenue is dismissed. (AY 2015-16)

ITO v. Rinku R. Rai (2023)454 ITR 35/ 293 Taxman 689 (SC)

Editorial : Rinku R. Rai v. ITO (2023) 454 ITR 33(Bom)(HC)

S. 144B : Faceless Assessment-Sale of property-Not allowing the relief under section 48-Assessing Officer abdicated his role as adjudicator-Assessment order is quashed and set aside-Assessee is directed to file the return within two weekS. [S. 48, 144, 147

Assessing Officer passed the assessment order and raised tax demand and interest by passing assessment order under section 147 read with sections 144 and 144B on ground that assessee failed to file return and respond to show cause notice. On writ the Court held that since in impugned assessment order under section 144 providing for best judgment was also invoked and there was absence of enquiry on relief under section 48 with respect to property including land and building which Assessing Officer was required to give, Assessing Officer abdicated his role as adjudicator in making computation of income. Assessment order IS t set aside and assessee is permitted to file return for purpose of assessment.

Swagatika Rout v.Chairman, CBDT (2023) 335 CTR 214 / 152 taxmann.com 529 (Orissa)(HC)

S. 144B : Faceless Assessment-Opportunity of hearing-Principle of natural justice-Less than 48 hours to submit reply-Matter remanded back for fresh consideration. [S. 143(3), Art. 226]

Allowing the petition the Court held that the assessee had not been given five days time and effectively it had only 48 hours to submit reply and there was total violation of principles of natural justice, matter was to be remanded back to Assessing Officer for fresh consideration. Matter remanded.

Green Valliey Industries Ltd. v.Asst. Unit, Income-tax Department (2023) 330 CTR 1/ 147 taxmann.com 295 (Cal)(HC)

Editorial : Order of single judge is set aside, Green Valliey Industries Ltd. v. Asst. Unit, Income-tax Department (2023) 330 CTR 4 (Cal)(HC

S. 144B : Faceless Assessment-Opportunity of hearing-Principle of natural justice-No patent violation of natural justice-Writ petition dismissed. [S. 143(3), Art. 226]

Dismissing the petition the Court held that there is no patent violation of principle of natural justice and a detailed order was passed based on material evidence which cannot be re-appreciated by the Court in exercise of its writ jurisdiction and the impugned order is an appealable order.(SJ)

Green Valliey Industries Ltd. v. Assessment Unit, Income Tax Department. (2023) 330 CTR 4(Cal) (HC)

Editorial : Division bench set aside the judgement of single judge, Green Valliey Industries Ltd. v.Asst. Unit, Income-tax Department (2023) 330 CTR 1/ 147 taxmann.com 295 (Cal)(HC)

S. 144B : Faceless Assessment-Best judgement assessment-Reassessment-Unexplained money-Alternative remedy-Writ petition is dismissed. [S. 69A, 144, 147, 148, 246A, Art. 226]

The assessee deposited huge cash into his bank account. The return was not filed.Various notices issue were not responded. The assessment order is passed making addition On writ dismissing the petition the Court held that since assessee had got statutory remedy of filing an appeal under section 246A to NFAA, assessee should avail statutory remedy of appeal. (AY. 2016-17)

Srinivas Meesala v. Add. CIT (2023) 331 CTR 464/146 taxmann.com 322 (AP)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Draft assessment order-Assessment order is set aside and the matter is remanded back for fresh consideration by the AO in accordance with the provisions of the Act. [S. 144B(1)(xiv), Art. 226 [

Allowing the petition the Court held that a perusal of the show-cause notice, draft assessment order as well as the final assessment order indicates that the response dt. 4th March, 2022 filed by assessee was not considered. Accordingly the assessment order is set aside and the matter is remanded back for fresh consideration by the AO in accordance with the provisions of s. 144B. (AY. 2014-15)
Aryan Education Society v. NFAC (2023) 332 CTR 124 / 221 DTR 244 (Bom)(HC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Order passed without giving an opportunity-Order is set aside.[S. 58, 115BBE, Art. 226]
Allowing the petition the Court held that the order passed without giving an opportunity hence the order is set aside. (AY.2017-18)(SJ)
Doddaguli Kenche Gowda Raju v. ACIT (2023)457 ITR 430 (Karn)(HC)

S. 144B : Faceless Assessment-Request for personal hearing-Must be given opportunity of personal hearing. [S,144B(7), Art. 226]
Held that in the facts of the case no draft assessment with show-cause notice as required under section 144B(1) and (7) was given to the assessee so as to enable the assessee to give an explanation for the proposed addition during the hearing before the National Faceless Assessment Centre. Order is quashed and set aside. (AY.2018-19)
MAP Refoils India Ltd. v. NEAC (2023) 457 ITR 618 / 330 CTR 303 / 155 taxmann.com 663 (Guj)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Order passed without giving an opportunity of hearing-Order is set aside. [S. 144B(9)]
Held, that the order passed without giving an opportunity of hearing being a clear violation of procedure laid down under section 144B(9), the order was non est in the eyes of law. Order is set aside. (AY.2017-18)
Rajubhai Bababhai Desai v. NFAC (2023)457 ITR 639 (Guj)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Variation proposed in draft assessment order-Must be given an opportunity to be heard. [S. 144B(7), 144B(1)(xvi), Art. 226]
Held that the show-cause notice dated September 18, 2021 was issued with a direction to file reply by September 20, 2021. September 18, 2021 was Saturday and September 20, 2021 was Monday, and the assessment order was passed on September 21, 2021. Thus there was clear violation of the principles of natural justice. The order of assessment dated September 21, 2021 for the assessment year 2013-14 passed by the respondent-authority under section 147 read with section 144B of the Act with the demand notice under section 156 of the Act were quashed and set aside.(AY.2013-14)
Riddhi Steel and Tube Ltd. v NFAC(2022) 145 taxmann.com 542 /(2023)457 ITR 105 (Guj)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Must be given an opportunity of being heard. [S. 143(3),144B(1)(xi))(b), 144B(9), Art. 226]
Held, that as the opportunity to respond to the show-cause notice was not made available to the assessee particularly, when the huge variation was proposed to be made which was prejudicial to the interest of the assessee, it violated the principles of natural justice. The order dated September 29, 2022 passed under section 143(3) read with section 144B was not valid. Order is set aside.(AY.2020-21)

Sun Glory Education Foundation v. NFAC(2023)457 ITR 771/156 taxmann.com 390 (Guj)(HC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Failure to file the submission-Technical glitch on E. Portal-Directed to file fresh submission-and pass the order in accordance with law.[S. 144, 147, 148, Art. 226]

Allowing the petition the Court held that since the assessee, due to a technical glitch, had not been able to file his response or written submission, the order dated March 29, 2022 is set aside. The assessee was directed to refile its reply dated March 24, 2022 with the National Faceless Appeal Centre within a week. The National Faceless Assessment Centre was to pass a fresh assessment order within six weeks thereafter in accordance with law.

Ankit Kaul v. NFAC(2023)456 ITR 362 (Delhi)(HC)

S. 144B : Faceless Assessment-Violation of principles of natural justice-Failure to provide requested opportunity of personal hearing-Matter remanded to Assessing Officer. [S. 144B(7), Art. 226]

Allowing the petition the Court held the principles of natural justice had been violated to such extent particularly when the Act itself provided for affording an opportunity of hearing. The order under section 143(3) read with section 144B was quashed and set aside.

Rashmi Lakhotia v. UOI (2023)456 ITR 320 / 330 CTR 648/ 221 DTR 376/148 taxmann.com 157 (Chhattisgarh) (HC)

S. 144B : Faceless Assessment-Principle of natural justice-Video conference not provided-Matter remanded to Assessing Officer to pass fresh assessment order after giving opportunity of hearing to assessee by video conferencing. [S. 68, Art. 226]

The Assessing Officer has passed the assessment order making addition under section 68 of the Act. On writ it was contended that video conference facility was not provided. Allowing the petition the Court held for technical fault thee assessee could not be made to suffer, matter was to be remanded to Assessing Officer to pass fresh assessment order after giving opportunity of hearing to assessee by video conferencing. Circular No. 14 (XL-35), dated 11-4-1995.(AY. 2015-16) (SJ)

Bangabasi Collage v. UOI (2023) 295 Taxman 727 (Cal.)(HC)

S. 144B : Faceless Assessment-Variations in income returned-Notice must be issued-Existence of alternate remedy-Not an absolute bar for issue of writ. [S. 144B(1)(xii)(b), Art. 226]

The High Court has discretion to entertain or not to entertain a writ petition and one of the exceptions to the rule of alternate remedy is in cases where there has been violation of principles of natural justice.

allowing the petition the Court held that the Assessing Officer had failed to issue notice as required to be issued under section 144B(1)(xii)(b) of the Act. The assessment order was quashed and set aside. The Court also held that the existence of alternate remedy is not an absolute bar for issue of writ. Referred, Whirlpool Corporation v.Registrar of Trade Mark (1998) 8 SCC 1, Radha Krishna Industries v. State of Himachal Pradesh (2021)) 88 GSTR 228 (SC) (AY. 2021-22)

Magadh Sugar and Energy Ltd. v. NFAC(2023)454 ITR 405/ 291 Taxman 402 / 334 CTR 384 (Cal)(HC)

S. 144B : Faceless Assessment-Draft assessment-Opportunity of personal hearing not granted-Assessment order is seta side. [S. 144B(6)(vii), 144B(6)(viii), Art. 226]

Allowing the petition the Court held that the provisions of section 144B(6)(vii) and (viii) would apply notwithstanding the fact that the draft order was not prepared but only income or loss determination proposal was made. The assessment order was set aside giving liberty to the Assessing Officer to conduct the proceedings de novo, after according personal hearing to the assessee.

Shubhank Garg v. ITO (2023)454 ITR 107 / 293 Taxman 97 (Delhi)(HC)

S. 144B : Faceless Assessment-Variation in income-Violation of Principles of natural Justice-Order set aside. [Art. 226]

On a writ the assessee challenged the assessment order on the ground that the assessee was given only 13 hours' time in the night hours to reply to the show-cause notice on the proposed variation in income which was in violation of principles of natural justice. Allowing the petition the Court held that the second show-cause notice in respect of the proposed variation in income was issued to the assessee on March 27, 2023 at 19.10.33 p. m. and the assessee was given time to reply till 9.00 a. m. on March 28, 2023 which was in clear violation of principles of natural justice. The assessment order was set aside and the matter was remanded to the Assessing Officer (AY. 2018-19) (SJ)

Sundaresan Suresh Kumar v. Asst. Unit (2023) 454 ITR 454 (Mad)(HC)

S. 144B : Faceless Assessment-Unexplained investments-Reassessment-Personal hearing was not provided-Assessing Officer was to be directed to grant personal hearing and pass assessment order on merits by taking appropriate factS. [S. 69, 147, 148, Art. 226]

Allowing the petition the Court held that the Assessing Officer was directed to grant personal hearing to assessee and pass assessment order on merits by taking appropriate facts. Matter remanded. (AY. 2015-16)

R. Rajasekaran v. Addl.CIT (2023) 294 Taxman 60 (Mad.)(HC)

S. 144B : Faceless Assessment-Natural justice-Specific request to afford an opportunity of personal hearing through video conference-Order is set aside. [S. 144B(6)(viii), Art. 226]

Allowing the petition the Court held that from a bare perusal of the provisions of the Act it is clear that when the assessee had made a specific request to afford an opportunity of personal hearing through video conference, the Department was required to grant the same to the assessee. However, in the case on hand it has not happened and therefore, impugned order and demand notice were to be quashed and set aside and matter would be remanded to AO concerned, who would grant an opportunity of personal hearing to assessee and thereafter, would pass a fresh, reasoned order, in accordance with law. (AY. 2017-18).

Maheshkumar Bhagvandas Patel v. ITO (2023) 294 Taxman 376 (Guj)(HC)

S. 144B : Faceless Assessment-Neither draft assessment order nor show cause notice was issued-Assessing Officer was directed to initiate process from stage it was left by furnishing draft assessment order along with show cause notice-Matter remanded. [S. 143(3), Art. 226]

Allowing the petition the Court held that on the fact of the case neither draft assessment order nor show cause notice had been issued. Accordingly the assessment order was quashed and set aside. The Assessing Officer was to be directed to initiate process from stage it was left by furnishing draft assessment order along with show cause notice. Matter remanded. (AY. 2018-19)

Shrenik Ltd. v. ITO (2023) 293 Taxman 397 (Guj.)(HC)

S. 144B : Faceless Assessment-Long term capital gains-Violation of principle of natural justice-Allowing the time of 12 hours-Holiday-There was gross violation of principles of natural justice-The final assessment order was quashed.[S. 263, Art. 226]

Assessing Officer issued show cause notice-cum-draft assessment order on 17-3-2022 and directed assessee to comply with same on 18-3-2022 allowing a time of 12 hours. The Assessing Officer passed fresh assessment order making additions and raised demand. On writ the allowing the petition the Court held that 18-3-2022 was a holiday and furthermore final assessment order was directed to be responded to on same day. There was gross violation of principles of natural justice accordingly the final assessment order was quashed. The Assessing officer may initiate any action from the stage where it has been left. (AY. 2016-17)

Dipak Natwarlal Dholakiya v. ACIT (2023) 293 Taxman 192 (Guj.)(HC)

S. 144B : Faceless Assessment-Method of accounting-Principle of natural justice-Not granted virtual hearing-Additions were made 50 times more to income proposed in show cause notice-Order was quashed and set aside. [S. 36(1) (iii),68, 69A, 145, Art. 226]

Income was assessed by rejecting his books of account and making addition 50 times more to income proposed in show cause notice.On writ it was contended that the assessment order was contrary to scheme of Act because additions were made beyond scope and issues in show cause notice resulting in actual income assessed at 50 times then proposed to be assessed in show cause notice and not granting the virtual hearing. Allowing the petition the Court held that non-grant of virtual hearing, though asked for repeatedly by assessee, and because additions were made beyond scope and issue of show cause notice, final assessment order was quashed and set side and pass fresh order after giving a reasonable opportunity to the assessee. (AY. 2018-19)

Margita Infra v. NEAC (2023)458 ITR 101 / 292 Taxman 178 (Guj.)(HC)

S. 144B : Faceless Assessment-Draft assessment order-Violation of principle of natural justice-Assessment order quashed and set aside and Assessing Officer was to be directed to provide sufficient opportunity to assessee after serving show cause notice cum draft assessment order. [S. 143(3), Art. 226]

Assessing Officer without issuance of show cause notice and providing draft assessment order passed final assessment order on assessee and raised tax demand upon him. On writ even if non-issuance of show cause notice along with draft assessment order was neither wilful nor wanting, fact remained that it must be supplied and hence it was clear and unequivocal act of breach of principles of natural justice warranting interference at hands of Court. Accordingly the assessment order was quashed and set aside and Assessing Officer was to be directed to provide sufficient opportunity to assessee after serving show cause notice cum draft assessment order. Matter remanded. (AY. 2018-19)

Bharatkumar Rajendraprasad Dave v. Dy. ACIT(2023) 458 ITR 97 / 292 Taxman 173 (Guj.)(HC)

S. 144B : Faceless Assessment-Violation of principles of natural justice-Standard Operating Procedure (SOP) is not followed-The Assessing Officer had acted in a most perverse manner in passing assessment order-The assessment order was a classical example as to how an assessment should not be made-Assessing Officer had reduced procedure to an empty formality, which had to be deprecated-Assessment order was quashed and set aside. [S. 143(3), Art. 226]

Standard Operating Procedure (SOP) under faceless assessment enumerated as to how assessment had to be made and also gave format of final assessment order which sets out

various heads under which assessment order had to be passed with due discussion. The Assessing Officer passed the order without following the SOP. On writ the Court held that the Assessing Officer had acted in a most perverse manner in passing assessment order. First 21 pages of assessment order were a verbatim extract of show cause notice. In next two pages, reply given by assessee had been summarized. Thereafter, next 14 pages were again an extract of show cause and ultimately total income had been determined and assessment completed. Court held that the assessment order was a classical example as to how an assessment should not be made. Assessing Officer had reduced procedure to an empty formality, which had to be deprecated. Accordingly the assessment order was to be quashed and set aside.

Indu Goenka v. Asst. Unit, ITD (2023) 292 Taxman 444 (Cal.)(HC)

S. 144B : Faceless assessment-Vested right to personal hearing-If it has been requested for-Order was quashed and set aside. [S. 144B(7)(viii), Art. 226]

Allowing the writ petition of the Assessee, the High Court held the issue involved in the present writ petition is no longer res integra. Relying on its earlier decision in the case of Bharat Aluminium Company Ltd. v. UoI [2022] 285 Taxman 447/442 ITR 101(Delhi)(HC) has held that the use of the expression "may" in Section 144B(7)(viii) is not decisive. Where discretion is conferred upon a quasi judicial authority, whose decision has civil consequences, the word "may" which denotes discretion should be construed to mean a command. Consequently, the requirement of giving an assessee a reasonable opportunity of personal hearing is mandatory. Hence, an assessee has a vested right to personal hearing and the same has to be given, if an assessee asks for it. (AY 2020-21).

DLF Emporio Ltd v. NFAC (2023) 291 Taxman 455 (Delhi)(HC)

S. 144B : Faceless Assessment-Order was passed within short period of two days from issuance of notice-Violation of principle of natural justice-Assessment order was quashed and set aside. [S. 143(3), Art. 226]

Tribunal remanded the matter to the Assessing Officer by issuing specific directions regarding examining certain claim of assessee. The Assessing Officer has passed the order within two days from issuance of notice. On writ allowing the petition the Court held that Order was passed within short period of two days from issuance of notice which is violation of principle of natural justice.Accordingly the Assessment order was quashed and set aside. Liberty was given to the petitioner to produce additional documents and file additional pleadings before the Assessing Authority in support of its claim. (AY. 2010-11)

Rahim Saib Hiryaur Hyder Ali v.NFAC (2023) 457 ITR 253/ 291 Taxman 175 (Karn)(HC)

S. 144B : Faceless Assessment-Writ-Territorial Jurisdiction of Court-Doctrine of forum non convenience-Assessment order-Cause of action-Situs of Assessing Officer would be determinative of Jurisdiction of High Court-Complexity of Legal issues-Matter referred to larger Bench. [S. 143(3), 144B(1)(xxxii), 156, 271AACC (1)), Art.226]

Writ petitions were filed challenging assessment orders passed under section 143(3) read with section 144B of the Act, 1961, notices of demand under section 156 and notices for initiation of penalty proceedings under section 271AAC(1). The Department raised a primary objection that the writ petitions could not be entertained by the Court as the situs of the jurisdictional Assessing Officers were outside the National Capital Territory of Delhi and hence beyond the territorial limits of the court. The issue being complexity of legal issues, the matter referred to larger Bench on following questions:

1.Whether the Delhi High Court had the territorial jurisdiction under article 226 of the Constitution of India to entertain the writ petitions when the permanent account number Assessing Officer/jurisdictional Assessing Officer was located outside the National Capital Territory of Delhi,
11.Whether the court, assuming it had jurisdiction, should refuse to exercise jurisdiction under article 226 applying the doctrine of forum non convenience if the permanent account number Assessing Officer/jurisdictional Assessing Officer was located outside the National Capital Territory of Delhi,
111. Whether the presence of National Faceless Assessment Centre in Delhi would be a sufficient "cause of action" to confer jurisdiction on this court to entertain a writ petition under article 226 ignoring the location of the permanent account number Assessing Officer/jurisdictional Assessing Officer and any other relevant factors,
(iv). Whether when a part of cause of action arose within one or more High Courts, the petitioner being dominus litus would have the right to choose his forum,
v).Whether applying the principles of the Full Bench decision in the case of Sterling Agro Industries Ltd. v. UOI(2011) 10 GSTR 20 / 166 Comp Cas 115/ 43 VST 375 (Delhi) (HC) (FB), this court should entertain the writ petitions or refuse to exercise discretion to entertain on the ground that the permanent account number Assessing Officer/jurisdictional Assessing Officer was located outside the jurisdiction of this court,
(vi). Whether the principle of res judicata was attracted, were required to be settled and decided by way of an authoritative pronouncement by a larger Bench of the court.(AY. 2018-19)
GPL-Rktcpl JV v. NFAC (2023)453 ITR 384 / 291 Taxman 409/ 330 CTR 362/ 221 DTR 272 (Delhi)(HC)
Pharmachol Chemicals Pvt Ltd v. NFAC (2023)453 ITR 384 / 291 Taxman 409/ 330 CTR 362/ 221 DTR 272 (Delhi)(HC)
RKKR Foundation v. NFAC (2023)453 ITR 384 / 291 Taxman 409/ 330 CTR 362/ 221 DTR 272 (Delhi)(HC)

S. 144B : Faceless Assessment-Draft assessment-Depreciation-Goodwill-Assessment order passed without satisfactory compliance with provisions of section 144B(1)(xvi) was quashed. [S. 32, 142, 144B(1)(xvi), Art. 226]
Assessing Officer after passing the draft assessment order raised a query of depreciation on goodwill by issuing a notice under section 142 and passed the final assessment order, since the earlier draft assessment order was silent about said query, final order passed without satisfactory compliance with provisions of section 144B(1)(xvi) was quashed. (AY. 2018-19)
ACME Housing India (P.) Ltd. v NFAC (2023) 291 Taxman 1 (Bom)(HC)

S. 144B : Faceless Assessment-Amalgamation-Non-Existent company-show-cause notices, assessment order, notice of demand, etc., in name of said non-existent company, which was amalgamated with petitioner-company and thereby lost its existence, was without jurisdiction-Order was quashed [S. 143(3), Art. 226]
Allowing the petition, the Court held tha**t** when a company was amalgamated with petitioner-company, issuance of show-cause notices, assessment order, notice of demand, etc., in name of said non-existent company, which was amalgamated with petitioner-company and thereby lost its existence, was without jurisdiction. Order was quashed.
New Age Buildtech (P.) Ltd. v. NFAC (2023) 151 taxmann.com 66 (Bom)(HC)

S. 144B : Faceless Assessment-Natural justice-Opportunity of hearing was not given-Video conference-Order was set aside and remanded. [S. 142, 143(3), Art. 226]

Assessing Officer issued on assessee a notice under section 144B dated 3-2-2022 and called upon to file reply by 10-2-202 and assessee sought extension of time but received no response and thereafter she received assessment order. On writ allowing the petition the Court held that the Assessing Officer having not given to assessee opportunity of hearing, impugned assessment order was to be set aside. Face Less Assessment Centre, Delhi was directed to give an opportunity of personal hearing to the Petitioner through the video conferencing and pass a fresh order after considering her response (AY. 2020-21)
Parul Bharat Shah v. NFAC (2023) 146 taxmann.com 446 / 291 Taxman 294 (Bom)(HC)

S. 144B : Faceless Assessment-Natural justice-Requests for extension of time to file a reply and personal hearing was not responded-Assessment order, notices of demand and penalty notice were set aside.[S. 143(3) 156, 270A, 274, Art. 226]
Allowing the petition the Court held, that the National Faceless Assessment Centre had acted in an arbitrary manner in not giving an opportunity of a personal hearing to the assessee as required under the provisions of section 144B as also specified in the show-cause notice dated February 3, 2022 itself on the issue of disallowance of the claim of the assessee that her agriculture income was exempted from tax. It ought to have either responded to the assessee's request for an extension of time till February 25, 2022 for filing her reply to the show-cause notice, by rejecting her request or provided for an online hearing by way of video conferencing. In the order of assessment dated February 3, 2022, the notice of demand under section 156 and notice for initiating penalty proceedings under section 274 read with section 270A were set aside. The National Faceless Assessment Centre was directed to give an opportunity of a personal hearing to the assessee through video conferencing and pass a fresh order after considering her response.(AY.2020-21)
Parul Bharat Shah v. NFAC (2023)451 ITR 360/ 291 Taxman 294 (Bom)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Only four days' time was given-Order was quashed and set aside [S. 11, Art. 226]
Assessee filed nil return and claimed exemption under section 11 of the Act. The assessment was completed by assessing the Income at Rs 10, 40, 93, 124. The assessee was not given reasonable time to file the reply. On writ, the Court held that period of four days given to the assessee included Saturday and Sunday. Since in effect, only two working days were given to assessee to file a response, principles of natural justice were egregiously violated. Order was set aside and the matter was remanded back to pass fresh assessment. (AY. 2018-19)
Urdu Education Society v. NFAC (2023) 290 Taxman 449 (Bom.)(HC)

S. 144B : Faceless Assessment-Prior to 1-4-2021-Order passed without notice-cum-Draft assessment order-No opportunity of hearing-Order of assessment was not valid-High Court-Territorial Jurisdiction-Part of cause of action arising in a particular area-High Court of that area has jurisdiction.[S. 143(3), Art. 226]
Court held that the law had been amended. Section 144B of the Act has been introduced from April 1, 2021. This change was after the assessment order passed on February 6, 2021. What was applicable in the case of the assessee was the notification of August 13, 2020 which was the E-assessment Scheme. In the absence of following of the scheme under which it was a must for the authority to provide the show-cause notice–cum–draft assessment order and also affording opportunity to the assessee, in the absence of vital and mandatory procedure having been followed, the order of assessment was not valid. Held that even if the smallest part of a cause of action arises within the jurisdiction of a particular High Court, it would have a jurisdiction to decide the matter. On the facts that not only the assessee residing in Ahmedabad, but, it continued to do its business and operated from the State of Gujarat.

Hence Gujarat High Court could decide the matter. Followed, Rajendran Chingaravelu v. R.K. Mishra, Addl. CIT (2010) 320 ITR 1 (SC))
Arista Infrastructure v. ITO (2023)452 ITR 172 /292 Taxman 226 /335 CTR 848 (Guj) (HC)

S. 144B : Faceless Assessment-Natural justice-Hearing though video conference-Voluminous documents-Department has agreed to provide physical hearing at Chennai-Faceless converted to interface-Assessment order was set aside-Petitioner was directed to appear before Assessing Officer at Chennai. [S. 11, 260A, Art. 226]
The petitioner has filed the return claiming the depreciation, which was disallowed by the Assessing Officer and also denied exemption under section 11 of the Act. On appeal the CIT(A) affirmed the order of the AO. On further appeal the Tribunal allowed the claim under section 11 of the Act. Revenue challenged the order before the High Court. High Court set aside the order of the Tribunal and remanded the matter to the Assessing Officer. The Faceless Assessment unit issued the show cause notice pursuant to remand proceedings. The petitioner had made request for personal hearing through video conference which was rejected and the order was passed. On writ the petitioner has submitted that it has to produce voluminous documents before the Authority hence the personal hearing through video conference was not provided. Allowing the petition the Court directed the Respondents to provide personal hearing by the Assessing Officer sitting at Chennai and pass the order after considering the documents produced by the petitioner. (WP Nos. 11849, 11854 and 11859 of 2023 dt 25-4-2023) (AY. 2003-04, 2004-05, 2005-06, 2006-07.
Chennai Port Authority v. NFAC (2023) 454 ITR 692 Mad)(HC) www.itatonline.org

S. 144B : Faceless Assessment-Amendment by Finance Act of 2022-Does not curtail benefits to the assessee-Amendment valid-Natural justice-Opportunity of the hearing was not granted-Reassessment was not valid-Order was set aside. [S. 144B(7), 144B(9), Art. 226]
Petitioner challenged the show cause notice and draft assessment passed by the Assessing Officer. The Court held that the omission of sub-section (9) of section 144B was with various new measures for checks and balances having been provided in the procedure prescribed under section 144B. Even otherwise, section 144B being a procedural statute, no right much less substantive right can be said to have been conferred by sub-section (9) of section 144B upon the taxpayer which provided for the proceeding of the assessment being non est if not made in accordance with the procedure laid down under section 144B. The sub-section was for imposing a burden upon the Department rather than conferment of any right upon the assessee and further as noted in the amendment bill it had lead to a large number of litigation on technical grounds due to some procedural difficulty in implementation of faceless assessment. The amendment is valid. The Court also held that the reassessment was initiated with the issuance of notice under section 148 of the Act, 1961 on March 31, 2021 by the Assistant Commissioner, Deputy Commissioner. The subsequent notice dated June 30, 2021 under section 143(2) read with section 147 of the Act, issued from the office of the Assistant Commissioner, Deputy Commissioner, therefore, could not be said to suffer from any error of law. All the subsequent proceedings were conducted through the National Faceless Assessment Centre. A further perusal of the communication dated November 22, 2021 issued by the National Faceless Assessment Centre, Delhi indicated that the Assessing Officer was directed to decide the objection raised by the assessee against the reopening of the assessment for the assessment year 2013-14. The order of rejection of the objections filed by the assessee was then passed on December 9, 2021 and was communicated through the National Faceless Assessment Centre. In a faceless assessment procedure set in place with

effect from April 1, 2022 by an amendment in section 144B(7), the personal hearing through video conferencing has been made mandatory, in case of the request made by the assessee. The assessee had specifically asked for a grant of opportunity of a personal hearing through video conferencing by communication on the website and the request had been acknowledged by the authorities. There was no good reason for denial of such an opportunity to the assessee. There was a violation of the principles of natural justice and against the procedure set in place for conducting reassessment proceedings. Being deficit in essential procedural compliances, the assessment order dated March 30, 2022 had to be set aside.(AY.2013-14)

Sapna Flour Mills Ltd. v. UOI (2023)451 ITR 521/ (2022) 145 taxmann.com 557 / 332 CTR 361/ 225 DTR 13 (All)(HC)

Editorial : SLP of assessee is dismissed, Sapna Flour Mills Ltd. v. UOI (2023) 295 Taxman 119 (SC)

S. 144B : Faceless Assessment-Violation of principles of natural justice-Final order passed without issuing show-cause notice-cum draft assessment order-Assessment order and consequent notices of demand and penalty set aside. [144, 156, 270A, 271AAC(1), Art. 226]

On a writ petition challenging the final assessment order passed under section 144 read with section 144B of the Income-tax Act, 1961 on the ground that no show-cause notice-cum-draft assessment order was issued before passing the final order, Court held that the provisions of section 144B had been violated and the assessment proceeding had been completed in violation of the principles of natural justice. Consequently, the order under section 144 read with section 144B and the demand notice issued under section 156 and notices for initiating penalty proceedings under sections 270A and 271AAC(1) are set aside. (AY. 2018-19)

Anju Jalaj Batra v. NEACC (2023) 450 ITR 140 (Delhi)(HC)

S. 144B : Faceless Assessment-Opportunity of personal hearing was not given-Assessment order and consequential demand and penalty notices set aside-Matter remanded [S. 143(3), 144B(7), 156, Art. 226]

Allowing the petition the Court held that the requirement of giving an assessee a reasonable opportunity of personal hearing was mandatory and that the classification made by the National E-Assessment Centre between matters involving disputed questions of fact and law by way of circular dated November 23, 2020 was not legally sustainable. Accordingly, the assessment order passed against the assessee under section 143(3) read with section 144B and the consequent notice of demand issued under section 156 and notices for initiating penalty proceedings were quashed and the matter was remanded back to the Assessing Officer to pass fresh assessment order. (AY. 2018-19)

Assotech Realty Pvt. Ltd v.NEAC (2023) 450 ITR 645 (Delhi)(HC)

S. 144B : Faceless Assessment-Assessment order passed without providing adequate opportunity to be heard-Order is held to be not valid-The matter was remanded back to the Assessing Officer [S. 143(3), 144, 144B(9), Art. 226]

Allowing the petition the Court held that the assessee very categorically had requested for video conference hearing. Due to technical glitches the video conference as scheduled could not be held. Hence in spite of specific request for personal hearing being requested by the assessee, the respondent authority without adhering to such request having proceeded to pass final assessment order, was in clear violation of the statutory scheme and was therefore, null and void. The matter was remanded back to the Assessing Officer.

Atulbhai Kantilal Mehta v.ACIT(2023) 450 ITR 660 (Guj)(HC)

S. 144B : Faceless Assessment-Failure to issue draft assessment order and give requested opportunity of hearing-Assessment order and consequent notices of demand and penalty set aside-Direction was issued to pass fresh assessment order. [S. 143(3), 144B(1)(xiv), 147, 156, 271(1)(c), 274, Art. 226]

Allowing the petition the Court held that there was nothing on record to show that a draft assessment order as mandated under section 144B(1)(xiv) was served on the assessee before finalising the assessment though the assessment order referred to a draft assessment order. Therefore, the assessment order, the notice of demand under section 156 and the notices for penalty under section 274 read with section 271(1)(c) were set aside. The National Faceless Assessment Centre was directed to finalise the assessment proceedings for the (AY-) 2013-14 afresh in accordance with law. (AY.2013-14)

Ellathkandi Khaleel Ahammad v. UOI (2023) 450 ITR 103 (Ker)(HC)

S. 144B : Faceless Assessment-Natural justice-Order passed without giving opportunity to file reply to show-cause notice-Assessment order and consequent demand notice and penalty notice set aside. 143(3), 156, 271(1)(c), Art. 226]

Allowing the petition the Court held that the assessment order had been passed in contravention of the basic principles of natural justice and fair play, inasmuch as the assessee was not granted an opportunity to file its reply to the proposed additions and a further opportunity of being heard in the matter and hence the order was unsustainable. Therefore, the assessment order with the consequential notice of demand and notice for initiating penalty proceedings were set aside. However, liberty was given to the Department to proceed in the matter in accordance with law after affording an opportunity of being heard to the assessee in response to the show-cause notice. (AY. 2018-19)

Fujiyama Power Systems v. ACIT (2023) 450 ITR 123 (HP)(HC)

S. 144B : Faceless Assessment-Search and seizure-Reopening based on information uploaded on insight portal-Replied the notices-Assessment order passes-Alternative remedy-Writ against the assessment order is held to be not maintainable.[147, 148, 153C, Art. 226]

After passing of the assessment order the assessee challenged the reassessment notice and assessment order. Dismissing the petitions the Court held that when it was asserted by the Department that the reopening of the proceedings was based on the information uploaded on Insight Portal, it was sufficient for not invoking the extraordinary jurisdiction. The ITO had specifically asserted the reopening of the assessment in the light of the information uploaded on Insight Portal and also stated to be a reason to believe that the income chargeable to tax had escaped assessment. It had also been asserted that the ITO had not received any books of account or documents or assets seized or requisitioned during the search of R. Therefore it would be necessary for the assessee to contest and challenge the assessment orders on the merits so as to substantiate his contention that the proceedings under section 147 were not justified and were without jurisdiction. The assessees did not challenge the notice issued under section 148 seeking to reopen the proceedings at that stage itself but had permitted the authorities to proceed under section 147 by responding to the notice. When in the reply to the show-cause notice the contention as regards lack of jurisdiction was not raised and was being raised after passing of the assessment orders. Writ was dismissed. (AY-2015-16)

Gopal Tukaram Bitode v. ITO (2023) 450 ITR 546 (Bom)(HC)
Shipaddevi Sunil Kumar Kediya v. ITO (2023) 450 ITR 546 (Bom)(HC)
Prakash Madharao Dani v. ITO (2023) 450 ITR 546 (Bom)(HC)

S. 144B : Faceless Assessment-Natural justice-Effect from 1-4-2021-Objection to draft assessment order must be considered-Order passed without considering objections is held to be not valid.[S. 144B(7), 144B(1)(xii), Art. 226]

On writ the Court held that no draft assessment order with show-cause notice as required under section 144B(1) and section 144B(7) was given to the assessee so as to enable the assessee to give an explanation regarding the proposed addition. The order was passed by the respondent in violation of principles of natural justice without affording an opportunity of personal hearing by not following the prescribed procedure laid down in terms of the provisions of section 144B of the Act, for faceless assessment. Hence the order of assessment passed by the respondent under section 143(3) read with section 254 read with section 144B dated September 20, 2021 and demand notice under section 156 of the even date was quashed and set aside. The Revenue was directed to pass the order giving an opportunity of hearing and in accordance with as per the provisions of section 144B of the Act. (AY-2006-07)

Hiraben Pragibhai Tala v.ACIT (2023) 450 ITR 264 (Guj) (HC)

S. 144B : Faceless Assessment-Natural justice-Failure to follow mandatory procedure-Alternative remedy-Writ can be entertained-The assessment order and the notice of demand was quashed and set aside-The matter was remanded to the Assessing Officer who shall issue a show-cause notice along with the draft assessment order granting an opportunity of personal hearing to the assessee as prescribed under section 144B. Matter remanded. [S. 143(3), 144, 144B(1)(xvi)(b, 147, 156, Art. 226]

Allowing the petition, that since the challenge to the assessment order under section 147 read with section 144B was that it was passed in violation of principles of natural justice and was contrary to the procedure prescribed for faceless assessment under section 144B it could be challenged by invoking the extraordinary jurisdiction under article 226 of the Constitution of India. It was not disputed that the draft assessment order was not forwarded to the assessee, with the show-cause notice as required according to the procedure prescribed under section 144B(1)(xvi)(b). The assessment order and the notice of demand under section 156 were quashed and set aside. The matter was remanded to the Assessing Officer who shall issue a show-cause notice along with the draft assessment order granting an opportunity of personal hearing to the assessee as prescribed under section 144B. Matter remanded. Followed Whirpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8 SCC 1. (AY. 2014-15)

Kottex Industries Pvt. Ltd v. NFAC (2023) 450 ITR 685 (Guj)(HC)

S. 144B : Faceless Assessment-Principle of natural justice-Violation of statutory condition-Assessment order set aside-liberty to proceed in accordance with law granted after issuing show-cause notice-cum draft assessment order. [S. 143(3), 144B(1)(xvi)(b), Art. 226]

Allowing the writ petition the Court held that since the order was passed without issuing a show-cause notice or a draft assessment order as mandated under section 144B(1)(xvi)(b) and gave liberty to the National Faceless Assessment Centre to issue a show-cause notice or draft assessment order to the assessee and thereafter, to continue the proceedings in accordance with law. (AY. 2018-19)

RMSI Pvt. Ltd v. NFAC(2023) 450 ITR 293 / 290 Taxman 383 (Delhi)(HC)

S. 144B : Faceless Assessment-Violation of principle of natural justice-Show cause notice-Only two day's time to file response-Violation of Circular dated 3-8-2022-Minimum period of seven days should be provided-Order was set aside. [S. 144(6)(vii), Art. 226]

The petitioner challenged the faceless assessment order on the ground that the reasonable opportunity of hearing was not given. Allowing the petition the Court held that the time made available to the petitioner to file its response to show cause notice was inadequate and natural justice was violated. Accordingly the matter was set aside to consider the objections of the petitioner and to give an opportunity of being heard in terms of section 144(6)(vii) of the Act and pass the order in accordance with law. (WP(L) No. 32925 of 2022 dt. 8-12-2022)
C S & Sons v. NFAC(2023) BCAJ-February-P. 48 (Bom)(HC)

S. 144C : Reference to dispute resolution panel-Limitation-Notice by Dispute Resolution Panel four years after direction by Tribunal-Barred by limitation-High Court has power to quash show-cause notice-Decisions of single judge affirmed-SLP is granted to the Revenue. [S. 92C, 92CA, 144C(13), 153, 254(1), Art. 136]
Section 144C of the Act is a self-contained code of assessment and time limits are inbuilt each stage of the procedure contemplated. However this does not lead to the conclusion that overall time limits have been eschewed in the process. The Statute having set time limits at every step, there is no reason to take a stand that proceedings on remand to the DRP may be done at leisure sans the imposition of any time limit at all. The non-obstante clause in Section 144C would not exclude the operation of Section 153 as a whole since it implies that irrespective of availability of larger time to conclude the proceedings, final orders are to be passed within time limit prescribed in Section 153 of the Act. SLP is granted to the Revenue. (AY.2009-10, 2010-11)
CIT. v. Roca Bathroom Products P. Ltd (2023) 291 Taxman 529 (SC)
Editorial : Refer CIT. v. Roca Bathroom Products P. Ltd (2022) 445 ITR 537 / 216 DTR 323 / 328 CTR 14 (Mad.)(HC) Dy. CIT v. Freight Systems (India) P. Ltd. (2022) 445 ITR 537/ 216 DTR 323 / 328 CTR 14 (Mad.)(HC) Decisions of single judge affirmed, CIT. v. Roca Bathroom Products P. Ltd (2021) 432 ITR 192 (Mad)(HC)/ Dy. CIT v. Freight Systems (India) P. Ltd. (2021) 18 ITR-OL 468 (Mad)(HC)

S. 144C : Reference to dispute resolution panel-Principle of natural justice-Only one day time was given to file reply-Matter remanded.[S. 92CA, Art. 226]
Allowing the petition the Court held that ground of non-affording the opportunity and breach of principles of natural justice, the Court needs to Intervene. Effective efficacious remedy available is also no ground. On the facts only one day time was given to file reply. Matter is remanded for providing opportunity to the assessee from the stage it had been denied by following the statutory provisions. (AY. 2018-19)
Cadila Pharmaceuticals Ltd. v. Add. CIT(2023) 334 CTR 57 (Guj)(HC)

S. 144C : Reference to dispute resolution panel-Jurisdiction-Dispute Resolution Panel can give directions only in pending assessments-Interpretation of taxing statutes-Strict interpretation. [S. 92CA,246A, Art. 226]
The assessee filed an appeal before the Commissioner (Appeals) under section 246A of the Act against the assessment order dated December 24, 2018. The assessment order dated December 24, 2018 passed by the Assessing Officer was received by the assessee only on December 29, 2018. Unaware of the order, the assessee filed its objections before the Dispute Resolution Panel on December 28, 2018. Once the assessee received the assessment order, the assessee informed the Dispute Resolution Panel that the assessment order albeit illegally had already been passed and, therefore, the Dispute Resolution Panel had no locus to proceed with the objections filed. The assessee also informed the Dispute Resolution Panel that it had already filed an appeal before the Commissioner (Appeals) against the assessment order dated December 24, 2018. Notwithstanding this, the Dispute Resolution Panel proceeded to

issue directions dated September 16, 2019 based on which another assessment order dated October 31, 2019 was passed. On a writ petition against the directions of the Dispute Resolution Panel and the assessment order dated October 31, 2019. The Court held that the directions issued by the Dispute Resolution Panel on September 16, 2019 and the consequent assessment order dated October 31, 2019, were liable to be quashed. Under section 144C of the Income-tax Act, 1961 the Dispute Resolution Panel can give directions only in pending assessment proceedings. Once an assessment order is passed, rightly or wrongly, the assessment proceedings come to an end. Thereafter, the Dispute Resolution Panel would have no power to pass any directions contemplated under sub-section (5) of section 144C.

The Court also held that a taxing statute must be interpreted strictly. Equity has no place in taxation. While interpreting a taxing statute intendment would have no place. It is axiomatic that a taxation statute has to be interpreted strictly because the State cannot at its whims and fancies burden the citizens without authority of law.In the matter of interpretation of the charging section of a taxation statute, strict rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favourable to the assessee has to be applied. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the Legislature's failure to express itself clearly. (AY. 2015-16)

Undercarriage and Tractor Parts Pvt. Ltd. v.Dispute Resolution Panel.(2023) 335 CTR 974 / (2024)460 ITR 401 (Bom)(HC)

S. 144C : Reference to dispute resolution panel-Opportunity of being heard was provided-Failure to produce documents-Alternative remedy-Writ petition is dismissed. [S. 143(3), 144C(11), Art. 226]

The assessee filed the writ petition challenging the order of the DRP on the ground that no opportunity of hearing was given. Single judge dismissed the petition. On appeal the division Bench affirmed the order of the single judge on the ground that the assessee has failed to produce the necessary documents and the alternative remedy is available.

Kostal India (P) Ltd. v. DRP (2023) 331 CTR 95/ 222 DTR 328 (Mad)(HC)

S. 144C : Reference to dispute resolution panel-Eligible assessee-Draft assessment order-Mandatory-Even when assessment order is issued in conformity with directions from higher authority-Failure to pass draft assessment order-Final order unlawful-Demand notice and penalty proceedings invalid [S. 143(3) 156, 263, 270A, Art. 226]

On writ the question raised by the petitioner is, whether the failure to pass a draft assessment order before passing the final assessment order invalidated the final assessment order under section 143(3) read with section 263 and the subsequent demand notice under section 156 and penalty proceedings under section 270A. Allowing the petition the Court held that the Assessing Officer's omission to pass a draft assessment order under section 144C was not merely a procedural oversight, but a substantive lapse, which rendered the final assessment order, the demand notice under section 156 and the penalty proceedings under section 270A devoid of jurisdiction. While the Commissioner exercised the revision powers under section 263, his action was primarily rooted in the belief that the original assessment order was erroneous and potentially detrimental to the Revenue's interests. However, on remand, the Assessing Officer had passed the order in question revising the assessee's income, and increased its tax liability. Therefore, the order was clearly prejudicial to the interest of the assessee. A draft assessment order should have been made available to the assessee. Failure to pass a draft assessment order had effectively denied the assessee an opportunity to seek adjudication before the Dispute Resolution Panel under section 144C(1) in respect of the allegations in the order. Although this order was passed in

remand proceedings to give effect to the directions of the Commissioner, issued under section 263, yet it qualified as a fresh assessment order within the ambit of section 143(3). Given this characterization, it was incumbent upon the Assessing Officer, not just as a matter of procedure, but also as a matter of law, to adhere to the special provisions delineated in section 144C(1) (AY.2006-07)

Sinogas Management Pte. Ltd. v. Dy. CIT(2023) 335 CTR 873/ / (2024)461 ITR 330 (Delhi)(HC)

S. 144C : Reference to dispute resolution panel-Assessment-Limitation-Directions issued by Dispute Resolution Panel binding on Assessing Officer-Final order to be passed in conformity with directions within one month-Order is barred by limitation.[S. 143(3), 144C (13)]

On the questions whether the Tribunal was right in holding that the order dated January 31, 2017 passed under section 143(3) read with section 144C(13) by the Assessing Officer was barred by limitation and not in conformity with the directions issued by the Dispute Resolution Panel by an order dated December 28, 2016.Dismissing the appeal, that the order passed under section 143(3) read with section 144C(13) by the Assessing Officer was barred by limitation and was not in conformity with the provisions of section 144C.(AY.2012-13)

PCIT v. Flextronics Technologies (India) Pvt. Ltd. (2023)459 ITR 493/148 taxmann.com 123 (Karn)(HC)

S. 144C : Reference to dispute resolution panel-Faceless assessment-Limitation-Draft assessment order-Reference To Objections to Dispute Resolution Panel-Directions From Dispute Resolution Panel-Failure to follow procedure is not merely procedural irregularity but illegality-Final order passed two years after receipt of directions from Dispute Resolution Panel-Assessment order time-barred-Original return of income to be accepted-Direction to refund excess of legitimate tax. [S. 144C(1) 144C(2)(b), 144C(5), 144C(10), 144C(13), Art. 226]

Allowing the petition the Court held that failure to follow procedure is not merely procedural irregularity but illegality. Final order passed two years after receipt of directions from Dispute Resolution Panel Assessment order time-barred. Original return of income to be accepted. Direction to refund excess of legitimate tax.Referred Shell India Markets Pvt Ltd v. Addl.CIT (2022) 443 ITR 366 (Bom)(HC), Turner International India Pvt Ltd v.Dy.CIT (2017) 398 ITR 177 (Delhi)(HC), Vodafone Idea Ltd v. ACIT (2020) 424 ITR 664 (SC) (AY.2016-17)

Vodafone Idea Ltd. v. CPC (2023)459 ITR 413 /156 taxmann.com 258 (Bom)(HC)

S. 144C : Reference to dispute resolution panel-Draft assessment order-Objections filed before Dispute Resolution Panel-Assessing Officer bound to wait for its directions-Matter restored to Assessing Officer.[S. 114C(2)(b)(ii), 144C(13), 144C(15)(b)(i), Art. 226]

Allowing the petition the Court held that once an objections were filed before the Dispute Resolution Panel and till the decision was taken by the Dispute Resolution Panel regarding directions to be passed, the Assessing Officer ought not to have proceeded further. The court restored the matter to the Assessing Officer with directions to proceed further in terms of the procedure under section 144C(13) the time contemplated thereunder deemed to commence from the date of receipt of the order. The Assessing Officer was to follow the directions issued by the Dispute Resolution Panel. The observations made in the context of directions being issued by the Dispute Resolution Panel at a subsequent point of time would not have the effect of construing the duty of the assessee to file objections before the Assessing Officer under section 144C(2)(b)(ii) as being optional and not mandatory.

Open Silicon Research Pvt. Ltd. v. NFAC (2023)456 ITR 546 /154 taxmann.com 11 / 335 CTR 108 (Karn)(HC)

S. 144C : Reference to dispute resolution panel-Draft assessment order-Passing of final order-Contrary to law-Mistake could not be cured. [S. 156, 292B.]

Dismissing the appeal of the Revenue the Court held that since at the stage of passing draft order, ACIT had assessed tax,passed final order and also issued a demand notice. Procedure followed by the ACIT is contrary to law and mistake could not be cured under section 292B of the Act. (AY. 2011-12 to 2013-14)

CIT (IT) v. Cisco Systems services B.V. (2023) 456 ITR 50/ 293 Taxman 85/334 CTR 52 (Karn)(HC)

Editorial : Affirmed, Cisco Systems services B.V. v.Dy.CIT (IT)(2022) 194 ITD 135 (Bang)(Trib)/ Systems services B.V. v.Dy.CIT (IT)(2022) 193 ITD 809 (Bang)(Trib)

S. 144C : Reference to dispute resolution panel-Draft assessment order-Limitation-Direction of Commissioner does not extend limitation [S. 92CA(3), 144A, 153]

The assessee had filed its return for the assessment year 2015-16. The time limit for completion of regular assessment in terms of section 153(1) of the Act, being 21 months from the end of the relevant assessment year, was December 31, 2017. A reference was made to the Transfer Pricing Officer, since the business of the assessee included transactions that related to entities abroad for which a proper determination of arm's length price was to be made. There was a request by the Transfer Pricing Officer for exchange of information and a reference was made to the competent authority in terms of section 90A of the Act. The reference for exchange of information was made by the Transfer Pricing Officer on October 29, 2018 and the last of the information sought was received by him on March 27, 2019. The order of the Transfer Pricing Officer was passed on May 24, 2019. On a writ petition challenging the draft assessment order dated July 26, 2019, passed in terms of section 143(3) read with section 144C(1).On writ the Court held that the last of the information was received by the Transfer Pricing Officer on March 27, 2019 by which time, the time for completion of regular assessment had itself long elapsed, on December 31, 2018. The order was barred by limitation. (AY.2015-16)

Pfizer Healthcare India Pvt. Ltd. v. Dy. CIT (2023)452 ITR 187 /334 CTR 944 / 151 taxmann.com 200 (Mad)(HC)

S. 144C : Reference to dispute resolution panel-Transfer pricing-Limitation-Order of Appellate Tribunal received by the AO in 2016 remanding the matter to DRP-DRP passed the order on 28-2-2020-Limitation for passing the order expired on 31-3 207-Direction and order passed by DRP on 28-2-2020 was barred by limitation. [S. 92CA, 153, 254(1) Art. 226]

The petitioner challenged the direction issued by DRP on 28-2-2020 was barred by limitation. Allowing the petition the Court held that the order of the Appellate Tribunal received by the AO in 2016 remanding the matter to DRP. The limitation for passing the order expired on or before 31-3 2017. DRP passed the order on 28-2-2020. Accordingly, the direction and order passed by DRP on 28-2-2020 were barred by limitation. (AY. 2009-10)

Sanmina-SCI India (P) Ltd v.Dy CIT (2023) 459 ITR 487/ 290 Taxman 560 (Mad)(HC)

S. 144C : Reference to dispute resolution panel-DRP cannot set aside any proposed variation or issue any direction for further enquiry-Direction issued to the Assessing Officer to pass a speaking order in respect of Permanent Entablement is contrary to the provisions of section 144C(8). [S. 9(1)(i), 144C(8)]

Held that DRP cannot set aside any proposed variation or issue any direction for further enquiry. Direction issued to the Assessing Officer to pass a speaking order in respect of Permanent Entablement is contrary to the provisions of section 144C(8). (AY. 2017-18, 2018-19)

FRD Solutions FZC v. Dy.CIT (2023) 222 TTJ 628 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Limitation-Order is barred by limitation.[S. 92CA (3A), 143(3) 153]

Held that since the TPO is bound to pass the order at any time before six days prior to the date on which the period of limitation referred to section 153 expires in view of the provisions of section 92CA (3A) said sixty days period expired on 29 th Jan, 2015 and therefore the order passed on 30 th Jan 2015 was barred by the limitation. Assesee being ceased to be an eligible assesee within the meaning of section 144C(15)(b) in the absence of valid transfer pricing order, the time limit for completion of assessment stood reverted back to twenty-one moths from the end of the relevant assessment year 2011-12 and consequently, the final assessment order passed by the Assessing Officer on 26 th Feb 2016 is also barred by limitation. (AY. 2011-12)

Johnson & Johanson (P) Ltd v. Dy.CIT(2023) 225 TTJ 241 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Limitation-Order is barred by limitation. [S. 92CA (3A), 143(3) 153 (1), 153(4)]

Held that time limit for completion of assessment for the relevant assessment year 2015-16 expired on 31 St December 2019 after including the extended time period provided under section 153(4) as well as Section 92CD(5) (b) and consequently, the due date for passing the order under section 92CA (3) was 31 st Otober, 2019. Order passed by TPO passed under S.92CA(3) on 1 st November 2019.i.e. beyond the time limit prescribed under S.92CA (3A). The order u/s 144C (1) for passing the draft assessment order on 30 th December, 2019. Assessment order passed by the AO on 6 th April 2021 is barred by limitation and is void ab initio. (AY. 2015-16, 2016-17)

Siemens Ltd v.Dy.CIT(2023) 225 TTJ 703 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Non-Resident-Assessment-Eligible assessee-Order under Section 92CA is not prerequisite in case of Non-resident.[S. 92CA]

Non-resident made eligible assessee by Finance Act, 2020 with effect from 1-4-2020,reassessment proceedings conducted after that date. Assessing Officer justified in adhering to provisions prescribed under amended provision.(AY.2014-15)

Abrar Fakirmohmmad Shaikh v. ITO (IT) (2023)108 ITR 127 / 226 TTJ 721 (Pune) (Trib)

S. 144C : Reference to dispute resolution panel-Final assessment order was passed without incorporating directions of Dispute Resolution Panel-Matter remanded to Assessing Officer to pass order incorporating Dispute Resolution Panel's directionS. [S. 144C(13)]

Held that the final assessment order was passed without incorporating the directions of the Dispute Resolution Panel. The issue was to be remitted to the Assessing Officer to pass an order incorporating the Dispute Resolution Panel's directions which had been given effect by the Transfer Pricing Officer.(AY.2018-19)

Hitachi Astemo Haryana P. Ltd. v Dy. CIT (2023)108 ITR 47 (SN) (Delhi)(Trib)

S. 144C : Reference to dispute resolution panel-Limitation-Legal issue-Can be raised at any time-Matter remanded to Assessing Officer to consider additional ground of limitation on Dispute Resolution Panel's Direction. [S. 92CA, 153, 254(1), ITATR.11]
Held that it was an undisputed fact that for the assessment year 2016-17, the Transfer Pricing Officer had passed the order under section 92CA on the 60th day of the limitation period prescribed in sub-sections (1) and (4) of section 153 ; any order not passed prior to that date would be barred by the limitation. As a result, the final assessment order passed by the Assessing Officer was clearly bad being beyond the period of limitation. As the assessee had taken its legal ground for the first time before the Tribunal and the Dispute Resolution Panel had not had an occasion to examine the assessee's case, the issue was to be set aside to the Assessing Officer to decide the assessee's preliminary objections on the matter of limitations in the light of this decision. The Assessing Officer was directed to obtain necessary directions from the Dispute Resolution Panel to adjudicate the additional grounds taken up by the assessee.(AY.2012-13, 2016-17)
Eaton Power Quality P. Ltd. v. Dy. Dy. CIT (2023)107 ITR 195 (Chennai) (Trib)

S. 144C : Reference to dispute resolution panel-Limitation-Legal issue-Can be raised at any time-Matter remanded to Assessing Officer to consider additional ground of limitation on Dispute Resolution Panel's Direction. [S. 92CA, 153, 254(1), ITAT R. 11]
Held that it was an undisputed fact that for the assessment year 2016-17, the Transfer Pricing Officer had passed the order under section 92CA on the 60th day of the limitation period prescribed in sub-sections (1) and (4) of section 153 ; any order not passed prior to that date would be barred by the limitation. As a result, the final assessment order passed by the Assessing Officer was clearly bad being beyond the period of limitation. As the assessee had taken its legal ground for the first time before the Tribunal and the Dispute Resolution Panel had not had an occasion to examine the assessee's case, the issue was to be set aside to the Assessing Officer to decide the assessee's preliminary objections on the matter of limitations in the light of this decision. The Assessing Officer was directed to obtain necessary directions from the Dispute Resolution Panel to adjudicate the additional grounds taken up by the assessee.(AY.2012-13, 2016-17)
Eaton Power Quality P. Ltd. v. Dy. Dy. CIT (2023)107 ITR 195 (Chennai) (Trib)

S. 144C : Reference to dispute resolution panel-Assessment-Limitation-Draft assessment order-Objections a day late-And Dispute Resolution Panel dismissing objections as filed late-Assessing Officer is bound to complete assessment within a month from last date for filing objections-Order passed beyond that date ultra vireS. [S. 143(3)]
Held that the assessee had not filed an objection till the expiry of the period to file such objection. The provisions of section 144C(3) read with section 144C(4) of the Income-tax Act, 1961 provide that the Assessing Officer will complete the assessment in accordance with the draft assessment order within a month if the assessee intimates the Assessing Officer about acceptance of the draft order or the assessee fails to file the objection within the period under sub-section (2) to section 144C of the Act. Thus, the Assessing Officer in terms of the provisions of section 144C(3) read with section 144C(4) of the Act was required to complete the assessment on or before September 30, 2021 as the assessee failed to file an objection on or before August 31, 2021. The order passed by the Assessing Officer under section 143(3) read with section 144C(13) of the Act on March 23, 2022 instead of September 30, 2021 is ultra vires.(AY.2018-19)
Dilipkumar Jashbai Patel v.Asst. CIT (IT) (2023)107 ITR 79 (SN)(Ahd) (Trib)

S. 144C : Reference to dispute resolution panel-Delay in filing object against draft assessment order-Appeal filed against draft assessment order is not maintainable-No power under section 144C for DRP to condone delay in filing objections either before it or before Assessing Officer. [S. 92CA, 144C(1), 144C(2b)(ii), 144C(3), 253 (1)]

Assessee-company had entered into certain specified domestic transactions whose value exceeded Rs. 5 Crores and case was referred to TPO for determination of ALP under section 92CA. TPO determined ALP of transactions and recommended an upward adjustment. After receipt of TPO's order, Assessing Officer passed a draft assessment order dated 15-11-2017 under section 144C(1) As Assessing Officer had not received any intimation either acceptance of variations or filing of objections before DRP by assessee within stipulated period of 30 days, Assessing Officer as per section 144C(3)passed final assessment order and served same to assessee.Assessee pleaded to condone delay in filing objection against draft assessment order. Tribunal held that since assessee did not satisfy conditions stipulated in section 144C(2b)(ii), namely, it did not file objection against draft assessment order within stipulated time period, there was no merit in objection raised by assessee against final assessment order. Tribunal held that there is no power under section 144C for DRP to condone delay in filing objections either before it or before Assessing Officer. (AY. 2014-15)

Kandla Energy and Chemicals Ltd. v. ACIT (2023) 203 ITD 190 /(2024) 229 TTJ 108 (Rajkot) (Trib.)

S. 144C : Reference to dispute resolution panel-Direction issued by DRP is binding on the Assessing Officer. [S. 144C(10)]

Tribunal held that as per provisions of section 144C(10), every direction issued by DRP shall be binding on Assessing Officer and Assessing Officer is not empowered to raise any new issue in giving effect proceedings and continue addition based on some other reasoning.(AY. 2018-19)

Golden State Capital Pte. Ltd. v. DCIT (IT) (2023) 203 ITD 303 /229 TTJ 290 (Delhi) (Trib.)

S. 144C : Reference to dispute resolution panel-Assessing Officer passing final assessment order before Transfer Pricing Officer gave effect to directions of Dispute Resolution Panel-Final assessment order rectified on application of assessee after Transfer Pricing Officer gave effect to directions-Rectified final assessment order deemed to be within limitation-Final assessment order is valid. [S. 144C(13), 154]

Held that the assessee accepted the final assessment order passed by the Assessing Officer on July 21, 2022. The assessee neither raised objections nor challenged that order but preferred to file a rectification petition under section 154 of the Act. The Assessing Officer rightly rectified the order on October 13, 2022. Therefore, the original assessment order passed by the Assessing Officer on July 21, 2022 was valid in law as it was rectified which was deemed to be considered within the limitation period specified under section 144C(13) of the Act..(AY.2017-18, 2018-19)

Teejay India P. Ltd. v. Dy. CIT (2023)103 ITR 52 (Vishakha) (Trib)

S. 144C : Reference to dispute resolution panel-Assessing Officer issuing notice of demand on same date as draft order attaining finality to assessment-Once notice of demand issued, assessment complete-Assessment order is not valid. [S. 143(3), 156]

Allowing the appeal the Tribunal held that the the Assessing Officer had issued notice of demand on June 29, 2021 which was the same date on which the alleged final assessment order was passed. Statutorily it was incumbent upon the Assessing Officer to pass the final assessment order after the draft assessment order and then issue notice of demand. Issuance

of notice of demand brought finality to the process of assessment. Before the notice of demand is issued one cannot say that the assessment has concluded. Since, the Assessing Officer had issued the notice of demand at the stage of draft order which actually ought to have been done at the stage of passing a final order, thereby assigning finality to the assessment at the stage of draft order itself. If the Assessing Officer wanted the assessee to treat the order dated June 29, 2021 as the draft assessment order he should not have issued demand notice and penalty notice to the assessee and even when he had issued them he should have withdrawn them which in fact he had not done. The demand notice and the penalty notice are issued only after the final assessment is completed. Therefore, the Assessing Officer had violated the provisions of section 144C of the Act. Accordingly, the assessment order was vitiated in the eyes of law and bad in law. (AY.2017-18)

Prodair Air Products India Pvt. Ltd. v. ACIT (2023)102 ITR 19 (SN)(Pune) (Trib)

S. 144C : Reference to dispute resolution panel-Since there was no forwarding not even effort to forward draft assessment order to the new address furnished to the Assessing Officer under proviso to Rule 127(2) within permitted time frame under section 153 r.w.S. 144C, the impugned assessment order was time barred and therefore liable to be quashed. [S. 153, Rule 127(2)]

The returned income of the assessee was proposed to be subjected to variations prejudicial to the interests of the assessee under section 144C. There was a change of address and assessee had intimated the new address to the Assessing Officer vide letter dated 25.05.2018. The Assessing Officer had passed two draft assessment orders both dated 10.12.2018 under section 144C but both of these draft assessment orders contained the old address of the assessee. The short case of the assessee was that since the Assessing Officer did not forward the draft assessment order on or before the due date as is prescribed in the provisions of section 153 r.w.s. 144C, the impugned assessment order was time barred.

The Tribunal observed that there was no forwarding not even an effort to forward the draft assessment order to the new address furnished to the Assessing Officer under proviso to Rule 127(2) within the permitted time frame under section 153 r.w.s. 144C. The impugned assessment order was thus barred by limitation. Accordingly, the Tribunal held that the impugned assessment fails for this short reason alone and the impugned assessment order was quashed. (AY. 2015-16)

DSV Solutions (P) Ltd. v. DCIT (2023) 221 TTJ 310 (Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Assessment-Limitation-No variation in returned income-Assessing Officer ought to have passed assessment order under section 143(3) of Act within limitation time prescribed under section 153(1), i.e., within 21 months from end of assessment year-Order is barred by limitation. [S. 143(3), 153(1)]

Assessee, cyprus based company, had earned interest income and opted to be governed by provisions of Cyprus Treaty. interest income was offered to tax at rate of 10 per cent as per article 11(2). Assessing Officer issued draft assessment order under section 143(3) read with section 144C(1) on 26-12-2016 wherein he assessed interest income at rate of 40 per cent. Thereafter, Assessing Officer passed final assessment order under section 143(3) read with section 144C(3) on 7-2-2017 as proposed in draft assessment order. On appeal the Tribunal held that since condition required to be satisfied for issuance of draft order under section 144C(1) had not been satisfied because there was no variation of returned income which was prejudicial to interest of assessee, Assessing Officer ought to have passed assessment order under section 143(3) within limitation time prescribed under section 153(1), i.e., on or before 31-12-2016 and since assessment order was framed on 7-2-2017, same was barred by limitation. (AY. 2014-15)

ACIT v. Erisse Investments Ltd. (2023) 200 ITD 801 /(2024) 110 ITR 283 (Mum) (Trib.)

S. 144C : Reference to dispute resolution panel-Option to file objection waived-Draft assessment order-Mandatory requirement of forwarding a draft assessment order could not be done away with-Order is quashed.

Assessee challenged the order on grounds that Assessing Officer failed to pass draft assessment order under section 144C. Revenue contended that assessee had waived off option to file objections before DRP under section 144C and thus, final assessment order was passed. Tribunal held that mandatory requirement of forwarding a draft of proposed order, of assessment could not be done away with, by any waiver given by assessee during assessment proceedings. Final assessment order without passing of draft assessment order would not be in accordance with provisions contained in section 144C hence quashed. (AY. 2013-14)

Linc Pen & Plastics Ltd. v. DCIT (2023) 199 ITD 719 (Kol) (Trib.)

S. 144C : Reference to dispute resolution panel-Order in the name of amalgamating company-Non existent entity-Aassessment proceedings based on an invalid draft assessment order were void ab initio and quashed. [S. 143(3)]

Held that draft assessment order under section 144C was passed in name of amalgamating company, which was a non-existent entity in eyes of law on date of passing of such order, it became an illegal order and thus, entire assessment proceedings based on such an invalid draft assessment order is void ab initio and quashed. (AY. 2011-12)

Siemens Ltd. v. DCIT (2023) 199 ITD 470 (Mum) (Trib.)

S. 144C : Reference to dispute resolution panel-Unexplained money-Draft assessment order-Order passed in violation of directions of DRP-Nullity and bad in law. [S. 69A]

Assessee sold equity shares of certain Indian companies through BSE and amount was remitted outside India. Assessing Officer added back by invoking provisions of section 69A. Before DRP, assessee submitted that share transaction of which was Security Transaction Tax (STT) paid, hence, resultant long-term capital gain was exempt under section 10(38) and that except this transaction, assessee had neither made any other share transaction nor made any other remittances. DRP, being convinced that assessee had actually made a single remittance deleted addition made by Assessing Officer. While passing final assessment order in pursuance to directions of DRP, Assessing Officer, added accepted in draft assessment order. On appeal the Tribunal held that where clear mandate given to Assessing Officer by DRP was to restrict himself to delete addition made in draft assessment order, Assessing Officer had travelled beyond direction given by DRP, therefore, assessment order having been passed in clear violation of directions of DRP was a nullity in eyes of law and hence was to be quashed. (AY. 2012-13)

Oxbow Energy Solutions LLC. v. DCIT, IT (2023) 199 ITD 770 (Delhi) (Trib.)

S. 144C : Reference to dispute resolution panel-International Transaction-Limitation-Assessment order passed beyond one month from the end month in which directions of DPR received-Relaxation under TOLA Act not applicable-Assessment order is barred by limitation. [S. 144B 144C(13), 147, 148]

Held, that under section 144C(13) of the Income-tax Act, 1961, the Assessing Officer is duty-bound to pass the final assessment order within a period of one month from the end of the month in which the directions of the Dispute Resolution Panel were received. The relaxation under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 would not be applicable to assessment orders passed in consequence of directions of the Dispute Resolution Panel. The assessment order dated September 30, 2021 was barred by limitation and without jurisdiction.(AY. 2015-16)

Supermax Personal Care Pvt. Ltd. v.Dy. CIT (2023)101 ITR 29 (SN)(Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Transfer pricing-Draft assessment order-Failure to give effect to the direction of DRP-Order was quashed. [S. 144c(10) 144C(13)]

The DRP provided directions to rework the transfer pricing adjustment, but the Assessing Officer retained the same adjustment in the final assessment order. The assessee challenged the validity of the final assessment order, arguing a violation of provisions of section 144C (10) r.w.s. 144C (13) of the Income-tax Act.The Tribunal quashed the transfer pricing adjustment, emphasizing that the AO's failure to adhere to the DRP's directions rendered the final assessment order invalid.(AY. 2012-13)

Tata Power Solar Systems Ltd. v. DCIT (2023) 200 ITD 226 (Bang (Trib.)

S. 144C : Reference to dispute resolution panel-Limitation-No variation is proposed-Extended period is not available for concluding assessment-Draft assessment order is not required to be issued-Order is barred by limitation-DTAA-India-CypruS. [S. 153 (1), Art. 11(2)]

The AO held that the Assessee is not a beneficial owner of the interest income and thereby issued a draft assessment order and final assessment order on 28.12.2018 and 22.02.2019 taxing the said income at 30%. Tribunal held that there was no proposal for variation in the returned income of the Assessee in the instant case. Further, while referring to other orders of the co-ordinate bench on the same issue, held that for the AYs before the amendment in section 144C which came into effect from 01.04.2020, the cases in which no variation in the return of income or loss were proposed, the draft assessment orders were not required to be issued. Accordingly, no extended period for concluding the assessment was available. Order is barred by limitation. (AY.2016-17)

Amadoroco Ltd. *v.* ACIT (IT (2023) 200 ITD 415 (Delhi)(Trib.)

S. 144C : Reference to dispute resolution panel-Assessment-Limitation-Eligible assessee-International Transactions-Orders Passed by TPO Beyond limitation period-therefore, Assessee is Not an "Eligible Assessee" as per 144C(15)(b) of the Act-extended time period of 12 months not available-as a consequence thereof, Regular Assessment Order was also barred by Limitation and not sustainable.[S. 92CA(3), 144C(15)(b), 153]

The provisions of section 92CA(3A) of the Act prescribes the date for passing an order u/s 92CA(3) as "any time before 60 days prior to the date on which the period of limitation referred to in s. 153 expires". According to the provisions of s. 153(1) r.w.s. 153(4), the time limit for passing of the order for under s. 153 was available up to 31.03.2015. Thus, the time limit for passing order u/s 92CA(3) was expiring on or before 29.01.2015. Held, (i) that the TPO for the AY 2011-12 had passed the order u/s 92CA(3) of the Act on 30.01.2015. For AY 2012-13 also, the limitation for passing an assessment order u/s 153 expired on 24 months from the end of the AY, i. e., on 31.01.2015. The extension of 12 months was granted as a reference was made u/s 92CA and therefore the limitation period was further extended from 31.3.2015 to 31.3.2016. The 60-day period after counting the one day in the month of January, 29 days of February being a leap year and 31 days of March 2016, expired on 31.1.2016. Therefore, the outer time limit for passing the order of the TPO was up to 30.1.2016. The order of the TPO was passed on 31.01.2016. For AY 2013-14, the TPO passed an order u/s 92CA(3) on 01.11.2016. Based on this the draft assessment order u/s 143(3) r.w.s. 144C(1) was passed on 31.12.2016. The assessee filed objections before the DRP and directions were issued on 27.09.2017. Based on this the final assessment order

u/s 143(3) was passed on 31.10.2017. According to S. 153(1) the assessment order should have been passed within 21 months from the end of the AY in which the income was first assessable. Therefore, the time-limit for passing the assessment order expired on 31.12.2015. However, as there was a reference made to the TPO for passing an order under section 92CA a further period available for completion of the assessment was to be extended by 12 months. Thus, the time-limit for passing order under section 143(3) was available up to 31.12.2016. According to S. 92CA(3A) the TPO should have passed the order at any time before 60 days prior to the date on which the time-limit for making the order of the assessment expires. The time of 60 days was available till 31.10.2016. The order of the TPO was passed on 1.11.2016. Therefore, the orders passed by the TPO for all three years were beyond the time-limit and were not sustainable. Pfizer Healthcare India P. Ltd. v. JT. CIT [2021 433 ITR 28 (Mad) followed.

(ii)That if the order passed by the TPO was beyond prescribed time-limit, the assessee would not remain an "eligible assessee" in terms of S. 144C(15)(b) of the Act and hence the extended time of 12 months was also not available. Therefore, even the regular assessment order passed by the AO u/s 143(3) read with S. 144C(13) of the Act dated 15.02.2016 also became barred by limitation and was not sustainable.(AY.2011-12, 2012-13, 2013-14)

Colgate-Palmolive (India) Ltd. v ACIT (2023) 149 taxmann.com 177/ 103 ITR 51 (SN)(Mum)(Trib)

S. 144C : Reference to dispute resolution panel-Procedure for filing objections-Natural justice-Form No 35A signed by the Advocate-Authorised Representative is not entitle to verify and sig the Form No 35A-Dismissal of objection by DRP without giving an opportunity to rectify the defects is violation of principle of natural justice-The Tribunal directed the Assessee to file objections before LD DRP within 30 days from the date of receipt of this order duly verified in accordance with law and directed the DRP to decide the objection in accordance with the law. [S. 2(7), 2(31), R. 2(vi), 4(1), 5, 7, 9, Form No 35A]

Form No 35A was signed by an Advocate, Authority based on which the learned advocate verified form number 35A was not produced before the DRP. The DRP dismissed the objection signed by the Advocate without giving any opportunity to the eligible assessee. On appeal the Tribunal held the advocate who signed the form is neither an 'assessee' nor an agent, therefore, verification of form number 35A made by the advocate being an authorized representative of the assessee is not proper verification and no fault can be found with the directions of the ld DRP holding that the objection are not maintainable. The Tribunal also held that the DRP should have confronted the fact that Form number 35A is not properly verified. Dismissal of objection without giving an opportunity to rectify the defects violates the principles of the natural justice. Accordingly, the Tribunal directed the Assessee to file objections before LD DRP within 30 days from the date of receipt of this order duly verified in accordance with law and directed the DRP to decide the objection in accordance with the law. (ITA Nos. 457 & 458/Mum/2023 and SA 49 and 50/M/2023 dt. 1-8-2023) (AY 2014-15 & 2015-16)

Bridge India Fund, New Delhi v. ACIT (Mum)(Trib) www.itatonline.org

S. 144C : Reference to dispute resolution panel-International Transaction-Limitation-Assessment order passed beyond one month from the end month in which directions of DPR received-Relaxation under TOLA Act not applicable-Assessment order barred by limitation. [S. 144C(13) 147]

Held, that under section 144C(13) of the Income-tax Act, 1961, the Assessing Officer is duty-bound to pass the final assessment order within a period of one month from the end of the

month in which the directions of the Dispute Resolution Panel were received. The relaxation under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 would not be applicable to assessment orders passed in consequence of directions of the Dispute Resolution Panel. The assessment order dated September 30, 2021 was barred by limitation and without jurisdiction.(AY. 2015-16)
Supermax Personal Care Pvt. Ltd. v. Dy. CIT (2023)101 ITR 29 (SN)(Mum) (Trib)

S. 145 : Method of accounting-Development of property-Project completion method-Percentage completion method-Accepted in earlier year-Rejection of method in latter year is not justified. [Accounting Standard, 7, & 9]
The assessee followed the project completion method. The Assessing Officer held that the assessee is a mere contractor hence percentage completion method should be followed instead of the project completion method followed as per Accounting Standard 7. The CIT(A)) and Tribunal allowed the appeal of the aassessee. On appeal to High Court the dismissing the appeal of the Revenue the Court held that the project completion method was followed by the assessee and had been accepted by the Department. Thus, applying the principle of consistency, the rejection of the method of accounting was not justified.(AY.2015-16)
PCIT v. Salarpuria Simplex Dwelling LLP (2023)455 ITR 712 /(2022) 143 taxmann.com 35 (Cal)(HC)

S. 145 : Method of accounting-Deduction of tax at source-Tax deducted is income received-Running bills-AO was not justified in making addition on account of difference in payment received as per Form 26AS and books of accounts without verifying total contract amount and relevant billS. [S. 198, Form No. 26AS]
Dismissing the appeal of the Reevenue the Court held that the Tribunal had specifically observed that AO had not verified claim of assessee and the CIT(A) had rightly deleted addition after verification of bank account, contract amount which was received by assessee on basis of running bills. Accordingly the Tribunal had rightly deleted addition made by AO on account of difference in payment received as per Form 26AS and books of accounts. (AY 2013-14).
PCIT.v. MBC Infra Space (P.) Ltd (2023) 294 Taxman 358) (Guj)(HC)

S. 145 : Method of accounting-Consumption of leather-No suppression of material-Addition was deleted.
Allowing the appeal the Court held that there was nothing on record to indicate that there was suppression of materials by assessee nor there was anything to indicate that wastage as mentioned by assessee for year under consideration could not have been shown. Accordingly the addition was deleted. (AY. 2006-07)
Sidhant Leather Exports (P.) Ltd. v. CIT (2023) 459 ITR 318 / 293 Taxman 412 (Cal.)(HC)

S. 145 : Method of accounting-Rejection of books of account-Equity trading, derivatives trading and real estate investment-Deletion of addition by the Appellate Tribunal-Question of fact.[S. 144, 260A, Code of Civil Procedure, 1908. S 100]
Assessee is engaged in business of equity trading, derivatives trading and real estate investment, filed Income-tax Returns ('ITR') declaring an income of Rs. 42.43 crores. On scrutiny, assessment order was passed making an addition of Rs. 10.21 crores on ground that there was difference between funds received and source of income as per books of account

which was not disclosed by assessee in its return. Assessing Officer rejected books of account declared by assessee on ground that they were not reliable. Commissioner (Appeals) allowed appeal of assessee, holding that addition was not sustainable in view of documentary evidences already available on record. It was further held that Assessing Officer failed to make any sincere effort regarding aforesaid addition and same was made only on basis of doubt, suspicion, conjecture or surmises without affording proper opportunity of being heard to assessee which was in violation of principles of natural justice. Tribunal concurred with findings in order of Commissioner (Appeals). On appeal by the Revenue the Court held that the Revenue had not placed any material on record to contradict aforesaid concurrent finding of facts returned by Tribunal and Commissioner (Appeals). No substantial question of law. Relied on Ram Kumar Agarwal v. Thawar Das (1999) 7 SCC 303 (AY. 2011-12)
PCIT v. Conwood Medipharma (P.) Ltd. (2023) 291 Taxman 393 (Delhi)(HC)

S. 145 : Method of accounting-Rejection of books of account-Estimation of profit 0.5 per cent-Question of fact [S. 145 (3), 260A]
Held that when both the authorities had deemed it appropriate to apply 0.5 per cent. net profit ratio the order need not be interfered with. These were all essentially and predominantly the factual aspects analysed based on the material adduced before these authorities and that also by giving cogent and sound reasons. No question of law arose.(AY.2010-11)
PCIT v. Kandla Steel Pvt. Ltd. (2023)452 ITR 22 (Guj)(HC)

S. 145 : Method of accounting-Rejection of accounts-Wholesale trader-Estimation of GP at 2% is held to be proper [S. 260A]
Assessee, a wholesale trader, disclosed gross profit at the rate of 0.13 per cent. The assessing Officer issued notices to twenty sundry debtors of the assessee, however, nineteen of the parties did not respond and only the sundry debtor who did respond to Assessing Officer denied any transaction with assessee. Assessing Officer rejected the account books of account and estimate the GP at 2% of gross sales. On appeal, the assessee contended d for deduction of statutory taxes, i.e., CST by holding that while estimating gross profit all expenditure had been accounted for and this included expenditure towards taxes. Tribunal rejected the contention and affirmed the estimate of GP at 2% estimated by the Assessing Officer. High Court affirmed the order of the Tribunal. (AY. 2013-14)
Narender Kumar Anand v. PCIT (2023) 290 Taxman 386 (Delhi)(HC)

S. 145 : Method of accounting-Rejection of books of account-Estimation of profit-Rejection of books of account is justified-Estimate of @ 5 percent of the turnover is affirmed-Jurisdiction issue is not challenged in the course of assessment proceedings hence not entertained-Reassessment is affirmed.[S. 124(3),145(3), 147, 148]
Held that estimation of profit and rejection of books of account is justified. Estimate of @ 5 percent of the turnover is affirmed. Jurisdiction issue is not challenged in the course of assessment proceedings hence not entertained hence not entertained. Reassessment is affirmed. (AY. 2009-10)
ITO v. Vibgyor Texotech (P) Ltd (2023) 221 TTJ 708 (Mum)(Trib)

S. 145 : Method of accounting-Unaccounted stock-Cash found during survey-Books of account was not complete-Justified in rejecting the books of account-Bogus purchases-Restricted the disallowance to 6% of bogus purchases as against 12.5% estimated by the CIT(A). [S. 133A, 145 (3)]

Held that in the course of excess cash was found and books of account was not complete. As regards bogus purchases Tribunal-Restricted the disallowance to 6% of bogus purchases as against 12.5% estimated by the CIT(A). (AY. 2010-11)
Bhimsen Darbarilal Arora Through L/H Rajat Bhimsen Arora v. ACIT (2023) 224 TTJ 487 /150 taxmann.com 68 (Surat)(Trib)

S. 145 : Method of accounting-No defects in the books of account-Ad-hoc estimate of profit is not justified. [S. 133A, 145 (3)
Held that the assessee following accounting standards and accounts audited without adverse remarks.All documents called are furnished and no defects pointed out. Rejection of books of account is not justified. Ad-hoc estimate of profits is deleted. *(*AY.2015-16)
Asst. CIT v. Friends Medicos (2023)108 ITR 279 (Delhi)(Trib)

S. 145 : Method of accounting-Accrual income-Electricity company-Late payment surcharge-Taxed in earlier and subsequent years on receipt basis-Accounting Standard 9-Not to be taxed on accrual basis. [S. 4]
Held, that the late payment surcharge was the additional amount levied on the customers for default in the payment of the electricity bill by the due date. It was levied to motivate the customers to pay the electricity bill on time. It was levied in the next billing cycle when the customer defaulted in earlier bill payment. However, it was recognised in the books of account on a collection basis. The assessee-company consistently recognised late payment of surcharge as and when it was recovered from the consumer, due to the uncertainty attached to its collection/recoverability. This was in tune with Accounting Standard 9 revenue recognition issued by the Institute of Chartered Accountants of India. Addition is deleted. (AY.2011-12, 2012-13)
Tata Power Delhi Distribution Ltd. v.Add. CIT (2023)108 ITR 329 (Delhi)(Trib)

S. 145 : Method of accounting-Mercantile system of accounting-Customs duty drawback-Refund-Income-Accrual-Accrues when assessee gets right to receive it-When it is sanctioned to assessee by Customs Authorities-Not in year when assessee makes claim. [S. 4, 5, 37(1).]
The assessee accounted for the refund of duty drawback when it got the right to receive the duty drawback, which was nothing but the mercantile system of accounting. This fact had not been disputed by the authorities in any of the previous years. In the peculiar facts and in the circumstances of the present case, the income would be receivable only when the income accrued to the assessee and income would accrue to the assessee only when the assessee got such a right to receive the income. The assessee would get a right to receive it only when it was sanctioned to the assessee by the customs authorities and not when the assessee made a claim therefor. Accordingly, the amount is taxable in the subsequent AY. 2019-20 and not in the year in question. Followed*,* CIT (LTU) v. Ssea Brown Boveri L td (2020) 427 ITR 166 (Karn)(HC and CIT v. Sriyansh Knitters P. L td (2011) 336 ITR 235 (P&H) (HC) *(*AY. 2018-19)
Mahalasa Exports v.ITO (2023)105 ITR 69 (SN)(Bang) (Trib)

S. 145 : Method of accounting-Percentage completion method-Matter remanded.
Assessee a developer. Agreement for construction of hotel building and sale. Assessee offering income based on percentage completion method. 39.89 Per Cent. of work completed and 39.89 Per Cent. of contract value offered as revenue on reduced contract value. Tribunal held that reduction in cost by registered deed because assessee could not complete construction within time and purchaser deciding to complete remaining construction itself.

Assessing Officer is directed to recalculate revenue taking into consideration reduced cost.*(*AY. 2010-11, 2011-12)
Angelica Properties P. Ltd. v. Add. CIT (2023)105 ITR 442 (Pune) (Trib)
Vason Engineers Ltd v. Add. CIT (2023)105 ITR 442 (Pune) (Trib)

S. 145 : Method of accounting-Undervaluation of stock-Fall in GP-Allegations made by Special Auditor-Rejection of books of account is unjustified.
Assessing Officer on basis of allegations alleged by Special Auditor that there was fall in GP rate for relevant year by below 0.44 per cent as compared to immediately preceding assessment year rejected books of account of assessee and alleged that assessee had undervalued closing stock of salt and rice. Tribbunal held that there was error in Special Auditor's report as there was only a marginal fall of 0.27 per cent as against 0.44 per cent indicated by Special Auditor. Further, on perusal of details it was found that assessee had maintained proper books of account. Month-wise details of purchases and sales were provided by assessee along with valuation of closing stock. Assessing Officer rejected books of account only on basis of allegations alleged by Special Auditor.Since complete details of valuation of closing stock were furnished and such data was also prepared from exhaustive accounting of assessee, observations of Assessing Officer were very general in nature and were purely based on assumptions and surmises without bringing any comparable case on record. Therefore, Assessing Officer is not justified in rejecting books of account of assessee. (AY. 2007-08)
DCIT v. Amrit Banaspati Company Ltd. (2023) 203 ITD 230 /226 TTJ 137 (Delhi) (Trib.)

S. 145 : Method of accounting-Fall in profit-Detailed explanation is furnished-Estimate profit rate at 4 per cent without rejecting books of account was not in accordance with law.
Assessee's case is selected for scrutiny on grounds that turnover shown in ITR was substantially lower in comparison to turnover shown in GSTR-1 return and GSTR 3 return and low income was shown compared to large commission receipts. Assessing Officer noted huge reduction in percentage of gross profit and net profit between two consecutive years. He, thus, computed net profit at 4 per cent of turnover and accordingly, made additions in income of assessee. Commissioner (Appeals) upheld order of Assessing Officer. Tribunal held that the assessee had filed detailed explanation for difference in GP and provided quantitative details of opening stock, purchases, sales and closing stock. Also assessee's books of account were duly audited by an independent chartered accountant. Since assessee provided detailed explanation behind fall in profit rate, action of Assessing Officer to estimate profit rate at 4 per cent without rejecting books of account was not in accordance with law. (AY. 2018-19)
Kunan Mal Kalu Ram Jain and Co. v. ITO (2023) 203 ITD 182 (Jaipur) (Trib.)

S. 145 : Method of accounting-Infrastructure development project-Project development fee received is to be apportioned over period of project-Entire fee can not be taxed during year specifically when fees apportioned to subsequent years was returned to tax by assessee in said yearS. [S. 4]
Assessee-company is engaged in building infrastructure projects Assessee had received project development fees of certain amount. It had apportioned project development fees over entire period of projects and had accordingly offered only a certain amount to tax during relevant year. However, Assessing Officer treated said fees as taxable entirety in relevant

year. Tribunal held that since Project work could not be completed within one year, services to be rendered by assessee would automatically spill over to succeeding years of project period and accordingly, fees would be apportioned to subsequent year of contract period. Further, since project development fees apportioned to subsequent years had also been returned to tax by assessee in said years, department in any case had not been deprived of any tax.Therefore, entire fee could not be brought to tax during year and same was to be apportioned over period of project. (AY. 2010-11)

ACIT v. Gujarat State Road Development Corporation Ltd. (2023) 202 ITD 510 (Ahd) (Trib.)

S. 145 : Method of accounting-Rejection of books of account-Without identifying any specific lacuna rejection of books of account is unjustified-Cash credits-Survey-Cash sales-Deposited in to bank-No Discrepancies found in stocks and purchases-Addition based solely on statement of third party-Opportunity for cross-examination not granted-Addition is deleted.[S. 68, 133A, 145(3)]

Held, allowing the appeal, that the amounts were received from the sole proprietorship through banking channels. In the assessment and the appellate proceedings, no discrepancies were found in the purchases or stocks of the assessee. Before the Tribunal, the assessee had submitted details of stocks as well as a ledger account with quantitative details of goods. All these documents were a part of the proceedings before the lower authorities. No question had been raised about the purchase of the goods which were duly sold by the assessee to the party in question. The addition was made entirely on the basis of the statement of the sole proprietor. That statement had not been served on the assessee. The assessee was not allowed to cross-examine the sole proprietor. The entire gross sales were duly returned by the assessee. The books of account were rejected under section 145(3) of the Act without finding any lacuna or specific discrepancy therein. The Assessing Officer had assumed that the cash deposited in the bank account of the sole proprietor belonged to the assessee. The additions had thus been made on the basis of surmises and conjectures, ignoring the evidence produced by the assessee. There was a lack of cogent evidence in respect of the addition. The assessee could not be taxed doubly in respect of the same amount which had already been declared in its return of income. The amount of sales by itself could not represent the income of the assessee who had not disclosed such sales. It was only the realisation of excess over the cost incurred that formed part of the profit included in the consideration of sales. The addition is deleted.The Tribunal also held that without identifying any specific lacuna rejection of books of account is unjustified. (AY.2014-15)

Ganesh Rice Mills v. Dy. CIT (2023)103 ITR 627 / 152 taxmann.com 492 (Amritsar) (Trib)

S. 145 : Method of accounting-Rejection of books-Books not updated as on date of survey and discrepancies between stocks and cash physically found-Rejection is proper-Sale of jewellery-Cash received-Genuineness of transaction not proved-Addition is affirmed-Levy of interest is mandatory. [S. 68,133A, 234B, 234C]

Held that books not updated as on date of survey and discrepancies between stocks and cash physically found.Rejection is proper. Tribunal also held that sale of jewellery and cash received. Genuineness of transaction not proved hence the addition is affirmed. Tribunal also held that the levy of interest under sections 234B and 234C was to be confirmed.(AY.2012-13)

Neeraj Agrawal v. Dy. CIT (2023)103 ITR 398 / 152 taxmann.com 632 (All)(Trib)

S. 145 : Method of accounting-Rejection-No specific defect in books of account-Rejection is not justified-Re payment of sundry creditors in next year-Addition is not justified.[S. 68, 145(3)]

Held that the Assessing Officer has pointed out any specific defect in books of account hence the rejection of books of account is not justified. Tribunal also held that re payment of sundry creditors in next year hence addition is not justified. (AY.2010-11)

ACIT v. Salya India P. Ltd. (2023)103 ITR 81 (Surat)(Trib)

S. 145 : Method of accounting-Mercantile system of accounting-Payment of interest-Related parties-No modification in loan agreement-Terms cannot be modified by Board Resolution.[S. 40A(2), Accounting Standard-9 (AS-9)]

During year under consideration, assessee had paid interest on loans borrowed from related parties and other lenders. Assessee had also advanced loans and charged interest on loans advanced until October 2012. At request of parties, interest was waived and a new agreement was established without charging any interest. Assessing Officer invoked section 40A(2)(b) to propose an addition to extent of interest not charged. On appeal the CIT(A) up held the order. On appeal the Tribunal held that the assessee is following mercantile system of accounting and Accounting Standard-9 (AS-9) issued by Institute of Chartered Accountants of India (ICAI) applied to it. Under mercantile system of accounting, interest accrual was to be recorded in books of account unless there was a modification of loan agreement and it could not be modified by a Board Resolution. On facts no such modification of agreement of advancing loans had been done and when assessee decided not to recognize income, it took support from Board Resolution. The claim of the assessee not based on any sound accounting system or section 145 could not be allowed (AY. 2013-14, 2015-16)

Bangalore Beverages Ltd. v. ITO (2023) 201 ITD 380 (Bang) (Trib.)

S. 145 : Method of accounting-Securitisation transactions-Sale to special purpose vehicle against lump sum consideration equal to book value-Offering excess interest spread to tax on proportionate basis as and when accruing over tenure-Method accepted by Revenue-Rule of consistency-Addition is deleted-Real income to be assessed.

Held that the Assessing Officer had arrived at an estimated income applying the present value factor on future estimated earnings, the receipt of which was uncertain. This methodology was not recognised under the Act and only real income had to be assessed to tax. Consistence method followed by the assessee is directed to be accepted.*(*AY.2016-17)

Cholamandalam Investment and Finance Co. Ltd. v. Asst. CIT (2023)102 ITR 685 (Chennai)(Trib)

S. 145 : Method of accounting-Rejection of books of account-Failure to file supporting evidence-Justified in rejecting the books of account-Net profit has to be estimating on scientific basic after allowing deduction on amount of depreciation, partners remuneration and interest paid to partners on their capital. [S. 32, 36(1)(iii), 40(b), 145(3), Partnership Act, 1932, S. 4]

Assessee partnership firm, engaged in business of purchase and processing of raw cotton, trading of cotton bales and seeds, filed its return claiming NIL profit. The assessee was asked to furnish details of purchase and sale registers along with copy of invoices, unit wise yield of production and details of closing stock along with method of valuation,however the assessee failed to submit these details. The Assessing Officer rejected books of account of assessee and estimated net profit at 1.5 per cent, which is affirmed by the CIT(A). On appeal the Tribunal held that since assessee did not file supporting corroborative materials along with

books of account so as to justify that profit declared in his return was correct within provisions of law, Assessing Officer was justified in rejecting books of account. The Tribunal also held that while estimating net profit on scientific basis, Assessing Officer should allow deduction on amount of depreciation, partners remuneration and interest paid by assessee to partners on their capital. (AY..2013 14, 2014-15)
Bhavani Cotton Ginning & Pressing Factory. v. ITO (2023) 198 ITD 4 (Ahd) (Trib.)

S. 145 : Method of accounting-Rejection of books of accounts-Audited books not declared to be incorrect-Rejection solely on the basis of photocopies of bills produced instead of original-Rejection of books not sustainable.[S. 145(3)]
Held, that The Assessing Officer was not justified in rejecting the books of account which were audited and without any qualification solely because photocopies of the bills had been produced instead of the original bills. Decision of CIT (A) to set aside the matter justified. (AY. 2013-14)
Blue Stampings And Forgings Ltd. v. Dy. CIT (2023)101 ITR 81 (SN)(Delhi) (Trib)

S. 145 : Method of accounting-Non accounting of expired stock as part of opening stock-no evidence of sale of obsolete stock-notional estimation of profit for not showing the obsolete stock as part of opening stock unjustified. [S. 37]
Department having accepted the fact that the stock purchased by the assessee in earlier years was expired and incapable of being sold to the customers, notional estimation of profit for not showing the said obsolete stock as part of opening stock of the year under consideration is unjustified. Further, such stock is destroyed or returned would also not impact the profitability of the assessee, as the assessee has not claimed any loss on account of writing off of such stock, which the assessee is entitled to. (AY.2012-13)
Abhinav Malik v. ITO [2023] 105 ITR 62 (SN) (Chd) (Trib)

S. 145 : Method of accounting-Accrual system of accounting-Interest income received during the relevant AY to be taxed in the said AY when assessee follows accrual system of accounting
Assessee received interest income during AY 2014-15. However, the same was not offered to tax in the return of income and therefore, the same was added to the total income of assessee by the AO. Before the CIT (A), Assessee contended that since interest income was offered to tax in the subsequent AY, taxing the same in the current AY would result in double taxation. CIT (A) dismissed the appeal of the Assessee on the basis that since Assessee was following mercantile system of accounting, interest income is required to be taxed on accrual basis. Hon'ble Tribunal upheld the order of the CIT (A) and held that the interest income should have been offered to tax in AY 2014-15 itself with consequential relief if said interest income is offered to tax in subsequent AY. (AY. 2014-15)
DCIT v. H.K Ispat Pvt. Ltd. (2023) 103 ITR 12 (SN)(Ahd) (Trib)

S. 145 : Method of accounting-Without show cause notice rejection of books oof account is bad in law-Books of accounts rejected u/S. 145(3) without issuing any Show Cause Notice and framing assessment u/S. 143(3) and not u/S. 144 indicates that assessment is bad in law-Purchases verified by AO and found to be genuine and purchases correctly recorded in books of accounts and stock register, books of accounts cannot be rejected-Cash sales and cash deposited in bank was held to be genuine and where assessee maintains proper books of accounts audited by Charaterd Acountant-Stock register, CIT(A) was not justified by estimating income by applying NP Rate and books of accounts were to be accepted. [S. 68,115BBE, 143(3) 144, 145(3)]

Assessee is engaged in manufacturing and trading of jewellery. The assessee-company derived income from manufacture and trading of jewellery. Books of the assessee were audited by an independent chartered accountant and the audit report and statement of profit and loss account were filed by the assessee. Assessee had deposited cash of Rs. 12.17 Crores during demonetization period. Assessee claimed that cash deposited out of cash sales, realisation from debtors and advances from customers. During assessment-AO rejected the books of accounts and made addition of Rs. 12.17 Crores by treating the same as unexplained cash credit u/s. 68 r.w.s. 115BBE of the Act. In first appeal, CIT(A) deleted the addition of Rs. 12.17 Crores made by the AO u/s. 68 of the Act. However, upheld the rejection of books of account and the estimation of net profit at the rate of 2.59% as against 2.36% declared by the assessee. The AO had verified the purchases, assessee had submitted stock records, all the details required to prove the sales made by the assessee were provided in the assessment proceedings. As regards the receipt of cash from customers such amount standing in the books of account of the assessee would not attract section 68. There was no fault in the detailed reasoned finding in the order of the Commissioner (Appeals). No Show Cause Notice u/s. 144 / 145 of the Act was issued to the assessee and assessment was completed vide Order u/s. 143(3) and not u/s. 144. Further, rejection of the books of account on the basis of insignificant defects in all respects, was not justified and the books of account deserved to be accepted. the CIT(A) had examined the genuineness of purchases from parties and found it to be genuine. Thus, when all the purchases were genuine which have been verified by the AO u/s. 133(6) and which have been correctly recorded in the books of account as well as the stock register, the books of account could not have been rejected under section 145(3) of the Act. Before invoking the provisions of section 145(3) of the Act, the Assessing Officer has to bring on record material on the basis of which he has arrived at the conclusion with regard to correctness or completeness of the accounts of the assessee or the method of accounting employed by it. The instant was not a case where the assessee had not followed either the cash or mercantile system of accounting. The assessee maintained proper books of account audited by a chartered accountant and the profits could have been derived from the audited books of account. (AY 2017-18)

ACIT v. Motisons Jewellers Ltd. (2023)104 ITR 304 (Jaipur)(Trib)

S. 145 : Method of accounting-Assessee explaining methodology of accounting in respect of sales and value added tax-Commissioner (Appeals) allowing relief-Cognizance of section 145 read with section 145A(ii) and relevant income computation and disclosure standard IV for revenue recognition not taken into consideration-Matter remitted to Commissioner (Appeals) for adjudication afresh taking into consideration section 145 read with section 145A(ii) and Income Computation and Disclosure Standard IV-Commissioner (Appeals) on basis of documents presented before him granting relief to assessee without getting remand report from the A.O. by deleting additions and also granting deduction u/S. 80C-Matter restored to CIT(A) for adjudication of issue afresh after obtaining remand report from A.O. [S. 80C, 145A(ii), R. 46A]

The assessee derived business income from his proprietary business in distributorship and wholesale trade of branded tobacco items. The A.O. completed the assessment based on the discrepancies noticed during the course of the survey conducted at the premises of the assessee in previous year relevant to A.Y. 2017-18. Before the CIT(A), the assessee explained the discrepancies related to VAT, cash, credits appearing in the books, and stock based on the additional evidences filed and the books of account of the assessee without calling for remand report. The Commissioner (Appeals) also allowed the deduction u/s. 80C of the Income-tax Act, 1961 upon the assessee furnishing the relevant documents before

him. On appeal, the Tribunal accepted the arguments of the Department objecting to reliefs granted based on additional documents produced during the appellate proceedings without granting sufficient opportunity to the A.O. to refute the same. The Tribunal, in the interest of justice, restored the issues to the file of the CIT(A) for fresh adjudication with direction to grant reasonable opportunity to A.O. examine and verify these documents and records and obtain a remand report before disposing of the appeal giving relief to the assessee. The Tribunal also noted that the CIT(A) had granted relief without considering relevant Income Computation and Disclosure Standard IV for revenue recognition which had become applicable from the AY 2017-18 and hence, held that in the interest of justice and fair play, the matter was to be remitted to the Commissioner (Appeals) to adjudicate on this issue afresh after taking into consideration the provisions of section 145 read with section 145A(ii) and relevant Income Computation and Disclosure Standard IV.(AY. 2017-18)

Asst. CIT v. Rishav Dutta (2023) 202 ITD 30/ 104 ITR 65 (SN)(Patna) (Trib)

S. 145 : Method of accounting-Estimation of income-Books of account not rejected-Estimate of profit is deleted. [S. 145(3)

.The AO computed net profit at 4% of turnover made additions in income of assessee after observing huge reduction in percentage of gross profit and net profit between two consecutive years.. The assessee has provided detailed explanation behind fall in profit rate and provided quantitative details of opening stock, purchases, sales and closing stock. The Tribunal held that when the books of account is not rejected the rejection of books of account and estimation of profit is not valid. CIT v. Maharaja Shree Umed Mills Ltd (1991) 192 ITR 565 (Raj)(HC) (AY. 2018-19)

Kunan Mal Kalu Ram Jain and Co. v. ITO (2023) 203 ITD 182 (Jaipur) (Trib)

S. 145 : Method of accounting-Rejection of books of accounts-Audited books not declared to be incorrect-Rejection solely on the basis of photocopies of bills produced instead of original-Rejection of books not sustainable. [S. 145(3)]

Held, that The Assessing Officer was not justified in rejecting the books of account which were audited and without any qualification solely because photocopies of the bills had been produced instead of the original bills. Decision of CIT (A) to set aside the matter justified. (AY. 2013-14)

Blue Stampings And Forgings Ltd. v. Dy. CIT (2023)101 ITR 81 (SN)(Delhi) (Trib)

S. 145 : Method of accounting-Rejection of accounts-Non maintenance of stock register-Accounts to tax and statutory audits-No defects pointed out by authorities-Accounts of similar nature accepted in earlier years-Mere absence of stock register no ground for rejection of accounts-Not justified.[S. 44AB, 145(3)]

Held, that the assessee's day-to-day books of account were subject to statutory audit under the Companies Act, 2013 as also tax audit under section 44AB. Neither the auditor nor the Assessing Officer had pointed out any defect therein except for the observation that the stock register was not maintained, ignoring the assessee's nature of business wherein all materials purchased were directly off loaded at the site and consumed. The Assessing Officer had not disputed the opening and closing work-in-progress declared by the assessee. Hence, simply because the stock register was not maintained, rejection of the books of account was not justified. Moreover, the assessee's books of account of a similar manner had been accepted by the Assessing Officer for the AY.s 2012-13 and 2013-14. The only dispute was the non-satisfaction of the Assessing Officer about the correctness or completeness of accounts owing to non-maintenance of the stock register. Hence, invocation of section 145(3) was not justified. (AY. 2014-15)

R. G. Colonizers Pvt. Ltd. v. Dy. CIT (2023)101 ITR 409 (Jaipur) (Trib)

S. 145 : Method of accounting-Rejection of accounts-Net profit rate-Addition by applying net profit rate on total turnover-Accounts correct and complete-Loss suffered due to increase cost verifiable from books-Addition to be deleted.[S. 145(3)]
Held, that it could be noted from the financial statements that the cost of raw materials during the year had increased by around three per cent., finance cost by around five per cent. and other expenses by around four per cent. compared to the previous year. As a result, the assessee suffered loss during the year, which was fully verifiable. Hence, the additions made by the Assessing Officer and confirmed by the Commissioner (Appeals) by applying the net profit rate of eight per cent. subject to depreciation, was unjustified. (AY. 2014-15)
R. G. Colonizers Pvt. Ltd. v Dy. CIT (2023)101 ITR 409 (Jaipur) (Trib)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Notice not valid-SLP of Revenue is dismissed. [S. 148, Art. 136]
High Court held that the notice of reassessment was not valid because the Assessing Officer had all material facts before him when he made the original assessment, there was a specific averment in the petition that the assessee had truly and fully disclosed all material facts at the time of the original assessment which the respondents had not rebutted, this was not a case where the assessment was sought to be reopened on the reasonable belief that income had escaped assessment on account of failure of the assessee to disclose truly and fully all material facts that were necessary for computation of income but a case where the assessment was sought to be reopened on account of change of opinion of the Assessing Officer and this was not permissible in view of the proviso to section 147 of the Income-tax Act, 1961. SLP of Revenue is dismissed. (AY.2015-16)
ACIT v. Meer Gems (2023)459 ITR 1 /154 taxmann.com 406/ 294 Taxman 606 (SC)
Editorial : Refer Meer Gems v. Asst.CIT (2022) 446 ITR 754/287 Taxman 689 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Deemed dividend-Advances made earlier year-Oder of High Court affirmed-SLP is dismissed.[S. 2(22)(e), 148, Art. 136]
High Court held that there was nothing to indicate in the accounts statements that the amounts advanced by P to the assessee were during the course of its business and that the Tribunal was correct in rejecting the assessee's contention that deemed dividend under section 2(22)(e) of the Income-tax Act, 1961, for the assessment year 1998-99, had to be computed only after deducting the advances given in the earlier assessment years, on a petition for special leave to appeal to the Supreme Court dismissed. (AY.1998-99, 1999-2000)
Aswani Enterprises v.ACIT (2023)456 ITR 33 /294 Taxman 435 (SC)
Editorial : Arising out of order, Aswani Enterprises v.ACIT (2018) 100 taxmann.com 178/ (2019) 417 ITR 223(Mad)(HC)

S. 147 : Reassessment-After the expiry of four years-Bad debt-Provision for bad and doubtful debts-Schedule bank-SLP of Revenue is dismissed.[S. 36(1)(viia), Art. 136]
High Court held that there was no failure to disclose material facts, the Assessing Officer had not even stated or alleged that there was failure on part of assessee to disclose fully and truly all material facts in respect of claim of deduction under section 36(1)(viia), Tribunal rightly held that reopening assessment initiated beyond four years was bad in law. SLP of Revenue is dismissed. (AY. 2006-07, 2007-08)

CIT v. Canara Bank (2023) 295 Taxman 228 / (2024) 460 ITR 6(SC)

Editorial : SLP dismissed, CIT v. Canara Bank (2023) 456 ITR 316/ 155 taxmann.com 289 (Karn)(HC)

S. 147 : Reassessment-After the expiry of four years-Notional foreign exchange loss-No failure to disclose material facts-Change of opinion-Order of High Court is affirmed-SLP of Revenue is dismissed.[S. 37(1), 148, Art. 136]
Reassessment notice was challenged before the High Court on the ground that since issue of foreign exchange loss was a subject matter of consideration of Assessing Officer during original assessment, reopening of assessment was based on merely change of opinion and thus not sustainable. SLP filed against the order of High Court is dismissed. (AY. 2014-15)
ACIT v. Meer Gems (2023) 295 Taxman 120 (SC)
Editorial : Meer Gems v. ACIT (2023) 154 taxmann.com 646 (Bom)(HC)

S. 147 : Reassessment-Unexplained money-Limited scrutiny-Cash deposit-Demonetisation-Pendency of appeal-Not adjudicated in the original assessment proceedings-Reassessment notice is valid.[S. 69A, 148, Art. 136]
High Court held that order since the assessee had failed to satisfactorily explain source of cash deposit made by it in its 'PN' bank account and said cash deposit was not adjudicated upon during original scrutiny proceedings. The reassessment notice was justified. SLP dismissed.(AY. 2017-18)
Sunil Jain v. ITD (2023) 459 ITR 276 /295 Taxman 10(SC)
Editorial : Sunil Jain v.. ITD (2022) 289 Taxman 688/ 20 ITR-OL409 (Delhi)(HC)

S. 147 : Reassessment-Revaluation of asset of firm-Transfer of revalued reserve to partners' accounts-Section 45(3) is applicable in year of transfer of capital asset by partner to firm by way of capital contribution-Re valuation is not colourable device-Reassessment is not valid-SLP of Revvenue is dismissed. [S. 10(2A), 45(3), 148, Art. 136]
Dismissing the appeal of the Revenue the Tribunal held on the facts that, if at all any income accrued or arose owing to revaluation of the assessee it was an issue which had to be dealt with in the assessment of the firm which was a separate taxable entity and that invoking of section 45(3) which had no application in the assessment year 2008-09 was unjustified since the year of transfer of reserve was the financial year ended March 31, 2006 and that notwithstanding that the State Government had revised the guideline value for the purpose of stamp duty between 2004-and 2007, in accordance with the accounting principles the land held as inventory was shown at its cost and therefore no undervaluation was done by the assessee, that after conversion of inventory into fixed asset the firm revalued the developed land including the construction thereon in order to bring it in line with the current market value to justify the business assistance secured by the firm from the banks to the extent of Rs. 250 crores and that therefore, the revaluation of the asset was not a colourable device. On appeal the High court affirmed the order of the Tribunal.SLP of Revenue is dismissed. (AY. 2008-09)
PCIT v. Blue Heaven Griha Nirman (P.) Ltd. (2023) 295 Taxman 11 (SC)
Editorial : PCIT v. Blue Heaven Griha Nirman (P.) Ltd(2022) 441 ITR 621/ 285 Taxman 663 (Cal)(HC)

S. 147 : Reassessment-Findings recorded by Assessing Authority not challenged before Appellate Authority or Revisional form-High Court order is affirmed-SLP of assessee is dismissed. [S. 148, 264, Art. 226]

High Court dismissed the petition on the ground that Findings recorded by Assessing Authority not challenged before Appellate Authority or Revisional form. SLP is dismissed. (AY.2007-08)

Achal Kumar Agrawal v. PCIT (2023)455 ITR 383 / 293 Taxman 686 (SC)

Editorial : Achal Kumar Agrawal v. PCIT (2023)455 ITR 380 (All) (HC), affirmed.

S. 147 : Reassessment-Unexplained investments-Search and Seizure-Tribunal setting aside additions-SLP of Revenue is dismissed. [S. 69B, 148,153C, Art. 136]

High Court allowed the appeal of the assessee on the ground of reassessment, and also deleted the addition as unexplained investments. SLP of Revenue is dismissed. (AY. 2005-06 to 2007-08)

Dy. CIT v. Dinakara Suvarna (2023)454 ITR 27/ 293 Taxman 687 (SC)

Editorial : Dinakara Suvarna v. Dy.CIT (2023) 254 ITR 21 (Karn)(HC), affirmed.

S. 147 : Reassessment-After the expiry of four years-Amount payable to sundry creditors-Cessation of liability-No new information-SLP of Revenue is dismissed. [S. 41(1), 148, Art. 226]

A notice was issued under section 148 on ground that genuineness of amount payable to sundry creditors which was pending for long period was not ascertained during original assessment and should have been treated as cessation of liability in terms of section 41(1) and to ought to be added to assessee's income. On writ the Court held that the Assessing Officer sought to reopen assessment proceedings based on same material facts which were present before him during original proceedings and there was not even a whisper of any additional information. Re assessment based on mere change of opinion is not permissible in view of proviso to section 147 of the Act. On appeal by Revenue SLP of revenue is dismissed. (AY. 2015-16)

ACIT v. Meer Gems (2023) 459 ITR 1 / 294 Taxman 606 (SC)

Editorial : Refer, Meer Gems v. ACIT (2022) 446 ITR 754/ 287 Taxman 689 (Bom.)(HC)

S. 147 : Reassessment-Residential Status-Resident or non-resident-Service of notice on chartered Accountant-Reassessment notice was held to be valid-Interest-Levy of interest-Automatic-Working in ITNS 150 forming part of assessment order was proper-Sikkim-Commission-Burden not discharged-Round tripping of funds-Liable to tax in India-Review petition is dismissed. [S. 2(35), 5, 6(3)(ii), 131, 142(1), 143(2), 148, 234A, 282]

Supreme Court held that since notice under section 131 issued by Assessing Officer to those who had allegedly paid commission to assessee were not complied with and it was assertion on behalf of assessee that it earned income of commission within Sikkim, burden to prove same was upon assessee and that Tribunal wrongly and erroneously shifted burden upon Assessing Officer to prove contrary. It further held that, in absence of any material on record that commission was earned only in Gangtok, assessee could not be permitted to say that it was liable to pay tax under Sikkim State Income-tax Manual, 1948 and not under Act, 1961.Apex Court further held that it appeared that assessee with mala fide intention and to evade payment of tax under Act, 1961 came out with a case that it earned income within Sikkim, which had not been established and proved, thus, it was a clear attempt on part of respective assessee to wriggle out of clutches of Act, 1961. Review petition is dismissed. (AY. 1987-88 to 1989-90)

Mansarovar Commercial (P.) Ltd. v. CIT (2023) 294 Taxman 513 (SC)

Editorial : Mansarovar Commercial (P.) Ltd. v. CIT (2023) 453 ITR 661/ 293 Taxman 312 (SC).

S. 147 : Reassessment-After the expiry of four years- Revision proceedings was dropped by the PCIT-Sanction given for reassessment on same ground-Non application of mind-SLP of revenue was dismissed. [S. 115JB, 143(3) 263 Art. 136]

The assessment was completed u/s.143(3). Thereafter the PCIT issued a notice u/s 263 on the issue of diminution in the value of investment in a subsidiary of the assessee recorded in the books of the assessee. Section 263 proceedings were invoked since the diminution in value of investment was recorded as loss and thereafter added back this deduction under normal provisions of the Act but the same was not added while computing income under MAT provisions u/s 115JB of the Act. The assessee filed its response and explained that there was no error in the original assessment order. Accordingly, the PCIT dropped the proceedings. However, the case of the assessee was reopened on two issues, which included the issue already taken up by the ld. PCIT. Honourable High Court held that since PCIT granted approval for reopening an issue which was already considered in the proceedings u/s 263 and thereafter such revisionary proceedings were dropped. Reopening notice was quashed. The Hon'ble Apex Court upheld the view of the Hon'ble High Court and dismissed the SLP preferred by the Department (AY. 2012-13)

ACIT v. Godrej and Boyce Manufacturing Co. Ltd. (2023) 453 ITR 14 / 293 Taxman 311 (SC)

Editorial : Godrej and Boyce Manufacturing Co. Ltd (2023) 453 ITR 10 (Bom)(HC), is affirmed.

S. 147 : Reassessment-After the expiry of four years-Business expenditure-Advertisement-Not open for the AO to reopen assessment based on very same material and to take a different view-Order of High Court affirmed. [S. 148, Indian Medical Council Act, 1956 read with Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, Art. 136]

Assessee is engaged in business of selling hair care products, providing consultancy services, treatment in hair care and beauty sector. Assessing Officer reopened the assessment on ground that advertisement and marketing expenditure incurred by assessee was not deductible in view of Explanation 1 to section 37(1), as assessee was prohibited from advertising under provisions of Indian Medical Council Act, 1956 read with Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. On writ High Court held that since Assessing Officer in original assessment was aware of issue of expenses incurred on advertisement and marketing by assessee and assessee had filed all requisite details as called for by Assessing Officer, he could not reopen assessment based on very same material to take another view. SLP of Revenue was dismissed. (AY. 2012-13)

ITO v. Rich Feel Health & Beauty (P.) Ltd. (2023) 291 Taxman 203 (SC)
ITO v. Rich Feel Health & Beauty (P.) Ltd. (2023) 291 Taxman 444 (SC)
ITO v. Rich Feel Health & Beauty (P.) Ltd. (2023) 291 Taxman 436 (SC)

Editorial : Rich Feel Health & Beauty (P.) Ltd v.ITO (2022) 440 ITR 41 / 284 Taxman 286 (Bom)(HC), affirmed.

S. 147 : Reassessment-Notice after six years-Notice issued prior to 1-4-2021 more than six years after expiry of Assessment year-High Court quashed notice and orders-SLP of Revenue is dismissed. [S. 148, Art. 136, 226]

On a writ petition against a reassessment notice pertaining to the AY. 2015-16 issued on March 30, 2021, the High Court, in the light of the judgments of the Supreme Court in UOI v. Ashish Agarwal (2022) 444 ITR 1(SC)) and of the court in Ambika Iron and Steel Pvt. Ltd. v. PCIT (2023) 452 452 ITR 285 (Orissa)(HC), quashed the notice under section 148 of

the Income-tax Act, 1961, issued prior to April 1, 2021, holding that it was beyond the period of six years after the expiry of the Assessment year. SLP of Revenue is dismissed (AY. 2015-16)

ITO v. Salu Agarwal (2023)453 ITR 786/ 293 Taxman 454 (SC)

Editorial : Refer Salu Agarwal v. ITO (2023)453 ITR 784 (Orissa)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Change of opinion-Reassessment notice and order disposing the objection was quashed by the High Court was affirmed. [S. 143(3), 148, Art.136, 226]

Allowing the petition of the assessee the High Court held that the Department had not discharged the onus to show that there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment under the proviso to section 147 and that the reopening was only due to a change of opinion, which was not permissible. On a petition for special leave to appeal to the Supreme Court, dismissed the petition holding that all the conditions required for reassessment of the assessment of four years not being satisfied. Followed, ACIT v. CEAT Ltd (2022) 449 ITR 171(SC) (SLP No. 12643 of 2022 dt. 10-10-2022) *(*AY. 2015-16)

ACIT v. E-Land Apparel Ltd. (2023)453 ITR 23 / 293 Taxman 453 (SC)

Editorial : E-Land Apparel Ltd v. ACIT (2023) 453 ITR 16 (Bom)(HC), is affirmed.

S. 147 : Reassessment-After the expiry of four years-Book profit-Revision was dropped-Sanction for reassessment was without application of mind-Reassessment notice and order disposing the objection was quashed.-SLP of Revenue was dismissed. [S. 148, 151, 263, Art. 136, 226]

Held that the High Court allowed the assessee's writ petition against a notice for reassessment holding that one of the reasons for reopening had already been considered by the Principal Commissioner under section 263 and in respect of which the Principal Commissioner had directed the proceedings initiated under section 263 be dropped. SLP against the order of High Court was dismissed. (AY. 2012-13)

ACIT v. Godrej and Boyce Manufacturing Co. Ltd. (2023)453 ITR 14/ 293 Taxman 311 (SC)

Editorial : Decision in Godrej And Boyce Manufacturing Co. Ltd v. ACIT (2023) 453 ITR 10(Bom)(HC) is affirmed.

S. 147 : Reassessment-After the expiry of four years-Specific query in the course of assessment proceedings-Expenditure on cost of samples-Advertisement and sales promotion-Change of opinion-SLP of Revenue is dismissed.[S. 37(1), Explanation, 148, Indian Medical Council (Professional, Conduct, Etiquette and Ethics) Regulations, 2002, Art. 136]

On writ allowing the petition the High Court held that a specific query in respect of the expenditure in question was raised at the time of original assessment and was replied by the assessee. The assessee had truly and fully disclosed all material facts necessary for the purpose of assessment. Change of opinion of the Assessing Officer about the manner of computation of income, which was not permissible, in view of the proviso to section 147 of the Act. SLP of Revenue was dismissed. (AY. 2014-15)

ACIT v. Virbac Animal Health India Pvt. Ltd. (2023)453 ITR 794 /293 Taxman 502 (SC)

Editorial : Virbac Animal Health India Pvt. Ltd v. ACIT (2022) 287 Taxman 590 / (2023) 453 ITR 787 / (Bom)(HC) is affirmed.

S. 147 : Reassessment-With in four years-Speculative transactions-loss of cancellation of forward contract-Change of opinion-No new material-SLP of Revenue dismissed. [S. 43(5), 148, Art. 136, 226]

The High Court allowed the assessee's writ petition against the notice issued under section 148 of the Income-tax Act, 1961 and the order rejecting its objections to the notice, and quashed the notice and the order, holding that the reasons recorded for the notice did not indicate any failure on the part of the assessee, that the entire basis for reopening was a change of opinion of the Assessing Officer, that all the facts regarding the loss on cancellation of forward contracts, which the Assessing Officer should have disallowed as speculation loss, were available before the Assessing Officer, that nothing new had happened between the date of order of assessment and the date of formation of opinion by the Assessing Officer, and that when the primary facts necessary for assessment were fully and truly disclosed, the Assessing Officer was not entitled on a change of opinion to commence proceedings for reassessment. SLP of revenue was dismissed. (AY. 2012-13)

ACIT v. Parle Products Pvt. Ltd. (2023)453 ITR 768 /293 Taxman 510 (SC)

Editorial : Parle Products (P.) Ltd. v. ACIT (2022] 286 Taxman 235 /(2023) 453 ITR 765(Bom)(HC), affirmed.

S. 147 : Reassessment-Residential Status-Resident or non-resident-Service of notice on chartered Accountant-Reassessment notice was held to be valid-Interest-Levy of interest-Automatic-Working in ITNS 150 forming part of assessment order was proper-Sikkim-Commission-Burden not discharged-Round tripping of funds-Liable to tax in India. [S. 2(35), 5, 6(3)(ii), 131, 142(1), 143(2), 148, 234A, 282]

Question of law involved in High Court was challenging the notices issued u/s. 148 and notice not served in accordance to law and whether assessee was resident of India within the meaning of S. 6(3)(ii) of the IT Act, 1961. On appeal in High, by revenue, Hon'ble High Court allowed Department's appeal and held that Rattan Gupta and Co Chartered Accountant was not only doing the audit work of the five assessee companies but determining who should be the directors of the said companies, this coupled with the fact that the blank signed cheque books of all the five companies together with rubber seals, the letterhead, the blank signed cheques and other records were also found in Delhi office of Rattan Gupta and Co Chartered Accountant the factual determination by the AO that the management and control of five companies was actually wholly situated in Delhi gets fortified, there were sufficient grounds for exercising the power u/s. 148, there was an implied authority of RG r/w. order V r.20 CPC. The Court also held that there were sufficient grounds for exercising the power u/s. 148, plea of the assessee that the notices u/s. 142(1) & 143(2) were issued for the first time in 1998 and were time barred was rejected. On appeal Supreme Court affirmed the order of the High Court. High Court held that no income by way of commission, as claimed by the assessees, had been established and proved by the assessees. In fact, the Assessing Officer issued notices or summons to different persons who had allegedly paid amounts as commission, but those persons had not responded. Therefore, the Assessing Officer had rightly drawn an adverse inference. The assessees did not produce any worthwhile evidence to prove the genuineness of the commission received. Once the Assessing Officer issued summons under section 131 to those who had allegedly paid the commission to the assessees and the summons were not complied with and it was the assertion on behalf of the assessees that they earned the income of commission within Sikkim, the burden to prove that was upon the assessees, wrongly and erroneously shifted by the Tribunal upon the Assessing Officer to prove the contrary. Therefore, in the absence of any material on record that the commission was earned only in Gangtok, the assessees could not be permitted to say that they were liable to pay the tax under the Sikkim Manual, 1948 and not under the 1961 Act. Order of High

Court, affirmed. Liable to tax in India Working in ITNS 150 forming part of assessment order was proper. (AY. 1987-88 to 1989-90)
Mansarovar Commercial Pvt. Ltd. v. CIT (2023)453 ITR 661/ 293 Taxman 312 / 332 CTR 137/ 224 DTR 305 (SC)
Editorial : Decision of Delhi High Court, affirmed, CIT v. Mansarovar Commercial Pvt. Ltd (Delhi)(HC) (2016) 134 DTR 105 / 287 CTR 28 (Delhi)(HC)/ CIT v. Pasupati Nath Commercial (P) Ltd. (2016) 134 DTR 105 / 287 CTR 28 (Delhi)(HC)
CIT v. Sovereign Commercial (P) Ltd. (2016) 134 DTR 105 / 287 CTR 28 (Delhi)(HC)
CIT v. Swastik Commercial (P) Ltd. (2016) 134 DTR 105 / 287 CTR 28 (Delhi)(HC)
CIT v. Trishul Commercial (P) Ltd. (2016) 134 DTR 105 / 287 CTR 28 (Delhi)(HC) (ITA Nos. 162/ 164 165 / 167/ 168 of 2002 dt 22 – 2-2016) (AY. 1987-88, 1988-89, 1989-90)
Editorial : Review petition is dismissed, Mansarovar Commercial (P.) Ltd. v. CIT (2023) 294 Taxman 513 (SC)

S. 147 : Reassessment-Rectification of mistake-Notice for reopening assessment not permissible during pendency of proceedings for rectification-Reassessment proceedings not sustainable-Order of High Court set aside. [S. 80HHC, 148, 154 (7)]
The assessee claimed the benefit under section 80HHC of the Act.The assessee claimed deduction of bad debt on the ground that, in the earlier year, the export did not materialise. Proceedings under section 154 of the Act were initiated by the Department for the 1995-96. During the pendency of the proceedings, the Department also reopened the assessment. The Tribunal set aside the reassessment proceedings under section 148 of the Act holding that as the proceedings under section 154 initiated against the assessee were pending, no reopening proceedings under section 147 / 148 of the Act could have been initiated. The High Court allowed the Department's appeal and remanded the matter to the Tribunal observing that as the proceedings under section 154 were beyond the period of limitation prescribed under section 154(7) of the Act, the reopening proceedings under section 147 / 148 were maintainable. A review application preferred by the assessee was dismissed. On appeals allowing the appeal the Court held that the proceedings under section 154 of the Act were not the subject-matter before the High Court. There was nothing on record to show that, in fact, the notice under section 154 of the Act was withdrawn on the ground that it was beyond the period of limitation prescribed under section 154(7) of the Act. In the absence of any specific order of withdrawal of the proceedings under section 154 of the Act, the proceedings initiated under section 154 of the Act could be said to have been pending. In that view of the matter, during the pendency of the proceedings under section 154 of the Act, it was not permissible on the part of the Department to initiate proceedings under section 147 / 148 of the Act. The High Court was wrong in presuming that the proceedings under section 154 were invalid because they were beyond the period of limitation. The judgment of the High Court was unsustainable. The order passed by the Tribunal was to be restored.(AY.1995-96)
S. M. Overseas Pvt. Ltd v.CIT (2023) 450 ITR 1/ 291 Taxman 441 (SC)
Editorial : Decision in CIT v. S. M. Overseas Pvt. Ltd (2011) 355 ITR 281 (P& H)(HC) reversed.

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Assessee is not required to state law which department feels attracted [S. 148, Art. 136]
Dismissing the petition the Court held that the reopening was post four years and therefore, notice need not be issued as full facts had been disclosed by the assessee. The assessee was not required to state the law, which the Department felt may be attracted.(AY.2012-13)
ACIT v. Oracle Financial Services Software Ltd. (2023)452 ITR 280 (SC)

Editorial : Oracle Financial Services Software Ltd v. ACIT(No. 2) (2023) 452 ITR 279 (Bom)(HC), affirmed.

S. 147 : Reassessment-Change of opinion-Facts available in the original assessment proceedings-Reassessment is not valid.[S. 143(3), 148, Art. 136]

Held that in view of the findings recorded by the High Court on the questions raised and answers given, before the assessment order under section 143(3) of the Income-Tax Act, 1961 was passed, the court dismissed the petition without issuing notice in the special leave petition. The court observed that the assessee has no role to play and is not the author of the assessment order hence the manner and contents of the assessment order as framed are not determinative whether or not it is a case of change of opinion. SLP is dismissed. (AY.2013-14)

JCIT v. Cognizant Technology Solutions India Pvt. Ltd. (2023)452 ITR 224/ 291 Taxman 526 (SC)

Editorial : Cognizant Technology Solutions India Pvt. Ltd v. ACIT(2021) 439 ITR 571 (Mad)(HC) is affirmed.

S. 147 : Reassessment-After the expiry of four years-Advertisement and sales promotion-No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed-SLP of Revenue is dismissed. [S. 37(1), 148, Art. 136]

High Court held that the assessee-company had filed all requisite details called for by Assessing Officer against its claim of advertisement and sales promotion expenses incurred in a marketing scheme and Assessing Officer during scrutiny assessment had duly applied his mind before allowing same as deduction under section 37(1), it could not be said that there was any failure on part of assessee to disclose fully and truly facts which were material and necessary for assessment. Reassessment notice and order disposing the objection was quashed. SLP of revenue is dismissed. (AY. 2013-14)

ACIT v. Asian Paints Ltd. (2023) 335 CTR 113 / (2024) 296 Taxman 74 (SC)

Editorial : Refer, Asian Paints Ltd. v. ACIT (2023) 149 taxmann.com 183 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Change of opinion-Notice and order disposing the objection is quashed. [S. 35(2AB), 36(1)(vii), 37(1), 115JB, 147, 148, Art. 226]

Allowing the petition the Court held that on the facts, there was no failure on the part of the assessee to disclose any material facts necessary for the assessment year Audited accounts were filed during the course of assessment proceedings. In the assessment order, the Assessing Officer had recorded that the details called for had been furnished and discussed The reopening of assessment was on change of opinion which did not constitute justification or reason to believe that income had escaped assessment.(AY.2013-14)

Astec Lifesciences Ltd. v. ACIT (2023)459 ITR 595 /155 taxmann.com 284 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Capital gains-Not discussed in the assessment order-No failure to disclose material facts-Notice based on assessment records- Reassessment is not valid.[S. 45, 148]

Held, that the entire basis for reason to believe was accessed from the assessee's record and there was nothing to indicate that there was any failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The Assessing Officer had made bald allegations that even though the assessee had produced books of account, profit and loss account, balance sheet and other evidence, no requisite material facts, had been disclosed. Moreover undisputedly a query was raised during the assessment proceedings and the assessee had provided the details on capital gains on the sale of property. Just because it

was not referred to in the assessment order, it did not mean that the query raised was not the subject matter of consideration while completing the assessment. This was a clear case where the reopening of the assessment was merely on the basis of a change of opinion of the Assessing Officer from that held earlier during the course of the assessment proceedings. The notice of reassessment is held to be not valid. (AY.2012-13)
Shriprakash Ramshringar Pandey v. ITO (2023)459 ITR 461 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Notice must specify facts which had not been disclosed-Notice not valid. [S. 143(3), 148, Art. 226]
Allowing the petition the court held that the notice for reopening the Assessing Officer did not mention what was the new tangible material to justify the reopening and what was the material fact which was not truly and fully disclosed. The entire reference in the reasons recorded was only to the material on record. In the absence of any new tangible material available with the Assessing Officer, and in view of the fact that there is a general presumption that an order of assessment under section 143(3) had been passed after proper application of mind and considering the fact that the Assessing Officer had sought clarification with regard to the details of sale of property and transfer of shares, details whereof were submitted during the course of the proceedings, the issue with regard to transactions with all parties had been gone into by the Assessing Officer. There was no failure on the part of the assessee to disclose any material facts and consequently the reopening was invalid in view of the proviso to section 147 of the Income-tax Act.Court also held that when a regular order of assessment is passed in terms of sub-section (3) of section 143 of the Income-tax Act, 1961, a presumption can be raised that such an order has been passed on application of mind. (AY.2015-16)
Noshir Darabshaw Talati v. ACIT (2023)459 ITR 742 /150 taxmann.com 16 (Bom)(HC)
Editorial : SLP granted,ACIT V. Noshir Darabshaw Talati (2024) 159 taxmann.com 390 (SC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Sales promotion expenses-Gift expenses-Health care professionals-Change in law subsequently-Reassessment notice and order disposing the objection is quashed.[S. 148, Art. 226, Medical Council of India Act, 1956, The Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002.]
The Medical Council of India in exercise of powers conferred under the Medical Council of India Act, 1956 framed the regulations called the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002. These regulations pertain to the professional conduct, etiquette and ethics for medical practitioners. A notice of reassessment was issued on the ground that a claim which was prohibited by the terms of the Medical Council had been allowed in the original assessment. On writ allowing the petition the Court held that there was no failure to disclose any material facts The Central Board of Direct Taxes issued Circular No. 5 of 2012 dated August 1, 2012 [2012] 346 ITR (St.) 95) to the effect that receipt of gifts, cash, travel facilities and hospitality from the pharmaceutical or allied health sector having been prohibited under the Regulations of 2002 they would be inadmissible under section 37 of the Income-tax Act, 1961, being prohibited by law was with effect from December 10, 2009 is not applicable for the relevant assessment year. Court held that it is settled that the law to be applied is the one that is in force in the relevant assessment year, unless otherwise provided expressly or by necessary implication. Accordingly the notice and order disposing the objection is quashed. Referred, Apex Laboratories Pvt Ltd v. Dy. CIT (2022) 442 ITR 1(SC). (AY.2008-09)

Abbott India Ltd. v. ACIT (2023) 458 ITR 529/ 157 taxmann.com 423/335 CTR 796 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-No evidence of failure to disclose material facts-Notice not specifying which facts not disclosed-Reassessment notice and order disposing the objection is quashed. [S. 143(3), 148, Art. 226]

Allowing the petition the Court held that in the notice for reopening the assessment, the Assessing Officer had not mentioned what was the new tangible material to justify the reopening and what was the material fact which was not truly and fully disclosed. In the absence of any new tangible material available with the Assessing Officer, and in view of the fact that there is a general presumption that an order of assessment under section 143(3) has been passed after proper application of mind and considering the fact that in the present case, the Assessing Officer had sought clarification with regard to the details of sister concerns and all transactions, details whereof were submitted during the course of the proceedings, this showed that the issue with regard to transactions with all parties had been gone into by the Assessing Officer. There was no failure on the part of the assessee to disclose any material facts and consequently the reopening was invalid in view of the proviso to section 147 of the Act.(AY.2013-14 to 2017-18)

Jetair Pvt. Ltd. v. Dy. CIT (2023)458 ITR 462 /148 taxmann.com 185 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Information from Investigation wing-Share transactions-No new tangible material-Change of opinion-Notice and order disposing the objection is quashed. [S. 148, Art. 226]

Allowing the petition the Court held that the very issue that such transaction was a subject of consideration by the Assessing Officer during the original assessment proceedings and the assessee had responded to with all the relevant details of transactions with the company in question. Such change of opinion could not constitute justification or reason to believe that the income chargeable to tax had escaped assessment. Hence, the notice and the order rejecting the assessee's objections and the subsequent assessment order were quashed and set aside.(AY.2013-14)

Rehana Anwar Shaikh v. ITO (2023) 456 ITR 720 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Reasons recorded not specifying what material was not disclosed-No new information-Change of opinion-Notice and order disposing the objection is quashed. [S. 35(2AB) 148, Art.226]

Allowing the petition the Court held that all the relevant facts had not only been disclosed but had also been considered by the Assessing Officer, while considering the claim of deduction under section 35(2AB). Notice under section 148 had been issued without there being any tangible material with the Assessing Officer and he had relied upon only the material which was already on record. No information was received by the Assessing Officer between the date of the order of assessment under section 143(3) and the issuance of the notice under section 148. The notice and the order rejecting the assessee's objections were unsustainable and therefore, set aside.(AY.2015-16)

Survival Technologies Pvt. Ltd. v. Dy. CIT (2023)456 ITR 261 /149 taxmann.com 453 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 148,151, Art. 226]

Allowing the petition the Court held the approval granted could not have been based on the reasons as recorded. Even on the merits, the notice had been issued after four years of the scrutiny assessment and all the three points in the reasons had already been considered during the assessment proceedings. Even if the assessment order were silent on one or two points, the Assessing Officer should still be considered to have applied his mind, once a query was raised and answers were provided. The notice of reassessment and order disposing the objection is quashed.(AY.2006-07)

Wyeth Ltd. v. ACIT (2023)456 ITR 536 /153 taxmann.com 699 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-S. 147 - Reassessment-Foreign exchange fluctuation-No failure to disclose material facts-Audit objection-Notice of reassessment and order disposing the objection is quashed.[S. 4, 148, Art. 226]

Allowing the petition the Court held taht there was not even a whisper that there was failure on part of assessee to disclose fully and truly all material facts. In computation of income filed along with profit and loss account, assessee had disclosed business income and had deducted from business income gain on Foreign Exchange Fluctuation and had furnished all details relating to same and it was admitted that notice to re-open came to be issued in view of audit objection there had not been non-disclosure of any material fact but only change of opinion. Court held that since, reasons for re-opening assessment was not that of Assessing Officer alone issuing notice but he had acted merely on dictates of another person for issuing notice, i.e., audit department. Accordingly the notice and order disclosing the objection is quashed. (AY. 2013-14)

Oriental Aromatics Ltd v. Dy.CIT (2023) 295 Taxman 367(Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Special economic zones-Splitting up or reconstruction-No failure to disclose full and true material facts-Reassessment notice and order disposing the objection is quashed. [S. 10AA, 148,Form No 56F, Art. 226]

Allowing the petition the Court held that the Assessee had furnished Form No. 56F, copy of return of income along with computation of income in which deduction under section 10AA was claimed to Assessing Officer. Assessing Officer during original assessment had itself allowed expenditure as regards MTM losses and employees benefit expenses.Since there was no failure on part of assessee to render full and true disclosure at time of assessment proceedings and Assessing Officer had perused documents and thereafter passed original order, reopening of assessment was merely based on a change of opinion hence not valid. (AY. 2015-16)

Citius Tech Healthcare Technology (P.) Ltd. v. Dy. CIT (2023) 295 Taxman 761/(2024) 461 ITR 249 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Brought forward depreciation-Capital gains-Business income [S. 28(i), 32, 71, 148, Art.226]

Assessing Officer issued a reopening notice on ground that brought forward unabsorbed depreciation could not be adjusted against income from capital gains and it could only be set off against income from business. On writ allowing the petition the Court held that the assessee had filed all details related to brought forward unabsorbed depreciation which was also considered by Assessing Officer while passing assessment order under section 143(3) of the Act. The Assessing Officer had in his possession all primary facts and it was for him to draw proper inference as to whether brought forward unabsorbed depreciation should be adjusted against capital gains or profit and gains from business or profession. There was nothing more to disclose for assessee.Since the assessee had truly and fully disclosed all

material facts necessary for purpose of assessment and they were carefully scrutinized and figures of income as well as deductions were worked out carefully by Assessing Officer during original assessment proceedings, the notice and order disposing the objection. is quashed.Followed Gemini Leather Stores v. ITO (1975) 100 ITR 1 (SC) (AY. 2006-07)

Mukand Ltd. v. UOI (2023) 295 Taxman 13 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Bad debts written off-Book profit-Exempt income-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 14A, rt. 36(1)(vii), 44AB,115JB, 148, Art. 226]
Allowing the petition the Court held that, there was no failure to disclose material facts and specific query was raised in the course of original assessment proceedings. Not discussing in the assessment order cannot be ground for reopening of the assessment. Notice for reassessment and order disposing the objection is quashed. (AY. 2014-15)
DCB Bank Ltd. v. Dy. CIT (2023) 458 ITR 716 /295 Taxman 387 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Notional foreign exchange loss-No failure to disclose material facts-Change of opinion-Notice and order disposing the objection is quashed.[S. 37(1), 148, Art. 226]
Allowing the petition the Court held that hat there was a query raised regarding details of foreign exchange loss during original assessment which had been provided by assessee through CA's letters.Since the issue of foreign exchange loss was a subject matter of consideration of Assessing Officer during original assessment, reopening of assessment was based merely on change of opinion and hence not sustainable. (AY. 2014-15)
Meer Gems v. ACIT (2023) 154 taxmann.com 646 (Bom)(HC)
Editorial : SLP of Revenue is dismissed, ACIT v. Meer Gems (2023) 295 Taxman 120 (SC)

S. 147 : Reassessment-After the expiry of four years-Capital gains-Investment in a residential house-No new tangible material-Reassessment notice and order disposing the objection is quashed. [S. 54F, 148, Art. 226]
The reassessment notice was issued under section 148 of the Act for denying the exemption under section 54F of the Act and no information was furnished to the assessee. On writ allowing the petition the Court held that the assessee having fully and truly disclosed all material facts necessary for purpose of assessment, reopening of assessment was clearly on basis of a change of opinion and that too without any new tangible information. Accordingly the notice and assessment order is quashed and set aside. (AY. 2015-16)
Ashraf Chitalwala v. Dy. CIT (2023) 295 Taxman 174 (2024) 461 ITR 235 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash deposited in bank-Suspicious of unaccounted money-Reason to suspect and no reason to believe-Notice and order depositing the objection is quashed and set aside. [S. 68, 148, Art. 226]
Allowing the petition the court held that all that the Assessing Officer desired was examination of certain details pertaining to amount paid by assessee to CCPL.The reasons must be founded on satisfaction of Assessing Officer that income chargeable to tax had escaped assessment. On the facts it was found that there were no reasons to believe but, only reasons to suspect, the notice and order disposing the objection is quashed and set aside. (AY. 2007-08)
Darpan P. Chandaliya v. ITO (2023) 295 Taxman 717 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Capital gains-Cost of acquisition-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed.[S. 45, 48, 148, Art. 226]

Allowing the petition the Court held that there was no allegation that assessee failed to disclose fully and truly all material facts necessary for his assessment. Neither notice, nor reasons disclosed what was suppressed by assessee and how such suppression offered Assessing Officer reason to believe that income had escaped assessment. Reassessment notice and order disposing the objection is quashed.(AY. 2015-16)

Teofilo Fernando Antonio Pinto v. UOI (2023) 295 Taxman 633 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Investment in purchase of shares-Objeections disposed without passing speaking order-Fundamental factual error-Reassessment notice and order disposing the objection is quashed.[S. 68, 148,151, Art. 226]

Allowing the petition the Court held that the amount related to assessment year 2012-13, however the notice was issued for the assessment year 2013-14. The objections having been decided without any speaking order and not dealing with undisputed factual aspects, lead to conclusion that reopening of assessment was without there being any reason to believe that income had escaped assessment. Accordingly the notice and order disposing the objection. is quashed. (AY. 2013-14)

Arvind Sahdeo Gupta v. ITO (2023) 295 Taxman 30/ 334 CTR 294 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Book profit-Over-stated cost of acquisition of shares and excess loss-No impact on tax liability on book profits-Reassessment notice and order disposing the objection is quashed.[S. 115JA, 143(1), 148, Art. 226]

Assessment was completed under section 143(1) accepting the income as per book profit under section. 115JA of the Act. The Assessing Officer issued notice under section 148 alleging that assessee had over-stated cost of acquisition of shares and excessive loss was claimed by assessee. On writ the Court held that in return and computation of income filed by assessee, complete facts relating to cost of acquisition of shares were disclosed by assessee. Court also held that even if revenue's case as set out in reason was accepted, it would still have no impact because assessee would be liable to pay tax on basis of book profits. Accordingly the notice and order disposing the objection was quashed and set aside. Followed Motto Tiles (P) Ltd v.ACIT (2016) 73 taxmann.com 176/ 386 ITR 280(Guj)(HC) (AY. 1999-2000)

Pacific Energy (P.) Ltd. v. ITO (2023) 295 Taxman 785 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-CSR expenditure-Prior period gain /loss-No failure to disclose material facts-Provision of Explanation 2 to section 37(1) inserted with effect from 1st April 2015 operates prospectively, from assessment year 2015-16-Reassessment notice and order disposing the objection was quashed. [S. 37 (1), 148 Art. 226, Companies Act, 2013, S. 135]

The Assessing Officer issued reassessment notice on ground that entire expenditure claimed by assessee was CSR expenditure and disallowed it by placing reliance on Explanation 2 to section 37(1) of the Act. On writ allowing the petition the Court held that there was no failure on part of assessee to disclose fully and truly all relevant details regarding expenditures incurred by it, pursuant to which an assessment order under section 143(3) was passed. There was no tangible material available on record to conclude that income had escaped assessment. Reasons recorded by Assessing Officer indicated that he had relied upon facts

and figures available from audited account. Provision of Explanation 2 to section 37(1) inserted with effect from 1st April 2015 operates prospectively, from assessment year 2015-16 same was not in statute during year under consideration. Further, Explanation 1 would also not be applicable as CSR expenditure was incurred as required by section 135 of Companies Act, 2013 and its proposed disallowance would not constitute an offense. Accordingly the reassessment notice and order dislosing the obkection was quashed and set aside. (AY. 2013-14)

Maharashtra State Power Generation Co. Ltd. v. Asst. CIT (2023) 294 Taxman 558 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Business expenditure-Penalty imposed for breach of a civil obligation would be outside purview of Explanation 1 to section 37(1)-Assessing Officer who had specifically gone into the allowability of the claim-A mere assertion in the absence of any material would not constitute a 'tangible material' for purposes of reopening an assessment-Reassessement notice and oder dsposing the objection. was quashed. [S. 37(1), 143(3), 148, Art.226]

Allowing the petition the Court held that the settlement had the approval of the Court in the U.S. itself suggests that the payment made was for a lawful purpose. In any case it is perverse to even think or hold that an amount paid towards settling a civil class action suit would be either an offence or one prohibited by law so as to disallow a claim of deduction in terms of *Explanation* to section 37. In any case a penalty imposed for breach of a civil obligation would be outside the purview of the *Explanation 1* to section 37. Admittedly, it is not the case of the revenue that the alleged penalty imposed upon the assessee was a part of a sentence in criminal proceedings which if it were, would certainly result in denying to the petitioner the benefit of the deductions claimed. Other than the information which was received by the Assessing Officer from the DDIT (Inv) Unit-2(4), Mumbai that the assessee had paid a penalty in USA, there was no material available with the Assessing Officer, in support of such an information that the payment made was in fact 'as a result of a penalty imposed'. A plain piece of information without any cogent material in support thereof would not justify the reopening of the assessment more so when the Assessing Officer, in the regular assessment under section 143(3) had gone into the allowability of the claim for such a deduction in the said assessment proceedings.Apart from the bare information received by the Assessing Officer, there was no material received as the same is not reflected in the reason so recorded which would justify the reopening of the assessment, the Assessing Officer in fact seeks to accord a fresh consideration to an issue which already stands concluded in the regular assessment proceedings. Therefore the Assessing Officer had no reason to believe that the payment made towards settlement of the class action suit was a payment towards a penalty imposed and on that account it is held that there was no reason for the Assessing Officer to believe that income had escaped assessment. In the light of the above to hold that what was paid by the petitioner was a penalty, in fact, would be without any basis and aimed at reviewing an order passed earlier by the Assessing Officer who had specifically gone into the allowability of the claim. A mere assertion in the absence of any material would not constitute a 'tangible material' for purposes of reopening an assessment. Accordingly the notice under section 148 and the order are set aside. (AY. 2013-14)

Tata Consultancy Services Ltd. v. Dy. CIT (2023) 294 Taxman 190 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Annual accounts certified by the Chartered Accountant/ Auditor wherein a clear reference was made to the fact which was the subject matter of reopening-Notice and order disposing the objection was quashed.[S. 69A, 148, Art. 226]

Notice was issued under section 148 of the Act after a period of four years from the end of the relevant assessment year. The same was challenged by way of a writ petition before the Bombay High Court. High Court observed that though the reasons recorded stated that the assessee had failed to fully and truly disclose "the following material facts", the Assessing Officer omitted to mention what were the material facts which the assessee had failed to disclose. High Court observed that it was well settled that the reasons recorded by the AO cannot be supplemented by filing an affidavit or making oral submissions and that the reasons recorded must be clear and unambiguous and should not suffer from any vagueness. High Court quashed the notice issued under section 148 of the Act as there was no disclosure in the reasons as to which fact or material was not disclosed by the assessee fully and truly and which the AO thought, was necessary for assessment of the relevant AY. High Court further observed that the assessee had along with the return of income also filed annual accounts certified by the Chartered Accountant/ Auditor wherein a clear reference was made to the fact which was the subject matter of reopening. Accordingly, the assessee had disclosed fully and truly all the material facts that were alleged to have been suppressed. (AY. 2012-13)

Tumkur Minerals (P.) Ltd. v. JCIT (2023) 456 ITR 286 / 291 Taxman 340 /330 CTR 177 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Penny Stock-Share transactions and tax paid on added income-No new tangible material-Accommodation entries-Reconsideration of the material available at the time of original assessment proceedings is tantamount to change of opinion-Reassessment notice and order disposing the objection was quashed. [S. 10(38), 45 69, 148, Art. 226]

Allowing the petition the Court held that since the notice under section 148 had been issued after the expiry of four years from the end of the relevant AY. 2014-15 the Assessing Officer had to show that the jurisdictional requirement of failure on the part of the assessee to truly and fully disclose material facts during the original assessment was satisfied. The reasons recorded were premised on "seen from the assessment records". The Assessing Officer had recorded that the assessee had claimed to have purchased shares of the penny stock scrips for a total of Rs. 33,09,976 and sold them for a consideration of Rs. 1,15,90,280 and that the long-term capital gains would be unexplained investment from other sources to obtain an equivalent amount of bogus profit on sale of shares and not capital gains as claimed by the assessee. There was nothing to indicate any failure by the assessee to disclose any material fact. According to the original assessment order under section 143(3) the Assessing Officer had considered these very transactions and had made an addition of Rs. 1,07,18,922 to the assessee's income on which he had already paid the tax. There was no substance in the Assessing Officer's reason to believe that income chargeable to tax had escaped assessment under section 147 inasmuch as there was no mention of any tangible material that had led to his conclusion. The reopening of assessment was on a change of opinion which was impermissible. It was evident that bald assertions of the transaction being "an accommodation entry made in collusion and connivance with the entry provider" were used to reopen the assessment. The notice was quashed and set aside. All subsequent proceedings were prohibited. (AY.2014-15)

Chanchal Bhagwatilal Gokhru v. UOI (2023)454 ITR 451/ 152 taxmann.com 214 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Same material available on record-Change of opinion-Notice and order rejecting objections set aside. [S. 148, Art. 226]

Allowing the petition the Court held that the reopening of assessment under section 147 of the Income-tax Act, 1961 in respect of the sale and purchase of property by the assessee was merely on a change of opinion. The Assessing Officer had relied upon the same information available from the assessment records and there was no new tangible material available with him to conclude that income had escaped assessment. The notice issued under section 148 and the order rejecting the assessee's objections were quashed and set aside.(AY. 2015-16)

A and J Associates v. ACIT (2023)454 ITR 590 (Bom) (HC)

S. 147 : Reassessment-After the expiry of four years-Capital gains-Transfer-Development rights-Power of Attorney-Neither any tangible material nor any reason to believe that 'any income chargeable to tax had escaped assessment'-Reassessment notice was quashed. [S. 2(47)(v), 148, Transfer of Property Act, 1882, S. 53A, Art. 226]

Assessing Officer issued a reopening notice on ground that capital gains income had arisen to assessee on transfer of development rights in its land to a developer. On writ the Court held that since the assessee had merely granted licence to permit construction on land to such developer but not given any possession in land as contemplated under section 53A of T.P. Act, 1882, there was no transfer as per section 2(47)(v) giving rise to any capital gain in hands of assessee. Notice of reassessment was quashed.. (AY. 2013-14)

Bharat Jayantilal Patel v. DCIT (2023) 149 taxmann.com 290/ 292 Taxman 276 (Bom)(HC)

Editorial : SLP of Revenue is dismissed, Dy,CIT v. Bharat Jayantilal Patel (2024) 296 Taxman 247 (SC)

S. 147 : Reassessment-After the expiry of four years-Capital gains-Reassessment notice was issued only on the basis of information received on insight portal-No tangible material-Reassessment notice was quashed. [S. 10(38), 143(3) 148, Art. 226]

Allowing the petition the Court held that where the assessee provided documentary evidence to support his claim for exemption on long-term capital gains from securities transactions, the impugned reopening notice issued by Assessing Officer under section 148 solely based on information received on Insight Portal, without any tangible evidence or independent investigation was arbitrary notice and order disposing the objection was quashed. (AY. 2013-14)

Anwar Mohammed Shaikh v. ACIT (2023) 459 ITR 534 / 292 Taxman 414 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Carry forward and set-off of deficit-Change of opinion-Reassessment notice and order disposing the objection was quashed [S. 11(1)(a), 12, Art. 226]

Assessing Officer issued a reopening notice claiming that assessee-trust was not entitled to claim carry forward and set-off of deficit after claiming exemption under section 11(1) since as per provision of section 11(1)(a) assessee could carry forward deficit of earlier years and set it off against surplus of subsequent years. On writ the Court held that there was no failure on part of assessee to disclose material fact, impugned notice issued under section 148 on mere change of opinion. Notice and order disposing the objection was quashed (AY. 2008-09)

Framji Dinshaw Petit Parsee Sanatorium v. ITO (2023) 148 taxmann.com 225 / 292 Taxman 251/ 335 CTR 807 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Reversal of transfer of TDR of a land-Capital or Revenue-No new material-Reassessment notice and order disposing the objection was quashed. [S. 28(i), 148, Art. 226]

Assessing Officer reopened assessment of assessee-company on basis that reversal of transfer of TDR of a land on account of cancellation of MoU entered into by assessee with its subsidiary company was wrongly allowed as a deduction and should be treated as capital in nature. On writ allowing the petition the Court held that since said reason for reopening was based on notes already submitted by assessee during original assessment and there was no new information brought on record, jurisdictional conditions mentioned under section 147 were not satisfied. Accordingly the notice of reassessment and order disposing the objection was quashed. (AY. 2015-16)

Standard Industries Ltd. v. DCIT (2023) 458 ITR 557/ 292 Taxman 502 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed [S. 28(i), 143(3), 148, Art. 226]

Assessment order under section 143(3) had been passed after eliciting various information from assessee regarding sale and purchase of shares which was responded by assessee. On writ against the reassessment notice and order disposing the objection the Court held that there was no whisper about any failure on the part of the assessee to disclose material facts hence it must be presumed that Assessing Officer while passing order had considered all issues pertaining to queries raised. Accordingly the reopening of assessment after four years was not valid. (AY. 2014-15)

Vibrant Securities (P.) Ltd. v. ITO (2023) 455 ITR 58/ 150 taxmann.com 56/ 293 Taxman 115 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Sale and lease back-100 percent depreciation-No failure to disclose material facts-Reassessment notice and order disposing the objection was set aside [S. 32, 148, Art. 226]

Allowing the petition, the Court held that where transactions of sale and lease back of machinery on which depreciation at rate of 100 per cent was claimed was disclosed with enough details and there was no allegation of non-disclosure of primary facts on part of assessee, impugned reopening of assessment after 4 years was unjustified. Reassessment notice and order disposing the objection was quashed. (AY. 1997-98)

Milton Plastics Ltd. v. Mudit Nagpal (2023) 293 Taxman 357 / 151 taxmann.com 24 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Scientific research expenditure-No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed. [S. 35(2AB), 148, 154, Art. 226]

Allowing the petition, the Court held that there was no failure on part of assessee to disclose fully and truly all material facts as all relevant facts had not only been disclosed, but had also been considered by Assessing Officer while considering claim of deduction under section 35(2AB) in order of assessment, reopening of assessment being a mere change of opinion was not justified. Re assessment notice issued and order disposing the objection was quashed. (AY. 2015-16)

Survival Technologies (P.) Ltd. v. DCIT (2023) 149 taxmann.com 453 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Settlement amount paid to employees-Penalty-Information from Investigation Wing-No material available on

record other than information from Investigation Wing to prove that payment made was penalty,-Reopening was quashed. [S. 37(1), 148, Art. 226]

Allowing the petition the Court held that the assessee claimed settlement amount paid to its employees with respect to civil suits filed against it in US court as expenses and the Assessing Officer during scrutiny assessment accepted said claim, however Assessing Officer later issued reopening notice on receiving information from Investigation Wing that assessee had paid penalty in USA and same was claimed as allowable expense instead of penalty, since as per settlement agreement payment was on account of a pure settlement between parties wherein settlement was arrived at for purposes of avoiding expense, risk and uncertainty, furthermore order passed by US Court approving said agreement did not refer to amount payable as a penalty amount, in view of fact that there was no material available on record other than information from Investigation Wing to prove that payment made was penalty, reopening would not be justified. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14)

Tata Consultancy Services Ltd v. Dy.CIT (2023) 152 taxmann.com 3 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Advertisement and sales promotion-Notice should specify material not disclosed-No failure to disclose material facts-Reassessment notice is bad in law [S. 148, Art. 226]

Allowing the petition the Court held that during the scrutiny assessment, the Assessing Officer had sought the relevant details with regard to the advertisement and sales promotion expenses which were furnished by the assessee. The Assessing Officer had also disallowed some of the expenses which were shown in the break-up under the head details of advertisement and sales promotion expenses while passing the order of assessment which showed that the Assessing Officer had applied his mind to the assessee's claim while passing the order under section 143(3) read with section 144C(3). The reasons for reopening the assessment did not state what material or fact was not disclosed by the assessee. Therefore, it was clear that there was complete disclosure of all the primary material facts on the part of the assessee and there was no failure on its part to disclose fully and truly all the facts which were material and necessary for the assessment. The notice of reassessment was quashed. (AY.2014-15)

Asian Paints Ltd. v ACIT (2023)451 ITR 45 / 221 DTR 457/ 330 CTR 560 /148 taxmann.com 99 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Advertisement and sales promotion-No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed [S. 37(1), 148, Art. 226

Allowing the petition the Court held that the assessee-company had filed all requisite details called for by Assessing Officer against its claim of advertisement and sales promotion expenses incurred in a marketing scheme and Assessing Officer during scrutiny assessment had duly applied his mind before allowing same as deduction under section 37(1), it could not be said that there was any failure on part of assessee to disclose fully and truly facts which were material and necessary for assessment. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14)

Asian Paints Ltd. v. ACIT (2023) 149 taxmann.com 183 (Bom)(HC)

Editorial : SLP of Revenue is dismissed, ACIT v. Asian Paints Ltd. (2024) 296 Taxman 74 (SC)

S. 147 : Reassessment-After the expiry of four years-Share dealing-No failure to disclose material facts-Reassessment notice and order disposing the objection. was quashed [S. 45, 148, Art. 226]

Allowing the petition, the Court held that during course of original assessment proceedings assessee produced scrip-wise details of opening stock, purchases and sales as well as closing stock along with documentary evidence in support thereof and Assessing Officer requested the assessee to submit Form No. 10DB duly certified and reconciled with audited account. There was no failure on part of assessee to disclose any material facts fully and truly during regular assessment proceedings and, thus, reassessment proceedings based on change of opinion was not sustainable. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14)

Devkant Synthetics India (P.) Ltd. v. NFAC (2023) 149 taxmann.com 344/ 292 Taxman 218 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Sale of shares-Capital gain-Another director has shown the income as salary-Reassessment is not justified.[S. 15, 45 148, Art. 226]

Allowing the petition the Court held that where the assessee, a director in a company, transferred shares of said company and disclosed income under head capital gain and Assessing Officer passed order under section 143(3) accepting disclosed income, merely because another director of said company had disclosed income received from transfer of shares under head Income from salary, it could not be a ground for reopening of assessment of assessee. The reassessment notice and order disposing the objection was quashed. (AY. 2014-15)

Deepak Marda v. ITO (2023) 150 taxmann.com 114 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Share premium-Share valuation-DCF Method-Report from Chartered Accountant-Issue was raised in the course of original assessment proceedings-Reassessment notice and order disposing the objection was quashed [S. 147, 148, Art. 226]

Allowing the petition the Court held that since same issue was raised by Assessing Officer during original assessment proceedings which was specifically responded to by assessee, there was no failure on part of assessee to disclose fully and truly material facts, nor there was any tangible material with Assessing Officer which would justified reopening of assessment. Fair value of shares which were issued at premium was determined as per valuation report obtained from CA wherein DCF method was adopted for valuation and said submission were accepted by Assessing Officer. Reassessment notice and order disposing the objection was quashed. (AY. 2015-16)

Suminter Organic and Fair Trade Cottton Ginning Mill (P.) Ltd. v. Dy. CIT (2023) 150 taxmann.com 232 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Different method of accounting-Capital gains-Computation-No failure to disclose material facts-Reassessment notice and order disposing the objection is not valid [S. 45, 48, 112(1)(c)(ii), 143(3) 148, Art. 226]

Held that the entire transaction had been considered by the Assessing Officer and had culminated in the order under section 143(3) of the Act. As apparent from the reasons there were no new tangible material in the hands of the Assessing Officer. Once the assessment was concluded, it was deemed to have been concluded with application of mind by the Assessing Officer from all perspectives legal and factual. The reopening of the assessment based on a different method of computation or application of the section was nothing else but

a change of opinion, which was impermissible in law. The reassessment notice and order disposing the objection was quashed (AY. 2014-15, 2015-16)
Lehman Brothers Investments Pte. Ltd. v ACIT (IT) (2023)454 ITR 331 /148 taxmann.com 236 / 293 Taxman 216/ 333 CTR 213 (Bom)(HC)
Editorial : SLP of Revenue dismissed , ACIT v. Lehman Brothers Investments Pte. Ltd (2024) 461 ITR 360 (SC)

S. 147 : Reassessment-After the expiry of four years-Right shares-Valuation-Change of opinion-Reassessment notice and order disposing the objection was quashed. [S. 56(2)(vii)(b), 148, Art. 226]
Allowing the petition, the Court held that assessment in case of assessee-company was reopened on issue of fair market value (FMV) of rights shares issued by assessee, since Assessing Officer had accepted assessee's method of determining FMV during original assessment and recorded his satisfaction in assessment order, impugned reopening notice issued under section 148 after expiry of four years on mere change of opinion was liable to be set aside. Notice and order disposing the objection was quashed. (AY. 2015-2016)
Lakshdeep Investments & Finance (P.) Ltd. v. ACIT (2023)455 ITR 639 / 293 Taxman 369 (Bom.)(HC)
Editorial : SLP of Revenue is dismissed, ACIT v. Lakshdeep Investment & Finance (P.) Ltd. (2024) 296 Taxman 573 (SC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Accommodation entries-Statement of third party-Presumption that the assessee was beneficiary-No tangible material-No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed [S. 68, 132, 153C, 148, Art. 226]
Allowing the petition, the Court held that the assessee has provided bank statement and details of parties in respect of loan and advances during original assessment proceedings, presumption based on statement of third party in course of search was dispelled and, consequently, notice issued under section 148 for reopening was to be quashed and set aside. (AY. 2008-09)
Aditi Constructions v. Dy. CIT (2023)454 ITR 456 /151 taxmann.com 513 / 293 Taxman 710 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash deposits-Insights portal that certain high risk transactions had taken place in case of assessee which were needed to be verified-No failure to disclose material facts-Re assessment notice and order disposing the objection was quashed [S. 68, 143(3) 148, Art. 226]
Allowing the petition, the Court held that reopening notice was issued on ground that an information was received on insights portal that certain high risk transactions had taken place in case of assessee which were needed to be verified, since as per reasons itself transactions were to be verified and, further, there was no live link or nexus between said information received and income escaping assessment, impugned reopening notice issued after four years from end of relevant assessment year was unjustified. Reassessment notice and order disposing the objection was quashed. (AY. 2016-17)
Digi1 Electronics (P.) Ltd. *v.* ACIT (2023) 458 ITR 478 / 292 Taxman 242 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Redemption of preference shares-Source explained in the original assessment proceedings-Change of opinion-Reassessment notice and order disposing the objection was quashed. [S. 68, 143(3), 148, Art. 226]

Allowing the petition, the Court held that issue with regard to source of Rs. 75 lacs was explained as redemption of preference shares and same was considered at the time of scrutiny assessment under section 143(3), reassessment proceedings on said issue would be nothing but a change of opinion, and, therefore, without jurisdiction. Reassessment notice and order disposing the objection was quashed. (AY. 2012-13)

Kandoi Fabrics (P.) Ltd. v. ACIT (2023) 149 taxmann.com 457/ 293 Taxman 202 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Alternative remedy-Failure to furnish recorded reasons-Alternative remedy is not a bar-Assessment order was quashed. [S. 68, 143(1)),143(2), 144B, 148,156, Art. 226]

The Assessing Officer issued a notice to reopen the assessment under sections 148 and 147 on the ground that income had escaped assessment on account of receipt of Rs. 85 lakhs in cash by the assessee. The assessee did not file any response to the notice. Further notice under section 142(1) was issued which required the assessee to furnish further information. According to the assessee without furnishing any material or information sought by him regarding the alleged loan the National Faceless Assessment Centre passed the order under section 147 read with section 144B and the penalty notice issued under section 271D. On writ allowing the petition the Court held that that the issuance of notice under section 148 in the absence of any new tangible material was nothing but an attempt to review the earlier order of assessment passed by the Assessing Officer. The assessee need not be relegated to the alternate remedy as provided under the Act for the reason that not only had the Assessing Officer failed to satisfy the jurisdictional conditions for invoking his power under sections 147 and 148 but had also failed to comply with the directions of the Supreme Court decision GKN Driveshafts (India) Ltd. v. ITO (2002) 125 Taman 963/ (2003) 259 ITR 19 (SC). Therefore, the notice issued under section 148, the order under section 147 read with section 144B and the consequent notice of demand under section 156 and penalty notice under section 271D were set aside. Referred CIT v. Chhabil Dass Agarwal(2013) 357 ITR 357 (SC). (AY. 2015-16)

Ajay Ajit Tanna v. UOI (2023) 454 ITR 754 /151 taxmann.com 324 / 334 CTR 287 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Purchase and sale of shares-Reopening of assessment to make further additions on account of purchase cost of said shares being based on change of opinion on part of Assessing Officer was not justified-Reassessment notice and order was quashed. [S. 69, 148, Art. 226]

Allowing the petition, the Court held that from the reasons recorded, it does not appear that there was any fresh tangible material which has come to the notice of the AO between the date of the passing of the order under section 143(3) of the Act and the date of issuance of notice under section 148 of the Act. The AO has only tried to re-visit and reconsider the decision rendered in the earlier regular assessment proceedings on the ground that the addition ought not to have been limited only to Rs. 27,27,657/-and ought to have been extended to Rs. 3,60,135/-. The Court held that the view of the Assessing Officer is nothing but a change of opinion on the part of the AO, and therefore, impermissible in law. As the jurisdictional conditions with regard to section 147 of the Act have not been satisfied, order of assessment, dated 22nd March 2022, notice of demand dated 22nd March 2022, and penalty notice dated 22nd March 2022 shall also stand quashed. (AY. 2014-15)

Pushpa Nahata v. ITO (2023) 456 ITR 255 / 292 Taxman 452 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Loans and advances to sister concern-Allegation of colourable device-No failure to disclose material facts-Notice of reassessment and order disposing objection was quashed. [S. 69, 148, Art. 226]

The original assessment was completed under section 143(3) of the Act. the reassessment notice was issued on 30-3-2021, on the ground that the advance payment of Rs. 17, 76,08, 505 remained unexplained. The assessee filed the objection for reassessment notice and recorded reasons stating that there was no failure to disclose material facts. The AO passed the order rejecting the objections of the assessee. The assessee filed writ before the High Court. Allowing the petition the Court held that the Assessing Officer has not established that there was a failure on the part of the assessee to disclose all material facts. The Assessing Officer has no power to review. On the facts there is neither a new information received nor has reference been made to any new material on record. Accordingly the notice under section 148 of the Act and all connected proceedings are quashed. Followed, CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC),Jindal Photo Films v.Dy.CIT (1998) 234 ITR 170 (Delhi)(HC). (AY. 2015-16)

Konark Life Spaces v.ACIT (2023) 455 ITR 103 / 149 taxmann.com 489 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Shell company-No failure to disclose material facts-Non application of mind-Reassessment notice and order disposing the objection was quashed. [S. 69, 148, Art. 226]

Allowing the petition, the Court held that the Assessing Officer sought to reopen assessment of assessee after period of four years on ground that assessee had transferred the funds with certain company which had been conclusively proven to be a shell company, since Assessing Officer had reopened assessment solely on basis of 'reason to believe' and not on grounds of failure to disclose material facts fully and truly, and moreover, Assessing Officer failed to highlight in reasons recorded as to what was that material fact, which was not disclosed by assessee in its return, impugned reopening notice and consequent order was quashed. (AY. 2015-16)

Punia Capital (P.) Ltd. v. ACIT (2023) 458 ITR 740 149 / 292 Taxman 380 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Commission payment-No failure to disclose material facts-No new tangible material to justify reopening, reassessment proceedings were nothing but a case of change of opinion,-Reassessment notice and order disposing the objection was quashed. [S. 148, Art. 226]]

Allowing the petition the Court held that the assessment was sought to be reopened in case of asssesse on ground that assessee was charging lower commission rates to its sister concern/related party, thereby resulting in lesser revenues and leading to lower tax liability and eventually resulting into escapement of income, however, issue with regard to transactions with all parties had been gone into by Assessing Officer in original assessment and there was no new tangible material to justify reopening, reassessment proceedings being a case of change of opinion were not justified. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14 to 2017-18)

Jetair (P.) Ltd. v. DCIT (2023) 148 taxmann.com 185 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Set-off of long term capital loss against long term capital gain-No failure to disclose material facts-No power of review-Reassessment notice and order disposing the objection was quashed. [S. 74,143(3), 148, Art. 226]

Allowing the petition the Court held that issue regarding set-off of long term capital loss against long term capital gain of current year, was considered and deliberated in course of

original assessment proceedings by Assessing Officer and no new tangible material was available with Assessing Officer that could justify reopening of assessment, it could be said that reopening was on account of mere change of opinion and was to be quashed. Reassessment notice and order disposing the objection was quashed. Referred ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC)) (Ananta Landmark (P.) Ltd. v. Dy. CIT(2021) 131 taxmann.com 52/ 283 Taxman 462/ 439 ITR 168 Bom)(HC) CIT v. Kelvinator of India Ltd (2002) 123 Taman 433/ 256 ITR 1 (FB) (Delhi))(HC), Tata Sons Ltd. v. Dy. CIT (2022) 137 taxmann.com 414/286 Taxman 587(Bom)(HC) Jt. CIT v. Cognizant Technology Solutions India (P.) Ltd (2023) 146 taxmann.com 197 /291 Taxman 526/ 452 ITR 224 (SC).(AY. 2015-16)

Noshir Darabshaw Talati v. ACIT (2023) 150 taxmann.com 16 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Interest on funds collected-Issue pending before the Commissioner (Appeals)-Reassessment notice and order disposing the objection was quashed.[S. 80IA, 148, 250, Art. 226]

Allowing the petition the Court held that entire issue with regard to interest income on funds collected as R & D and R & M funds was decided against assessee and was pending decision before Commissioner (Appeals), reopening of assessment was mere change of opinion of Assessing Officer about manner of computation of deduction under section 80AI, hence, not justified. (AY. 2015-16)

Nuclear Power Corporation of India Ltd. v. DCIT (2023) 151 taxmann.com 537 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Infrastructure Development-Audit objection-No failure to disclose material facts-Notice of reassessment based on Audit objection-Reassessment notice and order disposing of the objection was quashed. [S. 80IA(4), 115JB, 148, Art. 226]

Allowing the petition, the Court held that the reasons recorded by the Assessing Officer did not elucidate what material was not disclosed fully and truly by the assessee, failure to disclose which had led to the income escaping assessment. The basis for the reassessment proceedings was the audit objection and the entertaining of the special leave petition of the Department by the Supreme Court against the judgment in CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 374 ITR 645 (Bom) (HC). Even that objection lost its substratum since the appeal preferred by the Department in CIT v. Container Corporation of India Ltd. [2018] 404 ITR 397 (SC) had since been dismissed. Accordingly, the notice under section 148 and the order rejecting the assessee's objections were unsustainable and accordingly quashed.(AY.2015-16)

Saurashtra Infra and Power Pvt. Ltd v. Dy. CIT (2023)451 ITR 51 /149 taxmann.com 388 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Co-operative societies-Reopening of assessment being a mere change of opinion was not justified-Reassessment notice and order disposing the objection was quashed. [S. 80P, 148, Art. 226]

Allowing the petition the Court held that the assessment order was passed in case of assessee whereby claim of deduction under section 80P was allowed, reopening of assessment by issue of notice under section 148 without any new information received by Assessing Officer, only with a view to accord a fresh consideration on issue of deduction under section 80P on same set of records being a mere change of opinion was not justified. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14)

Tahnee Heights CHS Ltd. v. ITO (2023) 458 ITR 585/ 292 Taxman 315 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Coo-operative Society-Deduction allowed-Change of opinion-Reassessment notice and order disposing the objection was quashed. [S. 80P(2)(1), 80P(2)(d), 148, 226]

Allowing the petition the Court held that issue with regard to claim of deduction under section 80P had been specifically gone into by Assessing Officer leading to passing of assessment order under section 143(3) and consequent thereto, there had been neither any change in law nor any new material had been shown to have come to knowledge of Assessing Officer, reopening of assessment on ground that claim of deduction under section 80P(2)(d) was not in conformity with provisions of said section being a mere change of opinion was not justified.(AY. 2014-15)

Mumbai Postal Employees Co-operative Credit Society Ltd. v. ITO (2023) 149 taxmann.com 94 / 292 Taxman 492 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-What material facts are not disclosed is not pointed out-Notice and order disposing the objection was quashed. [S. 147, 148, Art. 226]

The Assessing officer in the reasons recorded has not mentioned what material facts were not disclosed by the assessee during the course of assessment proceedings and has simply recorded the amount of income which has escaped tax and the department has by affidavit sought to state what material facts were not disclosed which is impermissible. Even if the reasons are taken holistically, what material facts are not disclosed is not pointed out and therefore the notice is liable to be quashed. (AY. 2012-13

Tumkur Minerals Pvt. Ltd. v.JCIT (2023) 330 CTR 177/ 291 Taxman 340 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Reassessment notice and order disposing the objection was quashed. [S. 148, Art. 226]

Allowing the petition the court quashed the notice issued under section 148 of the Income-tax Act, 1961 and the order rejecting the objections of the assessee to the reopening of the assessment under section 147 for the assessment year 2012-13 applying their decision in the assessee's own case for another assessment year. Followed, Oracle Financial Services Software Ltd. v ACIT (No 1) (2023) 452 ITR 272 (Bom)(HC) (AY.2012-13)

Oracle Financial Services Software Ltd. v. ACIT (No. 2) (2023)452 ITR 279 (Bom) (HC)

S. 147 : Reassessment-After the expiry of four years-Sale of shares-Oversight of the Assessing officer-No failure to discloses material facts-Reassessment notice and order disposing the objection was quashed. [S. 54EC, 148, 153A, Art. 226]

Allowing the petition the Court held that there was nothing disclosed in the reasons recorded as to what was not disclosed by the assessee during the block assessment proceeding. The Assessing Officer had issued notice before passing assessment order under section 143(3) read with section 153A to which the assessee had responded providing all documents including the share purchase agreement and the issue had been discussed before passing the order accepting the returned income. In the order disposing of the objections of the assessee for reopening the assessment under section 147, the Assessing Officer had stated that in the original assessment, that he had missed to take into consideration the law laid down in Sumeet Taneja v. CIT (I. T. A. No. 293 of 2012, dated August 22, 2013 (P& H)(HC) and that could not be a reason to reopen the assessment to remedy the error resulting from this oversight. Since the reasons recorded for reopening the assessment did not indicate any failure on the part of the assessee to disclose fully and truly all material facts, notice under

section 148 was quashed and set aside. Followed Calcutta Discount Co. Ltd. v. ITO (1961) 41 ITR 191 (SC) (AY.2013-14)
Ashraf Alibhai Nathani v. ACIT (2023)452 ITR 292 / 211 DTR 336 (Bom) (HC)

S. 147 : Reassessment-After the expiry of four years-Advertisement and sales promotion-Notice should specify material not disclosed-No failure to disclose material facts-Reassessment notice is bad in law [S. 148, Art. 226]
Allowing the petition the Court held that during the scrutiny assessment, the Assessing Officer had sought the relevant details with regard to the advertisement and sales promotion expenses which were furnished by the assessee. The Assessing Officer had also disallowed some of the expenses which were shown in the break-up under the head details of advertisement and sales promotion expenses while passing the order of assessment which showed that the Assessing Officer had applied his mind to the assessee's claim while passing the order under section 143(3) read with section 144C(3). The reasons for reopening the assessment did not state what material or fact was not disclosed by the assessee. Therefore, it was clear that there was complete disclosure of all the primary material facts on the part of the assessee and there was no failure on its part to disclose fully and truly all the facts which were material and necessary for the assessment. The notice of reassessment was quashed.(AY.2014-15)
Asian Paints Ltd. v ACIT (2023)451 ITR 45 / 221 DTR 457/ 330 CTR 560/148 taxmann.com 99 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Infrastructure Development-Audit objection-No failure to disclose material facts-Notice of reassessment based on Audit objection-Reassessment notice and order disposing of the objection was quashed. [S. 80IA(4), 115JB, 148, Art. 226]
Allowing the petition, the Court held that the reasons recorded by the Assessing Officer did not elucidate what material was not disclosed fully and truly by the assessee, failure to disclose which had led to the income escaping assessment. The basis for the reassessment proceedings was the audit objection and the entertaining of the special leave petition of the Department by the Supreme Court against the judgment in CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd. [2015] 374 ITR 645 (Bom) (HC). Even that objection lost its substratum since the appeal preferred by the Department in CIT v. Container Corporation of India Ltd. [2018] 404 ITR 397 (SC) had since been dismissed. Accordingly, the notice under section 148 and the order rejecting the assessee's objections were unsustainable and accordingly quashed.(AY.2015-16)
Saurashtra Infra and Power Pvt. Ltd v. Dy. CIT (2023)451 ITR 51 /149 taxmann.com 388 (Bom)(HC)

S. 147 : Reassessment-After the expiry of four years-Loans and advances to sister concern-Allegation of colourable device-No failure to disclose material facts-Notice of reassessment and order disposing objection was quashed. [S. 69, 148, Art. 226]
The original assessment was completed under section 143(3) of the Act. the reassessment notice was issued on 30-3-2021, on the ground that the advance payment of Rs. 17, 76,08, 505 remained unexplained. The assessee filed the objection for reassessment notice and recorded reasons stating that there was no failure to disclose material facts. The AO passed the order rejecting the objections of the assessee. The assessee filed writ before the High Court. Allowing the petition the Court held that the Assessing Officer has not established that there was a failure on the part of the assessee to disclose all material facts. The Assessing Officer has no power to review. On the facts there is neither a new information received nor

has reference been made to any new material on record. Accordingly the notice under section 148 of the Act and all connected proceedings are quashed. Followed, CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC),Jindal Photo Films v.Dy.CIT (1998) 234 ITR 170 (Delhi)(HC) . (AY. 2015-16)
Konark Life Spaces v.ACIT [2023] 149 taxmann.com 489 / 455 ITR 103 (Bom)(HC) www.itatonline.org

S. 147 : Reassessment-After the expiry of four years-Valuation of equity shares-Share premium-Income from other sources-No failure to disclose material facts-Notice of reassessment and order disposing objection was quashed.[S. 56(2) (viib), 148, Art. 226]
The reason for reopening of the assessment was the petitioner had issued premium of Rs.17 per share, which was not valued correctly in terms of Rule 11UA, read with section 56(2)(viib) of the Act and the correct valuation of equity shares as per the rule worked out at Rs 6. 48 per share. It was thus stated that an amount of Rs. 1, 68, 30, 000/. Received as premium was required to be added as income from other sources. The objection of the assessee was rejected by the Assessing Officer. On writ allowing the petition the Court held that in the original assessment proceedings, valuation report obtained by the Chartered Accountant was filed. The Chartered Accountant has followed Discounted Cash Flow Method. The specific queries were raised in the course of assessment proceedings and material was supplied and thereafter the order was passed. The Court held that there was no failure to disclose fully and truly the material facts, nor there was any tangible material with the A.O. which would have otherwise justified the reopening of the assessment. Accordingly notice of reassessment and order disposing the objection was quashed and set aside.(WP No. 2179 of 2022 dt 10-2-2023)(AY.2015-16)

The Suminter Organic and Fair Trade Cotton Ginning Mill Pvt Ltd v.Dy.CIT (Bom)(HC). www.itatonline.org

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Change of opinion-Provision for customs duty, advance doubtful of recovery and provisions of non-moving inventory-Notice and order rejecting objections was quashed. [S. 115JB, 148, Art. 226]
Allowing the petition the Court held that there had been a full and true disclosure of the material facts by the assessee in the return of income and the reopening of the assessment was on change of opinion to take a different view relying on the same set of documents. Change in opinion cannot construe reason to believe. During the assessment proceedings the Assessing Officer had started from the income as returned by the assessee which included self-disallowances on account of advance doubtful of recovery and provision of non-moving inventory. Reassessment notice and order rejecting objections was quashed.(AY-2005-06)
Mangalore Refinery and Petrochemicals Ltd. v. Dy.CIT (2023) 450 ITR 82 (Bom) (HC)

S. 147 : Reassessment-After the expiry of four years-Share capital-Share premium-No failure to disclose material facts-Reasons not specifying material facts which are e not disclosed-Notice and order disposing the objection was quashed and set aside. [S. 68, 132, 147, Art. 226]
Allowing the petition the Court held that the assessee had already made available shareholding agreement with SHPL and SCPL and same had been examined by Assessing Officer, who also in fact, did not accept assessee's explanation and added amount of Rs. 3 crores to assessee's income. The addition was deleted by Commissioner (Appeals) and order of Commissioner (Appeals) had been upheld by Tribunal. There was no failure on part of

assessee to truly and fully disclose material facts. Even assuming that assessee should have disclosed that these were bogus or accommodation entries, still there was nothing on record to indicate that assessee was aware that these were bogus shares capital/premium from bogus paper companies, viz., SHPL and SCPL and were accommodation entries. Notice issued under section 148 as well as assessment order was quashed and set aside. (AY. 2012-13)
Rajshree Realtors (P.) Ltd. v. UOI (2023) 457 ITR 354 / 294 Taxman 228 / 334 CTR 866 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Infrastructure development-Change of opinion-Pendency of appeal before CIT(A)-No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed.[S. 80IA, 148,246A, Art. 226]
Allowing the petition the Court held that, the from the reasons recorded it is observed that the Assessing Officer had relied upon facts and figures available from accounts and there was no tangible material on record to conclude that income had escaped assessment.The Assessing Officer had acted in excess of limit of his jurisdiction. Accordingly the notice and order passed is quashed. (AY. 2015-16)
Nuclear Power Corporation of India Ltd. v. Dy. CIT (2023) 294 Taxman 365 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Amalgamation-Carry forward and set off of accumulated loss and unabsorbed depreciation-No failure to disclose any material fact-Change of opinion-Reassessment notice and order disposing the objection was quashed. [S. 72A(2), 72(3), 148, Art. 226]
Assessee claimed carry forward of loss after setting off of brought forward losses which included losses pertaining to amalgamated company. Assessing Officer allowed claim holding that as per section 72A(2) losses on amalgamation get fresh life for further 8 years form date of amalgamation. Thereafter the Assessing Officer reopened assessment on ground that amalgamated company will be entitled for claim for only unexpired period and not full 8 years afresh thus, assessee was not entitled for set-off of losses as it had exceeded period of carry forward of 8 years as prescribed in section 72(3) of the Act. On writ the Court held that since Assessing Officer in original assessment order considered all submissions and accepted loss to be carried forward and there was no failure to disclose any material fact, reopening was mere change of opinion and notice was quashed. (AY. 2014-15)
Hindoostan Mills Ltd. v. Dy. CIT (2023) 294 Taxman 362 (Bom.)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Search-Deposit of cash in bank-No scrutiny assessment was done-Reassessment notice is held to be justified-Review petition is dismissed [S. 68, 143(1), 147, Art. 226]
Dismissing the petition the Court held although assessee had filed his return for relevant assessment year, however, he did not dispute fact that he had deposited cash amount in bank account. Accordingly the reopening notice under section 148 was justified. Review petition is dismissed. (AY. 2012-13)
Ramakant v. ITO (2023) 333 CTR 786 (Dehi) (HC)
Editorial : Ramakant v. ITO (2023) 333 CTR 791/294 Taxman 48 / 228 DTR 206 (Dehi) (HC)

S. 147 : Reassessment-After the expiry of four years-Long term capital gains-Sale of shares-Information from Investigation Wing-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 45, 148, Art. 226]

Returns of income and subsequent correspondences make a full disclosure in the case of both assessees, and assessments have been framed after discussion and exchange of correspondence; having allowed matters to rest for so long, and in the light of the full and true disclosure made at the original instance, the impugned proceedings initiated beyond the period of four years, are barred by limitation and are quashed.Relied on Calcutta Discount Co. Ltd. v ITO (1961) 41 ITR 191 (SC) (AY. 2012-13) (SJ)
Ramesh Kymal v. Dy.CIT(IT)(2023) 334 CTR 533/227 DTR 85 (Mad) (HC)
Mangal Chand Ostwal v. ITO (2023) 334 CTR 533/ 227 DTR 85 (Mad) (HC)

S. 147 : Reassessment-After the expiry of four years-Share application money-Produced address, PAN etc-Reassessment notice and order disposing the objection is quashed.[S. 68,
Allowing the petition the Court held that the assessee had supplied all relevant material in nature of accounting entries, resolution passed, names of allottees and their addresses and PAN numbers during original scrutiny assessment, which had satisfied Assessing Officer at relevant time about genuineness of entities and share transactions. The amount of share application was received by cheque or through mode of RTGS. Assessee had furnished all material information truly and fully during original scrutiny assessment.On facts, impugned reopening of assessment after four years on basis of same information amounted to change of opinion which is not permitted under law (AY. 2011-12)
Gujarat Natural Resources Ltd. v. ACIT (2023) 335 CTR 260 / 148 taxmann.com 476 (Guj)(HC)

S. 147 : Reassessment-After the expiry of four years-Material already on the record-Referred in the Audit report-Reassessment notice and order disposing the objection is quashed. [S. 148, Art. 226]
Allowing the petition the Court held that the reopening of assessment based on same material as was available during assessment, clearly mentioning to the tax audit report and the information available in the books of accounts of the assessee is bad in law. Notice and order disposing the objection is quashed. (AY. 2014-15)
Kalinga Institute of Industrial Technology v. CIT (2023) 330 CTR 579 / 221 DTR 387 (Orissa)(HC)

S. 147 : Reassessment-After the expiry of four years-Capital gains-Sale of shares-Gift-Income from other sources-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 56(2)(vii)(c), 148, Art. 226]
Allowing the petition the Court held that during original assessment Assessing Officer had examined assessee's demat account, which gave full information about gift so received, sale made thereof and market value of said shares and thereafter completed assessment without treating gift of shares as assessee's taxable income under section 56(2)(vii)(c) of the Act. Notice and order disposing the objection is quashed. (AY. 2013-14) (SJ)
Azim Premji Trustee Co. (P.) Ltd. v Dy. CIT (2023) 331 CTR 173 / 122 DTR 145/ 146 taxmann.com 58 (Karn)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Change of opinion-Notice and order disposing the objection is quashed.[S. 148, Art. 226]
Allowing the petition the court held that the assessee had addressed letter dated October 8, 2014 to the officer in the course of assessment proceedings pointing out in clear terms that certain shares were sold. The Department already had with it the information on that count. If

the officer was not satisfied with the explanation furnished by the assessee, at that stage, he could have exercised powers to make addition but he did not choose to do anything on such count. Therefore, the action of the Assessing Officer was in the nature of change of opinion only. The notice of reassessment was not valid.(AY.2012-13)
AIM Fincon Pvt. Ltd. v. ACIT (2023)457 ITR 737 (Guj)(HC)

S. 147 : Reassessment-After the expiry of four years-Accommodation entries-No failure to disclose material facts-Notice and order disposing the objection is quashed. [S. 148, Art. 226]
Held that the assessee had disclosed all relevant facts necessary for assessment which included details of bank statements and even bank interest income from the savings bank account and, therefore, all the requisite details were disclosed which were facts necessary for assessment. On a perusal of the reasons recorded, the assessment was sought to be reopened for verification of the facts which were already on record. The reassessment notice and order disposing the objection is quashed.(AY.2011-12)
Vijay Ramanlal Sanghvi v. ACIT (2023)457 ITR 791 /146 taxmann.com 55 (Guj)(HC)

S. 147 : Reassessment-After the expiry of four years-Compensation-Compulsory acquisition by Government-Denial of exemption to other Co-owners-Notice and order disposing the objection is set aside. [S. 10(37) 148,263, Art. 226]
Allowing the petition the Court held that the orders under section 143(3) read with section 263 in respect of these two co-owners were the subject matter of further proceedings and had not attained finality. The authority once having accepted the claim of exemption under section 10(37) in the scrutiny assessment, the Assessing Officer's reopening of assessment of the assessee on the grounds that the issue had not attained finality with respect to those co-owners was not valid. The reopening of assessment was impermissible merely because in respect of other co-owners the claim had not been allowed. Accordingly, the notice under section 148 and the order were quashed and set aside. Once the issue with respect to the other co-owners was finally settled by the High Court, the authority was at liberty to take appropriate corrective measure if permissible in law. Circular No. 36 of 2016, dated October 25, 2016 ([2016] 388 ITR (St.) 48) (AY.2016-17)
Anilaben Rohitbhai Modi v. ITO (2023)456 ITR 607 / 152 taxmann.com 76 (Guj)(HC)

S. 147 : Reassessment-After the expiry of four years-No allegation in notice that material facts necessary for assessment had not been disclosed-Reassessment notice and order is not valid. [S. 148 260A]
Dismissing the appeal of the Revenue the Court held that the Assessing Officer had not even stated in the notice of reassessment or alleged that there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for the relevant assessment years. It was recorded in the file of the Assessing Officer that "on verification of the details" submitted by the bank, the Assessing Officer had noticed that certain branches which were reported to be situated in the rural area were not, in fact, situated in the rural area. The notice of reassessment is not valid. Order of the Tribunal is affirmed. (AY.2006-07, 2007-08)
CIT v. Canara Bank (2023)456 ITR 316 (Karn)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-No opportunity of cross-examination is given-Reassessment is not valid.[S. 148, 260A]
Dismissing the appeal of the Revenue the Court held that the reopening was based on a statement made by a director of the assessee's share broker company but no opportunity was

given to the assessee to cross-examine him. The order of the Tribunal setting aside the order of the Assessing Officer is affirmed.(AY.2009-10)
PCIT v. Prabhu Dayal Aggarwal (2023)456 ITR 84 /154 taxmann.com 506 (Delhi)(HC)

S. 147 : Reassessment-After the expiry of four years-Block of assets-Profit on sales of barge-No failure to disclose material facts-Order of Tribunal is affirmed. [S. 2(11), 32]
Reassessment notice was issued on the ground that assessee had debited a sum of certain amount towards profit on sales of barge and since barge was depreciable asset and same should had been deducted from block of assets in category of ships in depreciation chArt. said amount debited to profit and loss account was required to be added back while computing total income from business and profession but same was not done. Tribunal held that reopening was on basis of material already available on record and there was no new tangible material available before Assessing Officer to reopen assessment after expiry of period of four years and there was no failure to disclose material facts. Order Tribunal is up held.
PCIT v. Seastem Ltd. (2023) 295 Taxman 671 (Guj.)(HC)

S. 147 : Reassessment-After the expiry of four years-Additioal report-Reassessment notice based on audit report which is already on the record-No new fresh tangible material-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed. [S. 32(i)(iia), 148, Art. 226]
Allowing the petition the Court held that a detailed questionnaire was sent to assessee which was answered including question on claim of depreciation during course of original scrutiny proceedings.The Assessing Officer had already examined claim of depreciation allowance and after considering return of income and other documents allowed claim of higher depreciation on plant and machinery. Accordingly the reopening notice solely based on audit which was already available to revenue during scrutiny assessment was unjustified. Reassessment notice and order disposing the objection is quashed. (AY. 2011-12)
Sun Pharmaceutical Industries Ltd. v. Dy. CIT (2023) 295 Taxman 627 (Guj.)(HC)

S. 147 : Reassessment-After the expiry of four years-Bad debt-Provision for bad and doubtful debts-Schedule bank-No failure to disclose material facts-Order of the Tribunal is affirmed.[S. 36(1)(viia) 148, 260A]
Dismissing the appeal of the Revenue the Court held that the Assessing Officer had not even stated or alleged that there was failure on part of assessee to disclose fully and truly all material facts necessary for said assessment years in respect of claim of deduction under section 36(1)(viia), Tribunal rightly held that reopening assessment initiated beyond four years was bad in law.(AY. 2006-07, 2007-08)
CIT v. Canara Bank (2023) 155 taxmann.com 289 (Karn)(HC)
Editorial : SLP of Revenue is dismissed, CIT v. Canara Bank (2023) 295 Taxman 228 (SC)

S. 147 : Reassessment-After the expiry of four years-Capital gains-Slump sale-Borrowed satisfaction-Difference in valuation-No failure to disclose material facts-Reassessment notice and order disposing the objection is quashed and set aside. [S. 45, 54EC, 148, 154, Art. 226]
Reassessment notice was issued on the basis that there was difference in valuation. On writ the Court held that the assessee had disclosed all facts truly and fully during course of regular assessment and Assessing Officer had issued notice under section 148 on borrowed satisfaction. The notice and order disposing the objection is quashed. (AY. 2012-13)
Kunal Kiran Sheth v. ACIT (2023) 295 Taxman 292 (Guj.)(HC)

S. 147 : Reassessment-After the expiry of four years-Capital gains-Full value of consideration-Stamp valuation-Capital gains were calculated by assessee by taking circle-rate-Provisions of section 50C is not applicable-No reason between material and revenue's belief on income escapement-Reassessment notice and order disposing the objection is quashed. [S. 45, 50C,54EC 148, Art. 226]

The Assessing Officer issued reassessment notice on the ground that the assessee had not disclosed full and true value of consideration of subject parcels of land sold as it was less than prescribed circle rates. On writ the Court held that capital gains were calculated by assessee by taking circle rate into account hence the provisions of section 50C were not applicable, as computation of capital gains was based on circle rate. Further, real difference in LTCG computed by Assessing Officer and assessee pertained to difference in cost of acquisition. There was no reason between material and revenue's belief on income escapement. Reassessment notice and order disposing the objection is quashed.(AY. 2011-12)

Manujendra Shah v. CIT (2023) 295 Taxman 374 (Delhi)(HC)

S. 147 : Reassessment-After the expiry of four years-Report from investigation wing after scrutiny assessment-Shell companies-Deposited unaccounted cash in bank accounts-Prima facie material giving rise to belief sufficient-Notice valid.[S. 143(3), 148]

Allowing the appeal of the Revenue the Court held that the Commissioner (Appeals) during the scrutiny proceedings and remand proceedings none of the directors of the companies appeared before the Assessing Officer and the Assessing Officer rightly identified nine shell companies who were providing bogus purchase bills and accordingly held that the assessee had deposited its own unaccounted cash in the bank account and confirmed the findings. The Tribunal failed to examine any of the factual details which had been brought out by the Assessing Officer as well as the Commissioner (Appeals). The Tribunal was in error in setting aside the order of the Commissioner (Appeals). The notice of reassessment was valid. (AY.2011-12)

PCIT v. Arshia Global Tradecom Pvt. Ltd. (2023)455 ITR 686/154 taxmann.com 47 / 333 CTR 806 (Cal)(HC)

Editorial : Order in Arshia Global Tradecom Pvt. Ltd v.ACIT (2020) 84 ITR 64 (SN) (Kol)(Trib), reversed.

S. 147 : Reassessment-After the expiry of four years-Notice not mentioning facts which had not been disclosed-No evidence of failure-Notice and order disposing the objection is held to be not valid.[S. 115JB 148, Art. 226]

Dismissing the writ appeal of the Revenue the Court held that while furnishing the reasons for reassessment by its communication dated January 6, 2014, there was no finding that there was failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. There was not even a whisper of an allegation that such escapement had occurred by reason of failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment. There was legislative affirmation of the view taken by the assessee by way of an amendment introduced to section 115JB of the Act with regard to the treatment of bad and doubtful debts whereby the position of law declared by the Supreme Court was neutralised with retrospective effect from April 1, 2010. The notice of reassessment for the assessment year 2006-07 was not valid. (AY.2006-07).

ACIT v. Seshasayee Paper and Board Ltd. (2023)455 ITR 291/334 ITR 517 /148 taxmann.com 432 (Mad)(HC)

Editorial : Decision of single judge in Seshasayee Paper and Board Ltd v. ACIT (2021) 435 ITR 625 (Mad)(HC), affirmed.

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Reassessment is barred-Issue not discussed in original assessment-No opinion formed-Matter relegated to Assessing Officer. [S. 148, Art. 226]

Held that the initiation of reassessment proceedings under section 147 for the assessment year 2011-12 was in excess of jurisdiction. For the assessment year 2013-14, the order in the writ petition relegating the matter to the assessing authority was not interfered with.(AY.2011-12, 2013-14)

Durr India Pvt. Ltd. v. ACIT (2023)455 ITR 460 /335 CTR 444/152 taxmann.com 303 (Mad)(HC)

Editorial : Decision of the single judge Durr India Pvt. Ltd. v. ACIT (2021) 433 ITR 48 (Mad)(HC), affirmed.

S. 147 : Reassessment-After the expiry of four years-Based on facts which require investigation-Notice-Alternative remedy-Writ is held to be not maintainable. [S. 148, Art. 226]

A batch of sixty-one writ petitions was filed of which two writ petitions were filed by the assessee-trust while the remaining fifty-nine writ petitions were filed by the trustees, dismissing the writ petition the Court held that the batch of writ petitions filed by the trustees could not be entertained on the limited ground that the assessees had availed of the alternative remedy by way of appeal even before filing of the writ petitions. Moreover the allegation that the reassessment was bad as having been made on change of opinion, may require investigation into facts in the present case. Therefore, it was only appropriate for the assessee to participate in the proceedings before the statutory authorities. Similarly, whether there was escapement of income was again a question of fact which ought to be decided by the statutory authorities on appreciation of evidence.(AY.2012-13, 2013-14) (SJ)

Karur Kongu Charitable Trust v.ITO (E) (2023)455 ITR 479/332 CTR 513/ 224 DTR 12 /147 taxmann.com 73 (Mad)(HC)

S. 147 : Reassessment-After the expiry of four years-Detailed enquiry-No failure to disclose material facts-Change of opinion-Reassessment notice and order disposing the objection. is quashed. [S. 80IA(4), 80IC, 148, Art. 226]

Allowing the petition the Court held that in the original assessment proceedings the details are called and after enquiry the order was passed allowing the claim under section 80IA of the Act. Reassessment proceedings to withdraw the deduction on the ground that the assesee is not eligible for deduction is not a case of failure to disclose primary facts. Notice of reassessment and order disposing the objection is quashed. (AY.2008-09 to 2011-12)

Kaveri Infrastructure Pvt. Ltd. v.CIT (2023)455 ITR 384 /335 CTR 281 (P&H)(HC)

S. 147 : Reassessment-After the expiry of four years-Foreign remittances-Failure to deduct tax at source-Decision in favour of assessee in earlier year-One time settlement with bank-Non application of mind by the Assessing officer-Notice and order disposing the application is quashed. [S. 148,201(1) Art.226]

Allowing the petition the Court held that the issue of disallowance for failure to deduct tax at source on the foreign remittances made by the assessee was covered by the decision in the assessee's own case for the assessment year 2010-11 against which order no appeal had been

filed in the Supreme Court.Vedanta Ltd. (Successor of Sterlite Industries (India) Ltd.) v. ACIT (2019) 14 ITR-OL 266 (Delhi)(HC), followed. As regards one time settlement the Assessing Officer had not applied his mind in issuing the notice under section 148. Notice of reassessment and order disposing the objection is quashed. (AY.2011-12)
Vedanta Ltd. v ACIT (2023)455 ITR 146/153 taxmann.com 584 (Delhi)(HC)

S. 147 : Reassessment-After the expiry of four years-No new material and no evidence of non-disclosure of facts-Notice and order disposing the objection was quashed. [S. 148, Art. 226]
Allowing the petition the Court held that the assessee had produced the complete books of account, which were perused by the Income-tax Officer.. There was application of mind by the Income-tax Officer to the materials produced by the assessee. The reopening of the assessment was based on the same material already available before the Assessing Officer and without any noting, at the time of reopening of the assessment that there was a failure on the part of the assessee to make a full and true disclosure of all material particulars. The notice and the order disposing the objection was quashed. (AY. 2014-15)
Anil Raj Tuli v. ITO(NFAC) (2023) 454 ITR 411 / 330 CTR 582/ 221 DTR 390 (Orissa)(HC)

S. 147 : Reassessment-After the expiry of four years-No new tangible material-Change of opinion-Impermissible-Notice and all subsequent Proceedings are quashed. [S. 148, Art. 226]
Allowing the petition the court held that all the facts pertaining to the sale of immovable property were disclosed therefore there was no justification for invoking the proviso to section 147 to initiate reassessment proceedings after a period of four years. Notice and all subsequent Proceedings are quashed**.** *(*AY. 2013-14)
Rampal Samdani v. UOI, NEAC (2023)454 ITR 380 /330 CTR 672/222 DTR 137 /148 taxmann.com 114 (Raj)(HC)

S. 147 : Reassessment-After the expiry of four years-Unexplained expenditure-Search-No failure to disclose material facts-[S. 132, 143(3), 148]
Assessment was reopened on the ground that a search conducted at DSC Group of Companies revealed bogus purchases made by assessee through unexplained sources. The Assessing Officer made the addition which was confirmed by the CIT(A). On appeal the Tribunal held that the reasons recorded by Assessing Officer did not make specific allegations of failure to disclose all material facts, which was a prerequisite for reopening under section 147 and mere search action alone could not justify reopening of assessment. As the jurisdictional ingredients for reopening assessment provided in first proviso to section 147 were absent, both in form and substance and therefore, proceedings were bad in law. On appeal High Court affirmed the order of the Tribunal. (AY. 2006-07)
PCIT v. DSC Ltd. (2023) 294 Taxman 720 (Delhi)(HC)

S. 147 : Reassessment-After the expiry of four years-Order passed without disposing off objection raised by passing a speaking order-Assessment order and notice is set aside.[S. 143(3), 148, Art. 226]
The Court held that the procedure laid down in the GKN Driveshafts (India) Ltd. v. ITO [2002] 259 ITR 19 (SC) is to be strictly followed. Therefore, the reasons has to be furnished within reasonable time and the objections raised, if any, has to be disposed-off by the AO by passing a speaking order. In the present case, the AO didn't dispose of the objections raised by the assessee. Hence, the order passed u/s 143(3) r.w.s 147 was set aside.

Referred Deepak Extrusions (P) Ltd v. Dy.CIT (2017) 80 taxmann.com 77 (Karn)(HC), ACIT v. Mphasis Ltd, WP No. 919 of 2019 (T-IT) dt. 24-1-2023)(Karn)(HC) ((AY. 2011-12) (SJ))

Hewlett Packard Financial Services (India) v. DCIT (2023) 294 taxman 25 (Karn)(HC)

S. 147 : After the expiry of four years-Investment in Mutual funds-Did not file the income tax return-Did not respond to various notices-Neither conduct nor alleged prejudice suffered by assessee prompt Court to exercise any discretion to receive matter and adjudicate same without leaving assessee free to approach regular statutory remedy in accordance with law-Writ petition is dimissed.[S. 10(26),10(45), 139(1), 139(4C), 142(1), 148, Art. 226, Civil Procedure Code, 1908, Order VII Rule 11,]

The assessee did not file its return of income claiming that being a member of a scheduled tribe and deriving income exclusively within a notified area, it was entitled to the full exemption of income under section 10(26) and, as such, not obliged to file any return of income under section 139(1) or her income be charged to tax. Notice under section 148 was issued on the ground that huge investment in Mutual funds. The assessee neither filed the return nor responded various notices. Order under section 144 read with section 147 was passed. The assessee filed the writ petition. Dismissing the petition the Court held that this could not be a case of violation of any principle of natural justice. This is a case where an arrogant assessee refused to comply with every request of department and only suggested that since she was a member of scheduled tribe, she was willy-nilly above law. It was also not a case of authority having been exercised without jurisdiction. Neither conduct nor alleged prejudice suffered by assessee prompt Court to exercise any discretion to receive matter and adjudicate same without leaving assessee free to approach regular statutory remedy in accordance with law. Merely because a person asserts a fundamental right, it is no ground for such person bypassing usual process or procedure and invoking extraordinary jurisdiction of a High Court under article 226 of Constitution of India. (AY. 2013-14)

Ramona Massar v. UOI (2023) 294 Taxman 89 /334 CTR 880 (Meghalaya)(HC)

S. 147 : Reassessment-After the expiry of four years-Sale of shares-Tax Residency Certificate under laws of Mauritius-Capital gains-Nothing in form of information or material had been put on record-Reassessment notice is quashed and set aside-Matter was to be remanded back to AO to confront assessee with relevant material-DTAA-India-MauritiuS. [S. 148, Art. 13, Art. 226]

Assessee had not filed a return of income for the assessmet year 2016-17 on the ground that it had been issued a TRC under laws of Mauritius, it was entitled to take benefit of provisions of article 13 of DTAA between India and Mauritius. Reassessment notice was issued to the assesee. The assessee filed writ petition cahllnging the issue of notice under section. 148 of the Act. the Revenue contended that Tax Residency Certificate (TRC) issued was not a conclusive evidence on assessee's residential status, thus, held assessee ineligible for treaty benefits. Court hedl that nothing in form of information or material had been put on record by revenue to conclude that Tax Residency Certificate (TRC) issued to assessee was not a viable legal document. Accordingly reassessment proceedings initiated against assessee is set aside and matter was to be remanded back to AO to confront assessee with relevant material. (AY. 2016-17)

Vodafone Mauritius Ltd v. ACIT (2023) 294 Taxman 43 (Delhi)(HC)

S. 147 : Reassessment-After the expiry of four years-Unexplained investments-Sale of land-Depreciable assets-Information from investigation wing-Sale consideration n was disclosed in the return-Reassessment notice and order disposing the objection was quashed. [S. 48, 50C, 69A, 143(1), 148, Art.226]

Assessee sold immovable property comprising of industrial plot of land along with industrial shed (building) constructed thereon. Assessee filed return disclosing LTCG on sale of non-depreciable land and STCG on building. Assessing Officer on the basis of information receiving information from Investigation Wing with respect to purchase of land observed that the assessee had not shown capital gains from sale of land in return of income.. Accordingly issued the notice under section. 148 of the Act. On writ allowing the petition the Court held that since assessee had already disclosed sale consideration from transaction and had bifurcated said amount under head building and under head land and furthermore assessee had also paid STCG and LTCG, it could not be said that taxable income had escaped assessment. Accordingly the notice and order disposing the objection was quashed. (AY. 2014-15)

Apex Remedies (P.) Ltd. v. ITO (2023) 294 Taxman 215 (Guj.)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose true and full material-Question was raised and reply was filed-Reassessment notice and order disposing the objection was quashed. [S. 14A, 142(1), 143(3), 148, Art. 226]

In the course of assessment proceedings questions relating to investments of assessee, income earned from it and disallowance of expenditure under section 14A were raised and replied to by assessee and thereafter, assessment order under section 143(3) was passed. Against the reassessment notice and order disposing the objection writ was filed. Allowing the petition the Court held that in absence of any circumstances about non-disclosure of true and full material on part of assesseee, reassessment notice and order disposing the objection. was quashed. (AY. 20014-15)

Sandesh Procon (P.) Ltd. v. ACIT (2023) 459 ITR 453 / 294 Taxman 52 (Guj.)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Search-Deposit of cash in bank-No scrutiny assessment was done-Reassessment notice is held to be justified.[S. 68, 143(1), 147, Art. 226]

Dismissing the petition the Court held although assessee had filed his return for relevant assessment year, however, he did not dispute fact that he had deposited cash amount in bank account. Accordingly the reopening notice under section 148 was justified. (AY. 2012-13)

Ramakant v. ITO (2023) 294 Taxman 48/ 333 ITR 791 (Delhi)(HC)

Editorial : Review petition is dismissed, Ramakant v. ITO (2023) (2023) 333 CTR 786 (Delhi)(HC)

S. 147 : Reassessment-After the expiry of four years-Share capital-No failure to disclose material facts-Reassessment order quashing the reassessment is affirmed. [S. 68, 143(3), 148, 260A]

Assessee received certain sum towards share capital and unsecured loans. After making enquiries the assessment was completed u/s 143((3) of the Act. The assessment was re opened on the ground that the assessee was a beneficiary of accommodation entries. However, reasons for reopening assessment furnished by Assessing Officer did not record that there was a failure on part of assessee to disclose, truly and fully, all material facts necessary for carrying out assessment.Tribunal held that the Assessing Officer failed to apply its mind independently and that it reopened concluded assessment based on directions of

Director of Investigation. Tribunal returned a finding of fact that none of 99 share capital applicants were found in list of accommodation entry providers. Assessee had already been put to scrutiny with regard to infusion of share capital and had furnished relevant information sought by Assessing Officer when initial assessment order was framed under section 143(3) of the Act. Tribunal quashed the reassessment proceeding. On appeal dismissing the appeal of the Revenue the court held that reassessment was due to change of opinion.Order of tribunal quashing the revision order is affirmed. (AY. 2007-08)

PCIT v. South Delhi Promoters Ltd. (2023) 293 Taxman 123 (Delhi)(HC)

S. 147 : Reassessment-After the expiry of four years-Alternative remedy-Writ petition is dismissed.[S. 148, Art. 226]

Assessee filed an appeal against said reassessment order to save his statutory right. Writ petition against reassessment order on grounds of non-following of mandatory requirement of disposing of objections raised by it against reopening of assessment. Dismissing the petition the court held that since assessee had already availed alternative remedy by way of statutory appeal alongside filing of instant writ petition, writ petition was not entertained. (AY. 2014-15)

Indo Colchem Ltd. v. Dy. CIT (2023) 292 Taxman 156 (Guj.)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Objection raised by assessee were rejected without applying mind to facts-Material particulars, different from reasons given for reassessment-Reassessment notice and consequential orders were quashed and set aside. [S. 68, 92CA, 148, Art. 226]

Notice of reassessment was issued on the ground that the assessee was involved in huge amount of cash transaction in Bank of India (BOI) however only a part of such deposits were admitted as its gross receipts. Objection of the assessee was rejected by the Revenue. On writ allowing the ppetition the Court held that the objection raised by assessee were rejected without applying mind to facts that were relevant and more importantly facts stated in counter set up a case, rather material particulars, different from reasons given for reassessment. Accordingly the notice and consequent order passed were set-aside. (AY. 2015-16)

Shree Nagalinga Vilas Oil Mills v. ITO (2023) 292 Taxman 533 (Mad.)(HC)

S. 147 : Reassessment-After the expiry of four years-Transfer-Joint development agreement-Reassessment notice and order disposing the objection was quashed. [S. 2(47)(v), 45(7), 148, Art. 226]

Assessing Officer sought to reopen assessment in case of assessee on ground that certain amount of cash was received by assessee for sale of his share of land for project under said JDA and same went unreported by assessee and thus income chargeable to tax had escaped assessment. On writ allowing the petition the Court held that the execution of development agreement did not give rise to transfer within meaning of section 2(47)(v) during relevant year. When amount was received by assessee pursuant to development agreement and when sale deed was executed in subsequent year, transfer took place at that point of time. Further, assessee had offered capital gains to tax in subsequent assessment year 2016-17. The entire basis of reopening was erroneous of facts and misconceived in law. Accordingly the notice of reassessment and the order disposing objection was quashed (AY. 2015-16)

Chhaganlal Mulji Dholu v. JCIT (OSD) (2023) 456 ITR 465/ 291 Taxman 304 / 330 CTR 687/ 221 DTR 469 (Guj.)(HC)

S. 147 : Reassessment-After the expiry of four years-Guarantee commission-Interest on borrowed capital-Disallowance of expenditure-Exempt income-Method of accounting-Income reconciliation as per Form 26AS-No failure to disclose material facts-Reassessment notice and order disposing the objection was quashed. [S. 14A, 36(1)(iii), 37(1), 145, Form. 26AS, Art. 226]

Allowing the petition against the reassessment notice and order disposing the objections, the court held that there was no failure to disclose material facts therefore proposed reassessment proceedings for disallowance of guarantee commission, interest on borrowed capital, disallowance of expenditure in respect of exempt income and difference between Form 26AS Statement and books of account of assessee was held to be change of opinion hence the order was quashed. (AY. 2011-12)

P C Snehal Engineers (P.) Ltd. v. ACIT (2023) 291 Taxman 547 (Guj.)(HC)

S. 147 : Reassessment-After the expiry of four years-Cash credits-Cash deposit in the bank-Information from Bank-Factual error cannot be considered in writ proceedings-Order of single judge was affirmed.[S. 68, 143(1), 148, Art. 226]

Assessee is engaged in manufacture of edible oils.In relevant assessment year, Assessing Officer received information that one, R. Srinivasan has deposited cash of substantial amount in his bank which was subsequently transferred to assessee. Assessing Officer thus, held that said amount was to be treated as income from unexplained sources under section 68 of the Act. Assessee claimed that amount deposited by R. Srinivasan was towards purchase of edible oil and trade advances. However, Assessing Officer issued reopening notice and passed reassessment order treating said amount as unexplained income. In writ petition, assessee challenged reassessment order on grounds that Assessing Officer in assessment order passed in case of R. Srinivasan accepted certain sum which related to payment made towards purchase of edible oil and balance sum was treated as unaccounted income, however, in case of assessee entire sum was treated as unaccounted income. Single judge considering said submissions dismissed writ petition, by relegating assessee to file statutory appeal before Appellate Authority. On appeal the Division Bench held that case involved factual aspects which had to be determined by Appellate Authorities, Single Judge had correctly opined that any error committed or mistake committed by Assessing Officer in considering such reply given by assessee being a minute factual details, could not be gone into by High Court under article 226 of the Constitution. (AY. 2013-14)

Gem Edible Oils (P.) Ltd. v. ACIT (2023) 291 Taxman 242 (Mad)(HC)

Editorial : Order of single Judge, Gem Edible Oils (P.) Ltd. v. ACIT (WP No. 10769 of 2022 dt. 27-4 2022)(Mad)(HC).

S. 147 : Reassessment-Notice after six years-Sanction-Notice dated 30-3-2021 issued under old provision after coming into effect of new provision from 1-4-2021-UOI v. v. Ashish Agarwal(2022) 444 ITR 1 (SC)-Notice and subsequent orders and proceedings are quashed. [S. 148, 151, Art.226]

Allowing the petition the Court held that in view of the judgments in Union of India v. Ashish Agarwal (supra) and Ambika Iron and Steel Pvt. Ltd. v. PCIT (2023) 452 ITR 285 (Orissa)(HC)) the notice under section 148 which was issued on March 30, 2021, i. e., prior to April 1, 2021 beyond the period of six years from the A.Y. 2015-16 against the assessee was quashed. Consequently, all the subsequent orders and proceedings were also quashed.(AY 2015-16)

Salu Agarwal v. ITO (2023)453 ITR 784 (Orissa)(HC)

Editorial : SLP of revenue dismissed, ITO v. Salu Agarwal (2023) 433 ITR 786 (SC)

S. 147 : Reassessment-After the expiry of four years-Information received from Investigation Wing-Assessee's own statement during survey-Search of third party-Disputed question of fact-Alternative remedy-Writ petition was dismissed. [S. 132, 133A, 143(1), 148,151(1) Art. 226]

Dismissing the petitions the Court held that the extraordinary jurisdiction under article 226 could not be exercised at the initial stage of issue of notice under section 148 by interrupting the process of the assessing authority for reopening the assessment under section 147. It is trite law that if the facts are in dispute and clouded by some suspicion, they have to be left open for the appropriate competent authority to examine and extraordinary jurisdiction could not be exercised to usurp such discretion of the competent authority from being adjudicated upon. The assessing authority while disposing of the objections against reopening of the assessment under section 147 had examined not only the sauda chitthi of the land in which the assessee had purportedly made investments but also certain admissions and statements made by the assessee during the survey pursuant to the search under section 132 and incidental material. Only upon such critical analysis of the material on record vested jurisdiction was exercised. The order disposing of objections had been passed in consonance with proper guidelines. The entire exercise had been undertaken on account of relevant documents having been seized from the residence of searched party during search and survey proceedings. Even the assessee had admitted in his statement that unaccounted cash had been paid for the purchase of both the plots in question but was not disclosed and that he would reveal after consultation with other partners.. The notice under section 148 had been issued after the period of four years obtaining sanction under section 151(1) from the Principal Commissioner who was the appropriate authority and therefore, was not without jurisdiction. The information received from the Investigation Wing could not be denied and they were prepared after conducting search and seizure operation under section 132, inquiry, recording of the statements and collection of evidence and such material was sufficient to arrive at a conclusion. The sufficiency of the material would be good enough for the authority to assume the jurisdiction for commencement of reassessment proceedings. However, the sufficiency or correctness of the material would not be in the realm of consideration at this stage and the correctness or otherwise of the reasoning recorded for reopening of the assessment would not be in the realm of adjudication by going into the merits of reasoning. If such reasons were not perverse and it was not mere change of opinion but sufficient material or reason to believe there was escapement of income it would suffice for the authorities to proceed to reopen the assessment subject to other prescribed criteria also having been satisfied. Under the Act the assessee had the remedy by way of efficacious redressal mechanism under various provisions and at this stage of proceedings to invoke extraordinary jurisdiction would not be just and proper.(AY. 2011-12, 2012-13, 2013-14)

Pavan Kishanchand Tulsiani v. UOI (2023)453 ITR 284 / 226 DTR 225 / 334 CTR 222 (Guj)(HC)

S. 147 : Reassessment-After the expiry of four years-Loan-Accommodation entries-Documents produced during assessment proceedings-No failure to disclose material facts-Notice and order disposing the objection was quashed. [S. 68, 148, Art. 226]

Where it is was the case of the Assessing Officer that the assessee was a beneficiary of accommodation entries to the tune of Rs. 2.1 crore, but however the assessee supplied all documents and information to the AO during the course of assessment proceedings such as bank statement and bank interest, then the AO cannot conduct a roving inquiry when the amount received was admittedly returned. Notice was quashed.(AY. 2011-2012)

Vijay Ramanlal Sanghvi v. ACIT (2023) 330 CTR 424/ 146 taxmann.com 55 (Guj.)(HC)

S. 147 : Reassessment-After the expiry of four years-Change of opinion-Borrowed satisfaction-Communication from Kolkota-Notice and the disposing objection was quashed. [S. 40(a)(ia), 115JAA, 148 Art. 226]-

Allowing the petition the Court held that the reasons recorded for reopening the assessment and the order disposing of the objections raised by the assessee for the reopening of the assessment were one and the same. The records indicated that the assessee had duly deducted and paid the tax deducted at source on these payments of interest and finance charges and copies of the accounts of these parties had been tendered at the time of assessment and with the objections to the reopening. There was material available with the Assessing Officer and the assessee had not suppressed or withheld any information at the time of assessment proceedings and on this score itself, the notice of reassessment could not be sustained. That there was no whisper in the order as regards any failure on the part of the assessee to disclose fully and truly all material facts and no such failure on the part of the assessee could be inferred from the reasons recorded. The assessee had made adequate disclosures during the assessment proceedings. Accordingly, the notice and order disposing of the objection were quashed. Relied on Ganga Saran and Sons (P) Ltd. v. ITO (1981) 130 ITR 1 (SC) AY.2011-12)

Nila Infrastructures Ltd. v. ACIT (2023)451 ITR 283 (Guj)(HC)

S. 147 : Reassessment-After the expiry of four years-Amalgamation-Notice of reassessment issued in name of amalgamating company instead of a new company-Reassessment notice and order disposing of the objection was quashed [S. 148, Art. 226]

Allowing the petition the Court held the notice under section 148 of the Act dated December 13, 2017 was issued in the name of the amalgamating company instead of the new company. Further, the Assessing Officer after examining threadbare the various issues including the issues as to the keyman insurance premium and disallowance under section 14A of the Act, took a view not to make any disallowance in respect of the keyman insurance premium while framing assessment under section 143(3) of the Act and made a disallowance under section 14A of the Act. It was therefore, apparent that there was a change of opinion by the Assessing Officer to reopen the assessment for the assessment year 2013-14, more particularly, when the issues raised in the reopening assessment were already considered during the assessment proceedings under section 143(3) of the Act. The Assessing Officer did not have jurisdiction to issue the notice under section 148 of the Act, for reopening the assessment for more particularly, when the assessment was sought to be reopened beyond a period of four years. Accordingly, the notice of reassessment and order disposing of the objection was quashed. (AY.2012-13)

Shahlon Silk Industries P. Ltd. v. ACIT (2023)451 ITR 184 / 223 DTR 253/ 330 CTR 549/ 292 Taxman 18 (Guj)(HC)

S. 147 : Reassessment-After the expiry of four years-Land taxes-Leave encashment-Gratuity-Demerger-No failure to disclose material facts-Order disposing objection and notice of reassessment was quashed. [S. 43B, 148, Art. 226]

Allowing the petitions the Court held that there had been full disclosure by the assessee in the original scrutiny assessment in relation to the issues mentioned in the reasons recorded for reassessment and the Department had not discharged the statutory burden as stipulated in the proviso to section 147. The appendices to the return of income stated the particulars of the expenditure incurred under section 43B also referring to the rates and taxes of land tax, leave encashment, gratuity and others specifically referring to the amount transferred on demerger of the assessee which amount was alleged to have escaped assessment. The original order of

assessment had been passed after accepting the submissions of the assessee. The reassessment proceedings were barred by limitation and the consequent orders were quashed. (AY.2012-13)
GET and D India Ltd. v. ACIT (2023) 450 ITR 87 (Mad)(HC)

S. 147 : Reassessment-After the expiry of four years-Based on audit report-Change of opinion-No new material-Reassessment notice and order disposing the objection was quashed. [S. 148, Art. 226]
Allowing the petition the Court held that the reasons provided by the Department for the reopening of the assessment were based on the tax audit report and the information available in the books of account of the assessee. Reopening of assessment was sought to be made on exactly the same materials that were available with the Assessing Officer in the first instance during the original assessment and which had been disapproved by the Supreme Court. Therefore, there was a mere change of opinion on the same materials. The reassessment notice under section 148 and the consequential order rejecting the assessee's objections were quashed. (AY. 2014-15)
Kalinga Institute Of Industrial Technology v. ACIT (2023) 450 ITR 657 (Orissa)(HC)

S. 147 : Reassessment-After the expiry of four years-Verification tax residency certificate issued by other jurisdiction-For determining residential status, treaty eligibility and legal ownership-bad in law-Reassessment Notice quashed-DTAA-India-Singapore.[S. 143(1), 148, Art. 13(4), Art. 226]
The reassessment notice was issued to verify the genuineness of the Transaction. The assesse filed the objections to the recorded reasons on the ground that, inaccurate reasons for formation of belief, reassessment cannot be done in the absence of tangible material, income chargeability to tax escapement of assessment, and eligibility to claim tax treaty benefits between India and Singapore. The Objection was dimmed by the Assessing Officer. On writ allowing the petition, the Court held that the revenue cannot go behind the tax residency certificate issued by the other tax jurisdiction and issue a re-assessment notice to determine issues of residence status, treaty eligibility and legal ownership. The act of the revenue is wholly contrary to the Government of India's repeated assurances to foreign investors by way of CBDT Circulars, press releases, legislative amendments and judicial pronouncements.

It was also held that the reassessment proceedings cannot be initiated for verifying the genuineness of a transaction, on the basis of borrowed satisfaction, and without a live link between the material and formation to believe. Further, it was also held that the concept of beneficial ownership under DTAA is only qua dividend, interest and royalty, and not capital gains. (WP(C) 2562 of 2022 dated January 30, 2023)(AY. 2016-17)

Blackstone Capital Partners (Singapore) VI FDI Three Pte. Ltd. v. ACIT (Delhi)(HC) www.itatonline.org

S. 147 : Reassessment-With in four years-Capital gains-Change of opinion-No suppression of material facts-Reassessment notice and order disposing the objection is quashed. [S. 45, 143(3), 148, Art. 226]
Allowing the petition the Court held that the Assessing Officer has allowed the claim of the assessee after considering the material produced in the original assessment proceedings. Reassessment proceedings is initiated due to change of opinion, there was no suppression of facts. The notice and order disposing the objection is quashed. (AY. 2016-17)
Shrikant Vasudev Naik v. ACIT (2023) 333 CTR 684 (Bom)(HC)

Indirabai Shrikant Naik v. ACIT (2023) 333 CTR 684 (Bom)(HC)

S. 147 : Reassessment-Reopening of assessment on the ground of subsequent AAR-Binding nature of Advance ruling will prevail-Reassessment notice and notice is quashed and set aside-DTAA-India-UAE [S. 9(1)(i) 148, 245S, Art. 4, 10, 11,13(3), Art. 226]

AAR in case of assessee, a UAE resident, ruled that she was eligible for DTAA benefits. AO reopened assessment of assessee on ground that subsequent AAR ruling in another case held that benefits of DTAA would not be available as assessee was not chargeable to tax in UAE. On writ the Court held that since subsequent ruling cannot as a matter of plain intendment and meaning of section 245-S displace binding character of ruling rendered between applicant-assessee and revenue, AO had exceeded his jurisdiction to reopen said assessment. (AY. 1997-98 to 2000-01)

Usha Eswar (Mrs). v.Rajeshwari Menon, ITO, (IT) (2023) 334 CTR 480 / 152 taxmann.com 454 (Bom)(HC)

S. 147 : Reassessment-With in four years-Redemption of preference shares-Provisions of section 47(iv) are not applicable to redemption of preference shares-Order of Assessing Officer allowing the loss is affirmed-Reassessment notice and order disposing the objection is quashed. [S. 2(47) 47, 47 (iv),47(v), 148, Art. 226]

The assessee had purchased preference shares of Flagship company during year-2008-09 and sold these preference shares during assessment year-2015-16 and claimed long-term capital loss which was allowed. The reassessment notice was issued on ground that long-term capital loss should be disallowed as transaction was not regarded as transfer within meaning of section 47(iv) and (v). On writ allowing the petition the Court held that the assessee had not sold preference shares but same were redeemed by company, and due to extinguishment of rights, capital loss was claimed, jurisdictional conditions for issuance of reopening notice were not satisfied and reassessment was quashed. (AY. 2015-16)

Great Eastern Shipping Co. Ltd v. NFAC (2023) 157 taaxmann.com 442 (Bom)(HC)

Editorial : SLP of Revenue is dismissed, NFAC v. Great Eastern Shipping Co. Ltd. (2024) 296 Taxman 575 (SC)

S. 147 : Reassessment-With in four years-Query raised-Issue considered during original assessment proceedings-Notice and order disposing the objection is quashed. [S. 2(22)(a), 50C, 148, Art. 226]

Allowing the petition the Court held that the issue of section 50C of the Income-tax Act, 1961 was a subject of consideration during the assessment proceedings, the query having been raised and the assessee having responded to the query and the Assessing Officer not taking that issue forward. The notice of reassessment based on the same issue was not valid.(AY.2008-09)

Bakhtawar Construction Co. Pvt. Ltd. v.Dy. CIT (2023)459 ITR 402 / 335 CTR 481/ (2024) 296 Taxman 476 (Bom) (HC)

S. 147 : Reassessment-With in four years-Borrowed satisfaction-change of opinion-Notice without jurisdiction-Notice and order disposing the objection is quashed-Writ can be entertained on judicial aspect.[S. 2(40) 142(1), 143(2), 148, Art. 226]

Allowing the petition the Court held that except for referring to the information available on the Insight Portal with regard to high value cash deposits, there was no independent application of mind by the Assessing Officer to such information for recording satisfaction to

reopen the assessment under section 147. The reopening of the assessment was merely on a change of opinion of the Assessing Officer. Therefore, the notice issued under section 148 was without jurisdiction and accordingly quashed. Consequent proceedings were also quashed.(AY.2017-18)

Gandhibag Sahakari Bank Ltd. v. Dy. CIT (2023)458 ITR 157 /156 taxmann.com 221 (Bom)(HC)

S. 147 : Reassessment-With in four years-Provision for compensation-Allowed as deduction-Notice of reassessment based on same issues-Held to be not valid.[S. 37(1), 148]

Dismissing the appeal of the Revenue the Court held that no fresh tangible material had come into the possession of the Assessing Officer before recording the reasons for reopening the assessment. Even in the recorded reasons, the Assessing Officer clearly stated that his observations were based "on a perusal of records" and no fresh or new tangible material had been referred to or brought on record. The Tribunal was right and the notice of reassessment was not valid.(AY.2008-09)

PCIT v. Nesco Ltd. (2023)456 ITR 600/ 291 Taxman 286 (Bom)(HC)

S. 147 : Reassessment-With in four years-Depreciation-Goodwill-Query raised and reply was filed-Issue was considered in the course of assessment proceedings-Audit-Even if it is an error that the Assessing Officer discovered, still the error discovered on a reconsideration of the same material does not give him power to reopen the assessment-Change of opinion-Reassessment notice and order disposing the objection is quashed. [S. 32, 148, Art. 226]

Allowing the petition the Court held that it was found that issue regarding depreciation on goodwill was considered by Assessing Officer while completing assessment and Assessing Officer was satisfied with explanation offered in respect of query raised.The reopening of assessment merely on basis of change of opinion from that held earlier during course of assessment proceedings did not constitute justification and reasons to believe that income chargeable to tax had escaped assessment. Even if it is an error that the Assessing Officer discovered, still the error discovered on a reconsideration of the same material does not give him power to reopen the assessment. Notice and order disposing the objection is quashed and set aside. Followed, Indian & Eastern Newspaper Society v. CIT [1979] 2 Taxman 197/119 ITR 996 (SC), Aroni Commercials Ltd. v. Dy. CIT [2014] 224 Taxman 13 (Mag.)/362 ITR 403 (Bom)(HC). (AY. 2016-17)

Sterlite Technologies Ltd. v. Dy. CIT (2023) 459 ITR 83 / 295 Taxman 488 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Interest on borrowed capital-Advance of amount to sister concern and associate concerns without charging interests-Commercial expediency-Notice and order disposing the objection is quashed and set aside.[S. 36(1)(iii), 148, Art. 226]

Allowing the petition the Court held that the loan had been given to sister concern or associate concern of assessee as a measure of commercial expediency by using borrowed funds, interest on such borrowed funds was to be allowed as deduction under section 36(1)(iii) of the Act. Reassessment notice and order disposing the objection is quashed and set aside. Referred, S.A. Builders Ltd. v. CIT (Appeals) [2007] 158 Taxman 74/288 ITR 1 (SC), Prashant S. Joshi v. ITO [2010] 189 Taxman 1/324 ITR 154 (Bom)(HC) (AY. 2009-10)

Vaman Prestressing Co. (P.) Ltd. v. ACIT (2023) 295 Taxman 252 /(2024) 461 ITR 192 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Unexplained investments-Failure to provide alleged SEBI Investigation report-Syncom Formulations Limited-Long term gains-Assessment order is set aside-Remanded back to Jurisdictional Assessing Officer (JAO) with a direction to make available to assessee a copy of report of SEBI relied upon in reasons to believe for re-opening of assessment. [S. 10(38) 69, 144B, 148, Art. 226]

On writ the assessee contended that was despite repeatedly calling upon Assistant Commissioner to provide a copy of SEBI's report or finding as recorded in reasons, same had been not adhered to-Further, assessee was a family member of promoter group of Syncom Formulations Limited and there had never been any investigation by SEBI against Syncom Formulation Limited. Court held that the assessee was justified in seeking a copy of report on which reliance had been placed while arriving at conclusion that there were reasons to believe that income of assessee had escaped assessment. Accordingly the assessment order was set aside and matter would be remanded back to Jurisdictional Assessing Officer (JAO) with a direction to make available to assessee a copy of report of SEBI relied upon in reasons to believe for re-opening of the assessment. (AY. 2017-18)

Ankur V. Bankda v. ACIT (2023) 295 Taxman 430 (Bom.)(HC)

S. 147 : Reassessment-Notice-International Transactions-Reference to Transfer Pricing Officer-Assessment was not pending-Reference invalid-Transfer Pricing Officer's Order Nullity-Notice of reassessment based on Transfer Pricing Officer's Order is held to be not sustainable. [S. 92C, 92CA, 143((2), 148, 260A]

Dismissing the appeal of the Revenue the Court held that the Tribunal was correct in holding that when the reference under section 92CA was made to the Transfer Pricing Officer by the Assessing Officer for computation of the arm's length price in relation to the international transaction, no assessment proceedings were pending and hence it was invalid reference. Consequently, the subsequent order passed by the Transfer Pricing Officer was a nullity and void ab initio. Therefore, the Assessing Officer could not have relied upon an order of the Transfer Pricing Officer which was a nullity to form a belief that certain income chargeable to tax had escaped the assessment for the assessment year 2007-08. The belief of the Assessing Officer that there has been escapement of income must be based on some material on record and the only material relied upon was the order of the Transfer Pricing Officer. No notice under section 143(2) was issued to the assessee before making the reference to the Transfer Pricing Officer. When no assessment proceedings were pending in relation to the assessment year 2007-08 the Assessing Officer was precluded from making a reference to the Transfer Pricing Officer under section 92CA(1) for computing the arm's length price. No question of law arose. Referred The Central Board of Direct Taxes in Instruction No. 3 dated May 20, 2003 [2003] 261 ITR (St.) 51) *(*AY.2007-08)

PCIT v. Kimberly Clark Lever Private Limited (2023) 455 ITR 576 / 54 taxmann.com 134 (Bom.) (HC)

S. 147 : Reassessment-With in four years-Interest paid on loans borrowed-Controlling interest-Change of opinion-Allowed as business expenditure-Notice to reopen assessment was merely on basis of change of opinion of Assessing Officer and same was to be set aside. [S. 37(1), 148, Art. 226]

The assessment was completed under section 143(3) of the Act. Reassessment notice was issued for the reason that interest paid on loan borrowed by assessee for purchase of shares of a company so as to have controlling stake in said company and not for business purpose was to be capitalised and could not be allowed as deduction. On writ allowing the petition the Court held that on the same issues of investment and interest on loans taken was subject matter of a query raised by Assessing Officer during original scrutiny assessment and that

assessee had also addressed a communication to give an explanation in regard to allowability of interest and other expenditure as revenue expenditure. After considering submissions of assessee, assessment order was passed. Accordingly the notice to reopen assessment was merely on basis of change of opinion of Assessing Officer and is quashed and set aside. (AY. 2003-04)

Vedanta Ltd. v. B.D. Naik, Dy. CIT (2023) 294 Taxman 465 (Bom.)(HC)

S. 147 : Reassessment-With in four years-Compensation expenditure-Survey-Capital or revenue-Reopening of assessment on mere change of opinion-Impermissible-Notice was quashed and set aside. [S. 37(1), 133A, 147, Art. 226]

Allowing the petition the Court held that the reopening of assessment for the assessment year was on a mere change of opinion. A survey operation had been conducted under section 133A on January 31, 2008 and in the survey report it was specifically recommended to examine in detail the genuineness of the claim of the assessee about compensation payable to the seven parties. The Assessing Officer in his order dated December 31, 2010 had accepted the submissions of the assessee and had allowed the amount refunded as expenditure. In the reasons the Assessing Officer had stated that while passing the order under section 143(3), the Assessing Officer who had passed the original assessment order should not have accepted the payment of compensation as expenditure but should have treated it as "capital payment". Court held that the notice issued under section 148 on mere change of opinion hence quashed and set aside.(AY.2008-09)

Anjis Developers Pvt. Ltd. v. CIT (2023)455 ITR 523 / 150 taxmann.com 112 (Bom)(HC)

Editorial : SLP of Revenue is dismissed, CIT v. Anjis Developers (P.) Ltd. [2023] 293 Taxman 71 (SC)

S. 147 : Reassessment-Within four years-Change of opinion-Compensation payable-Based on record that was already with the Assessing Officer at the time of the proceedings-Reassessment notice and order disposing the objection was quashed..[S. 37(1), 143(3), 260A]

The assessment was completed under section 143(3) of the Act. Thereafter, a notice was issued under section 148 of the Act within a period of four years to reopen the assessment. The Assessing Officer in the reassessment proceedings disallowed a sum of Rs. 6.5 crore which was in the nature of provision made for compensation payable with respect to disputes with certain parties. High Court observed that the factual finding that the amount of compensation was recorded to be paid as and when settled by the Civil Courts and the amount not paid was returned back as part of other income was undisputed and uncontroverted by the Revenue. Accordingly, the High Court held that the provision of Rs. 6.5 crore was allowable as deduction. High Court further held that the dis-allowance of the claim of compensation was based on record that was already with the Assessing Officer at the time of the proceedings under section 143 (3) of the Act and that there was no new or fresh tangible material that had been brought on record. High Court held that the Assessing Officer had viewed the same material from a different angle of perception which was nothing but a case of change of opinion which could not be permitted. (AY. 2008-09)

PCIT v. NESCO Ltd. (2023) 291 Taxman 286 (Bom)(HC)

S. 147 : Reassessment-With in four years-Depreciation-Change of opinion-No new tangible material-Reassessment notice and order disposing the objection was quashed [S. 132, 143(3), 148, Art. 226]

Allowing the petition, the Court held that the Assessing Officer while passing assessment order under section 143(3) had gone into assessee's claim of depreciation on written down value of assets by making all necessary enquiries and he did not make any disallowance as regards said claim, in absence of any new tangible material, said assessment could not be reopened under section 147. (AY. 2010-11)
Solvay Specialities India (P.) Ltd. v. DCIT (2023) 149 taxmann.com 228 / 292 Taxman 537 (Bom)(HC)

S. 147 : Reassessment-With in four years-Depreciation-Change of opinion-Depreciation-License fee-No new information-Reassessment notice and order disposing the objection was quashed [S. 32, 35AAB, 148, Art. 226]
Allowing the petition, the Court held that the reassessment was initiated on ground that as per section 35ABB, assessee was eligible for deduction on license fee but it had capitalized said fee as intangible asset and claimed 25 per cent depreciation which had resulted in allowance of excess depreciation, since said issue was examined by Assessing Officer in assessment proceeding, and neither was there any new information received nor was a reference made to any new material on record, in absence of any tangible material, present case was nothing but a case of change of opinion and, thus, did not satisfy jurisdictional foundation of section 147. Reassessment notice and order disposing the objection was quashed. (AY. 2016-17)
Clear Media (India) (P.) Ltd. v. DCIT (2023) 150 taxmann.com 52 / 293 Taxman 108 (Bom)(HC)

S. 147 : Reassessment-With in four years-No tangible material-Business expenditure-Compensation-Provision for compensation-Pending for settlement-Reassessment is held to be bad in law. [S. 37(1), 145, 148, Art. 226]
Provision for payment of compensation with respect to defected machines sold against which complaints were filed and were pending settlement, compensation claimed as the expense was based on the actual occurrence of financial incidence purely related to business activities same was examined during original scrutiny assessment, reassessment order was to be quashed. (AY. 2008-09)
PCIT v. NESCO Ltd. (2023) 291 Taxman 286 (Bom)(HC)

S. 147 : Reassessment-With in four years-Accommodation entries-Shell company-Deposit demonetized cash-Sales Borrowed satisfaction-Not independently applied the mind-Reassessment notice and order disposing the objection was quashed. [S. 69A, 143(1), 148, Art. 226]
Allowing the petition, the Court held that the reasons do not furnish any explanation as to on what basis and material the assessing officer came to a conclusion that M/s Magnum Tradex Pvt. Ltd., was indeed a shell entity. The verification of the VAT returns referred to in the reasons recorded suggest only transaction between the Petitioner and M/s Magnum Tradex Pvt. Ltd., in regard to goods sold amounting to Rs. 2,08,76,068/-. There was, thus, no material or basis for the assessing officer to hold the transaction between the Petitioner and M/s Magnum Tradex Pvt. Ltd., as not a genuine transaction of sale or for that reason to hold that M/s Magnum Tradex Pvt. Ltd. was a shell entity. The reasons recorded do not suggest at all whether pursuant to receipt of information, the assessing officer had independently applied its mind to the information received or conducted its own inquiry into the matter for the purpose of coming to a conclusion that indeed income assessable to tax had escaped assessment or that the transaction in question with the alleged shell entity was only a paper transaction. Accordingly the reassessment notice and order disposing the objection. was quashed, Followed ITO v. Lakhmani Mewal Das (1976) 103 ITR 437 (SC) First Source

Solutions Ltd. v. Asstt. CIT (2021)) 132 taxmann.com 121 /438 ITR 139 (Bom)(HC) (HC)).(AY. 2016-17)
B.U. Bhandari Autolines (P.) Ltd. v. ACIT (2023) 456 ITR 56/ 292 Taxman 195/ 331 CTR 240 (Bom)(HC)

S. 147 : Reassessment-With in four years-Advance-Change of opinion-Notice and order disposing the objection was quashed [S. 69A 148, Art. 226]
Allowing the petition, the Court held that the issue relating to advance made by assessee to a co-operative society had been specifically gone into by Assessing Office in scrutiny assessment proceedings for assessment year 2017-18 by raising queries which was replied by assessee, reassessment proceedings initiated by Assessing Officer on same subject matter would be treated as a change of opinion which would not satisfy jurisdictional condition for reopening assessment. Reassessment notice and order disposing the objection was quashed. (AY. 2017-18)
D.K. Realty India (P.) Ltd. v. ACIT (2023) 148 taxmann.com 468 / 292 Taxman 328 (Bom)(HC)

S. 147 : Reassessment-Change of opinion-Notice and order-disposing the objection was quashed [S. 148, Art. 226]
Held that assessee's brother's case on similar facts and circumstances of the issue, the court set aside the notice issued under section 148 to reopen the assessment under section 147 and the order rejecting the assessee's objections. Accordingly, the petition was allowed. Followed Asraf Alibhai Nathani v. ACIT (2023) 452 ITR 292 (Bom)(HC)

Arshad Alibhai Nathani v. ACIT (2023)452 ITR 301 (Bom) (HC)
Editorial : SLP of Revenue dismissed, CIT v. Arshad Alibhai Nathani(2023) 452 ITR 415 (St)(SC)

S. 147 : Reassessment-Within four years-Intangible assets-Depreciation-No new information-Reassessment notice was quashed [S. 32, 35BB, 148, Art. 226]
Allowing the petition the Court held that though in the order of assessment, there was no specific discussion as regards this particular claim, it must be presumed that the claim was considered and only then allowed. Neither was there any new information received nor was a reference made to any new material on record. In the absence of any tangible material, it was nothing but a change of opinion and therefore, did not satisfy the jurisdictional condition under section 147. The notice and the consequent order disposing of the objections raised for the reopening of the assessment were quashed.(AY.2016-17)
Clear Media (India) Pvt. Ltd. v. Dy. CIT (2023)451 ITR 36 (Bom) (HC)

S. 147 : Reassessment-Change of opinion-Spent more than 85 per cent of receipts-Order of Tribunal quashing the reassessment order is affirmed.[S. 11, 12, 12A, 13, 148, 260A]
Dismissing the appeal of the Revenue the Court held that the Tribunal held that assessee had in fact spent much more than 85 per cent of its receipts under head 'funds pending utilization' and also of total receipts and entire spending was towards charitable purposes and there was no income accumulated or set apart in excess of 15 per cent of income during year under consideration. Order of Tribunal quashing the reassessment order is affirmed. (AY. 2004-05, 2005-06)
CIT (E) v. Tibetan Children's Village Dal Lake (2023) 335 CTR 380 /155 taxmann.com 118 (Himachal Pradesh)(HC)

S. 147 : Reassessment-With in four years-Employment of new workmen-Matter is remanded back to single judge to examine for want of jurisdiction. [S. 80JJAA, 148, Art. 226]

Assessment was reopened on ground that deduction under section 80JJAA had been incorrectly claimed. Assessee filed a writ petition challenging rejection of objections and proposal/declaration of intent on part of Assessing Authority to proceed further under section 147 on premise that assumption of jurisdiction was bad as it was on basis of mere change of opinion. Single Judge proceeded to relegate assessee to participate in reassessment proceedings while leaving it open to Assessing Authority to drop proceedings for reassessment, if circumstances did not justify invocation of reassessment. On appeal the division Bench hheld that since Single Judge had not examined or rendered any finding on above aspect and to contrary, directed above question to be decided by Assessing Authority in course of exercise of power of reassessment, matter was to be remitted back to Single Judge to examine as to whether assumption to make reassessment was bad for want of jurisdiction Matter remanded. (AY. 2012-13)

Polaris Financial Technology Ltd. v.Asst. CIT (2023) 332 CTR 351 / 150 taxmann.com 151 (Mad)(HC)

Editorial : Polaris Financial Technology Ltd. v.Asst. CIT (WPNo. 31722 of 2017 dt. 13 th March, 2020 is set aside.

S. 147 : Reassessment-Accommodation entries-Long term capital gains-Difference between reasons for issue of notice recorded and given to assessee-Order of Tribunal quashing the reassessment notice is affirmed.[S. 10(38, 45, 148, 260A 263]

Dismissing the appeal of the Revenue the Court held that the Tribunal had found that a reading of the reasons recorded for the reassessment clearly established that the reasons supplied to the assessee were not the same reasons recorded and found in the assessment record. The Tribunal was right in holding that the order of reassessment was not valid. Since the original reassessment order itself was not validly passed, the subsequent revision order by the Principal Commissioner was held invalid(AY.2013-14)

PCIT v. Badal Prakash Jindal (HUF) (2023)457 ITR 345/293 Taxman 350 / 334 CTR 164 (Orisa)(HC)

PCIT v. Binoy Kumar Jindal (2023)457 ITR 345/293 Taxman 350 (Orisa)(HC)

PCIT v. Binoy Kumar Jindal (HUF) (2023)457 ITR 345/293 Taxman 350 (Orisa)(HC)

PCIT v. Bulbul Agarwal (2023)457 ITR 345/293 Taxman 350 (Orisa)(HC)

S. 147 : Reassessment-Reassessment based on materials discovered in the assessment year 2014-15-Alternative remedy-Writ petition is dismissed. [S. 92CA, 144C, 148,151, Art. 226]

Dismissing the petition the Court held that there was a clear connection between the materials discovered subsequently and the belief formed by the Assessing Officer that income had escaped assessment in the assessment year 2011-12. The belief of the Assessing Officer was based on direct evidence. Therefore, it would be just and proper if the procedure prescribed under the statute was followed and in which event the assessee would have all the opportunities and remedies.(AY.2011-12)

HSBC Holdings Plc. v. Dy. CIT (2023)457 ITR 316/ 150 taxmann.com 221 /335 CTR 427 (Telangana)(HC)

S. 147 : Reassessment-With in four years-Audit objection and factual errors-Capital gains-Agricultural land-Notice is bad in law-Notice and order is quashed.[S. 45, 50C, 148, Art. 226]

Allowing the petition the Court held, that the notice of reassessment was based on an audit objection. Moreover the sale document registered before the registered authority clearly indicated that what had been transacted was an agricultural land. This document was cleared by the stamp authority. When the assessment proceedings were undergone, which had culminated into an order of assessment complete scrutiny was made with respect to this transaction. The notice of reassessment had been issued on the ground that capital gains on sale of the land had escaped assessment. The notice was not valid. The notice dated March 28, 2021 as well as the order dated March 10, 2022 were liable to be quashed.(AY.2017-18)
Limbabhai Ishwarbhai Jodhani v. ACIT (2023)458 ITR 331/150 taxmann.com 291 (Guj)(HC)

S. 147 : Reassessment-With in four years-Transaction has not taken place in previous year-Objection is not considered-Sanction is without application of mind-Notice and order disposing the application is quashed.[S. 133(6), 148, 151, Art. 226]
Allowing the petition the Court held, that the Assessing Officer failed to notice that the reassessment proceedings could not have been taken for the assessment year 2016-17, having regard to the fact that the payments for the flat were made in the financial year 2013-14 (the assessment year 2014-15) and the financial year 2014-15 (the assessment year 2015-16), and no part of the transaction took place in the assessment year in question. The objections filed by the assessee and the response given by him to the notice issued under section 133(6) of the Act. Sanctioning the commencement of reassessment proceedings, had simply rubber-stamped the proposal. There had been no application of mind. The notice of reassessment notice and order disposing the objection is quashed (AY.2016-17)
Sanjay Kumar v. ACIT (2023)458 ITR 548 /151 taxmann.com 158 (Delhi)(HC)

S. 147 : Reassessment-Capital or revenue-Amount paid to electricity Board for bay lines allowed as revenue expenditure-No new material-Reassessment is not valid. [S. 37, 148, 260A]
Dismissing the appeal of the Revenue the Court held that there was no fresh material brought in by the Assessing Officer for reopening the assessment, the consumer initially and that the cost paid by the consumer shall be the property of the licensee and that similar benefit had been extended to the assessee for the assessment years 1992-93 and 2004-05. (AY.2007-08)
CIT v. Verdhman Textiles Ltd. (2023)456 ITR 427 /153 taxmann.com 141 / (P&H)(HC)

S. 147 : Reassessment-Faceless Assessment-Principle of natural justice-Oder passed without giving an opportunity of hearing-Reassessment proceedings and consequential notices quashed-Assessing Officer is directed to afford due opportunity and pass order accordingly. [S. 148, 156, Art. 226]
Allowing the petition the Court held that there could not be a hyper technical approach, especially with the assessee placing on record the response at 11 :50 a.m., which was not contradicted. The decision on the assessee's objections to the reassessment proceedings under section 147, the assessment order and consequential demand notices were quashed. The Assessing Officer was directed to afford another opportunity of hearing in compliance with the Faceless Assessment Scheme parameters.(AY.2014-15) (SJ)
Harsha Bhavesh Patel (Smt.) v. NFAC (2023)456 ITR 476 (Karn)(HC)

S. 147 : Reassessment-Audit objection-Corporate Social Responsibility-Change of opinion-Notice and order disposing the objection is quashed and set aside.[S. 37(1), 148, Companies Act, 2013,S. 135, Art. 226]

Allowing the petition the Court held that reopening of assessment based on the audit objection is bad in law. Accordingly the notice and order disposing the objection is quashed and set aside. (AY. 2017-18)

Adani Power Rajasthan Ltd v. ACIT (2023) 150 taxmann.com 136/ 334 CTR 187/(2024) 461 ITR 210 (Guj)(HC)

S. 147 : Reassessment-Assessment order is set aside in writ remanding matter to Assessing Officer for reconsideration-Appeal-Order in writ petition modified granting liberty to file appeal before Appellate Authority raising all grounds on meritS. [S. 148, 246A, Art. 226]

On writ single judge had set aside the reassessment orders under and remitted the matters to the Assessing Officer for reconsideration and directed the assessee to treat the show-cause notices issued already as fresh notices for the assessment years 2015-16 and 2016-17, on appeal, division bench modified the order in writ petition and granted liberty to file an appeal before Appellate Authority raising all grounds on merits. (AY.2015-16, 2016-17)

International Seaport Dredging Pvt. Ltd. v NFAC(2023)456 ITR 267/152 taxmann.com 194 (Mad)(HC)

Editorial : Decision of single judge in International Seaport Dredging Pvt. Ltd. v NFAC (2022) 446 ITR 246 (Mad)(HC), modified.

S. 147 : Reassessment-Principles of natural justice-Matter remanded with directions to grant time. [S. 144B, 148, Art. 226]

On writ the orders were set aside and the matter was remitted back to the for reconsideration. (AY.2014-15, 2016-17)(SJ)

Paypal India Pvt. Ltd. v. Add. CIT(No.1) (2023)456 ITR 189 (Mad)(HC)

Paypal India Pvt. Ltd. v Add. CIT (No.2) (2023)456 ITR 191 (Mad)(HC)

S. 147 : Reassessment-Principles of natural justice-Liberty is given to assessee to raise fresh contentions while giving effect to Court's directionS. [S. 143(2), 148, Art. 226]

On appeal the court modified the order of single judge and directed the Assessing Officer to consider the assessee's reply and submissions during the reassessment proceedings and pass orders afresh, on the merits after providing due opportunity of hearing to the assessee.(AY.2014-15)

Paypal India Pvt. Ltd. v. Add. CIT (No. 3) (2023)456 ITR 195 (Mad)(HC)

Editorial : Decision of single judge in Paypal India Pvt. Ltd. v Add. CIT (No.2) (2023)456 ITR 191 (Mad)(HC), modified.

S. 147 : Reassessment-With in four years-Special economic zones-Explantion was furnished in the course of assessment proceedings-Notice and order disposing the objection is quashed.[S. 10AA, 148, Art. 226]

Allowing the petition the Court held that the Assessing Officer in response to a notice under section 142 having been satisfied with explanation given by assessee passed an assessment order, accepting explanation tendered by assessee. The notice and order disposing of objections is quashed and set aside. (AY. 2017-18)

Amneal Pharmaceuticals (P.) Ltd. v. ACIT (2023) 295 Taxman 197 (Guj.)(HC)

S. 147 : Reassessment-Capital work-in-progress-Change of opinion-Audit objection-No fresh tangible material-Order of Tribunal is affirmed. [S. 143(3) 148 260A]

Tribunal held that the Assessing Officer had not recorded his satisfaction that income chargeable to tax had escaped assessment. Reasons recorded did not advert to any tangible material which had triggered reassessment proceeding. Assessee had made full disclosure relating to why it had debited expenses incurred by it on software development for business purposes, in note appended to computation of income. Assessee mentioned in note that cost incurred on certain marketable software products under developments were brought forward from previous year as capital WIP and due to uncertainty in revenue which could be realized in future from marketing such products, management had charged off to profit and loss account and since amount was for software developed for business purpose, same was of revenue nature, and was claimed as deduction Tribunal was justified in holding that impugned reopening of assessment was a change of opinion and reassessment proceeding could not have been triggered merely on basis of audit objection, without any fresh tangible material. Order of Tribunal is affirmed. (AY. 2002-03)

PCIT v. Network Programme India Ltd. (2023) 295 Taxman 335 / (2024) 461 ITR 37 (Delhi)(HC)

S. 147 : Reassessment-Capital work-in-progress-Change of opinion-Audit objection-No fresh tangible material-Order of Tribunal is affirmed.[S. 143(3) 148 260A]

Tribunal held that the Assessing Officer had not recorded his satisfaction that income chargeable to tax had escaped assessment. Reasons recorded did not advert to any tangible material which had triggered reassessment proceeding. Assessee had made full disclosure relating to why it had debited expenses incurred by it on software development for business purposes, in note appended to computation of income. Assessee mentioned in note that cost incurred on certain marketable software products under developments were brought forward from previous year as capital WIP and due to uncertainty in revenue which could be realized in future from marketing such products, management had charged off to profit and loss account and since amount was for software developed for business purpose, same was of revenue nature, and was claimed as deduction Tribunal was justified in holding that impugned reopening of assessment was a change of opinion and reassessment proceeding could not have been triggered merely on basis of audit objection, without any fresh tangible material. Order of Tribunal is affirmed. (AY. 2002-03)

PCIT v. Network Programme India Ltd. (2023) 295 Taxman 335 /(2024) 461 ITR 37 (Delhi)(HC)

S. 147 : Reassessment-Findings recorded was not challenged before Appellate Authority-Writ petition is dismissed. [S. 148 264, Art. 226]

Dismissing the petition the Court held since there was no challenge to the findings recorded by the assessing authority the revisional authority had not examined them and had dismissed the revision petition of the assessee. Writ petition is dismissed. (AY.2007-08)(SJ)

Achal Kumar Agrawal v. PCIT (2023)455 ITR 380/ 293 Taxman 686 (All) (HC)

Editorial : SLP is dismissed, Achal Kumar Agrawal v. PCIT (2023)455 ITR 383 (SC)

S. 147 : Reassessment-Sale transaction need to be verified-Reason to suspect-Notice is not valid.[S. 148, 260A]

Dismissing the appeal of the Revenue the Court held that the recorded reasons of the Assessing Officer clearly showed that the Assessing Officer had himself held that "these sale transaction need to be verified". This observation of the Assessing Officer itself made the reason to believe actually as a reason to suspect. There could not be a fishing and itinerant enquiry. Order of Tribunal is affirmed.(AY.2010-11)

PCIT v. Maheshwari Devi (2023)455 ITR 755 /146 taxmann.com 550(Jharkhand)(HC)

S. 147 : Reassessment-Faceless Assessment-Alternative remedy-Writ is not maintainable. [S. 144B, 148, 246A Art. 226]

Dismissing the appeal the Court held that since the alternative efficacious remedy of appeal before the appellate authorities under sections 246A and 254 and appeal before the High Court under section 260A were available to the assessee, the writ petition at such a pre-mature stage would not be entertained and granted the assessee time to file appeal before the appellate authorities who were directed to consider and decide the appeal on merits in accordance with law. Order of single judge is affirmed.

Geekay Millennium Company v. UOI(No.2) (2023)455 ITR 574 (Chhattisgarh)(HC)

Editorial: Decision of the single judge in Geekay Millennium Company v. UOI (No.1) (2023)455 ITR 231 (Chhattisgarh)(HC), affirmed.

S. 147 : Reassessment-Faceless Assessment-Alternative remedy-Writ is not maintainable. [S. 144B, 148, 246A Art. 226]

Dismissing the writ challenging the reassessment proceedings the Court held that since the alternative efficacious remedy of appeal before the appellate authorities under sections 246A and 254 and appeal before the High Court under section 260A were available to the assessee the writ petition at such a pre-mature stage would not be entertained and granted the assessee time to file appeal before the appellate authorities who were directed to consider and decide the appeal on merits in accordance with law.(SJ)

Geekay Millennium Company v. UOI (No. 1) (2023)455 ITR 531 (Chhattisgarh) (HC)

Editorial : Geekay Millennium Company v. UOI(No.2) (2023)455 ITR 574 (Chhattisgarh)(HC), affirmed.

S. 147 : Reassessment-Failure of service of notice-Technological glitch in Web portal-Matter relegated to authority from stage of issue of notice. [142(1), 144B, 147, 148, Art. 226]

Allowing the petition the Court held, that any technological glitch in the software in the web portal of the Department would prejudice the assessee seriously and nothing had been explained in relation to the specific contention of the assessee of non-service of notice under section 142(1). Such technical glitch did not permit the Assessing Officer to fulfil his statutory obligation of serving the notice to the assessee and prejudiced the rights of the parties. Accordingly the order under section 147 read with section 144B and consequential notices of demand and penalty were quashed and set aside. The matter was relegated to the authority concerned from the stage of issuance of notice under section 142(1)(AY.2017-18)

S. P. Developers v.Add. CIT (2023)455 ITR 428/149 taxmann.com 158 (Guj)(HC)

S. 47 : Income chargeable to tax which had escaped assessment-Reassessment order and consequential order and notices are set aside-Opportunity must be given before passing the order. [S. 144, 147, 148, 156, 226, 271(1)(b), 271(1)(c), 271F, Art. 226]

Allowing the petition the Court held that the Assessing Officer had not been able to crystallize, what according to him was the exact amount of income which was chargeable to tax which had escaped assessment under section 147. Therefore, an opportunity was to be given to the assessee to file objections to the notices issued under the unamended provisions of section 148 and the Assessing Officer was to consider the objections and accordingly pass a speaking order.(AY.2015-16 to 2017-18)

Swarovski India Pvt. Ltd. v CIT (2023)455 ITR 656 (Delhi)(HC)

S. 147 : Reassessment-Opportunity of hearing is given and submission is considered-Writ petition is dismissed. [S. 148, Art. 226]

Dismissing the petition the Court held that the Assessing Officer had found that the nature of transactions mentioned in the notice which had been explained in the reply of the assessee required detailed examinations with necessary evidence in support of the assessee's claim during the reassessment proceedings. Therefore, the notice under section 148 and the order rejecting the assessee's objections to the reopening under section 147 need not be interfered with in exercise in writ jurisdiction (AY.2016-17)

Viswabharathi Medicals v ITO (2023)455 ITR 765/ 330 CTR 445/ 221 DTR 309 (Ker)(HC)

S. 147 : Reassessment-Within four years-Audit objection-Question of law-Notice and order disposing the objection was quashed. [S. 148, Art. 226]

On allowing the petition the Court held that the audit party had expressed its opinion on a question of law. It had also pointed it out to the Assessing Officer and that information which had been given was on question of law. The Assessing Officer had in clear terms stated that the objections raised by the audit party had been examined carefully and found to be not acceptable. The Assessing Officer had no subjective satisfaction while issuing the notice of reopening the assessment that income had escaped assessment. The notice of reassessment was not valid.(AY. 2017-18)(2016-17)

Adani Power Maharashtra Ltd. v. ACIT (2023)454 ITR 720 (Guj)(HC)

Adani Power Rajasthan Ltd v. ACIT (2023)454 ITR 734/ 292 Taxman 475 (Guj)(HC)

S. 147 : Reassessment-Unexplained investments-Search and Seizure-Survey-Statement in the course of survey is not conclusive evidence-Assessment of third person-Reassessment order was quashed. [S. 69B,132 143)) 148,153C.]

The Assessing Officer passed assessment orders for the AYs 2005-06, 2006-07 and 2007-08. The Assessing Officer, for the AY. 2005-06 held that reasons formed to reopen the assessment on the basis of assessee's voluntary depositions and seized materials. The Commissioner (Appeals) partly allowed the appeals. The Tribunal partly allowed the appeals and cross objections filed by the assessee. On appeal the Court held that the Tribunal had erred in upholding the reopening of the assessment under section 147 for the AY.s 2005-06, 2006-07 and 2007-08 and in holding that there was reason to believe that income had escaped assessment and all mandatory conditions to reopen the assessment were satisfied. No proceedings were initiated under section 153C. Thus, there was patent non-application of mind. The Assessing Officer had not recorded his satisfaction with regard to escapement of income. The assessee's admission during the survey under section 133A could not be a conclusive evidence. Relied on Pullangode Rubbber Produce Co Ltd v. State of Kerala (1973) 91 ITR 18 (SC) (AY. 2005-06 to 2007-08)

Dinakara Suvarna v. Dy. CIT (2023)454 ITR 21 (Karn)(HC)

Editorial : SLP of Revenue is dismissed, Dy.CIT v. Dinakara Suvarn (2023) 454 ITR 27 (SC)

S. 147 : Reassessment-Personal hearing through Video conference was not provided-Violation of principles of natural justice-Matter remanded. [S. 68, 148 Art. 226]

Allowing the petition the Court held that the Assessing Officer did not afford the requested opportunity of personal hearing through video conferencing to explain the finding of the Assessing Officer in respect of the amount paid. Even before the date sought for by the assessee the order under section 147 was passed without giving any reasons for not affording the opportunity of personal hearing. The assessee ought to have been granted an opportunity

of personal hearing. The order was quashed and set aside and the matter was remanded to the Assessing Officer for fresh consideration on merits in accordance with law after affording a personal hearing to the assessee and by adhering to the principles of natural justice.(AY. 2013-14)
Jayaprakash v. NFAC (2023)454 ITR 690 (Mad)(HC)

S. 147 : Reassessment-With in four years-corporate social responsibility expenses-Reopening was without application of mind-Reassessment notice and order disposing the objection is quashed. [S. 148, Companies Act, 2013, S. 135 Art.226]
Allowing the petition the Court held that since Co-ordinate Bench of Gujarat High Court in assessee's own cases for preceding year and succeeding year, Adani Power Maharashtra Ltd. v. ACIT (2023) 292 Taxman 475 / 147 taxmann.com 583 (Guj)(HC) in similar situation found action of reopening without independent application of mind. Accordingly the notice and order disposing the objection is quashed and set aside. (AY. 2016-17)
Adani Power Maharashtra Ltd. v. ACIT (2023) 294 Taxman 414 /(2024) 460 ITR 720 (Guj.)(HC)

S. 147 : Reassessment-With in four years-Transfer-Revaluation of asset-Estate development-Converted from inventory to fixed asset-Firm converted into company-Order of Tribunal quashing the reassessment was quashed. [S. 2(47), 45(1), 45(4),47(xiii), 148]
Dismissing the appeal of the Revenue the Court held that the, assessee had produced copies of partner's capital and current accounts together with their audited accounts as also furnished details of fixed assets during original assessment proceeding and Assessing Officer had accepted that revaluation amount was not income or taxable and no addition was made in original assessment order. Court also held that the Tribunal held that there was no distribution of assets but only taking over of firm by company and as such there was no transfer of capital assets as contemplated in section 45(1) or section 45(4) and on facts found that no profit on account of revaluation had accrued or arisen to assessee firm and revaluation of fixed asset did not give any profit to firm. Order of Tribunal quashing the reassessment was affirmed. (AY. 2008-09, 2009-10)
PCIT v. Salapuria Soft Zone (2023) 458 ITR 345/ 293 Taxman 739 /334 CTR 367/ 225 DTR 313 (Cal.)(HC)

S. 147 : Reassessment-With in four years-Long term capital gains from equities-Instances of insider trading-Formation of opinion based on *prima facie*, but precise facts-Strong foundation for invoking reassessment-Challenge to notice was dismissed.[S. 10(38), 45, 148, Art. 226]
The assessee challenged the notice of reassessment. Court held that the Assessing Officer had found that there was likelihood of acts and instance of insider trading by assessee. Beneficiaries, it was noticed, were promoters group consisting of family member and the assessee was prima facie found to have earned income which was chargeable to tax but same was not shown in return of income. Accordingly there being a strong foundation for invoking reassessment, challenge to impugned notice under section 148 was dismissed. (AY. 2017-18)
Munjal M Jaykrishna Family Trust v. ITO (2023) 293 Taxman 665 /333 CTR 364 (Guj.)(HC)

S. 147 : Reassessment-With in four years-Change of opinion-Deductions on actual payment-Outstanding Rural Development (RD) cess amount as a liability in balance sheet-Rectification proceeding was dropped-All material facts were disclosed before

Assessing Officer at time of original assessment-Affirming the order of the Tribunal the Court held that the reassessment is bad in law. [S. 43B, 143(3),148, 154.]

Dismissing the appeal of the Revenue the Court held that once a proceeding under section 154 was dropped on objection raised by assessee, it was not open to revenue to initiate proceedings under section 148 of the Act.Since all material facts were disclosed before Assessing Officer at time of original assessment, it was not open to him to open a concluded assessment merely on basis of change of opinion. (AY. 1998-99)

Mallikarjuna Rice Industries v. ITO (2023)458 ITR 566/ 293 Taxman 400 (Telangana) (HC)

S. 147 : Reassessment-With in four years-Shares issued at premium to non-resident company-Valuation certificates were furnished under FEMA regulations-Income from other sources-Detailed explanation was furnished in the course of original assessment proceedings-No new material or information-Reassessment notice and order was quashed and set aside. [S. 56(2)(viib), 79, 148, R.11UA, Art. 226]

Reopening notice under section 148 was issued on the ground that excessive share premium received by assessee, which was chargeable under section 56(2)(viib), had escaped assessment. On writ it was contended that the specific queries were raised by Assessing Officer during scrutiny assessment with respect to issue of shares at premium and its valuation and assessee had duly disclosed details regarding same in form of names, PAN number, confirmations and ITR of persons from whom premium were received, method adopted for computing premium of shares, valuation certificates under FEMA regulations etc. It was held that a detailed explanation for non-applicability of provision of sections 79 and 56(viib) was also projected stating that since share capital and share premium consideration were received from holding company based in Netherlands, no ITR was filed in India and there was no transfer of shareholding power. Allowing the petition the court held that since reassessment proceedings was initiated on basis of very same material which was available at time of original assessment and no new material or information came within knowledge of revenue, the notice issued and consequent order passed were set-aside.(AY. 2016-17) (AY. 2015-16)

Ball Aerosol Packaging India (P.) Ltd. v. ACIT (2023) 459 ITR 303 / 292 Taxman 55 (Guj.)(HC)

S. 147 : Reassessment-With in four years-Investment for purchase of property at Pali-Recorded reason the property mentioned at Delhi-reasons for reopening assessment were founded on non-existent transaction of purchase of property at Delhi, reassessment proceedings was quashed. [S. 69, 148, Art. 226]

Assessing Officer issued on assessee a notice for proposing to reopen assessment for reasons that it had made investment for purchase of a property situated at Delhi and had not disclosed investment in return of income and as such investment had escaped assessment. Assessee filed objections stating that it had not procured any property at Delhi and it had rather purchased a land at Pali and this transaction was duly disclosed in return of income. Against the order of disposing the objection the assessee filed the writ petition. Revenue in reply to writ petition admitted that property at Delhi was inadvertently mentioned in proceedings under section 148 and reference thereto should be considered as property at Pali. Allowing the petition the Court held that since reasons for reopening assessment were founded on non-existent transaction of purchase of property at Delhi, reassessment proceedings was quashed. (AY. 2017-18)

Rajhans Processors v. UOI (2023) 292 Taxman 332/332 CTR 581/ 225 DTR 224 (Raj.)(HC)

S. 147 : Reassessment-With in four years-Unexplained investment-Laundering of huge funds-Rotation of funds-Reassessment notice and order disposing the objection is justified [S. 69B, 148, Art. 226]

One NK Proteins Ltd. became a member of NSEL in 2008 and executed rotation trades whereby the margin profit would eventually be credited back to its account. The investment to carry out such trades being unexplained, the transaction quite possibly was deemed to launder unaccounted money only. The assessee was providing accommodation entries and could not disclose the source of investment and failed to disclose fully all material facts before the AO. Only brokers' ledgers and bank statements were provided whereas many details such as Demat accounts were asked for. The reasons expressly noted the modus operandi of the NK group and the order on objections was a well-reasoned order. Petition was dismissed. (AY. 2013-14, 2014-15)

Omni Lens (P.) Ltd. v. ACIT (2023) 291 Taxman 619 (Guj)(HC)

S. 147 : Reassessment-With in four years-Contribution to certain funds-Not claimed any relief-Reassessment notice and order disposing the objection was quashed.[80CCC(1), 148, Art. 226]

Allowing the petition, the High Court held that the facts relating to issue on the basis of which the reopening of the assessment was sought were earlier called for by the AO and all such information was furnished by the Assessee. Further, the Assessee having furnished details and clarified his stand with clear and convincing facts relating to the investment by him in the pension policy, source of funds applied and further pointing out that the deduction was not claimed in that regard under Section 80CCC(1) rendering the receipt of surrender value not liable to be offered to tax. Reassessment notice and order disposing the objection was quashed. (AY. 2013-14)

Piyush Ambalal Gandhi.v. DCIT (2023) 457 ITR 411/ 291 Taxman 396 (Guj)(HC)

S. 147 : Reassessment-Special category states-Assessing Officer applied his mind-Proceeding to reopen assessment was actuated merely by a change of opinion and, hence, impugned notice was set aside-Time limit to issue of notice-Notice is not barred by limitation-Sanction obtained satisfaction of Additional Commissioner, an authority who is not covered by provision of section 151(1), as it stood on 1-1-2019, proceeding initiated against assessee-company by issuance of notice under section 148 was held to be not in accordance with law.[S. 80IC, 148, 149, 151 (1), Art. 226]

Allowing the petition the Court held that assessment was made by taking recourse to section 143(2) and 143(3), it could not be open to ITO to project that income had escaped assessment. Further the Assessing Officer had applied his mind on defence taken by assessee and accepted deduction claimed to be admissible, therefore, it could be said that proceeding under section 148 to reopen assessment was actuated merely by a change of opinion and, hence notice was to be set aside. As regards time limit for notice, the ITO issued a notice dated 1-1-2019, under provision of section 149(1)(b) as amended by Finance Act, 2012 with effect from 1-7-2012, which was in force when notice dated 1-9-2019 was issued by ITO, period of limitation to issue notice under section 148 would be four years, but not more than six years. Therefore, notice dated 1-1-2019 could not be said to be issued after expiry of prescribed period of limitation and accordingly, assessee's challenge to notice as barred by limitation was to be dismissed. As regards sanction ITO had obtained satisfaction of Additional Commissioner.In view of prescription of section 151(1), by necessary implication, 'Addl. Commissioner' would not be same as 'Pr. Chief Commissioner' or 'Chief Commissioner' or 'Pr. Commissioner' or 'Commissioner'. Therefore, since ITO, had obtained satisfaction of Additional Commissioner, an authority who is not covered by provision of

section 151(1), as it stood on 1-1-2019, proceeding initiated against assessee-company by issuance of notice under section 148 was held to be not in accordance with law. (AY. 2014-15) (SJ)

Dhansri Roller Flour Mills v. UOI (2023) 293 Taxman 716 /335 CTR 328 /(2024) 460 ITR 326 (Gauhati)(HC)

S. 147 : Reassessment-Double taxation avoidance agreements-Tax Residency Certificate granted by another country-Binding on Income-Tax Authorities in India-Notice of reassessment is not valid-DTAA-India-Singapore.[S. 90(2), 133(6), 148, Art. 13(4) Art. 226]

Allowing the writ petition against the reassessment notice, the Court held that the assessee had a valid tax residency certificate dated February 3, 2015 from the Inland Revenue Authority of Singapore evidencing that it was a tax resident of Singapore and thereby was eligible to claim tax treaty benefits between India and Singapore. The tax residency certificate is statutorily the only evidence required to be eligible for the benefit under the Double Taxation Avoidance Agreement and the respondent's attempt to question and go behind the tax residency certificate was wholly contrary to the Government of India's consistent policy and repeated assurances to foreign investors. In fact, the Inland Revenue Authority of Singapore had granted the assessee the tax residency certificate after a detailed analysis of the documents, and the Indian Revenue authorities could not disregard it as that would be contrary to international law. Accordingly the tax residency certificate issued by the other tax jurisdiction was sufficient evidence to claim treaty eligibility, residence status, legal ownership and accordingly the capital gains earned by the assessee was not liable to tax in India. No income chargeable to tax had escaped assessment and the notice of reassessment was not valid.(AY.2016-17)

Blackstone Capital Partners (Singapore) Vi Fdi Three Pte. Ltd. v ACIT (IT) (2023)452 ITR 111/ 331 CTR 1/222 DTR 265 / 146 taxmann.com 569 (Delhi)(HC)

S. 147 : Reassessment-Within four years-Capital gains-No failure to disclose material facts-Reassessment notice and order disposing of the objection was quashed. [S. 45, 68, 148, Art. 226]

The assessing Officer issued a reopening notice on the ground that consideration received on sale had not been filed by the assessee in returns and thus there was a reason to believe that income had escaped assessment. On writ allowing the petition, the Court held that the assessee had made full disclosure of consideration received in its returns and the same was not disputed by Assessing Officer. Notice issued was only on premises that the assessee had received a certain amount of consideration and no other reasons. Accordingly, the notice and order disposing of the objection were quashed. (AY. 2008-09)

Wilfred D'Souza v. ITO (2023) 290 Taxman 267 (Karn)(HC)

S. 147 : Reassessment-With in four years-Change of opinion-capital gains-Expenditure incurred in terms of settlement to assessee's sisters from sale consideration of property and indexation benefits and other legal expenses-No failure to disclose material facts-Order disposing objection and notice for reopening was quashed and set aside. [S. 45, 48, 148, Art. 226]

Against order disposing objection and notice issued under section 148 of the Act, the assessee filed writ petition. Allowing the petition the Court held that the Assessing Officer had undertaken a detailed investigation in that regard including by retrieving information from the Delhi archives. The cost of assets and expenses in connection with transfer of the property and for perfecting title were also subject matter of a detailed scrutiny during the

assessment proceedings. The assessee was specifically called upon to furnish the documentary evidence in support of cost of land, cost of construction and cost of improvement. The assessee had responded by providing details and the manner in which cost of acquisition had been computed. The Assessing Officer had examined the statements and elaborately dealt with the question whether indexation was available in respect of the amount paid by the assessee to his sisters. The assessee had made full disclosure regarding the facts and circumstances in which the amount was paid to his sisters and the Assessing Officer had considered the allowability of such deduction. Reassessment on the ground that the amount paid by the assessee to his sisters was not deductible from the sale consideration for the purpose of computing capital gains was on a change of opinion. It was impermissible for the Assessing Officer to seek reopening of the assessment to review his decision regarding the fair market value of the property or deduction on account of the amount paid by the assessee to his sisters or the expenses incurred by him. The notice issued under section 148 was set aside. (AY. 2016-17)
Deepak Kapoor v. PCIT (2023) 450 ITR 301 / 221 DTR 330 / 330 CTR 220 (Delhi)(HC)

S. 147 : Reassessment-With in four years and beyond four years-Audit objection-Depreciation-Assessing Officer rejecting audit objection-Existence of alternate remedy is not an absolute bar for issue of writ-Notice based on audit objection is held to be not valid.[S. 32, 148, Art. 226]
Allowing the appeal against order of single judge Mobis India Ltd v. Dy. CIT (2016) 380 ITR 170 (Mad)(HC the division bench held that the reassessments were admittedly made on the basis of audit objections. The audit objection was made primarily on the basis that the dealer and vendor network would not constitute a "commercial right". The Assessing Officer submitted that the dealer and vendor network was a valuable asset and intangible and it would constitute a "commercial right". Despite the view being expressed by the Assessing Officer, the audit point was reiterated, stating that the dealer and vendor network would not constitute a commercial right and thus the claim of depreciation could not be accepted. The Assessing Officer without any change in circumstances, proceeded to make the reassessment which was not in "good faith". The reassessment order for the AY. 2008-09 also suffered from the infirmity of not rendering any finding of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment which would vitiate the proceedings. The proceedings were bad for want of jurisdiction thereby warranting interference. The order of the single judge was not justified and the orders of reassessment for the AY. 2008-09 and 2009-10 passed by the Assessing Officer were not valid. Followed Indian and Eastern Newspaper Society v. CIT (1979) 119 ITR 996 (SC).Court also held that existence of alternate remedy is not an absolute bar for issue of writ**.** (AY-2008-09, 2009-10)
Mobis India Ltd v.Dy. CIT (2023) 450 ITR 60/ 332 CTR 775/ 224 DTR 37 (Mad)(HC)
Editorial : Decision in Mobis India Ltd v.Dy. CIT (2016) 380 ITR 170 (Mad)(HC), set aside.

S. 147 : Reassessment-Reasons recorded mere repetition of report of deputy director (Inv)-Failure to supply documents which were basis for formation of belief-Reassessment order and consequential notice of demand set aside.[S. 133A, 143(3), 148, 156, Art. 226]
On writ the assessee contended that the documents on the basis of which the Assessing Officer had formed the reason to believe that income had escaped assessment were not supplied to the assessee, and that the request for opportunity of cross-examination of the persons on the basis of whose statements during the survey under section 133A according to the report of the Deputy Director (Inv) the reopening was supposed to have been directed was not provided to the assessee.Allowing the petition the Court held that the reopening of the

assessment was bad in law for failure to supply the vital documents on the basis of which the reasons to believe that income had escaped assessment under section 147 were formed. The report of the Deputy Director (Inv) was not supplied prior to the reassessment order being passed. The assessment order itself had stated that in response to the notice issued under section 148 the assessee had submitted objections to the reopening of the assessment under section 147. Such objections were not separately considered by the Assessing Officer as mandatorily required by the Supreme Court. The reasons for reopening of the assessment had merely repeated the language of the report of the Deputy Director (Inv) without any independent application of mind by the Assessing Officer. The reassessment order under section 143(3) read with section 147 was unsustainable and therefore, to be set aside. The consequential demand notice under section 156 was also set aside. (AY.2011-12) **Sri Laxmi Narayan Agency v. ITO (2023) 450 ITR 650 / 292 Taxman 192 (Orissa)(HC)**

S. 147 : Reassessment-Change of status-Denial of exemption-Failure to respond notices-Order of assessment justified-Writ petition dismissed-Given liberty to file statutory appeals. [S. 80P(2)(a)(vii), 139,148 Art. 226]

The assessee is a co-operative society. In response to notices issued under section 148 of the Income-tax Act, 1961 the assessee gave a reply stating that it had inadvertently applied for permanent account number as a "firm" instead of "Association of persons", that it was in the process of surrendering the permanent account number and thereafter would file a fresh return with the revised permanent account number as an "Association of persons" and that it was entitled to the benefit under section 80P(2)(a)(vii). Since the assessee did not file returns of income in response to the notices reassessment orders were passed. On a writ petition, the court dismissed the writ petitions filed by the assessee against the notice and the reassessment orders holding that the assessments having been made validly could not be set aside for the mere asking, the assessee being a non-filer and had not complied with the notices and questionnaires issued by the Department. On appeals the Court held that there were no reasons to differ from the order dismissing the writ petitions. However liberty was given to the assessee to file appeals before the Commissioner (Appeals) under section 246A leaving all the issues open to be contended before him.

Tamil Nadu State Apex Fisheries Co-Operative Federation Ltd v. ITO (No. 2) (2023) 450 ITR 365 /331 CTR 204 / 223 DTR 38/ 147 taxmann.com 303 (Mad)(HC)

Editorial : Decision of single Judge in Tamil Nadu State Apex Fisheries Co-Operative Federation Ltd v. ITO (No. 1) (2023) 450 ITR 362/ 331 CTR 207 (Mad)(HC), affirmed.

S. 147 : Reassessment-No new tangible material-Order passed without disposing the objection-Change of opinion-Reassessment order mere reproduction of reasons recorded-Reassessment order was quashed. [S. 69A, 148, 156, Art. 226]

On a writ petition against the order of reassessment making a disallowance under section 69A of the Income-tax Act, 1961 without disposing of the objections of the assessee for the reopening of the assessment.Allowing the petition the Court held that the reassessment order was unsustainable since it was not based on any new material and constituted a mere change of opinion of the Assessing Officer. There was no new material on the basis of which the Assessing Officer could have formed a subjective satisfaction as to income that supposedly had escaped assessment under section 147. The Department was unable to dispute the fact that the reassessment order merely reproduced the notice under section 148 as a reasoning of the Assessing Officer which was entirely based on a reappreciation of the accounts. The reassessment order and the consequential demand notice issued under section 156 were quashed. (AY. 2012-13)

TUFF Tubes (Orissa) Pvt. Ltd v. DCIT (2023) 450 ITR 654 (Orissa)(HC)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Reassessment is quashed. [S. 148]

Held that there was no mention of the failure on the part of the assessee to make a full and true disclosure of all material facts relevant for the purpose of assessment in the original assessment proceedings before the Assessing Officer. According to the proviso, the Assessing Officer was bound to mention the failure on the part of the assessee to make a full and true disclosure of all material facts relevant for the purpose of assessment. The Assessing Officer had invalidly assumed the jurisdiction under section 147 of the Act. Hence, the reassessment order is quashed.(AY.2008-09)

Asst. CIT (OSD) v. S. S. Gas Lab Asia P. Ltd. (2023)107 ITR 482 (Delhi) (Trib)

S. 147 : Reassessment-After the expiry of four years-With in four years-Raised specific query in the original assessment proceedings-No new tangible material-Reassessment is bad in law. [S. 143(3), 148]

Held that the assessee raising specific queries regarding the interest income in question followed by the assessee's clarifications. The assessee had placed on record its balance-sheets, tax audit reports and audited annual accounts, throwing sufficient light on the details of interest income. Therefore, for the assessment years 2011-12 and 2012-13 the reopening of the assessments did not satisfy the test of the Assessing Officer's having recorded any specific satisfaction based on fresh tangible material that the assessee had not disclosed "fully" and "truly" all the relevant particulars in the course of regular assessments.(AY.2011-12 to 2013-14)

Khed Economic Infrastructure P. Ltd. v. Dy. CIT (2023) 107 ITR 83 (SN)(Pune) (Trib)

S. 147 : Reassessment-After the expiry of four years-Borrowed satisfaction-Reassessment is not valid-Approval is not valid. [S. 132, 133A,148, 151, 153A, 153C]

Held that the reasons recorded for the formation of belief of escapement of income chargeable to Income-tax for the reopening of the completed assessment were found to be based on wrong and irrelevant facts, borrowed satisfaction and violation of principles of natural justice and were unsustainable,That whether assessment should have been completed under section 153A / 153C and not under section 148 of the Act did not require separate adjudication, when the reopening itself had been held to be invalid for wrong and irrelevant facts relied on by the Assessing Officer for reopening the completed assessment. Held that there was no failure on the part of the assessee to disclose the bank account during the original assessment proceedings or the post-search investigation. In the reasons recorded, the Assessing Officer has nowhere alleged that the bank account of the assessee was not disclosed during the original assessment proceedings. It is a trite law that the reasons recorded for the formation of belief of escapement of income chargeable to Income-tax have to be taken as they are and they cannot be improved upon subsequently. The Assessing Officer's finding that the statement of H was recorded by the Department on March 29, 2012, but it was received by the Assessing Officer on February 4, 2019, could not be accepted because such information was available with the Department on September 15, 2014, the date of the passing of the original assessment order under section 143(3) of the Act, after verification of advance against sale of property from six persons. Therefore, the extended period of six years under the proviso to section 147 of the Act was not available to the Department. (AY.2012-13)

Evershine Recreation P. Ltd. v. Dy. CIT (2023) 107 ITR 65 (SN) (Chd.)(Trib)

S. 147 : Reassessment-After the expiry of four years-Re-appreciation of same documents which were available at the time of original assessment-Reassessment is quashed.[S. 143(3)]

The sole issue involved is whether reassessment proceedings can be initiated after a period of 4 years from the end of the relevant assessment year when complete disclosure was made regarding the issue at hand by the Assessee during scrutiny assessment under section 143(3) of the Act.

The Hon'ble Tribunal drawing reference to a catena of judgements, quashed the reassessment notice and set aside the reassessment proceedings on the reasons that (i) There was nothing on record to establish that there was any failure on the part of the Assessee to disclose fully and truly all material facts necessary for the assessment; (ii) Relevant queries were made on the issue at hand during the course of assessment proceedings and the Assessee had duly replied to the same; (iii) The instant proceedings were reopened by way of 'change of opinion' since no fresh material or information had been brought on record by the Assessing Officer to show that there had been escapement of income due to failure on part of the Assessee to truly and fully disclose all material facts; (iv) The reassessment proceedings were initiated only on re-appreciation of same documents which were available with the Assessing Officer at the time of original assessment. (AY. 2008-09)

Madhya Gujarat Vij Company Ltd. v. DCIT (2023) 102 ITR 78 (SN) (Ahd) (Trib)

S. 147 : Reassessment-After the expiry of four years-Accommodation entries-Shell companies-Borrowed satisfaction-Information from investigation wing-Natural justice-Search-Survey-No failure to disclose material facts-Without the application of mind-Opportunity for cross-examination was not provided-Reassessment was quashed. (Tribunal has passed 359 pages order dealing with all issues on reassessment proceedings. [S. 131, 132.132(4), 133(6), 133A, 148, 153A, 153C]

Allowing the appeal of the assessee the Tribunal held that the reasons recorded for the formation of belief of escapement of income chargeable to income tax are found to be wrong and irrelevant for the reopening of the completed assessment of the assessee company. Company formed for real estate development purposes, purchased land, obtained license from the Government of Haryana for the proposed commercial project, and invested Rs. 28.29 crore under the said project, it cannot be alleged to be a shell entity for the reasons recorded for the formation of belief of escapement of income chargeable to income tax as it has no income earning apparatus. that the learned Commissioner of Income Tax (Appeals) has gone wrong in upholding the initiation of the re-opening of the completed assessment on the basis of information contained in the search material found during the search of a third party, since there was no incriminating material; that so, the initiation, completion and consequential upholding of the re-assessment proceedings is not sustainable in law; that the reasons recorded for the formation of belief of escapement of income chargeable to income tax by the Assessing Officer are based solely on the Investigation Wing's report and the statement of Shri Himanshu Verma; that the report of the Investigation Wing only suggested to the Assessing Officer to examine the details and to only thereafter determine whether there could be any justification for initiating the re-assessment proceedings; that the statement of Shri Himanshu Verma does not implicate the assessee in any manner that the information received from Income Tax Officer, Ward 1(5) Chandigarh was denied to be confronted to the assessee, and not providing the copy of the statement of Shri Himanshu Verma to the assessee is in violation of the principles of natural justice, as well as the provisions of section 142(3) of the Income-tax Act; that therefore, such information and statement of Shri Himanshu Verma cannot be used against the assessee for making addition that it is also patent that the learned Commissioner of Income Tax (Appeals) erroneously upheld the re-

opening, which was based on wrong and irrelevant facts recorded under reasons recorded for the formation of belief of escapement of income chargeable to income tax for reopening by Assessing Officer; that we were, therefore cancelling the assessment, as the grounds on which the re-assessment notice was issued were not found to exist or were found to be irrelevant and that the reopening of the assessment under section 147 of the Act is based on wrong and irrelevant facts and the reopening is held to be bad in law.(Tribunal has passed 359-page order dealing with all issues on reassessment proceedings). (ITA No. 718 / Chd / 2022 dt.15-9-2023)(AY. 2012-13)

Evershine Recreation Private Limited v.DCIT (Chd)(Trib) www.itatonline.org

S. 147 : Reassessment-After the expiry of four years-Non-Resident-Swiss account funds of non-resident-Credits in HSBC (Geneva) accounts originated outside Indian TerritorieS.-Income deemed to accrue or arise in India-No business connection-Limitation-Extended period of 16 years is not applicable to non-Residents-Reassessment notice and order is held to be bad in law and quashed-DTAA-India-UK-French. [S. 6(1), 6(6), 9(1)(i), 69,139(1), 148, 149(1), (149(1)(c), Art. 28]

The Assessee is an individual who is married to a British citizen and is settled in London. She has been outside India since F.Y.1999-2000. Even prior to that, from F.Y. 1989-90 to 1998-99, she was a non-resident or not ordinarily resident. As a non-resident, the Assessee has been maintaining NRE account & NRO account in India. The Assessee was filing the return of income in India in the status of non-resident in respect of income chargeable to tax in India in accordance with the provisions of Income-tax Act, which generally comprises of capital gains and income from other sources like dividend, interest, etc. For the A.Y.2006-07 and 2007 08 the Assessee filed the return of income as non-Resident. ADI (Inv.) has issued summons under section 131 of the Act prior to issue of notice u/s 148 of the Act. In response to summons the representative of the Assessee has given explanation about the status of the Assessee and the amount deposited in the Swiss Account. The Assessing Officer issued notice under section 148 of the Act on 12-3-2014 for failure to disclose the bank account in HSBC, Geneva which is an asset located outside India and that the income in relation to such asset has escaped assessment for the assessment year 2008-07, for which as per Section 149(1)(c), sixteen years time limit is available. In reply to notice under section 148 the Assessee stated that that Assessee being a non-resident, therefore, in terms of fourth proviso to Section 139(1), she is not required to disclose foreign asset and therefore, provision of Section 149(1)(c) extending the period of 16 years will also not apply.The objection of the Assessee was rejected and the Assessing Officer made addition as undisclosed income of the Assessee. Order of the Assessing Officer was affirmed by the CIT(A)). On appeal the Tribunal held that, the entire edifice for reopening is based on some "Base Note" received by Government of India under Article 28 of DTAA from the French authorities, on the basis of which, belief has been entertained that Assessee holds a bank account with HSBC Bank, Geneva and thus, the balance lying in the said bank accounts is taxable in India and therefore, income chargeable to tax has escaped assessment. Prior to the recording of the reasons, the investigation wing had issued notices u/s. 131 and asked for all the requisite details of the bank statements, accounts and the relevant information which was placed before the Investigation wing, as well as before the Assessing Officer also prior to the issuance of notice u/s.148. Perusal of the reasons recorded, it is seen that nowhere these documents have been mentioned nor the bank statements as was supplied by the Assessee to the Income Tax department. These bank accounts have been provided to the ADIT way back in the year 2011, then again to ACIT in the year 2013 and at no point of time they asked any clarification with regard to various entries appearing in the said bank statement. The reasons recorded are so general in nature which only mentioned about information received by the Government of

India and how Investigation wing of the Income Tax department after conducting enquiries, found large number of Assesses have admitted of holding accounts in HSBC bank. Even the Schedule FA of 2015 explains object behind various amendments made by the Finance Act 2012 in Section 139(1) which only refers to the cases of resident assesses. Thus, the Assessee being a non-resident was not required to disclose any asset held outside India in the return of income to be filed in India. This basic tenet has been missed by the Assessing Officer while recording the reasons as well as in the assessment order. The Revenue relied upon Section 149(1)(c) to justify the availability of extended time period of 16 years within which the notice can be issued would be available, provided the income in relation to any asset is located outside India which is chargeable to tax has escaped assessment. However, section 149(1)(c) and the period of 16 years is only applicable for reopening the assessment of the persons who are residents and are required to disclose the assets outside India The asset can be said to be "found" when an Assessee who is resident is required to disclose the said asset in the return of income within the provisions of the Income-tax Act. For a non-resident there is no obligation to disclose any foreign asset / account in its return of income in India as per section 139 itself, nor there is any column in the return of income to disclose foreign assets. The Assessee in terms of Section 6 of the Income-tax Act was never a resident of nothing has been brought on record in reasons recorded or there is any material on record that the Assessee has any business connection in India and therefore amount deposited in foreign bank account is income arisen or accrued or deemed to have arisen or deemed to have accrued in India. If at all there is some doubt about the said entity and deposits made therein, then, it is the UK Tax authorities which have to examine this issue. The Tribunal quashed the reassessment notice and the assessment order. The Tribunal has not decided the issue on merits. (ITA No.6096/Mum/2016 /dt.19-5-2023)(AY. 2007-08)
Amrita Jhaveri (MS.) v. Dy CIT (Mum)(Trib) www.itatonline.org

S. 147 : Reassessment-After the expiry of four years-Mutual fund Spill over expenses, offer expenses, SEBI Registration fee-On the same set of facts reassessment order is bad in law-Assessing Officer has no power to review the assessment order-Order of reassessment was quashed. [S. 148]

The assessment of the assessee was completed under section 143(3) of the Act. In the course of the original assessment proceedings, the Assessing Officer has asked a specific question on the allowability of Mutual fund Spil over expenses, offer expenses and SEBI Registration fee. After satisfying the explanation of the assessee no disallowance was made. The Assessing Officer issued notice u/s 148 on 26-3-2013 and passed the assessment order disallowing the expenses referred to above. The order was affirmed by CIT(A). On appeal, the Tribunal held that the Assessing Officer in reassessment proceedings cannot take the view that the view of the Assessing Officer allowing the claim in the original proceedings was the incorrect view. The Tribunal held that the Assessing Officer has no power to review the assessment order. Accordingly, the reassessment order was quashed. Relied on CIT v. Financial Software and Systems (P) Ltd (2022) 447 ITR 370/ 145 taxmann.com 37 (SC), PCIT v. Fibres and Fabrics International (P) Ltd (2022) 139 taxmann.com 562/ 288 Taxman 20 (SC), Dy CIT v. Bajaj Life Insurance Company Ltd (2021) 278 Taxman 104/ 125 taxmann.com 71 (SC) (ITA No. 1774/Mum/ 2022 dt 24-1-2023 (AY. 2007-08)
JM Financial Asset Management Ltd v. DCIT (Mum)(Trib) www.itatonline.org

S. 147 : Reassessment-After the expiry of four years-Validity-Assessee, Power of Attorney holder and selling land for owner-No evidence indicating land belonged to assessee-Assessment made in the hands of assessee not justified.

The Hon'ble Tribunal held that the assessee received the power of attorney from owner and sold the land on behalf of owner. Copy of the sale deed was placed on record. No addition could be made in the hands of the power of attorney holder. The Revenue had not brought on record any material evidence indicating that the ownership of the land belonged to the assessee. Therefore, the assessment order passed was without jurisdiction, void ab initio and bad in law.(AY. 2009-10)

Kamaldeep Singh v.ITO (2023)101 ITR 302 (Amritsar) (Trib)

S. 147 : Reassessment-After the expiry of four years-No failure to disclose material facts-Audit objection-Reassessment is bad in law-Delay of 230 days is condoned. [S. 143(3), 254(1)]

There was no failure on the part of the assessee to disclose material facts necessary for her assessment. Therefore, the notice issued under section 148 was barred by limitation and consequential assessment framed by the Assessing Officer would be nullity. Reassessment proceedings merely at the behest of an audit objection as based on mere appraisal of the same record without any tangible material or information, would be bad in law. In the present case, there was no independent application of mind by the Assessing Officer while recording the reasons for reopening. There was no new tangible material to reopen the case. Therefore, the assessment was bad in law. CIT v. Foramer France (2003) 264 Itr 566 (SC) and PCIT v. S. Chand and Co. L td. [2018) 409 ITR (St.) 15 (SC). Delay of 230 days is condoned. (AY. 2012-13)

Ramamirtham Mangaladhevi v.ITO (2023)104 ITR 39 (Trib) (SN)(Chennai) (Trib)

S. 147 : Reassessment-Alleged bogus long term capital gains-Sale of shares-Information from Investigation Wing-Non application of mind-Reassessment is quashed.[S. 10(38), 45]

Held that the Assessing Officer has reopened the assessment by merely relying upon the report of the Investigation Wing without carrying out any preliminary enquiry /investigation and establishing the necessary nexus between the material in his possession and formation of belief that the assessee has shown bogus long term capital gains. Reassessment is held to be bad in law. (AY. 2013-14)

Sudesh Rani (Smt) v.ACIT (2023) 222 TTJ 759 (Chd)(Trib)

Ritu Garg (Smt) v. ACIT (2023) 222 TTJ 759 (Chd)(Trib)

Urmila Rani (Smt) v. ACIT (2023) 222 TTJ 759 (Chd)(Trib)

S. 147 : Reassessment-Notice is issued by the Assessing Officer who had no jurisdiction-Reassessment is bad in law-Additional grounds-Question of law is admitted.[S. 2(7A), 120, 124(3), 143(3), 148]

Tribunal admitted the additional ground on question of law. The Tribunal also held that notice is issued by the Assessing Officer who had no jurisdiction is bad in law. Referred Notification No 1 of 2014-15 dt 15 th Nov, 2014. (AY. 2011-12)

Adarsh Rice Mill v. ITO (2023) 222 TTJ 390 / 227 DTR 7 (SMC) (Raipur) (Trib)

S. 147 : Reassessment-Notice to verify the deposits and withdrawals-Reassessment is bad in law. [S. 148]

Held that the reassessment notice to verify the deposits and withdrawals is bad in law. (AY. 2008-09)

Lalchand Mehrumal Jagwani v.ITO (2023) 221 ITR 273 (Pune)(Trib)

S. 147 : Reassessment-Recorded reasons-Un explained cash credits-Addition is made on commission income-Issue is not subject matter of notice under section 148-Reassessment order is quashed. [S. 37(1), 68,148]

Held that if no addition is made in reassessment proceedings on an issue for which reasons for reopening are recorded addition made on any other ground would be unsustainable. (AY. 2012-13)

Revera Milk & Foods (P) Ltd v. ITO (2023) 223 TTJ 821 (Mum)(Trib)

S. 147 : Reassessment-Business income-Value of any benefit or perquisite, arising from exercise of business or profession-Merger-Demerger-Transfer of Passive Infrastructure Assets (PIA) to ICTIL and subsequent amalgamation into Indus Towers, and demerger of telecom undertaking of ABTL-Scheme approved by High Court-No colourable device-Provision of section 28 (iv) cannot be applied-Non-compete fee-Change of opinion-amount debited in P&L Account as Employees Stock Scheme had been disallowed as being a contingent liability-Change of opinion-Reassessment is not valid.[S. 28(iv), 37(1), 1115JB,148]

Aassessee, under a court approved scheme of arrangement had transferred its Passive Infrastructure Assets (PIA), having book value of Rs. 1622.77 crores, to ICTIL which was a 100 per cent subsidiary of ABTL, which in turn was 100 per cent subsidiary of assessee at Nil value-Subsequently, ICTIL amalgamated into Indus Towers resulting in transfer of PIAs to Indus Towers. By a separate scheme of arrangement, telecom undertaking of ABTL was demerged into assessee and accordingly, investment of ABTL in shares of Indus (pursuant to amalgamation and demerger) was revalued at Rs. 7,330.75 crores. Revenue held that entire transaction of demerger and merger was a colourable device and would result in benefit to assessee in sum of Rs. 5707.97 crores which had escaped assessment due to failure on part of assessee to disclose all material facts at time of assessment under section 143(3) and was required to be taxed under section 28(iv). On appeal the Tribunal held that scheme of demerger and merger had been duly approved by High Courts and was also made as per policy decision taken by Government of India, thus, there was no colourable device involved at all in instant case. Revaluation of shares by ABTL was done on 31-3-2010 i.e. assessment year 2010-11, hence, event which had occurred in assessment year 2010-11 in hands of ABTL could never be a ground for reopening in case of assessee for assessment year 2009-10. If by way of a scheme of demerger and merger if PIAs had been transferred to ICTIL (by way of demerger) and subsequently by way of merger with Indus Towers, for Nil consideration, benefit, if any, under this entire transaction, would only arise to ABTL and certainly not to assessee Therefore, provisions of section 28(iv) would not be applicable in hands of assessee in instant case. Assessee had paid non-compete fees to MCPL and claimed same as a deduction in computation of income. This was allowed by Assessing Officer as revenue expenses while completing original assessment under section 143(3).Thereafter, Assessing Officer sought to reopen assessment on ground that said sum of non-compete fee would be a capital expenditure, not allowable as deduction.. The Tribunal held that the assessee had submitted all relevant details for adjudication on allowability of non-complete fee and Assessing Officer while recording reasons had looked into very same materials and absolutely had no tangible material with him which would enable him to form a reasonable belief that income of assessee had escaped assessment, warranting reopening of assessment. Assessment was sought to be reopened in case of assessee on ground that an amount debited in the P&L Account as Employees Stock Scheme had been disallowed as being a contingent liability, but same had not been added to book profit under section 115JB, thus, had escaped assessment. However, decision to not add back said expenditure while computing book profit during original assessment, was a clear and conscious decision on part of Assessing Officer.

Moreover provision made on account of ESOP expenditure would be an ascertained liability and not a contingent liability warranting any disallowance either under normal provisions or while computing book profits under section 115JB. Reopening is quashed. (AY. 2009-10)
Vodafone Idea Ltd. v Asst. CIT (2023) 149 taxmann.com169 / 226 TTJ 224 (Mum) (Trib.)

S. 147 : Reassessment-No tangible material-Addition is made substantive basis in another entity-Reassessment is quashed.[S. 148, 153A]
Held that the Assessing Officer assessed the certain income as substantive basis in another entity, hence assumption of jurisdiction by the Assessing Officer is held to be not valid. Reassessment is quashed. (AY. 2010-11)
World Sport Group (Mauritius) Ltd v. Dy.CIT(2023) 226 TTJ 282 (Mum)(Trib)

S. 147 : Reassessment-Search and seizure-Information from DDI (Inv)-CIT(A) has quashed the reassessment on the ground that the assessment should have been farmed under section. 153A/ 153C of the Act-Reassessment was not done on the basis of search-Order of CIT(A) is set aside with the direction to decide a afresh in accordance with law.[S. 132, 148,153A, 153C]
The Assessing Officer reopened the assessment on the basis of information received from the Dy. Director IT(Inv) and not on the basis of the search conducted on the assessee. On appeal the CIT(A) quashed the reassessment on the ground that reassessment proceedings can be initiated only under section. 153A of the Act and not under section 147 of the Act. On appeal the Tribunal held that reassessment was not initialled on the basis of search but on the basis of information received from the Dy. Director IT(Inv). Accordingly the order of CIT(A) is set aside and directed the CIT(A) to decide on merits in accordance with law. (AY. 2013-14)
Dy.CIT v. Ramesh Kumar Jain (2023) 226 TTJ 58 (Mum)(Trib)

S. 147 : Reassessment-No sanction was recorded on the date of issuance of notice-Reassessment is not valid-Notice under section 143(2) is not issued-Reassessment is quashed.[S. 143(2), 148, 149,151]
Held that the Assessing Officer issued the notice under section 148 on 31 st March 2017, where as the endorsement made by the PCIT on the letter is dt. 7 th April 2017, hence the reassessment is not valid. The Tribunal also held that the mandatory notice under section 143(2) is also not issued hence the reassessment is quashed. (AY. 2010-11)

Rajlaxmi Petrochem (P) Ltd v. ITO (2023) 224 TTJ 1004 (Pune)(Trib)

S. 147 : Reassessment-Notice in the name of dead person-Expired before passing of the assessment order-No notice is served on legal heir-Assessment is non-est and bad in law.[S. 143(1),144, 148, 159]
Held that the assessee expired much before the passing of the assessment order on February 24, 2016 and all the notices except that dated June 24, 2015 were issued after the death of the assessee on August 6, 2015. According to section 159 of the Act, where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased. After the death of the assessee, his legal heir was not brought on the record, and no notice was issued in the name of the legal heir. Therefore, the assessment order framed in the name of the deceased assessee was non-est in law and hence quashed.(AY.2010-11)
Motilal Hastimaji Bothra (Late) v.ITO (2023)108 ITR 166 ((Mum) (Trib)

S. 147 : Reassessment-Depreciation-Assets purchased from Subsidy-Change of opinion-Reassessment is bad in law-Subsidy-Renewable energy scheme to set up small hydro projects-Capital in nature-Not income-[S. 2(24)(xviii), 115JB, 143(3), 148]

Held that the assessee's submissions showed that that it had disclosed details, nature and accounting of the Central subsidy sanctioned and released by the Government for setting up the small hydro project under the renewable energy scheme of the Ministry of New and Renewable Energy, but no addition was made by the Assessing Officer after making a detailed examination of the documents. Thus, the reassessment proceedings were merely done on the Assessing Officer's change of opinion after completing the original assessment on due consideration of the facts. It was well-settled law that the Assessing Officer could not invoke sections 147 and 148 merely on a change of opinion. As the reassessment proceedings were initiated by the Assessing Officer under section 147 / 148 on a mere change of opinion and review, the assessment order is quashed.Tribunal also held that subsidy received on renewable energy scheme to set up small hydro projects is capital in nature and not income. (AY.2012-13, 2013-14)

Puri Oil Mills Ltd. v.ACIT (2023)108 ITR 107 (Delhi) (Trib)

S. 147 : Reassessment-Pursuant to direction of Tribunal-No direction of Tribunal to tax sum in question in hands of company-Reopening of assessment to bring sum to tax in hands of company is not sustainable. [S. 132(4), 148, 150]

The Tribunal decided the case of the two individuals and concluded that the income could not be taxed in their hands in the absence of any material on record to show that there was any undisclosed income in their hands. There was neither any finding nor any direction of the Tribunal regarding undisclosed income of the assessee-company. There was no finding or direction of the Tribunal allowing the Assessing Officer to bring to tax in any manner whatsoever. In both the reasons recorded for reopening and in the assessment order there was no reference to any seized material that could substantiate the addition made by the Assessing Officer. Therefore, the Assessing Officer is not justified in reopening and adding the amount as undisclosed income in the hands of the assessee.(AY.2007-08)

Dy. CIT v. Capital Power Systems Ltd. (2023)108 ITR 4 (SN)(Delhi)(Trib)

S. 147 : Reassessment-Cash credits-Undisclosed income-Source of cash deposits explained-Addition not sustainable-Reassessment invalid.[S. 68, 148]

Held, that the Department had not brought on record any evidence to establish that the affidavits were not true. The addition is not justified.(AY.2010-11)

Kuldeep Kumar v. ITO (2023)107 ITR 241/ 226 TTJ 341 (Jodhpur) (Trib)

S. 147 : Reassessment-With in four years-Change of opinion-Scientific research expenditure-No new material-Reassessment is quashed.[S. 35(2AB), 143(3), 148]

Held that while completing assessment under section 143(3) the Assessing Officer had duly verified details in regard to same and no new material came to knowledge of Assessing Officer subsequent to original assessment proceedings, entire proceedings being void-ab-initio were to be quashed. (AY. 2009-10)

Bharat Electronics Ltd. v. ACIT, LTU (2023) 203 ITD 532 (Bang) (Trib.)

S. 147 : Reassessment-Reasons recorded-No addition is made on the basis of recorded reasons-Addition is made on other grounds which are not part of the recorded reasons-Reassessment is quashed.[S. 148]

Held, that the case was reopened for the reason of claim of non-genuine expenses but the additions were made on different account, such as, sundry creditors, depreciation and tax

deducted at source. Since, the Assessing Officer recorded the reasons which were not found to exists on the record in as much as additions were made, the reassessment framed is quashed.(AY.2011-12, 2012-13, 2013-14)

Bharti Singh (Smt.) v. Asst. CIT (2023)107 ITR 26 (SN)(Amritsar) (Trib)

S. 147 : Reassessment-Settlement Of Case-Settlement Commission passing order settling case-Binding on department-Assessing Officer has no power to reopen assessment for year forming part of Settlement-Recovery of tax-Companies-Insolvency resolution-Resolution plan as approved by committee of creditors approved by National Company Law Tribunal-Binding on all Parties-Dues not forming part of resolution plan stand extinguished-Department has no power to reopen assessment [S. 148, 245C(1), 245D(4)]

Held that the Income-tax Settlement Commission had passed an order which was binding on the Department and the Assessing Officer had no power to reopen the assessment. Once the Settlement Commission had settled the tax component between the assessee and the Department, the Departmental authorities do not have any power to reopen such assessment. There is no need to interfere with the finding of the Commissioner (Appeals). Relied on Komalkant Fakirchand Sharma v.Dy.CIT (2019) 417 ITR 11 (Guj)(HC). Tribunal also held that that the resolution plan approved by the committee of creditors and then by the National Company Law Tribunal is binding on all the parties such as the Central Government and the related dues not forming part of the resolution plan shall stand extinguished. The Commissioner (Appeals) had rightly held that claims which were not part of the resolution plan stood extinguished. Relied on Ghanashyam Mishra and Sons P. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd (2021)) 227 Comp Cas 251 (SC) / 91GSTR 28 (SC). (AY.2012-13, 2013-14)

Asst. CIT v. Pradip Overseas Ltd. (2023)107 ITR 60 (SN)(Ahd) (Trib)

S. 147 : Reassessment-Reasons recorded-Factual misstatements and inaccuracies-Sanction of commissioner without proper application of mind-Dispute Resolution Panel-Admitting errors-Reassessment is bad in law.[S. 144C, 148, 151]

Held that the reasons recorded by the Assessing Officer for reopening of assessment were replete with various factual misstatements and inaccuracies and silly mistakes. The reasons recorded were based on either non-existent or completely irrelevant facts. In fact, while disposing of the objections of the assessee questioning the validity of the reopening of the assessment, the Assessing Officer had clearly admitted various factual inaccuracies in the recorded reasons. The higher authorities while granting approval under section 151 of the Act had approached the issue in a mechanical manner without verifying the facts. When the Assessing Officer, while disposing of the objections of the assessee had admitted errors committed by him, the Dispute Resolution Panel had fallen into the same error while referring to non-filing of return of tax deducted at source and related transaction as the cause for reopening of assessment, the Dispute Resolution Panel had disposed of the objections of the assessee, being completely oblivious of the factual position, as it had referred to non-filing of return of tax deducted at source and related transactions as the reasons for reopening. The reassessment is bad in law. (AY.2013-14)

Cricket South Africa (NPC) v.Asst. CIT (IT) (2023)107 ITR 93 (SN)/226 TTJ 936 (Delhi)(Trib)

S. 147 : Reassessment-Income deemed to accrue or arise in India-Interest-Failure to deduct tax deduct at source-Redemption premium paid-Income had not arisen in India

in hands of recipient/non-resident and there was no obligation on part of BFL to deduct tax at source on payment of interest-Re assessment is quashed. [S. 5(2), 6, 9(1(vi) 148, 201(IA)]

Assessee, a non-resident, was appointed as a trustee for issuance of FBBCs of BFL (Indian company). Assessing Officer of assessee based on information received from Assessing Officer of payer, i.e. BFL, that interest/redemption premium paid to assessee was without deducting TDS, reopened assessment and recorded his reason to believe that income chargeable to tax had escaped assessment. Action of Assessing Officer of BFL to deduct tax at source on redemption premium was deleted by Tribunal holding that income had not arisen in India in hands of recipient/non-resident and, therefore, there was no obligation on part of BFL to deduct tax at source on payment of interest (redemption premium). Since material/information on which Assessing Officer had reopened assessment was removed, notice under section 148 would itself failed and action of Assessing Officer to reopen assessment was to be quashed. (AY. 2014-15)

Citicorp Trustee Company Ltd. v. DCIT (IT) (2023) 203 ITD 421 (Mum) (Trib.)

S. 147 : Reassessment-Share application-Accommodation-No proof of service of reasons recorded being supplied to assessee, reassessment-Reassessment is quashed-Information in his possession, in form of tangible material from Directorate of Investigation (DDIT) during third-party search that income of assessee had escaped assessment-Non-existence of a particular entity-Succession to business otherwise than on death-[S. 68, 148, 153C, 170, 292B]

Held that by not providing reasons recorded, assessee had been deprived of fundamental right to know and object on basis of which jurisdiction had been acquired or assumed by Assessing Officer and was completely in dark about reasons of reopening against which he could not even file any objections.Reassessment order passed by Assessing Officer was to be quashed as bad in law. Held that where Assessing Officer had information in his possession, in form of tangible material from Directorate of Investigation (DDIT) during third-party search that income of assessee had escaped assessment, but no material related to assessee was found, correct provision required to be invoked for reopening of assessment was section 147 and not section 153C. therefore, there was no infirmity in assumption of jurisdiction assumed by Assessing Officer in reopening of assessment under section 147. Held that Assessing Officer was aware about non-existence of a particular entity and had even acted upon it in subsequent year accordingly, assessment order in name of non-existent entity, was a fundamental error on part of revenue, which could not have been cured or rectified. Assessee-company converted into a Limited Liability Partnership (LLP) and hence was considered dissolved and removed from Registrar of Companies (ROC) records from date of registration as an LLP. Thereafter, notice under section 148 was issued in name of LLP, and revenue argued that even though company ceased to exist, notice was appropriately issued to successor LLP. Section 170 gives power to Assessing Officer to assess income of predecessor in hands of successor. However, in cases where predecessor 'cannot be found', income of predecessor can be assessed in hands of successor for year of succession and immediately preceding year, therefore, successor LLP could only be assessed for income of predecessor company for assessment year 2015-16 (up to date of succession 23-3-2016) and year preceding that (assessment year 2014-15). Assessing Officer lacked jurisdiction in reopening and assessing case of predecessor company for assessment year 2009-10 in hands of assessee LLP and thus, reassessment order for assessment year 2009-10 was to be quashed. (AY. 2008-09, 2009-10)

DCIT v. Bhawna Computers (P.) Ltd. (2023) 203 ITD 330 /108 ITR 351/ (2024) 228 TTJ 450 (Mum) (Trib.)

S. 147 : Reassessment-Unaccounted on-money in cash-Date of payment as 5-11-2013-No addition can be made for the relevant assessment year.[S. 69, 148]

assessee, an NRI. Assessing Officer on the basis of information that assessee purchased a property for a higher price but declared less consideration in sale deed. AO held that the assessee had paid unaccounted on-money in cash from undisclosed sources which had escaped assessment and he made addition under section 69. On appeal the Tribunal held that document on basis of which reassessment was initiated clearly showed date of payment as 5-11-2013 which fell within previous year 2013-14 relevant to assessment year 2014-15 and there was no cash-payment during previous year 2012-13 relevant to concerned assessment year 2013-14. Addition is deleted. (AY. 2013-14)

Lalit Premchandani. v. ITO (IT& TP) (2023) 203 ITD 416 (Indore) (Trib.)

S. 147 : Reassessment-Reassessment-Treating loss and gains from Marked-To-Market instruments by different methods-Non application of mind-Reassessment is valid-Commissioner (Appeals) not discussing facts properly without discussing on facts-Matter remanded to the Assessing to consider issue De Novo in accordance with law. [S. 10AA, 148]

Held that when the assessee was treating the loss and gains by different methods, the assessee should have explained it before the Assessing Officer during the course of scrutiny assessment proceedings under section 143(3) of the Act. However, there was nothing on record to show that the assessee had put up a note to the Assessing Officer with regard to treatment of losses as well as gains. When there was no material before the Assessing Officer with regard to marked-to-market gains, there was no occasion for him to apply his mind. Therefore, the question of change of opinion did not arise in this case. In our opinion, the Assessing Officer had not examined the issue of marked-to-market gains and had rightly issued notice under section 148 of the Act and completed the reassessment, which was valid. On merits the Commissioner (Appeals) has not discussed the facts properly and had simply deleted the addition made by the Assessing Officer without giving any reason on the basis of any supporting evidence. The order of the Commissioner (Appeals) on this issue was to be set aside and the Assessing Officer was directed to consider the issue de novo in accordance with law. The Tribunal also held that the assessee was entitled to raise before the Assessing Officer the contentions that in case of marked-to-market gain was taxed, it may be allowed under section 10AA of the Act and the issue of book profits.(AY. 2013-14)

ITO v. SPI Technologies India P. Ltd. (2023)104 ITR 8 (SN)(Chennai)(Trib)

S. 147 : Reassessment-Share capital-Accommodation entry-Merely following the opinion by investigation wing-Reassessment order is quashed. [S. 68, 148, 151]

Assessment is sought to be reopened in case of assessee for two reasons, namely, accommodation entry of Rs. 50 lakh in form of share capital from 'SH' and allegation of undisclosed fictitious profit derived from transactions on NMCE platform.The reassessment was merely on the basis of opinion expressed by investigation wing. On appeal The Tribunal held that the Assessee had sufficiently demonstrated that neither there was any relevant material to make wide ranging allegations towards accommodation entry and earning fictitious profits nor reasons recorded spelt out exact particulars of transactions giving birth to such allegations. Moreover, Principal Commissioner had granted approval under section 151, without observing inconsistency and glaring inadequacy in approval memo placed before him wherein scope of reopening was curtailed to mere case of alleged escapement. Reassessment order is quashed. (AY. 2010-11)

Bhaijee Commodities (P.) Ltd. *v.* ACIT (2023) 202 ITD 757/226 TTJ 257 (Delhi) (Trib.)

S. 147 : Reassessment-Validity-Estimate of value of assets by Valuation Officer-Transfer of Development Rights-Valuation referred to Valuation Cell-Subject matter of appeal-Limitation-Order of reassessment passed on ground time-limit would expire without waiting for Report-incorrect-Order is bad in law. [S. 142A(7), 143(3), 148, 153]

Held, dismissing the appeal of the Revenue the Court held that firstly, the Assessing Officer had passed two assessment orders under section 147 read with section 143(3) of the Act on the basis of the very same reassessment notice dated March 31, 2016 issued under section 148 of the Act. Secondly, even in the second assessment order dated August 31, 2017, challenged in the appeal, the income of the assessee was not based on the valuation report of the Departmental Valuation Officer and therefore it was contrary to the provisions of section 142A(7) of the Act, which requires the Assessing Officer to take into account such report while making the assessment or reassessment. Thirdly, the second assessment order dated August 31, 2017 was in respect of a transaction, which was already a subject matter of appeal before the Commissioner (Appeals) and therefore it was contrary to the second proviso to section 147 of the Act, as it stood at the relevant time. There was no provision in the Act, which authorised the Assessing Officer to pass multiple assessment orders on its own without any direction from any higher administrative or appellate authority. Further, Explanation 1(iv) to section 153 specifically provides that the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under section 142A(1) of the Act and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer is excluded for the purpose of computation of limitation period under section 153 of the Act. Therefore, passing the assessment order on the pretext that the assessment was getting time-barred, without waiting for the report of the Departmental Valuation Officer, showed a completely incorrect understanding of the provisions of the Act. The assessee in its appeal against the first assessment order passed under section 147 read with section 143(3) of the Act, had challenged the taxability of the receipts from the transfer of the development rights and the reference to the Departmental Valuation Officer to determine the actual sale consideration of properties. Therefore, the second assessment order dated August 31, 2017 passed under section 147 read with section 143(3) of the Act was clearly in contravention of the provisions of the proviso to section 147 of the Act, since it reassessed the income which was the subject matter of the appeal before the Commissioner (Appeals). Therefore, the conclusion reached by the Commissioner (Appeals) that the second assessment order dated August 31, 2017, passed under section 147 read with section 143(3) of the Act was null and void ab initio being contrary to provisions of the Act was proper and to be affirmed.(AY. 2009-10)

ITO v. Neumec Builders And Developers (2023)104 ITR 62 (SN)(Mum)(Trib)

S. 147 : Reassessment-Educational institution-Application of 85 percent of gross income is not a requisite condition for exemption-Claiming exemption under section 10(23C)(iiiad)and not under section 11(1)(a)-Reassessment is not valid.[S. 10(23C)(iiiad), 11(1)(a), 12A]

Held that there is no obligation upon assessee to apply 85 percent of its gross income for claiming exemption under section 10(23C)(iiiad) of the Act. The Tribunal also held that the assessee has not claimed any part of income as exempt under section 11(1)(a) of the Act. Reassessment is quashed. (AY. 2007-08)

Holy Heart Education Society v. Dy.CIT (2023) 102 ITR 678 /223 TTJ 10 (UO)(Raipur)(Trib)

S. 147 : Reassessment-Interest-No fresh material-Change of opinion-Reassessment is not valid.[S. 37(1), 80IA 143(3), 148]

Held that the disallowance of interest proposed in the reasons for reopening of assessment was on a change of opinion. The assessment could not be reopened on the same material, as that would amount to review of the order. Since no new material was brought on record after completion of the assessment under section 143(3) of the Act, the reopening of assessment was not on account of fresh material or change of law, and was liable to be quashed.(AY.2014-15)

Prince Property Management Services v. ITO (2023)102 ITR 3 (SN)(Chennai) (Trib)

S. 147 : Reassessment-Reasons recorded-To be examined on a standalone basis-Reassessment is held to be bad in law. [S. 92CA, 148]

It is well settled in law that reasons as recorded for reopening the re-assessment are to be examined on a standalone basis. Nothing can be added to reasons so recorded, nor anything can be deleted from the reasons so recorded. Therefore, the reasons are to be examined only on the basis of the reasons as recorded. The next important point is that even though reasons, as recorded may not necessarily prove escapement of income at the stage of recording the reasons, such reasons must point out to an income escaping assessment and not merely need for an inquiry which may result in detection of income escaping assessment. Followed, Hindustan Lever Ltd. v. Dr. B. Wadkar(2004) 268 ITR 332 (Bom.) (AY.2008-09, 2010-11)

Dy. CIT v. Reliance Industrial Holdings (P) Ltd.(2022) 144 taxmann.com 180 / [2023] 221 TTJ 536/ 221 DTR 281 (Mum) (Trib)

S. 147 : Reassessment-Cash credits-Protective assessment-Held reopening assessment to make addition on the protective basis is bad in law-Amounts to reopening merely on suspicion-Reassessment is quashed. [S. 68, 148]

The joint bank account of the assessee along with other family members was noticed by the AO while conducting assessment due to a cash deposit of Rs. 16 lakhs. The assesee along with four other joint holders had their returns of income assessed an addition was made on protective basis. The legal validity of reopening the assessment is under dispute. The tribunal held that the reopening of assessment made in the hands of the assessee for making addition protective basis is bad in law, since the same amounts to reopening of assessment merely on suspicion. Asst. Year 2010-11 (AY. 2010-11)

Prakash Chandra Jain v. ITO (2023) 221 TTJ 1 (UO) (Jodhpur) (Trib)

S. 147 : Reassessment-Bogus purchases-Cash credits-Accommodation entries-Information from Investigation wing-Not recorded his own satisfaction-Reassessment order is quashed. [S. 68 148]

Held that the Assessing Officer merely on basis of information received from Investigation wing, Mumbai with reference to search carried out in case of one Gautam Jain reopened assessment on ground that assessee has taken accommodation entries of bogus purchase bills from Gautam Jain ., since Assessing Officer had not recorded his own satisfaction and had not made any effort to examine and to discuss material received from Investigation wing. Reassessment order is quashed.(AY. 2007-08)

Anshita Vimal Jain (Smt.) v. ITO (2023) 199 ITD 168 (Surat) (Trib.)

S. 147 : Reassessment-Best Judgement assessment-No addition is made on the basis of recorded reason-Reassessment is bad in law-Levy of penalty is not valid.[S. 144, 148, 271 (1)(c)]

The Tribunal held that the reasons for reopening the assessment revealed that assessment was reopened on the question of excess loss claimed by the assessee but no addition of this

amount was made in the reassessment order. The addition made in the reassessment order was was totally silent on the ground on which the addition was made. The Assessing Officer simply observed that he received information from the National Multi-Commodity Exchange at Ahmedabad in response to notice under section 133(6) of the Act that the assessee had earned profit. There were totally in contradiction to each other. There was no application of mind at the end of the Assessing Officer. Although it was a best judgment assessment order the Assessing Officer was obliged to conduct a proper enquiry and ascertain the complete facts before reopening the assessment and pass the reassessment order under section 147 / 143(3) of the Act. The quantum addition in itself ought to have not been made and might be deleted in the appellate proceedings. CIT v. Jet Airways (I.) Ltd. [2011] 331 ITR 236 (Bom)(HC) Ranbaxy Laboratories Ltd. v. CIT [2011 336 ITR 136 (Delhi)(HC) CIT v. Mohmed Juned Dadani [2013 355 ITR 172 (Guj) (HC) (AY. 2010-11)

Babita Devi Kajoria v. ITO (2023) 147 taxmann.com 317/101 ITR 17 (SN)(Kol) (Trib)

S. 147 : Reassessment-No fresh material with-Opinion based on incorrect basis-Proceeding on the basis of conjectures-Reassessment is without jurisdiction. [S. 148]

The Tribunal held that in the absence of nexus between the prima facie inference arrived in the reasons recorded and information vis-a-vis material tangible, credible, cogent and relevant to form a reason to believe, there was no basis to assume jurisdiction, the reasons recorded were highly vague, far-fetched and could not lead to a conclusion of escapement of income. The proceedings initiated were purely based on surmises, conjectures and suspicion and therefore, they were without jurisdiction and deserved to be quashed. (AY. 2011-12)

Milind Madhukar Edke v. ITO (2023)101 ITR 88 (SN) (Pune) (Trib)

S. 147 : Reassessment-Loose slip-Information received from Central Bureau of Investigation (CBI)-Affidavit-Assessment completed without verification of books of accounts as the same were impounded by CBI was in violation of natural justice-Matter remanded back to AO.[S. 148, ITATR.29]

Assessment was completed by the AO after making addition on the basis of loose slips and report of CBI that assessee-a manufacturer of pharmaceutical products, has sold products in market at rates higher than invoice price. Addition was made by AO without verification of books of accounts as the same were impounded by the CBI. The assessee filed affidavit under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 before the bench which were never be filed before any of the lower authorities. Thus, the matter was remitted back to the AO for further verification. (AY. 2005-06 to 2007-08)

Gold Star Pharmaceutical Pvt. Ltd. v. ITO (2023) 202 ITD 388/ 104 ITR 630 (Amritsar)(Trib)

S. 147 : Reassessment-Change of opinion-Initiated basis perusal of case records itself is a clear case of change of opinion and is liable to be quashed.[S. 148]

The Assessee has challenged the validity of reassessment proceedings initiated under section 147 stating it to be a change of opinion without any fresh material coming to the possession of AO.

The Hon'ble Tribunal perused the provisions of section 147 as applicable for the relevant period and pointed out that no notice can be issued under the said section unless any income chargeable to tax had escaped assessment. Further, it was noted that the AO had doubted upon the assessment only from the perusal of case records itself. Accordingly, it was held that it was a clear case of change of opinion and the reassessment was liable to be quashed. (AY.2008-09)

Glen Propbuild Pvt. Ltd. v. DCIT (2023) 103 ITR 71 (Trib) (SN)(Delhi)(Trib)

S. 147 : Reassessment-Change of opinion-Original assessment made on scrutiny-no tangible material coming into possession of AO for formation of belief that income had escaped assessment, Reassessment on materials is impermissible. [S. 143(3), 148]

The Tribunal allowing the appeal held that, original return of income was scrutinised u/s.143(3). The reopening was challenged stating that the AO had not referred to any tangible material coming into his possession which would lead to formation of a belief that certain income had escaped assessment. The reassessment had been initiated on the same set of materials as available before the AO during the original assessment proceedings. The reassessment proceedings would be nothing but a review of the order which was impermissible. (AY. 1997-98, 2001-02)

Sasi Enterprises v. Dy. CIT (2023)105 ITR 29 (SN)(Chennai) (Trib)

S. 147 : Reassessment-International transaction-Case transferred to transfer pricing officer-Verification of records-Held, reopening of assessment bad in law. [S. 143(3), 148]

The assessee was engaged in a shipping business. Assessee completed its assessment for A.Y. 2012-13 and the same was accepted u/s 143(3). The AO reopened the assessment u/s 147 and issued notice for the same. The AO transferred the matter related to international transactions to a Transfer Pricing Officer. The assesee filed its objection against the draft assessment order to the Dispute Resolution Panel. Finally, the total income calculated as per the provisions of the Act exceeded the book profits, the AO demanded tax on the total income. The validity of reopening the assessment was challenged. The Tribunal held that the assessment had been reopened after the expiry of four years from the end of the assessment year. There was no failure on the part of the assessee in disclosing all material facts relevant to the computation of income fully. When the assessee had duly furnished all the material facts before the Assessing Officer, it was for the Assessing Officer to decide the manner of examining those details. If there was failure on the part of the Assessing Officer, that could not be a ground for reopening the assessment after the expiry of four years from the end of the assessment year, when the original assessment was completed under section 143(3) of the Act. Hence the order of the AO is liable to be quashed. (AY.2012-13)

SAI Shipping Co. P. Ltd. v. ITO (2023)103 ITR 677 (Mum) (Trib)

S. 147 : Reassessment-With in four years-Income escaping assessment-No fresh material with AO to form opinion that income escaped assessment-Opinion based on incorrect basis-Proceeding on the basis of conjectures-Reassessment without jurisdiction. [S. 148]

The Hon'ble tribunal observed that in the absence of nexus between the prima facie inference arrived in the reasons recorded and information vis-a-vis material tangible, credible, cogent and relevant to form a reason to believe, there was no basis to assume jurisdiction, the reasons recorded were highly vague, far-fetched and could not lead to a conclusion of escapement of income. The proceedings initiated were purely based on surmises, conjectures and suspicion and therefore, they were without jurisdiction and deserved to be quashed. (AY. 2011-12)

Milind Madhukar Edke v. ITO (2023)101 ITR 88 (SN) (Pune) (Trib)

S. 148 : Reassessment-Notice-Reassessment notice issued would remain in operation unless it is specifically withdrawn, quashed or gets time barred-SLP of Revenue is dismissed as the amount of tax in dispute is low. [S. 147.]

Allowing the petition the High Court held that a notice of reopening which is once issued would remain in operation unless it is specifically withdrawn, quashed or gets time barred. High Court also held that where first notice of reopening of assessment was not withdrawn, it was not permissible in law to issue fresh notice of reopening. SLP of Revenue is dismissed,

in view of CBDT Circular No. 17/2019 dated 8-8-2019 amount of tax involved was low. (AY. 2010-11)
Dy. CIT v. Marwadi Shares & Finance Ltd. (2023) 294 Taxman 600 (SC)
Editorial : Marwadi Shares & Finance Ltd v. Dy.CIT (2018) 407 ITR 49/ 94 taxmann.com 398 (Guj)(HC)

S. 148 : Reassessment-Notice-Beyond period of limitation-Notice and concequential order was quashed-SLP of the Revenue is dismissed due to low tax effect-Issue is kept open. [S. 147, 149, Art. 136]
Allowing the petition the High Court held that the reassessment notice was issued beyond limitation period of six years after end of assessment and consequential orders are set aside. SLP of Revenue is dismissed in view of Circular No. 17/2019 dated 8-8-2019, amount of tax involved was low. Issue is kept open.
ITO v. K. Devasis Patro (2023) 294 Taxman 343 (SC)
ITO v. Tapan Kumar Ghadei (2023) 455 ITR 356 /294 Taxman 522 (SC)
Editorial : K. Devasis Patro v.ITO (2023) 153 taxmann.com 197 (Orissa) (HC) / Tapan Kumar Ghadei v. ITO (2023) 153 taxmann.com 576 (Orissa)(HC)

S. 148 : Reassessment-Writ-Kar Vivad Samdhan Scheme, 1998 Maintainability-Dismissal of writ petition without reasons order-Order is set aside and High Court is directed to hear and dispose of the writ petitions on their merits expeditiously.[S. 147, Kar Vivad Samdhan Scheme, 1998, Art. 136, 226]
The assessee availed the benefit of the Kar Vivad Samdhan Scheme, 1998 which was accepted by the Revenue and a 'No due' certificate was issued for the relevant period. The Assessing Officer issued reassessment notice. The assessee filed writ before the High Court. High Court summary dismissal of writ petition. On SLP the Court held that the order of High Court barely contains any reason much less the facts or advertence to the contentions of the parties, the matter has to be considered afresh on its merits. Accordingly the order is set aside and directed to hear and dispose of the writ petitions on their merits expeditiously.
R.P. Gupta v. CIT. (2023) 332 CTR 213/224 CTR 457(SC)
Editorial : From the decision of Allahabad High Court, WP.Nos 887 to 889 of 2018 dt. 25 th July, 2018.

S. 148 : Reassessment-Notice-Jurisdiction-Foreign company-No order of transfer was produced-Notices issued by ACIT, IT, Bhubaneswar were without jurisdiction and, impugned notices and all proceedings consequent thereto were to be quashed Notices issued by ACIT, IT, Bhubaneswar were without jurisdiction and, notices and all proceedings consequent thereto were quashed.[S. 120,127 147,197, Art. 226]
Assessee-company, a non-resident company, was under jurisdiction of Deputy Commissioner, International tax, circle-1(1)(1), New Delhi. Reopening notice was issued by ACIT, International Taxation, Bhubaneswar on ground that assessee had business income arising in India in respect of management consultancy fees paid to it by its Indian AE. The assessee filed an application for lower deduction certificate under section 197 wherein assessee itself mentioned its address at Odisha The reassessment notices were challenged on the ground that Assessing Officer at Bhuvaneswar had no jurisdiction to issue. Allowing the petition the Court held that since department was not able to explain legal basis for ACIT, Bhubaneswar exercising jurisdiction over assessee, notices issued by ACIT, IT, Bhubaneswar were without jurisdiction accordingly the notices and all proceedings consequent thereto are quashed. (AY. 2013-14 to 2017-18)

Vedanta Resources Ltd. v.ACIT (IT) (2023) 333 CTR 432 / 150 taxmann.com 57 (Orissa)(HC)

S. 148 : Reassessment-Notice-Notice issued in the name of dead person-Not enforceable in the eyes of law-The legal heirs are under no statutory obligation to intimate the death of the assessee to the department-Requirement of issuing notice to a correct person is not a merely a procedure requirement but is a condition precedent the impugned notice being valid in law-Notice is held to be null and void.[S. 10(37) 144. 147, 292BB, Art. 226

Income tax return is processed and accepted. Later on, the Assessing Officer issued the notice u/s 148 in the name of dead person. The assessee died before the issuance of notice is not disputed. On writ the Court held that the legal heirs are under no statutory obligation to intimate the death of the assessee to the department. The *sine qua non* for acquiring jurisdiction to reopen an assessment is that such notice should be issued in the name of correct person, the notice issued in the name of the dead person is also not protected either by the provisions of section 292B or 292BB of the Act.Relied on Sumit Balkrishna Gupta vs. ACIT (2019) 103 taxmann.com 188 / 262 Taxman 61/ 414 ITR 292 / 104 CCH 0379 (Bom. HC), Alamelu Veerappan vs. ITO (2018) 95 taxmann.com 155/257 Taxman 72/102 CCH 0118 (Chennai HC), Savita Kapila vs. ACIT (2020) 118 taxmann.com 46 / 273 Taxman 148 / 426 ITR 502 / 108 CCH 0049 (Delhi HC), Jaydeep kumar Dhirajlal Thakkar vs. ITO (2018) 401 ITR 302 / 101 CCH 0085 (Guj.) referred. (AY. 2016-17)

Devendra v. Add CIT (2023) 294 Taxman 550 / 335 CTR 1057 (2024) 461 ITR 463 (Bom)(HC)

S. 148 : Reassessment-Notice-Death of assessee-Failure to respond to notices issued on Department's Website-Legal representative directed to respond notices with supporting documents-Matter remanded to Assessing Officer for passing fresh order on meritS. [S. 69,115BBE, 142(1), 147, Art. 226]

On writ the reassessment order was set aside and the matter was remitted to the Assessing Officer to pass a fresh order on the merits and in accordance with law after giving opportunity of hearing. The petitioner was directed to file all the documents that were called for pursuant to the notice issued under section 142(1) and give a proper reply to the various show-cause notices issued to her. Matter remanded.(AY.2015-16)(SJ)

Kajal S. Jain v. ITO (2023)459 ITR 365 /(2024) 158 taxmann.com 212 (Mad)(HC)

S. 148 : Reassessment-Notice-Permanent Account Number-Old permanent account number-Matter remanded to Assessing Officer to afford opportunity to assessee to produce necessary documents-Notice and orders set aside. [S. 74, 144, 144B, 147, 148, 156, 271(1)(c), Art. 226]

Held, allowing the petition the Court held that the dispute had arisen on account of the confusion in respect of the permanent account numbers, which was changed in the year 2011. Therefore, the matter had to be reconsidered by the Assessing Officer further by affording an opportunity to the assessee to produce the necessary documents in support of its claim. Notices and consequential orders were set aside. Matter remanded. (SJ)

Shri Shivaji Maharaj Co-Op. Credit Society Ltd. v. ITO (2023)459 ITR 483 (Karn)(HC)

S. 148 : Reassessment-Notice-Sanction-Alternative remedy-Writ petition dismissed.[S. . 147, 151,246A, Art. 226]

Held, dismissing the writ petition, that the assessee's case was that sanction under section 151 of the Income-tax Act, 1961, was void, because the sanction did not bear a valid

digital signature. In view of the alternative remedy available in favour of the assessee under section 246A of the Act, a writ would not issue to quash the notice of reassessment.(SJ)
Southern Ispat and Energy Ltd. v. UOI (NO. 1) (2023)459 ITR 324 (Chhattisgarh)(HC)
Editorial : Affirmed, Southern Ispat and Energy Ltd. v.UOI (NO. 2) (2023)459 ITR 328 /(2022) 143 taxmann.com 270 (Chhattisgarh)(HC)

S. 148 : Reassessment-Notice-Sanction-Alternative remedy-Writ petition dismissed.[S. . 147, 151,246A, Art. 226]
Held, dismissing the writ appeal, that the challenge to initiation of proceedings under section 148 of the Income-tax Act, 1961, was raised only on the ground of non-issuance of sanction order under section 151 of the Act by the competent authority. The present was not a case warranting exercise of powers under article 226 of the Constitution of India, having regard to the fact that the assessee had adequate alternate remedy by way of appeal. The notice of reassessment could not be quashed.
Southern Ispat and Energy Ltd. v.UOI (NO. 2) (2023)459 ITR 328 /(2022) 143 taxmann.com 270 (Chhattisgarh)(HC)
Editorial : Affirmed, Southern Ispat and Energy Ltd. v. UOI (NO. 1) (2023)459 ITR 324 (Chhattisgarh)(HC)

S. 148 : Reassessment-Notice-Amalgamation-Company ceased to exist-Authorities are aware of amalgamation-Notice is held to be not valid.[S. 147, Art. 226]
Held that corporate entity stood merged in the transferee company, i. e., the assessee, with effect from April 1, 2014, i. e., with effect from the "previous year" 2014-15 as would relate to the assessment year 2015-16. The assessing authority of the transferor company had proceeded to issue the reassessment notice without examining the record of that assessee and without taking note of the event of merger and the subsequent order dated December 30, 2017 passed in the case of the merged entity, i. e., the assessee. Since inherent jurisdiction was lacking and the order had been passed without opportunity of hearing granted to the assessee, the order dated March 29, 2022 was not valid. Referred, PCIT v. Mahagun Realtors (P) Ltd (2022) 443 ITR 194 (SC)(AY.2015-16)
RRJ Infra Industries Pvt. Ltd. v. PCIT (2023)458 ITR 573 / 331 CTR 671/ 224 DTR 418/150 taxmann.com 85 (All)(HC)

S. 148 : Reassessment-Notice-Order passed ignoring stay order of High Court-Order is held to be not valid.[S. 147, Art. 226]
Allowing the petition the Court held that the assessment order passed in contravention of the interim order and without providing any opportunity to the assessee to respond to the information against it. The order of reassessment was not valid.(AY. 2013-14)
Cluster Overseas Pvt. Ltd. v. ITO (2023)457 ITR 422/ 146 taxmann.com 50 (Delhi)(HC)

S. 148 : Reassessment-Notice-After the expiry of four years-Sanction of Joint Commissioner-Notice and consequent proceedings invalid. [S. 151, Art. 226]
Allowing the petition the Court held that since the notice was being issued beyond the four years period prescribed under the unamended provisions of section 151(1) of the Act, it ought to have the satisfaction accorded by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner which was not so. The notice dated March 27, 2021 issued under section 148 of the Act and consequent order overruling the assessee's objections were quashed.(AY.2015-16)
DCW Ltd. v. ACIT (2023)457 ITR 632 (Bom)(HC)

S. 148 : Reassessment-Notice-After the expiry of four years-Sanction-Limitation-Approval by additional commissioner is not valid-Approval ought to be given by Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner-Notice is quashed-Provisions of Relaxation Act is applicable only cases expiring on 31-3 20200-Limitation expiring on 31-3 2022-Provisions of Relaxation Act is not applicable-[S. 147, 148 151(1), 151(2), Art.226]

Held that the copy of approval granted under section 151(1) of the Act, placed on record, stated that the approval had been given by the Additional Commissioner. The approval ought to have been given by the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner and not by the Additional Commissioner. Therefore, the notice dated March 31, 2021, issued under section 148 of the Act was quashed and set aside. Court also held that the Assessing Officer had not explained in the reasons recorded as to how the limitation got extended. Still the extension of limitation applies to only cases where the limitation was expiring on March 31, 2020. That the six years limitation for the assessment year 2015-16 would expire only on March 31, 2022. Therefore, the provisions of the Relaxation Act would not be applicable. Even if, the time to issue notice was considered to have been extended, that would not amount to amending the provisions of section 151 of the Act.(AY.2015-16)

Equitable Financial Consultancy Services Pvt. Ltd. v. ITO (2023)457 ITR 644 (Bom)(HC)

S. 148 : Reassessment-Notice-Amalgamation-Intimated to the Assessing Officer-Notice issued to non-existent company-Notice is quashed.[S. 147, Art.226]

Held that the intimation dated January 17, 2019, to the Assessing Officer as regards the amalgamation, both the notices issued under section 148 of the Act, were hereby quashed. All the consequential proceedings pursuant to the notices were to stand terminated.(AY.2013-14, 2014-15)

Gauriputra Estate Holders Pvt. Ltd. v. UOI (2023)457 ITR 691 (Guj)(HC)

S. 148 : Reassessment-Notice-After the expiry of four years-Sanction taken from Additional Commissioner-Not valid-Notice and order is quashed-Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020. [S. 147, 151(1), 151(2), Art. 226]

Allowing the petition the Court held that under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the time to issue notice may have been extended but that would not amount to amending the provisions of section 151 of the Act. Since four years had expired from the end of the assessment year, as provided under section 151(1) of the Act, it was only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded approval and not the Additional Commissioner. On this ground, the notice dated March 31, 2021 issued under section 148 of the Act, and consequent orders and notices were unsustainable.(AY.2015-16)

Johnson and Jonson Pvt. Ltd. v. Dy. CIT (2023)457 ITR 629 (Bom)(HC)

S. 148 : Reassessment-After the expiry of four years-Notice-Sanction-Notice issued with approval of Joint Commissioner is not valid. [S. 147, 151, Art. 226]

Held that under section 151 of the Income-tax Act, 1961 a notice under section 148 of the Act cannot be issued after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner was satisfied, on the reasons recorded by the

Assessing Officer, that it was a fit case for the issue of such a notice. Since the assessment year under consideration was 2015-16 and the notice dated March 29, 2021 was admittedly beyond the four year period for which the approval ought to have been granted by any one of the four authorities and not by the Joint Commissioner. The Assessing Officer fell in error in holding that the case at hand fell within the four years period, from the end of the assessment year under consideration. The notice is invalid.(AY.2015-16)
Soumya Girdhari Agrawal.v. ITO (2023)457 ITR 636 (Bom)(HC)

S. 148 : Reassessment-Notice-Limitation-Time-limit of one year from end of financial year in which notice of reassessment was served. [S. 147, 153(2)]
Dismissing the appeal of the Revenue the Court held that it was not in dispute that no action had been taken pursuant to notice under section 148 of the Act dated April 18, 2013. The notice related to the assessment year 2008-09. Hence, the second notice dated March 31, 2015 was unsustainable in law. Sub-section (2) of section 153 of the Income-tax Act, 1961 as it stood prior to amendment, relevant to the assessment year 2008-09 provides that no order of assessment, reassessment or re computation shall be made under section 147 after the expiry of one year from the end of the financial year in which the notice under section 148 was served. Referred Marwadi Shares and Finance Ltd v. Dy.CIT ß(2018) 4007 ITR 49 (Guj)(HC) (AY.2008-09)
PCIT (E) v. Archdiocesan Board of Education (2023)456 ITR 453 /155 taxmann.com 82 (Karn)(HC)

S. 148 : Reassessment-Notice-Reasons not furnished-Writ to quash the reassessment notice is dismissed. [S. 147, Art. 226]
Held that what was challenged in the writ petition was only the notice issued under section 148 of the Act. Considering the reasons recorded by the Assessing Officer and the submissions made by the learned counsel for the appellant, the order of the judge is set aside.(AY.1998-99)
Dy. CIT v. Gay Travels Pvt. Ltd. (2023)456 ITR 486 (Mad)(HC)

S. 148 : Reassessment-Notices issued in name of dead person-Non est and invalid. [S. 142(1) 147, Art. 226]
Allowing the petition the Court held that though intimation of her death was sent to the Department by the petitioner, her son, the notices issued against a dead person. Notice and order is held to be invalid and non est.
Dipak Tanna v.ITO (2023)456 ITR 372 (Bom)(HC)

S. 148 : Reassessment-Notice-Notice issued in name of dead person-Null and void.[S. 147, Art. 226]
Allowing the petitions the Court held that the notices issued in the name of a dead person for reopening of assessment under section 147 were null and void and, therefore, quashed and set aside.(AY.2013-14, 2014-15)
Raniben Khimji Patel v. ACIT (2023)456 ITR 369 (Bom)(HC)

S. 148 : Reassessment-Notice on dead person-Order is quashed and set aside.[S. 147, 159, 292B, Art. 226]
On the expiry of the assessee the Assessing Officer issued notice under section 148 in his name and not in the name of his legal representative. On writ the Court held that the notice is illegal and consequential proceedings and orders passed thereon were without any

jurisdiction is quashed and set aside. Followed Utpala Pradeep Jain v. Asstt. CIT [2023] 153 taxmann.com 700 (Guj)(HC) (AY. 2106-17)
Utpala Pradeep Jain v. ACIT (2023) 295 Taxman 322 (Guj.)(HC)

S. 148 : Reassessment-Notice-Amalgamation-Succession to business-Notice in the name of non-existing entity-Assessing Officer was informed-Notice and order disposing the objection is quashed. [S. 147, 170, Art. 226]
The assessee has informed the amalgamation to the Assessing Officer on 7-8-2019. Subsequently the erstwhile company received notices under section 148 for years 2014-15 to 2017-18 on various dates between 29-3-2021 and 31-3-2021. On writ allowing the petition the Court held that the notice was issued in the name of dead person is bad in law and quashed. (AY. 2014-15 to 2017-18)
Anokhi Realty (P.) Ltd. v. ITO (2023) 457 ITR 695/ 295 Taxman 60 (Guj.)(HC)

S. 148 : Reassessment-Notice-Amalgamation-Intimation was given to Income-Tax Authorities-Notice in the name of company which had ceased to exist-Not valid. [S. 142(1), 147, Art. 226]
Allowing the petition the Court held that intimation regarding the amalgamation was given in reply to the notice under section 142 in the month of March, 2018. It was the very same officer who after three years of such amalgamation had issued notice in the name of that company, which no longer existed on March 30, 2021 for the assessment year 2016-17. The notice of reassessment was not valid. (AY.2016-17)
Kunvarji Fincorp Pvt. Ltd. v. Dy. CIT (NO. 1) (2023)455 ITR 409 / 293 Taxman 183 (Guj)(HC)

S. 148 : Reassessment-Notice-Amalgamation-Company ceased to exist-Department restrained from proceeding-Batch identical challenge pending before Court.[S. 147,148A, Art.226]
On a writ petition on the question whether a company which ceased to exist consequent to a scheme of arrangement approved by the National Company Law Tribunal could be proceeded against under section 148A of the Income-tax Act, 1961. The Department is restrained the Department from taking further action till the next date of listing on September 12, 2023 of the main batch of petitions pursuant to the show-cause notices in question since an identical challenge formed subject matter of consideration.
Lecoanet Hemant India Pvt. Ltd. v. PCIT (2023)455 ITR 508 (Delhi)(HC)

S. 148 : Reassessment-Notice-After withdrawal of petition the assessment was completed-Second notice for same assessment year-Capital gains-Notice was quashed.[S. 10(38), 147, Art. 226]
After withdrawal of the petition, the assessment was completed. The Assessing Officer issued second notice for the same assessment year. Allowing the petition the Court held that, if any record was available with the Department in this regard, it could pursue the matter in accordance with law. The Notice was quashed. (AY.2012-13)
Bharatkumar Jayantibhai Patel v. ACIT (2023)454 ITR 749 (Guj)(HC)

S. 148 : Reassessment-Best judgment assessment-Request to the Assessing Officer to treat original return filed as return in response to notice-Best judgement order was passed without issuing notice under section 143(2-Order of Tribunal setting aside the order of the Assessing Officer is affirmed by High Court.[S. 139, 142(2A)) 143(2), 144, 147, 260A]

Dismissing the appeal of the Revenue the Court held that the assessment order in the second round was passed under section 147 read with section 144 and recourse under section 144 was taken under a mistaken belief that there was no return on record. Since a response was on record the Assessing Officer was required to have issued a notice under section 143(2) and then proceeded further in the matter, and perhaps thereafter, made an assessment under section 147 read with section 144. The order passed by the Tribunal confirming the order of the Commissioner (Appeals) quashing the order did not call for any interference. No question of law arose.(AY. 2009-10)

PCIT v. S. G. Portfolio Pvt. Ltd. (2023)454 ITR 761 (Delhi)(HC)

S. 148 : Reassessment-Notice-Amalgamation-Merger-Knowledge of department-Notice against non-existent assessee is unsustainable.[S. 147, Art. 226]

On writ the assessee contended that the notice under section 148 was issued in the name of non-existent assessee which since had merged with another entity under the order passed by the National Company Law Tribunal and therefore null and void.Allowing the petition, the Court held that the notice issued by the Assessing Officer under section 148 to the non-existent assessee was untenable. Order and the notice was quashed and set aside.(AY. 2014-15)

Virtusa Consulting Services Pvt. Ltd. v. UOI (2023)454 ITR 363 (Telangana)(HC)

S. 148 : Reassessment-Notice-Beyond period of limitation of six years-Notice and consequential order was quashed.[S. 147, 149, Art. 226]

Allowing the petition the High Court held that the reassessment notice was issued beyond limitation period of six years after end of assessment and consequential orders are set aside. Followed, Ambika Iron & Steel (P.) Ltd. v. Pr. CIT [2023] 452 ITR 285 (Orissa.)(HC)

K. Devasis Patro v.ITO (2023) 153 taxmann.com 197 (Orissa) (HC)

Tapan Kumar Ghadei v. ITO (2023) 153 taxmann.com 576 (Orissa)(HC)

Editorial : SLP of Revenue is dismissed due to low tax effect, ITO v. K. Devasis Patro (2023) 294 Taxman 343 (SC)/ ITO v. Tapan Kumar Ghadei (2023) 455 ITR 356 /294 Taxman 522 (SC)

S. 148 : Reassessment-Notice-Jurisdictional issue-Alteernative remedy-Writ ppetition is maintainable. [S. 147, Art. 226]

The assessee challenged the reassessment proceeings by filing the writ petition. Revenue raised a preliminary objection to maintainability of writ petition on ground that statutory remedy by way of an appeal was available to assessee and therefore, there was no reason to entertain said writ petition in exercise of extraordinary jurisdiction Court held that when a jurisdictional issue is raised in a writ petition challenging competence of exercise of statutory power in question, same being a pure question of law, it can be considered in exercise of writ jurisdiction. Accordingly the writ petition is entertained and will be heard for admission. shall accordingly be heard for admission. Followed Godrej Sara Lee Ltd v. Excise and Taxation Officer (CA No. 5393 of 2010 dt 1-2-2023) (AY. 2017-18)

Modern Living Solutions (P.) Ltd. v. ITO (2023) 294 Taxman 446 (Bom.)(HC)

S. 148 : Reassessment-Notice-Notice issued in the name of non-existent entity-Knowledge of amalgamation was made to the department-notice issued was set-aside.[S. 147, Art.226]

The AO issued notice under section 148 in name of the amalgamating entity proposing to reassess income of said entity. The Court noted that the assessee (amalgamated entity) had filed revised return, post amalgamation, which was duly scrutinised under section 143(2).

Therefore, from the material on records, it is evident that the Revenue was aware about factum of amalgamation.
The Court, following the ratio of the judgment of the Apex Court in the case of Saraswati Industrial Syndicate Ltd. v. CIT [1990] 186 ITR 278 (SC) as also in the case of Maruti Suzuki India Ltd. [2019] 416 ITR 613 (SC) held that the notice issued under section 148 on non-existent entity as unsustainable in law and accordingly the same was set aside.(AY. 2016-17)
Bennett Coleman and Company Ltd v. UOI (2023) 294 taxman 372 (Bom)(HC)

S. 148 : Reassessment-Notice-Amalgamation-Intimated to the Department-Cash credits-Notice in the name of company which is ceased to exist-Notice is quashed and and set aside. [S. 147 Art. 226]
Allowing the petition the Court held that scheme of arrangement approved by the High Court was intimated to the authority. Reopening notice under section 148 was issued upon the assessee which was in the name of the erstwhile company in respect of time deposits made by the assessee.
The notice issued by the revenue was in the name of old company which was not existing and same was not permissible. Accordingly the notice was quashed and set aside. (AY. 2017-18)
Roquette India (P.) Ltd. v. ACIT (2023) 457 ITR 509/ 294 Taxman 251 (Guj.)(HC)

S. 148 : Reassessment-Notice-Notice dated 29-3-2019 had been issued on 30-3-2019 and there was an entry in postal register in support-Order passed is valid in law. [S. 144, 147, Art. 226]
The petitioner challenged notice issued under section 148 of the Act, on the ground that notice had not been issued/served in a manner as contemplated under Act. Dismissing the petition the court helld that from records that notice under section 148, dated 29-3-2019 had been issued on 30-3-2019 and there was an entry in postal register in support of same thus confirming completion of service of notice. Another notice was sent on 31-7-2019, which was received by one 'A' whose identity was questioned by the petitioner. Court held that questioning of identity by the petitioner was totally irrelevant, since service of notice under section 148 on assessee was already been complete at first instance. Notices had been repeatedly issued even thereafter, and admittedly served on assessee to which assessee had not bothered to respond and, thus, there was no infirmity in the order of assessment both in regard to procedure followed by officer or as far as service of notice was concerned. (AY. 2012-13) (SJ)
Praveen Kumar v. ITO (2023) 294 Taxman 488 (Mad.)(HC)

S. 148 : Reassessment-Notice-Amalgamation-Intimated to the Assessing Officer-Notice in the name of amalgamated company which ceased to exist-Notice is not valid.[S. 133(6) 147, Art. 226]
Allowing the petition the Court hheld that the amalgamated company Panchadhra Agro Films Pvt Ltd was no longer in existence and could not have been issued the notice under section 148. The amalgamation of Panchadhra Agro Films Pvt Ltd with the assessee had been intimated to the Assessing Officer by way of a communication dated March 31, 2016 and also in response to notice dated January 24, 2020 issued under section 133(6) of the Act.The notice under section 148 was quashed and set aside.(AY.2016-17)
Adani Estate Management (P.) Ltd. v. ITO (2023) 456 ITR 560 /294 Taxman 18 (Guj.)(HC)

S. 148 : Reassessment-Notice-Dead person-Issuing a notice to a correct person is not merely a procedural requirement but a condition precedent for a notice to be valid in law-Order null and void.[S. 148A(b) 148A(d)), Art. 226]

Allowing the petition, the Court held that notice issued on a dead person or reopening of assessment of a dead person is null and void in law. Accordingly the notice under section 148, order under section 148A(d) and notice under section 148A(b) were quashed and set aside. (AY. 2020-21)

Dhirendra Bhupendra Sanghvi v. ACIT (2023) 458 ITR 326 / 294 Taxman 13 (Bom.) (HC)

S. 148 : Reassessment-Notice-Capital gains-Show cause notice-Disputed facts-Burden is on assessee-Since challenge to show-cause notice was based on disputed questions of facts, writ petition was dismissed. [S. 45, 147, Art. 226]

Assessee challenged show-cause notice issued under section 148 on ground that preconditions for issue of notice under section 148 had not been satisfied before issuance of such notice. it was submitted that in view of provisions of reopening having undergone amendment by Finance Act, 2021, reassessment would not be permissible after expiry of six years as escaped assessment amount was less than Rs. 50 lakhs.The Revenue contended that the notice had been issued on basis of information regarding sale deed of land that was received by revenue. As per sale deed available on record, assessee had sold a piece of land for a consideration of Rs. 6.51 lakhs and market value of such land for stamp duty purpose was determined at Rs. 51.71 lakhs. However, for year under consideration assessee's return of income was not filed, hence, capital gain on consideration of aforesaid land remained undisclosed. Dismissing the petition the Court held that the Assessing Officer having formed opinion that reassessment was necessary, as income had escaped assessment and valuation of escaped assessment was more than Rs. 50 lakhs based and had also recorded reasons, it was for assessee to establish that view taken by Assessing Officer was contrary to material on record or it was perverse. Since challenge to show-cause notice was based on disputed questions of facts. The petition was dismissed. entertained. (AY. 2015-16)

Sahjeevan Co-operative Housing Society Ltd. v. P CIT (2023) 458 ITR 486/ 292 Taxman 488/ 335 CTR 139 (Bom.)(HC)

S. 148 : Reassessment-Service of notice-Primary email id-Notice issued on the secondary notice-Failure to participate in the proceedings-Service of the notice is not valid-Reassessment was quashed. [S. 144, 144B, 147, 282, Rule 127, Art. 226]

Assessing Officer issued a notice u/s. 148 on the secondary email address of the assessee, when there was a primary email address available, there was nothing wrong with the assessee's refusal to participate in the proceeding vitiated by valid service of notice. r.w.s. 148, and rule 127 of the Income-tax Rules, 1962. Proceedings including the show cause notice for proposed variation dated 25th March 2022 and assessment order u/s 144B r.w s.144 of the Act was quashed. (AY. 2015-16, 2016-17, 2017-18)

Lok Developers Registered Partnership Firm v. Dy. CIT (2023) 455 ITR 399 / 149 taxmann.com 93 (Bom)(HC)

S. 148 : Reassessment-Notice-Unexplained investment-Wrongly stating that return was filed in terms of section 119(2)(b)-Exparte order making addition as income from undisclosed sources-Order was set aside-Directed to treat the return filed in terms of section 148 of the Act. [S. 69, 119(2)(b), 144, 147, 292B, Art. 226]

The Assessing Officer passed assessment order under section 147 read with section 144 an added certain amount to his income as unexplained investments in immovable property by

invoking provisions of section 69 on the ground that the assessee has not filed the return in pursuance of notice under section 148 of the Act. On writ the assessee contended that the in response to notice issued under section 148 filed return but by mistake reflected that return was filed in terms of section 119(2)(b) and Assessing Officer passed assessment order holding that assessee had not filed any return. Allowing the petition the Court held that the matter required to be reconsidered by Assessing Officer by treating return as a return filed in terms of notice under section 148. Assessment order and demand norice was set aside. (AY. 2015-16)

Shahana Nayak v. ITO (2023) 151 taxmann.com 482 (Bom)(HC)

S. 148 : Reassessment-Notice-Dead person-Issuing a notice to a correct person is not merely a procedural requirement but a condition precedent for a notice to be valid in law-Order null and void.[S. 148A(b) 148A(d)), Art. 226]

Allowing the petition, the Court held that notice issued on a dead person or reopening of assessment of a dead person is null and void in law. Accordingly the notice under section 148, order under section 148A(d) and notice under section 148A(b) were quashed and set aside. (AY. 2020-21)

Dhirendra Bhupendra Sanghvi v. ACIT (2023) 458 ITR 326 / 294 Taxman 13 (Bom.) (HC)

S. 148 : Reassessment-Notice-Amalgamation-Company ceased to exist-Estoppel against law-Reassessment notice and order was quashed. [S. 148(A))(b), 148A(d), Art. 226]

Allowing the petition, the Court held that**,** participation in the proceedings would not operate as an estoppel against law, based upon the settled legal principle that the amalgamating entity had ceased to exist upon the scheme of amalgamation being approved. Accordingly, when a company was amalgamated with petitioner company by an approved scheme of amalgamation, and such factum was communicated to concerned income-tax authorities, order passed under section 148A(d) and subsequent issue of notice under section 148 against such amalgamating company which ceased to exist. Oreder was quashed. Referred Saraswati Industrial Syndicate Ltd. v. CIT [1990] 53 Taxman 92/186 ITR 278 (SC), Spice Entertainment Ltd. v. CST 2012 (280) ELT 43 (Delhi) (HC)) and Pr. CIT v. Maruti Suzuki India Ltd(2019) 107 taxmann.com 375/ 265 Taxman 515/ 416 ITR 613(SC) (AY. 2013-14)

Pico Capital (P.) Ltd. v. DCIT (2023) 150 taxmann.com 488 / 293 Taxman 347 / (2024) 460 ITR 508 (Bom)(HC)

S 148 : Reassessment-Notice-Amalgamation-Company ceased to exist-Succession to business otherwise than on death-Non existing company-Amalgamation-PAN in name of non-Existent company remained active-Notice issued was quashed [S. 148, 170, Art. 226]

Allowing the petition the Court held that a company was amalgamated with petitioner-company, name of non-existing company could not be mentioned in reopening notice merely because PAN in name of non-existent company had remained active and, thus, impugned reopening notice and reassessment order passed upon petitioner-company while having name of non-existing company were to be set aside. Accordingly the reassessment notice and order disposing the objection was quashed. (AY. 2017-18)

CLSA India (P.) Ltd. *v.* DCIT (2023) 149 taxmann.com 380 (Bom)(HC)

S. 148 : Reassessment-Notice-Search and Seizure-Third party premises-Satisfaction note-Failure to furnish documents-Assessment order quashed and set aside-Matter was remanded back for adjudication afresh. [S. 131, 132, 147, 151, Art. 14, 226]

Assessee is a co-operative Bank providing financial and banking services. Assessing Officer on basis of search conducted against third person, issued notice under section 148 to assessee, claiming that it had reason to believe that assessee's income chargeable to tax for relevant assessment year had escaped assessment. The Assessee requested for satisfaction note and also copy of statement recorded of the parties. The Assessing Officer passed the order without providing the satisfaction note and copy of the statement. On writ allowing the petition the Court held that the Assessing Officer was duty bound to issue, along with notice under section 148, reasons which formed basis for reopening of assessment, satisfaction note and order of Principal Commissioner, who granted approval to issuance of said notice along with note of Assessing Officer in support of his request for approval, appraisal report from DDIT (Inv) Bhavnagar, and statements of person recorded under section 131 which were referred to in notice. However, none of these documents, were sent to assessee in compliance with general directions issued by Court. It was also borne from record that despite several requests from assessee, specifically demanding a copy of all these documents, Assessing Officer had refused to furnish copies of same to assessee-Thereafter, Assessing Officer rejected request of assessee for furnishing all these documents without assigning any reasons for such rejection, nor dealing with specific objections and request made by assessee in its order. Accordingly the order was set aside and Whether therefore, matter was remanded back for adjudication afresh. Followed Tata Capital Financial Services Ltd. v. Asstt. CIT(2022) 137 taxmann.com 315/ 287 Taxman 1/ 443 ITR 127 (Bom)(HC), Sabh Infrastructure Ltd. v. Asstt. CIT (2018) 99 taxmann.com 409/ (2017) 398 ITR 198 (Delhi)(HC) (AY. 2013-14)

Sahebrao Deshmukh Co-op. Bank Ltd. v. ACIT (2023) 455 ITR 92 / 149 taxmann.com 248 / 292 Taxman 258 (Bom)(HC)

S. 148 : Reassessment-Notice-Recorded reason was not provided-Order of assessment is bad in law-Faceless Assessment Scheme who shall proceed in the matter after providing to the Petitioner the reasons recorded for reopening. The proceedings be completed preferably within a period of three months from today. [S. 144B, 147, Art. 226]

Allowing the petition the Court held that where a reopening notice was issued upon assessee and, further, an order of assessment under section 147 read with section 144B was passed, since assessee had consistently requested Assessing Officer to furnish reasons for reopening which admittedly were never provided to assessee, impugned reopening of assessment and further order passed were unsustainable in law. The Court also held that the matter is remanded to the concerned officer under the Faceless Assessment Scheme who shall proceed in the matter after providing to the Petitioner the reasons recorded for reopening. The proceedings be completed preferably within a period of three months from today. (AY. 2014-15)

Rajesh Poddar v. ITO (2023) 152 taxmann.com 98 (Bom)(HC)

S. 148 : Reassessment-Notice-Two Permanent Account Numbers-Earlier Permanent Account Number was abended-Notices issued in earlier Permanent Account Number not responded-[144, 147, 148, 156, 271B, 271F, 274, Art. 226]

Held that in view of the peculiar facts, the petitioner-firm, having two PANs issued in its name (one in status as a company), filed its audited returns and paid taxes on correct PAN but since they had not taken any steps to cancel or surrender wrong PAN nor respondent had fulfilled its duties diligently by indicating in their reply to petition whether or not petitioner had filed any return of income on wrong PAN since issued, impugned notice under section 148 was t quashed and respondent was to be directed to cancel wrong PAN in accordance with law and reassess petitioner, if required. (AY. 2015-16, 2016-17)

Bhavna Steel v. ITO (2023) 454 ITR 670 / 152 taxmann.com 218 / 335 CTR 1074 (Bom)(HC)

S 148 : Reassessment-Notice-Jurisdiction-Notice issued by Officer who had no jurisdiction over assessee-Not curable defects-Notice and order rejecting objections was quashed and set aside.[S. 147 Art. 226]

Allowing the petition the Court held that on the facts the notice under section 148 having been issued by an Income-tax Officer who had no jurisdiction over the assessee had not been issued validly and without authority in law. The notice and the order rejecting the assessee's objections were quashed and set aside. (AY.2012-13)

Ashok Devichand Jain v. UOI (2023)452 ITR 43 (Bom)(HC)

S. 148 : Reassessment-Notice-Amalgamation-Amalgamating Company ceases to exist-Notice and initiation of reassessment proceedings void ab initio-Permanent Account Number Of Non-Existent entity remaining active. [S. 147, 156, Art. 226]

Allowing the petition the Court held that the notice under section 148 of the Income-tax Act, 1961 which formed the basis for reassessment proceedings under section 147 was issued in the name of the assessee which was a non-existent entity due to amalgamation under the order of the court and despite the fact that the Department having been informed. The fact that the permanent account number in the name of the non-existent entity remained active did not create an exception to the principles enunciated in PCIT v. Maruti Suzuki India Ltd (2019) 416 ITR 613 (SC). The notice of reassessment and consequential demand notice and penalty notice for the assessment were set aside. (AY.2017-18)

CLSA India Pvt. Ltd. v. Dy. CIT (2023)452 ITR 55 (Bom)(HC)

S. 148 : Reassessment-Notice on dead person-Intimated in the original assessment proceedings-Notice and order was quashed.[S. 142(2) 159, 292BB, Art. 226]

During pendency of scrutiny proceedings, assessee died on 18-1-2016 and he was represented by his legal representative, petitioner. Later, original income declared by assessee was accepted and assessment order was passed. Reopening notice was issued against deceased assessee on ground that bill receivables shown in audit report were not included in turnover receipt offered for taxation. In response to notice u/s 142(2) the Pursuant to notice petitioner annexed death certificate of assessee. The Assessing Officer passed assessment order on 10-9-2021 and initiated penalty proceedings against deceased assessee. On writ allowing the petition the Court held that since during original assessment proceeding itself, original assessee died and Assessing Officer was well-informed of same, notice issued for initiation of reassessment proceeding in name of deceased assessee on his PAN and not in name of his legal representative was illegal and all consequential orders passed pursuant to notice, would be non est and was quashed.(AY. 2015-16)

Sandeep Chopra v. PCIT (2023) 455 ITR 613 / 292 Taxman 269 / 227 DTR1 (Jharkhand)(HC)

S. 148 : Reassessment-Notice in the name of dead person-Subsequent notice u/s 148A dated 6-6-2022 was not challenged-Writ petition challenging the earlier notice dated 3-5-20021 issued under section 148 was dismissed.[S. 148A, Art. 226]

Assessment was made under section 143(3) read with section 153C of the Act.Assessee thereafter passed away on 6-9-2019. A notice for reassessment came to be issued under section 148 in name of assessee on 3-5-2021. In response to notice his son and legal heir requested revenue to provide reasons for proposed reassessment. Thereafter, on 4-5-2022 a notice was issued in name of assessee in terms of section 148A of the Act. Notice was

however returned with an endorsement 'assessee not known'. After this, on finding that assessee/deceased had passed away, a notice dated 6-6-2022 came to be issued to assessee represented by his wife in capacity of legal heir stating that said notice shall be deemed to be a notice issued under clause (b) of section 148A as amended by Finance Act, 2021. Subsequently, revenue vide order dated 28-7-2022 rejected objections of assessee in response to notice issued under section 148A. Wife of assessee in her capacity as legal heir of deceased assessee filed writ petition challenging notice dated 3-5-2021 issued under section 148 on ground that notice on a dead person was invalid/illegal. Dismissing the petition the Court held that subsequent notice/orders of revenue under section 148A dated 6-6-2022 and 28-7-2022 which had not been challenged. (AY. 2016-17)(SJ)
D.N.Vikraman v. ACIT (2023) 292 Taxman 449 (Mad.)(HC)

S. 148 : Reassessment-Notice in the name of non-existing company-Amalgamation-Notice issued in the non-existing company was quashed. [S. 147, Art. 226]
A company was amalgamated with petitioner-company. Petitioner-company had sent intimations to department about said amalgamation with a company. After three years, a reopening notice under section 148 was issued in name of said erstwhile company. On writ the court held that issuance of notice under section 148 in name of non-existing company which was amalgamated with petitioner-company and lost its existence was without jurisdiction and same was quashed. Court also held that lack of inter-departmental co-ordination or non-application of mind when materials relating to amalgamation were already available with department could hardly be a ground to hold non-service of intimation regarding amalgamation by assessee. (AY. 2016-17)
Adani Wilmar Ltd. v. ACIT (2023) 456 ITR 551 / 292 Taxman 592 (Guj.)(HC)

S. 148 : Reassessment-Notice-Second notice-After High Court remanded the matter.-Second notice is bad in law. [S. 153(6)(i), Art. 226]
Without disposing the return filed in pursuance of first notice under section. 148, a second notice is issued under Section 148 after the High Court has remanded the matter to the AO for undertaking reassessment pursuant to issue of the first Section 148 notice then the second 148 notice is liable to be quashed since the AO cannot ignore the limitation period specified under Section 153(6)(i) and justify the second 148 notice. Second notice was quashed.(AY. 2012-13, 2013-14)
Elite Pharmaceuticals v. ITO [2023] 291 Taxman 597 (Cal)(HC)

S. 148 : Reassessment-Notice-Material for a reason to believe that income has escaped assessment was not supplied-Reassessment notice was quashed [S. 132(4), 147 Art. 226]
The assessee challenged the reassessment notice on the ground that the assessee was not supplied the material forming the reason to believe that income has escaped the assessment. Allowing the petition the Court held that non-supply of material referred to in the reasons to believe would be enough to render the proceedings bad, even though the material for forming the opinion may be sufficient. (WP No. 13747 of 2021 dt. 4-1-2023)(AY. 2017-18)
Micro Marbles Pvt Ltd v.ITO ((2023) The Chamber's Journal-March P. 120 (Raj)(HC)
S. 148 : Reassessment-Notice-Death of assessee was notified to Department-Notice in the name of the dead person-Subsequent notice issued on the legal heir of deceased-Notice and consequential orders set aside. [S. 147, 159(2)(b), 292B, Art. 226]
On writ allowing the petition, the Court held that it was a matter on record that the assessee had expired and the death certificate of the deceased was communicated to the Assessing Officer. The first notice under section 148 against the deceased assessee itself was not sustainable and illegal. Therefore, the notice issued against the legal heir of the deceased

assessee was quashed and set aside. However, if otherwise permissible under the law, a fresh notice under section 159(2)(b) was permitted to be issued against the legal heir of the assessee. (AY.2017-18)
Madhuben Kantilal Patel (Smt.) (Late) v. UOI (2023)452 ITR 17 / 292 Taxman 151 (Guj) (HC)

S. 148 : Reassessment-Order disposing the objection-Judgments relied upon by petitioner not applicable-Order disposing the objection was up held [S. 147, Art. 226]
Where the order was passed disposing off the petitioner's objections, simply because the reply of the petitioner was not adequately considered cannot occasion a failure of natural justice. The judgments relied by the Petitioner in Divya Capital and Rithala Education deal with different situations and are not relevant. Notice and speaking order upheld. (AY.2016-2017)
Viswabharathi Medicals v. ITO (2023) 330 CTR 445 / 221 DTR 309 (Ker)(HC)

S. 148 : Reassessment-Notice-Direction of Supreme Court-UOI v. Ashish Agarwal-Pertaining only to notices issued after 1-4-2021 (2022) 444 ITR 1 (SC)-Notice issued prior to that date and after six years from assessment Year-Notices and proceedings are quashed. [S. 147, Art. 226]
Allowing the petition the Court held that the notice issued under section 148 pertaining to the assessment 2013-14 was issued on March 30, 2021, i. e., prior to April 1, 2021 and beyond the period of six years. The notice and all the subsequent orders and proceedings were quashed. The Court also held that Supreme Court in UOI v. Ashish Agarwal (2022) 444 ITR (SC) only partly allowed the appeals of the Union of India and made a distinction between notices issued under section 148 of the Income-Tax Act, 1961 for reopening the assessment under section 147 by the Department on or after April 1, 2021 and those that have been issued prior thereto. (AY.2013-14)
Nutan Bhusan Jena v. PCIT (2023)452 ITR 288/ 333 CTR 867 (Orissa)(HC)

S. 148 : Reassessment-Notice-Merger-Amalgamation-Notice Issued against non-existent entity-Notice void ab initio and unsustainable [A. 147, Art. 226]
On a writ petition challenging the notice issued under section 148 of the Income-tax Act, 1961 to reopen the assessment in the name of the co-operative bank which had merged with the petitioner and therefore, was non-existent. Allowing the petition the Court held that the notice issued against the non-existent entity was unsustainable and therefore, quashed and set aside. (AY.2012-13)
Mehsana Urban Co-Op Bank Ltd. v.ACIT (2023)451 ITR 514/292 Taxman 187 (Guj)(HC)

S. 148 : Reassessment-Notice-Assessment-Company struck off Register and restoration of registration subsequently-Company deemed to be in existence even during the period when it was struck off Register-Petition being not bonafide, the petitioner was directed to deposit the Cost of RS. 50000 with the Delhi High Court Legal Services committee. [S. 143(3), Companies Act, 2013, S. 252(3), 248]
A writ petition was filed to quash the notice dated March 28, 2019, issued under section 148 of the Income-tax Act, 1961 for the assessment year 2012-13 on the ground that the notice was null and void, as it had been issued in the name of a company, which had been struck off the register of companies. By order dated September 25, 2019, the National Company Law Tribunal, allowed the petition filed by the Income-tax Department under section 252 of the Act, for restoration of the name of the company in the register of companies. The Department contended that since the company now stood restored, the writ

petition which was premised on the sole ground that the notice was issued in the name of a struck-off company, did not survive and the petition had become infructuous. Dismissing the writ petition, that the company had admittedly been restored and under section 252(3) of the Companies Act, 2013, the company would be deemed to not have been struck off from the register of companies at all. Accordingly, the notice dated March 28, 2019, was valid. Court also held that the petition being not bonafide, the petitioner was directed to deposit the Cost of Rs.50000 with the Delhi High Court Legal Services committee (AY.2012-13)
Ravinder Kumar Aggarwal v. ITO (2023)451 ITR 100 (Delhi)(HC)

S. 148 : Reassessment-Notice-Assessing officer vested with jurisdiction over assessee can issue notice-Pecuniary limits had been laid down for distribution of work among assessing officers would not divest assessing officer of his jurisdiction-Notice valid.[S. 120, 124, 147, Art. 226]
Dismissing the writ petition, the Court held that it had been admitted that the Income-tax Officer, Moradabad had the territorial jurisdiction over the assessee, but objection to the jurisdiction had been raised merely on the ground that on account of pecuniary limit, the proceedings ought to have been initiated by the Assistant CIT-2, Moradabad. The pecuniary limit had been fixed by an order issued by the Chief Commissioner under Instruction No. 1 of 2011 dt. January 31, 2011 and 6 of 2011, dated April 8 of 2011 issued by the Central Board of Direct Taxes. Merely because some pecuniary limit had been fixed for purpose of distribution of work between officers, it would not mean that there would be inherent lack of jurisdiction of respondent No. 1. The notice of reassessment was valid. (AY.2017-18)
Shivaaditiya Jems and Jewellery Pvt. Ltd v. ITO (2023) 450 ITR 483/ 331 CTR 245 (All)(HC)

S. 148 : Reassessment-Notice-After the expiry of four years-Time limit for notice-Sanction for issue of notice-Approval was obtained from Additional Commissioner of Income-tax Instead of Principal Chief Commissioner of Income tax-Order is bad in law and quashed. [S. 147, 149(b) 151(1)(ii), Taxation and other laws (Relaxation and Amendment of certain Provisions) Act, 2020, Art. 226]
For the assessment year 2015-16 the notice under section 148 dated 31 St March 2021 was issued after obtaining the satisfaction of the Additional Commissioner of Income-tax. The assessee filed writ petition on the ground that since the notice was issued beyond the period of four years approval for issuance of the same ought to have been obtained from the Principal Chief Commissioner of Income-tax in terms of section 151 (ii) of the Act. High Court allowed the petition and quashed the notice issued under section 148 of the Act. Followed J.M. Financial & Investment Consultancy Services (P) Ltd v. ACIT (Bom)(HC) (WP No. 1650 of 2022 dt. 9 – 1-2023)(AY. 2015-16)
MA Multi-Infra Development Pvt Ltd v.ACIT (2023) BCAJ-March-P. 49 (Bom)(HC)

S. 148 : Reassessment-Notice-Transfer of case-Mandate of section 127 is not followed-Notice issued is without jurisdiction hence quashed.[S. 92CA(2), 127, 144C(15), 144C(13), 147, 153(2)]
Held that Revenue authorities have not passed under section 127 transferring the jurisdiction over the assessee's case from the Asstt. CIT Mordabad to the Dy. CIT(IT),Lucknow, nor issued notice to the assessee. Assessment order under section 147 read with section 144C(13) by the Dy, Director of IT(IT) Lucknow pursuant to the notice under section 148 issued by the Asst.CIT, Mordabad is without jurisdiction and is quashed. The asseseee is not an eligible assesee within the meaning of section 144C(15) and consequently, the limitation to pass the assessment order was the one provided under section 153 (2). Notice under section 148 was

issued to the assessee on 3 rd July, 2019, the limitation, as per the proviso to section 153(2) was up to 31 st, March 2021, which stood extended up to 30 th September, 2021, by virtue of Taxation and Other laws) Relaxation and Amendment of Certain Provisions) Act is clearly barred by limitation. (AY. 2016-17)
Shyam Sunder Bhartia v. Dy.CIT (2023) 225 TTJ 837 (Lucknow) (Trib)

S. 148 : Reassessment-Notice-Assessment-Firm-Dissolution of the firm is intimated to the Assessing Officer-Notices issued in the name of non-existing entity and passing order-Without jurisdiction and liable to be set aside. [S. 133(6), 147]
Held that a copy of the dissolution deed was also filed and the reply of the assessee was duly acknowledged by the Assessing Officer on March 18, 2019. The assessee has intimated the Assessing Officer at the earliest possible opportunity about the dissolution of the assessee-firm, but the Assessing Officer still issued notices in the name of non-existing entity and passed the order against such entity, therefore, the assessment order is without jurisdiction and is set aside. *(*AY.2012-13)
Jainam Exports v. ITO (2023)108 ITR 1 (Surat)(Trib)
S. 148 : Reassessment-Notice-Amalgamation-Factum of amalgamation intimated to Assessing Officer with request to cancel Permanent Account Number of amalgamating company-Notice in name of non-existent entity-Not sustainable.[S. 147]
Held that notice was issued in the name of a non-existent entity. The factum of amalgamation was intimated to the Assessing Officer even before the issuance of notice under section 148 of the Act. The assessee had intimated and requested the Assessing Officer to cancel the permanent account number in the name of M Ltd. The assessment was reopened under section 147 of the Act by issuing notice under section 148 in the name of M Ltd. The initiation of proceedings against a non-existent entity is bad in law. Order of CIT(A) is affirmed. (AY.2009-10)
Asst. CIT v. Vibhu International Ltd. (2023)107 ITR 6 (SN)(Delhi)(Trib)

S. 148 : Reassessment-Notice-Fishing enquiry-Recorded reasons are identical with information received-Foundation of reasons not existing when reasons recorded-Recorded reasons invalid-Assessments are quashed. [S. 147]
Held, that the very foundation of the reasons recorded did not exist when the reasons were recorded. As the reasons did not quantify even an estimated amount of the alleged income which had escaped assessment and as the reasons recorded did not contain any live link to the alleged illegal mining, the reasons were invalid and were nothing but a fishing enquiry. Consequently, the notice issued under section 148 of the Act for the purpose of reopening was quashed. The assessments were, accordingly, quashed. (AY.2009-10, 2010-11)
Bikash Dev v. Dy. CIT (2023)102 ITR 701 (Cuttack) (Trib)

S. 148 : Reassessment-Notice-Additional grounds-Legal grounds admitted-Recorded reasons under wrong premises-Reassessment proceedings void ab initio-Sanction-Approval granted mechanically-Notice and all consequent proceedings liable to be quashed.[S. 147, 151]
Tribunal admitted the legal ground on the jurisdictional issue of reassessment. Tribunal quashed the reassessment on the ground that recorded reasons under wrong premises and also approval was granted mechanically..(AY.2009-10)
Ashok Kumar Agarwal v. ITO (2023)102 ITR 74 (SN)(Delhi) (Trib)

S. 148 : Reassessment-Notice-Notice issued by non-Jurisdictional Assessing Officer-Order is void-ab initio. [S. 147]

Held that a non-jurisdictional Assessing Officer recorded reasons and issued notice under section 148 solely on basis of information received from DDI, Wing without making any further enquiry and without referring matter to jurisdictional officer, reopening of assessment was not valid, hence, reassessment proceedings consequent to notice issued by non-jurisdictional Assessing Officer is held void ab initio. Refer, Dushyant Kumar Jain v. Dy.CIT (2016) 381 ITR 428 (Delhi)(HC), Shirshbhai Harovandas Sajanwala v.ACIT (2017) 396 ITR 167 (Guj)(HC), PCIT v. Mohd. Rizwan Prop.M.R.Garments (2018) 11 ITR-OL 149 (All)(HC), City Union Bank Ltd v. ACIT (2020) 425 ITR 475 (Mad)(HC) (AY. 2010-11)
Mukesh Kumar Agarwal. v. ITO (2023) 198 ITD 32 (Jaipur) (Trib.)

S. 148 : Reassessment-Notice-Notice issued by non-Jurisdictional Assessing Officer-Order is void-ab initio. [S. 147]
Held that a non-jurisdictional Assessing Officer recorded reasons and issued notice under section 148 solely on basis of information received from DDI, Wing without making any further enquiry and without referring matter to jurisdictional officer, reopening of assessment was not valid, hence, reassessment proceedings consequent to notice issued by non-jurisdictional Assessing Officer is held void ab initio. Refer, Dushyant Kumar Jain v. Dy.CIT (2016) 381 ITR 428 (Delhi)(HC), Shirshbhai Harovandas Sajanwala v.ACIT (2017) 396 ITR 167 (Guj)(HC), PCIT v. Mohd. Rizwan Prop.M.R.Garments (2018) 11 ITR-OL 149 (All)(HC), City Union Bank Ltd v. ACIT (2020) 425 ITR 475 (Mad)(HC) (AY. 2010-11)
Mukesh Kumar Agarwal. v. ITO (2023) 198 ITD 32 (Jaipur) (Trib.)

S. 148 : Reassessment-Notice-Dissolution of Company-Name of the company had been struck off from Register of Companies-Not intimidated to Assessing Officer-Notice is valid-Sanction-Reassessment for the assessmentyear 2003-04 is quashed as the Commissioner had granted approval instead of the Additional Commissioner or Joint Commissioner as prescribed under the law-Quantum of addition-Matter remanded. [S. 69, 147, 151]
Held that although the name of the company had been struck off from Register of Companies, the assessee officially did not communicate to the Assessing Officer about the striking off of the name of the company. Thus, the assessee's contention that the notice of reassessment issued after dissolution of the company was invalid and the consequent reassessment proceedings null and void was not tenable. Reassessment for the assessmentyear 2003-04 is quashed as the Commissioner had granted approval instead of the Additional Commissioner or Joint Commissioner as prescribed under the law. As regards the quantum of addition,the matter is remanded. (AY. 2003-04 to 2005-06)
Pawan Green Channels Pvt. Ltd v. Dy. CIT (2023)101 ITR 19 (SN) (Chennai) (Trib)

S. 148 : Reassessment-Notice-Reassessment proceedings taken prior to expiry of assessment year void ab initio.[S. 139(1), 139(4), 142(1)]
For the AY. 2014-15, the assessee filed its return belatedly u/s. 139(4) of the Income-tax Act, 1961 on October 6, 2015. The return was not selected for scrutiny by the Assessing Officer. But the Assessing Officer issued notice u/s. 148 of the Act on January 22, 2015 itself, prior to the date of filing of return by the assessee. The reassessment proceedings framed by the Assessing Officer were void ab initio because:
(a) The Assessing Officer was entitled under the statute to issue notice us. 142(1) calling for the return of income when the return was not filed within the due date prescribed u/s. 139(1) of the Act. The due date for filing the return was available in terms of section 139(4)

(b) Nothing prevented the Assessing Officer to select the return filed by the assessee on October 6, 2015 for scrutiny and frame the assessment in accordance with law. Reopening of an assessment was not an alternative to selecting a case for scrutiny. There should be conscious formation of belief based on tangible information that income of an assessee had escaped assessment. (AY.2014-15)
Uttrakhand Poorv Sainik Kalyan Nigam Ltd. v. ITO (2023)105 ITR 435/ 224 TTJ 633 (Dehradun) (Trib)

S. 148 : Reassessment-Notice-Information from other ITO-Income from undisclosed sources-Bogus purchases-Assessing Officer not pointing out any defect in maintenance of books of account-Reassessment notice is not valid.[S. 147]
The issue of notice u/s. 148 was held to be erroneous, illegal and impermissible under the law and deserved to be quashed because:
(a) the Assessing Officer without making any independent enquiry started proceedings merely on the basis of information received from the other ITO.
(b) in the reasons recorded, neither was there any discussion nor had anything been brought on record to show which particular transactions relating to purchases made by the assessee were not genuine or bogus.
(c) That the Assessing Officer did not make any comment on the contents of the reply of the assessee and had solely passed his order on the basis of the report of the ITO and proceeded to make the addition. All the purchases were fully vouched, payments had been made through account payee cheque and the details had been duly submitted and no fault or defect pointed by the Assessing Officer. The accounts of the assessee were duly audited. The closing stock as reflected in the balance-sheet had been duly accepted. The Assessing Officer had not pointed out any defect in the maintenance of the books of account. Therefore, on the merits also, the addition was not sustainable and was to be deleted. (AY. 2010-11)
R. K. Machine Tools Ltd. v. ITO (2023) 105 ITR 73 (Delhi)(Trib)

S. 148 : Reassessment-Notice-Objection to recorded reason was not disposed off by a separate speaking order-Order is bad in law.[S. 143(3), 147]
Tribunal held that the reassessment framed without disposing off the objections for reasons recorded is bad in law and liable to be quashed. Relied on KSS Petron Pvt Ltd v.ACIT (ITA No. 224 of 2014 dt. 3-10 2016)(Bom)(HC),Bayer Material Science (P) Ltd v DCIT (2016) 382 ITR 333 (Bom)(HC), Fomento Resorts and Hotels Ltd v.ACIT (TA No. 63 of 2007 dt. 30-8-2019 (Bom)(HC).(ITA No. 82 / Mum/ 2011 dt 23-12-2022)(AY. 2001-02)
General Electric Company v. ADIT (Mum)(Trib) www.itatonline.org

S. 148 : Reassessment-Notice-Dissolution of Company-Company had been struck off from Register of Companies-Officially not intimidated to AO-Reassessment notice is valid.[S. 147]
Held that although the name of the company had been struck off from Register of Companies, the assessee officially did not communicate to the Assessing Officer about the striking off of the name of the company. Thus, the assessee's contention that the notice of reassessment issued after dissolution of the company was invalid and the consequent reassessment proceedings null and void was not tenable. (AY. 2003-04 to 2005-06)
Pawan Green Channels Pvt. Ltd v. Dy. CIT (2023)101 ITR 19 (SN) (Chennai) (Trib)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Extension of time limit for issuance of notice until 30-6-2021-Income escaping beyond 50 lakhs-Notice not barred by limitation-SLP dismissed. [S. 147, 148,

148A(b), 148A(d),149, Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020, S. 3. Art. 136]

On a writ petition challenging the order passed under section 148A(d) of the Income-tax Act, 1961 and the notice dated July 30, 2022 issued under section 148 for the assessment year 2013-14 on the ground that it was barred by limitation, and the validity of Instruction No. 1 of 2022 dated May 11, 2022 ([2022] 444 ITR (St.) 43) issued by the Central Board of Direct Taxes, the High Court held that since the time for issuance of reassessment notice for the assessment year 2013-14 stood extended until June 30, 2021 by section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the income alleged to have escaped assessment was beyond Rs. 50 lakhs, the first proviso to section 149 (as amended by the Finance Act, 2021) was not attracted and even without the benefit of Instruction No. 1 of 2022, dated May 11, 2022 the notice under section 148 was within limitation. SLP of assessee is dismissed.(AY.2013-14)

Salil Gulati v. Asst. CIT (2023)455 ITR 29/ 293 Taxman 75 (SC)

Editorial : Salil Gulati v. ACIT (2023)455 ITR 24/ 150 taxmann.com 49 (Delhi)(HC), affirmed.

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-Accommodation entries-question of fact-SLP is dismissed. [S. 68,147, 148A(b), 148A(d), 148, Art. 13]

The assessee filed the writ petition challenging the order passed under section 148A(d) of the Act on the ground that the Assessing Officer did not provide any information and material related to the reassessment proceedings and was barred by limitation. Dismissing the petition the Court held that the aassessee has not brought on record anything to suggest that the reassessment proceedings under section. 147 were undertaken in an arbitrary manner. On appeal SLP of assessee is dismissed. (AY. 2015-16)

Seema Gupta (Smt) v. ITO (2023) 455 ITR 504 / 294 Taxman 518 (SC)

Editorial : Seema Gupta (Smt) v. ITO (2023) 455 ITR 498 /146 taxmann.com 289 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Accommodation entries-Accepted by assessee-Information from Investigation Wing-Alternative remedy-SLP against the dismissal of writ petition was dismissed [S. 147, 148, 148A(d), Art.136, 226]

High Court dismissing the writ petitions held that in view of the information which had formed the basis of the initiation of the inquiry in the reassessment proceedings under section 147 of the Income-tax Act, 1961 and on the fact that the transactions in issue having been admitted by the assessees the order under section 148A(d) and the notice under section 148 did not call for interference, on a petition for special leave to appeal to the Supreme Court, SLP of assessee is dismissed. (AY. 2016-17)

Ajay Gupta v. ITO (2023)454 ITR 794 / 294 Taxman 3 (SC)

Editorial : Refer, Ajay Gupta (HUF) v.ITO (2023)454 ITR 787 / 147 taxmann.com 277 (Delhi)(HC), Rajiv Gupta (HUF) v.ITO (2023)454 ITR 787 / 147 taxmann.com 277 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Alternative remedy-Notice of reassessment not disturbed [S. 148, 148A(b), 148A(d)), Art. 136]

On a writ petition against an order dated April 12, 2022 passed under section 148A(d) of the Income-Tax Act, 1961 and notice of the same date issued under section 148 for the assessment year 2018-19 contending that the response filed by the assessee to the notice under section 148A(b) had not been considered, the High Court dismissed the petition holding that there was no reason to warrant interference under article 226 of the Constitution of India when the proceedings initiated were yet to be concluded by a statutory authority. On a petition for special leave to appeal to the Supreme Court : The Supreme Court dismissed the petition.

By the court : The judgment of the High Court rejecting the writ petition on the ground of alternative remedy does not take into consideration several judgments of this court, on the jurisdiction of High Court, as writ petitions have been entertained to be examined whether the jurisdiction preconditions for issue of notice under section 148 of the Income-tax Act, 1961 are satisfied. The provisions for reopening under the Income-tax Act, 1961 have undergone an amendment by the Finance Act, 2021, and consequently the matter would require a deeper and in depth consideration keeping in view the earlier case law. The observations made by the High Court that the writ petition would not be maintainable in view of the alternative remedy, would be examined in depth by the High Court if and when it arises for consideration.(AY.2018-19)

Red Chilli International Sales v. ITO (2023)452 ITR 222/ 291 Taxman 524 (SC)

Editorial : Red Chilli International Sales v. ITO (2023)452 ITR 218/ 332 CTR 807/ 223 DTR 140 (P& H)(HC), affirmed but observations set aside.

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Replies uploaded was not considered-Order passed and notice issued is set aside-Directed the Assessing Officer to pass a reasoned order on merits and in accordance with law. [S. 148A(b), 148A(d), Art. 226]

On appeal against the single Judge order the Court held that the Assessing Officer has considered the replies uploaded by the assessee. Accordingly the order passed and notice issued is set aside. Directed the Assessing Officer to pass a reasoned order on merits and in accordance with law. (AY. 2015-16)

Accord Capital Markets (P) Ltd v.ITO (2023) 333 CTR 549 (Cal)(HC)

Editorial : Order of single judge is set aside, Accord Capital Markets (P) Ltd v.ITO (2023) 333 CTR 550 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order passed is neither violation of principle of natural justice nor contrary to any statutory provision nor any procedural irregularity nor without jurisdiction-Writ petition is dismissed. [S. 148A(b), 148A(d), Art. 226]

Dismissing the petition the Court held that order passed is neither violation of principle of natural justice nor contrary to any statutory provision nor any procedural irregularity nor without jurisdiction. (SJ) (AY. 2018-19)

Girdhar Goppal Dalmia v.UOI (2023) 333 CTR 387/ 224 DTR 433 (Cal)(HC)

Editorial : Order of single judge is set aside, Girdhar Goppal Dalmia v. UOI (2023) 333 CTR 379 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice is violated-Seven days time exclusive of holidays to give reply was not provided-Matter is remanded back for fresh consideration.[S. 148(A)(b), 148A(d), Art. 226]

Allowing the appeal against the order of single judge, the Court held that seven days time exclusive of holidays to give reply was not provided. Matter is remanded back for fresh consideration

Girdhar Goppal Dalmia v.UOI (2023) 333 CTR 388 (Cal)(HC)

Editorial : Order of single judge is set aside, Girdhar Goppal Dalmia v.UOI (2023) 333 CTR 393/ 224 DTR 439 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Capital gains-Cash credits-Sale of property-Description of property was different in order passed under section 148A(d) from description in notice under section 148A(b)-Reassessment notice and order is quashed and set aside.[S. 45, 68, 148A(b), 148A(d), Art. 226]

Assessing Officer on perusal of information received from Investigation Wing noted that assessee sold property in relevant assessment year, however, assessee did not declare any capital gain on said sale in return filed by assessee Notice under section 148A(b) and later passed order under section 148A(d) holding that income had escaped assessment. On writ the Court held that description of property was different in notice issued under section 148A(b) and in order passed under section 148A(d) furthermore sale consideration and circle rate in both documents were different. Since Assessing Officer incorporated incorrect information and failed to admit that he had committed a mistake while issuing notice under section 148A(b) even at time of passing order under section 148A(d), show cause notice issued under section 148A(b) as well as order passed under section 148A(d) and notice issued under section 148 are set aside (AY. 2017-18)

Usha Rani Girdhar v. ITO (2023) 334 CTR 596 / 146 taxmann.com 547 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to disclose capital gains-Sale consideration of immoveable properties-Writ petition is filed after five months of passing of order-Writ petition is dismissed.[S. 148A(b) Art. 226]

Dismissing the petition the Court held that notice under s. 148A(b) had been issued on the basis of information that the assessee had sold two immovable properties, gains thereof had not been disclosed; there are aspects which the AO needs to enquire into. Writ petition is filed after five months of passing of order under section 148(a)(d).(AY. 2019-20)

Heritage Holidays (P) Ltd. v.Asst. CIT(2023) 335 CTR 1101 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Fictitious loss-Derivative loss-**Full-fledged investigations are required-Due process is followed-Writ petition is dismissed. [S. 148A(b), 148A(d), Art. 226]**

Dismissing the appeal against the order of single judge the court held that the AO having considered assessee's objection and come to the conclusion that the assessees failed to explain the transaction regarding derivative loss and that the assessee has made claim of fictitious loss, no interference is warranted with the impugned order under s. 148A(d) in writ proceedings; in exercise of Constitutional writ jurisdiction under Art. 226 the Court should not interfere in these types of cases where full-fledged investigations are required on alleged fictitious transaction/claim. (AY. 2015-16)

Accord Capital Markets (P) Ltd. v. ITO (2023) 333 CTR 549 (Cal)(HC)

Editorial : Order of single Judge is affirmed, Accord Capital Markets (P) Ltd. v. ITO (2023) 333 CTR 550 (Cal)(HC)

S. 149 : Reassessment-Time limit for notice-Conducting inquiry, providing opportunity before issue of notice-Sanction-Limitation-Specified authority-For the purpose of approval in this case is Principal CIT and the AO has rightly taken approval from the Principal CIT concerned and such approval for passing the impugned order under S 148A(d) is legal and valid-Writ petition is dismissed. [S. 148A((b), 148A(d), 149(1), 151, Art. 226]

The assesseee challenged the order under section 148A(d) on the ground of limitation and sanction. Dismissing the petition the Court held after taking into consideration the period allowed to the AO under the fifth and sixth proviso to s. 149(1), the order under s. 148A(d) by excluding the time granted to the assessee to file response to the notice under s. 148A(b) and a further period of seven days are excluded from the date of expiry of normal period of three years for the purpose of assessment. The order passed under s. 148A(d) is very much within three years-"Specified authority" for the purpose of approval in this case is Principal CIT and the AO has rightly taken approval from the Principal CIT concerned and such approval for passing the impugned order under s. 148A(d) is legal and valid and the order does not call for any interference. (AY. 2018-19)(SJ)

Giriraj Commercial (P) Ltd. v. UOI(2023) 334 CTR 589(Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Accommodation entries-No change of opinion-Non-disclosure of primary facts-Audit objection-Can constitute information on basis of which re-assessment proceeding can be initiated.[S. 132A, 147, 148, 148A(b), 148A(d), 153A, 153D, Art. 226]

Dismissing the petition the court held that an audit objection can constitute information on basis of which reassessment proceeding can be initiated. Explanation 1, clause (ii) to second proviso of section 148 clearly provides that any audit objection to effect that assessment in case of assessee for relevant assessment year has not been made in accordance with provisions of Act is included in term 'information regarding escaped assessment'. Accordingly where an audit objection was raised that assessment of assessee had not been framed properly in accordance with provisions of Act and it was a case where assessee was indulging in providing accommodation entries, merely because at one stage Assessing Officer had answered to queries raised by auditor regarding assessment being in accordance with provisions of Act and there being no illegality therein, will not mean that information in form of audit objection could not be relied upon to opine that income chargeable to tax had escaped assessment. Existence or non-existence of information could be subject matter of litigation but not sufficiency thereof. (AY. 2015-16)

Subodh Agarwal v. State of U.P (2023) 332 CTR 534/233 DTR 441 / 149 taxmann.com 448 (All)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Search and seizure-Circular transactions-Artificially inflation of turnover-Order is passed after considering the detailed reply-Writ is dismissed.[S. 148, 148A, Art. 226]

Dismissing the petition the Court held that On the basis of search of APCO, it was found that assessee is engaged in raising fake invoices in executing circular transactions with APCO and on detailed consideration the AO considered that income chargeable to tax to the tune of Rs. 75 crores has escaped assessment. Order under section 148A(d) is passed after considering the detailed reply. (AY-2018-19)

Chetak Enterprises Ltd. v. ACIT (2023) 332 CTR 316/ 223 DTR 49(Raj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Sale of land-Value was more than what has been disclosed-Writ petition is dismissed.[S. 148A(b), 148A(d), Art. 226]

Dismissing the petition the Court held that the assessee has not alleged procedural impropriety, irregularities or violation of statutory provisions in the matter of initiation of proceedings or passing of the order under S. 148A(d). There is no allegation that his reply was not considered or opportunity of hearing was not afforded to him. It appears that the Department received information that the value of land, which was subject-matter of transaction of sale, was far more than what has been disclosed. Therefore, on the face of it, it appears to be a case where the Department has collected certain information regarding certain income having escaped assessment. The Court is not inclined to interfere in the matter but leave the assessee to work out his remedy in the proceedings subsequent to issuance of notice under s. 148.. Followed Anshul Jain v. Principal CIT (Writ Petn. No. 10219 of 2022, dt. 2nd June, 2022 (P&H)(HC), Anshul Jain v. Principal CIT (2022) 329 CTR 463/ 219 DTR 169 (SC)

Laxmi Meena v. UOI (2023) 332 CTR 569/225 DTR 276(Raj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Res Judicata-Decision making Authority rendering two decisions inconsistent with each other for different assessment years facts and circumstances being similar-Order and notice quashed and set aside. [S. 148, 148A(b) 148A(d),151, Art. 226]

Allowing the petition the Court held that the Assistant Commissioner had dropped the proceedings pertaining to the assessment year 2016-17, while for the assessment year 2015-16 he had opted to proceed further under section 148A. The decision taken for the assessment year 2016-17 was a reasoned decision, based on the analysis of material on record, but the decision taken subsequently for the assessment year 2015-16 was not only just completely inconsistent with the earlier view but even without reason. Though sanction under section 151 was accorded by two different sanctioning authorities the satisfactions recorded in both orders were of the same Assistant Commissioner. There was nothing on record to suggest that the latter sanctioning authority for the assessment year 2015-16 was apprised of the earlier view taken by the sanctioning authority for the assessment year 2016-17. An assessee deals with the Department as a whole. The order under section 148A(d) and the notice under section 148 were set aside. (AY.2015-16)

Prem Kumar Chopra v. ACIT (2023) 456 ITR 8 / 153 taxmann.com 746/ 333 CTR 777 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Notice issued after three years-Barred by limitation-Travel back in time theory unsustainable-That the principle of constructive res judicata was not applicable. The orders passed under section 148A(d) and the consequent notices issued for the assessment years 2016-17 and 2017-18 under the amended provisions of section 148 of the 1961 Act were unsustainable. [S. 148, 148A(b) 148A(d),149, Art. 142, 226]

The notice issued under section 148 was issued for AY 2016-17 on 30 June 2021 and for AY 2017-18 was issued on 28 June 2021. There after, pursuant to the judgment of UOI vs Ashish Agrawal (2022) (444 ITR 1) (SC) order under section 148A(d) was passed. On appeal to the Hon'ble Delhi High Court, it was held that as per the new 148 provision, the time to complete the reassessment proceedings for income which is less than 50 lakhs should be within 3 years from the relevant assessment year. In the instant case the re-assessment proceedings were time-barred as limitation period of three years for the relevant assessment year since the

notice issued for post June 2021. Hence, the orders issued under Section 148A(d) and the notice under Section 148 of the amended 1961 Act, for AY 2016-17 and AY 2017-18 are not valid.(AY. 20016-17, 2017-18)

Ganesh Dass Khanna v. ITO (2023) 156 taxmann.com417/ 335 CTR 881 / (2024) 460 ITR 546 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Purchase of property-Issue examined in the original assessment proceedings-Notice is set aside.[S. 142(1), 147, 148A(b), 148(A)(d), Art.226]

Held that the Assessing Officer had specifically stated that during the course of assessment proceedings the assessee had submitted various details as called for and that those details were examined and that the data had been verified from the details submitted by the assessee. Therefore, the Assessing Officer was certainly satisfied with all the details provided by the assessee. In the reply to the notice issued under section 148A(b) also, the assessee had given details of the consideration paid for the property and the source of funds. Therefore, the Assessing Officer's stating in his order under section 148A(d) that the assessee did not provide the details or explain the source was incorrect. Accordingly, the initial notice under section 148A(b), the subsequent order under section 148A(d) and the consequential notice under section 148 were quashed and set aside.(AY.2016-17)

Urban Homes Realty v. UOI (2023)459 ITR 96 /154 taxmann.com 252 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Information must be definite and not vague-Validity of notice can be challenged by filing writ petition.[S. 147, 148, 148A(b) 148A(d), Art. 226]

Allowing the petition the Court held that the only information which was supplied to the assessee while issuing notice under section 148A(b) of the Act was that according to the information received from "other Income-tax authority" the assessee's capital gains of Rs. 2,67,97,850 during the previous relevant assessment year 2018-19, was not shown properly in the Income-tax return. The notice under section 148A(b) of the Act did not disclose as to what information was in fact there with the Assessing Officer suggesting that the capital gains during the assessment year 2018-19 was not shown in the return. Hence the notice dated March 14, 2022, issued under section 148A(b) of the Act, the order dated March 31, 2022 passed under section 148A(d) of the Act and the notice dated March 31, 2022 under section 148 of the Act were not valid and quashed.(AY.2018-19)

Alkem Laboratories Ltd. v. PCIT (2023)459 ITR 551 /152 taxmann.com 133 / 333 CTR 793 (Pat)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Copy of report of Investigation Wing for formation of opinion is made available-No violation of principle of natural justice-Writ petition is dismissed.[S. 147, 148, 148A(b), 148A(d), Art. 226]

Dismissing the petition the Court held that that the Assessing Officer had information based on which an initial notice under section 148A(b) was issued to the assessee. The copy of the report of the Investigation Wing was available with the Assessing Officer and was provided to the assessee. The information or the investigation report was not wholly irrelevant for exercise of power under section 147. The assessee was at liberty to raise all the contentions consequent to the issuance of notice under section 148 in the reassessment proceedings under section 147. The order under section 148A(d) did not suffer from non-application of mind or violation of principles of natural justice. There was no breach of any mandatory requirement stipulated under section 148A.The writ petition is dismissed. (AY.2018-19)

Anju Singh v.CCIT (2023)459 ITR 705/154 taxmann.com 191 (Pat)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to give minimum of seven clear days time to give reply-Order and notice are set aside.[S. 147, 148, 148A(b), 148A()d),Art. 226]

Allowing the petition the Court held that though the assessee did respond the obligation cast upon the Assessing Officer to afford "7 clear days", as stipulated in the section was not afforded. The language of the section is unambiguously clear. There is a mandate to the Assessing Officer to provide opportunity to the assessee for filing response and such period being "not less than" seven days. The Assessing Officer had passed the order under section 148A(d) on March 31, 2022, which also only exhibited undue haste in passing the order against the assessee. The order dated March 31, 2022, passed by the Deputy/Assistant Commissioner was set aside with the authority to issue a fresh notice within 15 days in terms of section 148A and complete the appropriate proceedings in accordance with law.(AY.2018-19)

Anju Singh v. PCIT (2023)459 ITR 702 (Pat)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice after three Years-Limitation-Wrongful claim of exemption-Amount exceeding threshold limit of 50 lakhs-Notice is valid-Suppression of facts-Writ petition is not entertained.[S. 11,12A, 12AA, 12AB,147 148, 148A)b), 148A(d),149, Art. 226]

Dismissing the petition the Court held that though the Explanation to section 149 of the 1961 Act clarified that deposits in bank accounts formed a part of the assets of the assessee, the contentions of the assessee in respect of the expiry of limitation for issue of notice under section 148 of the 1961 Act was unsustainable since the amount of income of the assessee that had escaped assessment was a sum of Rs. 2,23,95,787 which was higher than the minimum threshold of Rs. 50 lakhs as stipulated under section 149 of the 1961 Act. The limitation for the initiation of reassessment proceedings would resultantly extend to ten years since the Assessing Officer had in his possession books of account of the assessee evidencing voluntary deposits in bank accounts extending to more than Rs. 50 lakhs. Therefore, the Assessing Officer had formed an opinion based on tangible and concrete information in the form of the assessee's trust deed, the statement of the assessee's managing trustee that certain identified foreign contributions received by the assessee were utilised for a purpose divergent to its object as disclosed in the trust deed, and accordingly, the wrongful application of the exemption availed of under section 11 or section 12 of the 1961 Act in relation to such funds and had resulted in the Assessing Officer forming the subjective satisfaction that the exemption of foreign contributions wrongly availed of was the escaped income under section 147. Court also held that to invoke the jurisdiction of court under article 226 of the Constitution the individual must display bona fides. The assessee had suppressed material facts in relation to the cancellation of its registration under sections 12A, 12AA and 12AB of the 1961 Act. (AY.2016-17)

Environics Trust v. CIT (2023)459 ITR 751 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to comply with amended provisions before issue of notice-Notice and assessment order set aside-Matter remanded-Violation of principle of natural justice-Existence of alternative remedy is not bar-Writ petition allowed. [S. 144B, 147, 148, 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that that the procedure as provided under section 148A was not followed by the Department before issuing notice under section 148.

Therefore the entire proceedings and the order under section 147 read with section 144B were in violation of the principles of natural justice and vitiated. The Department was duty bound to comply with the amended provisions of sections 148 and 148A in letter and spirit since they provided safeguards to the assessee. The amended provisions of sections 148 and 148A had come into force with effect from April 1, 2021 and the notice under section 148 had been issued on June 9, 2021 after the amended provisions had come into force. The order under section 147 read with section 144B was set aside. The matter was remitted to the Department for decision afresh treating the notice issued under section 148 as notice under section 148A(b) and to proceed complying with the provisions of section 148A in the light of the decision of the Supreme Court in ASHISH AGARWAL and to pass orders afresh. Matter remanded. Court also held that Existence of alternate remedy is not an absolute bar to the maintainability of writ petition under article 226 of the Constitution of India when there is violation of principle of natural justice.Harbanslal Sahnia v. Indian Oil Corporation Ltd. [2003] 2 SCC 107 and Assistant Commissioner of State v. Commercial Steel Ltd (2021) 93GSTR 1 (SC) *(*AY.2013-14)

Gouri Construction v. PCIT (2023)459 ITR 335 /(2024) 158 taxmann.com 112 (Chhattisgarh)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Disclosed all material facts during original assessment-Notice on ground methodology followed at time of scrutiny assessment ought to have been different-Not sustainable.[S. . 43B, 147, 148, 148A(b), 148A(d), Art. 226]

Held that the Assessing Officer did not have any material over and above the material already with the Department to justify the reassessment proceedings under section 147 in the light of the new scheme for the assessment years 2014-15 and 2017-18 after a period of seven years. The contention of the Department was only that the methodology followed at the time of the original assessment under section 143(3) ought to have been different. The Assessing Officer had merely referred to the financials, form 3CD, profit and loss account, computation statement and the details furnished during original assessment. There was no new or tangible information or material to justify reassessment since all relevant information was available with the original authority. There was no averment in the notice issued under section 148 that "information" had been received indicating escapement of income attributable to the assessee. There was no allegation that any new material had been found which was to be examined. The Assessing Officer had himself stated in the reasons recorded that all materials in relation to foreign currency borrowings and transfer of assets to asset reconstruction companies had been fully and comprehensively placed at the time of the original proceedings. The original assessment order had specifically recorded detailed examination of the financials of the assessee. The Assessing Officer had examined all aspects of the return of income and had made an assessment after thorough scrutiny. The reassessment proceedings were initiated based on the financial records already available with the Assessing Officer and indicating that a different view invoking section 43A in respect of unrealised loss should have been taken. As regards the sale consideration from assets transferred to asset reconstruction companies, the Assessing Officer had recorded that income had been offered under the head "Other sources" but had expressed the view that the sale consideration ought to have been offered in full and not amortised over the years.The reference to "information" in the Explanation to section 148 relates to information flagged in the risk management strategy formulated by the Central Board of Direct Taxes or a final objection raised by the Comptroller and Auditor General pointing to a flaw in the assessment made earlier. No risk management strategy had been placed before the court despite a specific query in this regard. Only some specific information that had come to the knowledge of the Assessing Officer, and

hitherto unknown, would satisfy this requirement. Such information must be tangible and new and stale information already part of the record would not qualify. The term "flagged" has been omitted from this clause with effect from April 1, 2022 by the Finance Act 2022. Therefore, the material already on record and that had undergone scrutiny at the first instance could not satisfy the statutory condition. Hence the assumption of jurisdiction for initiation of proceedings for reassessments by the Assessing Officer was bad in law and, therefore, quashed. The books of account and material were furnished by the assessee at the time of original assessment and there was no mention anywhere in the reassessment proceedings about an "asset" which represented income that was alleged to have escaped assessment. The notices and proceedings for reassessment were quashed.(AY.2014-15, 2017-18)
IDFC Ltd v. Dy. CIT(2023)459 ITR 169 /155 taxmann.com 602 (Mad)(HC)
IDFC First Bank Ltd. v. Dy. CIT(2023)459 ITR 169 /155 taxmann.com 602 (Mad)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Assessee to be given minimum seven days to reply excluding date of issue of notice and last date for submission of reply-Only six clear days given to assessee to file reply to notice-Matter remanded to provide assessee minimum seven clear days and maximum thirty days to file E-replieS. [S. 147, 148, 148A(b), 148A(d), Art. 226]
Held that the assessee was prevented from submitting his reply online. The argument of the Revenue that it was the duty of the assessee to approach the concerned authority was misconceived and without any basis and was fit to be rejected in limine in view of the specific provision made under the Act itself. Consequently, the order under section 148A(d) dated March 31, 2023, and the notice dated March 31, 2023, issued under section 148 for the assessment year 2016-17, were to be quashed and set aside. The matter was remanded to allow the assessee for filing his reply, by giving him at least seven days' clear notice and not more than thirty days to file his reply and thereafter, proceed in accordance with law. Referred Pioneer motors (Private) ltd. v. Municipal Council, Nagercoil [1967] AIR 1967 SC 684 (AY.2016-17)
Satish Kumar v. PCIT(2023)459 ITR 67 (Jharkhand)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Effect of decision of Supreme Court In UOI v. Ashish Agarwal (2022) 444 ITR 1(SC)-Liberty available to matters at notice stage-Assessing Officer issuing second notice but allowing proceedings to lapse-Department cannot proceed for third time invoking liberty granted by Supreme Court-Notices and proceedings quashed. [S. . 147, 148, 148A(b), 148A(d), Art. 226]
Allowing the petition, the Court held that there was no justification for the Department either in law or on fact, to subject the assessee to a third round of reassessment proceedings under section 147 merely by invoking the liberty granted in UOI v. Ashish Agarwal (2022) 444 ITR 1(SC) The Department was bound by its decision in full when it dropped the second round of proceedings pursuant to the order of the High Court in the writ petition against the second notice issued under the new procedure. After the passing of the order by the High Court in respect of the second notice, proceedings had been commenced afresh by issuance of a notice under section 148A(b) and those proceedings had culminated by issuance of notice under section 148 dated April 18, 2022 pursuant to which no notice under section 143(2) had been issued and the proceedings lapsed. The explanation tendered for issuance of a notice under section 148A(b) for the third time on June 2, 2022 was fallacious and unacceptable as the liberty granted by the Supreme Court in its decision dated May 4, 2022 would be available only in those situations where the matters stood at an initial or preliminary stage of notice for reassessment and not where the proceedings had been carried forward to the stage of passing

of order under section 148A(d) and issuance of notice under section 148. The Department's submission that the proceedings initiated pursuant to the first notice stood revived was also factually incorrect as there were material differences between the reasons in the first notice and those in notice under section 148A(b) dated June 2, 2022. If the third round of proceedings was only a revival of the earlier proceedings, the reasons ought to have been identical but they were not. The notices and consequential proceedings were quashed.(AY.2015-16)(SJ)
Vellore Institute of Technology v. Asst. CIT (E) (2023)459 ITR 499 (Mad)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Reason to believe is sufficient-Not necessary to prove actual escapement of income-Writ petition is dismissed.[S. 148, 148A(b), 148A(d), Art. 226]
Dismissing the petition the Court held that the Assessing Officer had taken note of two entries that too after issuing due notice to the assessee and passing an order under section 148A(d), which established due compliance with the procedure. Therefore, initiation of reassessment proceedings was well founded on satisfaction as to escapement of income, from tax. The fact that some part of the allegation of escapement was being dropped or not pursued at the stage of quantification of income, would not nullify the assumption of jurisdiction.(AY.2013-14)
ARB Hotels Resorts Pvt. Ltd. v. PCIT (2023)458 ITR 61/(2024) 296 Taxman 419 (All)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Followed statutory procedure-Alternative remedy-Writ petition dismissed.[S. 148A(b), 148A(d), Art. 226]
Dismissing the petition the Court held that Revenue has followed the due process of law hence the writ petition is dismissed. (AY.2018-19)
Midland Microfin Ltd. v. UOI(2023)458 ITR 36 (P&H)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice after three years-Failure to file the return of income-Gross receipt of sale consideration not income chargeable to tax-Notice and consequential orders are quashed.[S. 2(24), 147, 148A(b), 148A(d), Art. 226]
Order passed under section 148A(d) of the Act on the ground that the assessee having not filed a return of income for the assessment year 2016-17, the amount of Rs. 72,05,084 received by the assessee as a result of an export transaction was an asset which had escaped assessment. On writ allowing the petition the Court held that the Department had failed to understand the fundamental difference between sale consideration and income chargeable to tax. It had relied upon sections 2(24), 14, 28 and 44AD to emphasize the expression "income". Neither the notice under section 148A(b) nor the order under section 148A(d), nor the consequential notice under section 148 stated that the income alleged to have escaped assessment included land or buildings or shares or equities or loans or advances. The assessee had filed a reply to the notice under section 148A(b) wherein it had submitted that the amount of Rs.72,05,084 was the gross receipt of sale consideration of 16 scooters which meant that the amount of Rs. 72,05,084 was the total sale consideration receipt of the transaction in question, and not income chargeable to tax which would obviously be less than such amount. With the reply the assessee had also furnished the details of items sold and payment receipts, computation of total income and the computation of tax on total income and had submitted these to the Assessing Officer before the passing of the order under section 148A(b). There was nothing stated in the provisions of

section 148, 148A or 149 which could prevent the assessee from taking advantage of these provisions merely because of his failure to file return of income. However, the Department was at liberty to invoke the provisions of section 148A in accordance with law.(AY.2016-17)
Nitin Nema v. PCIT (2023)458 ITR 690 /155 taxmann.com 276 / 334 CTR 545 (MP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Initial notice need only state issue on basis of which reopening of assessment is proposed-Writ petition is dismissed. [S. 2(22)(e), 147 148, 148A(b), 148A(d), Art. 226]
Held that the assessee had submitted that the receipt had been delayed and it was only after a few years that the amounts had been received, such submission involved the appreciation of facts which were to be best considered by the authorities. The contention of the assessee to the effect that the tax liability of the receipt had not been stated in the show-cause notice was also devoid of merit, since the assessing authority had raised these issues specifically in the penultimate paragraph of the annexure to notice under section 148A(b) of the Act.Writ petition against the notice is dismissed. (AY.2019-20)(SJ)
Satluj Credit And Holdings Pvt. Ltd. v.ITO (2023)458 ITR 378 /152 taxmann.com 401 (Mad)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Reply to initial notice-Assessing Officer directed to proceed after considering reply of assessee. [S. 148, 148A(b) 148A(d), Art. 226]
Court held that the facts revealed that either the Assessing Officer did not receive the reply filed by the assessee to the show-cause notice under section 148A(b) after receiving legible copies of documents from the Department nor did the assessee successfully upload his reply on the website of the Department. The Assessing Officer was directed to consider the reply of the assessee submitted to the show-cause notice after receiving legible copies and on consideration if it was found that the reply was satisfactory, the Assessing Officer was directed to drop the proceedings under section 148A and recall the order under section 148A(d). If the reply to the notice under section 148A(b) was not found satisfactory, the Assessing Officer could proceed under section 148 of the amended Act.(AY.2014-15)
Virendra Kumar Chourasia v. ITO (2023)458 ITR 431 (MP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice served at address given on Permanent Account Number Database-Reassessment Proceedings is valid.[S. 147, 148, 148A(b) 148A(d), 149, 151,Art. 226]
Court held that the assessee had knowledge of notice on March 26, 2022 and had not given any reply to the show-cause notice. The order was passed on the seventh day, i. e., on April 7, 2022. The notice was sent at the address given on the permanent account number database. The Assessing Officer initiated the proceedings in accordance with section 148A read with section 149 / 151 of the Income-tax Act, 1961. The approval of the specified authority as per section 151 of the Act was obtained at every stage. Service of notice on March 20, 2022 through speed post at the address given on the permanent account number database was sufficient to return a finding that the respondents had served the notice at the correct address. The assessee herself had admitted that the notice was received on March 26, 2022. The notice under section 148A and the consequent reassessment proceedings were valid. Referred PCIT v. I-Ven Interactive Ltd.(2019) 418 ITR 662 (SC) wherein the Court held that issuance of notice at the address listed in the permanent account number database is sufficient compliance for issue of notice, and that in the absence of any specific intimation to the

Assessing Officer, the Assessing Officer would be justified in sending notice at the available address mentioned in the permanent account number database (AY.2018-19)
Anita Gupta v. ITO (2023)457 ITR 63/151 taxmann.com 120 / 335 CTR 591 (P&H)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Non-resident-Non-application of mind-Notice and order is quashed.[S. 115JA,147, 148, 148A(b), 148A(d),197, Art. 226]
Allowing the petition the Court held that the Assessing Officer should have applied his mind was as to whether the investment in shares of Ageile Electro sub-Assesmly Pvt Ltd("Agile") by the assessee was a capital account transaction, given the fact that there was no allegation of round-tripping. There was no reference to section 115A of the Income-tax Act, 1961 either in the show-cause notice dated May 31, 2022 or in the order passed by the Assessing Officer. Whether the provisions were, at all, applicable to a non-resident company was a moot point which the Assessing Officer would have to decide. Accordingly the order passed under section 148A(d) of the Act and the consequent notice of the same date issued under section 148 were not valid.
Blackstone Capital Partners (Singapore) Vi Fdi Three Pte. Ltd. v. ACIT (IT) (2023)457 ITR 77 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order was passed before the time to reply the show cause notice is elapsed-Order and notice is quashed-Matter remanded. [S. 148A(b), 148A(d), Art. 226]
Held that the order has been made before the time for the assessee to reply to the notice under section 148A(b) of the elapsed and the assessee had in fact sent a reply before the time elapsed. Notice and order is quashed.Matter remanded. (AY.2018-19)
India Cements Ltd. v.Dy. CIT (2023)457 ITR 754/ 148 taxmann.com 206 (Mad)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Notices issued on or after 1-4-2021-Beyond six years from end of relevant assessment year-Barred by limitation. [S. 148, 148A(b), 148A(d) 149(1), Art. 226]
Allowing the petition the Court held that the notices issued for the assessment years 2013-14 and 2014-15, under section 148 of the Income-tax Act, 1961 referable to the old regime and issued between April 1, 2021 and June 30, 2021 would stand beyond the prescribed permissible timeline of six years from the end of the assessment years 2013-14 and 2014-15. Hence all such notices relating to the assessment years 2013-14 and 2014-15 would be time-barred in terms of the provisions of the Act as applicable in the old regime prior to April 1, 2021. These notices could not be issued under the amended provisions of the Act. Referred Keenara Industries Pvt Ltd v.ITO (2023) 453 ITR 51 (Guj)(HC), Rajeev Bamsal v.UOI (2023) 453 ITR 153 (All)(HC) (AY.2013-14, 2014-15)
Jain Chain v. ITO (2023)457 ITR 526 (Guj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to grant minimum of seven days' time to file reply to show-cause notice-Notice and order is set aside.[S. 147, 148, 148A(b) 148A(d), Art. 226]
Held that the Assessing Officer had given the assessee only three days time to submit the response with supporting documents on the issue raised in the show-cause notice under section 148A(b) instead of the minimum time of seven days that had to be granted to the assessee to file its reply. Consequently, the show-cause notice under section 148A(b), the order under section 148A(d) and the notice under section 148 were quashed and set aside.

Since the defect of giving less than seven days' time to the assessee to reply to the show-cause notice issued under section 148A(b) was a curable defect the Department could issue a fresh letter to the assessee in continuation to the show-cause notice by giving him at least seven days' time and not more than thirty days to file its reply and proceed in the matter in accordance with law.(AY.2018-19)

Jindal Forgings v. IT Department (2022) 143 taxmann.com 263 / (2023)457 ITR 59 (Jharkhand)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Sanction-Granted by Principal Commissioner Notice and consequent proceedings is held to be invalid. [S. 148A(b) 148A(d), 151(ii), Art. 226]

Allowing the petition the Court held that the Principal Commissioner was not the authority under section 151(ii) of the Act and the approval in this case was not by an authority authorized under the law. Therefore, such approval was not sustainable in law and in view thereof the notice under section 148A(b) of the Act and all subsequent proceedings were not sustainable in law.(AY.2016-17) (SJ)

K. K. Agarwal and Sons (HUF) v. ITO (2023) 457 ITR 638 (Cal)((HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cancellation of old Permanent Account Number card and obtaining of New Permanent Account Number card-Intimated to Income-Tax Authorities-Notice referring to old Permanent Account Number card-Notice is not valid-Obiter : The Income-tax authorities ought to prominently display the steps for cancellation of a permanent account number on their website apart from sending a link for cancellation in the covering letter when a permanent account number is provided to an assessee. [S. 147, 148 148A(b) 148A(d), Art. 226].

Allowing the petition the Court held, that it was the duty of the Income-tax Officer to have examined and verified the contentions of the assessee in respect of cancellation of the old permanent account number and the returns filed under the new permanent account number before the issuance of the order and the notice. The order under section 148A and notice under section 148 of the Income-tax Act, 1961, were not valid.

Obiter : The Income-tax authorities ought to prominently display the steps for cancellation of a permanent account number on their website apart from sending a link for cancellation in the covering letter when a permanent account number is provided to an assessee.(AY.2019-20)

Kai Balkrishna R. Gawade Mandai Vyapari Premises Sahakari Sanstha Maryadit v. ITO (2023)457 ITR 41 /153 taxmann.com 97 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Material forming basis for such belief must be furnished-Writ is maintainable.[S. 148, 148A(b), 148A(d), Art. 226]

Held, that the material, which formed the basis for the officer forming an opinion that he had reason to believe that the income chargeable to tax had escaped assessment in the hands of the assessee for the relevant year, had not been supplied to the assessee to enable it to file a proper and effective reply. Hence the entire proceedings for the reopening of the assessment and leading to the consequential assessment were vitiated in law. Notice and order is quashed and set side. (AY.2017-18)

Micro Marbles Pvt. Ltd. v. ITO (2023)457 ITR 569/ 331 CTR 329/ 223 DTR 41 /149 taxmann.com 387 (Raj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Directed to supply requested material.[S. 147, 148, 148A(b), 148A(d), Art. 226]
On writ the Court held, that since the notice under section 148 had already been issued, the Assessing Officer was directed to supply the incriminating material or information against the assessee for reopening the assessment under section 147. The assessee was given liberty to raise all his contentions and submissions before the Assessing Officer.(AY.2018-19)
Omesh Jain v.ITO (2023)457 ITR 332 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Return filed under new Permanent Account Number as a sole proprietor-Notice issued in name of erstwhile firm-Notice and order is quashed.[S. 148, 148A(b). 148A(d), Art. 226]
Allowing the petition the court held that that there was no deliberate concealment of facts by the assessee. If the assessee had intended to defraud the Department he would not have declared the imports in the books of account as proprietor of the concern. The order under section 148A(d) and notice under section 148 passed and issued against the non-extant erstwhile firm were unsustainable and therefore, set aside. The Department would be at liberty to proceed in accordance with law.(AY.2016-17)
Rajinder Nath Kapoor v.ITO (2023)457 ITR 225 /294 Taxman 576 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order passed in Permanent Account Number which had been surrendered-Direction of single judge to file representation-Notice and order set aside-Directed to pass speaking order.[S. 148, 148A(b), 148A(d), Art. 226]
On an appeal against the order of the single judge the Court held that while the direction of the single judge was proper, the Assessing Officer would be precluded from considering the representation since already he had passed an order under section 148A(d) of the Act. Therefore, unless and until the order under section 148A(d) was set aside and he was empowered to consider the matter afresh the direction issued in the writ petition could not be implemented. The assessee had submitted a reply to the show-cause notice issued under section 148A(b) in which the assessee had explained how and under what circumstances two permanent account numbers were applied for and the fact that one of the numbers was surrendered. The Assessing Officer should examine the correctness of the assessee's submission which according to the assessee was an inadvertent mistake. The order passed under section 148A(d) was a non-speaking order and was set aside. The consequential notice issued under section 148 was also set aside. The matter was remanded back to the Assessing Officer for fresh consideration. According to the direction issued by the court in the writ petition, the assessee was directed to submit a representation. The Assessing Officer on receipt of the representation should afford an opportunity of personal hearing and consider the assessee's earlier reply and the representation and pass a fresh order on merits and in accordance with law. Matter remanded.(AY.2015-16)
Shree Ramkirshna Sishu Tirtha. v. ITO (2023)457 ITR 729/157 taxmann.com 449 (Cal)(HC)
Editorial : Appeal from the judgement of single judge, WPA No. 19557 of 2022 dt. 28-11-2022 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Alternate remedy-Not absolute bar for filing writ petition-Writ petition is admitted.[S. 147 148, 148A(b), 148A(d),246A, Art. 226]

Held that even assuming an alternative remedy under section 246 of the Income-tax Act, 1961 of filing an appeal is available, it will not operate as an absolute bar for entertaining the writ petition as the jurisdictional issues goes to the root of the matter and it is one of the exceptional factors carved out by the Supreme Court for exercise of jurisdiction under article 226 of the Constitution of India. Writ petition is admitted. (AY.2013-14)
Space Enclave Pvt. Ltd. v. ITO (2023)457 ITR 382 (MP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Risk Management Strategy-Information Received From Director (Investigation And Criminal Intelligence)-Suffice requirement of information-Consideration for moveable property excess of Rs 50 lakhs-Sanction form Principal Commissioner-Reassessment notice is valid.[S. 147, 148, 148A(b), 148A(d), 149(1)(b), 151, Art. 226]
Held that there was no merit in the submission of the assessee to the effect that the information available with the Assessing Officer was vague, non-specific or did not relate to the risk management strategy of the Department. Though the provisions of section 148A did not contain such an expanded description of the sources that remained limited to those mentioned therein, including foreign tax and tax research references the Assessing Officer in the reasons recorded had clearly referred to information received from the Director (Investigation and Criminal Intelligence) and for the purposes of section 148A that would suffice. That the reasons for reopening indicated that, prima facie, the condition set out under section 149(1)(b) was satisfied in so far as the income chargeable to tax was represented in the form of the movable property transferred by the assessee is far in excess of the required amount of Rs. 50 lakhs. That the sanction under section 151 for issue of notice under section 148 had been duly obtained from the Principal Commissioner and there was no infirmity in the sanction accorded. Writ petition is dismissed. (AY.2016-17)
Susai Amalanathan antoni Vincent v. ITO (2023)457 ITR 96 /156 taxmann.com 17 (Mad)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Sufficient time is not given to raise the objection-Notice and order is quashed and set aside.[S. 143(3),148, 148A(b), Art. 226]
The assessee had made a specific request for a period of fifteen days to respond to the notice of the reassessment. Revenue has passed the order without giving a reasonable opportunity though the assessment was not getting time barred. On writ the Court held that when it was not a case of time barring assessment nor was there any urgency for it to not even to accede to the request of further three days for the assessee to file its reply. The order being in violation of the principles of natural justice. Order of assessment is quashed and set aside. (AY.2016-17)
Aditya Hareshbhai Sonpal v.ITO (2023)456 ITR 456 / 148 taxmnn.com 13 (Guj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Accommodation entries-Failure to furnish any material-Directed to give an opportunity of hearing-Notice and order disposing the objection is set aside. [147, 148, 148A(b), 148A(d),Art.226]
Allowing the petition the Court held that the Assessing Officer had failed to furnish a copy of the affidavit filed by certain directors of the company in which according to the Assessing Officer the name of the assessee had appeared as one of the beneficiaries of the accommodation entries. Therefore, the notice under section 148A(b), the order under section 148A(d) and the subsequent notice under section 148 for reopening the assessment under section 147 were set aside. Liberty was given to the Assessing Officer to take any

proceedings after furnishing to the assessee the relevant information available concerning the transaction in question and also affording him a personal hearing.(AY.2014-15)
Bhagwan Sahai Sharma v. Dy. CIT (2023)456 ITR 67 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Material forming basis for such reason has to be furnished-Notice and order disposing the objection is seta side. [S. 147 148, 148(A), 148(d), Art. 226]
Allowing the petition the Court held that the information that the Assessing Officer or Inspector gathered concerning the transactions in issue had not been furnished to the assessee. Accordingly the notice and order disposing the objection. is quashed and set aside.(AY.2016-17)
Charu Chains and Jewels Pvt. Ltd. v. CIT (2023)456 ITR 352/ 150 taxmann.com 93 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Based on facts-Writ is not maintainable. [S. 147, 148A(b), 148A((d), Art. 226]
Dismissing the petition the Court held that from a bare reading of the notice it could not be axiomatically held that the authority had assumed jurisdiction not vested in it. The correctness of order under section 148A(d) of the Income-tax Act, 1961, was being challenged on a factual premise contending that jurisdiction though vested had been wrongly exercised. Writ petition is dismissed. (AY.2015-16)
Dinesh Verma v. ITO (2023)456 ITR 682/ (2022) 141 taxmann.com 453 (P&H)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Law Applicable-Amendment of section 149 with effect from 1-4-2021-Notice cannot be issued unless the alleged income involved exceed Rs 50 lakhS. [S. 148. 148A(b) 148A(d), 149, Art. 226]
The amount involved is only Rs. 8 lakhs which was less than Rs. 50 lakhs. The assessee challenged the notice issued under section 148 of the Act. Allowing the petition the Court held that the Finance Act, 2021 with effect from April 1, 2021, amended section 149 of the Income-tax Act, 1961, which now provides for the time limit within which proceedings under section 148 of the Act could be initiated. Clause (a) of sub-section (1) of section 149 of the Act provides that no notice under section 148 of the Act shall be issued for the relevant assessment year if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b)-that is unless the alleged income involved exceeds Rs. 50 lakhs notice under section 148 of the Act cannot be issued.(AY.2016-17)
Geeta Agarwal v. ITO (2023)456 ITR 103 / 335 CTR 296 (Raj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Accommodation entries-Failure to provide the investigation report-Notice and order is set aside-Directed to provide all documents collected during the investigation. [S. 147, 148, 148A(b), 148A(d), Art. 226]
Allowing the petition the Court held that there was no allegation that the assessee had made any imports and was not been even called upon to produce documents regarding any imports. Therefore, an allegation could not be made that the assessee had not submitted any documentary evidence regarding imports to refute the claim that imports were bogus. The Assessing Officer is directed to provide copies of all documents collected during the investigation. On the facts and circumstances, the order passed under section 148A(b) and the consequential notice under section 148 were quashed and set aside. The matter was remanded to the Assessing Officer for de novo consideration. Matter remanded.(AY.2019-20)

Hari Darshan Exports Pvt. Ltd. v. ACIT (2023)456 ITR 542 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Orders set aside-Matter remanded. [S. 148, 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that the Assessing Officer had proceeded on entirely a new set of facts which were never put to the assessee in the show-cause notice and the corrigendum issued thereto. The reassessment proceedings had to be redone even though the assessment order under section 147 had been passed. The order is set aside. The assessee has to submit a comprehensive and detailed reply to all the allegations which were made against him and produce documents in support of his claim. The assessee is entitled to seek for required documents in this regard and the period of time fixed in this order would commence from the date on which the assessee received those documents from the Department. Thereafter the Assessing Officer should afford an opportunity of hearing to the assessee and redo the proceedings in accordance with law.

Kunal Daga v. UOI (2023)456 ITR 17 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Amendments by Finance Act, 2021-Observations of Supreme Court in UOI v. Ashish Agarwal (2022) 444 ITR 1 (SC) to be followed.[S. 148, 148A(b), 148A(d), Art. 142, 226]

In a batch of writ petitions, the assessees challenged the legality and validity of notices issued by the Assessing Officer under section 148 of the Income-tax Act, 1961. All the notices are post April 1, 2021, but issued under the unamended provision of section 148 of the Act. By the notices, the Assessing Officer proposed to assess/reassess income of the assessee for the respective assessment years on the ground that he had reason to believe that income chargeable to tax had escaped assessment. The notices were challenged on the ground that the procedure laid down under section 148 of the Act had not been followed, the Court held that in UOI v. Ashish Agarwal (2022) 444 ITR 1 (SC) clarified that its decision in Ashish Agarwal rendered on May 4, 2022 was an order passed under article 142 of the Constitution of India and would be binding in all cases where similar notices have either been set aside by the High Courts or are pending adjudication before the High Courts. Instruction No. 1 of 2022 dated May 11, 2022 (2022) 444 ITR (St.) 43) was issued by the Central Board of Direct Taxes giving instructions to the Assessing Officers regarding implementation of the judgment of the Supreme Court in the case of Ashish Agarwal. That being the position, the writ petitions were to stand disposed of in terms of the judgment of the Supreme Court in Ashish Agarwal.

Mohan Rao Gandra v. UOI (2023)456 ITR 676 (Telangana)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Transfer of case-Notice issued by Assessing Officer, Shimla,after case transferred to New Delhi-Notice and proceedings are invalid and without jurisdiction. [S. 127(2), 147,148, 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that notice issued by Assessing Officer, Shimla,after case transferred to New Delhi. Notice and proceedings are invalid and without jurisdiction. (AY.2015-16)

Punam Sharma v. PCIT (2023)456 ITR 580/ 335 CTR 1067 (HP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principles of natural justice-Initial notice not stating transactions of assessee with

two companies-Erroneously stating that the assessee did not respond to show-cause notice-Notice and order is set aside. [S. 147, 148, 148A(b), 148A(d), Art. 226]
Allowing the appeal the Court held that the Assessing Officer had stated that the assessee did not submit documents in support of his claim which was incorrect since there were enclosures along with the response submitted by the assessee dated March 29, 2022. The order passed under section 148A(d) is set aside and the matter is remanded back for fresh consideration by the Assessing Officer
Rajesh Kumar Agarwal v. UOI (2023)456 ITR 1/154 taxmann.com 404 (Cal)(HC)
Editorial : Decision of single judge is set aside, Rajesh Kumar Agarwal v. UOI (Cal)(HC) (WPA No. 6956 of 2023 dt 1-5-2023)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Payment to non-Resident-Management and consultancy fees-Change of opinion-Query raised in the course of assessment proceedings-No power to review the order-Reassessment notice and order disposing the objection is quashed.[S. 40(a)(i), 147, 148A(b).148A(d), 195, Art. 226]
Assessee, a team in India Premium League (Kolkata Knight Riders), had paid various management fees and consultancy fees, including a substantial amount to a foreign entity. During original assessment proceedings, assessee responded to queries raised by Assessing Officer regarding foreign payments and provided explanations for non-deduction of Tax Deducted at Source (TDS).-Assessment order did not discuss payments made or non-deduction of TDS. The reassessment proceeding was initiated for failure to deduct tax at source. On writ the Court held that once a query had been raised during assessment proceedings and assessee had responded to it, query raised was deemed to have been considered by Assessing Officer. Therefore, where assessee had submitted during assessment proceedings that no tax was deducted on payment made and submission so made during assessment proceedings had been accepted by Assessing Officer, reopening of assessment being mere change of opinion did not constitute justification to believe that income chargeable to tax had escaped assessment. The reassessment notice and order disposing the objection is quashed. (AY. 2016-17)
Knight Riders Sports Pvt. Ltd. v. ACIT (2023)459 ITR 16/ 295 Taxman 537 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Return was not filed-Purchase of immoveable property-Only five days time to file the reply-Notice and order disclosing the objection is quashed and set aside. [S. 69, 148, 148A(b),148A(d), Art.226]
Allowing the petition the Court held that the Assessing Officer has not given seven days of time to assessee to reply to notice under section 148A(b) of the Act the notice under section 148A(b) and further order under section 148A(d) along with notice issued under section 148 were quashed and set aside. (AY. 2011-12)
Mukesh J. Ruparel v. ITO (2023) 295 Taxman 475 (Bom.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing an opportunity before issue of notice-Business expenditure-Failure to file reply-Writ petition is dismissed.[S. 148, 148A(b), 148A(d), Art. 226]
Dismissing the petition the Court held that detail of information furnished to the assessee along with the notice under section 148A(*b*), is sufficient and adequate to afford reasonable opportunity to the assessee to prepare and submit an effective response. Failure to file the reply, directed to pursue the remedy as per law. (AY. 2019-20)
Samriddhi Industries v. CBDT (2023) 295 Taxman 524 (MP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Capital gains-Profit on sale of property used for residence-Furnished copy sale deed and NHAI bonds-Non application of mind-Reassessment notice and order under section 148A(d) is quashed and set aside. [S. 45, 54, 54EC,148, 148A(b), 148A(d), Art. 226]

Notice was issued under section 148A(b) alleging that she had sold a property and claimed deductions under sections 54 and 54EC but no details had been made available regarding reinvestment of amount claimed for deductions.Assessee submitted reply and attached necessary documents in form of copy of registered sale deed and copies of NHAI bonds Assessing Officer rejected reply on ground that assessee had not provided copy of sale deed and passed order under section 148A(d) and issued notice under section 148 of the Act. On writ allowing the petition the court held that copy of income-tax return clearly disclosed sale consideration coupled with deductions claimed and the assesssee along with reply to notice had duly submitted copy of sale deed as well as copies of NHAI bonds, it was a case of non-application of mind by Assessing Officer. Notice and order is quashed. (AY. 2018-19)

Shalini Mittal (MS.) v. ITO (2023) 295 Taxman 722 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-Accommodation entries-Rishabh Trading Company-Filing of affidavit-Notice and order disposing the objection is quashed and set aside.[S. 68, 148, 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that since revenue had not been able to draw attention to any part of statement of Mr. Agarwal which referred to assessees, and moreover, it failed to furnish to assessees documents evidencing approval for reassessment proceedings. Accordingly the notices and order is set aside. (AY. 2019-20)

Gudwala and Sons v. ACIT (2023) 295 Taxman 772 /(2024) 462 ITR 33 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice in the name of different entity-Notice and order disposing the objection is quashed. [S. 148, 148A(b), 148A(d), Art. 226]

The Assessing Officer passed an order under section 148A(d) on the assessee and subsequently the assessee received a notice under section 148 which was in the name of a different entity and in the meantime the Assessing Officer by a letter intimated the assessee that the The Assessing Officer passed the order in the name of the assessee. On writ the Court held that there are four serious errors in the notice. If all of them are excised it would cease to be a notice which would bear the imprint of section 148. Court also held that section 292B is concerned, a mistake, which can be corrected under section 292B should be such that if excised it does not change the tenor and scope of the documents/proceedings referred to therein. On the facts there is a misstep on the part of the Assessing Officer, since he has not assumed jurisdiction as per law. Accordingly the notice issued under section 148 and the reassessment order and notices of demand and penalty and the order issued under section 148A(d) are quashed and set aside. (AY. 2014-15)

AVS Infrabuild (P.) Ltd. v. ACIT (2023) 295 Taxman 458 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Amalgamation-Non-existing company-Mere activation of PAN in name of transferor company would not give right to revenue to issue notice to a non-existent entity-Notice and order is quashed.[S. 148, 148A(b), 148A(d), Art. 226]

The assessee (transferee) company and transferor company proposed a scheme for amalgamation with appointed dated 1-4-2018. Amalgamation process was approved by NCLT. The proposed scheme of amalgamation was also informed to the revenue. The Revenue issued notice under section 148A against the transferor company specifying therein that the PAN of the transferor company was active. Assessee submitted that all the transactions entered and appeared on the PAN of transferor company had been duly accounted by the assessee-company in accordance with the generally accepted accounting policy and other applicable laws. The Assessing Officer passed order u/s 148A(d) of the Act. On writ the Court held that the notice was given to the Transferor company, which is a non-existent entity, after the appointed date, *i.e.* 1-4-2018. The order under section 148A(*d*) has been passed by the revenue against a non-existent entity. Order is held to be bad in law. (AY. 2019-20)

Delta Electronics India (P.) Ltd. v. PCIT (2023) 459 ITR 26 / 295 Taxman 777 (Uttarakhand)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Extension of time limit for issuance of notice until 30-6-2021-Income escaping beyond 50 lakhs-Notice not barred by limitation. [S. 147, 148, 148A(b), 148A(d),149, Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020, S. 3. Art. 226]

On writ the assessee challenged the order passed under section 148A(d) of the Income-tax Act, 1961 and the notice dated July 30, 2022 issued under section 148 for the assessment year 2013-14 on the ground that it was barred by limitation and the vires of Instruction No. 1 of 2022 dated May 11, 2022 [2022] 444 ITR (St.) 43) issued by the Central Board of Direct Taxes, dismissing the petition, the Court held that as the income escaping beyond 50 lakhs,notice is not barred by limitation in view of section 3 of Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020 read with the Notification No. 20 of 2021 dated March 31, 2021 ([2021] 432 ITR (St.) 141) and Notification No. 38 of 2021 dated April 27, 2021 ([2021] 434 ITR (St.) 11). Accordingly the first proviso to section 149 (as amended by the Finance Act, 2021) was not attracted and even without the benefit of Instruction No. 1 of 2022, dated May 11, 2022 the notice under section 148 was within limitation.(AY.2013-14)

Salil Gulati v. ACIT (2023)455 ITR 24/ 150 taxmann.com 49 (Delhi)(HC)

Editorial : SLP dismissed, Salil Gulati v.Asst. CIT (2023)455 ITR 29/ 293 Taxman 75 (SC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Charitable purpose-Registration-Reassessment proceedings for earlier years cannot be initiated on ground of non-registration. [S. 11, 12 12A(2), 147, 148, 148A(b), Art. 226]

Allowing the petition the Court held that after issuance of notice under section 148A(b) objections were filed by the assessee which were dismissed. A notice under section 148 for reopening the assessment under section 147 was issued wherein no reference was made to the third proviso to section 12A. Registration of the assessee was granted and was applicable from the assessment year 2016-17. The registration was valid for claiming the benefit under sections 11 and 12. No proceedings under section 147 could be initiated for the assessment year 2015-16. Hence, the show-cause notice under section 148A(b), the consequent order under section 148A(d) and the notice under section 147 being contrary to the third proviso to section 12A(2) the order and notice is set aside.(AY.2015-16)

Prem Chand Markanda Sd College For Women v. ACIT (E) (2023)455 ITR 329 / 334 CTR 582 (P&H)(HC)

Editorial : SLP of Revenue dismissed, Asst. CIT (E) v. Prem Chand Markanda Sd College For Women (2024)460 ITR 495 /297 Taxman 64 (SC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Allegation in respect of inadmissible expense claimed not stated in initial show-cause notice-Show-Cause notice and subsequent order is invalid.[S. 147,148 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that the order under section 148A(d) was silent on how the reply given by the assessee to the show-notice under section 148A(b) was considered. Though the verification report had been uploaded on the portal of the Deputy Director it was not a part of the initial show-cause notice and the amount in question received from the party had not been shown in the initial show-cause notice. The assessee had no occasion to file reply on that issue. The notice and order is quashed and set aside.Referred, Catchy Prop-Build Pvt Ltd v.ACIT (2022) 448 ITR 671 (Delhi)(HC), Excel Commodity and Derivative Pvt Ltd (2023) 445 ITR 341 (Cal)(HC)

Shashank Garg v.ITO (2023)455 ITR 347 (P&H)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Objections not considered-Notice and order is set aside.[S. 147, 148, 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that the Assessing Officer had referred to the assessee's reply dated April 9, 2022 but there was no discussion as to the objection raised by the assessee in their reply. There was no discussion on the documents, which were placed by the assessee along with the reply with soft copies uploaded in the e-proceeding. The notice and order is set aside. (AY.2018-19)

Somnath Dealtrade Pvt. Ltd. v. UOI (2023)455 ITR 720 (2022) 143 taxmann.com 71 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice-Limitation-Finance Act, 2021-Notice Issued on 30-7-2022-Reopen assessments for 2013-14 and 2014-15-Barred by limitation-The 2020 Act is a secondary legislation-Secondary legislation would not override the principal legislation, the Finance Act, 2021. . [S. 147, 148, 148A(b), 148A(d), 149, 151, Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, S. 3, Art. 226]

The assessee challenged the notice issued on 30-7-2022 to reopen the assessments for the assessment years 2013-14 and 2014-15 are barred by limitation. Allowing the petition the Court held that

The Finance Act, 2021, passed on March 28, 2021, and made applicable with effect from April 1, 2021, section 148A was brought into force and section 149 was also recast. The first proviso to section 149 of the Act as introduced by the Finance Act, 2021, inter alia, stipulated that no notice under section 148 shall be issued at any time in a case for the assessment year beginning on or before 1st day of April 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provision as it stood immediately before the commencement of the Finance Act, 2021. Due to the pandemic of 2020 the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 was passed. Various notifications were issued from time to time extending the time limits prescribed under section 149 of the Act for issuance of reassessment notice under section 148. The 2020 Act is a secondary legislation. Such secondary legislation would not override the principal legislation, the Finance Act, 2021. Therefore, all original notices under section 148 of the Act referable to the old regime and issued between April 1, 2021 and June

30, 2021 which stand beyond the prescribed permissible time limit of six years from the end of assessment year 2013-14 and assessment year 2014-15, would be time barred. Accordingly all the notices under section 148 of the Act relatable to the assessment year 2013-14 or the assessment year 2014-15, as the case may be, were beyond the permissible time limit, and therefore, liable to be treated as illegal and without jurisdiction.(AY.2013-14, 2014-15)
Sumit Jagdishchandra Agrawal v.Dy. CIT (2023)455 ITR 216 /148 taxmann.com 437 (Guj) (HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Amendments by Finance Act, 2021-Notice issued on 30-6-2021-Barred by limitation. [S. 147, 148, 148A(b), 148A(d), 149, The Taxation and Other Laws (Relaxation and Amendment of Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, S. 3, Art. 226]
The assessee challenged the notice dated June 30, 2021 issued for the Assessment year 2014-15 is barred by limitation. Allowing the petition the Court held that no notice under section 148 shall be issued for the relevant assessment year, as per clause (b), if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to one lakh rupees or more for that year. The limitation of six years from the end of the relevant assessment year operated as the time limit in the old regime for issuance of notice under section 148 beyond which period, it was not competent for the Assessing Officer to issue notice for reassessment. This embargo continues in the new regime also. In view of the pandemic of March 2020 the Taxation and Other Laws (Relaxation and Amendment of Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 was passed. Various notifications were issued from time to time extending the time line prescribed under section 149. The 2020 Act is a secondary legislation. It would not override the principal legislation the Finance Act, 2021. Hence all original notices under section 148 of the Act referable to the old regime and issued between April 1, 2021 and June 30, 2021 would stand beyond the prescribed permissible time limit of six years from the end of the assessment year 2013-14 and the assessment year 2014-15. Therefore, all such notices relating to the assessment year 2013-14 or the assessment year 2014-15 would be time barred as per the provisions of the Act as applicable in the old regime prior to April 1, 2021. Accordingly the notice dated June 30, 2021 issued by the Assessing Officer under section 148 of the Act, seeking to reopen the assessment in respect of assessment year 2014-15, and the order dated July 21, 2022 passed are quashed and set aside.(AY.2014-15)
Sunny Rashikbhai Laheri v ITO (2023)455 ITR 35/148 taxmann.com 438 (Guj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Details of information and material relied is not furnished-Matter remanded. [S. 147, 148, 148A(b) 148A(d), Art. 226]
Allowing the petition the Court held that though there was a reference to information relied on for formation of the belief that income had escaped assessment under section 147 by the Department, the documents and material information requested by the assessee were not made available to him. In the absence of such materials and necessary information the assessee would not be in a position to justify his acts and conduct, nor would he be able to provide a reasonable explanation with regard to the information collected and relied on by the Department. Therefore, the order under section 148A(d) and the notice issued under section 148 is quashed and set aside. Matter remanded.(SJ)
Vinod Lalwani v.UOI (2023)455 ITR 738/331 CTR 458/ 222 DTR 331 /148 taxmann.com 204 (Chhattisgarh)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Accommodation entries-Accepted by assessee-Information from Investigation Wing-Alternative remedy-Writ petition was dismissed. [S. 147, 148, 148A(d), Art. 226]
Dismissing the petitions the Court held that in view of the information which had formed the basis of the initiation of the inquiry in the reassessment proceedings under section 147 and the fact that the transactions in issue had been admitted by the assessees the order under section 148A(d) and the notice under section 148 need not be interfered with. The disputed questions of fact involved could not be adjudicated exercising jurisdiction under article 226 of the Constitution of India.(AY. 2016-17)
Ajay Gupta (HUF) v.ITO (2023)454 ITR 787 (Delhi)(HC)
Rajiv Gupta (HUF) v.ITO (2023)454 ITR 787 (Delhi)(HC)
Editorial : SLP of assessee dismissed, Ajay Gupta v.ITO (2023)454 ITR 794(SC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Assessee must be furnished material on the basis of which initial notice was issued-Notice was quashed-[S. 148, 148A(b), 148A(d), Art. 226]
Allowing the petition the Court held, that the reassessment proceedings initiated were unsustainable on the ground of violation of the procedure prescribed under section 148A(b) of the Act on account of failure of the Assessing Officer to provide the requisite material which ought to have been supplied with the information in terms of the section. The order dated March, 25 2022 passed under section 148A(d) of the Act, and the notice under section 148 of the Act were quashed. The Court also observed that it is open to revenue to proceed in the matter from the stage of issue of notice under section 148A(b) of the Act, if it is otherwise permissible keeping in view the issue of limitation. (AY. 2018-19)
Anurag Gupta v. ITO (2023)454 ITR 326 / 332 CTR 811/ 225 DTR 211 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Reply of assessee was not considered-Notice was responded-Assessment order and notice of demand was stayed. [S. 142(1), 143(2), 144 144B,148, 148A(d), Art. 226]
Writ petition was filed challenging the order passed under section 147 and section 144 read with section 144B of the Income-tax Act, 1961 and notice of demand. The Court held that no notice under section 143(2) had been issued the Assessing Officer did not take cognizance of the reply filed by the assessee while passing the order under section 148A(d) of the Act. The operation of the order under section 147 and section 144 read with section 144B and demand notice under section 156 were stayed. The matter was to be listed on October 13, 2023.(AY. 2018-19)
Absolute Entertainment Pvt. Ltd. v ACIT (2023)454 ITR 655 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to consider replies-Notice and order for issue of notice is set aside-Matter remanded to Assessing Officer. [S. 147, 148, 148A(b). 148A(d), Art. 226]
On a writ allowing the petition the Court set aside the notice and order for issue of notice as the Assessing Officer failed to consider the replies of the assessee. Matter remanded to Assessing Officer. (AY. 2015-16)
Anu Gupta v. ITO (2023)454 ITR 785 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-Accommodation entries-question of fact-Writ petition was dismissed. [S. 68,147, 148A(b), 148A(d), 148, Art. 226]

The assessee filed the writ petition challenging the order passed under section 148A(d) of the Act on the ground that the Assessing Officer did not provide any information and material related to the reassessment proceedings and was barred by limitation. Dismissing the petition the Court held that the aassessee has not brought on record anything to suggest that the reassessment proceei9ngs under section. 147 were undertaken in an arbitrary manner. (AY. 2015-16)

Seema Gupta (Smt) v. ITO (2023) 455 ITR 498 /146 taxmann.com 289 (Delhi)(HC)

Editorial : SLP of assessee is dismissed, Seema Gupta (Smt) v. ITO (2023) 455 ITR 504 / 294 Taxman 518 (SC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice after three years-Limitation-Capital gains-Notice issued without considering the reply-Income escaping did not exceed 50 lakhs-Income chargeable to tax-notice barred by limitation.[S. 45, 48, 148A(b), 148(d), 149(1)(b) Art. 226]

Reopening notice dated 21-3-2023 under section 148A(b) was issued on ground that assessee had purchased a property and sold same after holding it for three years, therefore, long-term capital gain arose on same for Rs. 55.77 lakhs had escaped assessment . The assessee contended that capital gain was Rs. 33.85 lakhs after deducting indexed cost of acquisition and as income escaping assessment did not exceed Rs. 50 lakhs, in terms of section 149(1)(b), notice dated 21-3-2023 under section 148 for assessment year 2016-17 would not fall within extended time provided under section 149(1)(b) of the Act. The Assessing Officer passed an order under section 148A(d) and further issued a notice under section 148. On writ allowing the petition the court held that a plain reading of section 48 provide that entirety of sale consideration would not constitute income. The Revenue authorities had not applied its mind to said reply filed by assessee nor noticed legal position. Accordingly the order passed under section 148A(d) and notice issued under section 148 were set aside. Abdul M.Majeed v. ITO (2022) 447 ITR 698 (Raj(HC), distinguished. (AY. 2016-17)

Sanath Kumar Murali v. ITO (2023) 455 ITR 370 /294 Taxman 80 / 333 CTR 189 (Karn.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-No opportunity of hearing was given-Order and reassessment notice was quashed and set aside.[S. 68, 148, 148A(b), 148A(d), Art. 226]

The Assessing Officer issued notice under section 148 and initiated reassessment proceedings against assessee on the ground that the assessee was a beneficiary of an accommodation entry provided in form of bogus loans. The assessee challenged the proceedings by filing writ petition. Allowing the petition the Court held that since search and seizure action under section 132 was not carried out against assessee such action was carried out against a third party and a the assessee was not given opportunity of hearing. Accordingly the order passed under section 148A(d) and consequential notice issued under section 148 was also quashed and set aside. (AY. 2019-20)

Movish Realtech (P.) Ltd. v. Dy. CIT (2023) 294 Taxman 353 /(2024) 460 ITR 334 Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Share application money-Order passed without considering the reply-Order is set aside-Matter is remanded. [S. 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that the Assessing Officer passed order under section 148A(d) without consideration of reply made by assessee and issued notice under section 148 of the Act since there was no consideration of reply made by assessee, order and notice was

set aside with a direction to Assessing Officer to reconsider reply and advert to same while passing fresh order under section 148A(d) of the Act. Matter remanded.
Flipkart (P.) Ltd. v. ITO(IT) (2023) 294 Taxman 300 (Karn.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments-Purchase of property-Assessing Officer assumed it sale of an immoveable property-Capital gains-Order and consequential notice were set aside order and consequential notice were set aside. [S. 69, 133(6), 148A(b), 148A(d), Art. 226]
Assessing Officer issued notice under section 148A(b) on ground that assessee sold an immovable property but failed to disclose capital gains earned on said sale. The assesseee responded that it had not sold but purchased a property from which tax at source had been deducted. The Assessing Officer passed the order under section 148A(d) holding that asset was not declared by assessee and thus, income on said transaction had escaped assessment. On writ the Court held that the assessee supplied information with respect to purchase of property against a notice under section 133(6) which was issued prior to issuance of notice under section 148A(b) and said assertation was supported by relevant documents.Court also held that since Assessing Officer missed most crucial part of transaction that it was a purchase and not a sale transaction and impugned order did not align with notice issued under section 148A(b), order and consequential notice were set aside. Even if the Assessing Officer deemed it fit to carry out a fresh exercise, same would be started from stage prior to issuance of notice under section 148A(b) of the Act. (AY. 2017-18)
Krishna Diagnostic (P.) Ltd. v. ITO (2023) 294 Taxman 109 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments-Notice issued on the issue of unexplained investment-Order passed on other issues without issuing an opportunity to explain-Assessing Officer was directed to pass order afresh after giving an opportunity of personal hearing to assessee-Matter remanded.[S. 69, 148A(b), 148A(d), Art. 226]
The notice to the assessee has been based only for one reason whereas in the order the Assessing Officer has gone on to deal with the loan account, the employment details, the salary certificate, etc. of the assessee, *i.e.,* in the order the Assessing Officer had added new reasons and the assessee had not been given an opportunity to answer and explain the same. Therefore, taking into account the fact that the very basis of the impugned order is erroneous and it proceeds to give new reasons, which the assessee has not been given an opportunity to defend, the impugned order is set aside. The notice issued under section 148A(*b*) shall be treated as an additional show-cause notice and the assessee shall submit his explanation to this additional show cause notice and the Assessing Officer shall proceed to pass order after giving an opportunity of personal hearing to the assessee. (AY. 2016-17) (SJ)
Packirisamy Senthilkumar v. Government of India. (2023) 294 Taxman 546 / (2024) 461 ITR 473/ (Mad.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained investments-Notice issued was without application of mind-Order and notice was quashed and set aside. The matter is remitted back to revenue to consider matter afresh. [S. 148A(b), 148A(d), Art. 226]
The assessee subscribed to equity shares issued by subsidiary. The assessee was allotted certain equity shares at a premium. It remitted an aggregate amount from outside India to its subsidiary in two branches. Premium was ascertained based on a valuation report issued by accredited valuers. Assessee also submitted necessary details to Reserve Bank of India (RBI). RBI by an auto generated mail approved reporting form of assessee. Department issued

notice for reopening assessment on ground that assessee had not submitted any documentary evidence to verify source of investment. On writ the Court held that since the assessee had necessary permission from RBI and if RBI had any doubts about assessee's genuineness or source of funds, it would have red flagged assessee or subsidiary. Since the Revenue had failed to appreciate that assessee was a company organized under relevant laws of USA and was subject to tax in USA and assessee had sufficient funds to make investments in subsidiary during year in consideration. Accordingly the order passed under section 148A(d) was quashed and set aside. Matter remanded back to revenue to consider afresh. (AY. 2019-20)

J.P. Morgan Chase Holdings LLC v. ACIT (2023) 294 Taxman 245 (Bom.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Opportunity must be given-Order passed without considering the objection raised under the earlier unamended provisions of section 148 of the Act-Order is set aside. [S. 148, 148A(b), 148A(d), Art. 226]

The Assessee contended that it did not receive the notice under section 148A(b) as stated by the department. It became aware of the order being issued under section 148A (d) only through the portal. The Assessee challenged the order passed under section 148A(d) on the grounds that it violated the principles of natural justice and without considering the objections filed by the Assessee under the earlier unamended provisions of section 148. Additionally, the Assessee had no opportunity to respond to the notice under section 148A (b). The Court quashed the order passed under section 148A(d) of the Act and directed the AO to revaluate the issues after issuing a notice under section 148A(b).(AY. 2016-17)

Sahil Infra Creative (P.) Ltd. v. Income-tax Officer (2023) 455 ITR 11 / 294 Taxman 113 (Guj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained money-Search-Financial scam-Principal CIT was directed to refer the case along with all other involving same broker where similar modus operandi was adopted relating to unaccounted cash loan to Enforcement Directorate (ED).[S. 69A, 132, 148A(b), 148A(d), Art.226]

A search operation under section 132 was conducted at the assessee's premises. during which certain material and evidences were gathered which contained the name of the assessee and the symbols like Square/Rectangle/Triangle/Star/Circle/TickMark/Roman 'V' *i.e.* the coded language reflecting that the assessee was involved in taking cash loans. The *modus operandi* adopted was that the loan recipient acknowledged the receipt of cash loan through a paper popularly known as 'Rukka'. The loans were squared off or carried forward for a further specified period as per the mutual decisions of the parties involved and thereafter Rukka was destroyed on repayment of loan. Certain documents established the involvement of the assessee in such type of transactions with the broker and there were names of many other persons who were involved in this type of transactions adopting same *modus operandi.*

On the basis of such documents and evidences, it was considered that income chargeable to tax had escaped assessment for the assessment year under consideration and therefore, a reopening notice under section 148 was issued. On writ dismissing the petition the Court held that documents gathered during search were forwarded by investigation wing to relevant authorities and documents were also shared with assessee.Order was passed based on investigation and evidence collected.All findings in the order were based on material evidence which could not be scrutinised by a writ Court in exercise of its writ jurisdiction. Court also observed that considering nature of huge financial scam Principal CIT is directed to refer this case along with all other involving same broker where similar modus operandi

was adopted relating to unaccounted cash loan to Enforcement Directorate (ED). (AY. 2019-20)
Kalicharan Agarwalla v. Office of The Income-tax Officer (2023) 294 Taxman 295 (Cal.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained expenditure-Purchases from parties-Violation of principle of natural justice-Order set aside and matter remanded to the file of the Assessing Officer at the stage of show cause notice. [S. 148A(b), 148(d), Art. 226]
Assessing Office issued notice under section 148A(b), dated 15-3-2022 seeking detailed information regarding purchases made from two parties. Notice was served through e-mail on 16-3-2022.Both 17-3-2022 and 18-3-2022 were holidays, hence, it filed an interim reply on 17-3-2022 with whatever records, which were there in his possession. The Assessing Officer passed the order under section. 148A(d), without discussing the reply filed by the assessee. However, order under section 148A(b) was passed without any discussion on reply filed by assessee. On writ allowing the petition the court held that there had been violation of principles of natural justice hence the order was set aside and the matter was restored to file of Assessing Officer at stage of show-cause notice.(SJ)
Pramod Kumar Madhogarhia v. UOI (2023) 456 ITR 21 / 294 Taxman 291 (Cal.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Transfer cases from Chandigarh to New Delhi-Transfer of case to new Delhi-Notice issued by the Assessing Officer who had no jurisdiction-Order of Transfer come in to effect immediately-Notice was quashed-Existence of alternative remedy is not absolute bar. [S; 127(2), 148, 148A(b) 148A(d), Art. 226]
An order dated 12-3-2022 under section 127(2) was passed by Income-tax Officer, Chandigarh transferring case of assessee to Income-tax Officer at New Delhi. Transfer order it was stated that the said order would come into effect immediately with effect from 12-3-2022. Notice under section 148A(b) was issued on 22-3-2022 by Income-tax Officer, Shimla to reopen its assessment. When the notice was issued the assessee had brought this fact of transfer of its case to notice of revenue in his response on Portal given on 28-3-2022. Order dt. 12-3-2022 issued under section 127(2) was also available on Income-tax Portal. On writ the petitioner contended that notice under section 148A(b) issued to assessee was without jurisdiction. It was contended that merely because Income-tax Officer, Chandigarh failed to transfer PAN of assessee to Income-tax Officer at New Delhi, same would not mean that Income-tax officer, Shimla still had jurisdiction to issue reopening notice upon assessee. Allowing the petition the Court held that since transfer of jurisdiction was done on 15-3-2022, notice dated 22-3-2022 issued under section 148A(b) and further order passed under section 148A(d) and notice issued under section 148 were unjustified. Court also held that the existence of alternative remedy is not absolute u bar for entertaining the writ petition. Relied on Calcutta Discount Co Ltd v.ITO (1961) 41 ITR 191 (SC), Jeens Knit Pvt Ltd v. Dy.CIT (2017) 390 ITR 10 (SC), Secretary,Ministry of Defence v. Prabhas Chandra Mirdha (2012) 11 SCC 565, Whirlpool Corporation v. Registrar of Trade Marks, Mumbai (1998) 8SCC 565, CIT v. Chhabil Dass Agarwal (2013) 357 ITR 357 (SC), distinguished. (AY. 2015-16)
Ashok Kumar Sharma v. PCIT (2023) 458 ITR 54 / 294 Taxman 499 (HP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-No obligation to supply material or evidence on basis of which opinion is formed-Interpretation of Taxing Statutes-Nothing can be read into or implied-Words to be given their plain meaning-A taxing statute is to be interpreted literally-There is no

intendment to taxing statute and nothing can be implied from or read into a taxing statute. The words used in taxing statutory provision are required to be given their plain meaning-.Alternative remedy-Writ petition is dismissed.[S. 148, 148A(b), 148A(d), Art. 226]

Dismissing the petition the Court held that,if show-cause notice under section 148A (b) ought to be loaded with concise and precise information revealing foundational material which persuaded AO to come to a tentative finding that certain income had escaped assessment for relevant year and assessee had also filed a detailed reply to said notice, it was to be held that impugned order under section 148A(d) and consequential notice under section 148 had been issued/passed after following due process of law. Court also held that A taxing statute is to be interpreted literally. There is no intendment to taxing statute and nothing can be implied from or read into a taxing statute. The words used in taxing statutory provision are required to be given their plain meaning Assessee is directed to avail alternative remedy. The Court also observed that, it is settled in tax jurisprudence that taxing statute is to be interpreted literally. There is no intendment to a taxing statute. Nothing can be implied from or read into a taxing statute. The words used in a taxing statutory provision are required to be given in their plain meaning. referred, Ajmera Housing Corporation v.CIT (2010) 326 ITR 624/ (2010) 8SCC 739(para 6) Constitution Bench, Commissioner of Customs v. Dilip Kumar and Co. (2018) 9 SCC 1 (para 24, 34), Dy.CIT v. Ace Multi Axes systems Ltd (2018) 400 ITR 141 (Sc),(2018) 2 SCC 158, Check Mate Services Pvt Ltd v.CIT (2022) 448 ITR 518 (SC) /(2023) 6 SCC 451, (Also refer CIT v. Kasturi and Sons Ltd (1999) 3 SCC 346, State of West Bengal v.Kersoram Industries Ltd (2004) 10 SCC 201). (AY 2016-17).

Amrit Homes (P.) Ltd. v. DCIT (2023) 457 ITR 334 /294 Taxman 661 (MP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Time limit for notice-Notice dated 30-6-2021-The said notice was dispatched on 16-7-2021-Limitation expired on 30-6-2021-Notice is barred by limitation-Notice and order was quashed.[S. 148, 148(b), 148A(d), 149, Art. 226]

Allowing the petition the High Court observed that although the notice dated 30-6-2021 under section 148 of the Act bears an endorsement at the foot of the page that it has been digitally signed, it is inchoate, in the sense that it is not accompanied by a date. The date would have revealed when the digital signatures were appended on the notice. Admittedly, the said notice was never physically delivered to the petitioner-assessee. As such, the fact remains that service of the said notice under section 148 of the Act was affected on the petitioner only on 16-7-2021 through email, though the limitation period had already expired on 30-6-2021. Hence, the notice under section 148A(b) and the order under section 148A(d) are quashed. (AY 2014-15).

Himanshu Infratech (P.) Ltd.v. ITO (2023) 294 Taxman 715 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Educational institution-Deemed university-Order passed under section 148A(d) and consequential notices were quashed. [S. 10(23C)(iiiab), 139(4C), 148, 148A(b), 148A(d), Art. 226]

Assessee is an educational institution and a deemed university, was in existence from 1957. It did not file return for assessment year 2015-16, as there was no necessity to submit return till assessment year 2015-16. Pursuant to amendment to section 139(4C)(e) filed returns for assessment years 2016-17 to 2018-19 and in all these years Assessing Officer accepted that assessee was a section 10(23C)(iiiab) institution entitled for exemption. Later on Assessing Officer passed notice under section 148A on assessee for reasons that it failed to substantiate claim towards its compliance with conditions imposed in section 10(23C)(iiiab) and it was

holding huge amount of fixed deposits. On writ allowing the petition the Court held that since assessee was catering to needs of several lakhs of students and was having a huge infrastructure, holding fixed deposits running to several crores of rupees could not be a ground for reopening assessment that too when Assessing Officer himself had treated assessee as a section 10(23C)(iiiab) institution entitled for exemption in respect of subsequent assessment years 2016-17 to 2018-19. Accordingly the order passed under section 148A(d) and notice issued under section 148 of the Act was quashed. (AY. 2015-16)(SJ)

Avinashilingam Institute for Home Science and Higher Education for Women v. ACIT (E) (2023) 458 ITR 491/ 293 Taxman 195 (Mad.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Survey-Charitable purposes-Prima facie amended section 149 might not be applicable-Matter required examination-Matter to be listed on 22-11-2023-Stay was granted for continuation of reassessment proceedings, till further directions of court.[S. 148, 148A(b), 148A(d), 149, Art. 226]

A survey was conducted at premises of assessee-trust. Pursuant to survey, Assessing Officer issued reopening notices on 28-3-2023 and 29-3-2023 on ground that assessee-trust's activities were not genuine and expenditure were not made as per objects of trust. Accordingly, order was passed under section 148A(d) of the Act. On writ the assessee challenged the notices on ground that reopening notice was issued based on expenditure incurred in assessment year 2016-17 and said notice would be time barred. Revenue claimed that reassessment was initiated based on information from survey report which was conducted after introduction of amended provisions Court held that prima facie amended section 149 might not be applicable, however, matter required examination and thus, matter to be listed on 22-11-2023 and ordered that there would be a stay on continuation of reassessment proceedings, till further directions of court. (AY. 2016-17)

Centre For Policy Research v. Dy. CIT (2023) 293 Taxman 632 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Capital gains-Search-Violation of principle of natural justice-Without giving a reasonable opportunity to file reply to show cause notice-Order passed under section 148A(d) and notice issued under section 148 were quashed. [S. 48, 148, 148A(b), 148A()d), Art. 226]

During the course of search incriminating material was seized which showed that assessee had failed to disclose entire sale consideration concerning properties sold by it. A diary was seized by Enforcement Directorate (ED) which suggested that there was a cash component in sale of subject properties effected by assessee in favour of two persons. Assessing Officer held that income had escaped assessment and issued notice under section 148A(b) of the Act. Assessee had made a request for accommodation to seek time to gather material relevant for his defence. However the Assessing Officer had passed an order under section 148A(d) without dealing with assessee's request for accommodation. On writ the Court held that since there was breach of principles of natural justice order passed under section 148A(d) and notice issued under section 148 were be quashed. The Assessing Officer will be at liberty to take steps, as per law, from the stage of the issuance of notice under section 148A(b) on the Act, dated 17-2-2023 within next four (4) weeks. (AY. 2018-19)

Inderpal Singh Sayan v. Assessment Unit ITD (2023) 293 Taxman 731 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Civil construction-Objections were dealt with in a very mechanical manner-Order and notice were to be set aside and matter was to be remanded back to pass a

fresh order in accordance with law after giving an opportunity of personal hearing.[S. 48, 148A(b), 148A(d), Art. 226]

Petitioner is engaged in business of civil construction was issued notice under section 148A(b) to show cause as to why notice under section 148 for reopening should not be issued. Petitioner had submitted detailed reply raising various objections such as limitation, change of opinion, etc., along with details pertaining to capital gains tax computation paid on sale of property. The Assessing Officer held that petitioner's submissions and found unacceptable, therefore, order under section 148A(d) and notice under section 148 were issued the Assessing Officer also observed that the petitioner's submissions would require further verification. On writ the allowing the petition the Court held that no conclusion could had been reached by Department that petitioner's case was fit for issuance of notice under section 148 and since petitioner's objections were dealt with in a very mechanical manner, order and notice were set aside and matter was remanded back to pass a fresh order in accordance with law after giving an opportunity of personal hearing. (AY. 2016-17)

Crescent EPC Projects and Technical Services Ltd. v. Dy. CIT (2023) 293 Taxman 462 (Telangana)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Non-Resident Indian-Investment in shares-Automatic route of FDI-Violation of principle of natural justice-Matter was sent back to concerned officer from stage where he committed serious error in not complying with statutory requirements-Order passed under section 148A(d) was quashed and set-aside. [S. 56(2)(vii), 148, 148A(b), 148A(d), Art. 226]

Assessee-NRI, made an investment by purchasing certain equity shares of an Indian company through automatic route of FDI. Subsequently, he sold said shares as per valuation under section 56(2)(vii) to six different persons due to commercial reasons. Revenue issued a show-cause notice under section 148A seeking details from assessee with respect to his NRI identity and genuineness of transaction of sale of shares. Thereafter, an order under section 148A(d) was passed concluding that income chargeable to tax had escaped assessment. On writ the Court held that the assessee had furnished documentary evidences like passport, etc., for establishing that he was a non-resident Indian with a detailed reply and supporting documents. The order had been passed in complete disregard to details which were furnished by assessee, it was in breach of principles of natural justice. Accordingly the matter was sent back to concerned officer from stage where he committed serious error in not complying with statutory requirements. Accordingly the order passed under section 148A(d) was quashed and set-aside. (AY. 2015-16)

Pawan Girishbhai Batavia v. ITO (2023) 293 Taxman 179 (Guj.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Purchase of arecanut (Supari)-Failure to give an opportunity of cross examination-Non existence of sellers-Formation of opinion by authority concerned under section 148A(d), could not be questioned on basis of detailed defence setup by assessee on merits of information, including opportunity of cross-examining seller or by demanding documents relating to such information-Writ petition is dismissed. [S. 69A, 143(1), 148, 148A(b), 148A(d), Art. 226]

The petitioner is an individual engaged in the business of trading of Arecanut (Supari), Chopped Betal Nut and Sweet Betal Nut. He filed his return of income showing various purchases of arecanut (supari) from 'Kuhoje K. Achumi and Om Traders He had been assessed under section 143(1) of the Act. The Assessing Officer issued a notice to petitioner under section 148A(*b*) accompanying the information with the Assessing Officer to suggest

that income chargeable to tax had escaped assessment. The information available was that investigating wing of DGGI and GST had informed the Income-tax Authorities that 'K' and 'O' were found availing and utilizing fraudulent ITC on the basis of fake tax invoices without receipt of goods. It had also been found that the said entities (sellers) did not exist at all at the declared principal place of business. It was from such doubtful units that the petitioner claimed to have made purchases. Petitioner was given an opportunity under section 148A(*b*) to show cause as to why a notice under section 148 be not issued to him on the basis of information which suggests that income chargeable to tax had escaped assessment. In response to the notice the petitioner had filed a detailed objection before the Assessing Officer denying the allegations made in the notice. A request had also been made for providing the information relied upon for invoking such proceedings as well as to provide opportunity of cross-examination of the said suppliers. The Assessing Officer proceeded to pass an order under section 148(*d*) rejecting the petitioner's objection to the notice on the ground that information exists to suggest that transactions referred to in the notice are fictitious and without actual supply of goods. This amount had been treated as having escaped assessment for the purposes of initiating proceeding under section 148. Petitioner's request for cross-examination of suppliers and furnishing of material had also been declined considering the time-barring nature of the matter. A consequential notice had also been issued to petitioner under section 148 of the Act. On writ the Court held that whether formation of opinion by authority concerned under section 148A(d), could not be questioned on basis of detailed defence setup by assessee on merits of information, including opportunity of cross-examining seller or by demanding documents relating to such information Writ petition was dismissed. (AY. 2019-20)

Deepak Kumar Yadav v. PCIT (2023) 293 Taxman 694 /(2024) 460 ITR 50 (All.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Revenue had failed to furnish any (148, 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that Revenue had admitted that no documents or relevant material was furnished to assessee along with reopening notice issued upon it, order passed under section 148A(d) and notice issued under section 148 were t set aside and Assessing Officer was to be directed to pass fresh order under section 148A(d) after furnishing said documents. (AY. 2015-16)

Vertex International (P.) Ltd. v. ACIT (2023) 149 taxmann.com 480 (Delhi)(HC)

Editorial : SLP of the assessee is dismissed as withdrawn, Vertex International (P.) Ltd. v. ACIT (2023) 293 Taxman 72 (SC)

S 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Dissonance between input received from insight portal-Non application of mind-Order and notice were set aside. [S. 148, 148A(b), 148A(d), Art. 226]

There was a dissonance between input received from insight portal and what was noted in section 148A(b) notice with regard to amount which had escaped assessment. The assessee being informed by petitioner that there was discrepancy between what was stated in section 148A(b) notice and input received from said insight portal. Assessing Officer proceeded on same course and passed an order under section 148A(d) of the Act. On writ the Court held that there was c non-application of mind hence the order and notices were set aside. (AY. 2016-17)

Rahul Aggarwal v. ITO (2023) 293 Taxman 57 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained money-Violation of principle of natural justice-Flagged information on Insight Portal-Risk Management Strategy-Failure to furnish information-Notice and

consequential proceedings pursuant thereto were set aside. [S. 143(1), 148, 148A(b), 148A(d), Art. 226]

Assessee filed return of income under section 139(1). An intimation under section 143(1) was issued, accepting returned income. Thereafter, a notice under section 148A/148 was issued, after obtaining prior approval of CBDT. Notice indicated that information was flagged on 'Insight Portal' in accordance with Risk Management Strategy formulated by CBDT that assessee had made unaccounted transactions of investment which were not found genuine on basis of corroborative evidence and admission of a party. On writ it was contended that the assessee had not been furnished information with all requisite details including name of party with whom he was said to have transacted and, therefore, there was a clear violation of requirement of principles of natural justice and also statutory requirement under law. Allowing the petition the Court held that in absence of basic details of name of persons with whom assessee was said to have made unexplained transactions, no reply could have been given by assessee. Accordingly the notice issued under section 148/148A and consequential proceedings pursuant thereto were set aside.(AY. 2018-19)

Prakashchandra Chhotalal Shah v. ITO (2023) 292 Taxman 518 (Guj.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained expenditure-Bogus purchases-Violation of principle of natural justice-Information was not provided-Notice and order was set aside. [S. 148, 148A(b), 148(d), Art. 226]

Assessee is engaged in business of trading. During relevant assessment year, assessee incurred loss on account of trading in fabrics.During scrutiny, Assessing Officer disallowed said loss Consequently, an appeal was filed before Commissioner (Appeals) The Assessing Officer issued notice under section 148A(b) after observing information uploaded in INSIGHT and flagged by high risk transaction, wherein it was found that assessee had entered into fictitious transactions of bogus purchases. On writ it was contended that the alleged information was missing in the Portal. Allowing the petition the Court held that there had been breach of principle of natural justice accordingly the order passed under section 148A(d) was quashed and directed the authorities to furnish the information within seven days of the receipt of the order of the High Court (AY. 2018-19)

Yuva Trading Co. (P.) Ltd. v. ITO (2023) 292 Taxman 598 (Guj.)(HC)

S. 148A : Reassessment-Limitation-Effect of notification-Interpretation of taxing statutes-Notices issued pursuant to the case of UOI v. Ashish Agarwal (2022) 444 ITR 1/ 213 DTR 217/ 326 CTR 473/ 286 Taxman / AIR 2022 SC 2781 (SC)-Notice issued on or after 01.04.2021, the period concerned is between 01.04.2021 to 30.06.2021-Relaxation Act will not apply-The law as per Finance Act, 2021 has to be followed-Notice issued for Assessment years 2013-14 and 2014-15 are barred by limitation-The submission that the UOI v. Ashish Agarwal (Supra) would be applicable to the cases, where such notices have been challenged before different High Courts only, were not accepted. [S. 119, 147, 148, 148A(d), 149, 151, 151A, Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020, S. 3(1), CBDT Instruction, 31-3-2021, Art. 226]

Assessee filed writ petition for challenging notice dated 27-7-2022 issued under section 148 as well as order dated 27-7-2022 passed under section 148A(d) seeking to reopen income tax assessment of assessee for assessment year 2013-14 on ground that notice and order were bad in law and without jurisdiction. In Keenara Industries (P.) Ltd. v. ITO [2023] 147 taxmann.com 585 (Guj.), High Court held that all notices issued under section 148 between 1-4-2021 to 30-6-2021 shall need to pass test of new law including limitation test as laid

down in first proviso to section 149-Whether as per first proviso to section 149(1) for assessment year 2013-14 last date for issue of notice under section 148 was 31-3-2020. Accordingly notice dated 27-7-2022 was bared by limitation (AY. 2013-14)
Mohit Industries Ltd. v. ACIT (2023) 292 Taxman 224 (Guj.)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Information-Internal Audit objection-Not permissible-Change of opinion-Information not based on the objection raised by the Comptroller and Auditor General of India-Reassessment impermissible-Change of opinion-Audit objection raised by CAG a view deviating from that which was taken in the course of original assessment order is change of opinion-Impermissible. [S. 45, 48, 50C, 148,148A(b), 148A(d), 151 Art. 226]
In the course of assessment proceedings the Assessing Officer has raised a specific query as regards the applicability of the section 50C of the Act. After considering the submission of the petitioner the proposed addition was dropped. After the judgement of the supreme Court in UOI v. Ashish Agarwal (2022)444 ITR 1 (SC) the reassessment proceedings were initiated against the petitioner on the basis of Internal Audit objection. The objection of the petitioner was rejected and an order was passed under section 148A(d) of the Act. On writ the petitioner has prayed for quashing of the order was various grounds. One of the grounds was as the alleged information from the Internal Audit and not from the Comptroller and Auditor General of India hence the reassessment proceedings are bad in law. The petitioner has also raised the grounds on change of opinion. Allowing the petition the Court held that, information from Internal Audit objection is not permissible as the information was not based on the objection raised by the Comptroller and Auditor General of India.Court also held that audit objection raised by CAG a view deviating from that which was taken in the course of original assessment order is change of opinion which is impermissible. (WPNo. 4574 of 2022 dt 8. 11-2023) (AY. 2015-16)
Hasmukh Estates Pvt Ltd v. ACIT (2023)459 ITR 524/(2024) 158 taxmann.com 543 / 335 CTR 492 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Amalgamation-Notice issued in the name of a company which was amalgamated with Assessee (amalgamated company) and was not in existence on date of issue of such notice-The notice and consequent order is held to be invalid. [S. 148, 148A(d), Art. 226]
Allowing the writ petition of the Assessee, the High Court held that where an AO passed an order under section 148A(d) dated 20-7-2022 and issued notice under section 148 on same date in name of a company which was amalgamated with Assessee with effect from 1-4-2014 and Assessee had informed AO in this regard, then the order passed under section 148A(d) and notice issued under section 148 was set aside. (AY. 2014-15)
Sumant Investments (P.) Ltd. v. ACIT (2023) 291 Taxman 227 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Accommodating entries-Investigation revealed that the transaction was merely accommodating entries-Reopening of assessment is held to be valid. [S. 148A(d), Art. 226]
The Court noted that the party had already accepted that it was not engaged in real business activities. Further, the mere filing of VAT returns cannot help establish the genuineness of transactions without the VAT department making physical or spot enquiries. The parties still need to produce the relevant documents, transport details, purchase contracts or bills

concerning the alleged purchases. Hence the investigation revealed that the transaction was merely accommodating entries. The AO correctly passed the order under section 148(d) and the notice for reassessment. (AY. 2014-15)
Mahalaxmi Dye India (P.) Ltd. v. ACIT (2023) 291 Taxman 473 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Not granting the time prescribed from 7 to 30 days-Oder was set aside.[S. 148A(b), Art. 226]
Allowing the writ petition the High Court held that the legislature has provided a time schedule for AO from 7 to 30 days, as such, there is no impediment on part of AO to grant such time between 7 to 30 days. Further, since the AO has not considered the request of the petitioner for grant of 30 days' time and also not assigned any reason why has he given the time prescribed under the Act, i.e. 7 to 30 days, considering the law laid down by Hon'ble High Court of Delhi in Ester Industries Ltd v.ACIT 2022 SCC On. line Delhi 1827, the order passed under section 148A(d) of the Act, was set aside.(SJ)
Vesser Engineering Services (P.) Ltd. v. UOI (2022) 291 Taxman 179 (Chhattisgarh)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued after more than six years-non-compliance with mandatory requirements-Period had not got extended by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020-Notices dated 1-4-2021 and 5-4-2021 were held to be bad in law. [S. 148, 149, Art. 226]
Assessing Officer issued on assessee three notices under section 148 dated 31-3-2021, 1-4-2021 and 5-4-2021 seeking to reopen assessment for assessment year 2013-14. On writ allowing the petition the Court held that the first notice dated 31-3-2021 had been issued after more than six years from end of relevant assessment year and, therefore, exceeded time limit set out under section 149 and that period had not got extended by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Further, notices dated 1-4-2021 and 5-4-2021 were bad in law for non-compliance with mandatory requirements of prior inquiry by Assessing Officer in terms of section 148A. Accordingly the notice was quashed. (AY. 2013-14)
Stalco Consultancy & Systems (P.) Ltd. v. PCIT (2023) 455 ITR 308/ 291 Taxman 390 /333 CTR 205 (Orissa) (HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Accommodation entries-No reply was filed-Disputed facts-Writ petition was dismissed.[S. 133(6) 148A(b), Art. 226]
A show cause notice was issued upon assessee to provide information regarding accommodation entries received by it from an entity, namely, Surya Trading Company (STC). No reply was received, another notice was issued under section 148A(b) and reassessment proceeding was initiated. Assessee filed a writ petition against the said notice contending that the said transaction was done in course of business. Dismissing the petition the Court held that the assessee had not placed on record any documents explaining and substantiating nature of its transaction with Surya Trading Company (STC). Further, revenue's contention that assessee was beneficiary of an accommodation entry and assessee's contention that transaction was done in course of business were rival pleas and their determination was pure question of fact, which was to be determined by statutory authorities after appreciation of evidence. Writ petition was dismissed.(AY. 2013-14)
North End Foods Marketing (P.) Ltd. v. Dy. CIT (2023) 291 Taxman 482 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Entry operator-Monetary limit of less than 50 lakhs-Subsequent information-Writ petition was dismissed.[S. 148, 148A(b), 148A(d), Art. 226]

Assessee challenged order passed under section 148A(d) and notice issued under section 148 on ground that monetary requirement for reopening assessment was Rs. 50 lakhs which was not fulfilled in present matter as amount sought to be added in income of assessee was only Rs. 34.63 lakhs. Dismissing the petition the Court held that the condition precedent of an asset in form of Rs. 50 lakhs was not attracted to instant case, as notice under section 148A(b) had been issued within three years of assessment year sought to be assessed and section 148A(d) order as well as section 148 notice was within prescribed time. Said section 148 notice and order passed under section 148A(d) were set aside by the Court on petition of assessee and matter was remanded to Assessing Officer to decide matter in time bound manner. The Court held that the fact that a scrutiny assessment had been undertaken in instant case would not come to assessee's rescue, as revenue had subsequently received information that one of parties with whom assessee had transacted was an alleged entry operator, which fact was not known to revenue when scrutiny assessment was carried out. Accordingly the petition was dismissed. (AY. 2018-19)

Ester Industries Ltd. v. ACIT (2023) 291 Taxman 172 (Delhi)(HC)

Editorial : SLP dismissed as withdrawn, Ester Industries Ltd. v. ACIT (2023) 292 Taxman 1 (SC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Assessing Officer issued on assessee notices under section 148 dated 8-4-2021 seeking to reopen assessment for assessment years 2015-16 and 2016-17-Mandatory procedure of a prior inquiry under section 148A had not been followed-notices were unsustainable in law and quashed-Sanction-Sanction of Additional Commissioner and not only from Principal Chief Commissioner-Notice was quashed. [S. 148, 151, Art. 226]

Assessing Officer issued on assessee notices under section 148 dated 8-4-2021 seeking to reopen assessment for assessment years 2015-16 and 2016-17. Mandatory procedure of a prior inquiry under section 148A had not been followed Notices were unsustainable in law and quashed. The Assessing Officer issued on assessee notices under section 148 dated 31-3-2021 seeking to reopen assessment for assessment years 2015-16 and 2016-17 after obtaining necessary sanction of Additional Commissioner-It was noted that section 151 as it stood prior to 1-4-2021 would apply to instant case and in terms thereof previous sanction for issuance of notices had to be obtained only from Principal Chief Commissioner (for assessment year 2015-16) and Principal Commissioner (for assessment year 2016-17) and that Additional Commissioner was not competent sanctioning authority.-Accordingly the notices under section 148 were illegal as they were contrary to section 151 and was quashed. Circular and Notifications : Notification, dated 31-3-2021; Notification dated 27-4-2021 and Notification, dated 27-7-2021. (AY. 2015-16, 2016-17)

Sylvesa Infotech (P.) Ltd. v. Addl. CIT (2023)457 ITR 433/ 291 Taxman 375 / 332 CTR 803/ 226 DTR 13 s(Orissa) (HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Income deemed to accrue or arise in India-Royalty-Fees for technical services-Tax residency certificate-Reply filed by the assessee was had not been properly considered-Orders set aside-DTAA-India-Singapore-USA [S. 9(1)(vi), 9(1)(vii),148A(b), 148A(d), Art. 12, Art. 226]

In writ petition against the issue of notice under section 148 of the Act, the In response to notice the assessee contended that receipts from providing licensed material and ancillary services did not qualify either as royalty or fees for technical services in terms of article 12 of India-USA DTAA and therefore there was no income escaping assessment warranting exercise of jurisdiction under section 148 of the Act. The assessee also contended that they have also furnished Tax Residency Certificate prior to passing of an order under section 148A(d) of the Act. Allowing the petition the Court held that since the reply filed by the assessee was had not been properly considered, the orders were set aside with a direction to the Assessing Officer to deal with contentions and submissions advanced by the assessee and pass fresh orders under section 148A(d) of the Act. (AY. 2016-17, 2017-18)
Boeing Company v.UOI (2023 291 Taxman 406 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Faceless Jurisdiction of income-tax authorities-e-Assessment Scheme, 2022-It is mandatory for Revenue to conduct /initiate proceedings to reassessment in a faceless manner-Concurrent jurisdiction-Reassessment notice was issued by the Jurisdictional Assessing Officer and not by Faceless Assessing Officer-CBDT notification-Finance Act, 2021-Procedure adopted by the Revenue is contravention of the statute-When the initiation of the proceedings itself was procedurally wrong, the subsequent orders also gets nullified automatically-Interpretation of taxing statute-If statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. [S. 119, 124, 130(1), 130(2), 144B, 147, 148, 148A (d), 151A, e-assessment of Income Escaping Assessment Scheme 2022-, 2(1)b),3, Art.142, 226]
On writ petition challenging the notice under section 148 and the order passed under section. 148A (d) of the Act, the petitioners have contended that subsequent to the amendment incorporated in the Income-Tax Act, 1961, with effect from 29.03.2022 all the proceedings initiated by the authorities concerned under Section 148A and 148 of the Act were all mandatorily to be proceeded in a faceless manner. Else, the same would amount to being violative of the Income-Tax Act or in contravention to the procedure prescribed under law which is in force. When the Central Board of Direct Taxes (CBDT) have issued the notification dated 29.03.2022, whereby a scheme called e-assessment of Income Escaping Assessment Scheme 2022 which came into force with effect from 29.03.2022 itself; the assessment, re-assessment or re-computation under Section 147 and the issuance of notice under Section 148A shall be done through the automated allocation. Further the notices, to be issued, have to be in a faceless manner as is provided under Section 144B of the Act. It was also contended that the re-opening proceedings first of all could not have been initiated after a gap of three (3) years. Secondly, re-opening of the proceedings can only be permitted if the income chargeable to tax escaping assessment is more than fifty Rs.50,00,000/-. Court held that when the AO decided to go in for re-assessment of the return submitted by the assessee and notice for the same under Section 148A of the Act was issued, it was incumbent upon the AO to have adhered to the amended provision of the Act and do the re-assessment in a faceless manner, rather than being assessed by the jurisdictional officer as has been provided under Section 144B of the Act and in accordance with the scheme enacted by the Central Government under Section 151A of the Act. Subsequent to the amendment incorporated in the Income Tax Act, 1961, with effect from 29.03.2022 all the proceedings initiated by the authorities concerned under Section 148A and 148 of the Act were all mandatorily to be proceeded in a faceless manner. Else, the same is violative of the Income Tax Act and in contravention to the procedure prescribed under law which is in force. The Central Board of Direct Taxes (for short 'CBIT'), has issued the notification dated 29.03.2022, whereby a scheme called e-assessment of Income Escaping Assessment Scheme 2022 which came into

force with effect from 29.03.2022 itself; the assessment, re-assessment or re-computation under Section 147 and the issuance of notice under Section 148A shall be done through the automated allocation. Further the notices, to be issued, have to be in a faceless manner as is provided under Section 144B of the Act. Accordingly the notices issued and the proceedings drawn by the respondent-Department is neither tenable, nor sustainable. The notices so issued and the procedure adopted being *per se* illegal hence set aside/quashed. As a consequence, all the orders getting quashed, the consequential orders passed by the respondent-Department pursuant to the notices issued under Section 147 and 148 would also get quashed and it is ordered accordingly. The reason quashing the consequential order is on the principles that when the initiation of the proceedings itself was procedurally wrong, the subsequent orders also gets nullified automatically. Referred following cases laws wherein the Court held that, it is well settled solitary principle that if statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. Chandra Kishore Jha v. Mahaveer and others 1999 8 SCC 266 Cherrukurimani v. Chief Secretary Government of Andhra Pradesh and others 2015 13 SCC 722, Municipal Corporation Greater Mumbai v. Abhilash Lal and others 2020 13 SCC 234, Opto Circuit India Limited v. Axis Bank and others 2021 6 SCC 707, Union of India v.. Mahesh Sing (CAP.No.4807 of 2022), Tata Chemicals Limited v. Commissioner of Customs (preventive) Jam Nager 2015 11 SCC 628. (WP Nos.25903 of 2023 and Ors dt.14-9-2023 (AY. 2016-17)

Kanakanala Ravindra Reddy and Ors v.UOI(2023) 295 Taxman 652 / 334 CTR 646 (Telangana)(HC) www.itatonline.org

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Beyond limitation-Sanction-Signed by wrong specifying authority-Beyond period of three years-TOLA is not applicable to AY.2015-2016 or any subsequent years-No power to review-Change of opinion-Order is quashed as bad in law. [S. 147,148,148A(b), 148A(d)), 149(1)(b), 151(i), 151 (ii), Art. 226, Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act. 2020 (TOLA S. 3)

The notice under Section 148A(b) of the Act was issued on 25th June 2021 under Section 148 of the Act relying on the judgement of Apex Court in UOI v. Ashish Agarwal (2022) 444 ITR 1 / 138 taxmann.com 64(SC). The petitioner has raised various objection. The Revenue rejected the objection of the assessee and passed an order under section 148A(d) of the Act and also issued notice under section 148 of the Act. The assessee challenged the order and notice by filing the writ petition. Allowing the petition the Court held that as per section 151 of the Act, the specified authority who has to grant his sanction for the purposes of section 148 and section 148A is the Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, the Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year. For the Assessment year 2016-2017, three years elapsed on 31st March 2020 and hence the provisions of Section 151(i) and 151(ii) of the Act would have to be fulfilled, which have not been complied with. On the facts of the case the approval/sanction for order under Section 148A(d) of the Act has been granted by the Principal Commissioner of Income Tax-8. The entire controversy is, therefore, (a) whether the Principal Commissioner was the specified authority, who could have granted the approval / sanction ?, (b) if not, the effect thereof? The impugned notice mentions that the prior approval has been taken of the 'Principal Commissioner of Income-tax – 8' ('PCIT-8') which is bad in law as the approval should have been obtained in terms of section 151(ii) and not section 151(i) of the Act and the PCIT-8 cannot be the specified authority as per section 151 of the Act. The Court held that the approval is not valid. Hence, the order passed under

Section 148A(d) read with notice issued under Section 148 of the Act dated 31st July 2022 is not valid. The Court also held that the Revenue cannot rely on the provisions of the Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 (TOLA) and the notification issued thereunder as Section 151 of the Act has been amended by Finance Act 2021 and the provisions of amended Section would have to be complied with by respondent no.1, w.e.f. 1st April 2021. Hence, as the sanction of the specified authority has not been obtained, the impugned order and impugned notice both dated 31st July 2022 are bad-in-law hence quashed and set aside. The Court also held that if change of opinion concept is given a go by, that would result in giving arbitrary powers to the Assessing Officer to reopen the assessments. It would in effect be giving power to review which he does not possess. The Assessing Officer has only power to reassess not to review. If the concept of change of opinion is removed as contended on behalf of the Revenue, then in the garb of re-opening the assessment, review would take place. The concept of change of opinion is an in-built test to check abuse of power by the Assessing Officer. As held in Dr. Mathew Cherian v. ACIT (2023) 151 taxmann.com 154 (Mad)(HC) whether under old or new regime of reassessment, it is settled position that the issues decided categorically should not be revisited in the guise of reassessment. That would include issues where query have been raised during the assessment and query have been answered and accepted by the Assessing Officer while passing the assessment order.Even if assessment order has not specifically dealt with that issue, once the query is raised it is deemed to have been considered and the explanation accepted by the Assessing officer. It is not necessary that an assessment order should contain reference and/or discussion to disclose his satisfaction in respect of the query raised. The Assessing Officer does not have any power to review his own assessment when during the original assessment petitioner provided all the relevant information which was considered by him before passing the assessment order under section 143(3) of the Act. The Assessing Officer cannot initiate reassessment proceedings to have a relook at the documents that were filed and considered by him in the original assessment proceedings as the power to reassess cannot be exercised to review an assessment. Relied on Aroni Commercials Ltd. v. Dy.CIT (2014) 44 taxmann.com 304 /224 Taxman 13 (Bombay) (Mag.)/ 362 ITR 403 / 267 CTR 228 (Bom)(HC) CIT v. Kelvinator of India Ltd (2010) 320 ITR 561 (SC), Dr. Mathew Cherian v. ACIT (2023) 151 taxmann.com 154 /450 ITR 568 (Mad)(HC),Tata Communications Transformation Services Ltd. v ACIT (2022) 443 ITR 49 (Bom)(HC) J. M. Financial & Investment Consultancy Services Pvt Ltd. v. ACIT (2022) 215 DTR 98/ 327 CTR 458 / (2023) 451 ITR 205 (Bom)(HC), Sidhmicro Equities (P) Ltd. v. Dy.CIT (2023) 150 taxmann.com 460 (Bom) (HC) (SLP dismissed Dy.CIT v.Sidhmicro Equities (P) Ltd (2023) 150 taxmann.com 461/ 453 ITR 35 (SC), MA Multi-Infra Development Pvt Ltd v. ACIT (2023 149 taxmann.com 491/ 451 ITR 181 (Bom)(HC), DCW Limited v. ACIT (Bom)(HC)) [WP No. (L) 6546 of 2022 dated 4-7-2022] Soumya Girdhari Agarwal v. ITO (Bom)(HC) (WP No. 3354 of 2022 dated 25-7-2022) Voltas Limited v. ACIT (2022) 141 taxmann.com 127 /288 Taxman 506 (Bom)(HC), Johnson and Johnson v. DCIT (Bom)(HC), [WP (L) No. 7733 of 2022 dated 4-5-2022], Equitable Financial Consultancy Services Pvt Ltd v. ITO (WP No. 43 of 2022 dt. 27-4-2022) Asian Paints Ltd. v. ACIT (Bpm)(HC) (WP (L) No. 6385 of 2022 dated 26-4-2022]) Godrej Industries Limited v. DCIT. (2015) 377 ITR 1 (Bom) (HC), KK Agarwal and Sons HUF v. ITO (Cal)(HC) (WPA No. 25770 of 2022 dt. 14-12-2022), Seema Gupta v. ITO (2022) 288 Taxman 519 (Delhi)(HC) Sudesh Taneja v. ITO (2022) 442 ITR 289/ 286 Taxman 284 (Raj)(HC).(AY. 2016-17)(WP No. 4882 of 2022 dt. 25-8-2023)

Siemens Financial Services Pvt Ltd v. Dy.CIT (2023) 457 ITR 647 /154 taxmann.com 159 / 334 CTR 825 (Bom)(HC) www.itatonline.org

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Assessee must be furnished material on the basis of which initial notice was issued-Notice was quashed. [S. 69C, 148, 148A(b), 148A(d), Art. 226]

Assessing Officer issued a reopening notice on ground that assessee had failed to explain source of huge amount of cash paid for purchase of a warehouse. On writ the Court held that since the Assessing Officer failed to provide requisite material relied upon by it which ought to be supplied along with information in terms of section 148A(b) to assessee initiation of reassessment proceedings was unsustainable on ground of violation of procedure prescribed under said section. Notice was quashed. Court also observed that it would be open to the revenue to proceed in the matter from the stage of the notice under section 148A(*b*) of the Act by supplying the relevant material, if it is otherwise permissible keeping in view the issue of limitation. (AY. 2018-19)

Anurag Gupta v. ITO (2023) 454 ITR 326 / 150 taxmann.com 99 / 332 CTR 811 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued in name of deceased assessee-Notice and order quashed and set aside [S. 147, 148, 148A(b) 148A(d) Art. 226]

On a writ petition allowing the petition the Court held that the notice dated June 30, 2021 issued under section 148, the communication dated May 20, 2022 purporting to be a notice under section 148A(b) and the order dated June 30, 2022 under section 148A(d) was set aside. Notwithstanding the objection having been taken by the legal heir of the deceased assessee, an order under section 148A(d) was passed on June 30, 2022. The initial notice issued under section 148 and the subsequent communication dated May 20, 2022 purporting to be a notice under section 148A(b) were in the name of the deceased assessee. The notice issued under section 148 against a dead person would be invalid unless the legal representatives submit to the jurisdiction of the Assessing Officer without raising any objection.

Prakash Tatoba Toraskar v. ITO (2023)452 ITR 59 / 151 taxmann.com 366 (Bom) (HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-After three years from the end of relevant assessment year-Service of notice without the signature of Assessing Officer digitally or manually-Notice invalid-Order and notice was quashed and set aside [S. 147, 148, 148A(b) 148A(d), Art. 14, 226]

Allowing the petition, the Court held that the notice issued under section 148 of the Income-tax Act, 1961 has no signature of the Assessing Officer affixed on it, digitally or manually, was invalid, and would not vest the Assessing Officer with any further jurisdiction to proceed with the reassessment under section 147. Consequently, the Assessing Officer could not assume jurisdiction to proceed with the reassessment proceedings. The notice having been sought to be issued after three years from the end of the relevant assessment year 2015-16 any steps taken by the Assessing Officer the notice issued under section 148A(b) and the order passed under section 148A(d) were without jurisdiction and therefore, arbitrary and contrary to article 14 of the Constitution of India and consequently set aside. (AY.2015-16)

Prakash Krishnavtar Bhardwaj v. ITO (2023)451 ITR 27/ 331 CTR 64 / 150 taxmann.com 60 / 293 Taxman 132 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Jurisdiction-Part of cause of action had accrued within territorial jurisdiction of Bombay High Court-Bombay High Court has the jurisdiction to entertain the Writ petition-Interim relief was granted [S. 148, 148A(b), 148A(d), Art. 226]

On writ against the notice under section 148 of the Act the Court held that where a part of cause of action had accrued to assessee within territorial jurisdiction of Bombay High Court, inasmuch as initial notice under section 148A(b) was issued by Assessing Officer in Mumbai, Bombay High Court would have jurisdiction to entertain present writ petition, more so when Bombay High Court had proceeded to exercise jurisdiction in case of assessee while entertaining a challenge to initial notice under section 148, issued under unamended provisions of section 148 as it existed before 1-4-2021. Ad-interim relief was granted and the Respondents were directed to file the reply, within six weeks. The matter is kept for hearing on 13 –1-2023.

HSTN Acquisition (FII) Ltd. v. DCIT (2023) 147 taxmann.com 226 / 330 CTR 453 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Opportunity of hearing requested but not afforded-Opportunity of cross examination was to be granted-Order and notice was set aside-Matter remanded to Assessing Officer. [S. 147, 148, 148A(d), Art. 226]

Single judge dismissed the petition. On appeal allowing the petition the Court held that the stand taken by the Assessing Officer to deny an opportunity of personal hearing was not tenable. If credible information was available with the Department such information that the proprietorship concern of the assessee possessed a current account with the Burrabazar branch and the account number was also furnished in which high value transactions were reported it had to be disclosed to the assessee so as to afford it an effective opportunity of submitting a reply. Having not done so, the proceeding was in violation of principles of natural justice. Accordingly the order passed under section 148A(d) was set aside and the matter was restored to the Assessing Officer who should afford an opportunity of personal hearing to the assessee and all relevant and credible information to enable the assessee to put forth his defence in an effective manner. The assessee would be entitled to reagitate the request for cross-examination of those two named persons and to raise the plea of limitation. Thereafter, the Assessing Officer should pass a reasoned order on the merits and in accordance with law. Matter remanded.(AY. 2014-15)

Dinesh Kumar Goyal v. UOI (2023)453 ITR 535 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Alternative remedy-Writ petition against show cause notice is not maintainable-Writ petition was dismissed. S. 147, 148 148A(d), 246A, Art. 226]

On a writ petition challenging the legality, validity and propriety of the notice under section 148A(b) of the Income-tax Act, 1961, the Central Board of Direct Taxes Instruction dated May 11, 2022 ([2022] 444 ITR (St.) 43), the order passed section 148A(d) and the consequent notice issued under unamended section 148. Dismissing the petition, the Court held that The assessee had an efficacious alternative remedy to challenge the order under section 148A(d) or notice under section 148 in appeal under section 246A before the appellate authority and the ground raised by him with respect to jurisdiction of the authorities could be considered by the authorities. The court would not interfere with the order passed under section 148A(d) and notices issued under section 148A(b) and section 148 since they were issued in pursuance of the judgment of the Supreme Court in UOI v. Ashish Agarwal(2022) 444 ITR 1 (SC) Referred, UOI v. Kunisetty Satyanarayana (2006) 12SCC 28.

Harinder Singh Bedi v. UOI (2023)453 ITR 145 (MP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Limitation-Decision of Supreme Court is binding-Grievances on merits to be

agitated in reassessment proceedings before the Assessing Officer-Writ petition was dismissed. [147, 148, 148A(b), 148A(d), Art. 226]

On writ petitions challenging the notices under section 148A(b) of the Income-tax Act, 1961 and the consequential orders under section 148A(d) for issuing notices under section 148 on the grounds of limitation, not considering the objections filed, not providing a personal hearing, non-application of mind to the facts of each case and several other grounds. Dismissing the petition the Court held that the contentions of limitation, not considering the objections filed, not providing a personal hearing, non-application of mind to the facts of each case and all other grounds could be raised at a stage when an order was passed under section 147 in the reassessment proceedings and challenged by the assessees if warranted. At that point not only would all the grounds urged before the court be available to the assessees but all other grounds which were not urged before the court would be found necessary to be urged in accordance with law. The authority was to pass orders under section 147 in accordance with law. Decision of Supreme Court is binding. Followed Anshhual Jain v. PCIT (2022) 449 ITR 256 (SC)

Kailash Kedia v. ITO (2023)453 ITR 540 (Orissa)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Statutory duty cast upon Assessing Officer-Court cannot interfere at stage of notice-Writ petition was dismissed. [S. 147, 148, 148A(b), 148A(d), Art.226]

Dismissing the petition the Court held that there was no reason to interfere at this stage of notice under section 148. The court should not venture into the merits of the controversy when the Assessing Officer was yet to make the reassessment in discharge of the statutory duty cast upon him under section 147.(AY. 2018-19)

Midland Microfin Ltd. v. UOI (2023)453 ITR 150 (P&H)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-All original notices issued under section 148 of old regime and issued between 1-4-2021 and 30-6-2021 would stand beyond prescribed timeline of six years from end of assessment years 2013-14 and 2014-15-Assessment time barred under old regime and could not be issued as per amended provisionS. [S. 148, 148A(b), 148A(d), 149, 151, Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, S. 3, Art. 226]

Assessee challenged notice under section 148 and consequential order under section 148A(d) on ground that same was barred by limitation. Allowing the petition the Court held that all original notices issued under section 148 of old regime and issued between 1-4-2021 and 30-6-2021 would stand beyond prescribed timeline of six years from end of assessment years 2013-14 and 2014-15, thus would be time barred under old regime and could not be issued as per amended provisions. Followed, Keenara Industries Pvt Ltd. v. ITO (SCA No. 17321 of 2021 dt. 07.2.2023, (AY. 2014-15

Sunny Rashikbhai Laheri v. ITO (2023) 148 taxmann.com 438 (Guj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Alternative remedy-Writ petition was dismissed. [S. 147, 148,148A(b), 148A(b), 148A(d), Art. 226]

Dismissing the petition the Court held that the order passed under section 148A(d) need not be interfered with. The assessee could raise all grounds available including that the order was time barred and was on a mere change of opinion before the Assessing Officer at the appropriate stage.

Shiv Mettalicks Pvt. Ltd. v. PCIT (2023)453 ITR 544 (Orissa)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Typographical errors-Will not invalidate notice-Writ petition was dismissed.[S. 147, 148,148A(d), 151 Art. 226]

Dismissing the petition, the Court held that section 148A is a codified mechanism for the benefit of the assessee. As regards the letter of the Additional Commissioner to the Principal Commissioner, it was an inter-office communication where the Additional Commissioner had opined that it was not a fit case to issue notice under section 148. The Principal Chief Commissioner who admittedly was the "specified authority" within the meaning of section 148A(d) read with section 151 had clearly opined that it was a fit case for issuing notice under section 148. The order under section 148A(d) and the subsequent notice under section 148 need not be interfered with.(AY. 2014-15)

V. S. Dhandapani and Son v. ITO (2023)453 ITR 277/ 292 Taxman 364 / 222 DTR 337 (Mad)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Assessing Officer cannot travel beyond show cause notice-CBDT Circular dated 11.5. 2022 applicable if amount of income which has escaped tax is less than RS. 50 lakhs-Order was quashed.[S. 148A(b), 148(A)(d), Art. 226]

Where the assessee has received a notice under Section 148A(b) with certain information then the Assessing officer cannot travel beyond the show cause notice and pass an order under Section 148A(d) on other grounds. Followed Commissioner of Customs v. Toyo Engineering India Ltd (SC) (WP (T) No. 254 of 2022 dt.1-12-2022)

U.S Associates v. PCIT (2023) 330 CTR 317(Chattisgarh)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Shell company-Natural justice-Reply was filed in response to notice under the old regime-Order passed without considering the objection was set aside-Directed to pass the order considering the objections filed by the assessee. [S. 143(2), 148, 148A(b), 148A(d), Art. 226]

The petitioner engaged in the business as a builder, land-organiser, developer of lands and such other infrastructural projects, filed its return of income along with computation of income for the Assessment Year 2016-2017 declaring a loss of Rs. 8,24,444/-on 4.10.2016. Thereafter, on 30.6.2021, the Income Tax Officer issued notice under section 148 of the Income Tax Act, 1961. The petitioner filed its return of income and requested a copy of the reasons recorded by the officer. The Assessing Officer supplied a copy of the reasons recorded. The petitioner objected to the reasons recorded and filed its detailed objections by letter dated 11.10.2021. The objection was not disposed of by the AO. The new regime containing newly inserted provisions relating to reassessment *inter alia* section 148A was brought into the statute book with effect from 1.4.2021. The Petitioner did not receive any notice under section 148A(b) of the Act, however, it was stated that while checking the portal, the Petitioner came across the notice under section 148A(b) of the Act for the first time and order under section 148A(d) passed became known, as well as notice under section 148 of the Act thereafter came to be issued. The petitioner filed writ petition and contended that they had responded to the earlier notice issued by the department under the old or unamended provisions by filing the objections, which were not decided. It was submitted that the response given by the petitioner in the form of objections to the notice issued under the unamended provisions may be treated as a reply to the notice under section 148A(b) of the Act to which the petitioner could not file any response. Petitioner relied on Dharampal Satyapal Ltd. v. Dy. Commissioner of C.Ex., Gauhati [(2015) 8 SCC 519] for the proposition of violation of the principle of natural justice as the earlier objections were not considered.

Allowing the petition the Court held that the reply-cum-objections dated 11.10.2021 of the petitioner shall be treated by the Assessing Officer as a response to the notice dated 23.05.2022 issued under Section 148A (b) of the Act. The contents of the said reply-cum-objections shall be considered and shall be taken into account in deciding the notice dated 23.05.2022 afresh, which shall be decided in accordance with law and on its own merits. (AY. 2016-17)

Sahil Infra Creative Pvt Ltd v. ITO (Surat) (2023) 455 ITR 11 / 294 Taxman 113 (Guj)(HC) www.itatonline.org

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Alternative remedy-Writ will not normally maintainable [S. 148, Art. 226]

Dismissing the writ petition the Court held that where the proceedings had not even been concluded by the statutory authority, the writ court should not interfere at such a premature stage. From a bare reading of the notice, it could not be held that the authority had assumed jurisdiction not vested in it. The correctness of the order under section 148A(d) was being challenged on a factual premise contending that jurisdiction had been wrongly exercised. There is a distinction between jurisdictional error and error of law/fact within the jurisdiction. For rectification of errors statutory remedy has been provided. The notice of reassessment could not be quashed. (AY.2018-19)

Red Chilli International Sales v. ITO (2022) 288 Taxman 107/ (2023)452 ITR 218/ 223 DTR 140/ 332 CTR 807 (P&H)(HC)

Editorial: Red Chilli International Sales v. ITO (2023)452 ITR 222 (SC), affirmed, but observations set aside.

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Notice issued in name of deceased assessee-Notice and order quashed and set aside [S. 147, 148, 148A(b) 148A(d) Art. 226]

On a writ petition allowing the petition the Court held that the notice dated June 30, 2021 issued under section 148, the communication dated May 20, 2022 purporting to be a notice under section 148A(b) and the order dated June 30, 2022 under section 148A(d) was set aside. Notwithstanding the objection having been taken by the legal heir of the deceased assessee, an order under section 148A(d) was passed on June 30, 2022. The initial notice issued under section 148 and the subsequent communication dated May 20, 2022 purporting to be a notice under section 148A(b) were in the name of the deceased assessee. The notice issued under section 148 against a dead person would be invalid unless the legal representatives submit to the jurisdiction of the Assessing Officer without raising any objection.

Prakash Tatoba Toraskar v. ITO (2023)452 ITR 59 / 151 taxmann.com 366 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Cash credits-Bogus accommodation entries-No details mentioned-Order was set aside for fresh determination [S. 148, 148A(b) 148A(d), Art. 226]

In response to the show, cause notices the assessee filed a detailed reply stating that the assessee had never entered into any transactions with the alleged accommodation provider. However, the Assessing Officer passed an order under section 148A(d) on the assessee and issued a notice under section 148 of the Act. On writ allowing the petition the Court held that the order passed under section 148A(d) as well as notice issued under section 148 was set aside and the matter was to be remanded to Assessing Officer for fresh determination.. 2017-18)

Boutique International (P.) Ltd. v. Dy. CIT (2023) 290 Taxman 403 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unexplained money-Misuse of GST number by third party-Factual issue-Writ petition was dismissed-Directed the Assessing Officer to consider merits of the controversy and decide according to the law. [S. 148A(b), Art. 226]

Dismissing the petition the Court held that the submissions made by assessee that misuse of GST number by a third party was a factual issue were all factual pleas that which Assessing Officer should duly consider and adjudicate during assessment proceedings after examining evidence. The court also held that merits of controversy could not be examined by writ Court and therefore, the petition was disposed of with liberty to the assessee to raise all her pleas and contentions before the Assessing Officer. (AY. 2018-19)

Sangeeta Arora (Mrs). v. ITO (2023) 290 Taxman 391 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Violation of the principle of natural justice-Mandatory to give the minimum time of seven days-Reply of assesee was not considered-Order and notice was set aside [S. 148A(b)), 148A(d), Art. 226]

On Writ, the Court held that notice is required to be given to filing a reply of not less than seven days as provided in clause (b) of section 148A. Further section 148A(c) casts a duty on Assessing Officer to consider the reply of assessee in response to notice under section 148A(b) before making an order under section 148A(d) of the Act. On fact, the notice and order were quashed and set aside (AY. 2015-16)

Nidhi Bindal v. ITO (2023) 290 Taxman 306 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Right of personal hearing-Mandatory-CBDT circular is binding on the Department-Order was set aside [S. 148, Art. 226]

Allowing the petition the Court held that clause (viii) of the Department circular in F. No. 299/10/2022-Dir (Inv. III)/611, dated August 1, 2022 provides that if an assessee requests for a personal hearing, the same may be dealt with following the principles of natural justice by giving a reasonable period for compliance of notice specifying the date of hearing. The circular is binding. Even though the clarification dated November 9, 1989 was executive in nature, the concessions given to the assessee could be withdrawn only prospectively, but not retrospectively because, such executive circulars are binding on the authorities. Order was set aside. (AY.2016-17)(SJ))

Beboy Joseph John v. ACIT (2023)451 ITR 447 (Mad)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Order for the issue of notice based on the vague report of Deputy Director (Investigation)-Potential cash borrowings-Reassessment proceedings were quashed-Assessing Officer not following the direction of Court has indirectly interfered exposed with the administration of justice thereby exposing himself to proceedings under the Contempt of Courts Act 1971 [S. 148A(b), 148A(d), Contempt Of Courts Act, 1971 Art. 226]

The assessee challenged the order passed under section 148A(d) of the Act, pursuant to the order of the Division Bench but a single judge dismissed it on the ground that it was open to the assessee to raise all contentions in the reopening proceedings, which are to follow under section 148 of the Act. On appeal allowing the appeal, the Court held that the direction issued by the court to the Assessing Officer had clearly set out as to what he was required to do. Pursuant to the liberty granted, the assessee had submitted a detailed reply to the show-cause

notice issued under section 148A(b) of the Income-tax Act, 1961 specifically stating that the permanent account number mentioned in the notice did not belong to him, that the notice was issued to him on a wrong identity, and denying allegations of the loan transactions. Therefore, in terms of the direction issued earlier by the Division Bench of the court, the Assessing Officer should have conducted an enquiry and then passed an order. But the Assessing Officer had abdicated his powers and had verbatim extracted several portions of the earlier order. The Assessing Officer could not have done so for more than one reason. Firstly, the earlier order could not have been referred to as it had been set aside by the Division Bench. Secondly, by passing a non-speaking order under section 148A(d), the Assessing Officer had violated the directions issued by the Division Bench and had indirectly interfered with the administration of justice thereby exposing himself to proceedings under the Contempt of Courts Act, 1971. The order passed under section 148A(d) was liable to be quashed. That the reopening of the assessment under section 147 was bad since it was based on certain alleged "potential" cash borrowings and certain alleged "possible" financial transactions. It was based upon information given by the Deputy Director of Income-tax (Investigation) and the report was vague since it stated that possible financial transactions could be deduced and decoded from hard copies obtained from the Deputy Director and was without any particulars. Assuming that material was available such documents should have been made known to the assessee so as to enable him to give an effective reply. In more than one place the authority had used the word "potential" and also the word "probable". The Assessing Officer did not independently apply his mind to the information furnished by the Deputy Director which he was required to have done while exercising the power to reopen an assessment. Despite directions issued earlier, only copies of two statements had been given to the assessee and the assessee had replied taking note of the veracity of the allegations in those documents which were supplied. The reopening proceedings could not have been done based on assumptions and presumptions. The entire reopening proceedings commencing from issuance of the notice under section 148A(b) and culminating in the order under section 148A(d) dated August 25, 2022 were an abuse of the process of law and therefore quashed. Referred Sir Kikabhai Premcahnd v.CIT (1953) 24 ITR 506 (SC), wherein the Court held that the State has no power to tax the potential future advantage and all it can tax is income, profits and gains made in the relevant year. Lucknow Development Authority v. M.K. Gupta (1994) 80 Comp Cas 714 (SC)/ AIR 1994 SC 787. (AY. 2018-19)

Girdhar Gopal Dalmia v UOI (NO. 2) (2023)451 ITR 320 / 333 CTR 388 (Cal)(HC)

Editorial : Decision of single judge in Girdhar Gopal Dalmia v UOI (NO.) (2023)451 ITR 318 / 333 CTR 387 (Cal)(HC), reversed.

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Change of opinion-Long-term capital gains-Reassessment notice was quashed. [S. . 54, 147, 148, 148A(d), Art. 226]

Allowing the petition the Court held that there was no new information available with the Assessing Officer to reassess the long-term capital gains claim. The Assessing Officer had considered the same documents during the earlier assessment proceedings and was satisfied with the claim of the long-term capital gains made under section 54 of the Income-tax Act, 1961. The assessee was entitled to claim an exemption under section 54 of the Act on these admitted facts, as the conditions stipulated in section 54 were fulfilled. The order under section 148A(d) of the Act, and notice issued under section 148 of the Act by the Assessing Officer with respect to the assessment year 2015-16 was quashed.(AY.2015-16)

Kamlesh Keswani v. ACIT (2023)451 ITR 153 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Information from Investigation Wing-Capital gains-Alleged bogus scripts-Penny stock-Failure to furnish information received from Investigation Wing-Notice was quashed-Directed the AO to furnish the information and pass the order after considering the explanation of the assessee. [S. 45, 69A, 147, 148, 148A(b), 148A(d), Art. 226]

On a writ petition challenging the notice issued under section 148A(b) of the Income-tax Act, 1961 and the order passed under section 148A(d) for issue of notice under section 148 of the Act the Court held that the Assessing Officer should have provided this report in the first instance with the notice issued under section 148A(b), especially when the assessee had requested this information in her reply. The assessee had been denied an effective opportunity to answer the findings made in the report with respect to the transactions undertaken by the assessee. Hence, the order passed under section 148A(d) and the notice issued under section 148 with a direction to the assessee to file her additional reply, responding to the findings of the report of the Investigation Wing for consideration of the Assessing Officer and thereafter pass an order under section 148A(d)(AY.2013-14)

Kusum Gupta v. ITO (2023)451 ITR 142/ 290 Taxman 172 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Failure to consider a reply to show cause notice and personal hearing-Order was set aside-Directed to pass an order after giving an opportunity of personal hearing. [S. 147, 148, 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that the AO has passed the order without considering the reply filed by the assessee. Order was set aside. The Assessing Officer was directed to consider the assessee's reply and give her an opportunity for a personal hearing and pass appropriate orders on the merits and in accordance with the law thereafter. (AY.2015-16)

Parthasarathy Chitra v. ITO (2023)451 ITR 442 (Mad)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Reply filed by the assessee was not considered-Order was set aside [S. 147, 148A(b), 148A(d), Art. 226]

Allowing the petition the Court held that the reply filed by the assessee was not considered. Accordingly, the order was set aside and directed the Assessing Officer to consider the assessee's reply and pass a fresh order after granting the opportunity of hearing to the assessee.(AY.2018-19)

Popular Medicos v. ACIT (2023)451 ITR 90 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-After three years from the end of relevant assessment year-Service of notice without the signature of Assessing Officer digitally or manually-Notice invalid-Order and notice was quashed and set aside [S. 147, 148, 148A(b) 148A(d), Art. 14, 226]

Allowing the petition the Court held that the notice issued under section 148 of the Income-tax Act, 1961 has no signature of the Assessing Officer affixed on it, digitally or manually, was invalid, and would not vest the Assessing Officer with any further jurisdiction to proceed with the reassessment under section 147. Consequently, the Assessing Officer could not assume jurisdiction to proceed with the reassessment proceedings. The notice having been sought to be issued after three years from the end of the relevant assessment year 2015-16 any steps taken by the Assessing Officer the notice issued under section 148A(b) and the order passed under section 148A(d) were without jurisdiction and therefore, arbitrary and contrary to article 14 of the Constitution of India and consequently set aside. (AY.2015-16)

Prakash Krishnavtar Bhardwaj v. ITO (2023)451 ITR 27/ 331 CTR 64 / 150 taxmann.com 60 / 293 Taxman 132 (Bom)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Assessing Officer was directed to supply with material relied on-Order and notice set aside-Liberty granted to Department to pass fresh order if necessary [S. 147, 148, 148A(d), Art. 226]

The assessee challenged the order passed under section 148A(d) of the Act on the ground that the material relied on while passing the order was not supplied to the assessee. The court set aside the order passed by the Assessing Officer under section 148A(d) of the Income-tax Act, 1961 and the consequent notice issued under section 148. The Assessing Officer was directed to furnish the information or material relied upon by him to seek reopening of the assessment under section 147 and any other material in his possession which contained information concerning third parties and if it related to the assessee after redacting information concerning the third parties. Liberty was granted to the Department to pass a fresh order if found necessary thereafter in accordance with the law. (AY. 2015-16)

Abha Goel v.ITO (2023) 450 ITR 704 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-New procedure with effect from 1-4-2021 Notices for prior periods issued without complying with new provision-Notices were quashed [S. 147, 148,149(1)(b), Taxation and Other Laws (Relaxation and amendment of Certain Provisions) Act, 2020, Art. 226]

On writ petitions challenging the notices for reassessment issued under section 148 of the Income-tax Act, 1961 after April 1, 2021 for periods prior to April 1, 2021 on the grounds that they were issued without following the procedure laid down under section 148A which was inserted with effect from April 1, 2021 Court held that all the notices for reassessment were to be quashed. The Department did not dispute the factual contentions of the assessee. Court also held that notification dated March 31, 2021 issued by the CBDT substitution of reassessment provisions framed under the Finance Act, 2021 was not deferred nor could they have been deferred. The date of such amendments coming into effect remained April 1, 2021

Sukhdev International Pvt. Ltd. v. UOI (2023)451 ITR 534 (Raj)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Transactions not disclosed in initial notices-Department cannot travel beyond notice-Notice and order set aside [S. 147, 148, 148A(b), 148A(d), Art. 226]

On a writ petition challenging the notice under section 148 of the Income-tax Act, 1961 and the order under section 148A(d), dated July 22, 2022 on the grounds that the authorities considered certain transactions which were not part of the notice that was originally issued under section 148 (old provision) and under section 148A(b) (new provision) and that if the transaction of Rs. 14 lakhs considered by the Department was excluded from the proceedings the amount would be less than Rs. 50 lakhs and would be outside the purview of the assessment proceedings according to the circular dated May 11, 2022 ([2022] 444 ITR (St.) 43) issued by the central Board of Direct Taxes . Allowing the petition the Court held that from the two notices that were issued on June 29, 2021 and on May 25, 2022, i. e., the notices initially issued under section 148 (old provision) and under section 148A(b) (new provision) the Department had not disclosed the fact that the assessee had suppressed Rs. 14 lakhs transaction which had also escaped assessment under section 147. In the absence of its being stated in the notice, the assessment of such an amount would be prima facie bad since the Department could not travel beyond the show-cause notice. Given the facts and circumstances and in view of the circular dated May 11, 2022, issued by the Central Board of

Direct Taxes the order under section 148A(d) and the consequent notice under section 148 dated July 22, 2022, were unsustainable and therefore were set aside reserving the right of the Department to take appropriate recourse available in accordance with the law. (SJ)

U. S. Associates v. PCIT (2023)451 ITR 424 / 330 CTR 317 (Chhattisgarh)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Reasons for notice of reassessment and opportunity to be heard were given-Reassessment proceedings valid.[S. 147, 148, 194C, Art. 226]

Dismissing the petition the Court held that the notice under section 148 of the Income-tax Act, 1961, was also sent to the e-mail address of the assessee on April 12, 2022 and the same had been received, which was admitted by the petitioner. A perusal of the show-cause notice would reveal that in spite of having cash deposits in the bank and in spite of tax having been deducted at source under section 194C of the Act, the assessee failed to file returns of income for the year under consideration. Further, the assessee was given an opportunity for a hearing by issuing a show-cause notice under section 148A(b) of the Act, calling upon the assessee to submit necessary evidence in support of his claim. This was challenged mainly on the ground that the authorities could not have issued a notice to a firm, which was dissolved in the year 2001 itself and secondly that before issuing notice, an opportunity should have been given to the assessee to submit its explanation. The records showed that the bank account with the old permanent account number of the firm which had been allegedly dissolved was being operated in the bank. The amount in the bank account was said to be around Rs. 10 crores, in respect of which tax was also deducted at source under section 194C. That being the position, it was not proper to say that the authorities erred in issuing the notice. The notice and consequent proceedings were valid. (AY.2015-16)

Visakha Gas Agency v. ITO (2023)451 ITR 160/ 290 Taxman 570/ 331 CTR 696/ 223 DTR 479 (AP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before the issue of notice-Limitation-Notices issued pursuant to the case of UOI v. Ashish Agarwal (2022) 444 ITR 1/ 213 DTR 217/ 326 CTR 473/ 286 Taxman / AIR 2022 SC 2781 (SC)-Notice issued on or after 01.04.2021, the period concerned is between 01.04.2021 to 30.06.2021-Relaxation Act will not apply-The law as per Finance Act, 2021 has to be followed-CBDT Instructions No.1 of 2022 (2022) 444 ITR 43 (St)-Interpretation Of Taxing Statutes-Strict Interpretation. [S. 119, 147, 148, 148A(d), 149, 151, 151A, Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020, S. 3(1), CBDT Notification, 31-3-2021, Art. 142, 226,]

In a group of matters, challenging the reassessment proceedings pursuant to the case of Ashish Agarwal, the following two questions were framed for the consideration of the Honourable High Court.

"Whether the reassessment proceedings initiated with the notice under Section 148 (deemed to be a notice under Section 148-A), issued between 01.04.2021 and 30.06.2021, can be conducted by giving the benefit of relaxation/extension under the Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act' (TOLA)' 2020 up to 30.03.2021, and then the time limit prescribed in Section 149 (1) (b) (as substituted w.e.f. 01.04.2021) is to be counted by giving such relaxation, the benefit of TOLA from 30.03.2020 onwards to the revenue."

"Whether in respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, the benefit of TOLA' 2020 will be available to the revenue, or in other words, the

relaxation law under TOLA' 2020 would govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act' 2021, in such cases?"

It was held that No notice under Section 148 could be issued in a case for the assessment year 2013-14 and 2014-15 on or after 01.04.2021 being time-barred, on account of being beyond the time limit specified under the provisions of Section 149(1)(b) as they stood immediately before the commencement of the Finance Act' 2021. For the assessment years 2015-16, 2016-17, and 2017-18, the contention is that the monetary threshold and other requirements of the Income Tax Act in the post-amendment regime, i.e. after the commencement of the Finance Act 2021 have to be followed. The validity of the jurisdictional notice under Section 148 is, thus, to be tested on the touchstone of compliances or fulfilment of requirements by the revenue as per Section 149(1)(b) and the first proviso to Section 149(1) inserted by the amendment under the Finance Act' 2021, wef 01.04.2021.

The court clarified that there is no dispute about the fact that the notices issued under Section 148 after the amendment brought by the Finance Act 2021 i.e. on or after 01.04.2021 be treated as notices under Section 148-A as per the amended provisions. It has also been agreed by the counsel for the parties that the date of issuance of notice under Section 148 of the Income Tax Act (as per pre-amended provisions) shall be treated as the date of issuance of notice under Section 148-A (post amendment) and all notices issued under Section 148 of the Income Tax Act after 01.04.2021 shall be treated to be the notices under Section 148-A of the Income Tax Act, inserted by the Finance Act 2021, w.e.f. 01.04.2021. The jurisdictional notice under Section 148 after the amendment brought by the Finance Act 2021 will have to be issued after the conclusion of the preliminary enquiry required under Section 148-A.

It was argued by the Petitioners that:
(i)After the amendment brought by the Finance Act 2021, new/amended provisions will apply to reassessment proceedings.
(ii)Enabling Act (TOLA 2020) will not extend the time limit provided for initiation of reassessment proceedings under the unamended Sections 147 to 151 of the I.T. Act from 01.04.2021 onwards.
(iii)The result is that the revenue has to comply with all the requirements of the substituted/amended provisions of Sections 147 to 151A in the reassessment proceedings, initiated on or after 01.04.2021. The revenue will have to make all compliances under the amended provisions.
(iv) Simultaneously, all defences under the substituted/amended provisions will be available to the assessee.
(v) Regarding the impact of the Enabling Act (TOLA 2020) on the amendment by the Finance Act' 2021, it was argued that no time extension under Section 3(1) of the Enabling Act (TOLA 2020) can be granted in the time limit provided under the substituted unamended provisions. The contention is that Section 3(1) of TOLA 2020 saved only the reassessment proceeding as they existed under the unamended law.
(vi) The scheme of assessment underwent a substantial change with the enforcement of the Finance Act 2021. The general provisions of the Enabling Act (TOLA 2020) cannot vary the requirements of the Finance Act 2021, which is a special provision as the special overrides general.
(vii) It was argued that reassessment notice under Section 148 can be issued only upon the jurisdiction being validly assumed by the assessing authority, for which the compliances of substituted provisions of Sections 149 to 151A have to be made by the revenue.

(viii) New/amended provisions benefit the assessee and provide certain pre-requisite conditions/monitory threshold etc. to be adhered to by the revenue to issue a jurisdictional notice under Section 148. The revenue has to meet a higher threshold to discharge a positive burden because of the substantive changes made in the new regime.
(ix) The pre-requisite conditions to issue a notice under Section 148 in the pre and post-amendment regime have been placed before us to demonstrate that for the reassessment notice after elapse of the period of three years but before 10 years from the end of the relevant assessment year, notice under Section 148 cannot be issued unless the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of assets, which has escaped assessment, amount to or is likely to amount to Rs.50 lacs rupees or more for that year.
(x) It was submitted that the monetary threshold for the opening of assessment after elapse of three years for a period up to ten years has, thus, been put in place.
(xi) Further, the first proviso to sub-section (1) of Section 149 has been placed to assert that the cases wherein notices were not issued within the period of six years as per clause (b) of sub-section (1) of Section 149 under the unamended provision, reassessment notices cannot be issued on or after 01.04.2021 after the commencement of the Finance Act 2021, as such cases have become time-barred.
(xii) It was argued that such cases cannot be reopened by giving an extension in the time limit by applying the Enabling Act (TOLA 2020) provisions.
(xiii) It was argued that the Finance Act 2021 had limited the applicability of the Enabling Act (TOLA 2020) and after amendment, the compliances/conditions under the amended provisions have to be fulfilled.

The issuance of notice under Section 148 as per the prescribed time limit in Section 149 was permissible until 30.06.2021. The extension of time granted by the subsequent notifications dated 31.03.2021 and 27.04.2021 would save all notices issued by the revenue after 01.04.2021, by applying the procedure under the amended provisions. The challenge to the validity of notices issued under Section 148, in the instant case, after the rejection of the objections filed by the petitioners under Section 148-A, cannot be sustained.

The Revenue contended that the Enabling Act 2020 was enacted by the Parliament to grant relaxation in the time limit provided in the 'Specified Act' defined therein, one of which is the Income Tax Act 1961. Sub-section (1) of Section 3 of the Act provides that the time limit specified or prescribed or notified under the Specified Act shall stand extended/relaxed for completion and compliance of such action, issuance of such notice, which falls during the period prescribed therein. Clause (c) of sub-section (1) of Section 3 is specific to the Income Tax Act 1961. Section 3(1)(c)(ii) contains a 'Non-Obstante' clause and provides that the time limit for completion and compliance of such action shall, notwithstanding anything contained in the Specified Act, shall stand extended to 31st March 2021 or such other date after 31.03.2021, as the Central Government may specify, by notification in this behalf. The notifications dated 27.02.2020, 31.12.2020, 31.03.2021 and 27.04.2021 have been issued in the exercise of the power under the said provision by the Central Government. The end date to which the prescribed time limit for completion and compliance of such action as per sub-section (1) of Section 3 of the Enabling Act 2020 was extended up to 31.03.2021 under the notification dated 31.12.2020. In partial modification of the notification dated 31.12.2020, the time limit specified in Section 149 for issuance of notice under Section 148 or sanctions under Section 151 of the Act 1961 has been extended up to 30.04.2021. Further, by the notification dated 27.04.2021 issued in partial modification of the previous notifications dated 31.12.2020, 22.02.2021 and 31.03.2021, the time limit was further extended up to

30.06.2021. The issuance of notice under Section 148 as per the prescribed time limit in Section 149 was permissible until 30.06.2021. The extension of time granted by the subsequent notifications dated 31.03.2021 and 27.04.2021 would save all notices issued by the revenue after 01.04.2021, by applying the procedure under the amended provisions. The challenge to the validity of notices issued under Section 148, in the instant case, after the rejection of the objections filed by the petitioners under Section 148-A, cannot be sustained.

It was argued that the Explanation attached to clause A(a) of the notification dated 31.03.2021 and the explanation clause A (b) of the notification dated 27.04.2021 though has been read down by this Court in Ashok Kumar Agarwal (supra) holding that the said explanations must be read as applicable to reassessment proceedings as may have been in existence on 31.03.2021, i.e. before enforcement of Finance Act' 2021, but it was held that the notice to initiate reassessment proceedings after 01.04.2021 can be issued in accordance with the provisions of the I.T. Act as amended by Finance Act' 2021. It was argued that the notices issued on or after 01.04.2021 under Section 148 of the Income Tax Act, for reassessment were issued in accordance with the substituted laws and not as per the pre-existing laws and the Enabling Act (TOLA 2020) was only applied for an extension in the timeline. The Enabling Act has an overriding effect over the Specified Act namely the Income-tax Act and has been enacted in the exigencies due to the spread of Covid 19, it will extend the time limit for issuance of notice/action under the I.T. Act. The CBDT Instructions dated 11.05.2022 has only clarified the manner in which the implementation of the judgement of the Apex Court is to be made. The extension of time granted by TOLA 2020 until 31.03.2021 and the subsequent notifications issued under sub-section (1) of Section 3 of the Enabling Act (TOLA 2020) to further extend the timeline up to 31.06.2021 would save all notices issued on or after 01.04.2021.

Honourable Court answered the two questions as under ;

(i) The reassessment proceedings initiated with the notice under Section 148 (deemed to be a notice under Section 148-A), issued between 01.04.2021 and 30.06.2021, cannot be conducted by giving the benefit of relaxation/extension under the Taxation and Other Laws (Relaxation And Amendment of Certain Provisions) Act' (TOLA) 2020 up to 30.03.2021, and the time limit prescribed in Section 149 (1)(b) (as substituted w.e.f. 01.04.2021) cannot be counted by giving such relaxation from 30.03.2020 onwards to the revenue.

(ii) In respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, the benefit of TOLA 2020 will not be available to the revenue, or in other words, the relaxation law under TOLA 2020 would not govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act' 2021, in such cases.

(iii) The reassessment notices issued to the petitioners in this bunch of writ petitions, on or after 1.4.2021 for different assessment years (A.Y. 2013-14 to 2017-18), are to be dealt with, accordingly, by the revenue.

The Honourable Court held that The relaxation law under TOLA 2020 would not govern the time frame prescribed under the first 3 provisos to Section 149 of the Act as inserted by the Finance Act 2021. Therefore, the reopening of AY 2013-14 and 2014-15 would be time-barred. For AY 2015-16, 2016-17 and 2017-18, the monetary threshold and other requirements of the Income Tax Act in the post-amendment regime have to be followed. It is settled law that a taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency.

In interpreting a taxing statute, equitable considerations are out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. Before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the

section, and if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. Referred, CBDT Instructions No.1 of 2022 (2022) 444 ITR 43 (St). (WT No. 1086 of 2022 dated February 22, 2023) (AY 2013-14 to 2017-18)
Rajeev Bansal v. UOI (2023) 453 ITR 153/ 331 CTR 609/ 223 DTR 177 /147 taxmann.com 549 (All)(HC)

S. 148A : Reassessment-Limitation-Effect of notification-Interpretation of taxing statutes-Notices issued pursuant to the case of UOI v. Ashish Agarwal (2022) 444 ITR 1/ 213 DTR 217/ 326 CTR 473/ 286 Taxman / AIR 2022 SC 2781 (SC)-Notice issued on or after 01.04.2021, the period concerned is between 01.04.2021 to 30.06.2021-Relaxation Act will not apply-The law as per Finance Act, 2021 has to be followed-Notice issued for Assessment years 2013-14 and 2014-15 are barred by limitation-The submission that the UOI v. Ashish Agarwal (Supra) would be applicable to the cases, where such notices have been challenged before different High Courts only, were not accepted. [S. 119, 147, 148, 148A(d), 149, 151, 151A, Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020, S. 3(1), CBDT Instruction, 31-3-2021, Art. 226]
In group matters, challenging the notice issued under section 148, read with section 148A of the Act, allowing the petition the court held that even though CBDT issued both the notifications of 31.03.2021 and 27.04.2021, they could have no power to extend the time period under the first proviso to section 149(1) of the Act. The Notifications which are the creation of the executives, issued under section 3 of the TOLA Act, 2020 cannot override the legislation. Therefore, the CBDT's interpretation for issuance of directions to the Assessing Officers vide instruction dated March 31, 2021, by relying on the TLA Act is contrary to the ratio of the Apex Court. The notice under section 148 of the Act can be issued on or after 01.04.2021 only if the limitation for issuing such notice under the old regime of reopening had not expired prior to Finance Act, 2021 coming into force, which means w.e.f. 01.04.2021. As per the old regime of reopening, the reopening notice under section 148 of the Act could have been issued before the expiry of six years from the end of the relevant assessment year. In other words, no notice could have been issued after the expiry of a period of six years from the end of the relevant assessment year. In other words, if the period of six years from the end of the relevant assessment year expired on 31.03.2021, then notice under section 148 of the Act could not have been issued under the new regime for the said assessment year. The notices under Section 148A (by deeming fiction) were issued, between the period 01.04.2021 to 30.06.2021 (i.e. after 31.03.2021), wherein six years had elapsed from the end of the relevant assessment year and therefore they are time-barred and the petitions of Batch I for AY. 2013-2014 and Batch-II for AY.2014-2015 was allowed. It was also held that in view of the fact recorded by the Hon'ble Supreme Court that about 90,000 reassessment notices were issued after 01.04.2021, which were the subject matter of more than 9,000 petitions/ appeals and further permitting the revenue to deal with about 90,000 notices, with clear directions to make the said decision applicable to PAN India, the submissions of petitioners that the decision in the case of UOI v. Ashish Agarwal (2022) 444 ITR 1/ 213 DTR 217/ 326 CTR 473/ 286 Taxman / AIR 2022 SC 2781 (SC) would be applicable to the cases, where such notices have been challenged before different High Courts are held to be not accepted. (AY 2013-14, 2014-15) (R/SCA No. 17321 of 2022 dated February 07, 2022)
Keenara Industries Private Ltd v. ITO (2023) 453 ITR 51 / 147 taxmann.com 585// 331 CTR 477/ 223 DTR 273 (Guj) (HC)
Editorial : Touchstone Holdings Pvt Ltd v. ITO (2023) 451 ITR 196(Delhi)(HC), dissented from.

Editorial : Notice issued in SLP order of High Court, ITO v. Keenara Industries (P.) Ltd. (2023) 294 Taxman 344 (SC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Sale of property-Alleged cash receipts-Capital gains-Tax evasion petition on insight Portal-Directed to provide all documents considered by him as information-Order and subsequent notice set aside-Directed to pass the order after considering the reply of the assessee.[S. 147, 148, 148A(d), Art. 226]

The Assessing Officer issued a notice under section 148A(d) of the Income-tax Act, 1961 pursuant to a tax evasion petition uploaded by one of the Income-tax officials on the portal of the Department. The assessee responded to the notice and claimed that the property in question belonged to a Hindu undivided family of which he was the karta and the capital gains that arose from the sale transaction were duly disclosed in the returns of the Hindu undivided family for the AY. 2016-17 and that the receipt of an amount in cash was a mere surmise and did not have any link with him. The Assessing Officer did not accept the explanation provided by the assessee and consequently, passed an order under section 148A(d) and issued the notice under section 148. On a writ,the court set aside the order under section 148A(d) and the notice issued under section 148 without going into the merits of the assessee's contention that income chargeable to tax had not escaped assessment under section 147 and directed the Assessing Officer to provide to the assessee all the documents considered by him as information for initiating the reassessment proceedings and to reconsider the matter after affording an opportunity to the assessee to respond to the material relied upon by the Assessing Officer and then pass an order as considered fit. (AY. 2016-17)

Alaknarayan Poosapati Gajapati Raju v. UOI (2023) 450 ITR 297/ 291 Taxman 246 (Delhi)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Assessee is not expected to prove negative fact-Assessing Officer should verify information collected from other sources-Information not verified-Order is not valid-Directed to pass fresh order after giving a reasonable opportunity of hearing [S. 147, 148A(b), 148A(d), Art. 226]

Notice under clause (d) of section 148A of the Act was issued to the assessee based on information that the income chargeable to tax for the had escaped assessment within the meaning of section 147 of the Act. The notice indicated that the information from the Central Information Branch was that in Andhra Bank, Kaikalur, stating that certain cash was deposited in the bank account of the assessee. The assessee filed explanation stating that the assessee had only one bank account. However without verifying the explanation of the assessee order was passed. On writ the Court held that a perusal of the explanation by the assessee and the material would show that the assessee only had one bank account in the Andhra Bank at Kaikaluru. To prove that he had no other account at the Kaikaluru branch, in which he had deposited Rs. 26,00,000, would be practically impossible. A negative fact cannot be proved. On the other hand, if there were material to show that the assessee had another bank account, it would be useful for the respondent to verify it and place material in support of it. Apart from that, the Annual Information Return did not mention the bank account number or the branch of the Andhra Bank in the show-cause notice. In such an event, it would be difficult for the assessee to explain the deposit of Rs.26,00,000. In respect of information furnished under Central Information Branch, the assessee was able to explain the deposits made in the which tallied with the figures mentioned in the notice. The order under section 148A and the consequent notices were held to be not valid. The Assessing Officer

was directed to pass fresh order after giving a reasonable opportunity of hearing. (AY. 2015-16)

Asam Sreenivasa Reddy v. ITO (2023) 450 ITR 244/ 332 CTR 112/ 224 DTR 171 //(2022) 145 taxmann.com 659 (AP)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Natural justice-Failure to grant minimum seven days of time to file reply to notice-Notice for reopening of assessment set aside-Matter remanded to assessing officer. [147, 148, 148A(b), 148A(d), Art. 226]

The assessee filed a writ petition against the notice issued under section 148A(b) of the Income-tax Act, 1961 on the ground that adequate opportunity was not granted though the statute specified that a minimum of seven days' time should be granted. The court dismissed the writ petition observing that rejection of the assessee's objection to the notice under section 148A(b) did not mean that any final reassessment order was passed and a demand was raised, that the assessee would have opportunity during the reassessment proceedings to establish his case and to make out a case for dropping the reassessment proceedings and that it could not be called a case of violation of principles of natural justice. On appeal, The division Bench held that the assessee was to be granted an opportunity by the Assessing Officer in terms of section 148A(b). The notice issued under section 148 should not be enforced and fresh action could be initiated in accordance with law. The show-cause notice issued under section 148A(b) was received online by the assessee on March 17, 2022 and the order under section 148A(d) had been passed on March 29, 2022 and according to the Assessing Officer, the assessee had not produced any document to substantiate his claim. March 17, 2022 was declared as a State holiday on account of Holi festival and March 18, 2022 (Friday) was also declared a holiday and March 19, 2022 and March 20, 2022 being Saturday and Sunday, the next working day was March 21, 2022. Therefore, the period of notice issued to the assessee could not be stated to be affording a reasonable and adequate opportunity to the assessee. The assessee had requested for copies of certain documents. The Assessing Officer before affording an opportunity of hearing should consider such representation and take a decision on the merits. The assessee should submit a fresh reply and was at liberty to also refer to the notice dated March 29, 2022 under section 148A(b). The Assessing Officer was to consider the documents produced by the assessee and pass a fresh order under section 148A(d). Matter remanded. (AY. 2018-19)(SJ)

Girdhar Gopal Dalmia v. UOI (2023) 450 ITR 143/ 333 CTR 379 / 224 DTR 439 (Cal)(HC)

Editorial : Decision of single judge in Girdhar Gopal Dalmia v. UOI (2022) 449 ITR 629 (Cal)(HC), reversed.

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Survey-Salary or professional income-Remuneration is not taxable as salary-Remuneration of Doctors working in hospital-Issue of notice without examining the contracts between hospital and doctors-Order and notice not valid [S. 133A, 147, 148,148A(d), 149A(d), 192, Art. 226]

On the basis of documents seized in the course of a survey at a hospital, and consequent inferences, the authorities came to the conclusion that an employer-employee relationship was established between the assessees, doctors, and the hospital, the assessees were to be construed as employees and not full time or visiting consultants, and the income returned by them had to be assessed under the head "Salary" and not "professional income. Show-cause notices were issued to the assessees on various dates under clause (b) of section 148A. The assessees filed replies objecting to the proposal to treat the income returned under the head

"Salary" and not "professional income" and submitting that none of the documents found were incriminating or supported the issuance of the notices. An order was passed under section 148(d) of the Act rejecting the arguments. On a writ petition the Court held that in all the cases the entity searched was the KMC hospital. The Assessing Officer had come to the conclusion that the hospital exercised total control over the doctors in regard to their timings of work, holidays, call duties based on the exigencies of work, termination, entitlement to private practice, increments and other service rules. However the agreements between the hospital and the assessees revealed the following terms : (i) The doctors were referred to as consultants and fell within the category of visiting consultants or full time consultants, as against part-time and special category consultants who also attended the hospital. (ii) The remuneration paid was of a fixed amount along with a variable component depending on the number of patients treated, and was termed "salary". (iii) The consultants were not entitled to any statutory service benefits such as provident fund, gratuity, bonus, medical reimbursement, insurance or leave encashment. (iv) Working hours were stipulated as 8 a. m. to 5 p. m. and the consultants were expected to be available on call in the night. (v) They were permitted a month's vacation and leave on a case-to-case basis and depending on need. (vi) Private practice was permitted in the case of both categories, upon the satisfaction of certain conditions, such as service of two years in the hospital and other conditions. (vii) The hospital did not exercise any control, intervention or direction over the exercise of professional duties by the assessees. (viii) The assessees were wholly responsible for professional indemnity insurance and the hospital did not indemnify the doctors from any manner of claims. The intention of the parties appeared to engage in a relationship as equals. The hospital, on the one hand, and the professional, on the other, engaged in a relationship where the former provided the administrative infrastructure and facilities and the latter, the professional skill and expertise to result in a mutual rewarding result. The fact that the remuneration paid was variable, and the doctors were not entitled to any statutory benefits also pointed to the absence of an employer-employee relationship. The mere presence of rules and regulations did not lead to a conclusion of a contract of service. Rules and regulations are necessary to ensure that the workplace functions in a streamlined and disciplined fashion. The mere existence of an agreement that indicated some measure of regulation of the service of the doctors, could not lead to a conclusion that they were salaried employees. The fact that the doctors held full responsibility for their medical decisions and actions and the hospital bore no responsibility in this regard was also of paramount importance, relevant to determine the nature of the relationship as being one of equals, rather than one of master-servant. The order contained clear, categoric and conclusive findings that were adverse to the assessees. There were no disputed facts at play and rather, it was only the interpretation of admitted facts and conclusions arrived at by the officer, that were challenged. The "information" in the possession of the Revenue did not, in the light of the settled legal position lead to the conclusion that there had been escapement of tax. The order under section 148A was not valid. (AY. 2018-19)

Dr. Mathew Cherian v.ACIT (2023) 450 ITR 568 (Mad)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Reply was uploaded on Monday immediately after public holiday and Saturday and Sunday-Order for issue of show-cause notice without considering reply-Order passed in haste reducing procedure to nullity-A purposive interpretation needs to be given to the statutory provision-Matter was remanded-Directed the respondent to pay cost of RS. 15000, however on request of the Departmental counsel who has assured that he will take responsibility of conveying as to what would mean by "reasonable opportunity to the assessee "-Portion of direction

imposing cost on the Departmental Officer was deleted. [S. 147, 148, 148A(b), 148A(d), Art. 226]

The court dismissed the writ petition filed by the assessee challenging the order passed under section 148A(d) for issue of notice under section 148 for reopening the assessment on the ground that the assessee did not file its objection to the notice issued under section 148A(b) within the time prescribed thereunder and, therefore, the court was not inclined to interfere with the order. On appeal, allowing the appeal the Court held that the Assessing Officer had acted in great haste and virtually reduced the procedure under the amended provision of the Act to a nullity. The power to reassess under section 147 was available to the authority till the year 2023 if permissible under law. The time limit for filing the reply in terms of the notice had expired on March 18, 2022 which was a public holiday and the following two days March 19, 2022 and March 20, 2022 were Saturday and Sunday. Therefore, the next working day was March 21, 2022. The reply to the show cause notice under section 148A(b) was uploaded online by the assessee on March 21, 2022. A reasonable view ought to have been taken by the ITO and the interpretation given by the ITO was a narrow interpretation and a perverse outlook. The reply or objection had been filed online on March 21, 2022 and it was deemed that the assessee had sought for extension of time. The court was not adjudicating a public interest litigation but an aggrieved assessee was before the court. Therefore, if there were other similar cases where the Income-tax Officers had taken a perverted approach in the matter, those assessees would also be entitled to seek for legal remedy. The order passed in the writ petition was set aside. The order dated March 23, 2022 under section 148A(d) and the notice issued under section 148 were quashed. The opportunity provided under clause (b) of section 148A of the Income-tax Act, 1961 should be a meaningful opportunity. The statute provides for granting the assessee time to submit a reply to the notice within seven days, but not exceeding 30 days from the date on which the notice is issued. A purposive interpretation needs to be given to the statutory provision. The matter was remanded to the Assessing Officer to consider the reply given by the assessee dated March 21, 2022 in response to the notice under section 148A(b). Court directed the respondent to pay cost of Rs. 15000, however on request of the Departmental counsel who has assured that he will take responsibility of conveying as to what would mean by "reasonable opportunity to the assessee ". Portion of direction imposing cost on the Departmental Officer was deleted. (AY. 2018-19)

R N Fashion v. UOI (No. 2) (2023) 450 ITR 134 / 331 CTR 209 (Cal)(HC)

Editorial : Order of single judge, set aside, R N Fashion v. UOI (No 1) (2023) 450 ITR 132 / 331 CTR 215 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Order passed without considering the reply-Order set aside-Matter remanded to assessing officer to consider reply and afford opportunity of hearing.[S. 147, 148A(b), 148A(d), Art. 226]

The order was passed without considering the objection of the assessee.. On writ allowing the petition the court held that though the asseessee uploaded objection of the assessee to the notice under section 148A(b) was received by the Department on March 29, 2022 possibly due to the technical snag due to technical fault in the Department's system, the assessee should not suffer unless it was the Department's specific case with specific record that the objection of the assessee was uploaded beyond the time granted. The assessee had produced the record to show that the reply to the notice under section 148A(b) was uploaded in the official website of the Department on March 28, 2022 at 7:30 p.m. and the time to make such objection was till March 28, 2022 at 11:59 hours. Considering the facts and circumstances

and the principles of natural justice the order passed under section 148A(d) was set aside and the matter was remanded back to the Assessing Officer to pass a fresh speaking order in accordance with law after giving an opportunity of hearing to the assessee. Matter remanded. (AY-2018-19)
Radha Styores Pvt. Ltd v.UOI (2023) 450 ITR 543 (Cal) (HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Principle of natural justice-Failure to afford opportunity of hearing-Order and notices set aside-Matter remanded to assessing officer. [S. 147, 148, 148A(b), 148A(d), Art. 226]
On a writ petition against the order passed under section 148A(d) of the Act on the ground that it was passed without considering the objection filed by the assessee to the notice issued under section 148A(b) and was in violation of the principles of natural justice by not affording any opportunity of hearing in spite of specific request. Court held that on the facts and circumstances the order under section 148A(d) and all subsequent notices were set aside on the ground of violation of the principles of natural justice and the matter was remanded back to the Assessing Officer to pass a fresh speaking order in accordance with law after giving an opportunity of hearing to the assessee. Matter remanded.(AY-2017-18)
Rajesh Kumar Agarwal and Sons (HUF) v. UOI (2023) 450 ITR 545 (Cal)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Participated in the proceedings by filing return and responding to the notice-Writ is not maintainable [S. 147, 148, 148A(b), Art. 226]
The AO initiated reassessment proceedings by passing an order under section 148A(d) of the Act and notice was issued under section 148 of the Act. The assessee filed its return of income and participated in the proceedings. The assessee challenged the notice by filing writ petition. Dismissing the petition the Court held that once any quasi-judicial function is commenced by the issue of notice under section 148, the same is subject to the limitation contained in section 149 of the Act and there is no scope for any reset. Further, having filed revised return,the assessee participated in the proceedings and surrendered to the jurisdiction of the AO, the assessee cannot take advantages of its own wrongs. (AY. 2018-19)
Auroglobal Comtrade (P.) Ltd v. CBDT (2022) 143 taxmann.com 120/ (2023) 290 Taxman 84 / 221 DTR 433/ 330 CTR 628 (Orissa)(HC)

S. 148A : Reassessment-Conducting inquiry, providing opportunity before issue of notice-Unsigned notice-Order is bad in law-Notice and order was quashed. [S. 147, 148 292B, Art. 14, 226]
Petitioner is a non-resident Indian, residing in Dubai, UAE and since his total income for the relevant financial year was below the maximum amount chargeable to tax, he has not filed the return of income. The petitioner filed his response to the said notice electronically on 28.03.2022, pursuant to which, Respondent No.1 addressed an order under clause (d) of section 148A of the Act on 02.04.2022. It is the petitioner's case that this order was never received by him through e-mail; however, he has subsequently received a copy of this order on 16.04.2022 by speed post. The notice was unsigned. The petitioner filed writ petition and contended that since the notice dated 02.04.2022 issued u/s.148 of the Act was unsigned and never sent to the petitioner, the same is invalid, bad-in-law and deserves to be quashed and set aside; that since the purported unsigned notice issued u/s.148 of the Act itself was never issued in the eyes of law and three years have been elapsed from the end of the relevant assessment year, in this case Assessment Year 2015-16, as prescribed u/s.149(1)(b) of the Act, the action is beyond limitation. Allowing the petition the Court held that the order

passed on the basis of unsigned notice is bad in law. Notice and order was quashed and set aside. Relied on CIT v. Aparna Agency (P.) Ltd. (2004) 267 ITR 50/ 139 Taxman 132 (Cal)(HC) B.K. Gooyee v..CIT (1966) 62 ITR 109 (Cal)(HC) Umashankar Mishra v.CIT (1982) 136 ITR 330 / 11 Taxman 75 (MP)(HC) (WP No. 9835 of 2022 dt. 9-1 2023)(AY. 2015-16)
Prakash Krishnavtar Bhardwaj v. NFAC (Bom)(HC)

S. 149 : Reassessment-Time limit for notice-Capital gains-Dissolution of firm in 2006-Notice issued for reassessment for the Assessment year 2007-08 in November 2014-Notice is barred by limitation. [S. 144, 147, 148, Art. 226]
The firm was ceased to exist on March 31, 2006 and after the assessment of the year 2006-07, since there was no transfer of any surety in favour of any members, the proceedings under section 149 had to be set aside on the ground that they ware issued after a gap of six years. Further, the order dated August 25, 2010 imposing a penalty of Rs. 1,50,220, was set aside and the explanation given by the assessee was accepted for the assessment year 2006-07, by order dated March 12, 2013. Till date, no appeal had been filed against the order dated March 12, 2013 and thus it attained finality. The Department had thus accepted the dissolution of the firm. Reassessment notice for the Assessment year 2007-08 was issued in November, 2014. On writ allowing the petition the Court held that, the Department was now bound by the licence issued to the assessee. It was the Hindu undivided family which became the owner and being separate identity it had to file a separate return. The word management had been used in the partnership deed. After dissolution of the firm, there was no transfer of any asset to the partners of the firm. The notice of reassessment is not valid.(AY.2006-07, 2007-08)
Sandeep Theatre Abohar v. ITO (2023)457 ITR 562 (P&H)(HC)

S. 149 : Reassessment-Time limit for notice-Service of notice-Period of limitation-Authentication of notices and other documents-Notice dated 2-6-2022 for the assessment years 2013-14 and 2014-15, mailed after 3-6-2022-Not mentioning the name and designation of the concerned officer-Notice and order is quashed and set aside. [S. 148, 148A(b), 148A(d), 282A, Art. 226]
The petitioner has challenged the notice dated 2-6-2022 for the assessment years 2013-14 and 2014-15, mailed after 3-6-2022 and also authentication of notices and other documents. The Court held that the notices under section 148 of the Act issued between 1 April 2021 to 30 June 2021 were deemed to be notices under section 148A(b) of the Act vide Hon'ble Supreme Court in UOI v.Ashish Aggarwal (2022)444 ITR 1(SC). The Hon'ble Supreme Court also directed the Department to provide the information and material relied upon within 30 days of the Order. In pursuance to the Hon'ble Supreme Court's order, CBDT issued Instruction No. 1/ 2022 dated 11 May 2022 (2022) 444 ITR 43 (St) requiring the assessing officers to provide the data by 2 June 2022. In the assessee's case, the notice under section 148A(b) of the Act was issued on 2 June 2022 but mailed after 3 June 2022. Hon'ble High Court quashing the notice held that not only was the act of mailing the notice after 3 June 2022 by the assessing officer in contravention of CBDT Instruction No. 1/ 2022 dated 11 May 2022 but the notice was also violative of section 282A insofar as the name and designation of the concerned officer was absent.(AY. 2013-14, 2014-15)
Jindal Exports and Imports (P.) Ltd. v. DCIT [2023] 294 Taxman 711 (Delhi)(HC)

S. 149 : Reassessment-Time limit for notice-Limitation of six years from end of relevant assessment year-All original notices under section 148 referable to old regime and issued between 1-4-2021 to 30-6-2021 would stand beyond prescribed permissible timeline of six years from end of assessment year 2013-14 and assessment year 2014-15-

All notices they would relate to assessment year 2013-14 or assessment year 2014-15 would be time barred as per provisions of Act as applicable in old regime prior to 1-4-2021-These notices could not have been issued as per amended provisions of Act-Notice dated 26-5-2022 issued by respondent-Assessing Officer under section 148, seeking to reopen assessment in respect of assessment year 2014-15 and order dated 30-6-2022 passed under section 148A(d), and all consequential actions, were quashed and set aside-Circulars and Notifications : Notification No. 38 of 2021, dated 27-4-2021.[S. 148, 148A(b), 148A(d), Art. 226]

The petitioner challenged the notice dated 26-5-2022 which was issued under section 148, to reopen the assessment for the assessment year 2014-15 and also challenged the order dated 30-6-2022 passed under section 148A(*d*) of the Act. Notice under section 148 was originally issued on 21-4-2021. The said notice was treated as show-cause notice under section 148A(*b*), and that thereupon, the order under section 148A(*d*) was passed. The petitioner contended that the the notice issued under section 148 and the consequential order under section 148A(*d*) issued by the department was barred on the ground of limitation as the notice had been issued after passage of six years from the end of the relevant assessment year. Allowing the petition the Court held that all notices they would relate to assessment year 2013-14 or assessment year 2014-15 would be time barred as per provisions of Act as applicable in old regime prior to 1-4-2021. These notices could not have been issued as per amended provisions of Act.Notice dated 26-5-2022 issued by the Assessing Officer under section 148, seeking to reopen assessment in respect of assessment year 2014-15 and order dated 30-6-2022 passed under section 148A(d), and all consequential actions, were quashed and set aside. Notification No. 38 of 2021, dated 27-4-2021. (AY. 2014-15)

Micro Chem v. UOI (2023) 293 Taxman 608 (Guj.)(HC)

S. 149 : Reassessment-Time limit for notice-Notice issued beyond six years after the end of the relevant assessment year-Notice issued without withdrawing the first notice dated 31-3-2021-Order is bad in law.[S. 148, 148A, Art. 226]

The AO issued three notices u/s 148 dated 31-3-2021, 1-4-2021 and 5-4-2021 seeking to reopen the AY 2013-14 assessment. Concerning the first notice (31-3-2021), the Court held that the time limit of six years had lapsed on 1-4-2020. The decision Ashish Agarwal will not apply, as the decision pertains to the issuances of notice issued on or after 1-04-2021. The Court noted that the two notices, 1-4-2021 and 5-4-2021, were issued without withdrawing the first notice dated 31-3-2021 and were bad in law on account of non-compliance with the mandatory requirements (conducting of prior enquires by the AO) u/s 148A. (AY. 2013-14)

Stalco Consultancy & Systems (P.) Ltd. v. PCIT (2023) (455 ITR 308 /291 Taxman 390/ 333 CTR 205 (Orissa)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Sanction of Additional Commissioner-Notice Not Valid-SLP dismissed.[S. 144B (1)(xvi), 147, 148, Art. 131]

Dismissing the SLP the Court held that Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as required under section 151 of the Act for reopening the assessment after four years, and that the satisfaction of the Additional Commissioner did not give jurisdiction. (AY 2015-16)

ITO v. Rinku R. Rai (2023)454 ITR 35/ 293 Taxman 689 (SC)

Editorial : Rinku R. Rai v. ITO (2023) 454 ITR 33(Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice-Sanction given mechanically-SLP of Revenue dismissed. [S. 147, 148, Art 136]

On appeal by the Revenue High Court dismissed the Department's appeal from the order of the Tribunal quashing notices issued under section 148 of the Income-tax Act, 1961, holding that while according sanction to reopen the assessment, the Joint Commissioner had only recorded "Yes, I am satisfied" and that the mechanical way of recording satisfaction was clearly unsustainable, on a petition by the Department for special leave to appeal to the Supreme Court, The SLP of revenue is dismissed. (AY 1-4-1998 to 12-12-2002)

CIT v. S. Goyanka Lime and Chemical Ltd(2016) 237 Taxman 378 (2023)453 ITR 242/150 taxmann.com 245 (SC)

Editorial : Refer CIT Jabalpur v. S. Goyanka Lime & Chemicals Ltd (2015) 231 Taxman 73 (MP)(HC), affirmed.

S. 151 : Reassessment-Sanction for issue of notice-Notice after four years-Capital gains-Sanction of prescribed Authority-Approval by Joint Commissioner held to be valid-SLP of Revenue dismissed. [S. 147, 148, 151(1), Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2002, Art. 136, 226]

The High Court allowed the assessee's writ petition challenging the re-opening of its assessment for the A.Y. 2015-16 on the ground of invalid approval under section 151 of the Income-tax Act, 1961 by the Additional Commissioner, holding that since the reopening was more than four years after the end of the expiry of the relevant AY. the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 would not apply and only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner could have accorded the approval. High court Followed, J.M. Financial and Investment consultancy Services Pvt Ltd v. ACIT (2023) 451 ITR 205 (Bom)(HC). On SLP by Revenue a dismissing the petition, the Court held that the reopening was after four years and it was apparent that the assessee had made disclosure of payment and deduction of Rs. 3.6 crores while computing capital gains in the regular assessment proceedings. Order of High Court is affirmed. (AY. 2015-16)

Dy. CIT v. Sidhmicro Equities Pvt. Ltd. (2023)453 ITR 35/ 150 Taxman 461 (SC)

Editorial : Sidhmicro Equities Pvt. Ltd v.Dy.CIT (2023) 451 ITR 33(Bom)(HC), affirmed.

S. 151 : Reassessment-Sanction for issue of notice-Specified authority-More than three years-Sanction of Principal CIT instead of principal Chief CIT-Matter remanded. [S. 148A(d) 151(ii),, Art. 226]

Order under S. 148A(d) has been passed without approval from the specified authority as described under S. 151(ii) as the approval has been taken from the Principal CIT when admittedly the specified authority for approval in this case is Principal Chief CIT. On writ the Court remanded back to the AO concerned to proceed afresh and pass order in accordance with law and after observing principles of natural justice after giving opportunity of hearing to the assessee, within a period of eight weeks from the date of communication of this order, from the stage such irregularity has been committed in taking approval from the specified authority (AY. 2019-20)

Ethics Commercials Ltd. v. UOI(2023) 335 CTR 342 (Cal) (HC)

S. 151 : Reassessment-Sanction for issue of notice-Notice issued after expiry of six years from assessment year-Sanction of Additional Commissioner-Sanction is not valid-Taxation and other Laws (Relaxation and Amendment Of Certain Provisions) Act, 2020 is not applicable.[S. 148, 151(1), Art. 226]

Reassessment notice under section 148 of the Act dated March 26, 2021 was issued for the assessment year 2015-16 with the approval of the Additional Commissioner. On writ allowing the petition the Court held that sub-section (1) of section 151 provides that no notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. Admittedly, four years had expired from the end of the relevant assessment year, as provided under section 151(1) of the Act, it was only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval and not the Additional Commissioner. The notice dated March 26, 2021 issued under section 148 of the Act was not valid, and consequently, the orders and notices also were not sustainable. Court also held that the Taxation and other Laws (Relaxation of Certain Provisions) Act, 2020 applies to only cases where the limitation was expiring on March 31, 2020. The assessment year in question was 2015-16 and, therefore, the six years limitation would expire only on March 31, 2022. Therefore, the 2020 Act was not applicable. In any event, the time to issue notice may have been extended but that would not amount to amending the provisions of section 151 of the Act.(AY.2015-16)

Asian Paints Ltd. v. ACIT (2023)457 ITR 626 /155 taxmann.com 627 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice-Non application of mind-Within three years-Sanction is granted by PCIT-Notice and order is bad in law-Issue of digital signature left open. [S. 148, 148A(b), 148A(d), 149(1)(a), 149(1)(b), Art. 226]

The assessee contended that the reopening pertained to the Assessment Year 2019-20 and the approval was requested on April 12, 2023, it fell within three years. Consequently, section 149(1)(*a*) applies, not section 149(1)(*b*) of the Act.Allowing the petition the Court held that there is non-application of mind inasmuch as the affiant admits that while issuing notice for reopening of assessment proceedings under section 148, the Principal Chief Commissioner or Principal Director General and where there is no Principal Chief Commissioner or Principal Director General, then Chief Commissioner or Director General has to grant the sanction if more than three years have elapsed from the end of the relevant assessment year. If that is so, there is no explanation as to how the Pr. Commissioner granted this sanction when in box 9 of the approval the time limit for current proceedings covered under is stated to be under section 149(1)(*b*) for more than 3 years but not more than 10 years. In the affidavit in reply, it is stated that the reopening is within three years and the specified authority is Pr. Commissioner under section 151. In that case, the applicable provision would be section 149(1)(*a*) and not section 149(1)(*b*). Therefore, it is rather clear that neither the issuing authority, *i.e.* the Assistant Commissioner, nor the sanctioning authority, *i.e.,* Pr. Commissioner have applied their mind but have simply issued the notice mechanically. Accordingly the notice and order is quashed and set aside. (AY. 2019-20)

Kartik Sureshchandra Gandhi v. ACIT (2023) 295 Taxman 442 (Bom.)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Satisfaction recorded by Joint Commissioner-The notice issued under section 148 and order is set aside. [S. 147, 148, 151 (1), Art. 226]

Notice under section 148 was issue beyond a period of four years after obtaining the approval Joint Commissioner instead of Principal Chief Commissioner or Chief Commissioner. On writ allowing the petition the Court held that since approval as required under section 151 had not been obtained the notice and order was quashed. Followed J M Financial and Investment Consultancy Services (P.) Ltd. v. ACIT [2023] 451 ITR 205 (Bom.) (HC). (AY. 2015-16)

Pinki Rajesh Modi v. ITO (2023) 294 Taxman 491 (Bom.)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Sanction obtained from Additional Commissioner not from Principal Chief Commissioner or Chief Commissioner-Notice was quashed-Faceless Assessment-Mandatory condition-Draft Assessment order-Condition not complied with-Final assessment order was quashed and set aside. [S. 144B(1)(xvi), 147, 148, Art. 226]

Allowing the petition, the Court held that where the Assessing Officer issued reopening notice to assessee beyond period of four years after obtaining necessary sanction of Additional Commissioner, since approval for issuance of said notice ought to have been obtained from Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in terms of section 151, impugned notice was quashed. The Court also held that there had been breach of the provisions of section 144B(1)(xvi) of the Income-tax Act, 1961 since no draft assessment order was issued to the assessee. Accordingly the final assessment order dated March 25, 2022 passed in violation of the provisions of section 144B was also quashed and set aside. Followed J M Financial and Investment Consultancy Services (P.) Ltd. v. ACIT [2023] 451 ITR 205 (Bom.) (HC). (AY. 2015-16)

Rinku R. Rai v. ITO (2023) 454 ITR 33 / 151 taxmann.com 478 /294 Taxman 491 (Bom)(HC)

S. 151 : Reassessment-After the expiry of four years-Sanction for issue of notice-Sanction of approval by Joint Commissioner and Not by Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner-Notice and order on objections set aside.[S. 147, 148, Art. 226, Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020]

Allowing the petition the Court held that the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 would not apply since four years had expired from the end of the relevant A.Y. 2015-16 as provided under section 151(1) of the Income-tax Act, 1961 and it was only the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who could have accorded the approval for issue of notice under section 148 to reopen the assessment under section 147 and not the Joint Commissioner. Consequently, the notice and the order passed against the objections of the assessee were quashed and set aside. Followed J.M.Financial and Investment Consultancy Services Pvt Ltd v. ACIT(2023) 453 ITR 205 (Bpm)(HC) (AY. 2015-16)

Sidhmicro Equities Pvt. Ltd. v. Dy. CIT (2023)453 ITR 33 (Bom)(HC)

Editorial : SLP of Revenue dismissed, Dy.CIT v. Sidhmicro Equities Pvt. Ltd (2023) 453 ITR 35 (SC)

S. 151 : Reassessment-Sanction for issue of notice-Approval obtained from additional Commissioner and not from specified authority-Notice was quashed. [S. 147, 148, 151(ii), Art. 226]

Allowing the petition the Court held that the approval for issuance of notice under section 148 of the Income-tax Act, 1961 ought not to have been obtained from the Additional

Commissioner but from the authority specifically mentioned under section 151(ii). The notice issued under section 148 was quashed. Followed J.M. Financial and Investments Consultancy Services (P) Ltd v. ACIT (2023) 451 ITR 205 (Bom)(HC) (AY.2015-16)
MA Multi-Infra Development Pvt. Ltd. v. ACIT (2023)451 ITR 181/149 taxmann.com 491 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice-After the expiry of four years-Satisfaction recorded by Joint Commissioner-Notice and order disposing the objection was quashed [S. 147, 148, Art. 226]
Allowing the petition, the Court held that the Assessing Officer issued notice under section 148 beyond period of four years from end of assessment year and satisfaction under section 151 had been issued by Joint Commissioner, as satisfaction should have been of either Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with section 151(1) of the Act. Notice issued under section 148 and order disposing the objection was quashed. Followed J. M. Financial and Investment Consultancy Services (P.) Ltd. v. Asstt. CIT (2022) 215 DTR 98/ 327 CTR 458 /(2023) 451 ITR 205 (Bom)(HC) (AY. 2015-16)
Thirdware Solution Ltd. v. DCIT (2023) 146 taxmann.com 364 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice-Approval obtained from additional Commissioner and not from specified authority-Notice was quashed. [S. 147, 148, 151(ii), Art. 226]
Allowing the petition, the Court held that the approval for issuance of notice under section 148 of the Income-tax Act, 1961 ought not to have been obtained from the Additional Commissioner but from the authority specifically mentioned under section 151(ii). The notice issued under section 148 was quashed. Followed J.M. Financial and Investments Consultancy Services (P) Ltd v. ACIT (2023) 451 ITR 205 (Bom)(HC) (AY.2015-16)
MA Multi-Infra Development Pvt. Ltd. v. ACIT (2023)451 ITR 181/149 taxmann.com 491 (Bom)(HC)

S. 151 : Reassessment-Service of notice-Return submitted giving new address-Notice sent to old address-No proper service of notice-Notice and reassessment proceedings not valid-Sanction for issue of notice-After expiry of three years-Approval of Principal Commissioner (PCIT) is not valid-Approval is required from Principal Chief Commissioner (PCCIT)-Order was quashed [S. 147, 148,148A(b), 148A(d), 149(1)(a), 151(iii)), Art. 226]
Allowing the petition, the Court held that the sanction under section 151(ii) ought to have been obtained from the Principal Chief Commissioner when the notice under section 148A(b) had been issued beyond the period of three years. Though the Department had the new address of the assessee in the return of income filed, the notice was sent to the assessee's old address. There was no proof of the service of notice under section 148A(b) dated March 20, 2022. Before issuing the notice under section 148A(b) it was imperative for the Assessing Officer to have checked if there was a change in address of the assessee. The effect of non-service was that the assessee did not get an opportunity to respond to the notice. Consequently, the notice under section 148A(b) and the proceedings thereafter were void. The notice under section 148A(b), the order under section 148A(d) were set aside on account of jurisdictional error, i. e., for want of service and consequently, for non-compliance with the provisions of the Act. The notice under section 148 was quashed and set aside. The Assessing Officer was given liberty to proceed with the reassessment after issuance of notice and providing the assessee a hearing after a response was filed. Relied on

CIT v. Eshaan Holding (P.) Ltd (2012)) 25 taxmann.com 99/344 ITR 541 (Delhi)(HC),CIT v. Avtar Singh (2008) 304 ITR 333 (P&H)) (HC) (AY. 2018-19)
Chitra Supekar (Mrs.) v. ITO (2023) 453 ITR 530 / 149 taxmann.com 26 / 292 Taxman 511/ 332 CTR 374 (Bom)(HC)

S. 151 : Reassessment-Sanction for issue of notice-Mechanical sanction-Reassessment is quashed.[S. 147(b), 148]
In this case, Principal CIT having granted approval under Section 151 in a mechanical manner without applying his mind to the fact that the AO has sought approval for reopening the assessee's assessment under Section 147(b) which has been omitted from the statute with effect from 1st April, 1989, the entire proceeding is vitiated and, therefore the same is quashed. (AY. 2010-11 to 2013-14)
Sunil Sahu v. ACIT [2023] 221 TTJ 631/ 222 DTR 186 (Indore)(Trib)

S. 151 : Reassessment-Sanction for issue of notice-Sanction of CIT instead of A/JCIT-Notice is bad in law. [S. 147 148, 151(2)]
Held that for the AY 2003-04, the Commissioner had granted approval instead of the Additional Commissioner or Joint Commissioner as prescribed under the law and thus, notice issued under section 148 of the Act, was bad in law and consequent assessment proceedings were null and void. (AY: 2003-04).
Pawan Green Channels Pvt. Ltd v. Dy. CIT (2023)101 ITR 19 (SN) (Chennai) (Trib)

S. 153 : Assessment-Limitation-Uploading of order on web portal-One day delay in uploading of order or generating DIN would not make assessment order unsustainable in law-Writ petition is dismissed. [S. 68, 153 (3), 282, R. 127 Art. 226]
The Tribunal passed an order under section 254(1) on 2-3-2020 and remanded matter back to Assessing Officer to examine entire issue afresh On remand, the Assessing Officer passed an assessment order dated 31-3-2022 which was on last date of passing said order However, order was uploaded on web portal on 1-4-2022 and DIN (Document identification number) was also generated on same day.The order was communicated to assessee on 3-4-2022. On writ the assessee contended that order was uploaded on web portal on 1-4-2022 which was after completion of limitation period under section 153, thus, impugned order was void ab initio. Dismissing the petition the Court held that the assessment order dated 31-3-2022 uploaded on web portal on 1-4-2022 and communicated to assessee on 3-4-2022 was not barred by limitation as section 153(3) controls only making of order and there is no restriction or limitation period prescribed under section 153(3) for issue of order, uploading of order on web portal or 'communication of order. There was delay of only one day in uploading of order or generating DIN which would not make assessment order unsustainable in law. (AY. 2014-15)
Prakash Lal Khandelwal v. CIT (2023) 331 CTR 763 / 151 taxmann.com 72 (Jharkhand)(HC)

S. 153 : Assessment-Reassessment-Limitation-International Transactions-Arm's Length Price-Direction of DRP-Order giving effect to the order of the Tribunal-Section 144C does not exclude Section 153-Assessment order is barred by limitation-Returns of income filed to be accepted-Interpretation of taxing statutes-Section and sub-section to be read as whole with connected provisions to decipher meaning and intentionS. [S. 92CA, 144C(13), 153(3), 153B, Art. 226]
On writ the assessee challenged the order as barred by limitation. Allowing the petition the Court held that for the assessment year 2014-15, the date of Tribunal's order under

section 254 was October 4, 2019 when it was remanded to the Assessing Officer for de novo consideration. Accordingly the due date under section 153(3) read with the proviso thereto to pass fresh order pursuant to the Tribunal's order expired on March 31, 2021, i. e., 12 months from the end of the financial year in which the order was received by the specified authority. In view of Notification No. 10 of 2021 dated February 27, 2021 ([2021] 432 ITR (St.) 14) issued by the Central Board of Direct Taxes in the exercise of the powers conferred by sub-section (1) of section 3 of the notification under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and in partial modification of the earlier notification, the time to pass the assessment order was extended to September 30, 2021. The date on which the draft assessment order had been passed was September 28, 2021. Therefore, there was no possibility of passing any final assessment order as the matter had got time barred on September 30, 2021. Since the final assessment order had not been passed before this date the proceedings were barred by limitation. Therefore, the return as filed by the assessee should be accepted. Since the order had been passed by the Tribunal on October 4, 2019, the time would be twelve months from the end of the financial year in which the order under section 254 was received. The submission of the Department that when there was a remand the Assessing Officer was unfettered by limitation would run counter to the avowed object of provisions that were considered while framing the provisions of section 144C. The assessment should have been concluded within twelve months as provided in section 153(3) when there had been remand to the Assessing Officer by the Tribunal's order under section 254. Within this twelve months prescribed, the Assessing Officer was to ensure that the entire procedure prescribed under section 144C was completed. Since no final assessment order could be passed as it was time barred, the return of income as filed by assessee was to be accepted. This would however, not preclude the Department from taking any other steps in accordance with law. For the assessment year 2018-19 is concerned since the original assessment order was in question the period of limitation prescribed under section 153(1) was to be adhered to since the Assessing Officer sought to pass the original assessment order under section 143(3). The due date under section 153(1) was eighteen months from the end of the assessment year which was September 30, 2020. But in view of the extension given by virtue of the 2020 Act any due date of assessment proceedings falling between March 20, 2020 and December 31, 2020 was extended to March 31, 2021, and by Notifications Nos. 10 of 2021 dated February 27, 2021 ([2021] 432 ITR (St.) 14), 38 of 2021 dated April 27, 2021 ([2021] 434 ITR (St.) 11) and 74 of 2021 dated June 25, 2021 ([2021] 435 ITR (St.) 24), to April 30, 2021, June 30, 2021 and finally to September 30, 2021, respectively. The limitation period was as provided in section 153(1). Since the date of passing the draft assessment order under section 144C was itself September 28, 2021 and no final assessment order could be passed for the assessment year 2018-19 also the return of income filed by the assessee was to be accepted. This would however, not preclude the Department from taking any other steps in accordance with law. Relied on CIT v. Roca Bathroom Products P. Ltd (2022) 455 ITR 537 (Mad)(HC) Roca Bathroom Products P. Ltd. v. DRP (2021) 432 ITR 192 (Mad)(HC) (AY.2014-15, 2018-19)

Shelf Drilling Ron Tappmeyer Ltd. v. ACIT (IT) (2023) 457 ITR 161 295 Taxman 85/ 334 CTR 11 (Bom.)(HC)

Shelf Drilling Offshore Resources Ltd.II v.ACIT(IT) (2023) 457 ITR 161 295 Taxman 85/ 334 CTR 11 (Bom.)(HC)

Shelf Drilling Ron Tappmeyer Ltd v ACIT (IT) (2023) 457 ITR 161 295 Taxman 85 / 334 CTR 11 (Bom.)(HC)

Shelf Drilling Trident XII v. ACIT v. (IT) (2023) 457 ITR 161 295 Taxman 85 /334 CTR 11 (Bom.)(HC)

S. 153 : Assessment-Reassessment-Limitation-Remand-Failure to comply with remand order made by Tribunal-Delay of 12 years-Assessment became time barred-Directed the Revenue to refund the amount along with interest under section 244A of the Act. [S. 132, 153(3), 158BC, 244A, Art. 226]

Allowing the petition, the Court held that the Assessing Officer had failed to comply with remand order made by Tribunal even after lapse of substantial period of 12 years and even after receiving assesse's letter to department in that regard, assessment became time barred and, thus, revenue was to be directed to issue refund along with interest under section 244A of the Act. [BP 1-4-1996 to 13-8-2002]

Lakhpatrai Agarwal v. ACIT (2023) 149 taxmann.com 348 / 292 Taxman 282 (Bom)(HC)

S. 153 : Assessment-Limitation-Assessment barred by limitation-Refund due to the assessee must be paid along with the interest. [S. 153(3), 153 (4), 254(1) Art. 226]

Pursuant to the order of the Tribunal dated 7 th January 2016, the Transfer Pricing Officer passed on order dated 24-1-2017. However the Assessing Officer has not passed the final order. The petitioner contended that they are eligible for refund of the amount of the assessment which is barred by limitation. On writ the Court held that the order giving effect to the order of the Tribunal is barred by limitation, consequently the adjustment of refund for the assessment year 2006-07 against the demand for the assessment year 2007-08 was without jurisdiction. Accordingly directed the Revenue to refund the interest as applicable within a period of eight weeks. (WP (C) 13765 of 2022 dt 27-2-2023)(AY. 2007-08)

Aricent Technologies (Holdings) Ltd v. ACIT (2023) BCAJ-April-. 47 (Delhi)(HC)

S. 153 : Assessment-Reassessment-Limitation-Assessment order passed beyond time limit of 21 months for completion of assessment under section 153(1)-Void ab initio-Date on which appeal had been filed by assessee, should not be included in computing delay in filing appeal as appeal had reached Registry of Tribunal on said date. [S. 143(3) 253]

Assessee filed return of income under section 139(1) on 6-10-2017. Notice under section 143(2) was served by Assessing Officer on 27-2-2018. Time limit for completion of assessment under section 153(1) was within 21 Months from end of assessment year in which income was first assessable, that is, on 31-12-2019.Assessment order was passed under section 143(3) on 30-9-2021. The order is not within time limit of 21 months for completion of assessment under section 153(1) and void ab initio hence quashed. Tribunal also held that date on which appeal had been filed by assessee, should not be included in computing delay in filing appeal as appeal had reached Registry of Tribunal on said date. (AY. 2012-13, 2017-18)

Marudhar Diamond (P) Ltd v.Dy.CIT(2023) 223 TTJ 999 / 150 taxmann.com 169 (Surat)(Trib)

S. 153A : Assessment-Search-Non-abated assessment-No incriminating material is found-Order of High Court is affirmed-SLP of Revenue is dismissed. [S. 132, Art. 136]

High Court held that where assessment of assessee had attained finality prior to date of search and no incriminating documents or materials had been found and seized at time of search, no addition could be made under section 153A as cases of assessee were of non-abated assessments. SLP of Revenue is dismissed. Followed, PCIT v. Abhisar Buildwell (P.) Ltd. [2023] 293 Taxman 141/454 ITR 212 (SC)

PCIT (Central) v. King Buildcon (P.) Ltd. (2023) 436 ITR 770/ 295 Taxman 413 / 333 CTR 449 (SC)

Editorial : PCIT v. LKG Builders (P) Ltd (2023) 455 ITR 520/ 154 Taxman.com 188 (Delhi) (HC)

S. 153A : Assessment-Search-Cash credits-No incriminating materials-SLP of Revenue is dismissed-Order of High Court dismissing the appeal of the Revenue is affirmed. [S. 68, Art. 136]

High Court dismissed the appeal of the Revenue as there was no incriminating material was found. SLP of Revenue is dismissed. (AY.2006-07)

PCIT v. S. S. Con Build Pvt. Ltd. (2023)455 ITR 506 /293 Taxman 491 (SC)

Editorial : PCIT v S. S. Con Build Pvt. Ltd(Delhi)(HC)(ITA No. 57 of 2022 dt 22-3-2022), affirmed.

S. 153A : Assessment-Search or requisition-Total income-Completed Assessments remain unabated-No addition permissible for such years in absence of incriminating material having been found in search-Completed or unabated assessments can be reopened under Section 147 or 148 of the Act. 2(45), 131, 132, 132A, 143(1), 143(3), 147, 148,285BA]

Affirming the Orders of the High Court the Supreme Court held that in a case of search under section 132 or requisition under section 132A, the Assessing Officer assumes jurisdiction for assessment under section 153A ; all pending assessments or reassessments shall stand abated. In case any incriminating material is found or unearthed, even in case of unabated or completed assessments, the Assessing Officer would assume the jurisdiction to assess or reassess the "total income" taking into consideration the incriminating material unearthed during the search and the other material available with the Assessing Officer including the income declared in the returns ; and in case no incriminating material is unearthed during the search, the Assessing Officer cannot assess or reassess taking into consideration the other material in respect of completed assessments or unabated assessments, meaning thereby, in respect of completed or unabated assessments, no addition can be made by the Assessing Officer in the absence of any incriminating material having been found during the course of search under section 132 or requisition under section 132A of the Act. Court also held that the High Court was right in affirming the order of the Tribunal upholding the addition made on the basis of the incriminating material found during the search. However, completed or unabated assessments can be reopened by the Assessing Officer in exercise of powers under section 147 or 148 of the Act, subject to fulfilment of the conditions as envisaged or mentioned under section 147 or 148 of the Act and those powers are saved.

Editorial : Decisions of the Delhi, Gujarat and Bombay High Courts in CIT v. Kabul Chawla (2016) 380 ITR 573 (Delhi)(HC) PCIT v. Saumya Construction P. Ltd. (2016) 387 ITR 529 (Guj)(HC) PCIT v. Bhadani Financiers P. Ltd (2022) 447 ITR 305 (Delhi)(HC) PCIT v. Dharampal Premchand Ltd (2018) 408 ITR 170 (Delhi)(HC) CIT v. SKS Ispat and Power Ltd (2017)) 398 ITR 584 (Bom)(HC) and CIT v. Deepak Kumar Agarwal (2017) 398 ITR 586 (Bom))(HC) affirmed.

Decision of the Delhi High Court in Dayawanti (SMT.) v. CIT (2017) 390 ITR 496 (Delhi)(HC) affirmed. PCIT v. Dipak Jashvantlal Panchal (2017) 397 ITR 153(Guj)(HC) CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd (2015) 374 ITR 645 (Bom)(HC) PCIT v. Delhi International Arport Pvt. Ltd.(2022) 443 ITR 382 (Karn)(HC)) PCIT v. Meeta Gutgutia Prop. M/S. Ferns "N" Petals (2017) 395 ITR 526 (Delhi)(HC), Jami Nirmala (Smt.) v. PCIT (2021) 437 ITR 573 (Orissa)(HC) CIT v. Veerprabhu Marketing Ltd(2016) 388 ITR 574 (Cal)(HC) S. M. Kamal Pasha v. Dy.CIT (2023) 454 ITR 157 (Karn)(HC) PCIT v. Jay Infrastructure and Properties Pvt. Ltd. (2016) 10 TMI 1022 (Guj) (HC) PCIT v. Salasar Stock

Broking Ltd. (2016) 8 TMI 1131 (Cal)(HC) PCIT v. Daksha Jain Sirohi (SMT) (2019) 8 TMI 474 (Raj)(HC) and Smrutisudha Nayak (SMT.) v. UOI (2021) 439 ITR 193 (Orissa)(HC) impliedly approved. PCIT v. Mehndipur Balaji (2022) 447 ITR 517 (All)(HC) impliedly disapproved. Decision of the Allahabad High Court in CIT v. Kesarwani Zarda Bhandar Sahson (I. T. A. No. 270 of 2014 dated September 6, 2016) affirmed.

PCIT v. Abhisar Buildwell P. Ltd. (2023)454 ITR 212/ 293 Taxman 141/ 332 CTR 385/ 225 DTR 105 (SC)
Editorial : Refer case laws in the editorial.
Editorial : PCIT v. Abhisar Buildwell (P.) Ltd. (2023) 294 Taxman 70/ 332 CTR 729/ 225 DTR 497 (SC), Supreme Court refused to entertain Misc, application filed by Revenue seeking clarification order passed and directed Revenue to file an appropriate review application**.**

S. 153A : Assessment-Search or requisition-Incriminating material was found in search and investigation-Assessment order valid [Art. 136]
Dismissing the SLP the Court held that in view of the reasoning given by the High Court on incriminating material found and thereafter assessment under section 153A of the Income-Tax Act, 1961, in the facts and circumstances of the case, no interference was called for in exercise of powers under article 136 of the Constitution.
Siddharth Gupta v. PCIT (2023)452 ITR 227 (SC)
Editorial : PCIT v. Mehndipur Balaji (2022) 447 ITR 517 (All)(HC), affirmed.

S. 153A : Assessment-Search-No incriminating material was found-Share capital-Investor companies had ample funds to make investment in share capital-Oppprtunity of cross examination was not provided-SLP of Revenue is dismissed.[S. 68, Art. 136]]
Court held that dismissed the appeal of the Revenue on the ground that no incriminating material was found and the investor companies had ample funds to make investment in share capital. Court also held that opportunity of cross examination was not provided. Court also held that since issue was covered by judgment of Supreme Court in PCIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399/293 Taxman 141/454 ITR 212 (SC) (AY. 2008-09 to 2011-12)
PCIT v. Jay Ace Technologies Ltd. (2023) 294 Taxman 602 (SC)
Editorial : PCIT v. JPM Tools Ltd (2023) 154 taxmann.com 44 (Delhi)(HC)

S. 153A : Assessment-Search-No incriminating material-Addition cannot be made in respect of unabated assessments-SLP of Revenue is dismissed. [S. 132 Art. 136]
High Court held that no addition can be made in respect of unabated assessments which have become final if no incriminating material is found during search. SLP of Revenue is dismissed following, PCIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399/293 Taxman 141/454 ITR 212 (SC).
PCIT v. Saroj Sudhir Kothari (2023) 455 ITR 379/ 294 Taxman 598 (SC)
Editorial : PCIT v. Saroj Sudhir Kothari (2023) 154 taxmann.com 359 (Bom)(HC)

S. 153A : Assessment-Search or requisition-Total income-Completed Assessments remain unabated-No addition permissible for such years in absence of incriminating material having been found in search-Completed or unabated assessments can be reopened under Section 147 or 148 of the Act-Miscellaneous application of Revenue is dismissed. [2(45), 131, 132, 132A, 143(1), 143(3), 147, 148, 150(2),285BA]

Revenue preferred Miscellaneous Application seeking clarification of order passed in Pr. CIT v. Abhisar Buildwell (P.) Ltd. [2023] 149 taxmann.com 399 (SC) and submitted that waiver of limitation as stipulated in section 150(2) was to be read in respect of date of issue of notice for reassessment under section 148 and that even though appeals of revenue were dismissed in respect of assessments passed under 153A and 153C, in respect of such income which was found to have escaped assessment other than through incriminating material, Assessing Officers would be entitled to reassess such income in terms of section 147/148 read with section 150 of the Act. Court held that prayers sought could be said to be in form of review which would require detail consideration at length looking into importance of matter. Accordingly the application in form of clarification was not entertained and revenue was to be relegated to file an appropriate review application seeking reliefs which were sought in the application.

PCIT v. Abhisar Buildwell (P.) Ltd. (2023) 294 Taxman 70/ 332 CTR 729/ 225 DTR 497 (SC)

Editorial : Refer, PCIT v. Abhisar Buildwell P. Ltd. (2023)454 ITR 212/ 293 Taxman 141/ 332 CTR 385/ 225 DTR 105 (SC)

S. 153A : Assessment-Search or requisition-Finality of assessment -No incriminating material-No abatement of concluded proceedings-Notice is issued in SLP filed by the Revenue. [S. 132, 143(3)]

High Court held that Assessing Officer while passing order under section 153A read with section 143(3), cannot disturb assessment/reassessment order which has attained finality, unless materials gathered in course of proceedings establish that finalized assessments are contrary to material unearthed during course of section 153A proceedings. Notice is issued in SLP filed by the Revenue.

PCIT (Central) v. Delhi International Airport (P.) Ltd. (2023) 292 Taxman 4 (SC)

Editorial : PCIT v. Delhi International Airport (P.) Ltd (2022) 443 ITR 382 / 140 taxmann.com 440 (Karn)(HC)

S. 153A : Assessment-Search-No search warrant against assessee-Order of Tribunal is affirmed-Matter is remanded to the Tribunal only for determining the factual aspect of the existence of a valid search warrant.[S. 132]

Dismissing the appeal of the Revenue the Court held that if there is no search warrant against the assessee the order is bad in law. Matter is remanded to the Tribunal only for determining the factual aspect of the existence of a valid search warrant. (AY. 2000-001 to 2006-07)

CIT v. Siksha 'O' Anusudhana (2023) 333 CTR 770 (Orissa) (HC)

S. 153A : Assessment-Search-Cash credits-Furnished all documents and had explained source of credit in its original return,-Deletion of additions by the Tribunal is affirmed. [S. 68, 260A]

Dismissing the appeal of the Revenue the Court held that the department was unable to point out any material unearthed during course of search which would show that advances in question were not genuine. Order of Tribunal deleting the addition is affirmed. (AY. 2008-09)

PCIT v. Gangol Vincom (P.) Ltd. (2023) 332 CTR 854 / 225 CTR 262/ 148 taxmann.com 126 (Orissa)(HC)

S. 153A : Assessment-Search-Limitation-Computation Of Limitation Period-Extension Of Time Limits By 2020 Act-Interim protections granted in writ petitions for certain assessment years Assessment orders for assessment years 2011-12, 2012-13 and 2019-20

are barred by Limitation-Orders set aside. [S. 132, 143(3), 153A, 153B, 271(1)(c), 271B, Taxation And Other Laws (Relaxation And Amendment Of Certain Provisions) Act, 2020, S. 3]

Held that the date of search was on July 5, 2018, and the limitation for completion of assessment for the assessment years 2013-14 to 2018-19 being 18 months under section 153B commencing from April 1, 2019, the end of the financial year when the last of the search authorisations was executed ended by September 30, 2021, i. e., 18 months or 549 days. On the date of grant of stay first by the court, i. e., on December 18, 2019, time of 288 days remained. After the dismissal of the writ petitions on March 17, 2021, appeals were filed and a stay was granted for a period of 53 days from April 15, 2021 to June 7, 2021. The orders of assessment dated January 28, 2022 relied upon the extension under the 2020 Act of one year from September 30, 2020 to September 30, 2021. The last date for completion of assessment as prescribed by section 153B being within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed fell on September 30, 2020 which was within the limitation as stipulated in the 2020 Act and extended to September 30, 2021 by virtue of subsequent notifications. The extension, by taking benefit of the period of interim protection would follow only thereafter and the date stood extended by 16 months and 24 days to April 20, 2023. Therefore, the orders of assessment passed on January 29, 2022 were within prescribed time. The assessment orders passed under section 143(3) read with section 153A and the penalty orders under sections 271(1)(c) and 271B dated January 27, 2022 for the assessment years 2013-14 to 2018-19 were confirmed. The assessee was permitted to file statutory appeals on the merits and such appeals, if filed within the time prescribed by the court should be entertained by the appellate authority without reference to limitation but ensuring compliance with all other statutory requirements. For the assessment years 2011-12, 2012-13 and 2019-20 since no writ petitions were filed by the assessee the question of any period available thereafter to the Department did not arise. Therefore, applying the limitation prescribed under section 153B, the date for statutory time limit for assessment expired on September 30, 2020, though extended up to September 30, 2021 by virtue of the 2020 Act and subsequent extensions. Hence, the last date for completion of assessments for the assessment year 2011-12, 2012-13 and 2019-20 being September 30, 2021, the assessment orders dated January 29, 22, were barred by limitation. That clause (xi) of the Explanation to section 153B inserted with effect from April 1, 2021 being a substantive provision related to exclusion of the period taken for handing over seized material to the Assessing Officer operated prospectively. Hence, the benefit of the exclusion under that clause was not available to the Department. That therefore, the notices under section 153A, the assessment orders under section 143(3) read with section 153A dated January 28, 2022 and the penalty orders under sections 271(1)(c) and 271B dated January 27, 2022 for the assessment years 2011-12, 2012-13 and 2019-20 were set aside.(AY.2011-12 to 2019-20)

Agni Estates And Foundations Pvt. Ltd. v. Dy. CIT (2023)459 ITR 44 /157 taxmann.com 312 (Mad)(HC)

S. 153A : Assessment-Search-No incriminating material found during search-Statement recorded under Section 132(4) does not constitute incriminating material-Completed assessment-Addition is not valid. [S. 132, 132(4)]

Dismissing the appeal the Court held that on the date of search, admittedly, the assessment with respect to the assessment year under consideration 2011-12 admittedly stood completed. Since no assessment was pending for the relevant assessment year 2011-12 on the date of

search and no incriminating material was found during the course of search, the addition under section 153A of the Act was not valid.(AY.2011-12)
PCIT v. Kavita Agarwal (MS.) (2022) 143 taxmann.com 404 / (2023)457 ITR 112 (Delhi)(HC)

S. 153A : Assessment-Search-Undisclosed income-Loose paper-Addition is not valid. [S. 132]
Dismissing the appeal of the Revenue the Court held that the Tribunal which on examination of the material on record and the remand report submitted by the Assessing Officer, had held that the loose paper was not sufficient basis to make additions. In view of the factual matrix concurrently held by both fact finding authorities, the deletion of the addition was justified.(AY.2011-12)

PCIT v. Plama Developers Ltd. (2023)456 ITR 45 /151 taxmann.com 147 (Karn)(HC)

S. 153A : Assessment-Search-No incriminating material was found during search-Original assessment completed-Order is not valid. [S. 132]
Held that no incriminating material was found during the search conducted. Order is not valid. (AY.2000-01 to 2003-04)
PCIT v. PGF Ltd. (2023)457 ITR 607 /156 taxmann.com 24 (Delhi) (HC)

S. 153A : Assessment-Search-Statement made during search has evidentiary value but by itself cannot be basis for assessment-Assessment completed before search-No incriminating material was found-Distinction between scrutiny assessment under section 143() and summary assessment under section 143(1) is irrelevant for the purpose of section 153A-Addition is not justified-Question of fact. [S. 132,132(4), 143(1), 143(3), 260A]
Dismissing the appeal of the Revenue the Court held that the Assessing Officer had merely relied upon the documents seized during the course of search for the financial years 2010-11 and 2011-12 even when the present batch of cases pertained to the assessment years 2005-06 to 2009-10. The Tribunal was right in concurring with the view of the Commissioner (Appeals) that no addition could be made on the basis of the documents found during the course of search pertaining to different assessment years. No substantial question of law arose from the order. Court also held that statement made during search has evidentiary value but by itself cannot be basis for assessment. On facts the assessment completed before search and no incriminating material was found during search hence the deletion of addition is valid. Court also held that distinction between scrutiny assessment under section 143() and summary assessment under section 143(1) is irrelevant for the purpose of section 153A.(AY.2005-06 to 2009-10)
PCIT v. Pilot Industries Ltd. (2023)457 ITR 437/146 taxmann.com 233 (Delhi)(HC)
Editorial : Order in DCIT v.Pilot Industries Ltd(2022) 27 ITR (Trib)-OL 467 (Delhi), affirmed

S. 153A : Assessment-Search-Industrial undertakings-Original assessment completed-No incriminating material was found-Disallowance of deduction under section 80IA is not valid. [S. 80IA(4), 132, 260A]
Dismissing the appeal of the Revenue the Court held that since no incriminating material was found during search, no addition could have been made to income of assessee which was already assessed. Relied on PCIT v. Abhisar Buildwell (P.) Ltd. [2023] 293 Taxman 141/454 ITR 212 (SC). (AY. 2005-06, 2006-07)

PCIT v. Backbone Projects Ltd. (2023) 457 ITR 50 /295 Taxman 54 (Guj.)(HC)

S. 153A : Assessment-Search or requisition-Completed assessment/unabated assessment-No incriminating material is found-Deletion of addition by the Tribunal is affirmed.[S. 132]

Dismissing the appeal of the Revenue the Court held that in respect of completed assessment/unabated assessment where no incriminating material is found, deletion of addition by the Tribunal is affirmed. (AY. 2012-13)

PCIT (Central) v. Birju Chhotalal Shah (2023) 295 Taxman 357 (Guj.)(HC)

S. 153A : Assessment-Search-Assessment attained finality-No incriminating material is found-Order of Tribunal is affirmed. [S. 68, 132,260A]

Dismissing the appeal of the Revenue the Court held that since no incriminating material was found during course of search with regard to issue of addition made in assessment order, no addition could be made in respect of completed assessment. (AY. 2008-09)

ACIT v. Saluja Construction Co. Ltd. (2023) 295 Taxman 529 (Delhi)(HC)

S. 153A : Assessment-Search-Non-abated assessment-No incriminating material is found-Order of Tribunal is affirmed. [S. 132,260A]

Dismissing the appeal of the Revenue the Court held that assessment attained finality when no incriminating material is found. Order of Tribunal is affirmed.

PCIT v. LKG Builders (P) Ltd (2023) 154 Taxman.com 188 (Delhi) (HC)

Editorial : PCIT (Central) v. King Buildcon (P.) Ltd. (2023) 295 Taxman 413 (SC)

S. 153A : Assessment-Search-No incriminating material found during search-Assessment finalised prior to search-Addition is not valid. [S. 260A]

Dismissing the appeal of the Revenue the Court held that the Commissioner (Appeals) and the Tribunal had given concurrent findings of fact that no incriminating material had been found during the search. The Tribunal also recorded that the case of the assessee was one of non-abated assessment. In fact, the Assessing Officer in his remand report filed before the Commissioner (Appeals) admitted that no documents were found or seized during the course of search nor was there any admission by the assessee. The addition under section 153A was not valid.(AY.2009-10)

PCIT v. S. P. Singla Construction Pvt. Ltd. (2023)455 ITR 745/153 taxmann.com 688 (Delhi)(HC)

S. 153A : Assessment-Search-Block assessment-Non-abated assessments-No incriminating materials was found-Addition cannot be made. [S. 132]

Dismissing the appeal of the Revenue the Court held that the assessments having been completed prior to the date of search and no incriminating documents or materials having been found and seized from the assessee at the time of search no addition could be made thereunder since they were non-abated assessments. Followed, CIT v. Kabul Chawla (2016) 380 ITR 573 (Delhi)(HC)

PCIT v. LKG Builders Pvt. Ltd. (2023)455 ITR 520 (Delhi)(HC)

Editorial : Affirmed PCIT v.Abhisar Buildwell P. Ltd (2023)454 ITR 212 (SC)/ PCIT v. v King Buildcon Pvt. Ltd. (2023)456 ITR 770/295 Taxman 413 (SC)

S. 153A : Assessment-Search-No incriminating material found Assessment completed on date of search-Addition cannot be made. [S. 132]

Allowing the appeal the Court held that the Tribunal was not justified in reversing the order of the Commissioner (Appeals) setting aside the order under section 153A when there did not

exist any incriminating material found during the search under section 132 for issuing notice under section 153A. Hence the order of the Tribunal was set aside and the order of the Commissioner (Appeals) was restored.
S. M. Kamal Pasha v. Dy. CIT (2023)454 ITR 157 (Karn)(HC)

S. 153A : Assessment-Search-No incriminating material was found-Share capital-Investor companies had ample funds to make investment in share capital-Opportunity of cross examination was not provided-Deletion of the addition was affirmed.[S. 68, 260A]
A search was conducted at premises of assessee-company wherein certain share certificates were found which showed that certain companies had invested in shares of assessee's group of companies including assessee-Further, based on statement of one third party, Mr.Rajesh Agarwal the Assessing Officer held allotment of shares to investor companies as bogus and made addition under section 68 of the Act. Commissioner (Appeals) and Tribunal had given concurrent findings of fact that no incriminating material had been found during search and brought on record by Assessing Officer to sustain additions. On appeal the Court held that no incriminating material had been brought on record by Assessing Officer and said parties had filed detailed replies in response to section 133(6) notices along with requisite details as required by Assessing Officer and moreover, investor companies had sufficient net worth to make investment in assessee's group of companies, said share certificates could not be treated as incriminating.Further since assessees were denied opportunity to cross-examine Rajesh Agarwal despite a specific request, said statement needed to be excluded and could not be relied upon as a piece of evidence to make any addition. AY. 2008-09 to 2011-12)
PCIT v. JPM Tools Ltd (2023) 154 taxmann.com 44 (Delhi)(HC)
Editorial : SLP of Revenue is dismissed, PCIT v. Jay Ace Technologies Ltd. (2023) 294 Taxman 602 (SC)

S. 153A : Assessment-Search-Alleged bogus long-term capital gains-No incriminating material-assessments cannot be substantiated.[S. 45, 68, 69C, 132]
A search was conducted at the premises of the Assessee. Subsequent to the search, the AO passed an assessment order under section 143 r.w.s 153A and made additions under sections 68 and 69C on account of alleged bogus long-term capital gains. However, the CIT(A) and the Tribunal held that no incriminating material was found in the premises of the Assessee.
Referring to the decision of the Supreme Court in the case of PCIT v. Abhisar Buildwell P. Ltd (2023) 454 ITR 212(SC), the Court emphasized that the jurisdiction of the AO to make an assessment is confined to the incriminating materials found during the course of the search under section 132. In the absence of any incriminating material found during the search, the assessments could not be substantiated. Therefore, the Court concluded that there was no substantial question of law, and the appeal was dismissed.
PCIT *v.* Rajesh Mohanbhai Patel (2023) 294 Taxman 279 (Guj)(HC)

S. 153A : Assessment-Search-Ledge account-Not incriminating material-Unabated and concluded assessment u/s 143(1)-Failure to deduct tax at source-No disallowance can be made. [S. 10 (26),40(a)(ia), 132, 143(1)]
Dismissing the appeal of the Revenue the Court held that the Tribunal was justified in deleting the disallowance of Rs. 15.46 crores made under section 40(*a*)(*ia*) by holding that the assessment order under section 143(1) is concluded and unabated and it cannot be disturbed as the copy of ledger account of subcontractor expenditure seized during the search does not constitute incriminating material. No substantial question of law. (AY. 2011-12)

PCIT v. Shyama Power India Ltd. (2023) 294 Taxman 652 /(2024) 461 ITR 350(Gauhati)(HC)

S. 153A : Assessment-Search-Ledge account-Not incriminating material-Unabated and concluded assessment-Addition cannot be made. [S. 132, 143(3), 153A(1)(b)]
Dismissing the appeal of the Revenue the Court held that no addition can be made in respect of completed/ unabated assessment in absence of any incriminating material found in search. Followed, PCIT v. Abhisar Buildwell (P.) Ltd. [2023] 454 ITR 212 (SC) (AY. 2008-09)
PCIT v. Kutch Salt and Allied Industries Ltd. (2023) 457 ITR 44 / 294 Taxman 124 (Guj.)(HC)

S. 153A : Assessment-Search-No incriminating material-Unabated assessments-No addition can be made-Order of Tribunal is affirmed. [S. 132, Art.226]
Dismissing the appeal of the Revenue the Court held that no addition can be made in respect of unabated assessments which have become final if no incriminating material is found during search. Followed, CIT v. Continental Warehousing Corporation (Nhava Sheva) Ltd (2015) 374 ITR 645/ 232 Taxman 270 (Bom)(HC)
PCIT v. Saroj Sudhir Kothari (2023) 154 taxmann.com 359 (Bom)(HC)
Editorial : SLP of Revenue, dismissed, PCIT v. Saroj Sudhir Kothari (2023) 294 Taxman 598 (SC)

S. 153A : Assessment-Search-Assessment orders were passed without giving reasons as to why department had not granted specific time despite petitioner's specific request-Assessment orders were quashed and matters to be remanded back to department for fresh consideration.[S. 143(3), 153B, Art. 226]
Petitioner received a show cause notice wherein assessee was directed to submit details and produce documents mentioned therein. Petitioner had sought for two weeks' time to furnish required details since documents/records sought for were voluminous in nature. Department had passed assessment orders without considering petitioner's objections due to period of limitation. On writ the Court held that why department had not granted specific time despite petitioner's specific request and, consequently, petitioner was not in a position to take further steps with regard to such decision taken, department had violated principles of natural justice. Accordingly the assessment orders were quashed and matters to be remanded back to department for fresh consideration. (AY. 2019-20, 2020-21)
KPL Assets LLP v. ACIT (2023) 293 Taxman 474 (Mad.)(HC)
S. 153A : Assessment-Search or requisition-No incriminating material was found-Deletion of addition by the Tribunal was justified. [S. 132, 69B]
Dismissing the appeal of the Revenue the Court held that the Tribunal, upon the appreciation of documents on record, concluded that documents referred to by the Assessing Officer as 'incriminating' were admittedly not found from the address of assessee. The order of Tribunal was affirmed. (AY. 2010-11)
PCIT v. Suman Agarwal (2023) 290 Taxman 301 (Delhi)(HC)

S. 153A : Assessment-Search or requisition-Sanction of prescribed authority-Mechanical sanction-Assessing officer passing draft assessment order and on same day approving authority granting approval for 123 assessees-impossible for a person to apply his mind on all cases for all in a single day-Approval is illegal and non est.[S. 132, 153D, 260A]
Pursuant to a search and seizure under section 132 the Assessing Officer passed an order.On appeal the Tribunal found that the draft assessment orders under section 153D were placed

for approval on December 31, 2017 and that the Additional Commissioner on the same day had granted approval under section 153D in the cases of 123 assessees which included the three cases of the assessee. The Tribunal held that it was humanly impossible for the approving authority to peruse the material based on which the draft assessment orders were passed and that therefore, the approving authority had granted approval under section 153D in a mechanical manner which vitiated the entire proceedings. On appeal dismissing the appeal, that the draft assessment orders under section 153A in the cases of 123 assessees placed before the approving authority on December 30, 2017 and December 31, 2017 were approved under section 153D on December 31, 2017, which not only included the cases of the assessee but the cases of other groups as well. It was humanly impossible to go through the records of 123 cases in one day to apply independent mind to appraise the material before the approving authority. The conclusion drawn by the Tribunal that it was a mechanical exercise of power by the approving authority was not perverse or contrary to the material on record. No question of law arose. (AY. 2013-14, 2015-16, 2016-17)
PCIT v. Siddarth Gupta (2023) 450 ITR 534/ 330 CTR 295 (All)(HC)

S. 153A : Assessment-Search or requisition-Sanction non application of mind-Prior approval of prescribed authority in respect of each assessment year is mandatory-Sanction of prescribed authority for 38 cases granted on single day-Assessing officer passing draft assessment order and final assessment order on same day of approval-Approval illegal and non est-Order of Tribunal was up held.[S. 132, 153D, 260A]
Dismissing the appeal of the Revenue the Court held that the approving authority under section 153D had exercised his power mechanically which vitiated the entire proceedings under section 153A and that it was humanly impossible for the approving authority to peruse and apply his independent mind to appraise the material in one day in respect of 38 assessees including that of the assessee based on which the draft assessment order was passed. The submission of the Department that the grant of approval was an administrative exercise of power on the part of the approving authority and that the approval was in existence on the date of the passing of the assessment order and hence it could not be vitiated was a fallacy since the prior approval of superior authority meant that he had appraised the material before him so as to appreciate the factual and legal aspects to ascertain that the entire material had been examined by the assessing authority before preparing the draft assessment order. The appeal was devoid of merit. No question of law arose. (AY-2015-16)
PCIT v. Subodh Agarwal (2023) 450 ITR 526 (All)(HC)
S. 153A : Assessment-Search or requisition-Order was not barred by limitation-Seized material was handed on 27-8-2019-Writ petition was dismissed-Directed to pursue alternative remedy. [S. 153C(2) Art. 226]
The time frame for framing an assessment in terms of section 153C has been fixed bearing in mind the practical consideration that assimilation of materials relating to third person to whom those assessment relates, is bound to take some time. More often than not, it is only upon competition of the primary assessment (Under section 153A)) that the Assessing Officer eve comes to a reasoned conclusion as to whether proceedings are to be initiated against such a person or not. Seized material was handed over on 27-8 2019 hence the order is not barred by limitation Writ petition was dismissed-Directed to pursue alternative remedy (AY.2015-2016)
Savithri Naidu v. ACIT (2023) 330 CTR 200 / 212 DTR 462 (Mad)(HC)

S. 153A : Assessment-Search-No incriminating material is found-Addition is not justified.[S. 132]
Held that no incriminating material is found,addition is not justified. (AY. 2006-07 to 2012-13)

Dy.CIT v. Mahavir Ashok Enterprises (P) Ltd (2023) 223 TTJ 947 (Raipur)(Trib)

S. 153A : Assessment-Search-Limitation-Dispatch entry is absence in the assessment folder-Assessment order passed on a subsequent date is barred by limitation.[S. 142(1), 153B]

Held that the assessee has responded to the notice u/s 142(1) on the evening of 31 st March, 2015 as evident for the order-sheet entry. It cannot be presumed that the order was passed on 31st March, 2015 it.self.i.e. the date of expiry of limitation as claimed by the Revenue. Tribunal held that dispatch entry is absence in the assessment folder. Assessment order passed on a subsequent date is barred by limitation. (AY. 2007-08 to 2012-13)

Bibhudutta Panda v.ACIT (2023) 222 TTJ 273 (Cuttack)(Trib)

S. 153A : Assessment-Search-Issue of notice under section. 143(2)-No pendency of assessment-Not a mandatory requirement for making assessment under section 153A-Sundry creditors-Returned after search action-Deletion of addition by CIT(A) is not valid-Matter remanded to the Assessing Officer. [S. 68, 143(2)]

Held that section 153A gets triggered in case of search, assessments have to be made mandatorily by Assessing Officer.Since section 153A contains non obstante clause qua section 147 consequential requirement of issuing notice under section 143(2) before making assessment under section 147, would also not be warranted for completing assessment under section 153A. Thus, issuance of notice under section 143(2) is not a mandatory jurisdictional requirement for making assessment under section 153A so as to render assessment order null and void in its absence. There would be no legal impediment in making an addition, otherwise than on basis of any incriminating material found during search, in an assessment under section 153A for relevant year whose assessment was not pending on date of search. During assessment proceedings, Assessing Officer observed that assessee had shown sundry creditor with substantial amount. He thus, held that amount shown as sundry creditors was to be treated as unexplained as assessee failed to explain genuineness of transaction. Assessee contended that amount was received from creditor for sale of land, however, sale did not materialize and said amount was returned. Commissioner (Appeals) deleted additions on ground that no incriminating documents were found during search that would have bearing on additions. Accountant member held that the assessee had not submitted copies of bank statements and amount was claimed to be returned after a gap of three years that too after search. Since burden laid on assessee was not satisfied, Commissioner (Appeals) was not justified in deleting additions and matter was to be restored to Assessing Officer. [Matter remanded. (AY. 2011-12)

Asst. CIT v.Sunshine Infraestate (P.) Ltd [2022] 139 taxmann.com 60 / 221 TTJ 929 (TM) (All)(Trib.)

S. 153A : Assessment-Search-Limitation-Panchnama-No seizure of books of account or document-Panchnama was drawn only for removal of restraint order under section. 132(3)-Assessment order is barred by limitation. [S. 132, 132(3) 153B]

No books of account and documents were seized on 6-8-2020. It is also stated that the search commenced on 6-8-2020 on 11.00 AM and closed on 6-8-2020 at 2.00 PM. Further from the Panchnama where the parties offered for their personal search before the commencement of the search, was declined by the search party. Therefore, effectively no search was conducted on 6-8-2020 as per the Panchnama, dated 6-8-2020. In the absence of any seizure on 6-8-2020 by the search party it can only be considered for the purpose of removal of the restraint order and not as continuation of the search proceedings under the same authorization. Prohibitory order passed by the search party u/s. 132(3) by placing certain loose sheets

cannot be considered as impracticable for seizure which requires a restraint order u/s. 132(3) of the Act. Hence, the period of limitation for the purpose of passing the assessment order commences from 31-1-2020 and should have been completed on or before 31-3-2021 which was further extended by Taxation and Other Laws Amendment (TOLA) to 30thSeptember, 2021. Therefore, in the present case, the assessment order ought to have been passed on or before 30-9-2021 wherein it was passed on 31-3-2022. Accordingly barred by limitation. (AY. 2012-13 to 2020-21)

Polisetty Somasundaram v. Dy. CIT (2023) 153 taxmann.com 591 / 226 TTJ 01 (Visakha)(Trib.)

S. 153A : Assessment-Search-Pendrive-Investigation agency only obtained a certificate about details of pen drive and person in whose custody it was seized and except those details nothing was there in certificate-Certificate was not completely filled up by revenue authorities-Four conditions stipulated in section 65B(2) i.e., (a) to (d) along with section 65B(4) of Indian Evidence Act, 1872 were not followed while obtaining certificate-Certificate is not a valid certificate in eyes of law-Pendrive could not be considered as admissible evidence as per provisions of section 65B of Indian Evidence Act. [S. 132, Indian Evidence, Act 1872, S. 65B(2), 65B(4)]

Pursuant to a search operation, carried at premises of assessee, a pendrive was seized from cashier of assessee.Assessee raised concerns regarding manner in which pendrive was seized from his cashier.The assessee contended that four conditions stipulated in section 65B(2) i.e., (a) to (d) along with section 65B(4) of Indian Evidence Act, 1872 were to be followed while obtaining Certificate under section 65B and it was mandatory. Tribunal held that from records that investigation agency obtained a certificate about details of pendrive and person in whose custody it was seized and except those details nothing was there in certificate and also said certificate was not completely filled up by revenue authorities Whether in view of said facts, it could be said that four conditions stipulated in section 65B(2) i.e., (a) to (d) along with section 65B(4) were not followed by investigating agency while obtaining certificate under section 65B of Indian Evidence Act, 1872 and therefore, this certificate was not a valid certificate as prescribed under Indian Evidence Act, 1872 and could not be enforced. Further information contained in seized pendrive could not be considered as admissible evidence as per provisions of section 65B of Indian Evidence Act and therefore, such inadmissible seized material was not sustainable in eyes of law and thus, assessment order passed in case of assessee was not a valid assessment order and it deserved to be set aside (AY. 2012-13 to 2020-21)

Polisetty Somasundaram v. Dy. CIT (2023) 153 taxmann.com 591 / 226 TTJ 01 (Visakha)(Trib.)

S. 153A : Assessment-Search-On money-Contents of the WhatsApp amongst partners-Statement of partner-Huge gap between date of communication and sale of flats-Deletion of addition is affirmed-Undisclosed income-On money-addition is sustained to the extent of 10 percent of on-money.[S. 132]

Held that merely on the basis of contents of the WhatsApp amongst partners and statement of partner addition is not justified when there is huge gap between date of communication and sale of flats. Order of CIT(A) deletion of addition is affirmed. As regards addition as undisclosed income in respect of on money, addition is sustained to the extent of 10 percent of on-money. (AY. 2014-15 to 2016-17)

ACIT v. Kush Corporation (2023) 226 TTJ 55 (UO) (Surat)(Trib)

S. 153A : Assessment-Search-Document found in the course of search-Presumption cannot be extended to material found at the place of somebody else-Assessment should have been under section 153C and not under section 153A-Undisclosed income-No incriminating material-Deletion of addition is affirmed. [S. 132(4), 153C]

Held that document found in the course of search,resumption cannot be extended to material found at the place of somebody else Assessment should have been under section 153C and not under section 153A. Held that CIT(A) has given finding that no incriminating material during the search additions made is deleted. (AY. 2011-12)

ACIT v. Atul Kumar Gupta (2023) 225 TTJ 431 (Delhi)(Trib)

S. 153A : Assessment-Search-Document Identification Number (DIN)-Assessment can be said to be made only when DIN is quoted on order before it is signed-DIN was not signed before assessment order is signed-Order is non-est-Service of incomplete assessment order on ITBA may be a case of non-service of order; assessment order does not become void for that reason. [S. 143(3), 153]

Held that the assessment can be said to be made only when DIN is quoted on order before it is signed, if without first generating DIN and before it is quoted on order, order is signed, order is non-est.Generation of DIN subsequently and generation of intimation to be sent to assessee are of no consequence for purpose of assessment and raising demand. service of incomplete assessment order on ITBA may be case of non-service of order and as for purpose of filing appeal only it may be relevant, assessment order does not become void for that reason.Once order is complete in all respects and within prescribed period, actual service of order may be beyond period and that will only give rise to question of start of limitation period for challenging it but that does not invalidate order itself. (AY. 2013-14)

Abhimanyu Chaturvedi v. Dy.CIT(2023) 225 TTJ 313/ [2024] 159 taxmann.com 445 (Delhi)(Trib)

S. 153A : Assessment-Search-Abated assessment-Addition is justified though no incriminating material is found.[S. 132]

Held that in respect of abated assessment, addition is justified though no incriminating material is found. (AY. 2011-12, to 2013-14)

Dy.CIT v. Devi Iron & Power (P) Ltd (2023) 224 TTJ 59 (Raipur)(Trib)

S. 153A : Assessment-Search-Satisfaction-Computation of six. Assessment years-Absence of notice under section 153C-Actual date of receipts of books of account-Non issue of notice under section 153C-Within period of six assessment years-Not procedural irregularity-Jurisdictional illegality-Not curable provision. [S. 132 143(3) 153C, 292B]

Search action was held on 29 th July 2016.Date of satisfaction note.i.e. 18 th September, 1018 or actual date of receipt of books of account by the assesee's AO on.ie. 7 th July 2017 is taken as the date of receipt of books of accounts / documents the relevant assessment years 2016-17 and 2017-18 fell within the period of six assessment years covered by S.153C and consequently, the assessment framed by the Assessing Officer under section 143(3) without issuing notice under section 153C for the assessment years was ab initio void, lapse on the AO's part of not issuing notice under section 153C was not mere procedural irregularity, but jurisdictional illegality which is not curable by the provisions S. 292B. (AY. 2016-17)

ACIT v. Dr. D.Y.Patil Education Society (2023) 224 TTJ 345 (Mum)(Trib)

S. 153C : Assessment-Income of any other person-Search-Undisclosed income-Ikarnama (Agreement)-Matter remanded to the Assessing Officer. [S. 68]

Held that the Revenue has found Ikarnama (Agreement) to sell the ancestral property with hand written jotting of receipt of cash and his signature, it cannot be assumed that the addition was made on the basis of presumptions.Matter is remanded to the file of the Assessing Officer for verification and decide accordingly. (AY. 2011-12, 2012-13)
Late Shtrinath Tandon Through L/H Smt. Anju Tandon v. ITO (2023) 226 TTJ 9 (UO) (Jabalpur)(Trib)

S. 153A : Assessment-Search-Unabated assessment-No incriminating material was found-Addition merely on basis of book entries already disclosed to Department is unsustainable-Warrant of authorisation issued and panchnama drawn-Cannot be said that no search has been conducted. [S. 132, 133A, 153C]
Held that when no incriminating material was found,addition cannot be made merely on basis of book entries already disclosed to Department. Tribunal also held that when a warrant of authorisation had been issued in the name of the assessee and a panchnama had also been duly drawn. Hence, it could not be said that no search had been conducted. The Commissioner (Appeals) had fallen into error to that extent..(AY.2009-10, 2011-12, 2012-13)
ACIT v.N. M. Industries P. Ltd (2023)108 ITR 618 (Trib)(Delhi)(Trib)
ACIT v Mohit Nidhi Agro Oil P. Ltd. (2023)108 ITR 618 (Trib)(Delhi)(Trib)

S. 153A : Assessment-Search-Information in Annual Information return is not incriminating material-Addition is deleted.[S. 5, 50C, 132]
Held that Information in Annual Information return is not incriminating material hence the addition is deleted. *(*AY.2009-10, 2011-12 to 2015-16)
Pravinchandra R. Patel v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)
Ansuben P.Patel (Smt) v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)
Neothech Education Foundation v. Dy. CIT (2023)107 ITR 34 (SN)(Ahd) (Trib)

S. 153A : Assessment-Search-No incriminating material found in search-Alleged bogus long-term capital gains-Amalgamation approved by High Court-No evidence to prove transactions were bogus-Addition is deleted-No search on assessee-No assessment order could have been passed. [S. 10(38) 132, 133A]
Held that the issue was whether capital gains earned by the assessees were to be treated as a genuine. In response to show-cause notices, the assessees submitted detailed evidence. In scrutiny cases of the sale of shares in company T, the gain earned by the assessee was accepted as a genuine by the Department itself. Out of those cases, two were in reassessment under section 147 of the Act and these assessment orders were framed after more than one year of the search. Therefore, the Department was not doubting the genuineness of the transactions. The Department was not in possession of any details which would authorise it to doubt the claim made by the assessees. Therefore, on the merits too, no addition was sustainable. In respect of one of the assessees, no search was carried out as his name was not available on the panchnama. Even the appearance of the assessee's name on the warrant of authorisation for a search would not suffice to say that a search was conducted on him. Therefore, no order under section 153A could have been passed..(AY.2012-13, 2013-14, 2015-16)
Dy. CIT v. Bajrang Lal Bamalwa (2023)107 ITR 130 (Kol) (Trib)

S. 153A : Assessment-Search-Statements of key person and documents found during search-Not constituting incriminating material-Additions made on presumptions and conjectures-Deleted-Undisclosed source-Estimation of profit-Unrecorded sales-No infirmity in books of account-Addition on account of

Held that the entire basis for the Assessing Officer was presumption and conjectures and the addition, therefore, was not justified, particularly in the absence of any incriminating material. The Commissioner (Appeals) was correct in holding that the addition on account of undisclosed sale receipts was totally unjustified. Held that the Commissioner (Appeals) and the Tribunal had found no infirmity in the assessee's books of account and all additions made by the Assessing Officer on account of unsecured loans and unaccounted sales had been deleted. In the absence of any infirmity, there was no reason to reject the book results and make an estimation of the net profit rate. Accordingly, the addition made on account of the net profit was directed to be deleted.(AY. 2012-13 to 2014-15)

Dy. CIT v. Heaven Associates (2023)105 ITR 186/ 154 taxmann.com 595 154 taxmann.com 595 (Ahd) (Trib)

S. 153A : Assessment-Search-Original assessments completed prior to date of search-No incriminating material is found-Assessment is bad in law. [S. 36(1)(iii), 143(3)]

Held that where the assessment is completed before the date of search and no incriminating materials are found assessment is held to be bad in law.(AY. 2015-16 to 2018-19)

Aurum Platz P. Ltd. v. Dy. CIT (2023)105 ITR 615 / 225 TTJ 771 / 152 taxmann.com 85 (Mum) (Trib)

S. 153A : Assessment-Search-Cash credits-Return processed under section 143(1)-Share application money-Information available before the date of search-No incriminating material-Assessment is bad in law-Statement recorded by Investigation Agencies-Opportunity of cross examination. is not given-Assessments not sustainable-Share application moneys-Merger-Amalgamation-No inquiry could be made in hands of assessees Qua antecedents of merged companies-Additions are not sustainable. [S. 68, 143(1), 143(2)]

Held that return was processed under section 143(1). No incriminating material was found.Addition id bad in law. As regards statement recorded by Investigation Agencies, opportunity of cross examination is not given, addition cannot be made merely on the basis of statement. Assessments not sustainable-Share application moneys. Followed PCIT v**..** Abhisar Buildwell P. Ltd (2023) 454 ITR 212 (SC). Andaman Timber Industries v. CCE (2016) 38 GSTR 117 (SC). Tribunal held that two of the assessee-companies had merged and the National Company Law Tribunal had amalgamated all these companies with effect from April 1, 2017. The assessee has demonstrated that in the previous year relevant to the AY. 2018-19 neither assessee had raised any share capital money. Whatever action has done in the past by their share applicants could not be investigated in the hands of the assessee after amalgamation. Therefore, in view of the National Company Law Tribunal's decision on the amalgamation petition, no inquiry could be made in the hands of both these assessees qua the antecedents of the merged companies. The additions were not sustainable.(AY. 2012-13 to 2014-15, 2018-19)

Dy. CIT v. Bakshiram Uderam Holdings P. Ltd 2023)105 ITR 220 (Kol)(Trib)
Dy.CIT v. Narsingh Ispat Ltd. (2023)105 ITR 220 (Kol)(Trib)
Dy.CIT v. Narsingh Ispat Udyog P. Ltd. (2023)105 ITR 220 (Kol)(Trib)

S. 153A : Assessment-Search-Credit card payments-Unexplained investments-No incriminating material found in search-Deletion of addition by CIT(A) is affirmed-Income of any other person-Presumption as to books of account and articles or things could not be extended to material of different person.[S. 69, 132, 132(4A), 153C]

Held that when there is no incriminating material, the addition with regard to credit card payments was unsustainable. Tribunal also held that in the case of the other assessee, the

addition was made under section 153A of the Act on the basis of documents found in a separate search on the other individual. Hence, the plea of the assessee that the assessment should have been made under section 153C of the Act and not under section 153A was quite correct. Material found at the premises of the other individual was taken as if it was material found during search of the assessee which was not at all correct. Hence, the very basis of the addition was missing. The assessment was made under section 153A and not under section 153C of the Act, which was a fatal error which was not curable. The presumption under section 132(4A) could not be extended to material found at somebody else's place. Without corroborating documents, these could not be linked to the assessee. The assessee's name was nowhere directly mentioned in these documents found at the other individual's place whereas it was mentioned as Dildar (Atul sir) which ipso facto could not mean the assessee. The order of the Commissioner (Appeals) was set aside and the additions was deleted. (AY.2011-12, 2014-15 to 2016-17)

ACIT v.Atul Kumar Gupta (2023)103 ITR 13 /225 TTJ 431/ 152 taxmann.com 99 (Delhi)(Trib)

ACIT v. Rajiv Gupta (2023)103 ITR 13 /225 TTJ 431// 152 taxmann.com 99 (Delhi)(Trib)

S. 153A : Assessment-Search-Cash Credits-No incriminating material found during search-Unabated assessment-Additions not sustainable. [S. 68]

Held that it was undisputed that no incriminating material was found during search and this was an unabated assessment. Hence, the addition was not sustainable. (AY. 2006-07)

ACIT v. Paramount Probuild Pvt. Ltd. (2023)101 ITR 36 (SN) (Delhi) (Trib)

S. 153A : Assessment-Search-No addition can be made in case of completed or abated assessments in absence of incriminating material.[S. 68, 132]

Tribunal held that no addition can be made in case of completed or abated assessments in absence of incriminating material. Relied on CIT vv. *Continental Warehousing Corporation Ltd. (2015) 374 ITR 645 (Bom)(HC) and CIT v. Gurinder Singh Bawa (*2016] 386 ITR 483/ (2017) *70 taxmann.com 398 (Bom)(HC)* where in it was categorically held that when the assessments are abated (concluded) as on the date of search, the addition in such assessments has to be restricted only to the incriminating material found during the search proceedings. In the case of the assessee, the time limit to issue notice u/s. 143(2) was passed as on the date of search and therefore the assessments were considered to be abated. The ITAT also referred and relied upon the recent decision of Supreme Court in case of PCIT v. Abhisar Buildwell P Ltd (2023] 294 Taxman 70 (SC) wherein the Apex Court held that it is in complete agreement with the decision of various High courts taking the view that no addition can be made in respect of completed assessments in absence of incriminating material. *(*ITA Nos: 904-905-573/Mum/2023 & C.O. No. 107-108/Mum/2022).

Late Hiraben Kantial Shah v. DCIT (Mum) (Trib)

S. 153A : Assessment-Search-No incriminating material is found-Proceedings is held to be invalid-No failure to disclose material facts-Reassessment proceedings in valid-Books of account not rejected-Addition on account of alleged increase in margin is deleted. [S. 28(i), 145, 148, 148]

Allowing the appeal the Tribunal held that when no incriminating material is found, proceedings is invalid. As regards reassessment there was no failure to disclose material facts hence reassessment proceedings in valid. As the books of account is not rejected, addition on account of alleged increase in margin is deleted *(*AY. 2013-14)

ABCI Infrastructure P. Ltd. v.ACIT (2023)104 ITR 255 (Guwahti) (Trib)

S. 153A : Assessment-Search-Warrant of authorization and panchanama clearly shows name of the assessee-Assessment proper. [S. 132]

Held, that the warrant of authorisation clearly showed the name of the assessee as did the panchnama. Therefore, once the name of the assessee was mentioned in the search warrant and in the panchnama, the Commissioner (Appeals) was justified in confirming the action of the Assessing Officer in initiating proceedings under section 153A of the Act. (AY. 2012-13 to 2015-16).

Pujala Mahesh Babu v. Asst. CIT (2023)101 ITR 458 (Hyd) (Trib)

S. 153C : Assessment-Income of any other person-Period of six years in respect of which returns to be filed by third-party Assessee-Commences from date materials forwarded to Assessing Officer having jurisdiction over third-party assessee. [S. 132]

Court held that in case of other person i.e. period for which they were required to file returns, commenced only from date when materials were forwarded to their jurisdictional Assessing Officers. (AY. 2009-10,2010-11)

CIT v. Jasjit Singh (2023) 458 ITR 437 /295 Taxman 612/ 334 ITR 937 (SC)

CIT v. Bhupender Pal Singh Sarna 2023) 458 ITR 437 /295 Taxman 612/ 334 ITR 937 (SC)

CIT v. R.L.Allied Industries (2023) 458 ITR 437 /295 Taxman 612 (SC)

CIT v. Raunak Infrastructure Ltd (2023) 458 ITR 437 /295 Taxman 612 (SC)

Editorial : Decision in, CIT v. Jasjit Singh (2023) 155 taxmann.com 154 (Delhi)(HC) affirmed. also refer, SSP Aviation Ltd v. Dy.CIT (2012) 346 ITR 177 (Delhi)(HC)

S. 153C : Assessment-Income of any other person-Search-Share capital-Cash credits-Bogus accomodaation entries-No incriminating material brought on record-SLP of Revenue is dismissed.[S. 68, 132, 153A]

The High Court dismissed the Department's appeal, holding that no incriminating material had been brought on record by the Assessing Officer to sustain the additions on the merits, that the genuineness of the share capital and there was no live link between the seized material and the additions made, and that therefore, the assumption of jurisdiction was erroneous. SLP of Revenue dismissed. Followed PCIT v. Abhisar Buildwell P. Ltd (2023) 454 ITR 212 (SC) (AY.2010-11 to 2012-13)

PCIT (C) v. Panchmukhi Management Services Pvt. Ltd. (2023)456 ITR 358/294 Taxman 423 (SC)

Editorial : PCIT v. Panchmukhi Management Services Pvt. Ltd. (2023) 456 ITR 332 / 153 taxmann.com 297 (Delhi)(HC)

S. 153C : Assessment-Income of any other person-Search-Unexplained expenditure-Addition based on material seized-Order of High Court affirmed-SLP is dismissed.[S. 69C, Art. 136]

On appeal High Court held that the Assessing Officer was justified in making addition based on material seized from business premises of assessee. SLP is dismissed**.**

Nilambur Traders v. CIT (2023) 295 Taxman 219 / (2024) 460 ITR 3(SC)

Editorial : Nilambur Traders v. CIT (2022) 447 ITR 714/ (2023) 155 taxmann.com 194 (Ker)(HC)

S. 153C : Assessment-Income of any other person-Delay in filing-Writ-Alternative remedy-Order of High Court is affirmed. [S. 132, Art. 136]

Assessee filed writ petition challenging the notice dated 4-2-2022 issued by Assessing Authority under section 153C by contending that he was not subjected to any search proceeding under section 132 as search was conducted in case of Saloni Group of which assessee was not a pArt. High Court dismissed the writ petition. SLP of the assessee is dismissed. (AY. 2015-16)

Rajendra Kumar Sharma v. ITO (2023) 295 Taxman 215 /(2024) 460 ITR 157(SC)

Editorial : Rajendra Kumar Sharma v. ITO (2023) 155 taxmann.com 232(2024) 460 ITR 155 (All)(HC)

S. 153C : Assessment-Income of any other person-Search-No incriminating material is found-Deletion of addition is justified-Department at liberty to initiate reassessment proceedings in accordance with law.[S. 132, 147, 148]

Dismissing the appeal of the Revenue the Court held that the assessment in the case of each of the assessees was made under section 153C of the Act, and in none of the cases was any incriminating material found during the search either from the assessee or from a third party. Order of High Court is affirmed. Court also held that the Department at liberty to initiate reassessment proceedings in accordance with law. Relied on PCIT v. Abbhisar Buildwell P. Ltd (2023) 454 ITR 212 (SC)) (AY. 2002-03, 2005-06, 2006-07)

Dy. CIT v. U. K. Paints (Overseas) Ltd. (2023)454 ITR 441/ 294 Taxman 72 / 334 CTR 217 (SC)

Editorial : From the Judgement of Delhi High Court, ARN Infrastructure Ltd v.ACIT (2017) Delhi)(HC), BJN Holdings lTD v. Dy.CIT (2020) 15 ITR-OL 408 (Delhi)(HC), PCIT v. Ankush Salija (2019) 419 ITR 431 (Delhi)(HC), ITA No. 904 pf 2017 dt 30-10-2017, ITA No. 73 of 2017 dt. 6-3-2019 (Bom)(HC), ITA No. 1252 & 1251 of 2016 dt. 4-1-2019 (Bom)(HC)

S. 153C : Assessment-Income of any other person-Search-Belongs or belongs to-Pertains or pertaining-Search conducted prior to date of amendment-Prior to and after amendment by Finance Act, 2015, with effect from 1-6-2015-Amendment brought to section 153C vide Finance Act, 2015 shall be applicable to searches conducted under section 132 before 1-6-2015, i.e., date of amendment. [S. 132, Art. 136]

High Court held that section 153C as amended with effect from 1-6-2015 would apply to search initiated on or after 1-6-2015 and thus, it is date of search that has been considered to be relevant date for purpose of applying amended provisions of section 153C(1). Supreme Court in case similar to assessee held that proviso to section 153C as inserted vide Finance Act, 2005 creates a deeming fiction wherein any reference made to date of initiation of search is deemed to be a reference made to date when Assessing Officer of non-searched person receives books of account or documents or assets seized etc.. Following the order in ITO v. Vikram Sujitkumar Bhatia (2023) 453 ITR 417 (SC), amendment brought to section 153C vide Finance Act, 2015 shall be applicable to searches conducted under section 132 before 1-6-2015, i.e., date of amendment. (AY. 2008-09 to 2014-15)

ACIT v. Anilkumar Gopikishan Agrawal (2023) 454 ITR 531 /294 Taxman 68 / 334 CTR 220 (SC)

Editorial : Anilkumar Gopikishan Agrawal v. ACIT (2019) 418 ITR 25 (Guj)(HC), reversed.

S. 153C : Assessment-Income of any other person-Search-Prior to and after amendment by Finance Act, 2015, with effect from 1-6-2015-Order of High Court set aside. [S. 132, Art. 136]

High Court, following the decision in Anilkumar Gopikishan Agrawal v. ACIT (2019) 418 ITR 25 (Guj)(HC) allowed writ petitions against notices under section 153C of the Income-tax Act, 1961, holding them to be without jurisdiction,. On appeal by the Department

following the decision in ITO v. Vikram Sujitkumar Bhatia (2023) 453 ITR 417 (SC), the order passed by the High Court was quashed and set aside.(AY. 2009-10 to 2015-16)
ACIT v. Shruti Bhamasha Shah (2023)453 ITR 735/ 293 Taxman 276 / 332 CTR 383 (SC)

S. 153C : Assessment-Income of any other person-Search-Provision applicable to searches conducted prior to date of amendment-(Prior to and after amendment by Finance Act, 2015, with Effect From 1-6-2015)-Search conducted prior to amendment with effect from 1-6-2015-Books received by Assessing Officer of assessee after that date-Belongs or belong to-Deeming fiction that date of initiation of search would be date when Assessing Officer of third person receives seized material-Amended provision applicable-Interpretation of taxing statutes-Interpretation which effectuates object and purpose of statute preferred.-Amendment by substitution-Rule against retrospectivity. [S. 132]
Allowing the appeals the Courts held that even though the search under section 132 was initiated prior to the amendment to section 153C with effect from June 1, 2015, the books of account or documents or assets were received by the Assessing Officer of the assessees (in respect of whom search was not conducted) only on April 25, 2017, which was subsequent to the amendment. Therefore, when the notice under section 153C was issued on May 4, 2018, the provision of the law existing as on that date, i. e., the amended section 153C shall be applicable. Court held that while interpreting machinery provisions of a taxing statute, the court must give effect to its manifest purpose by construing it in such a manner as to effectuate the object and purpose of the statute. Once the primary intention is ascertained and the object and purpose of the legislation is known, it becomes the duty of the court to give the statute a purposeful or a functional interpretation. The ascertainment of the legislative intent is a basic rule of statutory construction and a construction should be preferred which advances the purpose and object of a legislation. *(*AY. 2008-09 to 2014-15)
ITO v. Vikram Sujitkumar Bhatia (2023)453 ITR 417/ 293 Taxman 4/ 332 CTR 1/ 224 DTR 217 (SC)
Editorial : Anil Kumar Gopikrishna Agarwal v.ACIT (2019) 418 ITR 25 /(2020) 186 DTR 273 / 313 CTR 520 (Guj)(HC), reversed.

S. 153C : Assessment-Income of any other person-Search-Recording of satisfaction is mandatory-No satisfaction is recorded-Order of the Tribunal quashing the order is affirmed.[S. 132, 153A, 153D]
Dismissing the appeal of the Revenue the Court held that recording of satisfaction note is pre-requisite and same must be prepared by Assessing Officer before he transmits record to other Assessing Officer who has jurisdiction over such other person under section 153C. (AY. 2011-12)
PCIT v. G. Lakshmi Aruna (Smt.) (2023) 333 CTR 257/225 DTR 417/150 taxmann.com 107 (Karn)(HC)

S. 153C : Assessment-Income of any other person-Search-No incriminating material was found-Limitation-Order of Tribunal allowing the appeal is affirmed. [S. 153A]
The assessee had disclosed the sale transactions and liquidation of shares in his regular books of account and the liquidation of shares were received in bank. Thus these assets could not be termed undisclosed assets. It had been appositely concluded in the concurrent decisions of the Commissioner (Appeals) and the Tribunal that it could not be held that the allegedly undisclosed assets had escaped assessment. The notice under section 153C for the assessment year 2011-12 was not valid.(AY.2011-12)

CIT v. Fortune Vanijya Pvt. Ltd. (2023)459 ITR 72 /156 taxmann.com 191 (Gauhati)(HC)

S. 153C : Assessment-Income of any other person-Search-Limitation-Request for information from competent Authority-Further period of one year or till such time receipt of information by Assessing Officer-Completion of assessment within time-Block period-Block comprises assessment years immediately preceding assessment year relevant to previous year in which search conducted-Inclusion of Assessment years found to be in Order-Satisfaction note by Assessing Officer of searched person-Compliance with requirements of recording of satisfaction is mandatory-Warrant-Validity of search-Liberty to approach first Appellate authority. [S. 132, 153A, Art. 226]
Dismissing the petitions the Court held that as the information had been received only on July 28, 2020, which was beyond a period of one year, the extended period of one year was available to the Revenue. The assessments had been completed on December 31, 2019, and hence, were within time. Block comprises assessment years immediately preceding assessment year relevant to previous year in which search conducted, inclusion of Assessment years found to be in Order. Compliance with requirements of recording of satisfaction is mandatory. As regards the validity of search, the assessee was granted liberty to approach the first appellate authority by way of statutory appeals. The assessee was permitted to raise all grounds, barring those of limitation and challenge to the validity of the satisfaction note, that have been decided adverse to it.(AY.2010-11 to 2014-15)
R. K. M. Powergen Pvt. Ltd. v. Asst. CIT (2023)459 ITR 792 /146 taxmann.com 68 / 334 CTR 68 (Mad)(HC)
R. K. Powergen Pvt. Ltd. v. Asst. CIT (2023)459 ITR 792/146 taxmann.com 68 (Mad)(HC)

S. 153C : Assessment-Income of any other person-Search-Writ petition against notice-Alternative remedy-Disputed questions of fact-Writ petition is dismissed. [S. 132, 246A, Art. 226]
Dismissing the petition the Court held that disputed questions of fact is involved, the assesseee is directed to avail alternative remedy.
Satya Vidya Real Estate Pvt. Ltd. v. ACIT(2023)459 ITR 331 (Chhattisgarh)(HC)

S. 153C : Assessment-Income of any other person-Search-Long term capital gains-Penny stock shares-Matter remanded.[S. 10(38), 132, 147, 148A(b) 148A(d), Art. 226]
Court held that the initial notice issued under section 148A(b) for reopening the assessment under section 147 was not bad in law. However, the order under section 147 read with section 144B did not state how the benefit under section 10(38) could be denied to the assessee by simply concluding that it had traded in penny stock shares of Monotype India Ltd, particularly when the assessee had contended that he had purchased the shares of M as early as March 30, 2011 and had sold them during the financial year 2017-18 (the assessment year 2018-19). Therefore, the order under section 147 read with section 144B was set aside and the matter was remitted back to the Assessing Officer to pass a fresh order on merits and in accordance with law. [Matter remanded.](AY.2018-19)
Saloni Prakash Kumar v. ITO (2023)458 ITR 452 /155 taxmann.com 432 / 335 CTR 782 (Mad)(HC)

S. 153C : Assessment-Income of any other person-Search-Examination of disputed questions of fact-Alternative remedy-Writ petition is dismissed.[S. 144 153A, Art. 226

Dismissing the writ petitions the Court held that the High Court would not entertain the writ petitions as the question raised would require examination of disputed questions of fact.(AY.2013-14 to 2015-16, 2017-18, 2018-19)
Alliance Broadcasting Pvt. Ltd. v. ACIT (2023)457 ITR 385 /152 taxmann.com 292/ 334 CTR 448/ 224 DTR 377 (Mad)(HC)

S. 153C : Assessment-Income of any other person-Amendment brought to section 153C vide Finance Act, 2015 shall be applicable to searches conducted under section 132 before 1-6-2015, i.e., date of amendment.[S. 132, 153A]
Allowing the appeal of the Revenue the Court held that amendment brought to section 153C vide Finance Act, 2015 shall be applicable to searches conducted under section 132 before 1-6-2015, i.e., date of amendment. Order of Tribunal is set aside.Followed, ITO v. Vikram Sujitkumar Bhatia [2023]293 Taxman 4/453 ITR 417 (SC). (AY. 2011-12)
PCIT v. Siddhi Vinayak Developers (2023) 295 Taxman 340 (Guj.)(HC)

S. 153C : Assessment-Income of any other person-Writ-Alternative remedy-Writ petition is dismissed. [S. 132, Art. 226]
Assessee filed writ petition challenging the notice dated 4-2-2022 issued by Assessing Authority under section 153C by contending that he was not subjected to any search proceeding under section 132 as search was conducted in case of Saloni Group of which assessee was not a pArt. High Court dismissed the writ petition. (AY. 2015-16)
Rajendra Kumar Sharma v. ITO (2023) 155 taxmann.com 232/(2024) 460 ITR 155 (All)(HC)
Editorial : SLP of assessee is dismissed, Rajendra Kumar Sharma v. ITO (2023) 295 Taxman 215/ (2024) 460 ITR 157 (SC)

S. 153C : Assessment-Income of any other person-Search-Unexplained expenditure-Addition based on material seized-Order of Tribunal is affirmed. [S. 69C, 260A]
In the Course of search a documents/accounts were found at variance with declaration made by assessee in returns. Difference between actual and declared amounts under all heads was on higher side. Assessing Officer gave an opportunity to justify claim under respective heads. The assessee failed to demonstrate any error in law. The Assessing Officer made the addition. On appeal the Tribunal affirmed the order of the assessing Officer. On appeal High Court affirmed the order of the assessing Officer.
Nilambur Traders v. CIT (2022) 447 ITR 714/ (2023) 155 taxmann.com 194 (Ker)(HC)
Editorial: SLP dismissed, Nilambur Traders v. CIT (2023) 295 Taxman 219 /(2024) 460 ITR 3 (SC)
S. 153C : Assessment-Income of any other person-Amendment brought to section 153C vide Finance Act, 2015 shall be applicable to searches conducted under section 132 before 1-6-2015, i.e., date of amendment.[S. 132, 153A]
Allowing the appeal of the Revenue the Court held that amendment brought to section 153C vide Finance Act, 2015 shall be applicable to searches conducted under section 132 before 1-6-2015, i.e., date of amendment. Order of Tribunal set aside.Followed, ITO v. Vikram Sujitkumar Bhatia [2023]293 Taxman 4/453 ITR 417 (SC). (AY. 2011-12)
PCIT v. Siddhi Vinayak Developers (2023) 295 Taxman 340 (Guj.)(HC)

S. 153C : Assessment-Income of any other person-Search-Satisfaction note-Limitation-Where no satisfaction is recorded year of search has to be considered. [S. 132, 153A]
Dismissing the appeal of the Revenue the Court held that the Tribunal was right in law in holding that the AY. relevant to the financial year in which satisfaction note was recorded

under section 153C of the Act, would be taken as the year of search for the purposes of clauses (a) and (b) of sub-section (1) of section 153A of the Act by making reference to the first proviso to sub-section (1) of section 153C. Therefore, the Tribunal was right in law in holding that no satisfaction was recorded by the Assessing Officer of the searched person and the notice issued by the Assessing Officer under section 153C of the Act would be taken as the year of search for the purpose of clauses (a) and (b) of sub-section (1) of section 153A. The Tribunal was right in law in setting aside the assessment order passed for the AY. 2011-12 under the facts and circumstances of the case holding that there was no satisfaction recorded by the Assessing Officer of the searched person in so far as section 153A in the case of the assessee. Referred, CIT v. Gopi Apartment (2014) 365 ITR 411 (All)(HC) (AY. 2011-12)

PCIT v. Gali Janardhana Reddy (2023)454 ITR 467 (Karn)(HC)

S. 153C : Assessment-Income of any other person-Search-Share capital-Cash credits-Bogus accomodaation entries-No incriminating material brought on record-Order of Tribunal deleting the addition is affirmed. [S. 68, 132, 153A]

The High Court dismissed the Department's appeal, holding that no incriminating material had been brought on record by the Assessing Officer to sustain the additions on the merits, that the genuineness of the share capital and there was no live link between the seized material and the additions made, and that therefore, the assumption of jurisdiction was erroneous. SLP of Revenue dismissed. Followed CIT v. Sinhgad Technical Education Socierty Ltd (2017) 397 ITR 344 (SC) wherein the Court held that seized material can be considered to be incriminating in terms section 153C of the Act, only if the material pertains to the assessment years in question. (AY.2010-11 to 2012-13)

PCIT v. Panchmukhi Management Services Pvt. Ltd. (2023) 456 ITR 332 / 153 taxmann.com 297 (Delhi)(HC)

Editorial : SLP of Revenue is dismissed, PCIT(C) v. Panchmukhi Management Services Pvt. Ltd. (2023)456 ITR 358/294 Taxman 423 (SC)

S. 153C : Assessment-Income of any other person-Search and seizure-Document-without further investigation-No addition when the document is in doubt.[S. 132]

A search was carried out in the case of a real estate broker, in which a document was seized showing that the Assessee had purchased a property in a shopping mall. The AO initiated assessment proceedings against the Assessee under section 153C. Thereafter, the AO made the addition to the income of the Assessee based on the contents and the words of the seized documents. The Tribunal held that additions made by Assessing Officer were erroneous, based on a seized document alone, without any further investigations, made additions and passed impugned assessment order. The High Court affirming the finding of the Tribunal held that the addition was made based on a single document whose genuineness itself was in doubt was rightly deleted by the Tribunal. (AY. 2007-08)

PCIT v. Vinita Chaurasia (2023) 291 Taxman 362 (Delhi)(HC)

S. 153C : Assessment-Income of any other person-Search-Business of financing-Best judgement-Loan not repaid-Treated as bad-debts-Search on the premises of debtors-Subsequently, notice issued to-Assessing Officer is not justified in assuming jurisdiction where assessment has not been abated where no incriminating material was found-Best judgement assessment-Notice under section 143(2) is mandatory-Reassessment-Change of opinion-Issues dealt with during original assessment-Full and true disclosure of information-No new tangible material-Reassessment is bad in law-No failure to comply with notice under section. 142- Best judgement assessment is bad in law-CBDT Circular-Binding on Revenue-Assessment order issued without bearing Document

Identification Number (DIN)-Order is invalid. [S. 36(1)(vii) 119, 132,133A, 143(2)(2) 144, 147, 148, 153A, Art. 226]

The Petitioner is partnership firm engaged in the business of financing. The Assessing Officer.had issued notice to petitioner for furnishing details regarding huge bad debts claimed as deduction by the assessee. The assessee, filed a reply explaining the bad debts. The Assessing Officer was satisfied with the reply and passed an order allowing the deduction. Subsequently, a search was conducted in the premises of the creditor which resulted in a survey proceeding under section 133A of the Act in the premises of the assessee to verify the ledger books. The Hon'ble Bombay High court held that Assessing officer cannot assume jurisdiction under section 153A/ 153C of the Income tax Act, 1961 where assessment proceedings have not been abated and no incriminating material have been found against assessee. The Court held that provisions of 153C of the Income tax Act, 1961, cannot override the condition precedent required to reassess income. The court held that reassessment was nothing but change in review as different view was being taken without any new tangible material being found. Further, the court observed that there was no failure of assessee to disclose full and true information. Thus, reassessment order was bad in law. There was no failure to comply with notice under section. 142 hence the best judgement assessment is bad in law.CBDT circular is binding on Revenue. Circular No 19 of 2019, dated 14-8-2019 (2019) 416 ITR 140 (St). Court also held that the assessment orders did not have computer generated Document Identification Number (DIN) which was contrary to the law. Thus, reassessment order was held to be invalid. (AY. 2011-12 to 2017-18)(W.P. 2595 of 2021 & Ors, dated September 4, 2023)

Ashok Commercial Enterprises v. ACIT (2023)459 ITR 100 /154 taxmann.com 144 / 334 CTR 757 (Bom) (HC)

S. 153C : Assessment-Income of any other person-Search-Incriminating material-Failure to establish how seized documents had nexus with undisclosed Income of assessee-Proceedings initiated was quashed [S. 132]

Dismissing the appeal of the Revenue the Court held that no incriminating documents or materials had been found and seized at the time of search under section 132. Order of the Tribunal deleting the addition was affirmed. (AY.2008-09)

PCIT v. Prominent Real Tech Pvt. Ltd. (2023)451 ITR 371 (Delhi)(HC)

S. 153C : Assessment-Income of any other person-Search-Satisfaction note-Incriminating material referred in satisfaction note not connected to assessee-Order is held to be invalid and quashed.

Held that the Assessing Officer can proceed only on the basis of incriminating material which has a bearing on determination of the total income of such other person. Nowhere in the satisfaction note it had been mentioned that the description of shares related to alleged business of providing accommodation entries by the assessee. The additions and disallowance, without any incriminating material found during the course of search, could not validate the assessment orders framed under section 153C of the Act. The assessment order is quashed. (AY.2013-14 to 2016-17)

Bhavya Residency P. Ltd. v. Asst. CIT (2023)107 ITR 10 (SN)(Delhi) (Trib)

S. 153C : Assessment-Income of any other person-Search-Educational Institution-Unaccounted capitation fees-Statements of persons relied upon who are not holding any important post or having any authority in College or Trust Students denied making payment of capitation fees-Assessment has to be made based on evidence and not on

suspicion and conjectures-Order of CIT(A) deleting the addition is affirmed.[S. 69C, 132]

Dismissing the appeal of the Revenue the Tribunal held, that none of four persons, whose statements were relied upon by the Assessing Officer, were persons holding any important post or having any authority in the college or trust and therefore their statements could not be the sole basis of addition, when no evidence was gathered either from the premises of the assessee-trust or the premises of these four persons. The Assessing Officer did not have in his possession any material or evidence to come to a conclusion that the assessee had received Rs. 2 crores by way of capitation fees. The assumption of the Assessing Officer that the cash represented capitation fees collected from students was far-fetched and based purely on conjecture and surmise, wherein in the course of search and in the post-search proceedings, SP had denied collecting capitation fees from students. There was no evidence found in the course of search which would show that the assessee had received capitation fees from students. The contention of the Revenue that since the search operation began first at the other group of DYP at Navi Mumbai, the assessee had received prior information about the search operation and for that reason no corroborative evidence or material was gathered in the course of search could not be accepted. The Commissioner (Appeals) had rightly held that search operation being leaked could not be an alibi for making addition in an assessment, as the assessment has to be made based on evidence and not on suspicion and conjectures.(AY. 2013-14 to 2015-16)

Asst. CIT v. Dr. D. Y. Patil Education Society (2023)105 ITR 400 (Mum) (Trib)

S. 153C : Assessment-Income of any other person-Search-Assessment-Document identification Number (DIN)-CBDT Circular No. 19 of 2019, dated 14-8-2019-Assessment order manually without generating any DIN number-Non-est in eyes of law. [S. 143(3)]

CBDT Circular No. 19/2019, dated 14-8-2019 has made it mandatory that all orders of Department should have DIN number indicated on face of order and orders passed without DIN number in violation of said circular are non-est in eyes of law. Accordingly an assessment order without DIN number and without any mention regarding non-generation of DIN number in body of assessment order is not a curable defect which can be removed or rectified by way of subsequent generation of DIN number Therefore assessment order being passed without complying with binding CBDT Circular No. 19/2019, dated 14-8-2019 is non-est in eyes of law,(AY. 2016-17)

Ankit Jain. v. DCIT (2023) 203 ITD 707 (Delhi) (Trib.)

S. 153C : Assessment-Income of any other person-Search-Approval of draft assessment-Sanction granted without application of mind-Order is bad in law. [S. 132, 153D]

On appeal the Tribunal held that since approval for passing draft assessment order was made by Additional Commissioner without any application of mind and thereafter, Assessing Officer completed assessee's assessment based on special audit report, approval granted under section 153D was bad in law and assessment passed by Assessing Officer would also be bad in law. (AY. 2008-09)

Vrushali Sanjay Shinde. v. DCIT (2023) 107 ITR 274 / 203 ITD 357 (Mum) (Trib.)

S. 153C : Assessment-Income of any other person-Search-In case of concluded assessment, addition can only be made on the basis of an incriminating material.[S. 132, 143(3)]

The ITAT held that there was no perversity in the finding of the CIT(A) and noted the fact that the time limit to issue a notice u/s 143(2) had expired. The ITAT also observed that in

the case of PCIT v. Saumya Construction P.Ltd. (2016) 387 ITR 0529 (Guj)(HC) the High Court has held that in the case of search, the concluded assessment could be disturbed only to the extent of incriminating material. The ITAT noticed that the revenue has not showed as to how the additions made by the AO and deleted by the CIT(A) were based on the incriminating material except mentioning the revenue has not accepted the decision of the Gujarat High Court. On the observation, the ITAT dismissed the appeal of the revenue. IT(SS)A.No.245/Ahd/2017, 86/Ahd/2018 & ITA No.716/Ahd/2018; Bench "B", dated 24/03/2023 (AY. : 2012-13, 2013-14, 2014-15)

DCIT v. Heaven Associates (2023 154 taxmann.com 595 /105 ITR 186 (Ahd) (Trib)

S. 153C : Assessment-Income of any other person-Search-Appelllate Tribunal-Additional ground-Legal issue-Admitted-The assessment ought to have been made u/S. 153A of the Income-tax Act, 1961 and not u/S. 143(3) of the Act and therefore, the assessment made by the Assessing Officer was bad in law and invalid.[S. 143(3), 153A, 254(1)]

The assessee raised an additional ground that the assessment ought to have been made u/s. 153A of the Income-tax Act, 1961 and not u/s. 143(3) of the Act and therefore, the assessment made by the Assessing Officer was bad in law and invalid.

Held, that the additional ground raised being a legal issue and no fresh investigation of fact being required, it was to be admitted for adjudication. The ITAT *relied on National Thermal Power Co. Ltd. Vs. CIT [1998 229 ITR 383 (SC)*] Validity of assessment u/s. 153:

The Assessing Officer issued notice u/s. 153C of the Act in respect of the A Ys. 2011-12 to 2016-17 and the assessments were completed u/s. 153C of the Act for the A Ys. 2011-12 and 2012-13.

Tribunal held that for the purpose of section 153C of the Act, six years had to be reckoned prior to the date of receipt of seized material by the Assessing Officer of the other person. In the case of the assessee the period of six years had to be reckoned from the AY. 2013-14 to 2018-19. Therefore, the assessment proceedings completed for the AYs 2011-12 and 2012-13 u/s. 153C of the Act were not in accordance with law and were to be quashed. (AY. 2011-12, 2012-13)

ACIT v.Dr. D. Y. Patil Education Society (2023)104 ITR 296 (Mum) (Trib)

S. 153C : Assessment-Income of any other person-Search-Recording of satisfaction-Additional ground-Question of law admitted-Document Identification Number / Document Number (DIN/DN)-CBDT circular-Binding on the Assessing Officer-Not mentioned in the assessment order-Order is quashed and set aside. [S. 119, 143(3), 254(1), 292B]

Before the Tribunal the assessee has raised an additional ground based on the CBDT Circular dated 14.8.2019 (2019) 416 ITR 140 (St) urging that the assessment order does not mention the, Document Identification Number / Document Number (DIN/DN) hence the order is bad in law. The Honourable Tribunal admitted the additional grounds. The Honurable Tribunal held that the CBDT vide Circular dated 14.8.2019 (2019) 416 ITR 140 (St) has mandated, Generation/ Allotment/ Quoting of computer generated Document Identification Number (DIN) in the body of all communications, in the nature of notices/summons/ letters/ correspondences as well as the orders passed. Para 3 of the Circular sets out, exceptional circumstances, in which such communications may be issued manually, with the rider that this shall be done only after recording reasons in writing in the file and with the prior written approval of the Chief Commissioner/Director of Income Tax. Para 4 of the Circular provides that any communication which is not in conformity with the requirement of Para 2 and Para 3

shall be treated as invalid and shall be deemed to have never been issued. Honourable Tribunal also observed that it is a matter of record that the order of the Assessing Officer does not bear any DIN. Honourable Tribunal following the ratio of judgements in Ashok Commercial Enterprise v. ACIT (2023) 459 ITR 100 / 154 taaxman.com 144/ (Bom)(HC) (WP Nos. 2595 of 2021 & Ors. dated 04.09.2023) Calcutta High Court in PCIT v. Tata Medical Centre Trust (2023) 459 ITR 155/ 295 Taxman 501 (Cal)(HC) (ITAT/202/2023 dated 26.9.2023) and Delhi High Court in CIT (IT), New Delhi v. Brandix Mauritius Holdings Ltd (2023) 456 ITR 34/ 393 taxman 385 (Delhi)(HC) / 2023 (4) TMI 579.. Allowed the appeal of the assessee and set a side the order of the Assessing Officer. (ITA No.3009/DEL/2022 dt.15-11-2023)(AY. 2015-16)

Sunderlal Bajaj HUF v. DCIT (Delhi)(Trib) www.itatonline.org

S. 153C : Assessment-Income of any other person-Search-Additional ground is admitted-Six years to be reckoned prior to date of receipt of seized material of other person-Seized document handed over to Assessing Officer on 18-9-2018-Six years to be reckoned from AY. 2013-14 to 2018-19-Assessment for the assessment year 2011-12, 2012-13 is bad in law hence quashed. [S. 132, 254(1)]

The assessee-trust ran various educational institutions. A search and seizure operation was conducted at organisations related to the assessee. Pursuant to the information pertaining to the assessee found during the course of search, the cases of the assessee were reopened invoking section 153C of the Act. The search in the case of other entities was concluded on July 29, 2016 and therefore, the assessment in the case of the person in respect of whom search conducted were reopened for the period from the Ays 2011-12 to 2016-17. The information relating to the assessee was passed on and relevant seized documents were handed over to the Assessing Officer of the assessee on September 18, 2018. The Assessing Officer issued notice under section 153C of the Act in respect of the Ays 2011-12 to 2016-17 and the assessments were completed under section 153C of the Act for the AYs 2011-12 and 2012-13. The Commissioner (Appeals) upheld the validity of the assessment under section 153C of the Act, but allowed the relief on the merits. On appeals by the assessee and the Department, the Tribunal held that that for the purpose of section 153C of the Act, six years had to be reckoned prior to the date of receipt of seized material by the Assessing Officer of the other person. In the case of the assessee the period of six years had to be reckoned from the Ays 2013-14 to 2018-19. Therefore, the assessment proceedings completed for the Ays 2011-12 and 2012-13 under section 153C of the Act were not in accordance with law quashed.(AY. 2011-12, 2012-13)

Asst. CIT v.Dr. D. Y. Patil Education Society (2023)104 ITR 296 (Mum) (Trib)

S. 153D : Assessment-Search-Sanction-Sanction given to 35 cases by virtue of single request-Alternative remedy-Writ was dismissed [S. 253, Art. 226]

The writ petition was filed against an order of the Commissioner (Appeals) contending that sanction granted under section 153D of the Income-Tax Act, 1961 by virtue of a single request in almost 35 cases including that of the assessee. High Court dismissed the writ petition holding that the assessee had an alternative and effective remedy by way of an appeal before the Income-tax Appellate Tribunal. SLP of assessee dismissed.(AY.2009-10)

Tirupati Buildings and Offices Pvt. Ltd. v PCIT (2023)452 ITR 284 (SC)

Editorial : Tirupati Buildings and Offices Pvt. Ltd. v PCIT(2023) 452 ITR 282 (Delhi)(HC), affirmed.

S. 153D : Assessment-Search-Approval-Order passed without obtaining the prior approval is bad in law. [S. 132,153A, 153B]

Held that the assessment orders were silent about Assessing Officer having written to Additional Commissioner seeking his approval or of Additional Commissioner having granted such approval, Tribunal was correct in holding that in present cases such approval was granted mechanically without application of mind by Additional Commissioner resulting in vitiating assessment orders. Order of Tribunal was affirmed. (AY. 2003-04, 2009-10)
ACIT v. Serajuddin & Co. (2023) 454 ITR 312 / 292 Taxman 566 / 226 DTR 91 / 333 CTR 228 (Orissa)(HC)

S. 153D : Assessment-Search-Sanction-Sanction-Alternative remedy-Writ was dismissed against the order of CIT(A) [S. 253, Art. 226]
The assessee filed writ petition against the order of CIT(A)and seeking necessary directions to the PCIT to issue guidelines for following orders of Superior authorities. On writ, the Court relegated the assessee to the alternative and effective remedy of appeal under section 253 of the Income-tax Act before the Tribunal and gave liberty to the assessee to raise all its contentions and submissions before the Tribunal. (AY. 2009-10)
Tirupati Buildings and Offices Pvt. Ltd. v. PCIT (2023)452 ITR 282 (Delhi)(HC)

S. 153D : Assessment-Search-Approval-Without application of mind-Without going through the records-Orders as ab-initio void and quashed-No addition can be made in the case of concluded assessments without any incriminating materials found during the search. [S. 132,153A]
Held that the approval was granted by the Commissioner without application of mind and without going through the records which were lying at Bhopal, 800 kms away from the camp office, the statutory obligation is not discharged, hence the order is a ab-initio void and quashed. Tribunal also held that o addition can be made in the case of concluded assessments without any incriminating materials found during the search. (AY. 2008-09 to 2013-14)
ACIT v. M.Ahjuja Project (India) (P) Ltd (2023) 222 TTJ 561 (Indore)(Trib)
ACIT v. M.R.Agriculture (P)Ltd (2023) 222 TTJ 561 (Indore)(Trib)
ACIT v. Mahendra Ahuja (2023) 222 TTJ 561 (Indore)(Trib)
ACIT v. Roma Ahuja (Smt) (2023) 222 TTJ 561 (Indore)(Trib)

S. 153D : Assessment-Search-Approval-Addl.CIT is granted approval to the draft assessment order-No approval for income determined in the draft assessment order and assessment determined in the assessment order-Remanded to get the approval of the Addl.CIT and to proceed in accordance with law.[S. 153A]
Held that Addl.CIT is granted approval to the draft assessment order however no approval for income determined in the draft assessment order and assessment determined in the assessment order. Remanded to get the approval of the Addl.CIT and to proceed in accordance with law. (AY. 2007-08 to 2012-13)
Bibhudutta Panda v.ACIT (2023) 222 TTJ 273 (Cuttack)(Trib)

S. 153D : Assessment-Search-In valid approval-Assessment is quashed. [S. 132, 153C]
Held that the assessment in the assessment year 2009-10 in pursuance of invalid approval accorded under section 153D was invalid and liable to be quashed and the order applied mutatis mutandis to the assessment year 2010-11 in the Revenue's appeal. The jurisdiction in these cases was not valid and the adjudication of the Revenue's appeals was of academic interest. Appeal of Revenue is dismissed. (AY.2009-10, 2010-11)
Dy. CIT v. M. G. Metalloy P. Ltd. (2023)108 ITR 314 (Delhi) (Trib)

S. 153D : Assessment-Search-Approval-Sanction of prescribed authority-Income from other sources-Addition made under head "Income from other sources" on ground Assessee could not explain source and details of investment made-Approval given by Joint Commissioner as formality without application of mind-No clarification whether or not assessment record seen by Joint Commissioner-Approval invalid and liable to be quashed.[S. 153A]

Allowing the appeal, Tribunal held, that the Assessing Officer had sought approval from the Joint Commissioner before passing the assessment order. On perusal of the approval, it was found that the Joint Commissioner, without looking into the complex facts of the search, had given approval, only on the basis of presumption that the Assessing Officer after giving proper opportunity to the assessee had thoroughly verified the seized material and proposed the addition. The Commissioner (Appeals) also had overlooked this technical error in the assessment order. Further, it was not clarified whether or not the assessment record had been seen by the Joint Commissioner. Therefore, the approval granted by the Joint Commissioner was merely a technical approval to complete the formality and without application of mind. The orders of the authorities below were liable to be quashed.(AY.2013-14)

Akshata Realtors P. Ltd. v. Asst. CIT (2023)103 ITR 652 / 224 TTJ 7(UO) (Raipur) (Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record Export business-Turnover-Section 80HHC as amended by Taxation Laws (Second Amendment) Act, 2005 is prospective in operation and it would apply to both categories of exporters having turnover below RS. 10 crores and above RS. 10 crores-Order of High Court is set aside. [S. 80HHC(3)]

High Court held that Taxation Laws (Second Amendment) Act, 2005 which had introduced section 80HHC(3) and certain provisos to section 80HHC(3) with retrospective effect from 1-4-1992 would grant benefit to said assessee's with retrospective effect. On appeal, Court held that in CIT v. Avani Exports [2015] 232 Taxman 357 (SC), Supreme Court had accepted that section 80HHC as amended by Taxation Laws (Second Amendment) Act, 2005 is prospective in operation and it would apply to both categories of exporters having turnover below Rs. 10 crores and above Rs. 10 crores. Order of High Court is set aside. (AY. 1999-2000, 2000-01)

Johnson G. Ommen v. CIT (Central) (2023) 459 ITR 150 /295 Taxman 221 / 334 CTR 753 (SC)

Editorial : CIT (Central) v. Johnson G. Ommen (2023) 459 ITR 147/I154 taxmann.com 497 (Ker)(HC)**,** reversed.

S. 154 : Rectification of mistake-Mistake apparent from the record-Non-Resident-Service rendered on Foreign ship outside India-Failure to apply circular issued by Central Board of Direct taxes is a mistake apparent from the record-Entitle to exemption. [S. 10(6)(viii), 143(1)]

The assessee mistakenly declaring in return salary received for services rendered outside India. Rectification application was rejected by the Assessing Officer, which was affirmed by the CIT(A) and Tribunal. On appeal the Court held that failure to apply Circular issued by Central Board Of Direct Taxes is error apparent on face of record. Order refusing to rectify mistake set aside and held that the assessee is entitled to exemption under Section 10(6)(viii) of the Act. Matter remanded to Assessing Officer. Circular No 13 of 2017 dated 11-4-2017(2017) 393 ITR 91 (St), Circular No. 14 (XL)-35. dated April, 11, 1955, CIT v. Mahalaxmi Sugar Mills Co Ltd (1986) 160 ITR 920 (SC).(AY.2012-13)

Rajeev Biswas v. UOI (2023)459 ITR 36 /(2022) 143 taxmann.com 3 (Cal)(HC)

S. 154 : Rectification of mistake-Mistake apparent from the record-Export business-Turnover-Amedment by the Taxation Laws (Amendment) Act, 2005 with retrospective effect from 1-4-1992-High Court set aside the order of the Tribunal-Matter remanded to the Tribunal. [S. 80HHC(3), 143(1), 260A]

The assessees contested the rectification orders issued under section 154 on the ground that there was no mistake justifying rectification under section 154 consequent upon retrospective amendment to the relevant provisions of the Act. The Commissioner (Appeals) turned down the challenge against the validity of rectification orders issued. On appeal, the Tribunal allowed the appeals by holding that assessments could not be rectified based on retrospective amendment. On appeal by revenue, the High Court while considering the amendment to section 80-HHC(3) by the Taxation Laws (Amendment) Act, 2005 with retrospective effect from 1-4-1992 and the fact that the assessments pertained to the years 1999-2000 and 2000-2001, although the assessments and reassessments were completed, held that the power of rectification under section 154 was rightly exercised by the Assessing Officer. Therefore, the appeals filed by the revenue were allowed and consequently the matter were remanded to the Tribunal for reconsideration of the appeals on other grounds. (AY. 1999-2000 2000-01)

CIT (Central) v. Johnson G. Ommen (2023) 459 ITR 147/ 154 taxmann.com 497 (Ker)(HC)

Editorial : Johnson G. Ommen v. CIT (Central) (2023) 459 ITR 150 /295 Taxman 221 (SC), order of High Court is set aside.

S. 154 : Rectification of mistake-Mistake apparent from the record-Search and seizure-Cash found-Reflected in the books of account-Order of Tribunal quashing the rectification order passed by the Assessing Officer is affirmed.[S. 69A, 132, 143(3)]

Dismissing the appeal of the Revenue the Court held that, there was no mistake apparent on record, as Assessing Officer had initially accepted assessee's explanation. When the Assessing Officer had accepted contention of assessee while framing regular assessment, there was no mistake apparent on record. (AY. 2011-12)

PCIT v. Pravinbhai Jayantibhai Kapasi (2023) 295 Taxman 169 (Guj.)(HC)

S. 154 : Rectification of mistake-Mistake apparent from the record-Limitation-Book-profit-Order giving effect to appellate order-Issue sought to be rectified not subject matter of appeal-Period of limitation will be reckoned from the date of original assessment order in respect of points not subjected to appellate jurisdiction-Oder passed in 2004 could not be rectified after a period of 4 years, impugned order passed under section 154 dated 29-3-2014 was barred by limitation. [S. 32, 115JB, 143(3). 154(IA)]

Dismissing the appeal of the Revenue the Court held that the AO, while giving effect to the ITAT's order cannot go beyond the directions of the ITAT and since in this case, the issue of calculation of book profit qua diminution in the value of an asset was not the subject matter of the appeal, the Revenue was not justified in contending that the order is within the time limit. Because u/s. 154(1A) of the Act, the AO can rectify the order in respect of a matter other than the matter which has been considered and decided by the appellate/ revisional authority. In the instant case, since the issue of diminution in value of an asset for calculating book profit was not a subject matter of appeal or revision, the original order u/s. 143(3) of the Act dated 27/02/2004 is the order which can be rectified by the AO and since the order passed in 2004 cannot be rectified after a period of 4 years, the order passed u/s. 154 of the Act dated 29/03/2014 is barred by limitation under section 154(7) of the Act. (AY. 2001-02)

PCIT v. Godrej Industries Ltd (2023) 153 taxmann.com 529 (Bom.) (HC)

S. 154 : Rectification of mistake-Mistake apparent from the record-Deferred revenue expenditure-Intangible assets-Book profit-Grants given-The Assessing Officer is directed to allow the rectification application.[S. 37(1)115JB]

The Assessing Officer passed assessment order accepting return filed by assessee.Subsequently, assessee filed rectification application on ground that revenue expenditure incurred on patents/trademark registration, clinical trials etc. which was shown in books of account as intangible assets was not reduced from book profit for purpose of calculation of MAT liability Assessing Officer denied application on ground that assessee had not claimed deferred revenue expenditure in return of income and thus, claim would not come under purview of section 154. Tribunal held that the revenue expenditure were treated as deferred expenses under head Patent/IPR/Technology for write off over next few years and during relevant year certain amount with respect to said expenses had been written off and claimed in profit and loss account. The assessee had debited a part of revenue expenditure in profit and loss account which was not prepared in accordance with Part II Schedule VI of Companies Act and had been done for presentation to and consumption of shareholders.Since tax liability had been computed under section 115JB, book profit had to be determined in terms of Part II of Schedule VI of Companies Act which necessarily include book profit after allowing deduction for whole of revenue expenditure.Thus, whole of revenue expenditure incurred by assessee during previous year had to be reduced while calculating net profit and net profit so arrived would form basis for determination of MAT liability. (AY. 2009-10, 2011-12)

Venus Remedies Ltd. v. Asst. CIT (2023) 226 TTJ 797 / 204 ITD 680 (Channai)(Trib.)

S. 154 : Rectification of mistake-Mistake apparent from the record-Search and seizure-Assessment-Cash found on search-Assessing Officer accepting the explanation-Not mistake apparent from the record.[S. 69A, 132, 132(4), 153C]

Held that the assessee in the statement furnished under section 132(4) of the Act, had categorically stated that the documents found during the search proceedings represented the undisclosed transaction of the firm, MK and based on that undisclosed income of the firm was determined. Therefore, the Assessing Officer had taken one of the possible views for holding that undisclosed cash represented the application of undisclosed income determined in the hands of the firm. Hence, there was no reason to interfere in the order of the Commissioner (Appeals).(AY.2011-12)

ITO v. Pravinbhai Jayantibhai Kapasi (2023)108 ITR 457 (Ahd) (Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Order passed in gross violation of principles of natural Justice is not sustainable in law-Dividend-Special rate of tax-Application filed by assessee for rectification to this effect to be allowed and adjustment taxing dividend at rate of 10 Per Cent is reversed.[S. 10(35),115BBDA, 143(1)]

Held that computation of income under section 154 of the Act by the Central Processing Centre was clearly a patent mistake and the assessee's rectification application ought to have been entertained and allowed. The order passed by the Central Processing Centre being in gross violation of the principles of natural justice it was not sustainable in law. That section 115BBDA of the Act levies special rate of tax only on dividend income earned from domestic companies if exceeding Rs. 10 lakhs. The assessee had claimed to have earned dividend income from mutual fund which was exempt under section 10(35) of the Act. The assessee had clearly demonstrated the inapplicability of section 115BBDA of the Act to the facts of her case. In the light thereof, the Commissioner (Appeals) order upholding the

rejection of her application seeking rectification to this effect was untenable more particularly since, the Commissioner (Appeals) had not dealt with the contention of the assessee before upholding the order of Central Processing Centre.That the Central Processing Centre was to allow the rectification application of the assessee and delete the adjustment made to her income to the income taxed at the rate of 10 per cent.(AY.2018-19)
Rajalben Hirenbhai Patel v. Dy. CIT (2023)108 ITR 67 (SN)/ (2024) 204 ITD 674 (Ahd) (Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Quasi-judicial power-Order cryptic and bereft of any reasoning is unsustainable-Matter remanded to Assessing Officer for consideration afresh.[S. 234B, 234C]
Held that the only reason for rejection of the rectification application was that the plea of the assessee "was not found tenable". The order of the Assessing Officer was cryptic and bereft of any reasoning. The order of the Commissioner (Appeals) also suffered from the same vice inasmuch as no reason has been advanced for dismissing the appeal of the assessee. The orders of the authorities below were conspicuous by absence of any reason for the decision thereof, and therefore, were unsustainable. The matter was to be remanded to the Assessing Officer for consideration afresh of the calculation of interest under sections 234B and 234C as canvassed by the assessee in his application and thereafter pass a speaking order, in accordance with law, after affording a reasonable opportunity of being heard to the assessee, in support of his application.(AY.2015-16)
Satinder Paul Gupta v.Dy. CIT (2023)108 ITR 64(SN)(Delhi) (Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Agricultural income-Book profit-Refund of claim-Order of Assessing Officer disposing of rectification application recomputing book profits including agricultural Income-Directed to grant the refund. [S. 10(1),115JB]
Held that the assessee was well within its right to claim refund of taxes which was not granted though the tax liability had been determined at nil. The action of the Assessing Officer while disposing of the assessee's rectification application, recomputing the book profits by including the agricultural income was not sustainable in the eyes of law. There was no notice to the assessee before enhancing the income and the Assessing Officer in his zeal of disposing of the rectification application had failed to appreciate and consider the unambiguous provisions wherein the agricultural income was exempt from the book profits for the purposes of computing the minimum alternate tax liability. The order of the Commissioner (Appeals) is set aside.(AY.2012-13, 2013-14)
Abhimanu Adventure Resorts P. Ltd. v. Dy. CIT (2023)107 ITR 1 / (2024) 227 TTJ 8 (UO) (Chd) (Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Corporate social responsibility-Disallowance is not justified-The Assessing Officer is directed to rectify the mistakes under section 154 within three monthS. [S. 40(a)(ia), 143(1)]
Held that in respect of the additions made under section 143(1) without issuing any notice to the assessee and which were not mentioned in the draft assessment order (being the difference between the disallowance reported in section 37 in the income returned in respect of corporate social responsibility contribution and tax audit report in respect of loss on sale of fixed assets and an amount under section 40(a)(ia) which sums had already been disallowed by the assessee in its return of income), since there was an apparent error in making the addition by the Assessing Officer, and since, the assessee had already moved an application for rectification before the Assessing Officer which had not been decided, they were to be

rectified under section 154 of the Act. The Assessing Officer is directed to rectify the mistakes under section 154 within three months..(AY.2018-19)
Ness Digital Engineering (India) P. Ltd. v.Add. CIT (2023)107 ITR 584 (Mum) (Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Business expenses-Sales promotion expenses-Debatable issue-Rectification is held to be not justified.[S. 37 (1)]
Tribunal held that Assessing Officer's rectification order disallowing sales promotion expenses fell beyond scope of section 154. Rectification order is quashed.(AY. 2011-12)
UCB India (P.) Ltd. v. ACIT (2023) 106 ITR 322 / 202 ITD 37 (Mum) (Trib.)

S. 154 : Rectification of mistake-Mistake apparent from the record-Delay in deposit of employees' contribution-Order of rectification is not valid.[S. 36(1)(va). 143(1)]
Assessee deposited employees' contribution to EPF and ESI after due date prescribed in respective Acts. Assessing Officer accepted return filed by assessee. Subsequently Assessing Officer passed a rectification order and disallowed employees' contribution to EPF and ESI. On appeal the Tribunal held that since question of delay in deposit of employees' contribution was very much in the assessment records upon which intimation under section 143(1) was served upon assessee and at relevant time there was law in favour of assessee allowing such expenditure, assessee was benefitted by same and failure to follow a divergent view in favour of revenue could not be considered to be an error apparent on record and thus Assessing Officer was not justified to substitute his opinion by invoking provisions of section 154 of the Act. Referred Checkmate Services (P)Ltd v. CIT(2022) 448 ITR 518 / (2023) 290 Taxman 191(SC),, followed CIT v. Mahavir Drilling Co (2005) 142 Taxman 663/ 273 ITR 201 (MP)(HC) (AY. 2019-20)
Sanjay Kumar. v. ITO (2023) 201 ITD 837 (Delhi) (Trib.)

S. 154 : Rectification of mistake-Mistake apparent from the record-Book profit-Claim of set off of book loss or unabsorbed depreciation upto assessment year 2014-15-Debatable issue-Order of Tribunal allowing the appeal of the assessee is affirmed.[S. 115JB]
Assessing Officer passed order under section 154 for nullifying assessee's claim of set off of book loss or unabsorbed depreciation upto assessment year 2014-15 against book profit beyond assessment year 2012-13 by holding that it was not permitted under provision of law and it was a mistake apparent on face of record arising out of books of account of assessee. Tribunal set aside orders of lower authorities and held that issue of allowing of book loss or unabsorbed depreciation while computing book profit under section 115JB, was a debatable issue same could not be subject matter of proceedings under section 154 of the Act. High Court affirmed the order of the Tribunal. (AY. 2013-14)
PCIT v. Lanshree Products & Services Ltd. (2023) 293 Taxman 53 (Cal.)(HC)

S. 154 : Rectification of mistake-Mistake apparent from the record-Deduction of tax at source-Credit for-Intimation-Directed to grant relief after verification. [S. 143(1), 199,Form, 26AS]
Allowing the appeal the Tribunal held that the assessee had given the details of 896 entries showing the corresponding receipt offered as income and corresponding tax credit claimed by the assessee. The assessee had given proper details in the return of income and there was no reason why the assessee should not be granted tax credit as claimed in the return of income. Reduction of the claim of the assessee in rectification proceedings under section 154 was in clear violation of the provisions of section 154(3) which provides that if any amendment

made to the order which is effect of enhancing an assessment and reducing the refund of the assessee, proper notice should be given to the assessee and he must be allowed a reasonable opportunity of being heard. The Assessing Officer was to grant tax credit to the assessee in accordance with the claim of the assessee in the return of income after verification.(AY.2019-20)

Kalyaniwalla and Mistry LlP v. ACIT (2023)102 ITR 47 (SN)(Mum)(Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Time limit-Barred by limitation-Merit also eligible deduction. [S. 80IA, 143(3) 154(7)]

Original assessment order u/s 143(3) allowing the claim of deduction u/s 80-IA – Application for rectification u/s 154 of the Act filed by the assessee for granting credit for the TDS being the mistake apparent from records – Disposed off by the AO granting credit for the TDS without disturbing the claim u/s 80-IA – Assessee filed the appeal before the CIT (Appeals) against other disallowances made u/s 143(3) and the same has been disposed off by the CIT (Appeals) with substantial relief – At the time of the passing the order to give effect to the CIT (Appeals)'s order, the AO issued notice u/s 154 proposing to disallow the deduction u/s 80-IA – While not considering the reply of the assessee, the AO passed the order giving effect to the CIT (Appeals)'s order with the disallowance of deduction u/s 80-IA, which had already been allowed u/s 143(3) and subsequent to the order passed u/s 154.

Once an order u/s 154 is passed for the rectification of the apparent mistake in the order u/s 143(3) of the Act, the rectification order u/s 154 could not be considered to be an independent proceeding, but it would be termed as the original assessment order modified/rectified. Hence, the time limit for rectification to deny deduction u/s 80-IA should be reckoned only from the date of original assessment order u/s 143(3) and therefore, the AO's order giving effect to the CIT (Appeals)'s order with an attempt to deny the deduction u/s 80-IA of the Act in the garb of apparent mistake, is clearly barred by the limitation as provided u/s 154(7) of the Act. Even on merits, the assessee is eligible to deduction u/s 80-IA r.w. Section 80-IA(12A) of the Act.(AY. 2010-11)

Ultratech Cement Ltd. v. ACIT (2023) 102 ITR 33 (SN) (Mum) (Trib.)

S. 154 : Rectification of mistake-Mistake apparent from the record-CPC while processing the return of income in as much as depreciation u/s 32 has not been granted-Entitled for the claim of depreciation. [S. 32]

An inadvertent error committed at the time of feeding the information in the return of income for the claim of depreciation u/s 32 – Applicability of Explanation 5 to Section 32 which provides that even though, the depreciation is not claimed in the return of income, the assessee shall be allowed the depreciation u/s 32 of the Act.Effect of Circular No. 14 (XI-35) of 1955 dtd. 11–04–1955. The assessee entitled for the claim of depreciation u/s 32 of the Act.(AY.2016-17)

Indauto Filters v. ACIT (2023) 102 ITR 403 (Bang) (Trib.)

S. 154 : Rectification of mistake-Mistake apparent from the record-Educational institution-Claim of exemption u/S. 11 without registration u/S. 12AA-Eligible for deduction-Annual receipt not to include voluntary donation forming part of corpus-Rectification application is allowed. [S. 10(23C)(iiiad), 11, 12, 12AA]

The Trust filed 'Nil' return claiming exemption u/s 11. The exemption claim u/s.11 was denied on the ground that the assessee was not registered u/s 12AA. Subsequently, the

assessee filed application u/s. 154 claiming exemption u/s.10(23C)(iiiad) on the ground annual receipt is less than Rs. one crore. The AO, noted that the gross receipt is Rs. 1,21,82,696 (including corpus donation of Rs. 72,18,000) exceeding the prescribed limit of Rs. One crore and denied the exemption claimed u/s.10(23C)(iiiad). Further, rejected the application treating that there is no mistake apparent on record. The NFAC upheld the order passed by the AO. The Tribunal held that donation towards corpus would not form part of income of the assessee. Thus, the assessee was entitled for exemption u/s.10(23C)(iiiad) and this would constitute mistake apparent from records.

Sathyam Educational & Charitable Trust v. ITO (NFAC) 103 ITR 50 (Chennai) (SN)(Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Capital or revenue-Excise duty refund and Interest subsidy as revenue receipts-Rectification application pursuant to jurisdictional High Court-Tribunal held that CIT(A) is right in directing AO to carry out necessary rectification. [S. 4]

Assessee received Excise duty of refund and Interest subsidy and offered the same as revenue receipts in return of income. Regular assessment completed after making addition of petty expenses. Assessee filed rectification application u/s. 154 to reduce Excise duty refund and Interest subsidy and to treat the same as capital receipt in view of the judgment of Jurisdictional J&K High Court in the case of Shree Balaji Alloys v.CIT (2011) 333 ITR 335 (J&K)(HC)) On appeal, ITAT held that CIT (A) was right in allowing the appeal of assessee by directing the AO to carry out necessary rectification. Section 154 has been enacted to enable the authorities to rectify the mistake whether the mistake is done by assessee or by AO. A liberal construction of the statute has to be made else the object of the legislation shall be forfeited. (AY. 2007-08)

DCIT v. Kashmir Steel Rolling Mills (2023) 104 ITR 684 (Amritsar) (Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-First appeal was dismissed-Second appeal-Abuse of process of Court-Appeal is dismissed. [S. 80IB, 253]

Where first appeal filed by assessee against order of Commissioner (Appeals) was dismissed by Tribunal as withdrawn, second appeal filed by assessee again against same order of Commissioner (Appeals) before Tribunal was nothing but abuse of process of Court and, hence, same deserved to be dismissed.(AY. 2012 013)

Kishor Shankar Garve v. Dy. CIT (2023) 200 ITD 461 (Pune)(Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Capital gains-Compensation for compulsory acquisition of commercial land from National Highways Authority of India (NHAI)-Clarificatory circular was issued by CBDT subsequent to the date of filing return-Eligible to file rectification application, claim of exemption of assessee under RFCTLARR Act was directed to be allowed by the AO. [S. 45, 56(2)(viii), 139, Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 S. 96]

Assessee received compensation for compulsory acquisition of commercial land from National Highways Authority of India (NHAI) for compulsory acquisition of land under RFCTLARR Act, 2013. Compensation for both agricultural and non-agricultural land exempt under RFCTLARR Act. However, assessee filed its return of income declaring compensation received taxable as capital gain without taking exemption as per Section 96 of RFCTLARR Act, 2013. Assessee filed rectification application before AO for rectification of mistake apparent from record after considering the CBDT Circular No. 36 of 2016 dated 25.10.2016 (2016) 388 ITR (St.) 48 and to allow exemption to the assessee in view of CBDT Circular.

However, AO rejected the application. On appeal, ITAT held that clarificatory circular was issued by CBDT subsequent to the date of filing return and assessee therefore was eligible to file rectification application, claim of exemption of assessee under RFCTLARR Act was to be allowed by the AO. (AY.2015-16)
Satish Kumar v. ITO (2023)104 ITR 694 (Chd)(Trib)
Urmila Garg (Smt.) v. ITO (2023)104 ITR 694 (Chd)(Trib)

S. 154 : Rectification of mistake-Mistake apparent from the record-Credit for TCS-Rule applicable to TDS should also be applicable TCS-Denial of claim for TCS is not valid. [S. 199, Rule, 37BA(2)(i)]
The credit for TCS was denied by the AO. The assessee filed an application under section 154 contending that credit ought to be granted to the firm. Along with the application, indemnity of the partner, Raju Shetty was also furnished. The AO rejected the application. On appeal the CIT(A) held that issue being debatable dismissing the appeal. On appeal the Tribunal held that merely because there is no Rule 37BA(2)(i) of the Rules with reference to TCS provisions, it cannot be the basis for deny the claim for credit of TCS. Rules applicable to TDS is also applicable to TCS. Relied on Jai Ambey Wines v.ACIT dt. 11-1 2017 (ITA Nos. 12 to 15 / Bang / 2023 dt. 6-2-2023)(AY. 2016-17)
Hotel Ashok Garden v. ITO (2023) BCAJ-March P. 30 (Bang)(Trib)

S. 156 : Notice of demand-Bogus accommodation entries-lacked bona fides-Refund of money transferred to bank account in which Department had Lien for tax dues of company-Question of facts-Single judge held that the assessee should approach appropriate Forum or Civil Court [Art. 226]
Dismissing the appeal against the order of single judge Court held that the prayer made by the petitioner could not be acceded on the ground that since the single judge on the petitioner's earlier writ petition on similar contentions had held that the petitioner's contentions lacked bona fides and highly disputed questions of fact had been raised. That order having attained finality, the petitioner should have taken steps to agitate its claim before the appropriate forum or civil court. Accordingly writ petition seeking a direction to the Commissioner to refund the amount wrongly credited in the account of respondent No. 4 which was frozen to recover tax dues under section 156 of the Income-tax Act, 1961 in respondent No. 2-bank in the account of the petitioner with respondent No. 3-bank and restraining the Commissioner from appropriating the amount due towards Income-tax :
Garhwal Logistics Ltd. v. ITO (2023)453 ITR 527 (Delhi)(HC)
Editorial : Order single judge, Garwal Logistics Ltd. v. CIT (2023)453 ITR 524 (Delhi)(HC)

S. 156 : Notice of demand-Bogus accommodation entries-lacked bona fides-Refund of money transferred to bank account in which Department had Lien for tax dues of company-Question of facts-The assessee was directed to approach appropriate Forum or Civil Court for recovery of its claim. [Art. 226]
Dismissing the petition the Court held that on the facts the contentions of the petition lacked complete bona fides. Other than a bald claim that the amount had been transferred by an error there was nothing on record to show any error committed by it. No material was placed on record to show any intention or liability on its part to transfer funds to P. The bald plea that by oversight and mistake, the amount was inadvertently transferred to the account of respondent No. 4 could not be accepted. The observation of the Commissioner (Appeals) that respondent No. 4 was an entry provider cast further doubt on the averment made by the petitioner. Given the fact that there were disputed questions of fact, liberty was granted to the

petitioner to take steps in accordance with law for recovery of the alleged claims before an appropriate forum or an appropriate civil court.
Garwal Logistics Ltd. v. CIT (2023)453 ITR 524 (Delhi)(HC)
Editorial : Order of single judge is affirmed, Garhwal Logistics Ltd. v. ITO (2023)453 ITR 527 (Delhi)(HC)

S. 158BC : Block assessment-Unexplained money-Shares-Undisclosed income-Amalgamation of companies-Joint venture-Matter remanded to the Assessing Officer to make fresh assessment based on recordS. [S. 47(vi), 69C. 158BB)
Court held that a fresh a fresh assessment is required to be made by Assessing Officer based on records instead of notional allocation of amounts received by S. Mohandchand Dadha Group (SMD Group). (BP-1-4-1988 to 15-12-1988)
CIT v. Dadha Pharma (P.) Ltd. (2023) 333 CTR 130 /225 DTR 329 /153 taxmann.com 106 (Mad)(HC)
CIT v. S. Mohanchand Dadha (Indl) (2023) 333 CTR 130 /225 DTR 329 /153 taxmann.com 106 (Mad)(HC)

S. 158BC : Block assessment-Undisclosed income-Protective assessment-Burden discharged-Order of Tribunal quashing the protective assessment is affirmed. [S. 143(3), 158BB, 260A]
Dismissing the appeal of the Revenue the Court held that the Tribunal rightly concluded that the protective assessment was not warranted in the hands of the assessee because the assessee has been able to discharge the onus for showing the nature and source of credit entries in the bank account of Kalo Engineering works (KEW), Pragati Engineering Company (PEL) as well as, in the bank accounts of N.C.Jain (NC)and P.L.Mittal (PL)) which in turn are sourced from SW and its subsidiaries-Tribunal after verifying and examining the factual position has granted relief to the assessee and the Revenue has failed to make out a case to set aside the order passed by the Tribunal. (BP. 1-4 1986 to 27 th August 1996)
PCIT v. Ram Ratan Modi (2023) 333 CTR 536 (Cal) (HC)

S. 158BC : Block assessment-Bonus money and prize money-Cricket Board-Circular withdrawing guidelines for treatment of tour money received by Cricket player cannot be applied retrospectively.[S. 132, 260A]
Dismissing the appeal of the Revenue the Court held that the bonus money was the prize money given by the Cricket Board and was exempted from tax. The issue with regard to match fee was covered by the Central Board of Direct Taxes Circular No. 1432 dated November 27, 1987 wherein guidelines for the treatment of tour money received by cricket players had been laid down by the Central Board of Direct Taxes. Though it was withdrawn by a circular dated September 22, 1998 such circular could not have been applied retrospectively. Both these issues came up for consideration before the Commissioner (Appeals) during the course of assessment proceedings and had already been adjudicated in favour of the assessee. Similar issue had been considered in the case of the assessee's wife for the same block period April 1, 1990 to July 20, 2000, and the appeal of the Department was dismissed. This issue had already been decided in favour of the assessee by the Commissioner (Appeals) and the issue had attained finality. No question of law arose.(BP 1-4-1990 to 20-7-2000)
CIT v. Navjot Singh Sidhu (2023)458 ITR 446 (P&H)(HC)

S. 158BC : Block assessment-No notice is issued under section 143(2) of the Act-Not curable defects-Order is bad in law. [S. 143(2), 292BB]

Allowing the appeal of the assssee the Court held that the assessment completed under section 158BC without a notice under section 143(2) is bad in law. Not curable defects.
Chand Bihari Agrawal v. CIT (Central) (2023) 295 Taxman 468 /(2024) 460 ITR 270 (Patna)(HC)

S. 158BD : Block assessment-Undisclosed income of any other person-Search and seizure-Delay in filing of returns-Interest leviable-Assessment of third person notice under section 158BD is sufficient-Not necessary to issue separate notice u/s 158BC of the Act. [S. 140A(1), 158BC, 158BFA(1)]
Held that on a conjoint reading of the Notes on Clauses and the Memorandum Explaining the Provisions of the Finance Bill, 1999 (see [1999] 236 ITR (St.) 141 and 187), it is clear that by virtue of the amendment, the Legislature proposed to make assessees filing returns under section 158BC also liable to pay tax and interest under section 140A. The Memorandum further makes it clear that the existing provisions of section 140A were not applicable to Chapter XIV-B relating to assessment of income of the block period in search and seizure cases. It further recognises that the admitted tax declared in the return cannot be collected till the assessment is completed. Therefore, the Legislature intended to amend section 140A by incorporating section 158BC so as to make persons filing returns under section 158BC also liable. Thus, by virtue of the amendment, a new class of assessees whose income was subject to be assessed under Chapter XIV-B, were brought in section 140A compelling them to pay self-assessment tax. Thus, the interest under section 158BFA is leviable on standalone basis for late or non-filing of return, which ceases on the day return is filed. That KI Ltd. and KB Ltd., the persons searched, were issued notice under section 158BC and in the case of KLS, the "other person", notice under section 158BD had been issued. Therefore, the assessees' submission that in the absence of any notice under section 158BC served upon the assessee-persons other than searched persons-for the period prior to the amendment in section 158BD by the Finance Act, 2002, there shall not be any liability to pay interest under section 158BFA, was not tenable. The levy of interest under section 158BFA(1) of the Act for late filing of the return for the block period for the period prior to June 1, 1999 was proper.(AY.BP. 1-4-1986 to 13-2-1997)
K. L. Swamy v. CIT (2023)451 ITR 1/ 221 DTR 401/ 330 CTR 457 / 291 Taxman 502 (SC)
K.L. Srihari v. CIT (2023)451 ITR 1 / 221 DTR 401/ 330 CTR 457 (SC)
Universal Trading Co v. CIT (2023)451 ITR 1 (SC)
Gayathri Foundation v. CIT (2023)451 ITR 1 (SC)
Koday India Ltd v. CIT (2023)451 ITR 1 / 221 DTR 401/ 330 CTR 457 (SC)
Khoday Breweries Ltd v. CIT (2023)451 ITR 1 (SC)
Editorial : Decision in CIT v. K.L.Srihari (2011) 335 ITR 215 (Karn)(HC), reversed on this point.

S. 158BD : Block assessment-Undisclosed income of any other person-Search and seizure-On money-Statement retracted-Seized documents did not bear signature of assessee and seized material also did not suggest that assessee had paid any on-money order passed by Assessing Officer was not sustainable.[S. 132,132(4A), 158BC, 260A]
A search was conducted upon Jan Sons group and also upon assessee. During search, some typed unsigned papers were found in assessee's premises. Assessing Officer on basis of seized material and statement of landowners held that there was an undisclosed income in hands of assessee alleging that he had paid on-money to original landowners from whom five individuals had purchased lands.The order of the Assessing Officer was affirmed by the Tribunal.On appeal allowing the appeal the Court held that the seized documents did not bear

any signature of assessee and statement given by landowner was subsequently retraced. There was no incriminating material seized during search which could suggest that assessee had paid any 'on-money'. Five purchasers had filed their respective returns and offered their income to tax. Addition confirmed by the Tribunal is set aside.-Whether, on facts, impugned order passed by Assessing Officer was not sustainable and same was to be set aside.(BP. 1991-92 to 24 th January, 2001)
Dr. Syed Anwar v. Dy. CIT (2023) 335 CTR 336 / 146 taxmann.com 247 (Karn)(HC)

S. 158BE : Block assessment-Time limit-Search and seizure-Limitation-From date of last Panchnama and not date of last warrant of authorisation [S. 132, 158C]
During the execution of a search warrant dated March 13, 2001, the Income-tax authorities got information about a locker belonging to the assessee in a bank. Therefore on March 26, 2001, a second authorisation was issued for searching the locker and the search was executed on March 26, 2001 itself. Notice under section 158BC was issued for block assessment. The assessee filed his return and the assessment was completed in April, 2003. Similar assessment orders were passed in the case of other assessees. The assessees filed appeals challenging the assessment orders, inter alia, on the ground that the assessment was time barred, contending that the two-year period as prescribed under section 158BE(b) of the Act from the date of the panchnama drawn on March 26, 2001, came to an end by March, 2003 and the assessment order was passed in April, 2003. The Commissioner (Appeals) dismissed the appeals. However, the Tribunal held that the assessment orders were barred by limitation but the High Court held that as the last panchnama though related to search authorisation dated March 13, 2001 was executed on April 11, 2001, limitation of two years was to be computed from April 11, 2001 and the assessments were within time. On appeals dismissing the appeal the Court held that the Limitation to be reckoned from date of last Panchnama and not date of last warrant of authorisation**.** (AY. Block period 1985-86 to 5-12-1995)
Anil Minda v. CIT (2023)453 ITR 1/ 292 Taxman 407 /331 CTR 705 / 224 DTR 665 (SC)
Editorial : CIT v. Anil Minda (2010) 328 ITR 320 (Delhi)(HC) is affirmed.

S. 164 : Representative assessees-Charge of tax-Beneficiaries unknown-Violation of section 13-Trust has to be taxed at maximum marginal rate under section. 164 (2) on its income. [S. 11, 13(1)(c), 13(2), 164 (2)]
Held that the managing trustee is paid unreasonable and excessive salary. The assessee failed to prove that the vehicle was used for performing its charitable activity and also foreign tour of manging trustee for object of the Trust. Denial of exemption is justified. Tribunal also held that when there is violation of section 13(2) and 13(1)(c), the trust has to be taxed at maximum marginal rate under section. 164 (2) on its income.[S. 13(1)(c), 13(2)(c), 164(2)] (AY. 2011-12)
Seth Ramdas Nathubhai Dharmadaya Vishwastha Nidhi v.ITO (E) (2023) 224 TTJ 194 (Pune)(Trib)

S. 167B : Charge of tax-Shares of members unknown-Registered Society-Maximum marginal rate cannot be applied-Gross receipt cannot be assessed, without allowing the deduction for expenseS. [S. 2(31), 11, 12, 37(1), 143(1),251, Registration Act, 1860]
The return filed by the assessee indicate the assessee's status as AOP/BOI. However, having said that, the CIT(A) failed to exercise powers which were available with him and examine a specific ground of appeal raised by the assessee. since the return of the assessee was processed under s. 143(1), if there were any doubts, scrutiny should have been carried out and the necessary powers available under the 1961 Act should have been taken recourse to. Evidently, this was not done and therefore, the order was passed by the CPC and confirmed

by the CIT(A) without delving into the specific grounds raised by the assessee, which remain unrebutted, cannot be sustained. The impugned order passed by the Tribunal and the order of CIT(A) are set aside. Court also held that The Revenue cannot but accept that in the succeeding assessment year i.e., asst. yr. 2015-16, CPC has brought to tax that amount which constitutes excess of income over expenditure i.e., from gross receipts, deductible expenses have been adjusted. Assessee was registered as a society as far back as on 10th Feb., 1978 under the 1860 Act; if this position is correct, then on a plain reading of s. 167B, one can only conclude that the maximum marginal rate cannot be made applicable to the assessee though status of assessee was wrongly shown as AOP/BOI. (AY. 2014-15)
Sri Guru Singh Sabha v. Dy. CIT (2023) 334 CTR 206/ 224 DTR 165 (Delhi)(HC)

S. 172 : Shipping business-Non-residents-Vessel journeying between Indian ports-Journey was a part of International voyage-Not taxable in India-DTAA-India-Singapore. [S. 172(4), Art. 8, 24]
Held that that J had issued a certificate specifically confirming the fact that it had considered the income on accrual basis earned on the vessel in question during its voyage from September 28, 2016 to October 27, 2016 while it was in international traffic and passed through Indian waters and accordingly the assessee had offered its taxes to the Singapore Revenue authorities. The certificate of the Singapore Revenue authorities issued on December 10, 2016 clearly mentioned that the assessee had discharged estimated tax as per the original assessment dated March 29, 2016. The Double Taxation Avoidance Agreement between India and Singapore was applicable as the assessee had already paid taxes for the international voyage of vessel MV for the period September 28, 2016 to October 27, 2016 while it was in international traffic, which included the voyage from one Indian port to another Indian port. The stand of the Revenue that the assessee had not paid the taxes in Singapore was incorrect, and in fact, it was not just a coastal run but a part of an international voyage. Therefore, articlesandof Double Taxation Avoidance Agreement between India and Singapore were applicable.(AY.2017-18)
Magnum Shipping Services v. ITO (IT) (2023)108 ITR 433/ 225 TTJ 200 (Rajkot) (Trib)

S. 179 : Private company-Liability of directors-Notices lacked disclosure of steps taken for tax recovery from company-Order of High Court quashing the Notice-SLP of Revenue is dismissed. [Companies Act, 2013, S. 167, Art. 136]
Allowing the petition the Court held that show cause notices disclosed no facts regarding steps taken by revenue to recover tax dues from delinquent company and this being a sine qua non for proceeding further, and for assuming jurisdiction under section 179 of the Act.Failure to disclose this material and to record satisfaction of Assessing Officer in manner required by provisions of section 179 rendered impugned show cause notices order unsustainable in law. SLP of Revenue is dismissed. (AY. 2007-08)
ITO v. Jagesh Savjani (2023) 459 ITR 210/ 294 Taxman 601 (SC)
Editorial : Jagesh Savjani v.UOI (2023) 459 ITR 194/ 154 taxmann.com 42 (Bom)(HC)

S. 179 : Private company-Liability of directors-Only if Officer unable to recover tax due from Private company-Failure to record satisfaction-Show-cause notices and order quashed.[Art. 226]
Allowing the petition the Court held that the show-cause notices did not disclose any facts regarding the steps taken by the Revenue to recover tax dues from the assessee-company and the order did not record any of the material which formed the basis for the Assessing Officer to conclude that all steps had been taken to recover the tax dues from the company. Further, it did not refer to the Assessing Officer's subjective satisfaction based upon the material before

it, to conclude that all steps had been taken to proceed against the company and such steps had failed. Accordingly due to failure to record the satisfaction, Show-cause notices and order quashed. Followed,Vanraj V. Shah v. Dy. CIT & Anr. (2019) 181 DTR (Bom) 5, Rajendra R. Singh v. Asstt. CIT & Ors. (2022) 328 CTR (Bom) 691 : (2022) 216 DTR (Bom) 386 and Mehul Jadavji Shah v. Dy. CIT (2018) 302 CTR (Bom) 344: (2018) 165 DTR (Bom) 366 Distinguished, UOI v. Manik Dattatreya Lotlikar (1988) 67 CTR (Bom) 37 and B. Muralidhar v. Dy. CIT (2020) 187 DTR (Mad) 162 (AY.2007-08)
Jagesh Savjani v.UOI(2023) 459 ITR 194/335 CTR 993 (Bom)(HC)

S. 179 : Private company-Liability of directors-Recovery of tax-Burden of proof-Non-recovery of tax was not attributable to gross negligence, misfeasance or breach of duty by directors Initiation of action after period of eight years-Order and revision order is quashed. [S. 264, Art. 226]
On a writ petition challenging the orders passed under section 179 of the Income-tax Act, 1961 holding the assessee liable for taxes allegedly due from company in which he was a director and the revision order passed under section 264 for the assessment years 2008-09 and 2009-10, allowing the petition the Court held that the assessee had sufficiently discharged the burden cast upon him under section 179(1) to absolve him from the liability thereunder since he had brought on record material to show lack of financial control, lack of decision-making power and limited role in the defaulting company while he was director and the entire decision-making process had been with the directors appointed by the largest shareholder. It was therefore imperative for the authorities to have considered them and to have reasonably concluded under section 179(1). Both the Income-tax Officer and the revisional authority had mainly proceeded on the basis that the assessee was director during the relevant assessment years when the default had occurred and did not consider whether there was any gross neglect or misfeasance or breach of duty on his part in relation to the affairs of the company "in the context of non-recovery of tax dues". No material was produced by the Income-tax Officer contrary to the material placed on record by the assessee based on which he could be held to be guilty of gross neglect or misfeasance or breach of duty in the context of non-recovery of tax dues. Therefore, the orders to the effect that the assessee as director of the company had failed to prove that non-recovery of tax could not be attributed to any gross neglect or misfeasance or breach of duty on the assessee's part were unsustainable. The orders were also vitiated on the touchstone of procedural fairness since the Department had initiated action after a long period of about eight years. Followed Geetha P. Kamat v.PCIT (2023) 455 ITR 234 (Bom)(HC) AY.2008-09, 2009-10)
Prakash B. Kamat v.PCIT (2023)457 ITR 150 / 151 taxmann.com 344 (Bom)(HC)

S. 179 : Private company-Liability of directors-Principle of natural justice-Not residing at given address at time of issuance of show-cause notice-Order is quashed and set aside.[Art.226]
The Assessing Officer has passed the order for recovering the tax due. On writ the asseessee contended that the order was passed without due service of notice as the assessee was not residing at given address at time of issuance of notice. High Court quashed and set aside the order and the Assessing Officer may issue fresh notice in accordance with law. (AY. 2008-09,2010-11 to 2012-13)
Rajeshkumar Arjanbhai Vekariya v. Dy. CIT (2023) 295 Taxman 522 (Guj.)(HC)

S. 179 : Private company-Liability of directors-Notices lacked disclosure of steps taken for tax recovery from company-Order was quashed. [Companies Act, 2013, S. 167, Art.226]

Assessee, filed a writ petition contestendung that he was not a director and the notices lacked disclosure of steps taken for tax recovery from the company. Allowing the petition the Court held that show cause notices disclosed no facts regarding steps taken by revenue to recover tax dues from delinquent company and this being a sine qua non for proceeding further, and for assuming jurisdiction under section 179, failure to disclose this material and to record satisfaction of Assessing Officer in manner required by provisions of section 179 rendered show cause notices and impugned order unsustainable in law. Notice was quashed. (AY. 2007-08)

Jagesh Savjani v.UOI (2023) 459 ITR 194/ 154 taxmann.com 42 (Bom)(HC)

Editorial : SLP of Revenue, dismissed, ITO v. Jagesh Savjani (2023) 459 ITR 210/ 294 Taxman 601 (SC)

S. 179 : Private Company-Liability of directors-The non-recovery of dues was not linked to the Assessee's gross negligence, misconduct, or breach of duty, and all relevant circumstances were not reflected in the notice-Notice was quashed-Authority was directed to reconsider decision and initiate fresh step in accordance with law. [Art. 226]

The Assessee, a former director of the company, resigned from the position and sold off its shares. Subsequently, the company went into liquidation. After four years, a show cause notice under section 179 was issued to the Assessee, requiring payment of the company's pending tax liabilities.On writ the Court held that thereading of section 179, which indicates that the authorities should examine the circumstances stated in the section before exercising jurisdiction under the provisions. The notice issued under section 179 was vague, as it only mentioned the Assessee being a director of the company without specifying the reasons for holding the Assessee responsible, and whether the conditions of section 179 had been complied with. Since the non-recovery of dues was not linked to the Assessee's gross negligence, misconduct, or breach of duty, and all relevant circumstances were not reflected in the notice, its primary issuance was attributed to the failure to collect demands due to business closure and the non-existence of the company's office. Therefore, demanding taxes from the Assessee appeared premature.Court also observed that recognizing the potential revenue loss, directed the authority to reconsider its decision and take fresh steps in accordance with the law after following the proper procedure.(AY. 2011-12)

Kushal Vinodchandra Mehta *v.* Income-tax Officer (2023) 458 ITR 359 / 294 Taxman 307 (Guj)(HC)

S. 179 : Private company-Liability of directors-No liability if the director takes steps by filing an appeal before CIT (A)-Order was quashed and set aside. [S. 156, 222,226(3), Art. 226]

Where the directors of a private limited company have not paid 20% of the demand for a stay of demand on the company, it cannot be said that there is any negligence on the part of the directors since they have filed an appeal before CIT(A) and taken all steps to ensure no liability is cast upon the company. Recovery notice was quashed. (AY 2014-2015)

Devendra Babulal Jain v. ITO (2023) 456 ITR 141/ 291 Taxman 333 (Guj)(HC)

S. 179 : Private company-Liability of directors-Recovery proceedings-Gross neglect, misfeasance or breach of duty-Not proved-Order of the Assessing Officer and order rejecting the revision application was quashed. [S. 264, Art. 226]

In response to show cause notice the petitioner contended that she was not guilty of any gross neglect, misfeasance or breach of duty on her part in relation to the affaires of the company. The Assessing Officer passed the order under section 179 of the Act treating the petitioner as defaulter for not paying the tax due from the Company. The petitioner filed revision

application under section 264 of the Act. Commissioner rejected the revision application on the ground that the petitioner was director and hence liable. On writ the Court held that the Assessing Officer has not specifically held that the petitioner to be guilty of gross neglect, misfeasance or breach of duty on part in relation to the affairs of the company. Not a single incident decision or action has been highlighted by the Assessing Officer, which would be treated as an act of gross neglect, breach of duty or malfeasance which would have remotest potential of resulting in non-recovery of tax due in future. Accordingly the order of the Assessing Officer and rejecting the order under section 264 of the Act was quashed. Relied on Maganbhai Hansrajbhai Patel v.ACIT (2012) 211 Taxman 386 / 2013] 353 ITR 567 (Guj)(HC), Ram Praksh Singeshwar Runta v.ITO (2015) 370 ITR 641 (Guj)(HC) (AY. 2008-09, 2009-10)

Geeta P.Kamat v.PCIT (2023) 455 ITR 234 / 150 taxmann.com 490 / (Bom)(HC)

S. 179 : Private company-Liability of directors-Recovery of tax-Private company-liability primarily that of company-Assessing officer to make efforts for recovery of tax from company-Directors showing that non-recovery of tax not attributable to their gross negligence, misfeasance or breach of duty-Order against directors was quashed.[S. 156, Art. 226]

An order was passed against the directors for recovery of tax due from the Company. On writ allowing the petition the Court held that the order under section 179 was without jurisdiction especially when the petitioners had prima facie shown that non-recovery of the outstanding demand could not be attributed to any gross negligence, misfeasance or breach of duty on their part as directors of the company and they had not remained negligent for non-recovery of the outstanding tax dues. The authorities had failed to take any action for recovery of the outstanding dues except issuing notice for recovery and attaching the bank account of the company. According to the provisions of section 179(1) the Assessing Officer was required to have made efforts for recovery of the outstanding dues from the assessee-company which had committed default in payment of the outstanding demand. The basic ingredients of section 179 were not complied with. Accordingly the order was quashed. (AY-2013-14)

Devendra Babulal Jain v.ITO (2023) 450 ITR 520 (Guj)(HC)

S. 192 : Deduction at source-Salary-Difference between sums reported in 26AS and sums reported by assessee-Matter remanded to the Assessing Officer. [Form 26AS]

Held that explanation of the assessee in so far as the difference of amounts reported in form 26AS though the assessee had furnished copies of invoices with its submission, neither the Assessing Officer nor the Dispute Resolution Panel had considered them. Therefore, issue was to be remitted to the Assessing Officer to examine the evidence and decide the issue afresh. (AY. 2015-16, 2017-18).

Panasonic Holdings Corporation v. Dy. CIT (2023)101 ITR 5 (SN) (Delhi) (Trib)

S. 192 : Deduction at source-Salary to partners-Not liable to deduction of tax at source. [S. 15, Explanation 2, 40(a)(ia), 40(b)(v)]

Held that salary, bonus, commission or remuneration received by a partner under the head "salary" and given under section 15 of the Act, there was no infirmity in the findings of the Commissioner (Appeals) that there was no requirement under the provisions of the Act for deduction of tax at source by the partnership firm on salary, bonus, commission or remuneration, etc., or whatever name called given or credited to a partner of a firm. (AY. 2017-18)

Asst. CIT v. Dhar Construction Co. (2023)199 ITD 124 / 101 ITR 49 (SN)(Gauhati) (Trib)

S. 192 : Deduction at source-Salary-Difference between sums reported in 26AS and sums reported by assessee-To be examined by AO.-Matter remanded.[Form No. 26AS]
Held that explanation of the assessee in so far as the difference of amounts reported in form 26AS though the assessee had furnished copies of invoices with its submission, neither the Assessing Officer nor the Dispute Resolution Panel had considered them. Therefore, issue was to be remitted to the Assessing Officer to examine the evidence and decide the issue afresh. (AY. 2015-16, 2017-18).
Panasonic Holdings Corporation v. Dy. CIT (2023)101 ITR 5 (SN) (Delhi) (Trib)

S. 194A : Deduction at source-Interest other than interest on securities-Interest awarded by Motor Accidents' Tribunal under Motor Vehicles Act-Not income-Not liable to deduct tax at source-Any provision for deduction of tax at source in the section would not govern the taxability of the receipt-SLP granted to the Revenue. [S. 2(24), 56(2)(vii), 145A, 145B, 194A(3), Motor Vehicles Act, 1988, S. 171, Art. 136]
High Court held that term 'income' as defined in section 2(24) does not include 'interest' referred to in section 56(2)(viii) or interest received in MACT award and thus, interest awarded in motor accident claim cases from date of claim petition till passing of award, or in case of appeal, till judgment of High Court in such appeal, would not be exigible to tax, not being an income. Court also held that neither clause (b) of section 145A, as it stood at relevant time, nor clause (viii) of sub-section (2) of section 56 make interest awarded in motor accident claim chargeable to tax, whether such interest is income of recipient or not. High Court also held that when interest is paid, if same is received not in name of 'income', then section 194A(3) would not operate and therefore, interest on compensation not being taxable at all, there is no question of deducting tax on same under section 194A and insurance companies or owners of motor vehicles depositing requisite amount in due compliance with awards of Motor Accident Claims Tribunals shall deposit full amount with Tribunal and shall not deduct tax under section 194A on interest awarded by Motor Accident Claims Tribunal. SLP was granted against the order of High Court. (AY. 2017-18)
CCIT (TDS) v. Oriental Insurance Co. Ltd.(2023) 295 Taxman 320 (SC)
Editorial : SLP granted, Oriental Insurance Co. Ltd. v. CCIT (TDS)(2022) 445 ITR 300/ 287 Taxman 522 (Guj)(HC)

S. 194A : Deduction at source-Interest other than interest on securities-Interest on compensation awarded by Motor Accidents Claims Tribunal-Interest assessable only if it exceeds fifty thousand rupeeS. [S. 145A(b), 194A(3)(ixa)*,* **Motor Vehicles Act, 1988, Art. 226]**
Held that that the interest payable under the Motor Vehicles Act, 1988 was relatable to the period 2013-14 to 2019-20. If the interest were spread over year to year, the amount would not exceed Rs. 50,000. Under such premise, the deduction of tax at source in respect of interest for delay in deposit of compensation before the Motor Accidents Claims Tribunal would attract the provisions of sub-section (3) of section 194A and no deduction of tax at source was required. Section 194A of the Income-tax Act, 1961 being not a charging provision, deals with deduction of tax at source in respect of "interest other than interest on securities". Under the provisions of section 145A(b) as it existed prior to amendment by virtue of the and sub-section (1) of section 145B of the Act, after the amendment interest received by an assessee on compensation or on enhanced compensation, as the case may be, shall be deemed to be the income of the year in which it is received. However, under section 194A(3)(ixa) the provisions of the section would not be applicable to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims

Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees.
Kuni Sahoo (Smt.) v. UOI (2023)457 ITR 777 / 331 CTR 258/ 223 DTR 1/ 147 taxmann.com 237(Orissa)(HC)

S. 194A : Deduction of tax at source-Interest other than interest on securities-Jammu Development Authority (JDA) being a corporation established by a State Act is outside purview of section 194A-Not andobliged to deduct tax at source on payment of interest by it on FDs/deposits made by JDA. [Jammu Development Authority Act,1970, S. 3]
Dismissing the appeal of the Revenue the Court held that from a conjoint reading of section 194A and SO 3489 dated 22-10-1970, it becomes abundantly clear that, apart from others, a corporation established by a Central, State or Provincial Act is exempt from the operation of sub-section (1) of section 194A and such corporation is, thus, not obliged to deduct TDS on the interest payment made by it to the payee. The issue raised i.e., whether the JDA is a corporation established by or under the State Act, is no longer res Integra as the Hon'ble Supreme Court has dealt with the similar issue in the case of CIT (TDS), Kanpur v. Canara Bank, [2018] 95 taxmann.com 81/257 Taxman 12/406 ITR 161 (SC) and based on this ratio the inescapable conclusion would be that the assessee-bank shall not be obliged to deduct TDS from the interest payments made to the JDA on its amount kept in FDRs. (AY.2010-11, 2011-12).
PCIT v. J&K Bank Ltd (2023) 294 Taxman 580 (J & K and Ladakh)(HC)

S. 194A : Deduction at source-Interest other than interest on securities-Delay in payment of interest-Tax was deducted out of gross amount of interest without spreading over the period of delay-Not justified-Directed to refund the TDS deducted. [S. 2(28A),2(28B), Motor Vehicles Act, 1988, S. 168, 173, Art. 226]
The petitioners, the wife and the children of the deceased Mahendra Kumar Sahoo filed Motor Accident Claims Case before the Motor Accidents Claims Tribunal (MACT), consequent upon death of Mahendra Kumar Sahoo in road accident on 7-1-2013. The MACT awarded compensation to the tune of Rs. 17.91 lakhs in favour of the petitioners along with interest at the rate of 7 per cent per annum with effect from date of application till its realization. Aggrieved, insurance company preferred an appeal before instant Court, which was referred to National Lok Adalat wherein award was modified. Insurance company pursuant to directions of National Lok Adalat deposited cheques dated 20-9-2019 and accordingly an order was passed by MACT on 22-10-2019. On Writ Petition, the petitioner contended that no disclosure was made with regard to details of interest nor any intimation was given to petitioners with regard to TDS on interest. Allowing the petition the Court held that if interest in question had been computed by spreading over for six years commencing from date of application till deposit was made, interest would be less than Rs. 50,000 and in such eventuality, in view of section 194A(3)(ix) (pre-amendment)/section 194A(3)(ixa) (post-amendment), TDS was not required to be deducted by insurance company. Accordingly the writ petition was to be allowed and TDS amount wrongly deducted was to be refunded to petitioners.
Kuni Sahoo (Smt) v.UOI (2023) 147 taxmann.com 237 (Orissa)(HC)

S. 194A : Deduction at source-Interest other than interest on securities-Compensation /damage for delayed allotment of plot of land-Not interest not liable to deduct tax at source-Deduction of tax at source by mistake the assessee cannot be treated as assessee is default-Interest cannot be levied. [S. 2(28A), 133A, 201(1)]

Assessee, a builder, had taken registration amount from applicants for allotment of plots/flats. He could not allot plots/flats on time and, hence, had to pay compensation/damages for non-compliance. Assessing Officer held that the assessee had paid interest as per copy of account obtained during survey proceedings under section 133A, however, nomenclature of said expenses had been changed to compensation on cancellation of plots/flats after such survey proceedings. Assessee contended that he had deducted TDS under section 194A incorrectly treating amount of compensation as interest under inadvertent mistake which was later on corrected by tax consultant.CIT(A) confirmed the order of the Assessing Officer. On appeal the Tribunal held that amount of payment/compensation for delayed allotment of plot of land was not interest under section 2(28A) since there was neither any borrowings of money nor was there incurring of debt on part of assessee provisions of section 194A would not apply on said payment/compensation. Followed PCIT v. West Bengal Housing Infrastructure Development Corpn. Ltd (2018) 257 Taxman 610 / (2019)413 ITR 82 (Cal)(HC). Tribunal also held that merely because in earlier point of time under an advertent mistake, assessee was treating such payment as interest, he could not be compelled to commit same mistake continuously after advice of tax consultant and, thus, such inadvertent mistake of assessee did not entitle Assessing Officer to treat assessee-in-default for taking action against assessee on account of non-deduction of TDS under section 194A. (AY. 2015-16)
Sawhney Builders (P.) Ltd. v. ACIT (TDS) (2023) 201 ITD 259 (Delhi) (Trib.)

S. 194A : Deduction at source-Interest other than interest on securities-S. 194A : Deduction at source-Interest other than interest on securities-Non deduction of TDS on year-end provision-Suo moto disallowance of expenditure u/s 40(a)(ia)-liability to deduct tax at source u/s 194A exists-levy of interest u/s 201(1A)-Failure to identify the payees-Matter remanded.[S. 40(a)(i), 40(a)(ia),191, 201 (1), 201(IA)]
Assessee had disallowed certain expenditure u/s 40(a)(i) and 40(a)(ia) of the Act for not deducting tax at source from those expenses. AO initiated proceedings u/s 201(1) & 201(1A) and charged interest u/s 201(1A). It was held that assesses who are following a mercantile system of accounting are required to account for all known expenses and losses, even if bills/invoices have not been received. Point of time at which tax had to be deducted at source is at time of credit to Account of contractor or payment in cash or cheque, whichever r is earlier. Following the decisions of coordinate benches, it was held that TDS provisions are triggered for the amount credited to the Provision for expenses account. Accordingly, it was held that assessee is liable to deduct tax at source from year end provision for expenses. Even if the payer had disallowed expenditure u/s 40(a)(ia) or did not claim the same as expenditure at all, he shall still be liable to deduct tax at source u/s 194A. In view of explanation given u/s 191 of the Act, provisions of S. 201 are triggered when assessee is deemed to be an assessee in default. If there is failure on part of an assessee to deduct tax at source, provisions of S. 191 introduces a deeming fiction as per which said assessee is deemed to be an assessee in default. Disallowance made u/s 40(a)(i)/40(a)(ia) will not absolve assessee from liability u/s 201. However, when assessee cannot ascertain payee who is beneficiary of credit of tax deduction at source, mechanism of Chapter XVII-B cannot be put into service as the mechanism provided under Chapter XVII-B would fail and hence AO would not be entitled to demand tax u/s 201(1) and interest u/s 201(1A). As the assessee has not furnished any detail to AO / CIT(A), the issue is restored to file of AO. Matter remanded. (AY. 2012-13)
Biocon Ltd. v. DCIT (2023) 102 ITR 485 (Bang)(Trib)

S. 194A : Deduction at source-Interest other than interest on securities-Assessee in default-The tax deducted was deposited-The assessee could not be trated as assessee in default under section 201(1)-The assessee would be liable to pay interest u/S. 201(1A) of the Act. [S. 201(1) 201(IA)]

The AO passed orders under section 201(1) & 201(1A) of the Act making the assessee as an assessee in default and also levied interest on the tax demand. The CIT(A) upheld the orders passed by the AO.The Tribunal rejected the contention of the assessee that a part of the interest charged to the P&L Account has neither been paid nor credited to the customers account, rather credited to the interest payable account and therefore the same is not liable to TDS under section 194A of the Act. However, the Tribunal accepted the contention of the assessee that since the tax was deducted at source at later stage i.e. at the time of maturity, it cannot be said that there was any default in deducting tax at source. The Tribunal further held that the assessee would be liable for interest under section 201(1A) of the Act in respect of the said amount.(AY. 2016-17 to 2019-20)

Wayanad District Co-op. Bank Ltd. v. ITO (TDS) (2023) 200 ITD 500 (Cochin)(Trib)

S. 194A : Deduction at source-Interest other than interest on securities-Assessee in default-The tax deducted was deposited-The assessee could not be trated as assessee in default under section 201(1)-The assessee would be liable to pay interest u/S. 201(1A) of the Act. [S. 201(1) 201(IA)]

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Wayanad District Co-op. Bank Ltd. v. ITO (TDS) (2023) 200 ITD 500 (Cochin)(Trib)

S. 194C : Deduction at source-Contractors-Reimbursement of expenditure in absence of evidence-Liable to deduct tax at source [S. 40(a)(ic)]

The Assessee-company was engaged in the business of generation and distribution of power. It paid certain amount to the clearing and forwarding agent, which included reimbursement of expenditure. It contended that no tax was to be deducted at source on such reimbursement. Calcutta High Court by the impugned order held that since assessee had failed to produce any document in support to its contention, it was liable to deduct tax at source even in respect of reimbursements which had been incurred by agent. SLP dismissed as withdrawn. (AY. 2005-2006)

Surendra Commercial & Exim (P.) Ltd. v. ITO (2023) 291 Taxman 202 (SC)

Editorial : SLP dismissed as withdrawn Surendra Commercial & Exim (P.) Ltd. v. ITO (2022) 288 Taxman 580 (Cal)(HC)

S. 194C : Deduction at source-Contractors-Works contract-Sales or return basis (SOR)-Arrangement is not works contract-Not liable to deduct tax at source. [S. 201(1),Sale of Goods Act, 1930]

Held that payments made to vendors for procurements of goods under sales or return basis (SOR) is an arrangement is not works contract hence not liable to deduct tax at source. (AY. 2017-18)

ACIT v. Shoppers Stop Ltd (2023) 223 TTJ 27/225 DTR 337 (Mum)(Trib)

S. 194C : Deduction at source-Contractors-Payment of external development charges to Greater Mohali Area Development Authority-Charges not paid out of any contractual obligations or liability-Provisions of S. 194C is not attracted-Not in default.[S. 201(1), 201(IA)]

Held, that the Greater Mohali Area Development Authority had been authorised to collect the external development charges as per the policy decision of the Government and not out of free consent of the parties to the contract which had been executed between the assessee and the Government. Though the developer contributed towards the proportionate cost of infrastructure development by way of external development charges, the work so carried out by the local authority was not in consequence of specific performance of the contract but out of its own obligations and duties towards the public and thus, the contract could not be said to be a work or service contract. Thus, on both accounts, the provisions of section 194C were not attracted and the demands raised under section 201(1) read with section 201(1A) of the Act are set aside.(AY.2011-12)

Punjab IAS and PCS Officers House Building Society Ltd. v.ITO (2023)108 ITR 290 (Chd) (Trib)

S. 194C : Deduction at source-Contractors-Year end provision for expenses-Payee is not identifiable-Invoices received next year-Provision is reversed-Tax deducted at source-Assessee Could not be treated as in default for mere book entries in absence of ascertainable amount and identifiable payee. [S. 194I, 194J, 201(1),201(IA)]

Held that in the absence of an ascertainable amount and identifiable payee, the assessee could not be treated as an "assessee in default" for mere book entries passed within the meaning of section 201(1) of the Act and consequentially interest under section 201(1A) could also not be levied in respect of the year-end provision. Relied on UCO Bank v. UOI (2014) 369 ITR 335 (Delhi) (HC), ADIT v. Ericsson Communications Ltd (2015) 378 ITR 395 (Delhi)(HC) .(AY.2013-14, 2014-15)

HT Mobile Solutions Ltd. v. JCIT (2023)104 ITR 44 (SN)(Delhi) (Trib)

S. 194C : Deduction at source-Contractors-Common area maintenance charges-,Paid to malls-Tax deductible at 2 percent under section 194C and not 10 %. [S. S. 133A, 194I, 201(1) 201(IA)]

The Assessing officer held that tax should have been deducted at 10% under section 194I instead of 2% under section 194C. CIT(A) held that there was no distinction between CAM charges and lease rent payment, except for separate invoices, and upheld the views of the Assessing officer.Tribunal lease rentals are paid based on a fixed percentage on the net revenue while the CAM charges are based on the per sq. ft. area. Further, the determination of the rent or CAM are separate, and the CAM arrangements are not essential and an integral part of the use of premises. CAM involves the employment of separate staff and separate operations while expenses against rent are generally only for general building maintenance and municipal charges. The distinction above being apparent it is held that rent provisions are governed by section 194I while CAM charges by section 194C of the Act. (AY. 2012-13)

Aero Club v. DCIT [2023] 200 ITD 318 /102 ITR 65 (SN) (Delhi) (Trib.)

S. 194H : Deduction at source-Commission or brokerage-Discounts given by assessee-telecommunication Company on the sale of prepaid SIM cards to distributors-SLP admitted.

Bombay High Court by the impugned order held that TDS provisions under section 194H were not attracted on discounts given by the assessee-telecommunication company on the sale of prepaid SIM cards to distributors. SLP was admitted against the order of the High Court.

CIT (TDS) v. Vodafone Cellular Ltd (2023) 291 Taxman 447 (SC)

Editorial : CIT (TDS) v. Vodafone Cellular Ltd (2021) 131 tamann.com 191 (Bom)(HC)

S. 194H : Deduction at source-Commission or brokerage-Trade discount-Payment by Television Channels or Newspapers-Advertising Agency-Procuring or canvassing for Advertisements-Not commission-Not liable to deduct tax at source. [S. 260A]

Dismissing the appeal, of the Revenue the Court held that the Tribunal had examined the factual position, more importantly, the various clauses as contained in the rules and regulations prescribed by the Indian Newspaper Society of which clauses 20, 23 and 25 were referred to and after analysis of those clauses, the Tribunal held that it was clear that there was no principal and agent relationship between the newspaper and the advertising agency. Thus, both on the facts as well as in law, the Tribunal was justified in holding that trade discount allowed by the assessee to the accredited advertising agent was not in the nature of commission and therefore not subjected to tax deduction at source under the provisions of section 194H of the Income-tax Act, 1961. Referred,Circular No. 5 of 2016, dated February 29, 2016 ([2016] 382 ITR (St.) 13), question No. 27 of the Board's Circular No. 715 dated August 8, 1995 ([1995] 215 ITR (St.) 12) (AY.2004-05)

CIT (TDS) v. ABP Pvt. Ltd. (2023)458 ITR 74 /150 taxmann.com 436 / 333 CTR 564 (Cal)(HC)

S. 194H : Deduction at source-Commission or brokerage-Telecom services-Discount to distributors-Agreement is not considered-Matter remanded [S. 201]

Tribunal held that since agreement between assessee and distributors as well as ledger copy of distributors in books of assessee had not been considered by lower authorities while passing order, matter was to be remanded to Assessing Officer for fresh adjudication. (AY. 2009-10, 2010-11)

Bharti Airtel Ltd. v. ITO (TDS) (2023) 201 ITD 695 (Indore) (Trib.)

S. 194H : Deduction at source-Commission or brokerage-Exhibition of films-Survey-Theatre owner is not liable to deduct tax at source on convenience fee charged by BookMyshow to the end customer and retained by it-Matter remanded. [S. 133A, 201(IA)]

The AO held that convenience fee retained by Bigtree was in lieu of commission /service charges payable by the cinema owner and amounts to constructive payment made by the cinema owner to Bigtree. The AO held that the provision of section 194H is applicable and treated the assessee in default as per the provision of section 201 and 201(IA) of the Act. The Tribunal held that the Theatre owner is not liable to deduct tax at source or convenience fee charged and retained by it. Tribunal also held that one aspect which needs to be considered is the situation where tickets are liable to be refunded. The Tribunal raised a question that if the theatre owner was not able to start/ play the movie who would be liable to refund the ticket price – Bigtree or the theatre owner ? This issue needs to be ascertained and risk analysed. The Tribunal directed the AO to carry out the necessary verification and consider the claim of the assessee in accordance with law. (TS-1026-ITAT-2022. (AY-2013-14, 2014-15)

Srinivas Rudrappa v.ITO (2022) BCAJ-February-P. 37 (Bang)(Trib)

S. 194I : Deduction at source-Rent-Agreement with State Government for Development-External development charges-Not in the nature of rent-Tax not deductible at source on such chargeS. [S. 201(1), 201(IA), Art. 226]

The Assessing Officer had held that tax was liable to be deducted at source under section 194-I of the Act, and he had also proceeded to analyse the section and hold that external development charges were in the nature of rent. He had, in addition, also applied the rate of 10 per cent. for assessing the assessee's liability. Court held that the approach of the Revenue was flawed. The contention that the findings of the Assessing Officer regarding the nature of the external development charges as well as at the provisions referred by him for determining the assessee's liability were not material, was erroneous. The orders passed by the Assessing Officer raising a demand under section 201(1) and (1A) of the Act were liable to be quashed.

DLF Homes Panchkula Pvt. Ltd. v. JCIT(OSD) (2023)459 ITR 773/149 taxmann.com 176/ 333 CTR 754 / 226 DTR 1 (Delhi)(HC)

S. 194I : Deduction at source-Rent-Common area maintenance (CAM) charges-Provision of section 194C is applicable and not provision of section 194I. [S. 194C, 201(1)]

Assessing Officer held that payment made by assessee in nature of Common Area Maintenance (CAM) essentially was a part of rental activities and was covered under section 194-I and treated assessee as 'assessee in default' within meaning of section 201(1) for failure to appropriately deduct tax at source. On appeal the Tribunal held that in case of Yum Restaurants India (P.) Ltd. v. ACIT (2023) 147 taxmann.com 257 (Delhi) (Trib) decided similar issue in favour of assessee and held that provisions for rent are governed by section 194-I and CAM charges by section 194C. The Assessing Officer is directed to recompute CAM charges taking into consideration said two sections. (AY. 2013-14, 2014-15)

Welgrow Hotels Concepts (P.) Ltd. v. ITO (2023) 203 ITD 595 (Delhi) (Trib.)

S. 194I : Deduction at source-Rent-TDS credit cannot be denied to assessee HUF as a consequence of wrong PAN mentioned in the sale deed mistakenly, when corresponding capital gain on relevant transaction was taxed in the assessee HUF's name.[S. 199 Rule 37BA(2)]

The Tribunal held that no credit was claimed in Shri Anand Singhania's return of income and an affidavit to the said extent was filed by Assessee before the first appellate Tribunal. Considering the facts of the case, the Tribunal held that TDS cannot be denied to Assessee by taking benefit of the mistake in the sale deed when the corresponding capital gain was taxed in Assessee's name. Accordingly, the claim for TDS by the Assessee was allowed. (AY 2018-19)

Anant Singhania HUF v. ITO (2023) 202 ITD 46/ 226 TTJ 430 (Mum)(Trib)

S. 194IA : Deduction at source-Immoveable property-Assessee in business of real estate-Percentage Completion Method-Tax deducted by buyer at the time of execution of deed-Assessee to produce certificates to substantiate tax deducted on income offered in earlier or current year-AO to carry out necessary verification-Matter remanded to lower authority.[S. 145]

Held that if the income had been offered by the assessee following the percentage completion method, in the current year or in any earlier year, while tax had been deducted subsequently by the buyer at the time of execution of sale deed and the assessee was able to produce the requisite certificates to substantiate that tax had been deducted on the income which had been offered to tax by the assessee and the assessee was able to correlate the income offered to tax

with the tax deducted, credit for the tax so deducted should be allowed to the assessee. Thus, matter was remanded for verification (AY. 2018-19, 2019-20).
Neelkanth Developers v. Asst. DIT (2023)101 ITR 44 (SN) (Ahd) (Trib)

S. 194J : Deduction at source-Fees for professional or technical services-Salary-Hospital-Retainership fees paid to doctors-Provisions of section 194J are applicable not provision of section 192 of the Act [S. 192]
Dismissing the appeal of the Revenue the Court held that with respect to Retainership fees paid to doctors, provisions of section 194J are applicable not provisions of section 192 of the Act. (AY. 2018-19)
CIT (TDS) v. Mewar Hospital (P.) Ltd. (2023) 290 Taxman 389 (Raj.)(HC)

S. 194J : Deduction at source-Fees for professional or technical services-Foreign agents-No business connection-Not performed any job /operation in India-Not liable to deduct tax at source-OECD Model convention-Art.12-Reimbursement of expenses-Not chargeable to tax-Not liable to deduct tax at source. [S. 5(2)(b), 9(1)(vii), Explanation, 195, 201(1), 201(IA), 204]
Assessee had made payments to foreign agencies for availing investment and other cost estimates, arrange for arrival and departure including local transport, hotel and bookings for personnel deputed from India, arrangement of accommodation, automobile, medical insurance for seconded staff, etc. under agency agreement.Assessing Officer held that payment attracted provisions of section 9(1), therefore, TDS was deductible on such payment under section 195. Accordingly, he held assessee as assessee-in-default and raised demand under section 201(1)/201(1A) upon it. CIT(A) deleted the disallowance.On appeal the Tribunal held that since there was no business connection in India between agent and assessee nor agent had performed any job/operations in India, no part of sum payable by assessee could be regarded as arising in India so as to be chargeable to tax in India and, therefore, assessee had no obligation to deduct tax at source from said payment. Order of CIT(A) is affirmed. As regards foreign allowances, food and out pocket expenses paid to non-resident secondees is not chargeable to tax under section 5(2)(b) as there is no employer-employee relation ship between the assessee and secondees and the services in respect of which allowance in question were paid were rendered by the non-residents employees outside India. Assessee is not default under section 201(1), read with section 201(IA) of the Act. Order of CIT(A) is affirmed. (AY. 1996-97 to 1998-99)
ITO v.Petroleum India International (2023) 225 TTJ 254 / (2024) 158 taxmann.com 23 / 111 ITR 365 (Mum)(Trib)

S. 194J : Deduction at source-Fees for professional or technical services-Educational institute-**Monthly remuneration to guest faculties-Contract for sevice-Below taxable limit on individual basis-Not laible to deduct tax at source. [S. 201(1), 201(IA)]**
Assessing Officer held that the assessee had not deducted TDS on payments made to guest faculty rendering professional services which was covered under section 194J and, thus, he held assessee as assessee in default and raised demand under section 201(1)/201(1A) upon it. The Tribunal held that the guest faculties were rendering identical services as regular staff. Relationship between management and teaching faculties involved an obligation to obey orders and work to be supervised and, thus, said relationship could not be called 'contract for services'. Monthly remuneration paid to guest faculties were in nature of 'contract of service' between assessee and guest faculties. Teaching staff did not render any professional or technical service to assessee. Teaching staff was appointed on ad hoc basis and such ad hoc

salary paid to them was below taxable limit on individual basis. No tax at source was to be deducted by assessee on remuneration paid to guest faculty.(AY. 2017-18)
Government Polytechnic Education Society v. ITO (TDS) (2023) 200 ITD 134 (Delhi) (Trib)

S. 194J : Deduction of tax at source-Fees for professional or technical services-Payments to contract teachers-Remuneration did not exceed RS. 5 lakhs-Not liable to deduct tax at source. [S. 87A]
Assessees were authorities appointed by and working under directions of the State Government with their main function to disburse honorarium/remuneration to teachers with whom colleges agree to perform teaching work entrusted by the college committee under the curriculum of the intermediate syllabus. Teachers were paid a fixed monthly honorarium/remuneration which did not exceed Rs.5 lakh. The AO held that the payments made to such contract teachers fell within the definition of the expression 'fee for professional services' u/s. 194J and same were liable for deduction of TDS on payments made to contract teachers. The Tribunal held that the words 'fee for professional services, would not leave any scope for interpretation and categories mentioned therein as on date were exhaustive by explanation itself or by notification of CBDT and by necessary implication, such an exhaustive definition excludes payments made to contract teachers in intermediate colleges. Further, slab rates and rebates u/s. 87A, there would be no tax liability in the hands of teachers. Therefore, payments made to contract teachers did not answer the description of 'fee for professional services' and were not liable to TDS u/s. 194J. (Followed Notification No. 88/2008, dated 28-1-2008)(AY. 2020-21)
Dist. Intermediate Educational Office v. ITO (TDS) [2023] 201 ITD 74 (Hyd)(Trib.)
S. 194J : Deduction at source-Fees for professional or technical services-Not taxable as fees for technical services-DTAA-India-Songapore [Art. Art. 12(4)(a), (b)]
The Tribunal allowing the appeal held that with respect to taxability of management support cost, the services provided by the assessee did not make available any technical knowledge, skill, know-how to the recipient. While the licence agreements for user of brand name were with various third party hotels in India, the agreement for provision of management support services was with the Indian subsidiary. Therefore, the amount received from provision of management support services was not ancillary and subsidiary to the licence agreement. Not taxable as fees for technical services.(AY. 2015-16 to 2016-17)
Inter-Continental Hotels Group (Asia Pacific) Pte. Ltd. v. Dy. CIT (2023) 151 taxmann.com 416/ 105 ITR 39 (SN)(Delhi) (Trib)

***S.* 194N *:* Payment of certain amounts in cash-Deduction of tax at source-Exemption to Societies-Directing Ministry of Finance, Government of India and CBDT to immediately examine representation of Tamil Nadu Government for exemption of Societies from section 194N after affording opportunity of hearing to Government and all stakeholders through public notice. [S. 119, Art.226]**
Petitioners were Primary Agricultural Co-operative Credit Societies, primarily engaged in lending money to members of Society for agriculture and allied activities. State Government implemented Pongal welfare scheme through these Societies whereby allotment for a district would be made to a Central Co-operative Bank which would be withdrawn by petitioners in bulk and distributed to beneficiaries. Such withdrawal of money was considered to be income of petitioners on which Central Co-operative Bank was liable to deduct tax at source under section 194N at 2 per cent where payment in cash exceeded Rs. 1 crore during previous year. Central Co-operative Bank issued a Circular to Societies to strictly adhere to provisions of section 194N. Primary Societies were only acting as Facilitators to pass on welfare scheme

being implemented by State Government, they chose to challenge circulars issued by respective District Central Co-operative Banks.In similar previous petitions, a Mandamus was issued directing Ministry of Finance, Government of India and CBDT to immediately examine representation of Tamil Nadu Government for exemption of Societies from section 194N after affording opportunity of hearing to Government and all stakeholders through public notice.(Madurai Bench of the Madras High Court in the matter of A.2979 *Thirumohur Primary Agricultural Co-operative Credit Society Ltd.* v. *ITO* [W.P.(MD) Nos.4499, 4536 and 4592 of 2023, dated 3-3-2023). Revenue submitted that within a reasonable period, request made by Government of Tamil Nadu would be considered and a decision would be taken.Further time of six weeks was granted to Revenue within which Ministry of Finance, Government of India and CBDT would decide request made by Government of Tamil Nadu for co-operative societies seeking exemption from section 194N and pass orders thereon.
Erode Mavatta Valamana Thodakka v. Managing Director/Additional Registrar, Erode District Central Cooperative Bank (2023) 294 Taxman 730 (Mad.)(HC)

S. 195 : Deduction at source-Non-resident-Other sums-Payment to resellers-No permanent establishment in India-Equalisation levy-Directed to withhold 8 percent of payments to Amazon Web Services (AWS) USA-DTAA-India-USA [S. 9(1)(i),195(2), Finance, Act, 2016, S. 165A, Art. 7, Art.226]
Assessee made payments as reseller fee to Amazon Web Services (AWS) USA for purchase of web services and claimed that reseller fees paid by it was not chargeable to tax as AWS USA did not have any permanent establishment in India. The assessee made an application under section. 195(2) of the Act. The Assessing Officer held that AWS USA had significant infrastructural assets (data centres) in India, which constituted its PE. The Assessing Officer proceeded on the information as available in the public domain and concluded that AWS USA had significant infrastructural assets (data centres) in India, which constituted its PE. Accordingly, the Assessing Officer held that the reseller fees paid by AWS India to AWS USA would fall outside the scope of equalisation levy and would be chargeable as business income under the provisions of the Act. He estimated 40 per cent of the reseller fess paid by AWS India to AWS USA as profit margin of AWS USA. The Assessing Officer directed AWS India to withhold 16 per cent of the remittance on account of reseller fee paid to AWS USA. On Writ the Court held that since Assessing Officer had decided assessee's application based on information in public domain and on basis of certain assumptions which were ex facie erroneous, it would be apt that assessee would withhold 8 per cent of payments to AWS USA, for period in question and deposit same with revenue authorities.
Amazon Web Services India (P.) Ltd v.ITO (2023) 295 Taxman 555 (Delhi)(HC)

S. 195 : Deduction at source-Non-resident-Other sums-Commission earned by non-resident agent carrying on business of selling Indian goods outside India could not be said to be income which had accrued and/or arisen in India and, thus, assessee was not liable to deduct TDS on payment of such commission to foreign agentS. [S. 40(a)(i)]
An appeal was filed by the Revenue challenging the order of the Tribunal wherein the Tribunal deleted the disallowance made under section 40(a)(i) of the Act in respect of payment made towards commission to foreign agents without deducting tax at source. High Court observed that the question of TDS on commission income paid to foreign agents and the non-deduction of TDS was fully covered by the decision of the Supreme Court in *GE India Technology Centre (P.) Ltd. v. CIT (327 ITR 456)*. High Court further observed that it was well settled that commission earned by a non-resident agent who carried on the business of selling Indian goods outside India cannot be said to be deemed income accrued or arising

in India. High Court dismissed the department's appeal holding that no substantial question of law arose in the matter. (TA No. 68 of 2016 dt. 16-8-2017) (AY 2010-11)
PCIT v. Sesa Goa Ltd. (2023) 291 Taxman 229 (Bom)(HC)
Editorial : SLP of Revenue dismissed PCIT v. Vedanta Ltd (2023)291 Taxman 205 / 146 taxman.com 34 (SC)

S. 195 : Deduction at source-Non-resident-Deposit of TDS under wrong challan-Authorities directed to correct the demand due to deposit of TDS by wrong challan.
While depositing the TDS on dividend paid to non-resident the assessee deposited the taxes vide challan No 280 which is applicable for payment of advance tax, self assessment tax, tax on regular assessment, tax on distributed income unit to unit holders etc. The tax ought to have been deposited under challan No 281. The AO has raised the demand for short payment of taxes. On appeal CIT(A) dismissed the appeal. On appeal the Tribunal directed the Authorities to correct the demand due to deposit of TDS by wrong challan. The Tribunal also directed the concerned authority to make every possible endeavour of carrying out the necessary correction in the challan within a period of 2 months from the date of receipt of the order and grant the relief as per law.(TS-963-ITAT-2022) (AY. 2021-22)
World Quant Research (India) Pvt Ltd v.CIT, NFAC (2023) BCAJ-February-P.38(Mum)(Trib)

S. 197 : Deduction at source-Certificate for lower rate-Income deemed to accrue or arise in India-Fees for technical services-India-UAE DTAA did not contain article of FTS and the assessee had no PE in India, directed to issue certificate pegging withholding tax at 4 per cent-DTAA-India-UAE [S. 9(1)(vii), Art. 7, 10, Art. 226]

The assessee a resident of UAE made an application for issuance of certificate under section 197 at nil rate. The Assessing Officer held that income earned by assessee was FTS and tax is to be deducted at 10 percent. On writ the court held that India-UAE, DTAA did not contain article of FTS and the assessee had no PE in India. Accordingly directed the Assessing Officer to issue certificate pegging withholding tax at 4 per cent.
WTS Energy DMCC v. Dy. CIT (2023) 451 ITR 175 / 292 Taxman 52 (Delhi)(HC)

S. 197 : Deduction at source-Certificate for lower rate-Non-Resident-Payments under distributor agreement-Certificate for withholding tax at rate of 9.99 Per Cent-Order set aside-Precedent-Supreme Court-Binding on Authorities. [S. 195, Rule 28AA, Art. 226]
On writ against the order under section 197 of the Act, the Court held, that the Assessing Officer had bypassed the judgment of the Supreme Court in Engineering Analysis Centre of Excellence P. Ltd. v. CIT (2021) 432 ITR 471 (SC). The Court directed the Assessing Officer to examine the application, in the background of the parameters set forth in rule 28AA. (AY. 2022-23)(AY. 2023-24)
Milestone Systems A/S v.Dy. CIT (No. 1) (2023)453 ITR 250/150 taxmann.com 348 / 334 CTR 89/ 225 DTR 369 ((Delhi)(HC)
Milestone Systems A/S v. Dy. CIT (NO. 2) (2023)453 ITR 255 (Delhi)(HC)

S. 197 : Deduction at source-Certificate for lower rate Binding judgement of Supreme Court-Pendency of review-Assessing Officer is bound to follow the judgement-Order has to be passed due application of mind-DTAA-India-Denmark.[S. 9(1)(vi), 195, Art. 13(3) Art. 226]
The petitioner made an application under section 197 of the act for withholding tax certificate. The application was rejected on the ground that review petition is pending in

respect of the order relied by the petitioner in Engineering Analysis Centre of Excellence Pvt Ltd v. CIT 2021 SCC Online SC 159. On writ the Court held that as long as the judgement of the Supreme Court is in force, the concerned authority could not have side stepped the judgement, based on the fact that the review petition had been preferred. The Assessing Officer was directed to look in to the distribution agreement and decide according to law. Order was quashed. Directed the Assessing Officer to pass the order after considering the distribution agreement. (W.P.(C) 3639/ 2022 dt. 14-3 2022)(AY. 2022-23)
Milestone Systems A/S v. Dy.CIT (2023) BCAJ-April-49 (Delhi)(HC)

S. 197 : Deduction at source-Certificate for a lower rate-Payments to Non-Resident-Fees for technical services-No article contained in double taxation avoidance agreement-Department directed to issue a certificate at withholding rate of four Per Cent-Contentions of parties left open-DTAA-India-UAE [Art. 226]
On a writ petition for a direction to issue a certificate under section 197 of the Income-tax Act, 1961 at a lower rate than 10 per cent. for the financial year 2022-23 since lower withholding tax certificates at 4 per cent. were issued in the financial years 2019-20, 2020-21 and 2021-22 Court held that the issue was whether the income in question earned by the assessee could be treated as fees for technical services as contended by the Department. The Double Taxation Avoidance Agreement between India and the United Arab Emirates did not contain any article concerning fees for technical services whereas the assessee who was a non-resident and did not have a permanent establishment in India, claimed the income as business income. Because of these varying stands the dispute arose with regard to the rate at which withholding of tax had to be pegged and therefore, the rate of withholding tax, for the time being, would be at four per cent. without prejudice to the rights and contentions of both parties. The court directed the Department to issue a certificate under section 197 pegging the withholding tax rate at four per cent. which was also the position obtained in the financial years 2019-20, 2020-21 and 2021-22.
WTS Energy DMCC v. Dy. CIT (2023)451 ITR 175 (Delhi)(HC)

S. 199 : Deduction at source-Credit for tax deducted-Refund of tax deducted at source-Amount wrongly deducted to be refunded if person receiving payment is not claiming credit-Amount to be refunded with interest.[S. 115A,195,195A, 248, Art.226, 265]
Assessee entered into an agreement with one with Davy Mckee Corporation (DAVY) a foreign company, as per which assessee was to receive services in relation to projects outside India. It was also agreed that if any withholding tax was required to be deducted, it would be borne by assessee and DAVY would be paid net amount. Accordingly, assessee sought for a NOC to facilitate remittance to DAVY claiming that technical services were rendered outside India and fees was also paid outside India in foreign currency, hence income embedded in said fees accrued and arose to DAVY outside India. The Assessing Officer held that amount payable by assessee was taxable in India and NOC would be issued only if assessee deposited 30 per cent of amount to be remitted to DAVY The assessee paid withholding tax on payment made to DAVY under protest. Later, High Court confirmed that amount paid to DAVY was not chargeable to tax in India.(Grasim Industries Ltd v.S.M Mishra (2011) 332 ITR 276 (Bom)(HC)) The Assessing Officer refused to refund withholding tax to assessee on ground that same was deposited by assessee on behalf of DAVY. For past 13 years neither Kvaerner successor-in-interest of DAVY) nor DAVY had claimed any amount from revenue Kvaerner had also addressed its 'no objection' conveying that amount could be refunded to assessee. Allowing the petition the Court held that even though amount deposited by assessee would be called as 'tax deductible at source' but what assessee actually paid was 'an ad hoc amount not technically a TDS amount', revenue's insistence on assessee paying that amount

was not in accordance with law and amount so paid over must be refunded to assessee. Court also observe that section 248 of the Act, amended by the Finance Bill, 2007 (2007) 289 ITR 122 (St), envisages and deals with a situation where a refund could be made to the person by whom the income was payable and who has borne the withholding tax. (Procedure for refunds) Circular No. 769, dated 6-8-1998 (1998) 232 ITR 25(St)), Circular No. 790, dated 20-4-2000 (2000) 243 ITR 58 (St) and Circular No. 7 of 2007, dated 23-10-2007(2007) 294 ITR 1(St). Referred, Balmukund Acharya v. Dy.CIT (2009) 310 ITR 310(Bom)(HC), Nirmala L.Mehta v. A. Balasubramanian, CIT (2004) 269 ITR 1 (Bom)(HC), CIT v. Shelly Products (2003) 261 ITR 367 (SC). (AY. 1990-91, 1991-92)
Grasim Industries Ltd. v. ACIT (2023) 458 ITR 1 / 295 Taxman 297/ 335 CTR 233 (Bom.)(HC)

S. 199 : Deduction at source-Credit for tax deducted-Interest income of deceased husband was shown in her return of income-Tax deducted which was reflected in Form No. 26AS has to be allowed to the assessee, though physical grant if refund was not feasible through system. [Art. 226]
Assessee filed return declaring income from interest received in name of her deceased husband and claimed credit for TDS.Which was denied by the Assessing Officer. On appeal Commissioner (Appeals) directed Assessing Officer to verify claim of assessee and grant TDS credit to assessee. However the Assessing Officer denied claim on ground that credit of TDS stood in name of late husband of assessee, therefore, she could not be given refund although she had offered income in her return and paid tax thereon-Whether since assessee was fair enough to offer interest income.On writ allowing the petition the Court held that the interest received on account in her return of income and tax paid also reflected in Form 26AS, TDS relating to such interest income was to be allowed to assessee and same was to be refunded through physical grant, if refund was not feasible through system (AY. 2017-18)
Nayana Kanakbhai Hutheesing v. ITO (2023) 292 Taxman 588 (Guj.)(HC)

S. 199 : Deduction at source-Credit for tax deducted-Firm-Partner-Sale of immoveable property-Failure to file declaration-Directed to file an application under section. 199 read with Rule 37BA of the Act. [R. 37BA]
Held that the assessee has not filed the declaration therefore directed to file an application under section. 199 read with Rule 37BA of the Act.Matter remanded. (AY. 2018-19)
Nirav Bipinbhai Vaghasiya v.ITO (2023) 223 TTJ 5 (UO) (SMC)(Surat)(Trib)

S. 199 : Deduction at source-Credit for tax deducted-Transfer of business-Transfer of income-TDS credit TDS credit cannot not be denied merely because credit of TDS didn't reflect in Form 26AS of assessee. [Rule 37BA(2), Form 26AS]
Assessee, transferred business of generation, transmission and distribution of electricity to another company Adani Electricity Mumbai Ltd. (AEML). On account of said transfer of business, AEML transferred income and TDS credit to assessee. Said TDS credit had been claimed by assessee in its original as well as revised return of income. AEML in its return of income for assessment year 2020-21 had also categorically declared that it had taken no claim or credit of said TDS amount appearing in Form 26AS and had transferred same to PAN of assessee in return of income. Department did not grant credit for TDS claimed, since TDS credit did not appear in Form 26AS of assessee and procedure had not been followed by assessee as provided in rule 37BA(2). CIT (A) granted the relief. On appeal the Tribunal held that a Form or a Rule is an aid to implement provisions of main enactment, i.e., Income-tax Act and procedure prescribed under Rule is to facilitate and implement tax and Rules and Form cannot be interpreted so as to make main provisions of Act subservient to such Rules or

Forms prescribed therein to make procedure cumbersome.Therefore, in peculiar facts and circumstances of case, Assessing Officer was to be directed to give credit of TDS in question and assessee should not be drawn to further litigation on ground that IT system did not support or did not have any mechanism to give credit. (AY. 2020-21)
DCIT v. Reliance Infrastructure Ltd. (2023) 202 ITD 452/224 TTJ 1 (Mum) (Trib.)

S. 199 : Deduction at source-Credit for tax deducted-Credit should be given in the year in which the income is assessed though the tenant inadvertently reported same in assessment year 2021-22.[R. 37BA(3)(i)]
Tribunal held that where assessee received rental income from tenant on 31-3-2020, benefit of TDS had to be allowed in year under consideration even though tenant had inadvertently reported same in succeeding assessment year. In terms of rule 37BA(3)(i), benefit of TDS is to be given for assessment year for which corresponding income is assessable. (AY. 2020-21)
Anup Rajendra Tapadia. v. `DCIT (2023) 199 ITD 205 (Pune) (Trib.)

S. 199 : Deduction at source-Credit for tax deducted-Portuguese Civil Code-Income earned to be apportioned half to spouse-TDS credit to be apportioned-Not entitle to entire TDS credit in his name. [S. 5A,154, 198, Rule. 37BA]
Assessee is governed by Portuguese Civil Code as in force in State of Goa and was covered under special provisions of section 5A. He declared half of income earned in his return of income and apportioned half of income with his spouse in terms of section 5A Assessing Officer processed return by giving apportioned TDS credit. Commissioner (Appeals) held that assessee was not entitled to entire TDS credit in his hands.On appeal the Tribunal held that as per section 198 all TDS amounts deducted under chapter XVII are indeed deemed as income received of concerned assessee and legislative expression 'assessee' must be read as 'spouses assessees' in light of section 5A and, therefore, such TDS amount had to be consequentially apportioned going by scheme of Act. Order of CIT(A) is affirmed. (AY. 2018-19)
Prasad Raghoba Naik. v. ADIT (2023) 199 ITD 95 (Panaji) (Trib.)

S. 199 : Deduction at source-Credit for tax deducted-Commission-Direction issued for reopen the assessment for the Assessment year 2013-14 and tax the commission income and also allow credit of TDS. [S. 147,159, 254(1), R. 37BA(2)(i)]
Executor of estate filed return of income for assessment year 2014-15 and claimed credit for tax deducted on said commission income. Assessing Officer held that commission income had not been offered for taxation by assessee in return and thus, rejected the claim. The AO also held that commission income on which tax had been deducted at source was taxable in hands of late Shri Hari Shankar Singahnia as represented by his legal heirs and as said commission income had not been declared in assessment year 2013-14 it had escaped assessment. On appeal the Tribunal held that it would be fair and just if Assessing Officer would be directed to re-open assessment of late 'H' (Individual) for assessment year 2013-14 to bring to tax impugned commission income and allow credit of TDS. (AY. 2014-15)
Hari Shankar Singhania Estate. v. JCIT (2023) 199 ITD 496 (Delhi) (Trib.)

S. 199 : Deduction at source-Credit for tax deducted-Gift of shares-Interest income-Entitled to credit of tax deducted at source on interest earned from gifted amount-Substantive provision prevail over procedural irregularitieS. [S. 64, R.37BA(2)]
Assessee gifted certain amount to his wife who in turn deposited same with a bank in her account.Assessee's wife earned total interest income in her hand which included interest income earned from deposits made with amount gifted by assessee. Bank deducted tax at

source on total interest income. The assessee included the interest under section 64 and also claimed proportionate credit for tax deduction at source. Lower authorities denied credit of tax deducted at source on ground that mandate of rule 37BA was not fulfilled by assessee's wife. Tribunal held that merely because assessee's wife did not furnish declaration to bank in terms of proviso to rule 37BA(2), amount of tax deducted at source, could not be allowed to remain with revenue eternally without allowing any corresponding credit to person who had been subjected to tax in respect of such income. As substantive provision of section 199 deals with granting credit for tax deducted at source to other person who is lawfully taxable in respect of such income and rule 37BA is procedural provision which cannot disturb writ of a substantive provision, credit for tax deducted at source should be allowed to assessee, who had been subjected to tax in respect of interest income.(AY. 2021-22)
Anil Ratanlal Bohora. v. ACIT (2023) 199 ITD 596 (Pune) (Trib.)

S. 199 : Deduction at source-Credit for tax deducted-Sub-Contractor-Assessing Officer is directed to verify receipts and deducibility of corresponding payments and thereafter allow claim of credit to assessee in respect of tax deducted at source by NHAI. [R.37BA]
Assessee had entered into a contract with National Highway Authority of India (NHAI) for construction of a national highway. As per aforesaid agreement, assessee was entrusted with responsibility of shifting utilities. Assessee appointed sub-contractors for carrying out said utility shifting work. It claimed credit of certain sum being tax deducted at source by NHAI. Assessing Officer held that assessee had failed to offer corresponding income to tax during relevant assessment year and, therefore, it was not entitled to claim credit of tax deducted at source. Assessee contended that sub-contractor raised invoices on assessee at periodic intervals and assessee in turn, raised corresponding invoices of same amount on NHAI and on account of back-to-back arrangement there was no profit accruing to assessee. Therefore, assessee had not shown receipts from NHAI in profit and loss account. Tribunal held that since assessee had placed on record separate ledger account maintained showing receipts from NHAI and corresponding payments to sub-contractors, Assessing Officer is directed to verify receipts and deducibility of corresponding payments reflected in aforesaid ledger account and, thereafter, allow claim of credit to assessee in respect of tax deducted at source by NHAI.(AY. 2017-18)
Hampi Expressways (P.) Ltd. v. DCIT *(*2023) 198 ITD 498 (Mum) (Trib.)

S. 199 : Deduction at source-Credit for tax deducted-Percentage completion method-Receipt of revenue is reduced from the cost incurred-Tax deducted at source-Tax has deducted on a particular receipt the assessee should get credit even if the receipt is not directly offered for tax. [S. 4, 145]
The assessee had developed customised software in the field of medical prescription data. The development of the software was completed during the year under consideration. During the process of development of software, some software patches were developed on which some revenue was earned and tax was deducted thereon by the parties from whom such revenue was received. The assessee reduced the revenue received from cost incurred to develop and claimed credit in those year when it was deducted. TDS credit was denied in the earlier assessment years because revenue was reduced from capitalised cost. Therefore, entire TDS credit was claimed in the current AY when the software was complete. The entire capitalised cost net of revenue was transferred to intangible assets. The lower authorities did not allow TDS on the ground that assessee should follow AS 7 and revenue should be recognised on percentage completion method. On appeal Tribunal relied upon the decision of Chennai ITAT case in case of Supreme Renewable Energy which had followed the ratio of decision in CIT v. Karnal Co-op Sugar Mills Ltd (200) 243 ITR 2 (SC) where it was held

that, when an income is not directly liable for tax as the same is incidental to the cost or to the installation and acquisition of an asset, the tax deducted on such income shall be refunded to the assessee or is entitled to take credit of the same. Government cannot benefit itself from the taking advantage of legal technicalities. Reducing the income from the cost of the asset is indirectly offering the same for assessment and taxation. Accordingly, the appeal was allowed in favour of the assessee by allowing the credit for tax deducted at source. (ITA No: 5989/Mum/2019), dated 21/03/2023.]

Trikaal Mediinfotech Pvt. Ltd. v. DCIT (2023) The Chamber's Journal-April-P. 143 (Mum)(Trib)

S. 199 : Deduction at source-Credit for tax deducted- Entitled for credit for tax deducted at source.[R. 37BA(2)]

The Tribunal held that, the assessee was entitled for credit for tax deducted at source in accordance with the provisions of s. 199. (AY. 2015-16, 2016-17)

Inter-Continental Hotels Group (Asia Pacific) Pte. Ltd. v. Dy. CIT (2023) 151 taxmann.com 416 / 105 ITR 39 (SN)(Delhi) (Trib)

S. 199 : Deduction at source-clubbing of income-Credit for tax deducted-Non-furnishing of the declaration by the deductee to the deductor-Credit for deduction of tax at source cannot be denied. [S. 64, Rule 37BA(2) Form 26AS]

The CPC, in intimation, denied credit OF TDS claimed on the ground that same was not reflected in Form No. 26AS of the assessee. On appeal, the CIT(A) up held the order on the ground that provisions of Rule 37BA(2) were not complied with. On appeal the Tribunal held that mere non-furnishing of the declaration by the deductee to the deductor in terms of proviso to Rule 37BA(2) cannot be a reason to deny credit to the person in whose hands income is included.(ITA No. 675/ Pune /2022 dt 19-1-2023)(AY. 2021-22)

Anil Ratanlal Bohra v.ACIT (2023) BCAJ-March-31 (Pune)(Trib)

S. 199 : Deduction at source-Credit for tax deducted-Income declared on accrual basis when the software was sold-Eligible to claim TDS in the year when income was offered for tax. [S. 145]

It has been held by the Hon'ble Appellate Tribunal that the assessee had raised invoices during the year under consideration and had also shown revenue from the invoices as income during the year under consideration itself. The deductors may have deducted tax in subsequent assessment years, however as the assessee had shown income from sale of software during the year under consideration, the assessee had every right to get credit for the tax deducted at source in the impugned year itself. (AY. 2019-20)

BAE Systems Information and Electronic Systems Integration Inc. v. Add. CIT (IT) [2023] 105 ITR 18 (SN) (Delhi) (Trib)

S. 199 : Deduction at source-Credit for tax deducted-Credit for tax deducted at source has to be given even though the amount deducted is not reflected in Form No. 26AS of the payee. [S. 22, 143(3), 203]

The tenant has deducted tax at source in respect of rent paid by him. The assessee claimed the amount of tax deducted by the tenant even though the same was not reflected in Form No. 26AS of the assessee. The CPC did not allow credit for the said amount. CIT(A) also affirmed the order of the CPC. On appeal the Tribunal held that Credit for tax deducted at source has to be given even though the amount deducted is not reflected in Form No. 26AS of the payee.Followed Kartik Vijaysinh Sonavane (2021) 132 taxmann.com 293 (Guj)(HC) (ITA No. 126/ Srt /2021 dt 27-6 2022.(AY. 2019 – 20)

Liladevi Dokania v. ITO (2022) BCAJ-January-P. 32 (Surat)(Trib)

S. 200 : Deduction at source-Duty of person deducting tax-Intimation of demand-Not responding to notice-Garnishee notice to bank-Alternative remedy-Writ is not maintainable [S. 201(IA), 221, 226(3), 246A, Art. 226]

Dismissing the petition the Court held that notices issued under section 226(3) without challenging the demand made under section 201(1A) was not maintainable. The assessee was not aggrieved by the demand for the outstanding tax with interest and penalty for which intimation under section 200A(1) had been given to the assessee. The assessee was only aggrieved by the notices under section 226(3) calling upon the assessee's bank to make the deposit of the outstanding liability standing against the assessee. Section 201 was prima facie not attracted. The Department had found discrepancy on account of deduction of tax at source on the salary component and, accordingly, on the basis of voluntary return filed by the assessee along with statement of tax deduction at source had given intimation under section 200A(1) to the assessee. Since the assessee did not respond to the intimation of demand given by respondent No. 3, the intimation under section 200A(1) was treated as a notice of demand. There was failure on the part of the assessee to meet the demand and deposit the outstanding tax. Accordingly, notice under section 226(3) was issued. The assessee was within its rights to file a statutory appeal under section 246A before the Commissioner (Appeals) and therefore, could not straightaway approach the court invoking extraordinary writ jurisdiction under article 226 of the Constitution of India. There was an inseparable causal connection between the intimation of demand under section 200A(1) and recovery proceedings under section 226. Directed to file an appeal before CIT(A) (AY.2007-08 to 2015-16)

Construction Engineers v. UOI (2023)452 ITR 33 / 331 CTR 788/ 223 DTR 435 (J&K&L)(HC)

S. 201 : Deduction at source-Failure to deduct or pay-Recipient of income assessed at loss-Not liable to pay tax-Deductor is not liable to pay interest-Direction to department to refund the sums collected with interest-SLP of Revenue is dismissed. [S. 195,197, 201(1), 201(IA), 243, 244A, Art. 136]

Assessment of the deductee was completed at loss for the assessment years 2008-09 to 2011-12. The Department recovered amounts from the deductor on account of interest under section 201(1A) of the Act. On writ the High Court held that in a situation where the assessee, having been assessed at a loss figure, was not required to pay any tax on its income, there was no reason to hold the deductor in default under section 201(1) and (1A) of the Act, that interest recovered under section 201(1A) of the Act could not be legally retained by the Department and ought to have been refunded and directed the Department to refund the interest amount collected under section 201(1A) of the Act from the deductor on behalf of the assessee together with interest under section 244A of the Act, who in turn, shall pay it to the assessee in accordance with law. SLP of Revenue is dismissed. (AY.2008-09 to 2011-12)

CIT (IT& TP) v. IJM Corporation Berhad (2023)455 ITR 357 / 293 Taxman 451 (SC)

Editorial : SLP of Revenue dismissed, IJM Corporation Berhad v.UOI (MP)(HC) (WP.No.19315 of 2017 dt. 11-2-2020)

S. 201 : Deduction at source-Failure to deduct or pay-Payments to non-resident-Tribunal setting aside order holding assessee in default-High court affirming Tribunal-Question of taxability in case of recipient pending before high court-Order of High court affirmed with direction to assessing officer to proceed in matter after decision of high court in pending appealS. [S. 260A, Art. 32]

The AO held that the the assessee in default under section 201 of the Income-tax Act, 1961 in respect of payments to its parent company in the U. S. A. The Tribunal set aside the order. The High Court affirmed the decision of the Tribunal.On SLP the court held that the subject-matter of appeal before the High Court and to avoid any further question which may arise on limitation, the judgment of the High Court quashing and setting aside the order under section 201 of the Income-tax Act, 1961 was to be sustained but with the direction that the matter be remitted to the Assessing Officer (TDS) at the stage of issuance of the show-cause notice under section 201 so that after the decision of the High Court in the pending appeals, the matter could be proceeded with further in accordance with law and on the merits. (AY. 2014-15)

ITO(IT) v. Gia Laboratory Pvt. Ltd. (2023) 450 ITR 11 (SC)

Editorial : Refer Gia Laboratory Pvt. Ltd v.ITO (IT) (2023) 450 ITR 7 (Bom)(HC), affirmed.

S. 201 : Deduction at source-Failure to deduct or pay-Limitation-Oder under section 201(1) was passed by Assessing Officer beyond four years from end of relevant financial year, Tribunal was justified in setting aside the order.[S. 201(1), 201(IA), 260A]

Dismissing the appeal of the Revenue, the Court held that the deemed reasonable period of limitation is four years when no period of limitation is prescribed by statute-Held, yes-Whether where order under section 201(1) was passed by Assessing Officer beyond four years from end of relevant financial year, Tribunal was justified in setting aside said order. (AY. 2002-03, 2003-04)

Income-tax Officer, TDS v. Indian Oil Corporation Ltd(2023) 334 CTR 999/ 156 taxmann.com 576/(2024) 296 Taxman 428 (Pat)(HC)

S. 201 : Deduction at source-Failure to deduct or pay-Non-Resident-Non-Resident not liable to tax in India-Tax not deductible at source-Precedent-Revenue Officials are bound by the decisions of appellate authorities. [Art. 226]

Held that the payment to non-resident is not liable to tax in India hence not liable to deduct tax at source. The Court also held that, Revenue officers are bound by the decisions of the appellate authorities. Referred, UOI v. Kamlakshi Finance Corporation Ltd. [1992] Supp (1) SCC 443 (AY.2019-20)

Hapag Lloyd India Pvt. Ltd. v. Dy. CIT (IT) (2023)457 ITR 376 /152 taxmann.com 246 (Bom)(HC)

S. 201 : Deduction at source-Failure to deduct or pay-Foreign remittance-Purchase of subscription-No liability to pay tax in India-Cannot be treated as assessee in default-DTAA-India-Singapore [S. 9(1)(vii), 201(1), 201(IA), Art. 5, 7, 12(3), 12(4)(a) 12(4)(b)]

The assessee had made foreign remittance to a company Red Hat Singapore without deducting tax at source on ground that payment for purchase of subscription was not taxable as per the provisions of article 7 read with article 5 of the India Singapore DTAA. The Assessing Officer held that the subscription fee was liable to be taxed as 'royalty' within the meaning of section 9(1)(*vi*) as well as article 12(3) and also taxable as 'fee of technical services' within the meaning of section 9(1)(*vi*) as well as article 12(4)(*a*) and article 12(4)(*b*). Accordingly, assessee was treated as an 'assessee-in-default' under section 201(1) and passed the order. The Commissioner (Appeals) partly allowed the appeal. Tribunal deleted the addition. Court also held that the ITAT also came to the conclusion that assessment should be lawfully made by AO on the payee/recipient. Since that has not been done, the order of AO under section 201(1) read with Section 201(1A) of the Act was unsustainable. Order of the

Tribunal is affirmed. Mahindra & Mahindra Ltd. v. Dy. CIT (2010) 122 ITD 216 / ((2009) 30 SOT 374 /122 TTJ 577 (SB) (Mum)(Trib) is approved. (AY. 2007-08, 2008-09)
CIT v. Red Hat India (P.) Ltd (2023) 295 Taxman 247 (Bom)(HC)

S. 201 : Deduction at source-Failure to deduct or pay-Non-Residents-Assessee-in-default"-Limitation-No statutory period of limitation-Orders must be passed within reasonable time-Limitation prescribed for residents is applicable to payments to non-residents-The extended period of limitation of seven years would be available for passing orders under section 201(1) of the Act deeming a person to be an "assessee-in-default" for failure to deduct taxes in respect of payments to residents is also applicable to non-residentS. [S. 201(1), 201(3), Art. 226]
Allowing the petition the Court held that the limitation for passing orders under section 201(1) of the Act deeming a person to be an "assessee-in-default" for failure to deduct tax at source on payments to residents must thus be adopted and treated as constituting "reasonable period" for the purpose of passing orders under section 201(1) of the Act deeming a person to be an "assessee-in-default" for failure to deduct tax at source on payments to non-residents. The extended period of limitation of seven years would be available for passing orders under section 201(1) of the Act deeming a person to be an "assessee-in-default" for failure to deduct taxes in respect of payments to residents. The sequitur is that the "reasonable period" for passing orders under section 201(1) of the Act deeming a person to be an "assessee-in-default" for failure to deduct taxes in respect of payments to non-residents shall also be seven years from the end of the financial year in which the payment is made or credit given with effect from April 1, 2010.(AY. 2010-11 to 2015-16)
Vedanta Limited v. Dy. CIT (IT)(2023)454 ITR 545/333 CTR 628 (Mad)(HC)

S. 201 : Deduction at source-Failure to deduct or pay-Stay of recovery-Pendency of appeal-Tax Authorities can grant stay against recovery of demand on deposit of a lesser than 20 percent of the disputed demand. [S. 220 (6), Art. 226]
The aassessee filed an application for stay of demand, when the appeal was pending before the CIT(A). Revenue rejected the application and directed to pay to the extent of 20% of the total tax demand arising under section 201(1) of the Act. The assessee filed the writ petition against rejection of stay application. The Court held that requirement of 20 percent of disputed tax demand is not a pre-requisite for putting in abeyance recovery of demand pending first appeal in all cases. The said pre-condition of deposit of 20 percent of the demand can be relaxed in appropriate cases. High Court referred PCIT v. LG Electronics India (P) Ltd (2018) 303 CTR 649 / 168 DTR 353 (SC) and set aside the order of recovery. Directed the Commissioner of income tax deal with all contention of the assessee and pass a speaking order. (WP (C) 16287 & 16288 (Delhi) (HC) dt. 25-11-2022) (AY. 2013-14, 2014-15)
Dr. B.L.Kapur Memorial Hospital v.CIT (2023) BCAJ-January P. 46 (Delhi)(HC)

S. 201 : Deduction at source-Failure to deduct or pay-Failure to deduct tax at source-Interest-Form No 15G, Form No 15H-Not verified by the Assessing Officer-Matter remanded for to the Assessing Officer for fresh adjudication. [S. 194A, 201(1), Form No 15G, Form No 15H]
Held that the Assessing Officer has not verified the Form No 15G and 15H by the Assessing Officer. Matter remanded for to the Assessing Officer for fresh adjudication. (AY. 2016-17 to 2018-19)
Hooghly District Central Co-Operative Bank Ltd v.CIT(2023) 224 TTJ 869 (Kol)(Trib)

S. 201 : Deduction at source-Failure to deduct or pay-Interest under section 201(1A) is payable only when there is an obligation to deduct tax-Matter remanded.[S. 191, 194A, 197A, 201(1), 201(IA), Form 15H]

Assessee, a Nationalized Bank. During a spot verification, it was found that assessee had not complied with TDS provisions under section 194A, which required deduction of tax at source on interest paid or credited to customer accounts. Assessing Officer held assessee in default under section 201 Tribunal held that-whether bank is in default under section 201(1) should be made considering Explanation to section 191. Cases falling under section 197A(1A), where an eligible person declares in Form No. 15G that their tax liability on total income, including interest, is Nil but not hit by section 197A(1B) should be excluded from obligation to deduct tax at source. Cases covered under section 194A(1C), where individuals above a specified age declare in Form No. 15H that their tax on total income, including such interest, is Nil, should also be excluded. Cases with no obligation to deduct tax at source should not be considered for interest under section 201(1A).Therefore matters are remanded to the Assessing Officer for passing fresh orders.In case, it is found that recipients included amount of interest in their total income, then assessee should not be treated in default. (AY. 2012-13, 2013-14, 2014-15)

Bank of India. v. DCIT (TDS) (2023) 203 ITD 10 (Nagpur) (Trib.)

S. 201 : Deduction at source-Failure to deduct or pay-Salaries-Perquisites-Non-deduction of TDS-Collection of license fee in form of house rent allowance from its employees-Unfurnished accommodation-Organization under a Statute enacted by legislature-Provisions of TDS will not apply.[S. 15, 17, 201(1), 201(IA)]

Assessee is an autonomous body to be construed as an executive limb of Central Government. Assessing Officer treated assessee as assessee-in-default for non-deduction of TDS on perquisite value of unfurnished accommodation provided to its employees, and computed default along with interest under section 201/1(A) Commissioner (Appeals) upheld the order. On appeal the Tribunal held that assessee could not be held to be an assessee-in-default for reason that it was an organization under a Statute enacted by legislature. Further since assessee collected license fee in form of House Rent Allowance from its employees against unfurnished accommodation, therefore, provisions of TDS will not apply. (AY. 2011-12 to 2013-14)

Employees Provident Fund Organisation. v. DCIT, TDS (2023) 203 ITD 44/ (2024) 227 TTJ 583 (Bang) (Trib.)

S. 201 : Deduction at source-Failure to deduct or pay-Consideration above 50 lakhs-Failure to deduct tax at source and failure to file Form No 26A-Interest is leviable.[S. 194IA, 201(1), 201(IA)]

Assessee along with his wife purchased a property for total consideration of Rs. 1.25 crores from three sellers/co-owners-Sellers individual share in said joint property was below Rs. 50 lakhs, therefore, both seller and purchaser was under bona fide impression that threshold limit for TDS was Rs. 50 lakhs, thus, no TDS was required to be deducted at rate of 1 per cent under section 194-IA.CIT(A) held that the assessee has not furnished mandatory Form No 26A along with the certificate of three sellers /co-owners along with computation of income. CIT (A) partly allowed the appeal. On appeal the Tribunal held that since assessee had not filed Form no. 26A along with certificate of Chartered Accountant condition of section 201 was not fulfilled, interest under section 201(1)/(1A) is to be levied upon assessee. (AY. 2015-16)

Bhikhabhai Parshottambhai Patel. v. ITO (2023) 202 ITD 779 (Ahd) (Trib.)

S. 201 : Deduction at source-Failure to deduct or pay-Cheque tendered on due date-One day delay in debiting in bank account-Date of tendering of cheque for payment of Government dues could be deemed to be date of payment of tax-Interest cannot be levied. [S. 201(IA)

Held that where the assessee had tendered cheque for TDS payment with bank, well within stipulated 'due date', however, there was one day delay in debiting amount from assessee's bank account which was apparently due to mistake of banker, no interest could have been levied under section 201(1A) of the Act. Followed Standard Chartered Bank v.Dy.CIT (ITA Nos 2153 to 2156 (Mum), dt. 21-8-2020), CBDT Circular No. 261 [F.No. 385/61 /79-IT (B), dated 8-8-1979, CIT v. Kumudam Publications (P) Ltd (1981) 128 ITR 617 (Mad)(HC), K. Kaplana Saraswathi v. P.S.S. Somasundram Chettiar 1980 AIR 512 (SC), Oil and Natural Gas Corporation Ltd v. Dy.CIT [2019] 176 ITD 124 (Mum)(Trib) (AY. 2012-13)

Natma Securities Ltd. v. ACIT (2023) 199 ITD 31 (Delhi) (Trib.)

S. 201 : Deduction at source-Failure to deduct or pay-Indian custodian of shares-Failed to deduct TDS from sale consideration of shares so held by him on behalf of overseas depository-Overseas depository had already paid advance tax on capital gains on sale of shares-Deduction at source liability under section 201 being a vicarious liability of payer of an income, would not come into play when primary liability of recipient of income was already discharged, and thus, basic tax withholding liability under section 201(1) and interest liability under section 201(1A) is quashed.[S. 195, 201(1), 201(IA)]

Assessee, an Indian company, was engaged as a stock broker. Assessee sold shares on behalf of an overseas depository and sent remittance to said depository. Assessing Officer held that TDS should have been deducted on payments made by payer and computed tax liability on non-deduction of tax at source and further computed tax withholding demand, including interest for delay in payment. CIT(A) affirmed the order of the Assessing Officer. On appeal the Tribunal held that deduction at source liability under section 201 being a vicarious liability of payer of an income, would not come into play when primary liability of recipient of income was already discharged. On facts since taxes were paid as advance tax by overseas depository on capital gains of said shares, to that extent, assessee tax-deductor could not be saddled with a tax withholding demand under section 201(1) read with section 195 and thus, basic tax withholding liability under section 201(1) is quashed and interest liability under section 201(1A), being consequential in nature also quashed. (AY. 2015-16)

ICICI Securities Ltd. v. ITO (IT) (2023) 198 ITD 214/221 TTJ 902 (Mum) (Trib.)

S. 201 : Deduction at source-Failure to deduct or pay-Short deduction-Assessee in default-Retainership fees-Matter remanded.[S. 197, 201(1), 201(IA)]

Held that the assessee had explained before the lower authorities in respect of short-deduction of tax at source that some of the payees had furnished certificates under section 197 of the Act for tax deduction at a lower rate. Accordingly, the assessee is directed to produce these certificates obtained under section 197 of the Act before the Assessing Officer to justify its case. As regards rent and retainership fees also matter is remanded to the Assessing Officer. (AY.2013-14, 2014-15)

HT Mobile Solutions Ltd. v JCIT (2023)104 ITR 44 (SN)(Delhi) (Trib)

S. 201 : Deduction at source-Failure to deduct or pay-Limitation-Order passed beyond period of seven years is time barred. [S. 195, 200(1), 201(IA)]

Assessee was incorporated as a Special Purpose Vehicle and its parent company a Dubai based company, The AO held that assessee failed to discharge its obligation to make TDS u/s 195 and passed an order dated 3.3.2014 because the assessee has shown certain amount as

'architectural fee' under capital work in progress which was remittance made to parent company. On appeal the CIT(A) held that the time limit for initiating proceedings under section 201(1) and 201(IA) was four years from the end of the financial year in which the aassessee was required to deduct tax at source, hence the order was invalid. The Tribunal affirmed the order of the Tribunal. Tribunal also held that alleged laps was committed in the financial year 2005-06 which ended on 3-3-2016. The order was passed on 3-3-2024 which is beyond period of seven years. Followed CIT v. Acer India (P) Ltd (2022) 448 ITR 417/ 286 Taxman 570 (Karn)(HC) (AY. 2006-07)
DCIT v. Emaar Hills Township (P.) Ltd. (2023) 203 ITD 98 (Hyd.) (Trib)

S. 201 : Deduction at source-Failure to deduct or pay-Late deposit of TDS payment-Payment of TDS to bank would relate to date of presentation of cheque to banker-Mistake of banker the assessee is not liable to pay the interest. [S. 194A, 201(1), 201(IA)]
The assessee presented the cheque for tax deducted at source on time, however due to mistake of the Bank the cheque was presented late. The CPC levied the interest on the assessee. The assesssee moved the application under section 154 of the Act, which was dismissed. On appeal the CIT(A) also affirmed the order of the AO. The issue before the Tribunal was "whether on the facts and in the circumstances of the case and in law the ld. CIT (Appeals) erred in confirming the action of the AO refusing the cancel interest charged u/s 201 of the Act on the delay in deposit of TDS caused by negligence on the part of the Bank.". Allowing the appeal the Tribunal held that payment of TDS would relate back to the date of presentation of the cheque by the assessee to the Banker and allowed the appeal of the assessee. Relied on CIT v. Kumudam Publications (P.) Ltd.(1981)) 128 ITR 61 (Mad)(HC), P.L. Haulwel Trailers Ltd. v. Dy. CIT [2006] 100 ITD 485 (Chennai)(Trib) NHAI, PIU Siliguri v. ACIT (ITA No. 2296/Kol/2013, ITO v. Bradcom Communication Technologies (P) Ltd. (ITA No. 6104/ Del/ 2019 dt 30-11-2022 (Trib)) (AY. 2012-13)
Natma Securities Ltd v.ACIT (2022) 145 taxmann.com 291 (Delhi)(Trib)

S. 205 : Deduction at source-Bar against direct demand-Employer deducted tax at source from salary-Not paid to Government Entitled to refund with interest. [S. 156, 192,199, 237, Art. 226]
The assessee has filed a writ petition to quash the recovery notices under section 226 and to recover the unpaid tax deducted at source from the assessee's employer and refund under section 237 of the amount which was adjusted against the outstanding demands for the assessment years 2010-11, 2011-12 and 2012-13. Allowing the petition the Court held that the Department could not deny the assessee the benefit of tax deducted at source by the employer from his salary during the relevant financial years. Credit for tax deducted at source should be given to the assessee and if in the interregnum any recovery or adjustment was made by the Department, the assessee was entitled to the refund with statutory interest.(AY.2010-11 to 2012-13)
Milan Arvindbhai Patel v.ACIT (2023)455 ITR 82/149 taxmann.com 190 (Guj)(HC)

S. 205 : Deduction at source-Bar against direct demand-Refund-Department cannot demand tax from assessee and set off demand against refund of any other assessment year.[S. 194, 237]
For the assessment year 2012-13 the assessee's employer withheld tax payable on salary but did not deposit it in the Central Government account. Hence, a demand was raised by the Department against the assessee and the refund payable to the assessee for the assessment year 2015-16 was set off against such demand. On a writ petition allowing the petition the Court held that neither could the demand in respect of the tax withheld by the deductor-

employer be recovered from him nor could such amount be adjusted against the future refund, if any, payable to the assessee. The Department was not entitled in law to adjust the demand raised for the assessment year 2012-13 against any other assessment year. The assessee was entitled to a refund under section 237 in respect of the assessment year 2015-16. Referred instruction dated June 1, 2015 ([2015] 374 ITR (St.) 34) (AY.2012-13, 2015-16)
Sanjay Sudan v. ACIT (2023)452 ITR 107/ 331 CTR 797/ 224 DTR 9 / 292 Taxman 138 (Delhi)(HC)

S. 205 : Deduction at source-Bar against direct demand-Salary-Tax deducted by employer-Not remitted to Central Government-Revenue can recover from employer and not from the employee.[S. 192]
The assessee filed his return for relevant year declaring net salary income received from his employer with corresponding claim of TDS under section 192. The Assessing Officer held that assessee was not entitled to credit of TDS owning to failure of deductor-employer to deposit said amount of TDS to credit of central exchequer. On appeal the Tribunal held that as per section 205 of the Act, the Revenue is restrained from enforcing any tax recovery against assessee insofar as demand with reference to amount of which tax had been deducted by employer from salary accrued to assessee but deductor-employer had not remitted amount after its deduction to Central Government, only course open to revenue was to recover same from very person who had deducted TDS and not from assessee. Followed, Yashpal Sahani v. Rekha Hajarmavis, ACIT (2007) 165 Taxman 144/ 293 ITR 539 (Bom)(HC), Ashok Kumar B. Chowatia v.JCIT (2021) 281 Taxman 405/ 435 ITR 449 (Mad)(HC) (AY. 2018-19, 2019-20)
Chandrashekhar Sadashiv Potphode. v. DCIT (2023] 199 ITD 381 (Pune) (Trib.)
S. 205 : Deduction at source-Bar against direct demand-Deduction of tax at source while making payment of wages-Failure to deposit to Government account-Matter restored back to Assessing Officer to verify fact and grant set off of tax deducted. [S. 199]
Assessee's employer deducted tax at source while making payment of wages but not deposited to Government Account. Assessing Officer did not grant credit of TDS which had been deducted from wages of assessee. Matter is restored back to file of Assessing Officer to verify fact and grant set off of tax deducted as well as reflected in salary slip and pass order afresh. (AY. 2016-17)
Sanjay Mahadev Khopkar. v. ACIT (2023) 198 ITD 512 (Surat) (Trib.)

S. 206AA : Requirement to furnish Permanent Account Number-Non-Resident-Provision cannot have overriding effect on DTAA-Rates prescribed under DTAA are applicable-DTAA-India-Netherland-SLP of Revenue dismissed. [S. 2(37A)(iii), 4, 5, 9(1)(i),90(2), 206AA(7), Art. 12(4)]
The assessee had taken an engine on lease with a foreign company having no permanent establishment in India. It had deducted tax at rate of 10 percent on lease rental as per provision of DTAA between India and Netherland. On appeal the Tribunal held that provision of section 206AA cannot have overriding effect on payment made to non-resident, rate prescribed under DTAA are applicable hence no demand was payable by assessee. On appeal High Court affirmed the order of the Tribunal. SLP of Revenue dismissed (AY. 2013-14)
CIT (IT) v. Air India Ltd (2023)294 Taxman 163 (SC)
Editorial : CIT v. Air India Ltd. (2022) 289 Taxman 492 /(2023) 456 ITR 117 (Delhi)(HC)

S. 206C : Collection at source-Trading-Toll on mechanical vehicles-Assessing Officer is to directed to verify return filed by toll lessees and in event he came to conclusion that toll lessees had already paid tax on amount which ought to have been collected as TCS by assessee, then he shall not levy any tax on assessee-Matter remanded. [S. 206C(7), Himachal Pradesh Tolls Act, 1975, S. 3, 3A]

State of Himachal Pradesh enacted Himachal Pradesh Tolls Act, 1975 to provide for levy and collection of tolls on mechanical vehicles Assessee, a department of State Government, granted lease of rights to various persons (toll lessees) to collect toll levied under aforesaid Act and to pay toll money in Government treasury. Assessing Officer held that there was no tax collection at source (TCS) by assessee in respect of toll money passed assessment order on it and raised tax demand. The order is affirmed by CIT(A) and Tribunal. On appeal the Court held that in view of judicial precedent on subject Assessing Officer is directed to verify return filed by toll lessees and in event he came to conclusion that toll lessees had already paid tax on amount which ought to have been collected as TCS by assessee, then he shall not levy any tax on assessee.Matter remanded. (AY. 2004-05 to 2008-09)

Assistant Excise & Taxation Commissioner v. ITO (TDS) (2023) 335 CTR 597 / 154 taxmann.com 660 (Himachal Pradesh)(HC)

S. 206C : Collection at source-Sale of vehicles to dealers-CBDT Circular No. 22 of 2016. dt. 8 th June 2016-Matter remanded to the Assessing Officer.[S. 206(IF),206C(6A)]

Tribunal set aside the matter to the Assessing Officer to consider CBDT Circular No. 22 of 2016. dt. 8 th June 2016 and decide in accordance with law. (AY. 2018-19, 2019-20)

Bhulwara Agro Auto Services (P) Ltd v. ITO (2023) 223 TTJ 239 (Jodhpur) (Trib)

S. 206C : Collection at source-Trading-Alcoholic liquor-Forest produce-Scrap-Limitation-Assessment year 2012-13-Assessing Officer ought to have assessed order under section 206C(6A) on or before 31-3-2016-Order barred by limitation-Penalty-Failure to collect tax at source-Quantum appeal quashed-Penalty cannot be levied. [S. 206C(7),271CA]

Held that the assessment year involved was 2012-13 and four years end on March 31, 2016. However the show-cause notice was issued by the Assessing Officer on July 27, 2017 and order was passed on July 26, 2017 which was beyond four years. Therefore, the order passed was barred by limitation, not maintainable in law and is quashed. Quantum appeal quashed,penalty cannot be levied. (AY.2012-13)

Nisarahmed Abdulsattar Shaikh v.ITO (2023)107 ITR 233)(Ahd) (Trib)

S. 206C : Collection at source-Trading-Alcoholic liquor-Forest produce-Scrap-Time limit for furnishing form-No time limit is prescribed-The matter was to be remanded back to file of ITO (TDS) to take into consideration Form no. 27C furnished by assessee and pass order in accordance with law. [S. 206C(6), 206C(7), Form No 27C]

ITO held assessee as 'assessee-in-default' and tax demand of certain amount (including interest) was raised upon it. It was noted that assessee had duly obtained Form No. 27C, belatedly from buyers to whom goods were sold and same was submitted before Commissioner (TDS). However, same was not considered by ITO (TDS) and he proceeded to levy tax and interest in terms of section 206C(6) and 206C(7). Since there was no time-limit provided in section 206C(1A) to furnish declaration in Form no. 27C, delay in filing said declaration by assessee to prescribed income-tax authority would not be a ground to deny benefit to assessee. The matter was to be remanded back to file of ITO (TDS) to take into consideration Form no. 27C furnished by assessee and pass order in accordance with law.(AY. 2012-13)

Gopallal Ramprasad Kabra v. ITO (2023) 200 ITD 295 / 225 TTH 485 (Rajkot)(Trib)

S. 206C : Collection at source-Trading-Alcoholic liquor-Forest produce-Scrap-Buyers declaration in Form No 27C-No time limit is prescribed-Delay in filing the Form-Cannot be treated as asseessee in default-Benefit cannot be denied-Matter is remanded to the file of the Assessing Officer to decide issue de novo after giving assessee due opportunity of hearing. [S. 206C(IA), (206C(6), 206C(7), Form No 27C]

The assessee-company had sold scrap to various parties without collecting tax at source. Assessee had also failed to submit a statement in Form 27C comprising of buyer's declaration to prescribed income tax authority in time.The Assessing Officer treated the assessee as assessee in default and levied the interest under section 206C(7) of the Act which is affirmed by the CIT(A). On appeal it was contended that if buyer of scrap had paid taxes on purchase and furnished CA certificate to this effect, assessee would not be at default under section 206C. The Tribunal held that since there was no limit provided in section 206C to make a declaration in Form 27C collected from buyers, delay in filing said declaration would not be ground to deny benefit to assessee. Matter was to be remanded back to file of Assessing Officer to decide issue de novo after giving assessee due opportunity of hearing. (AY. 2014-15)

G.K. TraderS. v. ITO *(*2023) 198 ITD 72 (Rajkot) (Trib.)

S. 220 : Collection and recovery-Assessee deemed in default-Interest on arrears of tax-Waiver-Refusal to waive interest-SLP is dismissed. [S. 220(2A), Art. 136]

On a writ the court held that the order was based on findings of fact which had not been shown to be perverse, and refused to interfere. SLP is dismissed *(*AY. 1990-91)

Haji Ramzan And Sons v. CIT (2023)454 ITR 440/ 293 Taxman 607 (SC)

Editorial : Decision in, Haji Ramzan And Sons v. CIT (2017) 10 ITR-OL 1 (All)(HC), affirmed.

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before CIT(A)-Search-Concluded assessment-Abatement-Prima facie opinion on abatement would be relevant for purposes of considering question of stay, hence, matter was to be remanded back for consideration afresh. [S. 153A 153C, 246A, Art. 226]

The assessee filed an appeal against the assessment order which is pending before the CIT(A).The Assessing Officer rejected the application for stay of demand and directed to pay 20 percent of the disputed tax. On writ the Court held that whether there would be abatement or not, he should have considered accordingly moderating terms to be imposed while granting stay. In absence of due consideration of these aspects, matter is remanded back for consideration afresh. (AY. 2017-18) (SJ)

Gumegowda Hanumanthe Gowda Nagaraja v. PCIT, (Central) (2023) 334 CTR 212 / 151 taxmann.com 209 (Karn)(HC

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of rectification application-Pendency of appeal before CIT(A)-Stay is granted on entire demand till disposal of appeal. [S. 2(15), 12A, 154, 220(6), 250, Art. 226]

Assessee, an educational and charitable society registered under section 12A, faced scrutiny leading to a tax liability of Rs. 2.50 crores on its gross receipts of Rs. 5.25 crores. Assessee submitted a rectification application under section 154, which remained undecided for over 2½ years Assessee also challenged demand before appellate authority and sought a stay under section 220(6), which was partially granted, directing payment of Rs. 35 lakhs by a certain date. On writ the Court held that the assessee is a charitable establishment and had been

availing exemption from payment of income-tax all along, prior to issuance of demand notice and even in subsequent years as well. Therefore, considering status of assessee, which was a charitable establishment with a charitable object and purpose, assessing authority should have allowed application under section 220(6). Stay is granted on entire demand till disposal of appeal. (AY. 2018-19)

Chaitanya Memorial Educational Society v. CIT (E)(2023) 335 CTR 868/ (2024) 296 Taxman 297 (Telangana)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before CIT(A)-Twenty per cent of disputed tax demand is not a pre-requisite for putting in abeyance recovery of demand pending first appeal in all cases-Matter remanded to the Commissioner of Income tax for fresh adjudication. [S. 220(6), Art. 226]

On writ the Court held that the requirement of payment of twenty per cent of disputed tax demand is not a pre-requisite for putting in abeyance recovery of demand pending first appeal in all cases. Pre-condition of deposit of twenty per cent of the demand can be relaxed in appropriate cases. Referred the Office Memorandum dt. 29th Feb., 2016 gives instances like where addition on the same issue has been deleted by the appellate authorities in earlier years or where the decision of the Supreme Court or jurisdictional High Court is in favour of the assessee. Relied on P CIT v. LG Electronics India (P) Ltd. (2018) 303 CTR 649. 168 DTR 353(SC). On the facts neither the AO nor the CIT have considered three basic principles i.e. the prima facie case, balance of convenience and irreparable injury; impugned orders and notices are set aside and the matter is remanded back to the CIT for fresh adjudication.

Tata Teleservices Ltd. v CIT (IT) (2023) 331 CTR 412/223 DTR 672(Delhi)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Discretion must be exercised judicial manner.[S. 220(6), Art. 226]

Held that where an outstanding demand was disputed before the appellate authority, the assessee had to pay 20 per cent. of the disputed demand. Accordingly, the assessee was directed to pay 20 per cent. of the outstanding demand. There had been no application of mind by the Assessing Officer. The order therefore was not valid. Directed to dispose the application within period of six weeks. (AY.2017-18)

Sudarshan Reddy Kottur v. ITO (2023)458 ITR 750 (Telangana)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Waiver of interest-Depreciation-Condition not fulfilled-Order

Favouring : Assessee, personof partial waiver is valid. [S. 220(2A), Art. 226]

The aassessee has claimed depreciation at 15 % and 25%. The Assessing Officer allowed the depreciation at 10 %.Commissioner has waived part of interests. On writ dismissing the petition the Court held that considering the status of the assessee, none of the preconditions mentioned in section 220(2A) were satisfied in its case. None the less substantial relief had been granted by the Commissioner. The dispute in question was regarding the quantum of depreciation on theatre building. While in the two assessment years, the assessee had claimed 15 per cent. and 25 per cent., respectively, depreciation was allowed by the Assessing Officer to the extent of 10 per cent. only in the two orders of assessment. There was no good ground to interfere with the order dated September 17, 2002 passed by the Commissioner granting partial waiver of interest.(AY.1991-92, 1993-94)

Prasad Film Laborator Pvt. Ltd. v. CIT (2023)457 ITR 747 /157 taxmann.com 309 (Telangana)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Discretion should be used in judicious manner.[S. 220(6), Art. 226]

Held, that a perusal of the order dated February 2, 2023, made it clear that the Commissioner (E) had merely followed the circulars of the Central Board of Direct Taxes and on the basis thereof had directed the assessee to pay 20 per cent. of the demand as a pre-condition for stay of the demand. The order was not valid. Directed to pass speaking order after considering the Judgement of Apex Court in PCIT v. LG Electronics India Pvt Ltd (2018) 12 ITR-OL 334 (SC) (AY.2016-17 to 2021-22)

Zoos and Parks Authority of Telangana v. CIT (E) (2023)457 ITR 560 (Telangana)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal-Paid 15 Per Cent. of demand-Stay is granted till disposal of pending appeal.[S. 220(6), 246A, Art.226]

On writ considering the facts and circumstances and also taking into account the quantum of the demand when the assessee had made a payment of 15 per cent. of the demand it would be entitled to stay of the assessment order under appeal before the appellate authority, till the disposal of appeal by the CIT(A). (AY.2018-19)

Air Liquide Medical Systems Pvt. Ltd. v Dy. CIT (2023)456 ITR 712/ 155 taxmann.com 409 (Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal Recovery Of Tax-Condition of deposit of 20 per.cent of outstanding demand is not mandatory. [S. 220(6), Art. 226]

The Assessing Officer has raised the huge demand and directed to deposit 20 per cent of tax in dispute, relying on CBDT instruction dated July 31, 2017 ([2017] 396 ITR (St). On writ the Court held that the requirement to deposit 20 per cent. of the demand is not cast in stone. It can be scaled down in a given set of facts. Relied on PCIT v. LG Electronics Pvt Ltd (2018) 18 SCC 447/ 12 ITR-OL 334 (SC). Directed to carry out the de novo exercise.(AY.2021-22)

Amtek Transportation Systems Ltd. v ACIT (2023)456 ITR 4 / 156 taxmann.com 35 (Delhi)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay
Company in liquidation-Properties in execution proceedings-Granted permission to pay dues with interest in monthly instalmentS. [S. 143(1)(a), 156,220(6), Art. 226]

Held, that the intent of the assessee being sincere despite the odds it must be permitted to show its bona fides and settle the tax dues. Therefore, the assessee is permitted to pay the amount in instalments. Since the first instalment with interest would be a little too steep for the assessee to repay such amount was split into two instalments and the second part of this sum would be paid as the eleventh instalment. The assessee's default of even one of the instalments would bring an end to this concession shown to the assessee.(AY.2021-22)

Mahalakshmi Textile Mills Ltd. v.Dy. CIT (2023)456 ITR 25 /152 taxmann.com 227 (Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before CIT(A)-Rectification of mistake-[S. 220(6), 246A, Art. 226]

The Assessing Officer refused the stay application on the ground that though the assessment order is modified the assessee is still required to deposit 20 per cent of disputed tax under section 220(6) as confirmed vide assessment order dated 19-3-2022. On writ the Court held that since the assessee had got interim protection from the Court by an order dated 28-12-

2022, the Revenue is directed to maintain status quo as far as pre deposit of amount pursuant to assessment order dated 19-3-2022 or in terms of rectification order passed on 17-1-2023 for a period of two months from today. Further the CIT(A) is directed to dispose the appeal, within a period of two months from date of receipt of copy of this order CBDT Instruction No. 1914 dated 2-12-1993, Instruction No. 96 [F.No.1/6/69-ITCC dated 21-8-1969. (AY. 2015-16)
Sukumar Dhanapal v. ITO (2023) 295 Taxman 481 (Mad.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Waiver of interest Tax paid through the PAN of minor son-Denying the credit is not justified-Directed to waiver of interest.[S. 64, 220(2A), 244A, Art. 226]
Allowing the petition the Court held that interest cannot be levied under section 220(2) when the advance taxes were in fact paid on time though mistakenly in the assessee's minor son's PAN number. Directed for waiver of interest. (AY 2009-10, 2011-12) (SJ)
Fuaad Musvee v. PCIT (2023) 455 ITR 243/ 335 CTR 217 /147 taxmann.com 426 (Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay of demand-Pendency of appeal before CIT(A)-Directed to stay the recovery proceedings-CIT(A) is directed to dispose of appeal expeditiously. [S. 220(6), 246A, 250, Art. 226]
Hon'ble High Court granted complete stay on the recovery of outstanding demand by observing that the assessee had filed loss return, however, AO passed high pitched assessment order and also issued notice of demand under section 156 of the Act. Stay application filed by the assessee is rejected by the AO and directed the assessee to deposit 20 per cent of tax as determined in assessment order. As the appeal filed before Commissioner (Appeals) is pending, recovery proceedings is to be kept in abeyance till appeal is disposed of by the Commissioner (Appeals).
Great Barter Pvt. Ltd. v. ACIT (2023) 455 ITR 452 / 330 CTR 442/147 taxmann.com 296 (Cal)(HC)
Editorial : Decision of single judge is reversed (WP.Nos. 4717 / 4720 of 2018 dated September 26, 2018, reversed.

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal-The stay application must be considered in a judicious manner. [S. 220(6), Art. 226]
Allowing the petition the Court held that the stay application must be considered in a judicious manner. Order was seta side. (AY.2016-17)
ALM Industries Ltd. v. Dy. CIT (2023)455 ITR 319/ 331 CTR 415/ 223 DTR 98 /153 taxmann.com 374 ((All)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Prima facie case-High pitched assessment-Undue financial hardship-Pendency of appeal before CIT(A). [S. 69, 220(6), 250, Art. 226]
When the appeal is pending before the CIT(A), the Department had insisted to deposit 10 per cent. of the demand when the assessee had a strong prima facie case. On writ the Court held that the deposit would itself occasion undue hardship to the assessee which was a trust created for the purpose of benefiting the employees. They would not be liable to pay such a high demand if their assessment was considered in their capacity as a trust as against the status of a firm. Court directed the Department to consider the assessee's application under their status as a trust and try to dispose of the matter preferably within a period of four months from the date of this order. No coercive steps shall be taken against the assessee for

the recovery of the demand in pursuance of the impugned notice dated March 30, 2022.(AY.2014-15, 2017-18)
Bhil Employees Welfare Fund No. 4 v. ITO (2023)455 ITR 130/147 taxmann.com 427(Bom)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-High pitched assessment-Appeals not disposed of for long time-Entitle to stay of recovery proceedings-CIT(A) is directed to hear the appeals at the earliest. [S. 250, Art. 226]
On writ against the recovery proceedings the Court held that since the appeals were filed in 2018 and the stay applications filed before the Deputy Commissioner during the year 2018 followed by subsequent reminders, were rejected only on December 8, 2022. Directed the CIT(A) to dispose the appeals at an early date and until then, the Department was not to take any coercive action against the assessee for recovery of the Income-tax, which had been assessed.(AY.2011-12, 2012-13, 2016-17)
Jankalyan Vinimay Pvt. Ltd. v Dy. CIT (2023)455 ITR 456/332 CTR 661/ 224 DTR 33 /153 taxmann.com 712 (Cal)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before CIT(A)-Rejection of application for stay-Order set aside-Matter remanded to Assessing Officer for fresh consideration and passing reasoned order.[S. 220(6),246A, Art. 226]
On writ the Court held that while requiring the assessee to pay 20 per cent. of the disputed payment by October 19, 2022, his request for stay of the demand had been rejected without even awaiting compliance of such requirement which vitiated the entire proceedings. The order rejecting the stay of demand was set aside. The matter was remitted to the Assessing Officer for decision afresh after considering each of the contentions raised by the assessee including additional submissions that were made on December 12, 2022 and passing a reasoned order on the merits and in accordance with law. (SJ)
Thasirkhan Abdul Hameed v. Dy. CIT (NO. 1) (2023)455 ITR 605 (Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before CIT(A)-Recovery of 20 Per Cent. of disputed tax from bank accounts-Directed to dispose of appeal expeditiously-Stay is granted remaining 80 percent of disputed demand. [S. 156, 220(6),246A, Art. 226]
On writ the Court directed the CIT(A) to dispose the appeal within a period of 12 weeks. Since 20 per cent. of the disputed tax, interest and penalty had been recovered by the Department from the assessee's accounts in the banks, there would be a stay in respect of the remaining 80 per cent. of the demand and the attachment in respect thereto till the disposal of the appeals.(AY.2014-15 to 2017-18)(SJ)
Thasirkhan Abdul Hameed v. Dy. CIT (NO. 2) (2023) 455 ITR 609 /152 taxmann.com 443 (Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before CIT(A)-Factors to be considered in terms of the Judgement of Supreme Court. [220(6), 226(3), 246A, Art. 226]
Allowing the petition the Court held, that since a portion of the demand had been recovered from the assessee, the Assessing Officer should dispose of the application filed under section 220(6) for stay of recovery within thirty days from the date of receipt of copy of this order after hearing the assessee. The Court also directed the Assessing Officer to exercise the

discretion in terms of the observations in PCIT v, L.G. Electronics India Pvt Ltd (2018) 12 ITR-OL 334 (S) (2018) 18 SCC 447 (SC) (AY.2017-18)
Trichy District Lorry Owners Association v. CIT(A) (NO. 1) (2023)455 ITR 545 (Mad)(HC)
Trichy District Lorry Owners Association v. CIT(A) (NO. 2) (2023)455 ITR 548 / 154 taxmann.com 98 ((Mad)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Cash credits-Pendency of stay application-Assessing Officer was directed to consider the stay application and pass an order. [S. 68, 220(6),250, Art. 226]
Against the additions made under section 68 of the Act, the assessee preferred an appeal before the CIT(A).When the appeal was pending the assessee also made an application for stay of recovery proceedings. The Assessing Officer directed assessee to pay 20 per cent of outstanding demand and stated in letter that if assessee had applied for stay of demand, furnish copy of order of stay of demand granted, if any. On writ the court held that since stay application was not considered by the Assessing Officer the Assessing Officer was directed to consider stay application and pass order under provision in sub-section (6) of section 220 of the Act, Referred, Circulars and Notification: CBDT Office Memorandum [F.No. 404/72/93-ITCC], dated 31-7-2017
Legend Steel (P.) Ltd. v. UOI (2023) 294 Taxman 564 (Orissa) (HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay of demand-Pendency of appeal before CIT(A)-Financial hardship-Directed the authority to issue a fresh order after thoroughly considering the facts, circumstances, and submissions made by the Assessee.[S. 250 Art.226]
The Assessee filed an appeal before the CIT (A). Simultaneously, the Assessee filed a stay application before the Principal Commissioner, who disposed of the application by granting a stay until the disposal of the appeal, subject to the payment of 20 per cent of the demand amount.On writ the Court observed that the order had been passed without addressing the contentions raised by the Assessee regarding undue hardships arising from their financial condition and the downturn in the export industries. Additionally, the Court noted that neither the circular nor the office memorandum on dealing with demands raised in high-pitched demands had been considered. In this case, the Revenue had merely followed the instructions provided in the memorandum dated 29-2-2016 and 31-7-2017. The Court emphasized that these instructions and memorandum should not act as a constraint, and the authority, being a quasi-judicial entity, retains the discretion to issue a deposit order for less than 20 per cent. Since the order lacked reasoning and explanation, the Court quashed and set aside the order. The Court directed the authority to issue a fresh order after considering the facts, circumstances, and submissions made by the Assessee. CBDT Instruction No. 1914 dated 21-3-1996, 29-2-2020 and 31-7-2017. (AY. 2014-15, 2016-17, 2020-21)
Kunj Bihari Lal Agarwal v. PCIT(C) (2023) 294 Taxman 273 / 335 CTR 226 (Raj)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay of demand-Pendency of appeal-Discretionary powers is to be exercised judiciously and reasonably and not arbitrary-Order quashed-Directed to to pass fresh order in accordance with law.[S. 220(6), 250, Art. 226]
On writ against the dismissal of stay application the Court emphasized that the discretionary powers granted to the ITO under section 220(6) for handling stay demand applications should be based on four parameters: (i) the prima facie case, (ii) balance of convenience, (iii) irreparable injury that may be caused to the Assessee, which cannot be compensated in terms

of money, and (iv) whether the Assessee has come before the authority with clean hands. These discretionary powers must be exercised judiciously and reasonably, relying on relevant facts and circumstances, without being arbitrary or considering irrelevant or trivial facts. It is the responsibility of the authorities to consider the facts and circumstances of the case. Referred, Sant Raj v. O.P.Singla (1985) 2 SCC 349/ Reliance Airport Developers (P) Ltd v. Air ports Authority of India (2006) 10 SCC 1/ U.P. State Road Transport Corporation v. Mohd. Ismail (1991) 3 SCC 239

The Court stressed that while the ITO should not function solely as a tax collector but as a quasi-judicial authority with the power to alleviate hardships for the Assessee, they should remember they are not the final authority. Appellate authorities possess plenary powers. Since the order lacked any application of mind or detailed discussion on the prima facie case of the Assessee, balance of convenience, or any hardships on the Assessee, the Court quashed and set aside the order. (AY. 2020-21)

Nirmal Kumar Pradeep Kumar, (HUF) *v.* UOI (2023) 456 ITR 386/ 294 Taxman 321/333 CTR 345 (Jharkhand)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before CIT(A)-Trading in waste materials-Return not filed by the seller-Sellers stock register-The assessee was not liable to submit any evidence to prove seller's return and other particulars of seller-Demand is stayed.[Art. 226]

Assessing Officer passed assessment order holding that seller from whom assessee made purchases had not filed its return of income and raised demand upon assessee. The assessee filed an appeal before the CIT(A). The assessee received a demand notice to pay 25 per cent of assessed tax. On writ the assessee contended he is not liable to submit any evidence to prove seller's return and other particulars of seller, it was not liable to pay 25 per cent demand more so when statutory appeal was pending before Commissioner (Appeals).The Court held that the assessee is not liable to submit seller's stock register. The Appellate Authority shall consider the issue on its own merits uninfluenced by the observation of this order. Demand notice was stayed. (AY. 2021-22) (SJ)

Rangasamy Engineers (P.) Ltd. v. ACIT (2023) 294 Taxman 610 (Mad.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Assessing Officer failed to disclose reasons while rejecting stay application and Commissioner (Appeals) also failed to consider stay application considering financial hardships-Assessee was directed to deposit 10 per cent of disputed demand-Matter remanded. [S. 144, 156, 250, Art. 226]

Assessee-company was a 100 per cent State Government owned company and filed loss in its return. Assessing Officer passed assessment order under section 144 and raised demand under section 156 of the Act. Assessee filed an application for stay of demand. Assessing Officer rejected said application on ground that assessee failed to pay 20 per cent of disputed demand. On writ the Court held that since Assessing Officer failed to disclose reasons while rejecting stay application and Commissioner (Appeals) also failed to consider stay application considering financial hardships, assessee was directed to deposit 10 per cent of disputed demand.Matter remanded. (AY. 2017-18)

Goa Forest Development Corporation v. PCIT (2023) 293 Taxman 62 /333 CTR 509 (Bom.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before Commissioner (Appeals)-65 percent of total demand was adjusted-Application for releasing beyond 20 percent of demand raised by the Assessing Officer was rejected-

Revenue was to be directed to refund amount adjusted beyond 20 per cent of demand raised.[Art. 226]

An assessment order was passed against assessee and tax demand including interest was raised. Assessee preferred an appeal before Commissioner (Appeals). However, amount constituting 65 per cent of total demand raised was adjusted against refunds receivable by assessee for various years. Assessee filed application requesting release of refund beyond 20 per cent of demand raised before Assessing Officer which was rejected by Assessing Officer on ground that adjustment of refund against demand was done by CPC system in accordance with total outstanding demand and would have no reference to CBDT Office Memorandum. On writ the court held that since assessee had filed stay application two days prior to filing of appeal against assessment order, order refusing refund was to be set aside and revenue was to be directed to refund amount adjusted beyond 20 per cent of demand raised. Referred Circulars and Notifications : Instruction No. 1914, dated 2-2-1993, Office Memorandum dated 29-2-2016 and Office Memorandum, dated 31-7-2017. (AY. 2012-13)

Neo Structo Construction (P.) Ltd. v. ACIT (2023) 292 Taxman 162/ 224 DTR 72 (Guj.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Financial hardship-Rejection of application without reasoning-Remanded back to Principal Commissioner to reconsider issue and pass an appropriate order after granting an opportunity of hearing to assessee. [S. 132, Art. 226]

There was a search carried out under section 132 of the Act on the assessee. Pursuant to the search, Assessing Officer completed assessment making certain additions to income of assessee and raised a tax demand. While an appeal filed against said assessment order was pending before Commissioner (Appeals), assessee filed an application for stay of demand of tax on the ground of financial hardship. The stay application was rejected by Principal Commissioner without assigning any reasons. On challenge, the High Court held that the case of assessee on financial stringency ought to be considered by Principal Commissioner after applying his mind and giving reasons thereof. Accordingly, the High Court remanded the matter back to Principal Commissioner to reconsider issue and pass an appropriate order after granting an opportunity of hearing to assessee. (AY. 2008-09)

Tungabhadra Minerals (P.) Ltd. v. DCIT (2023) 291 Taxman 250 / 455 ITR 311/ 331 CTR 73/ 222 DTR 353 (Bom.)(HC)

Salgaocar Mining Industries (P) Ltd v Dy. CIT (2023) 291 Taxman 250 / 455 ITR 311/ 331 CTR 73/ 222 DTR 353 (Bom.)(HC)

Salitho ores (P) Ltd v Dy. CIT (2023) 291 Taxman 250 / 455 ITR 311/ 331 CTR 73/ 222 DTR 353 (Bom.)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay-Pendency of appeal before Commissioner (Appeals)-Refund-Assessee was directed to approach appropriate authority under section 220(6) by filing stay application pending appeal. [S. 220(6), 225,246A, Art. 226]

Assessment for assessment years 1998-99 to 2002-03 had been made resulting in demand of Rs. 67.73 lakhs for all five years. An appeal was preferred against said assessment orders before Commissioner (Appeals) and same was pending consideration. Matter had been heard and orders were reserved and awaiting pronouncement. In meanwhile, refund was due to assessee pursuant to assessment made for assessment year 2021-22 to extent of Rs. 1.92 crores. The assessee filed petition praying for issuance of Writ of Mandamus forbearing Commissioner (Appeals) from taking any coercive steps to recover/set off refund due

towards liability for other assessment years-Revenue submitted that it had already set out/adjusted refund for some years, although exact numbers were not available. Court held that if the assessee intended to seek protection against any coercive proceedings, it would be open to assesseee to approach appropriate authority under section 220(6) by filing stay application pending appeal. (AY. 1998-99 to 2002-03)
Noorul Islam Educational Trust v. CIT (Appeals) (2023) 291 Taxman 271 (Mad.)(HC)

S. 220 : Collection and recovery of tax-High pitched assessment-Complete stay of demand was granted. [S. 10(34), 10(38), 68, Art. 226]
Held that since the assessment was high pitched and the prima facie case was in favour of the assessee, a complete stay of demand was granted. (AY. 2017-18)
Humuza Consultants v. ACIT (2023) 451 ITR 77 (Bom)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-High pitched assessment-Change its status from firm to trust-Complete stay was granted-Remanded to Assessing Officer to consider assesse's status as Trust.[S. 250, Art. 226]
On writ allowing the petition the Court held that the Assessee's status had changed from firm to a trust and it was alloted a new PAN, however the Assessing Officer issued reopening notice under old name and PAN of assessee and raised demand by passing high-pitched assessment, since assessee had a strong prima facie case that it would not be liable to pay such a high demand if it was assessed in capacity of trust as against that of firm, complete stay of demand was granted. The Respondents was directed to consider the Petitioner's application under their status as a Trust and try to dispose of the matter preferably within a period of 4 months from the date of this order. No coercive steps shall be taken against the assessee for the recovery of the demand in pursuance of the impugned notice dated 30th March 2022. (AY. 2014-15)
BHIL Employees Welfare Fund No.4 v. ITO (2023) / 455 ITR 130 / 147 taxmann.com 427 (Bom)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Levy of interest-Order set aside and remanded-Interest payable from fresh assessment order [S. 220(2), 254(1)]
Dismissing the appeal of the Revenue the Court held that the Tribunal by order dated September 30, 2014, set aside the original assessment order dated December 28, 2006, and restored the matter to the file of the Assessing Officer for determining the issue of taxability of the amounts received as brand building fund, the allowability of brand building expenses as well as a separate claim for other expenses. On remand, the Assessing Officer on March 29, 2016 reframed the assessment and passed a fresh assessment order under section 143(3) of the Act read with section 254 of the Act. The Assessing Officer reconfirmed the disallowance of brand expenses. The court held that the Tribunal was right in holding that interest under section 220(2) of the Act could be charged only after the expiry of the period of 30 days from the date of service of demand notice issued pursuant to the fresh assessment order dated March 29, 2016. Referred Circular No. 334 dated April 3, 1982 ([1982] 135 ITR (St.) 10). Para 2.1 (AY.2004-05)
PCIT v. AT and T Communication Services (India) Pvt. Ltd. (2023)451 ITR 92 / 291 Taxman 495/ 332 CTR 129/ 224 DTR 249 (Delhi)(HC)

S. 220 : Collection and recovery-Assessee deemed in default-Stay of demand-Calculation of 20 per cent outstanding-TDS deducted must be considered.[S. 156, 254(1)]

An appeal had been filed before Tribunal on disputed addition of short-term capital gain.Assessee had deposited TDS on such capital gain but entire addition was challenged before Assessing Officer as well as before Tribunal. Such TDS amount undisputedly was more than 20 per cent of demand as worked out by Assessing Officer in his computation of demand relating to this addition.Accordingly, 20 per cent had to be reckoned with disputed demand. Tribunal held that an action of Assessing Officer was not correct and accordingly, balance disputed demand was to be stayed for reason that there was no fault on part of assessee to conduct appeals and stay had already been granted by Tribunal looking to prima facie case on earlier occasions which had been misinterpreted by Assessing Officer. (AY. 2019-20)

eBay Singapore Services (P.) Ltd. v. DCIT (IT) (2023) 202 ITD 678 (Mum) (Trib.)

S. 220 : Collection and recovery-Assessee deemed in default-The return of income was uploaded without consent of the assessee by the Chartered Accountant in connivance with other partners-Matter remanded to the AO to decide after taking into account the outcome of criminal case filed by the assessee against the Chartered Accountant and other partnerS. [S. 2(24), Indian Penal Code, 1860, S. 418, 419 420, 468, 471, 477A]

The assessee was partner in the firm that carried liquor business. Due to heart related ailments, the assessee did not carry any business and did not file any return of income. However, the Chartered Accountant with the connivance of the partners of the assessee prepared fake documents to support the ITR which was uploaded without the knowledge of the assessee. Therefore, before the CIT(A) the assessee contended that there was no real income in his hands and whatever the return of income that were furnished by the Chartered Accountant was false and without his knowledge. However, the CIT(A) rejected the contentions and upheld the additions made to the income of the assessee.

On appeal, the Tribunal took cognizance of the fact that Indian Institute of Chartered Accountant had held the Chartered Accountant guilty of preparing false documents and that the criminal complaint filed by the assessee was pending before Judicial Magistrate. Taking these factors into consideration, the Tribunal remanded the issue to the Assessing Officer for a decision based on the criminal case's outcome.(AY. 2014-15)

Venkata Ramana Anupa v. ITO [(2023) 201 ITD 561 / 226 TTJ 605 (SMC) (Hyd) (Trib)

S. 221 : Collection and recovery-Penalty-Tax in default-Original return invalid-Revised return-Failure to pay tax as per original which was held to be invalid-Levy of penalty is not valid.[S. 139(4) 140A]

Assessee-company engaged in business of manufacturing of textiles, filed its return claiming MAT credit of certain amount and refund of advance taxes paid. However, amount of MAT credit computed by assessee was incorrect. The original return filed by assessee was held to be defective/invalid. Thereafter the assessee filed revised return under section 139(4) and also paid additional tax liability in two instalments. Assessing Officer held that excess MAT credit was an intentionally wrong claim made by assessee and held that assessee was 'assessee-in-default' under section 221(1) for not paying tax liability at time of filling of original return and, accordingly, levied penalty. CIT(A) affirmed the order of the CIT(A). On appeal the Tribunal held that since original return filed by assessee was already held to be invalid, no penalty could be levied upon assessee stating that assessee had failed to pay tax according to said invalid return. (AY. 2016-17)

G.M. Fabrics (P.) Ltd. v. DCIT (2023) 198 ITD 67 (Mum) (Trib.)

S. 225 : Collection and recovery-Stay of proceedings-20 percent not a pre-requisite for all appeals-Prima facie case, the balance of convenience, and irreparable injury while

disposing of the stay application-stay order is set aside, and the matter is remanded for fresh adjudication after granting an opportunity to be heard. [S. 220, Art. 226]
The Assessee challenged the dismissal of the stay application and the direction to deposit 20% of the total outstanding demand. The Court noted that the requirement to deposit 20% of disputed tax demand is not a pre-requisite for putting the demand in abeyance for all first appeals in all cases. The same has been noted by the Office Memorandum dated 29-02-2016 that the said pre-condition of deposit of 20% of the demand can be relaxed in appropriate cases. The authorities shall consider three basic principles, i.e., the prima facie case, the balance of convenience, and irreparable injury while disposing of the stay application. Consequently, the impugned stay order is set aside, and the matter is remanded for fresh adjudication after granting an opportunity to be heard. (AY. 2013-14 to 2020-21)
Dabur India Ltd. v. CIT (TDS) (2023) 291 Taxman 3 (Delhi)(HC)

S. 226 : Collection and recovery-Modes of recovery-Assessee-in-default-On remittance of Rs 43 Crores the notice and order were to be quashed and set aside and all further action in respect thereof would be prohibited. [S. 226 (3), Art.226]
Petitioner, a multi-state scheduled urban cooperative bank was by three separate notices under section 226(3) called upon to forthwith pay any amount held by it in accounts of three assessee's viz. M, S and N due to Deputy Commissioner on account of income-tax, wealth-tax,/Interest/Penalty. Petitioner informed Deputy Commissioner that they had marked a 'Debit freeze' for stated accounts. Subsequently, petitioner was declared as an 'assessee-in-default' for non-compliance with notice under section 226(3) and RBI was called upon to attach all bank accounts, FDs, RDs, and other deposits held by petitioner to effect recovery of dues from 'S' in respect of arrears of income-tax. On writ the Court held that impasse between the petitioner and Deputy Commissioner could be resolved by directing petitioner to forthwith remit electronically a sum of Rs. 43 crores to Deputy Commissioner. Upon such remittance, petition was to be disposed of and impugned notice and impugned order were to be quashed and set aside and all further action in respect thereof would be prohibited.
TJSB Sahakari Bank Ltd. v. DCIT (2023) 151 taxmann.com 254 (Bom)(HC)

S. 226 : Collection and recovery-Modes of recovery-Stay of demand-Commissioner (Appeals)-High-pitched assessment-Rejection of stay application without considering the additional evidence-Held to be not justified [S. 10(34), 246A, 251, Rule, 46A Art. 226]
The Assessing Officer rejected the exemption u/s 10(34) of the Act and assessed the sale consideration un)der section 68 of the Act and raised the demand of Rs 175, 52, 26, 440. The application for stay was rejected by the CIT(A). On writ, the Court held that rejection of the application for a stay without considering the additional evidence was held to be not justified. Directed the appellate authority to decide the application under rule 46A which is pending before it as also the appeal within three months from to day. Instruction No. 1914, dated February 2, 1993 Referred Valvoline Cummins Ltd v.Dy CIT (2008) 307 ITR 103 (Delhi)(HC), Soul v Dy.CIT(2008) 173 taxman 468 (Delhi)(HC) (AY.2017-18
Humuza Consultants v. ACIT (2023)451 ITR 77/ 330 CTR 192 / 221 DTR 57 (Bom)(HC)

S. 226 : Collection and recovery-Modes of recovery-Pendency of appeal before CIT(A)-Deduction of tax at source-Failure to consider prima facie case-Payment of 20 per cent.of disputed tax demand is not a prerequisite for a stay of demand-Order set aside

and matter remanded to Commissioner (IT) to consider afresh [S. 201(1), 201(IA), 246A, Art. 226]

Allowing the petition the Court held that the orders passed under section 201(1) / 201(1A) were non-reasoned orders. Neither the Assessing Officer nor the Commissioner (IT) had considered the three basic principles, i.e., the prima facie case, the balance of convenience and irreparable injury while deciding the stay applications. Consequently, the orders and notices were set aside and the matter was remanded back to the Commissioner for fresh adjudication in the application for stay. Before deciding on the stay application, the Commissioner (IT) should grant a personal hearing to the assessee. Until the stay application filed by the assessee was decided, no coercive action should be taken by the authorities in pursuance of the demand. Referred PCIT v. Electronics India Pvt Ltd. [2018] 12 ITR-OL 334 (SC) (WP (C) No. 4660 of 2022 dt 23-3-2022)

Tata Teleservices Ltd. v. CIT (IT) (2023)451 ITR 328 (Delhi)(HC)

S. 226 : Collection and recovery-Modes of recovery-20% of tax demand-Liability of directors of the private limited company-Pendency of appeal-Assessing Officer cannot directly initiate recovery proceedings against directors of the company without taking an assertive step for recovery of the outstanding tax due from the Private Limited company [S. 179, Art. 226]

The assessee is one of the Director of Nakoda Syntex Pvt Ltd. The AO passed the assessment order against the company making various addition. The company preferred an appeal which is pending for final hearing. The company filed and application for a stay of recovery which was rejected by the AO. The AO initiated recovery proceedings under section 179 of the Act against the assessee and passed an order under section 179 of the Act and also issued a certificate under section 222 of the Act. Against the said order the assessee filed writ petition. Allowing the Petition the Court held that the AO must make efforts for recovery of the outstanding dues from the private limited company which had committed default in payment of the outstanding demand. Only because the director was unable to deposit 20% of the demand raised in the assessment order against the company, he cannot be said to be negligent and AO cannot invoke jurisdiction under section 179 of the Act. (SCA No. 12961 of 2019 dt 16-12-2022)

Devendra Babulal Jain v. ITO (2023) The Chamber's Journal-January-P. 89 (Guj)(HC)

S. 234A : Interest-Default in furnishing return of income-Levy of interest is mandatory. [S. 2(35), 5, 6(3)(ii), 131, 142(1), 143(2), 148, 282]

Affirming the order of High Court the Court held that the assessees' contention against levy of interest in the absence of any specific order passed in the assessment order to levy interest, was not tenable. When the interest was levied in accordance with the working mentioned in ITNS 150 which formed part of the assessment order, it was sufficient to charge interest. Applied. CIT v. Bhagat Construction Co. Pvt. L td (2016) 383 ITR 9 (SC). Court also held that levy of interest under section 234A was mandatory and automatic. (AY. 1987-88 to 1989-90) AY. 1987-88 to 1989-90)

Mansarovar Commercial Pvt. Ltd. v. CIT (2023)453 ITR 661/ 293 Taxman 312 / 332 CTR 137/ 224 DTR 305 (SC)

Editorial : Decision of Delhi High Court, affirmed, CIT v. Mansarovar Commercial Pvt. Ltd (Delhi)(HC) (2016) 134 DTR 105 / 287 CTR 28 (Delhi)(HC)

Editorial : Review petition is dismissed, Mansarovar Commercial (P.) Ltd. v. CIT (2023) 294 Taxman 513 (SC)

S. 234A : Interest-Default in furnishing return of income-Levy of interest is mandatory-Review petition is dismissed. [S. 2(35), 5, 6(3)(ii), 131, 142(1), 143(2), 148,, 282]

Affirming the order of High Court the Court held that the assessees' contention against levy of interest in the absence of any specific order passed in the assessment order to levy interest, was not tenable. When the interest was levied in accordance with the working mentioned in ITNS 150 which formed part of the assessment order, it was sufficient to charge interest. Applied. CIT v. Bhagat Construction Co. Pvt. L td (2016) 383 ITR 9 (SC). Court also held that levy of interest under section 234A was mandatory and automatic. Review petition is dismissed. (AY. 1987-88 to 1989-90) AY. 1987-88 to 1989-90)

Mansarovar Commercial (P.) Ltd. v. CIT (2023) 294 Taxman 513 (SC)

Editorial : Mansarovar Commercial (P.) Ltd. v. CIT (2023) 453 ITR 661/ 293 Taxman 312 (SC).

S. 234A : Interest-Default in furnishing return of income-Settlement Commission-Allowed credit of pre-paid taxes-Interest under section 234B(2A) can be levied only on balance tax payable-Short paid for period after due date of filing return on which the return was filed. [S. 132, 133A, 234B(2A), 245C 245D(4), Art. 226]

A search and survey operation under section 133A was carried out at premises of assessee-firm wherein certain amount of cash was found. Assessee made a disclosure that entire sum belonged to him and filed an application for settlement. Said application was allowed. However, final order passed under section 245D(4) included interest under section 234B(2A) on entire amount of additional income offered without providing set-off of pre-paid taxes. On writ the Court held that the assessee had already paid tax on income which had gone to government treasury and therefore it could not be expected to pay interest on taxes already paid.It ought to have been allowed credit of pre-paid taxes and interest under section 234B(2A) was to be levied only on balance additional tax payable. Accordingly the interest under section 234A was to be levied on additional amount of tax paid by assessee, as that became tax short paid, for entire period i.e. after due date of filing return till date on which return was filed. Accordingly the order was set aside to extent of computation of interest, directing revenue to recover interest on additional tax paid as per the settled ratio.(AY. 2015-16 to 2018-19)

Shiv Shipping and Logistics v. ITSC (2023) 292 Taxman 390 (Guj.)(HC)

S. 234A : Interest-Default in furnishing return of income-Return is filed within time allowed by notice under section 153A, no interest would be leviable under section 234A. [S. 139(1), 153A]

Held that the assessee had filed return within time allowed by notice under section 153A, there was no delay in filing return of income by assessee and, consequently, no interest would be leviable under section 234A of the Act. (AY. 2014-15)

Lalit Johri v.ACIT (2023) 223 TTJ 1 (UO)/ 151 taxmann.com 436 (Jodhpur)(Trib)

S. 234A : Interest-Default in furnishing return of income-Compensatory in nature-Can only be levied up to such date of self-assessment and not beyond that period or till date of completion of assessment.[S. 234B]

Assessee, deriving income under head salary and interest income, had failed to file his return of income under section 139, However, he paid self-assessment tax with interest on 19-3-2015 Assessing Officer accepted returns and framed assessment under section 147 after levying interest under sections 234A, 234B and 234C till date of completion of assessment i.e. 29-11-2018. Assessee challenged levy of interest on ground that since he had paid self-assessment tax along with interest on 19-3-2015, no interest should be charged under sections

234A and 234B beyond said date. Tribunal held that interest under sections 234A and 234B, being compensatory in nature, could only be levied up to date of self assessment tax paid by assessee along with interest and not to period beyond that date i.e. 19-3-2015. The Assessing Officer is directed to delete excess interest charged. (AY. 2011-12)
Dhirendra Narbheram Sheth. v. ITO (2023) 199 ITD 507 (Rajkot) (Trib.)

S. 234A : Interest-Default in furnishing return of income-Return due on 31-7-2020-Return was filed on 17-10-2020-Delay of 2.5 months-Tax was paid in August & September 2020-Interest correctly computed for the period 31-7-2020 up to August & September 2020 and not up to filing of return. [S. 139 (4)]
Assessee's income-tax return was due to be filed on 31-7-2020. Return was filed on 17-10-2020 after a delay of about 2.5 months Entire tax dues were paid in August & September, 2020, i.e., before filing of return. Return was processed and interest under section 234A was calculated from 1-8-2020 to 17-10-2020. Tribunal held that irrespective of date of furnishing of ITR, interest under section 234A commence from first day immediately following due date and cease to accrue on date of payment by instalment (when paid in parts) or on date of full discharge of entire tax liability.Therefore, since assessee, in terms of section 234A(1), computed interest accrued on each occasion of payment by instalment on outstanding balance of taxes due to ex-chequer and discharged entire tax liability along with interest accrued thereon before filing of his return, interest under section 234A was correctly computed and paid for period from 31-7-2020 upto August & September 2020 by assessee. (AY. 2020-21)
Milind Madhav Padhye. v. DCIT (2023) 199 ITD 708 (Pune) (Trib.)

S. 234A : Interest-Default in furnishing return of income-being compensatory in nature, can only be levied up to such date of self-assessment and not beyond that period or till date of completion of assessment.[S. 234B]
Assessee challenged the levy of interest on ground that since he had paid self-assessment tax along with interest on 19-3-2015, no interest should be charged under sections 234A and 234B beyond said date. Held that interest under sections 234A and 234B, being compensatory in nature, could only be levied up to date of self assessment tax paid by assessee along with interest and not to period beyond that date i.e. 19-3-2015. The Assessing Officer was to be directed to delete excess interest charged by him. (AY. 2011-12)
Dhirendra Narbheram Sheth v.ITO (2023) 199 ITD 507 (Rajkot)(Trib)

S. 234A : Interest-Default in furnishing return of income-Assessment for the first time-Not liable to pay interest for the period during which it was not possible to file return. [S. 139, 147, 154]
The AO had revised the amount of interest charged u/s 234A to 97,493/-from 8,296/ vide rectification order. The AO had computed the interest u/s 234A for the period of 47 months for the period August 2010 to June 2014. The rectification order of the AO was confirmed by CIT (A). On appeal the Tribunal held that in the case of Priti Pithawala vs. ITO (2003) 129 Taxman 79 wherein it was observed that a belated return could not be submitted after the expiry of one year from the end of the assessment year and thus, the Assessee could not be fastened with a liability for which he was not able to file a return. The assessment was made for the AY 2010-11. The ITAT observed that the AO erred in rectifying the order for charging the interest for a period for which the assessee could not file his return. The ITAT allowed the appeal of the assessee. (379 /Jodh / 2019 dt. 22/03/2023 (AY. 2010-11)
Bhawna Nagori (Smt.) v. ITO (2023) The Chamber's Journal-May-110 (Jodhpur) (Trib)

S. 234B : Interest-Advance tax-Interest would be computed up to date of admission of application by Settlement Commission under section 245D(1) and not up to date of order of settlement Commission under section 245D(4)-Natural justice-Order was passed without giving an opportunity to the Revenue-Order of by High Court was quashed and the matter was remanded to decide writ petition afresh [S. 245D(1) 245D(4)]

Allowing the petition of Revenue the Court held that since the judgment was passed by High Court without any notice and thereby without giving any opportunity to revenue, said order was in violation of the principle of natural justice. Accordingly, the order passed by High Court was quashed and the matter was remanded to decide the writ petition afresh.

UOI v. G.M. Foods (2023) 452 ITR 100/ 290 Taxman 446/ 223 DTR 239/ 331 CTR 475 (SC)

Editorial : Arising out of order of High Court in. G.M. Foods v. IT& WT Settlement Commission (2015) 58 taxmann.com 16 /231 Taxman 793 (Cal)(HC)

S. 234B : Interest-Advance tax-Mandatory-Capital gains-Central Board Of Direct Taxes-Notification-Cannot override provisions of Statute-Or otherwise. [S. 119, 234B(2), Art. 226]

The assessee sought for credit in respect of the advance tax remitted during the financial years 2011-12 and 2012-13, relevant to the assessment years 2012-13 and 2013-14 and there was a delay of one and two years, respectively, since the amounts for which credit was sought for ought to have been remitted in the financial year 2010-11, relevant to the assessment year 2011-12. To such extent, the assessee was liable to interest under section 234B. The order rejecting waiver of interest was set aside to that extent. There was no justification in the challenge to the order of the Commissioner (Appeals) and the consequential order passed by the Assessing Officer. Court also held that the contents of a notification issued by the Central Board of Direct Taxes could not limit the interpretation of statutory provisions. Notification F. No. 400/234/95-IT(B), dated May 23, 1996 ([1997] 225 ITR (St.) 101), wherein "Capital gains" had been excluded under clause (c) as a head of income, from the ambit of waiver was not relevant to the assessee and therefore, reliance upon it was misplaced. The situation contemplated in clause (c) was one where income chargeable under a head other than "Capital gains", was received or had accrued after the due date of payments of the first or second instalments of advance tax and such a situation did not arise in the assessee's case since the entire consideration had not just been received but also offered to tax in the respective assessment years. The advance taxes relevant to the assessment years 2012-13 and 2013-14 had been paid in time, in the course of financial years 2011-12 and 2012-13, respectively. The reassessments had transpired on December 29, 2017. The payments were not ad hoc, and had been made specifically towards advance tax for liability towards capital gains in the financial years 2011-12 and 2012-13. Moreover, the Department had been in possession of the entire amounts from the financial years 2011-12 and 2012-13, since the assessee had satisfied the demands for the corresponding assessment years by way of advance and self-assessment taxes. It was those amounts that had been adjusted against the liability for the assessment year 2011-12 and therefore, substantially revenue neutral. The phrase "or otherwise" used in section 234B(2) would encompass situations of remittances made in any other context, wherein the amounts paid stood to the credit of the assessee. However, the liability to advance tax had commenced from the financial year relevant to the assessment year in question 2011-12. (AY.2011-12, 2012-13, 2013-14) (SJ)

Malini Ravindran (Mrs.) v. CIT (Appeal) (2023)457 ITR 401/151 taxmann.com 102 / 335 CTR 549 (Mad)(HC)

S. 234B : Interest-Advance tax-Income liable to tax deduction at source-Not liable to advance tax.

Held that section 234B should not be read in isolation without reference to the other provisions of Chapter XVII. The pre-conditions of section 234B for payment of interest were that : liability to pay advance tax and non-payment or short payment of such tax, had to be satisfied, after which interest could be levied taking into account the assessed tax. The Revenue was, however, not remediless and could proceed against the payer who had defaulted in deducting tax at source.(AY.2011-12)

Krones Aktiengesellschaft v. Dy. CIT (IT) (2023)108 ITR 705 (Delhi) (Trib)

S. 234B : Interest-Advance tax-applies on returned income and not on assessed income. [S. 234C]

Held that the chargeability of interest under section 234B was consequential in nature. As far as interest under section 234C of the Act was concerned, it should be charged only on the returned income and not on the assessed income..(AY.2011-12, 2012-13)

Tata Power Delhi Distribution Ltd. v.Add. CIT (2023)108 ITR 329 (Delhi)(Trib)

S. 234E : Fee-Default in furnishing the statements-Levy of the late fee applicable only from 1-6-2015. [S. 200A(1) Art. 226]

The court held that the jurisdiction to levy late fee under section 234E arises only from June 1, 2015 and not earlier.(AY.2012-13, 2013-14)

Sark Cable Pvt. Ltd. v. ITO (2023)451 ITR 167 (Ker)(HC)

S. 234E : Fee-Default in furnishing the statements-Applicable only prospectively i.e. from 01.06.2015. [S. 200A]

The Tribunal referred to the decision of the Hon'ble Kerala High Court in the case of Olari Little Flower Kuries (P.) Ltd. v. UOI (2022) 440 ITR 26 (Ker)(HC) wherein it was held that no late filing fee could be levied for processing of statement u/s 200A (1) for the period before 01.06.2015. In light of the said decision, the Tribunal held in favor of the Assessee that before 01.06.2015, there being no enabling provision for raising a demand in respect of levy of fees u/s 234E of the Act, no such levy could have been effected. (AY. 2013-14, 2014-15)

Anumod Viswambharan v. ITO (TDS) (2023) 201 ITD 743 (Cochin) (Trib.)

S. 234E : Fee-Default in furnishing the statements-Tax deducted at source deposited within the time limits prescribed, under the Act-Interest cannot be levied merely for delay in the filing of tax deducted at source return. [S. 195, Form No 27Q.]

The assessee was a senior citizen and had purchased a house property from two non-resident co-owners. Since the sellers were non-residents, TDS on the sale consideration was deducted and paid as per section 195 of the Act. Tax was deducted on the same day when the sale consideration was paid and the same was also deposited to the Central Government on same day without any delay. The Assessing Officer levied fee for delay in filing of the statements. On appeal it was contended that the assessee is a senior citizen and due to old age, forgot to file the return of TDS by error and that is a procedural error with no *malafide* intention of being non cooperative to income tax compliances whereas the dept. representative argued that since section 234E provides for mandatory filing of TDS statement, the levy of fees is correct and should be levied. Tribbunal held that the assessee being a senior citizen has deposited amount immediately after sale consideration was received and there was no lapse in payment. Merely on the ground that assesee could not file form 27Q within the time frame, cannot be the criteria for levying fees u/s. 234E and seeing the circumstances, the levy of fee was deleted. [ITA No. 127/Ahd/2022] dated 17/05/2023.]

Kanta Govind Singh v. ACIT (Ahd)(Trib) (UR)

S. 234E : Fee-Default in furnishing the statements-Not leviable for TDS deducted prior to 1 June 2015-NFAC is bound by the binding decision of the jurisdictional High Court. [S. 200A]

The AO rejected the application for non-levy of fee u/s. 234E for TDS deducted prior to 1.6.2015 by placing reliance on the decision of non-jurisdictional High Courts, which was further upheld by the NFAC. In this context, the Tribunal noted that the Hon'ble Karnataka High Court in the case of Fatehraj Singhvi [2016] 73 taxmann.com 252 (Karn)(HC) held that fee u/s. 234E of the Act could not be computed at the time of processing of return u/s. 200A of the Act for return filed for TDS deducted prior to 1.6.2015 since amendment for levy of fees in the intimation came into effect only from 1.6.2015. Further, the Tribunal held that decision of the jurisdictional High Court would be binding on the ITAT / NAFC / AO within the jurisdiction of the Court whereas in absence of the jurisdictional High Court and decisions of non-jurisdictional High Courts are conflicting, the authorities must take the view which is in favour of the assessee.(AY. 2013-14)

Nagesh Consultants v. Dy.CIT(2023) 103 ITR 24 (SN) (Bang) (Trib)

S. 237 : Refunds-Condonation of delay-Deduction of tax at source-Revised return-Joint Development Agreement-Reflected in form no 26AS-Not claimed refund under bonafide belief-Rejection order is set aside and directed to file revised return. [S. 119(2)(b),139(5), 154, 195A, Art. 226]

Allowing the petition the Court held that since receipt of advances and deduction of TDS under section 195A was reflected in corresponding Form 26AS filed but TDS was not claimed under impression that it was not required, as deduction was towards advance as against income which was realized only with sale of apartments when capital gains were offered during assessment year 2021-22, a strong case of bona fide error in not claiming benefit of TDS in assessment year 2018-19 was established. Rejection order is quashed and the assessee is permitted to file revised returns within three months. (AY. 2018-19) (SJ)

Sandhya Srivatsan v. CIT (IT) (2023) 333 CTR 2 /226 DTR 337/151 taxmann.com 305 (Karn)(HC)

S. 237 : Refunds-Interest-Credit for advance tax and tax deducted at source-Company Merging Under Order Of National Company Law Tribunal-Directions issued to give credit of refund with interest to entity with which company merged. [Art. 226]

By an order of the National Company Law Tribunal Polaries Consulting Services Limited was merged with Virtusa Consulting Services Private Limited. On a writ petition seeking directions to the Department to allow credit of advance tax paid by P and tax deducted at source in the merged assessee Virtusa Consulting Services Private Limited and refund under section 237 of the Income-tax Act, 1961 with applicable interest :

The court directed the Department to remit the consequential refund along with applicable interest to the assessee Virtusa Consulting Services Private Limited since challan from Polaries Consulting Services Limited to Virtusa Consulting Services Private Limited had been migrated.

Virtusa Consulting Services Pvt. Ltd. v. Dy. CIT (2023)459 ITR 522 (Telangana)(HC)

S. 237 : Refunds-Failure to give effect to remand order of the Tribunal within prescribed time-Assessment order is barred by limitation-Directed to grant refund with interest.[S. 153(3), 153(4), 254(1), Art. 226]

The Assessing Officer has not passed the order giving effect to the order of the Tribunal. On a writ petition the assessee contended that the refund for the assessment year 2006-07 due to Flextronics Software Systems Ltd which was amalgamated with the assessee be refunded with applicable interest on the ground that the assessment for the assessment year 2007-08 was barred by limitation. Allowing the petition the Court held that passing a fresh assessment order pursuant to the Tribunal's order dated January 7, 2016, was barred by limitation under the provisions of section 153(3) and 153(4) and the income as returned by the amalgamated company FSS for the assessment year 2007-08 would stand accepted. Consequently, any adjustment that would be made against the refund due to FSS for the assessment year 2006-07 was not sustainable. Therefore, the amount which was due to FSS as refund for the assessment year 2006-07 was to be refunded to the assessee with applicable interest.(AY.2006-07, 2007-08)

Aricent Technologies (Holdings) Ltd. v. ACIT (2023)458 ITR 578 /152 taxmann.com 299 / 334 CTR 84/ 225 DTR 270 (Delhi)(HC)

S. 237 : Refunds-Disability pension-Retired Officer of Indian Army-Arrears of disability pension received in December 2008-Entitled to exemption-Strictures-Court directed the Revenue for refund of tax paid by assessee with interest at 9 per cent. per annum within one month with costs of RS. 1 lakh. If the payment was not made within the stipulated period interest was to be paid at 18 per cent. per annum from the date of entitlement till actual payment. [Pension Regulations for the Army, Rule, 173]

The assessee is a disabled officer of the Indian army who was commissioned on March 23, 1975 and retired on November 31, 2008 with service pension. The assesse filed revised return was filed within 20 days of the receipt of the amount on implementation of the court's orders whereby he was granted arrears of disability pension and this was within the time stipulated in the Central Board of Direct Taxes Circular No. 2009 of 2015. The assessee's claim to refund of the Income-tax for the past years on his exempted income of disability pension was rejected. The assessee again approached the authority through the portal of the Government of India and even this was rejected. On a writ petition allowing the petition, the Court held that Circular No. 13 of 2019 dated June 24, 2019 ([2019] 415 ITR (St.) 209), Supreme Court order dated August 30, 2019, Circular No. 210 dated February 20, 2020 and Circular No. 211 dated March 3, 2020 were not disputed by the Department. No explanation has been given as to why under Circular dated July 2, 2001, once the disability pension was exempted from Income-tax why this benefit was not given to the assessee. Hence, the order is not valid. Court directed the Revenue for refund of tax paid by assessee with interest at 9 per cent. per annum within one month with costs of Rs. 1 lakh. If the payment was not made within the stipulated period interest was to be paid at 18 per cent. per annum from the date of entitlement till actual payment.

Jaswinder Pal Singh (Col.) (Retd.) v.PCIT (2023)456 ITR 410/152 taxmann.com 103 / 334 CTR 319 (P&H)(HC)

S. 237 : Refunds-Scheduled Tribe-Salary-Tax deducted at source-Migrating from his place of origin specified area to another specified area-Entitle to exemption-Tax deducted to be refunded. [S. 10(26), 192 197, Art. 226, 342]

The assessee was in the service of Border Security Force in the State of Assam. The assessee was a member of a recognized Scheduled tribe under article 342 of the Constitution of India hailing from the State of Rajasthan but tax was deducted at source from his salary. On writ allowing the petition the Court held that the assessee was entitled to the exemption under section 10(26). The Department having issued a certificate under section 197 of the Act, the

authority was directed to process the request for refund of tax deducted from the salary Followed, Pradip Kr.Tyre v.UOI (2010) 320 ITR 29 (FB) (Gauhati) HC).(SJ)
Chyawan Prakash Meena v. UOI (2023)455 ITR 258 /150 taxmann.com 235 / 331 CTR 690/ 223 DTR 473 (Gau)(HC)

S. 237 : Refunds-Directed to refund verified amount along with interest and balance refund amount the Revenue is directed to locate the file and release the amount based on indemnity bond furnished by the assessee. [Art. 226]
For not granting the refund the assessee filed the writ petition, allowing the petition the Court directed the Revenue to refund verified amount along with interest and balance refund amount the Revenue is directed to locate the file and release the amount based on indemnity bond furnished by the assessee. (AY. 1997-98 to 2002-03)
Nokia Corporation v. Dy. CIT (2023) 295 Taxman 267 (Delhi)(HC)

S. 237 : Refunds-Delay in filing application for refund-Claims Exceeding RS. 50 Lakhs to be considered by CBDT-Directed the Board to pass an order on refunds [S. 119, 133A, 194C, 201(1), Art. 226]
On writ against the failure to issue the refunds the Court held that the the Assessing Officer who was the Assistant Commissioner (TDS) who passed the order of rejection did not have pecuniary jurisdiction. Further, the letter dated December 10, 2020 by which the Principal Chief Commissioner, New Delhi, had referred the matter to the Principal Chief Commissioner, Bihar and Jharkhand could not be ignored, inasmuch as, the competent authority to pass the refund order was Central Board of Direct Taxes. In order to pass a final order as per Circular No. 9 of 2015, (2013) 374 ITR 25 (St) the Board is the competent authority. Case remitted to CBDT.
Jharkhand Bijili Vitran Nigam Ltd. v. PCIT (2023)455 ITR 436/333 CTR 738 /150 taxmann.com 191 (Jharkhand)(HC)

S. 241A : Refunds-Withholding of refund-Permission for withholding of refund given without application of mind is not valid.[S. 143(2), Art. 226]
Held merely because a notice had been issued under section 143(2) of the Act, was not sufficient ground to withhold the refund. The Principal Commissioner had also mechanically accorded permission to withhold the refund till the date of finalization of assessment without any application of mind in the matter. The order withholding refund was not valid.(AY.2020-21)
Oyo Hotels and Homes Pvt. Ltd. v Dy.CIT (2023)456 ITR 743 /148 taxmann.com 410/ 333 CTR 454/ 224 DTR 389 (Delhi)(HC)

S. 241A : Refunds-Withholding of refund in certain cases-Intimation order was passed-Order withholding refund was set aside and the Revenue was directed to conduct a *de novo* exercise as per provision of section 241A of the Act. [Art. 226]
Assessee received intimation under section 143(1) that refund had been calculated as due to it and shall be credited within a period of 15 days from date of intimation. However, despite lapse of several months, no refund was received by assessee. Reasons recorded for withholding refund simply stated that case was selected under CASS with a large number of issues to be examined and mentioned no details of any issue which required examination..On writ allowing the petition the Court held that merely because a notice had been issue under section 143(2) of the Act is not a sufficient ground too withhold the refund. Accordingly the order withholding refund was to be set-aside and revenue was directed to conduct a *de novo* exercise as per provision of section 241A of the Ac. (AY. 2020-21)

OYO Hotels & Homes (P.) Ltd v. Dy.CIT (2023) 148 taxmann.com 410 (Delhi)(HC)

S. 244 : Refunds-Interest on refunds-Additional interest-Delay in granting refund pursuant to order of Tribunal which is affirmed by High Court-Entitled to refund with interest and additional interest-Directed to comply the direction within three months-Failure to comply the direction compensation shall be paid of Rs 1lakh. [S. 244(IA) Art. 226]

Allowing the petition the Court held that with regard to the refund to be returned with the interest, sub-section (1A) inserted in section 244A had to be applied prospectively for the period of delay after introduction of the relevant statutory provision. Under sub-section (1) of section 244A the Department had to grant interest at the statutory rate and both the provisions, sections 244 and 244A, applied and the Department had to grant the refund accordingly. Directed to comply the direction within three months. Failure to comply the direction compensation shall be paid of Rs 1lakh (AY.2005-06)

Bombardier Transportation India Pvt. Ltd. v Dy. DIT (TDS) (2023)455 ITR 278 / 149 taxmann.com 460 (Guj)(HC)

S. 244A : Refunds-Interest on refunds-Delay in paying refund-Interest on interest-Department directed to refund the entire amount, which was due and payable, including interest payable. [Art. 226]

On writ the Court held that one may call it interest on interest, but in reality payment of interest on the unpaid amount occurs because of non-payment of the total amount refundable, which is due and payable to the assessee consisting of the tax, which had to be refunded and the interest accrued on the delayed refund of the tax. The principal amount and the interest due are to be added and treated as the primary amount and interest becomes due and payable on this primary amount. It would be incorrect to treat it as compounding of interest.Accordingly the Court directed the Department to refund the entire amount, which was due and payable, including interest payable under section 244A of the Act. (Writ and appeal)

Tata Communications Ltd. v. Dy. CIT(2023) 335 CTR 983/ (2024)462 ITR 86 (Bom)(HC)

S. 244A : Refunds-Interest on refunds-Interest paid on penalty-Section 240 do not differentiate between refund of tax or penalty or any other amount-Deletion of penalty by Tribunal-Interest paid on penalty-Entitled to interest on Interest.[S. 220(2), 220(6),240,244(1A),244A,264271(1)(c),Art.226]

The assessee filed a revision application before the Commissioner for grant of interest which was paid along with the penalty. The Commissioner held that section 244 was substituted with effect from April 1, 1989 by section 244A, that since the penalty was imposed on August 4, 1989, the refund arose after April 1, 1989 section 244A applied and not section 244 and that there was no provision under the Act for payment of interest on interest and rejected the application. On a writ allowing the petition the Court held that section 240 made no distinction between refund of tax or penalty paid and refund on other amounts collected. The assessee did not claim interest on interest which was due but had claimed interest on the amount which was paid as interest under section 220(2) which formed part of refund due to it. The Assessing Officer had wrongly demanded the amount of the interest under section 220(2) and the assessee had paid interest on outstanding amount of penalty. On deletion of penalty by the Tribunal, the assessee was entitled to refund of amount of penalty paid and also the interest thereon paid under section 220(2). Therefore, the amount of interest paid by the assessee under section 220(2) was part of the refund envisaged under

section 240 and the assessee was entitled to interest on such amount under the provisions of section 244(1A). The Commissioner is directed to grant the interest on the refund under section 244 instead of section 244A and also grant interest on the refund of amount of interest recovered under section 220(2)(AY.1984-85)

J. K. Industries v Krishna Sahal v. CIT (2023)456 ITR 588 /153 taxmann.com 523 / 335 CTR 402 (Bom)(HC)

S. 244A : Refunds-Interest on refunds-Interest paid on penalty-Section 240 do not differentiate between refund of tax or penalty or any other amount-Deletion of penalty by Tribunal-Interest paid on penalty-Entitled to interest on Interest. [S. 220(2), 220(6), 240, 244(1A), 244A, 264, 271(1)(c), Art.226]

The assessee filed a revision application before the Commissioner for grant of interest which was paid along with the penalty. The Commissioner held that section 244 was substituted with effect from April 1, 1989 by section 244A, that since the penalty was imposed on August 4, 1989, the refund arose after April 1, 1989 section 244A applied and not section 244 and that there was no provision under the Act for payment of interest on interest and rejected the application. On a writ allowing the petition the Court held that section 240 made no distinction between refund of tax or penalty paid and refund on other amounts collected. The assessee did not claim interest on interest which was due but had claimed interest on the amount which was paid as interest under section 220(2) which formed part of refund due to it. The Assessing Officer had wrongly demanded the amount of the interest under section 220(2) and the assessee had paid interest on outstanding amount of penalty. On deletion of penalty by the Tribunal, the assessee was entitled to refund of amount of penalty paid and also the interest thereon paid under section 220(2). Therefore, the amount of interest paid by the assessee under section 220(2) was part of the refund envisaged under section 240 and the assessee was entitled to interest on such amount under the provisions of section 244(1A). The Commissioner is directed to grant the interest on the refund under section 244 instead of section 244A and also grant interest on the refund of amount of interest recovered under section 220(2)(AY.1984-85)

J. K. Industries v Krishna Sahal v. CIT (2023)456 ITR 588 /153 taxmann.com 523 (Bom)(HC)

S. 244A : Refunds-Interest on refunds-Rectification order-Department should calculate the interest component while passing the order under section 154 of the Act. [S. 154, 244(IA)]

Assessee filed a rectification application under section 154 on 30-3-2016, highlighting incorrect status as a trust instead of AOP, resulting in a recomputed tax liability and a refund. However, interest on refund was not provided NFAC observed that delay in refund proceedings was attributed to assessee's conduct and therefore, it would not be entitled to any interest on refund. Tribunal held that in pursuant to order passed under section 154 refund amount was determined in respect of assessee and when this refund was issued to assessee automatically, interest component had to be calculated and to be given to assessee and this exercise should have been completed immediately after pronouncement of rectification order under section 154. Since department while calculating refund amount did not give interest to assessee, this was in direct contravention to section 244(1A). Therefore, order of NFAC was to be set aside and Assessing Officer was directed to calculate interest as per law and remit same to assessee. (AY. 2007-08)

Seva Vikas Co-Operative Bank Ltd. v Add. CIT (2023) 157 taxmann.com 562 / 226 TTJ 134 (Pune)(Trib.)

S. 244A : Refunds-Interest on refunds-Not granting interest despite directions of Dispute Resolution Panel-Assessing Officer is directed to follow the directions of the Dispute Resolution Panel and grant interest in accordance with law.

Held that the Assessing Officer had not granted interest under section 244A on the refund determined despite the directions of the Dispute Resolution Panel to examine it and grant interest as per law. The Assessing Officer is directed to examine the issue and follow the directions of the Dispute Resolution Panel.(AY.2016-17)

Nike India P. Ltd. v. Dy. CIT (2023)108 ITR 666 (Bang) (Trib)

S. 244A : Refunds-Interest on refunds-Offered to tax in year of receipt-Could not be taxed in year of accrual. [S. 5]

That the interest on Income-tax refunds added back to the assessee's income in the year under consideration on accrual basis ought not to have been considered as income as the same income had been offered to tax in the AY. 2021-22 and had also been received by the assessee in that year. The addition was to be deleted as it would have been taxed twice.(AY. 2018-19)

FIL India Business And Research Services P. Ltd. v. Dy. CIT (2023)105 ITR 82 / 154 taxmann.com 251 (Delhi) (Trib)

S. 244A : Refunds-Interest on refunds-Directed the Assessing Officer to recalculate refund.

The Tribunal held that, calculation table given by the assessee gave a clear picture as to the correct amount of refund of principal and interest to be taken into account. Therefore, the AO directed to recalculate the refund with interest u/s. 244A of the Act up to the date of issue of refund.

Minor Baku Dineshbhai Amin Oral Specific Deferred Family Trust v. ITO (2023)105 ITR 55 (SN)(Ahd)(Trib)

S. 244A : Refunds-Interest on refunds-Interest on Income Tax Refund to be calculated till the Grant of Refund and not till the date of order. [S. 143(3), 243]

The Appellant filed return of income claiming a refund. Assessment order under section 143(3) was issued by the AO on 30 December 2018 along with the computation sheet determining refund. Interest under section 244A of the Act was granted by the AO which was calculated from 1 April 2016 to 31 October 2018 i.e. for a period of 31 months. The refund was received by the appellant only on 4 June 2019 in its bank account i.e. after 6 months of passing of assessment order.

The Court held that the *CBDT vide Circular No. 20-D (XXII-22) of 1968, dated 20 August 1968* clarified that in cases where interest is payable by the Central Government to assessee under section 243 of the Act, such interest is to be calculated up to the date of issue of the refund voucher. The language used in section 244A of the Act is similar to language used in section 243 of the Act and therefore reliance can be placed on the above Circular issued by the CBDT. (ITA No.428 to 430/Jp/2022, dated 05/04/2023) (AY 2016-17 to 2018-19)

Girnar Software Pvt. Ltd. v. ACIT (Jaipur)(Trib)

S. 245 : Refunds-Set off of refunds against tax remaining payable-Recovery of tax-Must be given information regarding proposed adjustment-Strictures-For not obeying and considering the judgments of the Supreme Court, as well as the provisions of sections 220(6) and 245 of the Act and the circulars of the Department Cost of Rs 50000 was imposed on the Assessing Officer to be deposited with the Rajasthan State Legal

Services Authority-High Court order imposing cost of Rs 50000 is set aside. [S. 220(6), 222, 223, 246A, Customs Act, 1962 S. 129(e), 235(f), Art. 14, 19, 136 265]
On SLP the Revenue submitted that since main matter was still not yet disposed of, it would be satisfied if imposition of exorbitant cost of Rs. 50,000 was set aside.. Order of High Court on merit affirmed however the cost of Rs. 50,000 imposed by High Court is set aside (AY. 2017-18)
ACIT v. Rajendra Kumar (2023) 295 Taxman 407 /334 CTR 343 (SC)
Editorial : Rajendra Kumar v. ACIT (2022) 287 Taxman 625/ 445 ITR 622 /327 CTR 116/ 215 DTR 1 (Raj)(HC)

S. 245 : Refunds-Set off of refunds against tax remaining payable-Failure to comply with provision-Entitle to refund with interest if any in accordance with law. [S. 237, 244A(1), 244A(IA), Art.
Allowing the petition, the Court held that the failure to comply with the mandatory requirement of prior intimation under section 245 would make the entire adjustment of refund of the assessment years 2016-17, 2017-18 and 2019-20 towards the tax dues of the assessment year 2014-15 illegal. Directed to grant refund within four weeks with accumulate interest. (AY.2016-17, 2017-18, 2019-20)
G. E. Power India Ltd. v. ACIT (2023)458 ITR 450 /(2024) 158 taxmann.com 173 (Bom)(HC)

S. 245 : Refunds-Set off of refunds against tax remaining payable-Order adjustment of refund was passed before time granted to respond notice-Order set aside.[S. 237, Art. 226]
Allowing the petition the Court held that the order adjustment of refund was passed before time granted to respond notice.Order is set aside and the matter remanded.(AY.2019-20)
Travelport International Operations Ltd. v.CIT (IT)(2023)455 ITR 510 (Delhi)(HC)

S. 245C : Settlement Commission-Settlement of cases-Failure to disclose full and true disclosure-Writ petition is dismissed-SLP is dismissed. [S. 245D(1), Art. 136]
High Court held that Settlement Commission is empowered to declare an application as invalid on ground of failure to make true and full disclosure, hence, where Settlement Commission, after perusing report of Principal Commissioner submitted under sub-section (2B) of section 245D had recorded reasons to come to conclusion that there was no true and full disclosure as required under section 245C(1). (AY.2006-07 to 2012-13)
Maa Mahamaya Industries Ltd. v. ITSC (2023) 459 ITR 301 / 294 Taxman 424 (SC)
Editorial : Maa Mahamaya Industries Ltd. v. ITSC (2023) 459 ITR 277 / 153 taxmann.com 295 (Telangana) (HC)

S. 245C : Settlement Commission-Settlement of cases-Conditions-Retrospective amendment made by the Finance Bill, 2021-Pending applications-last date for filing of application in Section 245C(5) should be read as 31-03-2021 instead of 01-02-2021 and consequently the last date mentioned in the circular should also be read as 31-03-2021 and thus, the pending applications between 01-02-2021 to 31-03-2021 and as on 31-03-2021 should be deemed as pending applications for purposes of consideration by Interim Board-Court cannot substitute its opinion to abolition of Settlement Commission. [S. 245A, 245C (5), 245D(11), Art. 226]
Petitioner challenged the constitutional validity of amendment to Section 245A discontinuing operations of Settlement Commission w.e.f. 01–02–2021. Petitioner also challenged the validity of Circular No. P. No. 299/22/2021-Dir(Inv.III), dtd. 28–09–2021 – The Court

observed that neither there was any intent nor it was within purpose to do away with pending applications of cases from 01–02–2021 to 31–03–2021. The Court held that last date for filing of application in Section 245C(5) should be read as 31–03–2021 instead of 01–02–2021 and consequently the last date mentioned in the circular should also be read as 31–03–2021 and thus, the pending applications between 01–02–2021 to 31–03–2021 and as on 31–03–2021 should be deemed as pending applications for purposes of consideration by Interim Board.Followed, CIT v. Shah Sadiq & Sons (1987) 31 Taxman 498 / 166 ITR 102 (SC) and UOI v. Tushar Ranjan Mohanty (1994) 5 SCC 2020. The Right to seek resolution through Settlement Commission conferred by Statute, within policy realm of State to make away remedy or benevolence. The Court also held that the Court cannot substitute its opinion to abolition of Settlement Commission**.**

Jain Metal Rolling Mills v. UOI (2023) 335 CTR 761 / (2024) 296 Taxman 336 / 461 ITR 423 (Mad)(HC)

S. 245C : Settlement Commission-Settlement of cases-Failure to disclose full and true disclosure-Writ petition is dismissed-SLP is dismissed. [S. 245D(1), Art.226]

Settlement Commission dismissed petition on the ground that the assessee failed to disclose full and true disclosure. On writ the Court held that the primary obligation cast upon the assessee under section 245C(1) to make a true and full disclosure has not been taken away by the omission of sub-section (1A). The right of the Commissioner to object under sub-section (1A) to the application being proceeded with, stands on a different footing from the obligation of the assessee to make a full and true disclosure under section 245C(1). That the application does not disclose true and full particulars, can be highlighted by the Commissioner in his report under sub-section (2B). On the basis of such report, the Settlement Commission can declare the application under sub-section (2C) to be invalid. The procedure prescribed in sub-section (2B) and sub-section (2C) is not taken away even after the deletion of sub-section (1A). Writ petition was dismissed. (AY.2006-07 to 2012-13)

Maa Mahamaya Industries Ltd. v. ITSC (2023) 459 ITR 277 / 153 taxmann.com 295 (Telangana) (HC)

Editorial : SLP of assessee is dismissed, Maa Mahamaya Industries Ltd. v. ITSC (2023) 459 ITR 301 / 294 Taxman 424 (SC)

S. 245C : Settlement Commission-Pendency of proceedings-No proceedings was pending-Petition is not maintainable.[S. 147 148, 245A, Art. 226]

Settlement Commission dismissed the petition on the ground that application of assessee was not maintainable since there were no assessment proceedings for said assessment years as the time limit for Assessing Officer to make an assessment pursuant to returns filed by assessee under section 139 in respect of assessment years 2012-13 to 2014-15 had expired and no notice under section 148 was issued for said years. On writ the Court held that as per Explanation (i) to clause (b) of section 245A proceedings in relation to assessment or reassessment or re computation under section 147 was not pending for said years. On facts, assessee's settlement application under section 245C for relevant years was not maintainable. (AY. 2012-13 to 2014-15)

Bishan Das Goyal HUF v. PCIT (2023) 294 Taxman 102 (Delhi)(HC)

S. 245C : Settlement Commission-Settlement of cases-Case-There was no case pending in relation to assessment years on date of respective applications-Any proceeding for assessment under this Act-Application for the Assessment year 2012-13 and 2013-14 are held to be not maintainable-Applications in respect of assessment years 2014-15, 2015-16, and 2016-17 were maintainable because in terms of Explanation (iv) proceedings for

said assessment years were not concluded on date on which assessee had filed their respective applications-Order of Settlement Commission was affirmed. [S. 148, 245A,Art. 226]

The assessee had filed application for the Assessment years 2012-13 to 2016-17 under section 245C(1) of the Act. Settlement Commission held that in terms of sub-clause (iv) of clause (b) of section 245A, assessment proceedings in respect of assessment years 2012-13 and 2013-14, were concluded and, there was no 'case' existing in respect of assessment years 2012-13 and 2013-14. Accordingly in respect of those assessment years, were not maintainable, since no notice under section 148 was issued to assessee at material time in respect of any of assessment years; therefore, time for making application as well as on date of passing impugned order, there were no proceedings pending for re-opening any assessment for any of assessment years for which applications were made. Court also held that applications in respect of assessment years 2014-15, 2015-16, and 2016-17 were maintainable because in terms of Explanation (iv) proceedings for said assessment years were not concluded on date on which assessee had filed their respective applications. (AY. 2012-13 to 2016-17)

Sushil Kumar Goyal v. P CIT (2023) 293 Taxman 653 /333 CTR 464/ 226 DTR 345 (Delhi)(HC)

S. 245D : Settlement Commission-Settlement of cases-observation-It was not practicable to examine records and arrive at proper Settlement-Directing Authorities to adjudicate and pass orders on other aspects not before it-Writ petition dismissed-Order passed by Settlement Commission a nullity-Orders Of High Court, Assessing Officer, and Settlement Commission set aside and matter remanded to Interim Board for Settlement. [S. 132, 153A, 245AA, 245C(1), 245D(4), 245F(4), 245HA, Art. 136, 226]

Held, allowing the appeal the Court held that the High Court was justified in observing that the order passed by the Settlement Commission was a nullity and could not be said to be an order in the eye of law. The Settlement Commission specifically observed that it was not practicable for the Commission to examine the records and investigate the case for proper settlement and that even giving adequate opportunity to the applicant and the Department, as laid down in section 245D(4) of the Act was not practicable. However thereafter, the Settlement Commission passed an order to comply with the directions of the High Court to dispose of the application on or before March 31, 2008. If that be so, the High Court in fact ought to have remitted the matter back to the Settlement Commission to pass a fresh order in accordance with law and on the merits after following due procedure as required under section 245D(4) of the Act. The judgment of the High Court, the subsequent order passed by the Assessing Officer, and the order passed by the Settlement Commission were set aside and the matter remanded to the Settlement Commission for decision afresh. The Settlement Commission having been wound up and the matters pending before it being adjudicated by an Interim Board constituted under section 245AA of the Act, the matter was to be remitted to the Interim Board with a request that the matter be taken up expeditiously and a reasoned order passed. It would be open to the Interim Board to call for a fresh report under rule 9 of the Income-tax Settlement Commission (Procedure) Rules, 1997 and thereafter pass the final order on the application, after following due procedure as required under section 245D(4) of the Act. (AY. 1998-99 to 2004-05)

Jagdish Transport Corporation and Ors v. UOI (ITSC) (2023)454 ITR 264 / 293 Taxman 417/ 332 CTR 601/ 225 DTR 265 (SC)

Editorial : Jagdish Transport Corporation and Ors v. UOI (ITSC) (All)(HC) (WP No. 4858 of 2008 dt. 29-3 2017)

S. 245D : Settlement Commission-Application-Additional income disclosed-Settlement Commission accepted the additional income-High Court set aside the order-On appeal the matter was remanded back to Settlement Commission (now Interim Board) for reconsideration and re-determination of undisclosed income, after giving an opportunity to both sideS. [S. 133A, 2245C, 245D(4), Art. 136

Application was filed before the Settlement. In the course of hearing

with the permission of the Settlement Commission, declared additional income o over and above what was already declared in the application for settlement. The Settlement Commission accepted the declaration of additional income and permitted the assessee to make payment of the tax on such income in instalments. On writ filed by revenue, the High Court concluded that the Settlement Commission had not passed a just and proper order; that this was not a case which was acceptable for settlement at all and, therefore, set aside the order of the Settlement Commission.

On appeal to the Supreme Court held that in view of the remand being made to the said Interim Board, the subsequent re-assessment and demand made by the Department to the assessee shall be kept in abeyance and subject to the order to be made by the Interim Board for settlement. The concerned Interim Board shall issue notice to the assessee/appellant, preferably within a period of four weeks, to appear before it and dispose of the application filed by the assessee seeking settlement, in accordance with law and after giving an opportunity to both sides. (AY. 2011-12 to 2013-14)

Shree Nilkanth Developers v. PCIT (2023) 457 ITR 464 /294 Taxman 591 / 334 CTR 1 (SC)

Editorial : PCIT v. Shree Nilkanth Developers(2016) 73 taxmann.com 76 (Guj)(HC)

S. 245D : Settlement Commission-Surrendering claim for depreciation on leased assets-Report of Commissioner for addition of interest on Government Securities-Order of Settlement Commission non-speaking-Matter referred to Interim Board-Precedent-Supreme Court decision-Judicial decision acts retrospectively. [S. 245AA 245C, R.9, Art. 226]

On writ the Court held, that the order of the Settlement Commission under section 245D on the interest accrued but not due was contrary to the provisions of law. The Settlement Commission had not given any reasons but had simply stated that it agreed with the Commissioner's view. Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at. The right to receive interest on Government securities vested in the assessee only on the due date mentioned in the securities. Consequently, the interest accrued on the securities only on the due dates and had not accrued to the assessee on any date other than the dates stipulated therein. Therefore, the conclusion arrived at by the Settlement Commission was not in conformity with the provisions of law and certainly such a contravention would prejudice the assessee. The order of the Settlement Commission and the assessment order to the extent of the aspect of interest was quashed and set aside. The matter was sent to the Interim Board for Settlement constituted for the settlement of pending applications as contemplated under section 245AA. The Interim Board was directed to pass such orders as it deemed fit in accordance with law after hearing the parties. The Supreme Court in ACIT v. Saurashtra Kutch Stock Exchange Ltd (2008) 305 ITR 227 (SC) has held that a judicial decision acts retrospectively. The judges do not make law, they only discover or find the correct law. The law has always been the same and if a subsequent decision alters the earlier one, the later decision does not make a new law. It only discovers the correct principle of law which has to be applied retrospectively. The Supreme Court held that even an earlier decision of the court operated

for quite sometime, the decision rendered later on would have retrospective effect, clarifying the legal position which was earlier not correctly understood. (AY.1997-98)
Indusind Bank Ltd. v ITSC (2023)456 ITR 376/152 taxmann.com 489 (Bom)(HC)

S. 245D : Settlement Commission-Settlement of cases-Full and true disclosure of undisclosed income-Pending application-Rejection of application is not valid-Matter remanded to Interim Board. [S. 245A, 245B, 245C, Art. 226]
Allowing the petition the Court held that the finding of the Settlement Commission that the failure to offer interest income on non-performing assets constituted a failure to make a full and true disclosure for the purpose of section 245C of the Act, was unsustainable. The rejection of the application for settlement of case is not valid. By virtue of the provisions contained in the Finance Act, 2021, sections 245A and 245B of the Act had been amended, and the Settlement Commission ceased to exist. In the place of the Settlement Commission, an Interim Board has been constituted to consider and entertain applications for settlement which were pending. The effect of an order quashing the order passed by the Settlement Commission would result in the application for settlement filed by the assessee being treated as a ”pending application” which has to be disposed of by the Interim Board.](AY.2010-11 to 2017-18)
Muthoot Fincorp Ltd. v. ITSC(2023)456 ITR 418/ 293 Taxman 623 (Ker)(HC)

S. 245D : Settlement Commission-Settlement of cases-Application-Full and true disclosure of undisclosed income-Revision of amount-Order of Settlement Commission based on revision is not valid-No power to waive interest-High Court can set aside order of Settlement Commission passed in excess of its statutory powers or in violation of principles of natural justice-High Court also directed the Principal Secretary Government of UP and The Vice Chancellor of King George Medical University, Lucknow to take appropriate action against the individual Doctors who are employees of King Georges Medical University, who are found indulged in blatant private practice and making profits in private companies and also being on their boards as directors [S. 132(4),234A, 234B, 234C, 245C, 245D(4),245D(6B)245I, Art. 226]
Allowing the petition of the Revenue the Court held that the order of Settlement Commission based on revision is not valid. The assessee had substantially deviated in disclosure of the income from the affidavit submitted under section 132(4) of the Act before the Settlement Commission. That the Settlement Commission, in a mechanical manner, had waived the interest without considering whether the matter of the assessees was covered by the circulars of the Board, and waiving the interest in such a manner, which may indicate that statutory interest payable under sections 234A, 234B and 234C has also been waived. This was clearly beyond the competence and jurisdiction of the Commission.. Settlement Commission has no power to waive interests 234A, 234B, 234C of the Act. High Court can set aside order of Settlement Commission passed in excess of its statutory powers or in violation of principles of natural justice. Court also made observations that the conduct rules pertaining to Government servant and even those employed in public corporations /utilities are not permitted to indulge in private practice unless there is specific rule or provisions in this regard. Court also stated that the doctors of King Georges Medical University are entitle to non-practicing allowance and further that there is bar from private practice which clearly indicate that they cannot work anywhere except for the University where they are appointed. The Court directed the State Government shall make due enquiries and proceed appropriately against such individuals who are found indulged in blatant private practice and making profits in private companies and also being on their boards as directors. Copy of judgement was forwarded to the Principal Secretary Government of UP and The Vice Chancellor of

King George Medical University, Lucknow by the senior register of the Court. (AY. 2007-08 to 2014-15)
PCIT (Central) v. UOI & ITSC (2023)454 ITR 696 / 224 DTR 441 /334 CTR 261 (All)(HC)

S. 245D : Settlement Commission-Settlement of cases-Entire tax on admitted additional income was paid-Short fall of tax was brought to Knowledge through report-Deposited the amount immediately-Sufficient Compliance-Application restored to Settlement Commission. [S. 132, 245C, 245D(2B), Art. 226]
The application was rejected for short payment of admitted tax. On writ the Court held that shortfall in the remittance of the admitted tax came to the assessee's knowledge from the report under section 245D(2B) and the assessee had immediately remitted which constituted substantial and adequate compliance with the statutory condition under section 245C of the remittance of the entire admitted tax at the time of filing the application. The settlement application was restored to the Settlement Commission (Interim Board).(AY. 2011-12 to 2017-18)
Sri Lakshmi Ammal Educational Trust v. ITSC(2023)454 ITR 804 (Mad)(HC)

S. 245D : Settlement Commission-Rectification of order-Rectification application was filed beyond period of six months-Rejection of application is said to be valid. [S. 245D(4), 245D(6B), Art. 226]
Assessee filed an application before Settlement Commission which was allowed under section 245D(4). Revenue filed writ petition challenging said order on ground that there was failure on part of assessee to make full and true disclosure of income. Petition was rejected on ground that revenue could only file rectification application. Revenue filed application under section 245D(6B) to Commission to rectify the order.Settlement Commission held that the application. Was beyond the period of limitation hence dismissed. On writ dismissing the petition the Court held that even when period spent on pursuing alternate remedy by revenue was excluded, rectification application filed by revenue was still beyond period of six months stipulated in section 245D(6B) of the Act. Accordingly the order of Settlement Commission is affirmed.
PCIT v. Goldsukh Developers (P.) Ltd. (2023) 294 Taxman 484 (Bom.)(HC)

S. 245D : Settlement Commission-Settlement of cases-Procedure Due process followed-No allegation of fraud or malice-Writ petition is dismissed.[S. 245C, 245A, 245D(4), Art. 226]
Dismissing the writ petition. The Court held that there was no procedural or substantive error or infirmity in the approach of the Settlement Commission. The Settlement Commission had followed the procedure laid down under Chapter XIX-A of the Act as well as under the Rules. Principles of natural justice were duly complied with. There was no allegation of any fraud or misrepresentation. In the absence thereof, a concluded settlement could not be reopened.(AY.1999-2000 to 2005-06)
CIT v. ITSC (2023)455 ITR 112 (Telangana)(HC)

S. 245F : Settlement Commission-Powers-Special Audit-Settlement Commission does not have power to direct aa special audit under section 142(2A) of the Act. [S. 142(2A), 245C, Art. 136]
High Court held that Settlement Commission does not have power to direct a special audit under section 142(2A) in course of settlement proceedings under Chapter XIX-A of Act. SLP

against the order was disposed of as, on account of abolition of Income-tax Settlement Commission nothing survived for adjudication in matter.
ITSC v. Agson Global (P.) Ltd. (2023) 291 Taxman 356 (SC)
Editorial : Agson Global (P.) Ltd v. ITSC (2016) 380 ITR 342/ 237 Taxman 158 (Delhi)(HC), affirmed.

S. 245H : Settlement Commission-Power-Grant immunity from prosecution and penalty-Order of High Court remanding the matter to Settlement Commission to determine fresh, the question as to immunity from levy of penalty and prosecution is set aside. [S. 245C, 245D, 271(1))(c), Art. 136]
Assessing Officer issued reopening notice for relevant assessment years on ground that assessee claimed depreciation on leased assets even though it was not owner of the assets.The Assessing Officer also passed penalty order under section 271(1)(c) of the Act. Assessee has filed Settlement petition before the Settlement Commission. under section 245C and sought determination of its taxable income. The petition was allowed and order under section 245D(1) determining additional income and annulled penalty levied by Assessing Officer. In writ by the Revenue, Single Judge held that reasoning of Settlement Commission was vague, and in absence of evidence before Settlement Commission, order granting immunity from penalty and prosecution was an illegal order and matter was remanded to Settlement Commission. Division Bench affirmed the order. On appeal the Court held that in Commission's order that immunity from prosecution and penalty was granted after noting that assessee realized that when adhering to RBI guidelines of accounting of lease income there was an error in not disclosing full lease rental receipts as per income tax law and assessee had offered additional income under various heads not considered by Assessing Officer.Since immunity from penalty and prosecution was granted based on fact that assessee placed material and particulars before Commission as to manner in which income pertaining to certain activities was derived and had sought to offer such additional income to tax, High Court ought not to have interfered with order of Commission and thus, order of High Court remanding matter to Commission was to be set aside. Order of High Court is set aside. (AY. 1994-95 to 1999-2000)
Kotak Mahindra Bank Ltd. v. CIT (2023) 458 ITR 113 /295 Taxman 588 / 334 CTR 729 (SC)
Editorial : ING Vysya Bank Ltd v.CIT (2013) Taxman 115 (Karn)(HC)(SJ), CIT v. Vysya Bank Ltd (2010) 194 Taxman 533/(2012) 344 ITR 658 (Karn)(HC)

S. 245HA : Settlement Commission-Abatement of proceedings-Shortfall on additional taxes and interest-Refunds-Interest-Excess tax paid-If interest on excess payment made on self-assessment, same would meet requirement of section 245D(2D)-Petition is allowed and the **matter is directed to be placed before the Interim Board for Settlement constituted under section 245AA for consideration. [S. 244A, 245AA, 245C,245(2D). Art. 226]**
Assessee paid additional tax and furnished copies of challans. Subsequently, Settlement Commission informed that certain sum was payable by original assessee on account of tax and interest. Assessee by way of an application objected and submitted that various payments made by assessee including interest payable on excess tax paid had not been considered by Commission. Assessee furnished copies of challans and requested Commission to revise calculations. Settlement Commission dismissed application of assessee for want of payment of admitted tax and held that no interest was payable on excess tax paid out of self-assessment tax paid by assessee.On writ the Court held that tax paid on self-assessment would fall under section 244A(1)(b), i.e., residuary clause covering refunds of amount not

falling under section 244A(1) and as confirmed by a circular issued by CBDT bearing No. 549 dated 31-10-1989, said payment should be considered to be a tax and interest thereon would be payable to assessee. If interest on excess payment made on self-assessment, same would meet requirement of section 245D(2D) of the Act. Court directed to be placed before the Interim Board for Settlement constituted under section 245AA for consideration. Since the matter is old, petitioners shall file a copy of the settlement application that was originally filed on 27-4-1997 before the Board within two weeks of this order being uploaded. The photocopy shall be certified as true copy by the Advocates/Chartered Accountant of petitioners. The Interim Board shall dispose the application on merits in accordance with law. CBDT Circular bearing No. 549 dated 31-10-1989. (AY. 1989-90 to 1996-97)

Sitadevi Satyanarayan Malpani (Mrs.) v. ITSC (2023) 459 ITR 758 / 294 Taxman 205 (Bom.)(HC)

S. 245HA : Settlement Commission-Abatement of proceedings-Shortfall on additional taxes and interest-Subsequently intimated-Abatement invalid.[S. 245C, 245D(2A), Art. 226]

The Assessee filed an application before the Settlement Commission. Furthermore, according to the Assessee's calculation, it paid the taxes and interest on the additional income disclosed in the application. However, the Revenue objected, stating there was a shortfall in the taxes and interest paid by the Assessee. The Settlement Commission held that the application had abated since the Assessee failed to pay the appropriate taxes on the additional income disclosed in the said applications.

The High Court noted that the Revenue had not provided any information to the Assessee regarding the shortfall in the tax and interest paid as per the income disclosed in the application. It was only subsequently that the Joint Commissioner gave information about the shortfall in the taxes paid. The Assessee had complied with the provisions of section 245D(2D) by paying the additional tax and interest on the income disclosed in its application as per its own calculation. Therefore, the abatement of the application by the Settlement Commission was quashed and set aside, and the matter is directed to be placed before the Interim Board for Settlement constituted under section 245AA for consideration.(AY. 2002-03, to 2004-05)

Mahesh Gupta *v.* ITSC (2023) 294 Taxman 537 / 335 CTR 251/(2024) 461 ITR 267 (Bom)(HC)

S. 245R : Advance rulings-Non-Resident-Capital gains-Shell company-CBDT circulars and press release of Ministry of Finance-Certificate of residence issued by Mauritius Authorities would constitute sufficient evidence-Denial of benefit of Double Taxation avoidance agreement-Matter remanded to Authority for Advance Rulings for reconsideration-DTAA-India-Mauritius [S. 45, 197(1), 245Q,Art. 13, Art. 226]

On writ allowing the petition the Court held that certificate of residence issued by Mauritius Authorities would constitute sufficient evidence. Authority for Advance Rulings denying to benefits of Double Taxation Avoidance Agreement on ground that the assessee shell company and was treaty shopping held to be not valid. Matter Remanded to Authority for Advance Rulings for reconsideration. Referred CBDT Circular No Central Board Of Direct Taxes Circular Nos. 682, Dated 30-3-1994 ([1994] 207 ITR (St.) 7) and 789 Dated 13-4-2000 ([2000] 243 ITR (St.) 57), UOI v. Azadi Bachao Andolan (2003) 263 ITR 706 (SC) Vodafone International Holdings B.V. v. UOI (20012) 341 ITR 1 (SC). Court also observed that although scrutiny in writ jurisdiction under article 226 of the Constitution of India of orders passed by the Authority for Advance Rulings is minimal they can be interfered with if the ruling is without considering the entire material on record or the submissions made on

behalf of the parties or the ruling suffers from a fundamental error or is absurd or perverse. Accordingly the matter was remanded back to the Authority for reconsideration after giving opportunity of hearing to the assessee and the Department. Accordingly, the ruling passed by the Authority for Advance Ruling was quashed and set aside.
Bid Services Division (Mauritius) Ltd v. AAR (2023)453 ITR 461/ 334 CTR 389 (Bom) (HC)

S. 246A : Appeal-Commissioner (Appeals)-Appealable orders-Writ petition permitted to be withdrawn-On appeal the division bench held that observation of Single Judge on merits of assessee's claim of exemption under section 11, observations is vacated and set aside.[S. 11, Art. 226]
On appeal against the Judgement of single judge the Court held that once a writ petition is permitted to be withdrawn and assessee is permitted to avail statutory remedy, any observation on merits of case ought to be avoided, hence, where while permitting assessee to withdraw writ petitions, Single Judge had made observations on merits of assessee's claim of exemption under section 11, observations/findings on merits of case made by Single Judge is vacated and set aside.
Tamizhavel P.T. Rajan Commemoration Trust v. ITO (2023) 333 CTR 417 / 149 taxmann.com 340 (Mad)(HC)
Editorial : Tamizhavel P.T. Rajan Commemoration Trust v. ITO (2023) 333 CTR 420 /227 DTR 51 (Mad)(HC), disapproved.

S. 246A : Appeal-Commissioner (Appeals)-Stay-Payment of 20 Per Cent. of sum assessed-Best judgement assessment-High pitched assessment-Coercive proceedings to be kept in abeyance. [S. 144, 250, Art. 226]
The Assessing Officer passed the order u/s 144 assessing the income more than 71 percent of assessed income. On writ the Court directed the appellate authority to take up the stay application along with the appeal and consider the appeal itself and pass orders unless the appellate authority was of the opinion that the workload would not permit such a course of action. In such a situation, the appellate authority shall consider the stay application with particular reference to the decisions referred to and pass appropriate orders. All coercive steps shall be kept in abeyance till a decision was taken by the appellate authority. (SJ)
Radhakrishnan Nair Madhavan Nair v. PCIT (2023)452 ITR 104 (Ker)(HC)

S. 246A : Appeal-Commissioner (Appeals)-Appealable orders-Defective return-Treating the return as invalid-Not appealable-Appeal is not maintainable.[S. 44AB, 139(9), 246A(1)(a)]
Held that the order of CIT(A) rejecting the appeal against section 139(9) treating the return as defective an invalid which is not appealable order is affirmed. (AY. 2018-19)
Amrut Rajendra Bora v.Dy.CIT(2023) 225 TTJ 453 (Pune)(Trib)

S. 246A : Appeal-Commissioner (Appeals)-Appealable orders-Deduction of tax at source-Credit-Intimation denying credit for tax at source-Appealable.[S. 143(1)]
The assessee had executed conveyance in the previous year relevant to A.Y. 2019-20 and hence offered the income arising from transfer of asset in earlier years as income for A.Y. 2019-20 and claimed credit for tax deducted at source in earlier year. However, while processing return u/s. 143(1) of the Act, the credit claimed for tax deducted in earlier year was not allowed. The appeal filed by the assessee was dismissed by the CIT(A) on the ground that no adjustment to the income had been done in the section 143(1) intimation. On further

appeal, the Tribunal held that section 246A cannot be read in a manner so as to only include those cases where adjustments have been made to the "income" of the assessee and exclude adjustments made in the intimation issued u/s. 143(1), which have an impact on the "amount of tax determined". Accordingly, the matter was set aside to the file of the CIT (A) to hear the appeal of the assessee on the merits, after giving due opportunity of hearing to the assessee, in accordance with law. (AY. 2019-20)

D and C Phoenix v.Asst. DIT (2023)104 ITR 55 (SN)(Ahd) (Trib)

S. 248 : Appeal-Commissioner (Appeals)-Denying liability to deduct tax-Appeal is maintainable.[S. 90, 115A, 195, 206AA)

During the financial year 2015-16, the assessee had made payment of USD 61,200 to a U. S. A. company for training of pilots. Under the arrangement between the foreign entity and the assessee, the taxes, if any, payable on training of pilots were to be borne by the assessee. Since the services were in the nature of technical services, the applicable rate of tax u/s. 115A of the Act was 10 per cent. However, in the absence of the permanent account number of the deductee, the assessee deducted TDS u/s. 195 r.w.s. 206AA at 25.94 per cent. being grossed up rate of 20 per cent u/s. 195A. However, after making payment of the taxes, the assessee filed an appeal before the CIT (A) u/s.248 contending that the deductee, being a tax resident of the U. S. A. and the Double Taxation Avoidance Agreement between India and U.S.A. are applicable to the transaction in question. Under article 12 of the Double Taxation Avoidance Agreement, the rate of tax on "fees for included services" shall not exceed 15 per cent. The CIT (A) dismissed the appeal as not maintainable on the ground that s. 248 states that an appeal would lie only where a person claimed that no tax was required to be deducted on such income and not where the assessee sought a reduced rate of tax to be deducted.

However, Tribunal held that, appeal is maintainable and the Assessing Officer was directed to apply the rates in force which was the applicable rate of tax in accordance with law. (AY. 2016-17)

Reliance Commercial Dealers Ltd. v. CIT (2023) 202 ITD 490/ 105 ITR 57 (SN) (Mum)(Trib)

S. 249 : Appeal-Commissioner (Appeals)-Form of appeal and limitation-e-filing of appeal-Appeal filed manually-CIT(A) is directed to hear the appeal on merits-Order of single judge is affirmed-Whether the question as to whether R. 45 of the IT Rules must be treated as mandatory or directory, is left open. [S. 246A, R. 45, Art. 226]

CIT(A) dismissed the appeal on the ground that the appeal was filed manually. On writ the single judge held that the appeal being a statutory and substantive right, ought not to be denied, in view of procedural lapses in filing of appeal manually, instead of electronically as provided under rule 45. On appeal the division bench of the High Court held that the single Judge was right in holding that in as much as the appeal is admittedly manually filed in the present case and that the CIT(A) has also heard the matter on more than one occasion, appeal being a statutory and substantive right, ought not to be denied, in view of procedural lapses in filing of appeal manually, instead of electronically as provided under r. 45. Court also held that there is no reason to interfere with the impugned order passed by the Single Judge, inasmuch as it has been made clear that, in view of the peculiar facts and circumstances of the case and to preserve the right of appeal, the directions were given while making it clear that this case shall not be treated as a precedent and the question as to whether R. 45 of the IT Rules must be treated as mandatory or directory, is left open-Arjun Krishna Kondamani v. Dy. CIT (WP. No. 6766 of 2019, dt. 10th April, 2019) affirmed (AY. 2013-14)

Dy. CIT. v. Arjun Krishna Kondamani (2023) 331 CTR 785/ 223 DTR 150 (Mad)(HC)

S. 249 : Appeal-Commissioner (Appeals)-Form of appeal and limitation-Condonation of delay-Order of CIT(A) is set aside and directed to condone the delay and decide on merit. [S. 249(3), 250(6)]

CIT(A) dismissed the appeal without condoning the delay in filing of an appeal. On appeal the Tribunal set aside the order of CIT(A) is and directed to condone the delay and decide on merit. (AY. 2013-14)

Saharsh Laxmiratn Daga v.ACIT (2023) 222 TTJ 23 (UO) (Mum)(Trib)

S. 249 : Appeal-Commissioner (Appeals)-Form of appeal and limitation-Delay reasonable cause-Delay of 162 days-Affidavit is filed-Delay is condoned and the matter is remanded to the file of CIT(A) to decide on meritS. [S. 249(3), 254(1)]

Held that prolonged illness and subsequent death of the Chartered Accountant who was handling the statutory audit and taxation is held to be reasonable cause for delay in filing an appeal before the CIT(A). Delay of 162 days is condoned and the matter is remanded to the file of CIT(A) to decide on merits. (AY. 2019-20)

Vishnu Pareek v. CIT(2023) 226 TTJ 73 (UO)(SMC) (Jaipur)(Trib)

S. 249 : Appeal-Commissioner (Appeals)-Form of appeal and limitation-Delay of 3177 days-No reasonable cause-Dismissal of the appeal is held to be valid.[S. 246A, 254(1)]

Held that the asssessee has acted gross defiance of law and not given any reasonable explanation to condone the delay.Accordingly the order of the CIT(A) refusing the condonation of delay is affirmed. (AY. 2013-14, 2015-16, 2016-17)

Nikita Kingrani v. Dy.CIT(2023) 226 TTJ 84 (UO) (Raipur)(Trib)

S. 249 : Appeal-Commissioner (Appeals)-Form of appeal and limitation-Pendency of rectification application under section 154-Delay of six years-Not condoned-Direction of CIT(A) to dispose the rectification application within six months is affirmed.[S. 154, 254(1)]

Held that the CIT(A) has not condoned the delay of six years on the ground that there was pendency of rectification application. CIT(A) also directed to dispose the rectification application within six months. Tribunal affirmed the order of the CIT(A). (AY. 2009-10 to 2015-16)

Siby Mining & Infracture (P) Ltd v. ITO(2023) 225 TTJ 1 (UO) (Hyd) (Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Appellate authority cannot dismiss an appeal for non-prosecution, instead has to decide the matter on its meritS. [S. 246A, Art. 226]

On writ allowing the petition the Court held that the Appellate authority cannot dismiss an appeal for non-prosecution, instead has to decide the matter on its merits. Respondent is directed to reconsider appeal in accordance with law and on its merits, after affording the assensee an opportunity of being heard. Followed Balaji Steel-Re rolling Mills v.CCE (2014) 272 CTR 205/ 211 DTR 401/ AIR 2015 SC 426, Uzhuva Service Co-operative Bank v. ITO & Om (Writ Appeal No. 1257 of 2020 (Ker)(HC)) followed (AY. 2015-16)(SJ)

Kerala State Service Pensioners Co-Operative Society Ltd. v ITO (2023) 335 CTR 105 (Ker)(HC)

S. 250 : Appeal-Commissioner (Appeals)-Limitation-Appeal Should be heard within reasonable time-Directed to dispose of the appeal within a period of three months from the date of receipt of a copy of the order. [S. 246A, 250(6A), Art. 226]

Allowing the petition the Court held that sub-section (6A) of section 250 of the Income-tax Act, 1961 says that in every appeal, the Commissioner (Appeals), where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under sub-section (1) of section 246A of the Act. Though the provision pertains to appeals filed under section 246A of the Act, none the less the objective behind the provision is to hear an appeal as early as possible. Direction issued to the Commissioner (Appeals) to hear the appeal filed by the assessee on February 23, 2020 against the assessment order dated November 14, 2019 for the assessment year 2017-18 and dispose of it within a period of three months from the date of receipt of a copy of this order.(AY.2017-18)

Venkat Rao Paleti v. CIT (2023)455 ITR 48 /153 taxmann.com 284/334 CTR 103 (Telangana)(HC)

S. 250 : Appeals-Commissioner of (Appeals)-National Faceless Appeal Centre (NFAC)-Pendency of appeals-Delay in disposal of appeals-Honourable court has directed the government to take appropriate measures to fill up all vacant posts and also increase the sanctioned strength of Commissioner (Appeals) so as to achieve the target at least 570 of such postS. [S. 246, 250(6A), Art. 226]

The petitioner has filed writ petition in regard to delay in adjudication of appeals by Commissioner (Appeals). It was contended by the petitioner that in terms of Section 250(6A) of the Income-tax Act, the appeals should be decided within a period of one year whereas appeals are pending for quite number of years. Revenue has filed an additional affidavit was filed on behalf of the government as per directions of the Hon'ble court on 09.10.2023,in the Affidavit the government accepted that pendency of appeals has been increasing from year after year, it submitted that serious efforts are being made to reduce the pendency. The Hon'ble Court has expressed its satisfaction as regards the efforts made by the government, however, vide para 10 of the judgment the Hon'ble court has directed the government to take an appropriate measures to fill up all vacant posts and also increase the sanctioned strength of Commissioner (Appeals) so as to achieve the target at least 570 of such posts, to achieve the aims and objects of the Central Action plan which is formulated every year. (W.P. (C) 3423/2013 dt.6-11-2023)

All India Federation of Tax Practioners v.UOI (Delhi)(HC) www.itatonline.org

S. 250 : Appeal-Commissioner (Appeals)-National Faceless Appeal Centre (NFAC)-Ex-parte order-Non-filing of grounds of appeal at the time of filing of Form No 35-Dismissing the appeal without considering the submissions filed by the assessee-Order was set aside. [S. 251, Art. 226]

The petitioner had filed his memo of appeal in Form 35, however the grounds of appeal were not attached at the time of filing of Form 35 on account of some technical reasons. It is stated that during the course of the appeal proceedings, by virtue of notice dated 29th August 2022, the petitioner was required to submit its grounds of appeal, which was not responded to by the petitioner. Subsequently, the petitioner was asked to upload the submissions vide notices dated 28th December 2020 and 27th December 2021, to which the petitioner responded and filed its online submissions on 27th January 2022 and 12th September 2022, respectively. The NFAC dismissed the appeal without considering the submissions. On writ allowing the petition the Court held that the order passed by the NFAC has violated the principles of natural justice as the same was passed ex-parte, without considering the submissions made by the assessee. Accordingly the petition was allowed, the order was set aside and the matter was remanded to the NFAC for fresh consideration.The Court directed the CIT(A) to decide the matter within three months.

Prime ABGB (P.) Ltd v. NFAC (2023 147 taxmann.com 357/ 292 Taxman 149 (Bom)(HC)

S. 250 : Appeal-Commissioner (Appeals)-Duties-Search and Seizure-Block assessment-Failure to furnish all material in Department's possession-Direction issued to CIT(A) to furnish to assessee except documents relied upon [S. 132, 153A, 246A, Art. 226]

On a writ petition contending that the assessee had not been furnished the material and information in the possession of the Department, the Department's case was that since the documents were voluminous and collating them would involve a long time, the documents relied upon were furnished and if some of them were not furnished they would be furnished shortly and that in respect of the documents which were in the possession of the Department but were not relied upon, there was no legal obligation on its part to furnish them to the assessee. On the facts, the court directed the Commissioner (Appeals) to take a decision in the matter with regard to the documents which, although, in the possession of the Department had not been relied upon and before proceeding further placed on record a list of those documents, whereupon, the assessee would have an opportunity to make a submission, as to the relevance of those documents for the purposes of prosecuting the assessee's appeal. However, the Commissioner (Appeals) would not pass a piecemeal order. The order would be composite and would deal with the aforesaid aspect and the merits of the appeal.(AY.2011-12 to 2017-18)

Deepak Talwar v.Dy. CIT (2023)452 ITR 61 (Delhi)(HC)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Written submission was forwarded to the Assessing Officer-Failure to file rejoinder-It cannot be held that no reasonable opportunity was not given. [S. 68, 153A]

Held that the CIT(A) has forwarded the written submission to the Assessing Officer. Failure to file rejoinder by the Assessing Officer It cannot be held that no reasonable opportunity was not given. (AY. 2006-07 to 2012-13)

Dy.CIT v. Mahavir Ashok Enterprises (P) Ltd (2023) 223 TTJ 947 (Raipur)(Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Ex-Parte order-Notices issued to E-Mail address mentioned in appeal memo-Dismissal is held to be not valid-Appeals restored to Commissioner (Appeals) for decision on meritS. [S. 80IC, 250(2)]

Held, that the notices had been issued to the e-mail address mentioned by the assessee in the appeal memo. The claim of the assessee before the Tribunal was that there was a change in the e-mail address after filing of form 35. This was not disputed by the Department. According to section 250(2) of the Act, the appellant has a right to be heard at the hearing of the appeal. The Commissioner (Appeals) had not decided the appeals on the merits and had merely upheld the order of the Assessing Officer dismissing appeal on non-prosecution. Therefore, in the interest of justice, all these appeals were to be restored before the Commissioner (Appeals), with a direction to the assessee to submit the paper books for all those six assessment years within 90 days. After considering the submission of the assessee and granting opportunity of hearing, the Commissioner (Appeals) was to decide the issue on the merits and in accordance with the law.(AY.2009-10 to 2014-15)

AMI Deepak Shah v. NFAC (2023)108 ITR 42 (SN)(Mum) (Trib)

S. 250 : Appeal-Commissioner (Appeals)-Delay of 350 days-Delay in filing the appeal is condoned-Matter remanded to the file of the Assessing Officer to decide on meritS. [S. 144, 271(1)(c)]

The Tribunal restored the matter to the Assessing Officer with direction to decide the issue afresh in accordance with law. The assessee was also directed to be more vigilant in future and to furnish all his submissions and evidence on the grounds of appeal as soon as possible. (AY.2010-11)

Basant Sekhani v. ITO (2023)108 ITR 14 (SN)(Surat) (Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Ex-Parte order-Matter remanded to Commissioner (Appeals) with direction to assessee to remain present and make submissionS. [S. 254(1)]

Held that the passing of the order by the appellate authority without the assessee getting a fair opportunity of hearing did not serve interest of justice. Since there was no objection by the Department, in the interests of justice, the issue was remanded to the Commissioner (Appeals) with direction to the assessee to remain present before him and submit his submissions as well as any paper book which was required to be filed within 90 days of date of this order. After that, the Commissioner (Appeals) after giving opportunity of hearing to the assessee may decide the issue on the merits.(AY.2014-15)

Nitin Amratlal Brahmbhatt v. ACIT (2023)108 ITR 18 (SN)(Mum) (Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Passing order merely stating wrong facts by cut paste from other assessee's record-Matter remanded to Commissioner (Appeals) for adjudication afresh in accordance with law.[S. 249]

Held, that the Commissioner (Appeals) had passed the order merely stating wrong facts by cut paste from the other assessee's record, claim of short-term capital loss as against the disallowance of bogus creditor. The Commissioner (Appeals) had been negligent to mention the correct facts of the case, that he had picked-up the facts of a limited company, though the assessee was an individual and had rejected the appeal of the assessee in an arbitrary manner without deciding the matter on the merits, ignoring the submissions filed before him. The matter is remanded to the Commissioner (Appeals) to adjudicate afresh after granting sufficient opportunity of being heard and considering the material evidence filed on record and to be filed in the course of a fresh proceedings, appreciating the correct facts of the assessee in right perspective. (AY.2015-16)

Bharti Singh (Smt.) v. Dy. CIT (2023)107 ITR 29 (SN)(Amritsar) (Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Delay of 9 years in filing appeal-Order sent to E-mail ID of accountant who had left job-Assessee came to know when refund of AY 2019-20 was proposed to be adjusted against demand of AY 2010-11-Assessee filed affidavit. Sufficient cause for not filing appeal within time. Matter remanded back to CIT(A) to pass order on merits, denovo. [S. 80IB,245, 251, Limitation Act,1963 S. 5]

Assessee's claim u/s. 80IB denied by CPC vide Intimation u/s. 143(1) dated 15.03.2011. Assessee filed appeal before CIT(A) on 30.01.2020 after delay of 9 years. CIT(A) was dismissed and delay was not condoned. Delay due to Intimation sent on E-mail ID of accountant who had left job and did not informed assessee about such Intimation. Assessee came to know about outstanding demand when assessee received Notice u/s. 245 for adjustment of refund of AY 2019-20 with demand of AY 2010-11. Delay unintentional and without any fault on the part of assessee. "Sufficient cause" under Sec. 5 of Limitation Act should be liberally construed so as to advance substantial justice when no negligence or any inaction or want of bona fides is imputable to a party; that is, the delay in filing an appeal should not have been for reasons which indicate the party's negligence in not taking necessary steps which he could have or should have taken. Matter remitted back to CIT(A) for adjudication on merits.

M.K. Hotels & Resorts Ltd. v. ACIT (2023)104 ITR 204 Amritsar) (Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Appeal arising from penalty order-Appeal to Appellate Tribunal-To be decided after finalization of Quantum Proceeding.[S. 253, 254]

Held that an appeal arising from penalty order is to be decided after finalisation of the quantum proceedings. The CIT (A) or the Tribunal must wait for completion of the quantum proceeding at the appellate level. (AY. 2010-11)

Babita Devi Kajoria v ITO (2023)101 ITR 17 (SN)(Kol) (Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-CIT(A) cannot go beyond the assessment year other than the one under consideration-Direction to A.O. to take remedial action for other Assessment year not sustainable.[S. 246A, 251]

Held, the Commissioner (Appeals) could not go beyond the assessment year under consideration before him. The Commissioner (Appeals) had erred in passing the direction to take remedial action to the Assessing Officer for other years.(AY. 2014-15)

Wieden+Kennedy India Pvt. Ltd. v. Dy. CIT (2023)101 ITR 63 (SN) (Delhi) (Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Exparte order-In case of failure of assessee to reply to any notices, the CIT(A) is dutybound to adjudicate on available data instead of dismissal of appeal. [S. 250(6)]

The assessee did not reply to any appeal notices issued by the CIT(A). The CIT(A) in turn dismissed the appeal of the assessee on the grounds of non-prosecution of appeal by the assessee. The assessee filed appeal arguing that the actions of CIT(A) of dismissing the appeal ex-parte qua the assessee without adjudicating the grounds of appeal filed in Form 35 and the submissions is violation of principles of natural justice.

The Tribunal held that in case CIT(A) proceeds to adjudicate the appeal on non-compliance by the assessee, the CIT(A) is still duty bound to adjudicate on all grounds of appeal by taking into consideration the assessment order as well as evidences and explanations filed by the assessee before the AO during the assessment proceedings. Dismissing the appeal in a cryptic manner without considering material on record, is a case of not giving opportunity of hearing to the assessee and against the natural justice. The appeal was restored back to the file of CIT(A) for denovo consideration without being influenced by the first CIT(A) order. (ITA No. 1757/Del/2020] dated 23/03/2023) (AY. 2016-17)

Dura Line India Private Ltd. v. ACIT ACIT (2023) The Chamber's Journal-April-P. 143 (Delhi)(Trib)

S. 250 : Appeal-Commissioner (Appeals)-Procedure-Ex parte order passed before commissioner (Appeals) due to miscommunication-bona fide reason of assessee for miscommunication-matter restored to AO and providing opportunity for hearing. [S. 250(6)]

An addition to the income of the assessee was made by the AO due to unexplained money in the bank account of the assessee. The assesee explained how the amount was received for a land acquisition by the government and after withdrawal, he could not deposit it because of demonetisation. The matter remained unrepresented before the Commissioner (Appeals) because of a miscommunication and an order was passed ex parte.

The tribunal held that on examining form 35, it was discovered that the assessee had accurately stated that the email address listed there was that of his acquaintance. The assessee's claim that he was misinformed and did not appear before the Commissioner (Appeals) due to notices not being delivered to his authorized agent therefore seemed to be

true. The assessee had only sent one letter outlining the source of cash deposits to the assessing officer, and no follow-up correspondence was filed. As a result, the assessee's argument that his case had not been adequately presented to and understood by the Assessing Officer was valid. A fresh opportunity must be given to the assessee for making his case. (AY.2017-18)

Kishoresinh Hemantsinh Chudasama v. Dy. CIT (2023)103 ITR 391 (Ahd) (Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Finding of CIT(A) on remand for fresh assessment after further enquiry which was up held by the Tribunal is quashed.[S. 251(1)(a), 254(1),260A]

Held, allowing the appeal, that under section 251(1)(a) of the Act, the Commissioner (Appeals) may confirm, reduce, enhance or annul the assessment. On a reading of the Finance Act, 2001 (Circular No. 14 of 2001), the Commissioner (Appeals) had no power to remand the matter to the Assessing Officer for fresh assessment in accordance with the direction given by him after making such further enquiry as may be necessary. Though such power was conferred on the Commissioner (Appeals), the said provision stood omitted by the Finance Act, 2001. In the light of the Explanatory Notes to the Provisions related to Direct Taxes, under paragraph 78.1 dealing with the powers of the Commissioner (Appeals) with effect from June 1, 2001, the Commissioner (Appeals) could not have remanded the matter to the Assessing Officer after having decided the case in favour of the assessee in its entirety. Though the assessee had raised a specific ground of exceeding the statutory powers conferred under section 251(1)(a) before the Tribunal which had been noted by it in paragraph 3 of the impugned order, this aspect had not been dealt with by the Tribunal. Accordingly the order of the Tribunal is set aside. (AY.2014-15)

Arun Kumar Bose v. ITO (2023)458 ITR 32/ 158 taxmann.com 282 (Cal)(HC)

Editorial : Order of Tribunal in Arun Kumar Bose v. ITO(2023) 107 ITR 263 (Kol)(Trib) is reversed.

S. 251 : Appeal-Commissioner (Appeals)-Powers-Remand proceedings-Cross examination-Revenue is directed to provide effective cross examination as per the provisions of the Indian Evidence Act, 1872.[S. 250, Indian Evidence Act, 1872]

In the course of assessment proceedings the assessee requested for the cross examination of the witnesses but the Assessing Officer discarded same. On appeal, the assessee prayed for the cross-examination of the witnesses. The Commissioner (Appeals), permitted the said prayer and issued adequate guidelines to the Assessing Officer. However, when the assessee participated in the cross-examination process, the revenue started to completely restrict the cross-examination process by denying the relevant questions being asked by the assessee in cross-examination. On writ the assessee also prayed for direction upon the revenue to provide copies of entire order sheets, statement of witnesses, remand reports and the other perquisites in order to enable the assessee to effectively exercise his valuable right of cross-examination. The directed to provide effective cross-examination opportunity in accordance with the provisions of the Indian Evidence Act, 1872 and permit the assessee to cross-examine such persons who are being named by the witnesses being cross-examined without in any manner interfering or restricting the same. In other words, the revenue is hereby directed to conduct cross-examination in accordance with law and the guidelines as referred to hereinabove. (AY. 2004-05 to 2010-11)

Madhu Korah v. ITD (2023) 294 Taxman 63 (Jharkhand)(HC)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Cash credits-Unexplained investment-Assessing Officer made addition to income of assessee in respect of certain credit entries as unexplained credit-Commissioner (Appeals) could not have treated said addition as

unexplained money under section 69A as he was not empowered to change provision of law qua item of which assessment was made. [S. 68, 69A]
Held that Commissioner (Appeals) is not empowered to change provision of law qua item of which assessment was made. Therefore, in absence of such power, Commissioner (Appeals) could not have treated addition under section 69A and therefore, same was liable to be deleted Even otherwise since assessee had furnished confirmation of her husband by way of duly notarized affidavit regarding credit entries and lower authorities failed to discharge their onus by getting details from bank and therefore, addition under section 69A is directed to be deleted. (AY. 2011-12)
Sekar Jayalakshmi (Smt.) v.ITO (2023) 221 TTJ 1025 /150 Taxmann.com 120 (Chennai)(Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Directions-Reassessment-Limitation-Reassessment on the basis of observation of CIT(A) is not justified-Reassessment is quashed as time barred.[S. 147, 148, 149(1)(b), 150]
As per the observation of the CIT(A) for the Assessment year 2005-06 the Assessing Officer issued notice for the Assessment year 2006-07. On appeal the Tribunal held that, that the as per section. 251 (1) (a) the CIT(A) has no power to give directions while disposing the appeal against an assessment order, therefore reopening of assessment for assessment year 2006-07 by issuing the notice under section. 148 beyond the time specified in section. 149(1(b) relying on the observations made by the CIT(A), while disposing the appeal for assessment year 2005-06 is not sustainable. (AY. 2006-07)
CITI Plaza v. ITO (2023) 226 TTJ 30(UO)(Amritsar)(Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Direction to initiate penalty proceedings-No proceedings were pending before CIT(A)-Direction to initiate penalty proceedings after culmination of appellate proceedings are without jurisdiction.[S. 154, 250, 270A]
The CIT(A) passed the order under section 154 as corrigendum. Held that CIT(A) no power to give direction to initiate penalty proceedings when no proceedings are pending before him. Direction to initiate penalty proceedings after culmination of appellate proceedings are without jurisdiction. (AY 2017-18)
Bhuramal Rajmal Surana & Sons (P) Ltd v. ACIT(2023) 225 TTJ 122 (SMC)(Jaipur)(Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-No power to introduce new source of income-Commissioner (Appeals) must confine himself to items of income which were subject matter of original assessment. [S. 143(3)]
Held that the power of the Commissioner (Appeals) extends to the extent of examining not only those aspects of the assessment about which the assessee makes a grievance but his powers range over the whole assessment to correct the assessee not only with regard to a matter raised by the assessee in appeal but also with regard to any other matter which has been considered by the Assessing Officer and determined in the course of the assessment. If an income is the subject matter of consideration by the Assessing Officer and even though the Assessing Officer might have come to the conclusion that income is not subject to tax, it would still be open to the Commissioner (Appeals) to take a different view and to bring that income to tax. However, the Commissioner (Appeals) has no power to travel beyond the subject matter of the assessment and he is not entitled to assess new sources of income. To do so would not be in the nature of enhancing the assessment but adding a new assessment to the assessment done by the Assessing Officer which is impermissible. It is not open for the

Commissioner (Appeals) to introduce in the assessment a new source of income rather he has to remain confine himself to those items of income which were the subject matter of original assessment. (AY.2014-15)
Alpha Reality v. Asst. CIT (2023)108 ITR 7 (SN)(Chennai) (Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Sundry creditors-Matter restoring back to Assessing Officer to make further enquiries is affirmed. [S. 246A,250, 251(1)(a)]
Held that when the creditor himself had stated that the assessee did not owe any liability to him, there was no liability remaining of the assessee towards the party. However, the Commissioner (Appeals), to give a fair chance to the assessee, had directed the Assessing Officer to make enquiries in respect of the liability shown by the assessee. Similarly, in respect of the other two parties, the notices sent to them were received back unserved. The Commissioner (Appeals), though at the first instance, had deleted the additions made by the Assessing Officer he had thereafter directed the Assessing Officer to make further enquiries in this respect. There was no infirmity in the order of the Commissioner (Appeals) in directing the Assessing Officer to make further enquiries.(AY.2014-15)
Arun Kumar Bose v.ITO (2023)107 ITR 263 (Kol) (Trib)
Editorial : Order is reversed by High Court Arun Kumar Bosev. ITO (2023) 458 ITR 32 (Cal)(HC)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Power to enhance income-Capital gains as business income-Failure to issue show cause before enhancement-Enhancement is not valid-Treatment of lease rent as business income is not sustainable. [S. 28(i), 45, 251 (2)]
Held that the Commissioner (Appeals) is duty-bound to follow procedure laid down in section 251(2) of the Act. Once the assessee had made a statement that no opportunity was provided by the Commissioner (Appeals) before treating the income as adventure in the nature of trade and the order sheet maintained by the Commissioner (Appeals) clearly showed that no show-cause notice was issued or query raised by the Commissioner (Appeals), the onus shifted to the Department to prove that opportunity was granted to the assessee before the enhancement. The Department had not brought on record any document to prove that the Commissioner (Appeals) had issued to the assessee to explain the assessee the intention of the Commissioner (Appeals) to treat the income as business income, which had been assessed by the Assessing Officer as capital gains and income from house property. There was no show cause issued by the Commissioner (Appeals) before enhancement. Therefore, the Commissioner (Appeals) had failed to give a reasonable opportunity of showing cause against the enhancement. This failure to issue show cause went to the root of the issue of powers of the Commissioner (Appeals) of enhancement. Therefore, the treatment by the Commissioner (Appeals) of capital gains as business income was not sustainable. Similarly, the treatment of lease rent as business income was not sustainable. S. L. Kapoor v. Jagmohan [1981 AIR 1981 SC 136 applied.(AY. 2010-11, 2011-12)
Angelica Properties P. Ltd. v. Add. CIT (2023)105 ITR 442 (Pune) (Trib)
Vason Engineers Ltd v. Add. CIT (2023)105 ITR 442 (Pune) (Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Commissioner (Appeals) directing Assessing Officer to verify and allow claim-Not tantamount to setting aside or remanding matter to Assessing Officer-No violation-Order is up held-Other issues matter is remanded to the Assessing Officer. [S. 54F, 69, 251 (1)(a)]
Dismissing the appeal of the Revenue and allowing that of the assessee, the Tribunal held that the Commissioner (Appeals) had only directed the Assessing Officer to examine the

supporting documents and had only allowed the claim of deduction under section 54F in principle. This was not akin to setting aside the issue or remanding the matter to the Assessing Officer. There was no violation of section 251(1)(a) and, hence, no infirmity in the order of the Commissioner (Appeals).As regards banking transactions the assessee is given one more chance to produce the dematerialised account and details of banking transactions to prove the incurrence of loss and to quantify it and matter is remanded to the Assessing Officer. AY.2012-13 to 2014-15)

ACIT v. Justice N. Kannadasan (2023)103 ITR 590/223 TTJ 331/ 223 DTR 329 (Chennai) (Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Additional grounds-Lease expenditure-Revised computation-Not justified in refusing admission-Matter remanded to the CIT(A).[S. 37(1)]

Held that the Commissioner (Appeals) was not justified in refusing to admit the additional ground raised by the assessee ; he had misinterpreted the decision of the Supreme Court in Goetze (India) Ltd. v. CIT (2006) 284 ITR 323 (SC). Since the restriction in entertaining a fresh claim otherwise than through a revised return of income was only applicable to the proceedings before the Assessing Officer and not the appellate authority, there are no fetters on the appellate authority in entertaining the fresh ground raised by the assessee, if it could be decided based on the facts available on record. The Commissioner (Appeals) should have adjudicated the issue by admitting the additional ground. The matter was restored back to the Assessing Officer for fresh examination.(AY. 2006-07 to 2010-11)

Spicejet Ltd. v. Add. CIT (2023)102 ITR 58 (Delhi)(Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Delay of 54 months-Father hospitalised-Delay is condoned-Directed the CIT(A) to decide on meritS. [S. 250]

Held that assessee's father was suffering from multiple ailments during period of delay and remained hospitalized which was beyond control of assessee and all there facts were sufficient cause with assessee not to file appeal in time. Delay was condoned and directed CIT(A) to decide on merits. (AY. 2019-20)

Rakesh Metal & TubeS. v. ITO *(*2023) 198 ITD 1 (SMC) (Mum) (Trib.)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Capital gains-Business income-Jurisdiction of Commissioner (Appeals) does not extend to introducing an altogether new source of income. [S. 28(i), 45]

On appeal the CIT(A) has bifurcated the Assessing Officer's long term capital gains' computation of Rs.74,55,088/-to business income to the extent of business profits of Rs.65,58,156/-.and enhanced the income. Revenue supported the same on the ground that the CIT(A)'s jurisdiction is co-terminus with that of the Assessing Officer in arriving at the correct computation of an assessee's taxable income. Tribunal relied on following case laws and held that held that Jurisdiction of Commissioner (Appeals) does not extend to introducing an altogether new source of income, CIT v. Shapoorji Pallonji Mistry (1962) 44 ITR 891 (SC) CIT v. Union Tyers (1999) 251 ITR 864 (Delhi)(HC)) CIT v. Sardari Lal & Co (2001) 251 ITR 864 (Delhi)(HC). (AY. 2012-13)

Rangnathappa Govindappa Zharkhande v. ITO (2023) 198 ITD 290 /225 TTJ 621 (Pune) (Trib.)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Claim of deduction under Section 54F-Commissioner (Appeals) directing Assessing Officer to verify and allow claim-Not tantamount to setting aside or remanding matter to Assessing Officer-No Violation of Section 251(1)(a)-Order of Commissioner (Appeals) upheld. [S. 251(1)(a)]

The AO observed that aside from purchasing land jointly with K, he bought vacant land from his spouse, sold some of the land, and bought a brand-new house, the assessee had claimed an exemption under section 54F. The AO denied the exemption because the assesee failed to produce documents for the same transactions and he also owned other properties. Since the property was sold when possession was transferred on receipt of full consideration and the Assessing Officer had not taken into account that on the date of transfer, the other property was only landed property, the Commissioner (Appeals) allowed the assessee's claim, subject to the Assessing Officer's verification of documents. This did not disqualify the assessee's claim of deduction. The Revenue contends that the Assessing Officer did not have the authority under section 251(1)(a) to set aside or reexamine the Commissioner (Appeals') directive to the Assessing Officer to check and approve the assessee's claim of deduction.
On several appeals by both, the final decision stands as follows. Rejecting the Revenue's appeal and granting the Assessee's, it was determined that (i) the Commissioner (Appeals) had simply instructed the Assessing Officer to review the supporting documentation and had only, in theory, approved the claim of deduction under section 54F. This was not the same as putting the matter on hold or returning it to the Assessing Officer. No infraction of section 251(1)(a) occurred. It was observed that it was not clear as to how the AO had given enough chances to the assessee to prove its claim and furnish the document. As a result, the assessee was given one more chance to produce documents on various counts. (AY.2012-13 to 2014-15)
Asst. CIT v. Justice N. Kannadasan (2023)103 ITR 590 (Chennai) (Trib)

S. 251 : Appeal-Commissioner (Appeals)-Powers-Dismissal of appeal for non appearance-Tribunal restored the matter to the file of the CIT (A) to decide afresh in the interest of natural justice.[S. 55A, 55C, 254(1)]
The AO reopened the assessment for A.Y. 2011-12 on the basis of information received that the assessee with other co-owners had sold a plot of land and had not offered to tax the capital gains arising on sale. During the assessment proceedings, the assessee filed a letter requesting the A.O. to refer to the District Valuation Officer. The A.O. referred to the District Valuation Officer u/s. 55A and 55C of Act for determination of value of the property. Pending receipt of the Valuation Report, the A.O. completed the assessment on protective basis by determining the share of the assessee subject to the outcome of the report of the District Valuation Officer with reference to the market value of the property on the date of transfer. The CIT(A) dismissed the appeal ex parte confirming the action of the A.O. On appeal, the Tribunal remanded to issue to the file of the CIT(A) for adjudication afresh providing the assessee adequate opportunity of hearing in view of the prayer that valuation report was not received before completion of assessment and that the assessee wanted to substantiate his case with evidence and information. (AY. 2011-12)
Arun Moreshwar Patil v. ITO (2023)104 ITR 53 (SN) (Mum) (Trib)

S. 252A : Qualifications, terms and conditions of service of President, Vice-President and Members-Retirement-Applicant had offered her candidature for appointment as member of Tribunal, in pursuance of Circular of 2013-Right of applicant to appointment having been crystallized before 2017 Rules, appointment of applicant would be governed by position as it existed prior to 2017 Rules-Her tenure would be extended until she attained age of 62 yearS. [Income-tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963, R. 3, 11
The applicant is a Member of the Income Tax Appellate Tribunal. Applicant had offered her candidature for appointment as member of Tribunal, in pursuance of Circular of 2013. Selection process which was conducted in pursuance of circular ended in grant of letters of

appointment to those who were found to be qualified and were selected. Applicant was deprived of selection at that stage only on ground that she had not filed her income tax return for relevant assessment year. Applicant pursued her claim before Calcutta High Court. High Court held that candidature of applicant shall not be rejected on ground that her income tax return for relevant assessment year 2010-11 was not available. This judgment of Calcutta High Court attained finality. Thus, appointment letter was issued to applicant on 19-3-2018 in terms of 2017 Rules, fixing her term as three years, however, other persons who were selected in pursuance of selection process initiated with circular of 17-4-2013 were issued with letters of appointment much before 2017 Rules came into effect. Applicant made a representation to effect that her appointment was in pursuance of vacancy of 2013 which was governed by Income-tax Act, 1961, thus her tenure of appointment should operate till age of 62 years and not for period of three years. The application was rejected. The applicant moved Interlocutory application before the Court as to whether the applicant would be governed by the provisions contained in the Income-tax Act, 1961. Court held that right of applicant to appointment having been crystallized before 2017 Rules, appointment of applicant would be governed by position as it existed prior to 2017 Rules. Accordingly her tenure would be extended until she attained age of 62 years. The Interlocutory Application is disposed of.
Madras Bar Association v. UOI (2023) 292 Taxman 467 (SC)

S. 253 : Appellate Tribunal-Appeals-Delay of 1563 days-Not given reasonable cause-Delay is not condoned.
Held that the assessee has not given reasonable cause for condonation of delay of 1563 days, delay is not condoned.(AY. 2007-08, 2008-09, 2010-11)
Shyam Sundar Agarwal v.ITO(2023) 222 TTJ 1 (UO) (SMC)(Raipur)(Trib)

S. 253 : Appellate Tribunal-Appeals-Delay of 3966 days-Condoned-Cost of Rs 20000 is imposed on Revenue to be paid to Prime Minister National Relief fund-Bad debt-Reassessment-On merit the matter remanded to the file of the CIT(A) to decide a fresh in accordance with law. [S. 36(1)(vii), 143(3), 147, 148, 154, 253(5), 254(1)]
The Revenue was under bona fide belief that the appeal is not required to be filed hence there was delay of 3966 days in filing an appeal before the Tribunal. The Tribunal condoned the delay of 3966 days and directed the Revenue to pay cost of Rs 20, 000 is imposed on Revenue to be paid to Prime Minister National Relief fund. As regards on merits allowability of bad debt the matter is remanded to the file of the CIT(A) to decide a fresh in accordance with law. (AY. 2006-07)
Dy.CIT v. Chhattishgarh State Electricity Board (2023) 226 TTJ 861 (Raipur)(Trib)

S. 253 : Appellate Tribunal-Appeals-Monetary limits for appeals by Department-Deduction only on actual payment-Employee's contribution to employees' State Insurance-Appeal is not maintainable. [S. 43B, 143(1)]
Held dismissing the appeal, that the exception carved out in para 10(b) of the Central Board of Direct Taxes Circular No. 3 of 2018 talks about a situation where the Board's order, notification, instruction or circular has been held to be illegal or ultra vires. The Commissioner (Appeals) had not recorded any findings holding any of the Board's circular or instructions illegal or ultra vires. Not following the circular could not be held a challenge to the vires of the circular or for that matter, holding it illegal. The case did not fall under the exception para 10(b) of Circular No. 3 of 2018 and given that the tax effect involved was well below the prescribed threshold for filing appeals before the Tribunal, the appeal deserved to be dismissed on account of low tax effect.(AY.2019-20)
Dy. CIT v.Anil Kumar Jain (2023)108 ITR 41 (SN)(Chd) (Trib)

S. 253 : Appellate Tribunal-Appeals-Memorandum of appeal-Two assessment orders-Contends are different-Matter remanded to Commissioner (Appeals) to verify and adjudicate de novo complying with principles of natural justice-Principal Chief Commissioner is directed to make a thorough enquiry.[S. 143(3), 250]

Held, allowing the appeals filed by the Department and the assessee, that the case records provided considerable amount of clarity and validity regarding the facts and circumstances of each case in matters of any ambiguity on enquiry. On examination, the contents of paragraph 8 as appearing in the assessment order in the case record matched the contents of paragraph 8 of the assessment order filed by the Revenue in its appeal memo. Therefore, without any doubt the correct assessment order had to be the one as appearing in the case record. Neither the assessee nor Department could demonstrate through evidence which assessment order had been considered for adjudication by the Commissioner (Appeals). Firstly, it had to be ascertained whether or not the Commissioner (Appeals) in passing the order had placed reliance on the correct assessment order and secondly, how a wrong assessment order could have been sent to the assessee by the Department. If the Commissioner (Appeals) had adjudicated on the basis of the wrong assessment order, his order had to be quashed as non est and the correct assessment order had to be restored. Therefore, the order passed by the Commissioner (Appeals) was to be set aside and remanded to his file to verify the issues and adjudicate de novo complying with the principles of natural justice. The Principal Chief Commissioner was directed to make a thorough enquiry taking the enquiry to its complete logical end in upholding the principles of fair play, justice and judiciousness.(AY.2008-09)

Dy. CIT v. Vintage Enterprises (2023)108 ITR 10 (SN)(Pune) (Trib)

S. 253 : Appellate Tribunal-Appeals-Monetary limits-Low tax effect-Appeal of Revenue is dismissed.[S. 253 (2)]

Held, that the Central Board of Direct Taxes Circular No. 23 of 2019, dated September 6, 2019 ([2019 417 ITR (St.) 4) and Office Memorandum dated September 16, 2019 ([2019 417 ITR (St.) 53) carving exception to the monetary limits in cases came much after the authorisation to file appeal under section 253(2) of the Act in the case of the assessee before the Tribunal. The appeal of the Revenue was not maintainable on account of low tax effect as the CBDT Circular and Office Memorandum was not applicable to the case of the assessee.(AY.2014-15)

ACIT v. Umesh Kumar Arora (2023)103 ITR 46 (Delhi) (Trib)

S. 253 : Appellate Tribunal-Appeals-Impleaded as corporate debtor before NCLT by financial creditor-Provisions of IBC would prevail over Income-tax Act-Appeal is not maintainable. [S. 254(1), Insolvency and Bankruptcy Code, 2016, S. 14, 31, 238]

Assessment order was passed in case of applicant/assessee and demand was raised, however, applicant had already filed order of NCLT showing fact that applicant had been impleaded as corporate debtor before NCLT by financial creditor and said petition had been admitted by NCLT and moratorium under section 14 of IBC had been declared and NCLT had already appointed Interim Resolution Professional (IRP), however, IRP had not impleaded himself to represent assessee-company in present appeal, in view of section 14 of IBC, there could be no continuation of any pending proceedings before Income-tax Appellate Tribunal. Appeal is dismissed as not maintainable. (AY. 2010-11 to 2017-18, 2019-20)

Garden Silk Mills (P.) Ltd. v. DCIT (2023) 201 ITD 68 (Surat) (Trib.)

S. 253 : Appellate Tribunal-Appeals-Impleaded as corporate debtor before NCLT by financial creditor-Petition is admitted-Pending proceedings before ITAT cannot be

continued-Provisions of IBC would prevail over Income-tax Act.[S. 254(1), Insolvency and Bankruptcy Code, 2016, S. 4, 31, 238]
Assessee had been impleaded as corporate debtor before NCLT by financial creditor which had been admitted by NCLT. In view of section 14 IBC, there could be no continuation of any pending proceedings before Income-tax Appellate Tribunal. Appeal of revenue is be dismissed as not maintainable. (AY. 2017-18)
DCIT v. Sumeet Industries Ltd. (2023) 201 ITD 154 (Surat) (Trib.)

S. 253 : Appellate Tribunal-Appeals-Pendency of corporate insolvency proceedings under provisions of Insolvency and Bankruptcy Code, 2016-Appeal cannot be proceeded with.[S. 254 (1), Insolvency and Bankruptcy Code, 2016, S. 13, 14]
Held that where corporate insolvency proceedings under provisions of Insolvency and Bankruptcy Code, 2016 were pending against assessee, instant appeal filed by revenue could not be proceeded with during continuance of proceedings under Code. However depending upon results of such proceedings before Adjudicating Authority in respect of corporate debtor, appropriate steps, if any, might be taken by revenue. Followed, Ghanshyam Mishra & Sons (P) Ltd v. Edelweiss Asset Reconstruction Co Ltd (2021) 126 taxmann.com 132/ 166 SCL 237(SC), Murli Industries Ltd v. ACIT (2022) 441 ITR 8 (Bom)(HC). (AY. 2013-14)
ACIT v. MSM Steels (P.) Ltd. (2023) 199 ITD 232 (Pune) (Trib.)

S. 253 : Appellate Tribunal-Monetary limit-50 lakhs monetary limit for appeal by Department-Circular laying down limit applicable to retrospectively even to pending appealS. [CBDT Circular No. 17 Of 2019, Dated August 8, 2019] [S. 268A]
Held, that in view of the CBDT Circular No. 17 of 2019, dated August 8, 2019 no appeal should be filed by the Revenue before the Tribunal which has tax effect of Rs. 50 lakhs or less and this circular is also applicable retrospectively to all pending appeals. Therefore, the appeal filed by the Revenue was dismissed as not maintainable. (AY. 2014-15)
Saranya Agro Foods Pvt. Ltd. v. ITO (2023)101 ITR 60 (SN)(Chennai) (Trib)

S. 253 : Appellate Tribunal-Appeal by assessee-Assessee not putting appearance-Not adducing material before Tribunal to controvert findings-Order of CIT (A) justified.[S. 250]
Held that since there was no no appearance from the side of the assessee on the various dates and no material had been placed by the assessee before the Tribunal to controvert the findings of the lower authorities nor had the assessee pointed to any fallacy in the findings of lower authorities, there was no reason to interfere with the order of the Commissioner (Appeals). (AY. 2015-16)
MGS Securities P. Ltd. v. Dy. CIT (2023)101 ITR 95 (SN)(Delhi) (Trib)

S. 253 : Appellate Tribunal-Appeals-Legacy Dispute Resolution-Assessee opting to settle dispute under Vivad Se Vishwas Scheme and obtaining Form 4 from Department-Withdrawal of appeal allowed-If dispute unresolved assessee shall be at liberty to approach Tribunal for reinstitution of appeal.[S. 254(1) Direct Tax Vivad Se Vishwas Scheme, 2020]
Held, that the assessee had sought withdrawal of the appeal, opting to settle the dispute relating to the tax arrears for the A Y. 2011-12 under the Direct Tax Vivad se Vishwas Scheme, 2020 and had obtained form 4 from the Department. In the absence of objection from the Department, the request was allowed. However, in case the dispute was unresolved in terms of the Scheme, the assessee shall be at liberty to approach the Tribunal for reinstitution of the appeal and the Tribunal shall consider such application appropriately in

accordance with law. The Department had no objection with regard to the caveat.(AY. 2011-12)
AD Mega Structure India P. Ltd. v. ITO (2023)103 ITR 260 Delhi) (Trib)

S. 253 : Appellate Tribunal-Jurisdiction of the Bench-On the basis of Jurisdiction of the Assessing Officer. [ITAT R, 1963, R 4]
The AO situated in Mumbai passed the assessment order and the appeal was filed before CIT(A). The jurisdiction of the AO was transferred from Mumbai to Delhi and thus, subsequently, the CIT(A) delhi decided the Appeal and passed the order which was challenged before the ITAT Delhi bench. The issue of maintainability arose and the ITAT held that as per Rule 4 of the Income Tax (Appellate Tribunal) Rules, 1963 and paragraph 4 of Notification No. F.No.63-AD(AT/97), dated 16/09/1997 as amended from time to time. The jurisdiction of the Bench which can decide the appeal is to be determined by the location of the Assessing Officer passing an assessment order. In the present case, the location of the AO in the instant proceeding was at Mumbai, the appeals, necessarily, should have been filed before Mumbai Benches and not in Delhi Benches. The reference was made to the view expressed by the Supreme Court in PCIT v. ABC Papers Ltd., [2022] 289 taxman 150(SC). The ITAT held that the appeal before the Delhi bench was not maintainable. However, since the Appellant was filed under the bona fide belief, the ITAT Delhi bench granted liberty to the assessee to file an appeal before the Mumbai bench. (ITA No.2168/De 1/2019 dt. 24/03/2023) (AY. 201-11)
Panalpine World Transport India Pvt. Ltd. v. Addl. CIT (2023) The Chamber's Journal-May-P. 111 (Delhi)(Trib)

S. 253 : Appellate Tribunal-Maintainability-Consolidated order of CIT(A) for more than one year-One appeal cannot be filed against two reassessment orders for the same assessment year-Income-tax Appellate Tribunal Rules, 1963-R. 9-Appeal of revenue was dismissed. [S. 132, 153C,ITAT R, 9]
There were two different search and seizure actions conducted by the Department and the assessee's case was reopened twice for each year under consideration. The Ld. CIT(A) passed a combined order, allowing all the appeals filed before it. The Department filed one appeal for each assessment year under consideration. It was held that each assessment order is separate and separate appeals have to be filed for each assessment order. Appeal dismissed as defective. (ITA 1695-97 of 2022 dated January 30, 2023) (AY. 2009-10, to 2011-12)
CIT v. Ajit Anantrao Pawar (Mum)(Trib) www.itatonline.org
S. 253 : Appellate Tribunal-Appeals-Delay of 1005 days-Delay due to negligence, lethargy or inaction on part of assessee-Delay is not condoned. [S. 254]
Held that even after filing the application for condonation of delay, none appeared for the assessee before the Tribunal on the dates fixed for hearing of the appeals. The facts on record clearly indicated that the delay was caused due to negligence, lethargy or inaction on the part of the assessee and therefore not worthy of condonation. The inordinate delay of 1005 days in filing appeal before the Tribunal was not to be condoned.(AY. 2004-05, 2005-06, 2006-07)
Mass Awash P. Ltd. v. Add. CIT(IT) (2023)104 ITR 14 (SN)(Delhi) (Trib)

S. 253 : Appellate Tribunal-50 lakhs monetary limit for appeal by Department-Circular laying down limit applicable to retrospectively even to pending appealS. [CBDT Circular No. 17 Of 2019, Dated August 8, 2019]
Held, that in view of the CBDT Circular No. 17 of 2019, dated August 8, 2019 no appeal should be filed by the Revenue before the Tribunal which has tax effect of Rs. 50 lakhs or

less and this circular is also applicable retrospectively to all pending appeals. Therefore, the appeal filed by the Revenue was dismissed as not maintainable. (AY. 2014-15)
Saranya Agro Foods Pvt. Ltd. v. ITO (2023)101 ITR 60 (SN)(Chennai)(Trib)

S. 253 : Appellate Tribunal-Appeal by assessee-Assessee not putting appearance-Not adducing material before Tribunal to controvert findings-Order of CIT (A) justified.
Held that since there was no no appearance from the side of the assessee on the various dates and no material had been placed by the assessee before the Tribunal to controvert the findings of the lower authorities nor had the assessee pointed to any fallacy in the findings of lower authorities, there was no reason to interfere with the order of the Commissioner (Appeals). (AY. 2015-16)
MGS Securities P. Ltd. v Dy. CIT (2023)101 ITR 95 (SN)(Delhi) (Trib)

S. 253 : Appellate Tribunal-Appeal to appellate Tribunal-Power to admit additional evidence-Tribunal admitted in assessee's own case for previous years-Empowered to admit claims other that by revised returnS. [S. 254(1)]
Held, that in the assessee's own case for the AY.s 2006-07 to 2009-10, the Tribunal had admitted the assessee's additional claims and remanded the matter to the Assessing Officer for adjudication. Moreover, there was no restriction on the Tribunal's power to admit claims otherwise than by way of a revised return of income. Since the Tribunal had, in the assessee's own case in earlier years, consistently admitted such claims and remanded the matter to the Assessing Officer, the two claims of the assessee were to be admitted and the matter remitted to the Assessing Officer. (AY. 2010-11, 2011-12)
Dabur India Ltd. v. Dy. CIT (2023)101 ITR 148 (Delhi) (Trib)

S. 253 : Appellate Tribunal-Delay in filing appeal-No condonation of delay application-No reasons explained by the department-Appeal barred by limitation.[S. 254(1)]
The Hon'ble Tribunal held that the Cross Objection filed by the Department was delayed by more that 2 years for which neither condonation of delay application filed nor any reason was explained by the Revenue. Thus, the appeal was barred by limitation. (AY.2014-15, 2015-16).
Play Games 24×7 P. Ltd. v Dy. CIT (2023)101 ITR 241 (Mum) (Trib)

S. 253 : Appellate Tribunal-Appeal-Condonation of delay-Assessee an aged person, suffering from various illness-Omission to prefer appeal inadvertently-Reasonable Cause-Delay condoned.[S. 254(1)]
Held, that the assessee was an aged person, suffering from various medical problems and inadvertently omitted to prefer appeals against the orders passed by the Principal Commissioner. Therefore, the delay in filing the appeals was to be condoned. (AY. 2013-14)
Kanta Chandak (Smt).v ITO (2023)101 ITR 6 (Jodhpur) (Trib)
Mohan Lal Chandak v. ITO 2023)101 ITR 6 (Jodhpur) (Trib)

S. 253 : Appellate Tribunal-Condonation of delay-Delay on account of bona fide belief-No dilatory strategy-Delay condoned.[S. 254(1)]
Held, that the delay was on account of a bona fide belief. The assessee did not stand to gain from the delay and it was not a dilatory strategy. The delay was thus condoned. (AY. 2014-15)
Puran Pradhan v. ITO (2023)101 ITR 266 (Kol) (Trib)

S. 254(1) : Appellate Tribunal-Powers-Dismissal of appeal-Non appearance-Failure to appear on the appointed date, failure to make arrangement to represent her before Tribunal by an authorised representative and also failed to seek another date of hearing-Order of High Court is set aside-Matter is restored to the file of the CIT(A).[S. 54F, Art. 136]

On date of hearing, assessee failed to appear before Tribunal due to reason that assessee was out of country. Tribunal dismissed appeal for non-prosecution. Tribunal held that, even if assessee was out of India assessee could have made arrangements to represent her before Tribunal by any authorised representative or she could have addressed a letter seeking for another date of hearing as she was out of country. On appeal the Court held that since assessee failed to make arrangement to represent her before Tribunal by an authorized representative and also failed to seek another date of hearing; impugned order passed by Tribunal dismissing appeal was justified. On appeal the order of High Court is set aside and matter remanded to the CIT(A) to decide on merits. (AY. 2013-14)

Shobha Lakshman (Smt) v. CIT (Appeals) (2023) 295 Taxman 237 (SC)

Editorial : Shobha Lakshman (Smt.) v. CIT (2019) 264 Taxman 198 / 311 CTR 496 / 183 DTR 213 (Karn.)(HC)

S. 254(1) : Appellate Tribunal-Duties-Numbering of paragraphs in all orders-The Supreme Court urges the High Court and Tribunals to follow a uniform format for all its orders.

The Hon'ble Supreme Court referring to the case of Shakuntala Shukla v State of Uttar Pradesh LL 2021 SC 422 and State Bank of India v Ajay Kumar Sood 2022 LiveLaw (SC) 710, observed that it is desirable that all Courts and Tribunals, as a matter of practice, number paragraphs in all Orders and Judgments in seriatim, factoring in the judgements afore-extracted. The bench further directed the Secretary-General of the Supreme Court to circulate this judgement to the Registrars General of all High Courts, to place the same before the Chief Justices, to consider the adoption of a uniform format for Judgments and Orders, including paragraphing. (Criminal Appeal No. 1890 of 2014 dated April 13)

BS Hari v. UOI 2023 (SC) www.itatonline.org/(2023) SCC online SC 413

S. 254(1) : Appellate Tribunal-Duties-Reasoned order-A non-speaking order not only prevents adversely affected persons from knowing the exact reasons behind the conclusion arrived at but also disables the aggrieved person from effectively availing of remedy before the higher forum.[S. 260A]

Held, that the Tribunal in fact had not recorded any independent finding or reasons in respect of both the grounds raised by the assessee and thus, the order of the Tribunal to the extent it related to the assessment year 2004-05 was violative of the principles of natural justice being non-speaking. It was not valid. The Appellate Tribunal should give reasons for its order. A non-speaking order not only prevents adversely affected persons from knowing the exact reasons behind the conclusion arrived at but also disables the aggrieved person from effectively availing of remedy before the higher forum. (AY.2004-05, 2007-08, 2008-09)

PCIT v.Shree Developers (2023)459 ITR 466 (MP)(HC)

S. 254(1) : Appellate Tribunal-Duties-Appeals by Revenue and Assessee-Tribunal should consider both appeals together. [S. 253, 260A]

Allowing the interim application to amend the question of law the Court held that where an appeal is preferred both by the assessee and the Revenue the proper course to be followed by the Tribunal is to hear both appeals together. The course of action adopted by the Tribunal in deciding only the appeal of the Revenue in fact resulted in a lot of prejudice to the case of the

assessee, whose appeal was still pending before the Tribunal. The order passed by the Tribunal was not valid.Matter remanded to the Tribunal. Referred, Commissioner of Sales Tax, U. P., Lucknow v. Vijay Int. Udyog [1985] 59 STC 49 (SC)
Linklaters v. Dy. DIT (IT) (2023)458 ITR 110 /147 taxmann.com 128 (Bom)(HC)

S. 254(1) : Appellate Tribunal-Duties-Ex Parte order-Matter remanded to Tribunal to decide appeal on meritS. [S. 254(2), ITATR, 1963, R. 19, 24, Art. 226]
Allowing the petition the Court held that the inadvertent delay in filing the miscellaneous application was caused on account of the concerned persons having been temporarily transferred to a plant outside Delhi, and some persons retiring during the relevant period. The order of the Tribunal was set aside and the matter was remitted to the Tribunal for disposal of the assessee's appeal on merits. Matter remanded.(AY.2011-12)
Cement Corporation of India Ltd. v. ACIT (2023)456 ITR 61/149 taxmann.com 192/ 332 CTR 621 / 225 DTR 282 (Delhi)(HC)

S. 254(1) : Appellate Tribunal-Duties-No cross objections by the Department-Tribunal remanding of matter in entirety-Prejudicial to assessee-Tribunal is directed to limit its adjudication to issues raised by assesses-Order of Tribunal is set aside. [S. 36(1)(iii)) 147]
On appeals before the Tribunal against the order of the Commissioner (Appeals) partly affirming the disallowance of interest expenditure under section 36(1)(iii) of the Income-tax Act, 1961 and on the issue of validity of reopening of reassessment under section 147, the Tribunal remanded the matter in entirety to the Assessing Officer to examine afresh in the light of all the evidence the assessees' fund position and the issue as to whether the corresponding borrowings claimed to have carried no interest involving plotted land buyers. On appeals allowing the appeals the Court held that that the Tribunal was required to adjudicate the appeals on the grounds which were raised before it by the assessees. Remanding the matter in its entirety to the Assessing Officer had caused serious prejudice to the assessees inasmuch as even those reliefs which had been granted by the Commissioner (Appeals) stood nullified in view of the Tribunal's direction to the Assessing Officer to re-do the whole exercise in its entirety. No cross-appeals have been filed by the Department against the order of the Commissioner (Appeals) granting substantial relief to the assessees. The common order of the Tribunal under section 254 was to be set aside and the Tribunal directed to hear the appeals before it on the limited grounds urged by the assessee, namely, the disallowance of interest expenditure under section 36(1)(iii) to the extent disallowed by the Commissioner (Appeals) and the validity of the reassessment proceedings under section 147.(AY.2012-13 to 2014-15, 2016-17 to 2018-19)
Kausalya Agro Farms And Developers Pvt. Ltd. v Dy. CIT (2023)455 ITR 432/334 CTR 460 (Telangana)(HC)

S. 254(1) : Appellate Tribunal-Duties-Condonation of delay-Dismissal of appeal for non attendance by the assessee-Order of dismissal was set aside-Matter was to be remanded back to Tribunal to decide issue on merits. [S. 254(2)]
Assessee had filed an application seeking condonation of delay in filing appeal before Tribunal.Tribunal dismissed the application on a presumption that since assessee could not attend proceedings and there was no one to press application, assessee was not interested in pursuing appeal. On appeal referring the judgement in CIT v. S. Chenniappa Mudaliar [1969] 74 ITR 41 (SC) the Court held that Tribunal was bound to give proper decision on question of fact as well as law on merits and it could not dismiss an appeal owing to default of

appearance. Accordingly the order of the Tribunal was to be set aside and matter was to be remanded back to Tribunal to decide issue on merits. (AY. 2016-17)
Radheshyam Patel v. UOI (2023) 292 Taxman 146 (MP)(HC)

S. 254(1) : Appellate Tribunal-Duties-Failure of Tribunal examine the matter on merits-Matter remanded. [S. 260A, 271 A ABB, 273B]
Remanding the matter to the Tribunal, the High Court observed that the Tribunal has followed the decision of the Co-ordinate Bench in case of DCIT v. A. K. A. Logistics (P.) Ltd. (ITA No. 1604 (Kol)) of 2017 dt. 27-2-2019, with no finding recorded as to how such decision would apply to the present case and there has been no discussion on the factual aspect of the case by the Tribunal. Hence, it was held that in the absence of any independent reasoning by the Tribunal with regard to the merits of the matter, it was not possible for High Court to test the correctness of the order passed by the Tribunal, more particularly, when the Court were to ascertain as to whether any substantial question of law arises for consideration. The matter was remanded to the Tribunal for a fresh decision on merits. (AY. 2013-14).
PCIT v. Sanjay Dhingra (2023) 457 ITR 588/ 291 Taxman 291 (Cal)(HC)
PCIT v. Sidhant Gupta (2023) 457 ITR 588/ 291 Taxman 291 (Cal)(HC)

S. 254(1) : Appellate Tribunal-Powers-Notional income-Income from house property or Income from other sources-Tribunal has no power to review earlier order-Order of Tribunal is stayed [S. 22, 23 56, 254(2) Art. 226.
Assessing Officer held that amount received by assessee as rent was to be taxed as income from other sources. Tribunal upheld said order and directed Assessing Officer to recompute same. Assessee filed rectification application challenging said order on ground that Tribunal failed to address issue whether notional income could be brought to be tax under head 'income from other source. Tribunal pursuant to applications recalled matter and fixed matter for passing order de novo. Tribunal however passed impugned order holding that rent income of assessee was to be treated as income from house property. On writ the the assessee contended tha consequence of rectification application filed by assessee being allowed was only to extent that issue regarding taxability of a notional income had to be considered. Since the Tribunal by virtue of impugned order reviewed its earlier order in which it was specifically ordered that income was to be treated as 'income from other sources', The order of the Tribunal was stayed. Petition was fixed for hearing on 30-10-2023 (AY. 2004-05)
Procter and Gamble Home Products (P.) Ltd. v. ITO (2023) 150 taxmann.com 124 (Bom)(HC)

S. 254(1) : Appellate Tribunal-Powers-Ex-parte order-Search-Alleged Accommodation entry provider-32,000+ beneficiaries-Shell companies-Alleged Money Laundering-Direction issued by the Tribunal to AO to intimate/report to SEBI, ED, MCA and ROC regarding details of money laundering activities-Directed the Assessing officer to share information about all beneficiaries within 90 days-Ex-parte order was quashed-Direction of the Appellate Tribunal was set aside-Tribunal must try and confine itself to the question that really arises in the appeal before it and not travel outside the ambit of its jurisdiction and express opinions prejudicial to the assessee which may help the Department in taking proceedings against the assessee-Court directed the Tribunal decide on merits. [S. 68, 132, 150, Prevention of Money-Laundering Act, 2002; 11, Art. 226]
The Assessee was providing alleged bogus accommodation entries and availing a 3% commission on the same. A search was conducted and it was found that the assessee provided bogus accommodation entries to 32,855 persons wherein thousands of crores were laundered

by the assessee. Accordingly, the A.O. made an addition on the basis of a 3% commission which was charged by the assessee. Before the CIT(A), in an ex-parte order, confirmed the findings of the Assessing officer.

On appeal before the Hon'ble Tribunal, the Tribunal passed an ex parte order and it found that there was no infirmity in the order of the lower authorities. the Hon'ble Tribunal also noted that the Assessee was a mere entry provider and the real beneficiaries of the bogus transitions were those 32,000 + people identified by the Assessing Officer in the order. Thus, the Hon'ble Tribunal directed the Assessing officer to share information about all beneficiaries within 90 days, who were involved in the racket with their concerned Assessing officers, in order to reopen assessments of those individuals. Further, the AO was also directed to intimate the Securities Exchange Board of India (**SEBI**) with a list of beneficiaries, share brokers, depositories, list of synchronized transactions who were involved in the racket. Furthermore, the AO was also directed to provide the same to respective government authorities for applicability of section 11 of the Prevention of Money-Laundering Act, 2002 (**PMLA**) and also to the Ministry of Corporate Affairs (**MCA**) and Registrar of Companies (**ROC**) with a list of shell companies involved whose share prices are rigged on the stock exchange. On writ petition against the ex-parte order of the Tribunal, the Hon'ble Bombay High Court has set aside the order of the Tribunal. The Court observed that the appeal was filed by the assessee hence the direction of the Tribunal was uncalled for. Court set aside the ex-parte order and directed the Tribunal to decide on merits. Relied on Indira Balakrishna, Manager of Estate of Balakrishna Purshottam Purvani v. CIT (1956) 30 ITR 320(Bom)(HC) wherein the Court observed that " **Now, it is never desirable for any Judge to express an opinion which is not necessary for the decision of a case ; even so Judges, and some of them very eminent Judges, have indulged from time to time in obiterS. But the only result of their doing so is possibly to encumber law reports and the giving expression to these obiters has not resulted in any prejudice to any party. But in the case of the Tribunal the position is entirely different. Every expression of opinion by them is likely seriously to prejudice the assessee. In this very case because they took the view that the Appellate Assistant Commissioner was in error in considering that the income from property fell under section 9(3), the Income-tax Officer has, as pointed out by Mr. Palkhivala, issued a notice against the assessees under section 34(1)(*b*). The Tribunal being the highest authority under the Income-tax Act, the Income-tax Officer is bound to respect any opinion expressed by it, and if it says that an assessee has been under-assessed or there has been a failure to assess properly, the Income-tax Officer is bound to take action under section 34, and that is exactly what has happened in this case. Therefore, in our opinion, with respect to the Tribunal, it should be very careful in giving findings and in expressing opinionS. It must try and confine itself to the question that really arises in the appeal before it and not travel outside the ambit of its jurisdiction and express opinions prejudicial to the assessee which may help the Department in taking proceedings against the assessee. It may be said that if the Income-tax Officer is in error in issuing the notice under section 34 or that the view expressed by the Tribunal was not correct, the assessee would always have his remedy. But that is not the point. The assessee is harassed by a notice issued against him under section 34 and he has got to run the gamut of several Income-tax authorities before ultimately he gets justice, and all this arises because the Tribunal overlooks its own responsible position and the serious consequences of expressing opinions which do not really arise for the decision of the appeal before it."** (Affirmed by CIT v. Indira Balakrishna (1960) 39 ITR 546 (SC)**.** (WP (L)No.27193 of 2023 dt.18-10-2023)(AY 2012-13]

Naresh Manakchand Jain v. The Registrar, ITAT(2024) 296 Taxman 101 (Bom)(HC) www.itatonline.org

Editorial : Order of Tribunal in Naresh Manakchand Jain v. ACIT [IT Appeal Nos. 1945 & 1946 of 2023, dated 31-8-2023 **(2023)108 ITR 627/(2024) 228 TTJ 349 (Mum) (Trib)** is set aside

S. 254(1) : Appellate Tribunal-Powers-Ex parte order-Search-Alleged Accommodation entry provider-32,000+ beneficiaries-Shell companies-Alleged Money Laundering-Direction issued by the Tribunal to AO to intimate/report to SEBI, ED, MCA and ROC regarding details of money laundering activities-Directed the Assessing officer to share information about all beneficiaries within 90 days. [S. 132, 150, Prevention of Money-Laundering Act, 2002; 11, Art. 226]

The Assessee was providing bogus accommodation entries and availing a 3% commission on the same. A search was conducted and it was found that the assessee provided bogus accommodation entries to 32,855 persons wherein thousands of crores were laundered by the assessee. Accordingly, the A.O. made an addition on the basis of a 3% commission which was charged by the assessee. Before the CIT(A), in an ex-parte order, confirmed the findings of the Assessing officer.

On appeal before the Hon'ble Tribunal, it found that there was no infirmity in the order of the lower authorities. the Hon'ble Tribunal also noted that the Assessee was a mere entry provider and the real beneficiaries of the bogus transitions were those 32,000 + people identified by the Assessing Officer in the order. Thus, the Hon'ble Tribunal directed the Assessing officer to share information about all beneficiaries within 90 days, who were involved in the racket with their concerned Assessing officers, in order to reopen assessments of those individuals. Further, the AO was also directed to intimate the Securities Exchange Board of India (**SEBI**) with a list of beneficiaries, share brokers, depositories, list of synchronized transactions who were involved in the racket. Furthermore, the AO was also directed to provide the same to respective government authorities for applicability of section 11 of the Prevention of Money-Laundering Act, 2002 (**PMLA**) and also to the Ministry of Corporate Affairs (**MCA**) and Registrar of Companies (**ROC**) with a list of shell companies involved whose share prices are rigged on the stock exchange.

The Hon'ble Bombay High Court has stayed the *ex-parte* order of the Hon'ble Tribunal on thein the case of **Naresh Manakchand Jain v. ACIT [ITA No. 1945 & 1946/Mum/2023 dated August 29, 2023 (Mum)(Trib)** as the Chartered Accountant representing the assessee could not remain present on account of ill health. **[W.P. (L) No. 27193 of 2023 dated October 7, 2023 AY 2012-13]**

Naresh Manakchand Jain v. The Registrar, ITAT (Bom)(HC)

S. 254(1) : Appellate Tribunal-Powers-Revised grounds-Additional evidence-Matter remanded.

Allowing the appeal, that the additions and disallowances had been confirmed by the Commissioner (Appeals) primarily for the reason that there was no adequate documentary evidence submitted neither during the course of assessment proceedings nor during the course of appellate proceedings. Therefore, in the interest of justice and equity, one more opportunity should be provided to the assessee for a proper representation of its case. The Assessing Officer was directed to afford reasonable opportunity to the assessee to present its case. The assessee was not to seek unnecessary adjournment and shall co-operate with the Department in filing the written submissions on time.(AY. 2018-19)

Prakalpa Automotives P. Ltd. v. ITO (2023) 104 ITR 3 (SN)(Bang) (Trib)

S. 254(1) : Appellate Tribunal-Powers-Death of the assessee during pendency of appeal-Tribunal has the power to decide the appeal on the relevant material-Revenue has not brought on record the details of legal Representative for more than 18 months-Tribunal decided the appeal on meritS. [S. 45, 254(1), ITAT R.1963, R.26]

The Tribunal held that there is no mechanism to ascertain the details of the legal representative of the assessee, except seeking the help of the Assessing Officer. Since more than 18 months had passed, there was no option but either to dismiss the appeal for want of proper prosecution at the end of the Revenue, or decide the appeal on the relevant material available. The Tribunal decided the appeal on merits. (AY. 2014-15)

ITO v. Bejoy Kumar Chirimar (2023) 103 ITR 1(SN)(Kol)(Trib)

S. 254(1) : Appellate Tribunal-Powers-Limitation-Condonation of delay-Assessee's CA expired-Assesssee made aware only upon intimation of penalty order-Assessee, a cardiac patient undergone treatment-Sufficient cause-Delay condoned. [S. 253]

Held, that the assessee was about 69 years old whose chartered accountant regularly handling his Income-tax matters expired during the pendency of the appeal before the Commissioner (Appeals) and thereafter he had no regular chartered accountant to advise him properly on the matter. The assessee claimed that only upon intimation regarding the penalty order was he informed by his chartered accountant that quantum appeal had been dismissed by the Commissioner (Appeals). It was further evident from the medical report that the assessee was a cardiac patient and had undergone treatment. There was nothing to show that the assessee stood to benefit by the late filing of the appeal. There existed sufficient cause for not filing the appeal within time and therefore the delay in filing the appeal was to be condoned.(AY. 2013-14)

Vijay Liladhar Mohmaya v. ITO (2023)101 ITR 33 (SN) (Mum) (Trib)

S. 254(1) : Apppellate Tribunal-Powers-Transfer-Any transaction involving the allowing of the possession of any immoveable property-Joint Venture (JV) agreement for construction of building-Capital gains-Matter remanded to CIT(A) [S. 2(47)(v), 45,54F, Transfer of Property Act, 1882, S. 53A]

A Joint Venture (JV) agreement for construction of building/s was entered into by seven co-owners with the Developer on 4th February, 2011. Both the GPA and JV agreement were not registered. In view of the Assessing Officer, it amounted to a transfer under Section 2(47(v) in view of part performance, as defined under Section 53 of Transfer of Property Act, 1882. CIT (A) held that since the portion of land was transferred by assessee for transferee's disposal in its capacity as owner, construction by such transferee on portion of land belonging to transferor would amount to consideration for said transfer of land to him, hence, provisions of Section 2(47)(vi) would squarely apply irrespective of the fact that the construction remained incomplete. Since the Commissioner (Appeals) did not extend any opportunity to assessee before applying the provisions of Section 2(47(vi) in the interest of justice, matter was remanded back to the CIT(A) to decide the issue of deduction under Section 54F and also the Board Circular 672 dated 16th December, 1993 and give the hearing to both the parties and pass the Speaking Order. (AY. 2011-12)

Pulikkaparambil George Jacob v. ITO [2023] 200 ITD 773 / 225 TTJ 101 (Cochin)(Trib.)

S. 254(1) : Appellate Tribunal-Powers-Direction-Ex-parte order-Assessment-Unaccounted income-Long term capital gains-32,855 persons-Shell companies-Order on appeal-Direction to reopen cases of beneficiary and forward information to other

investigating agencies-[S. 45,48, 68, 150, The Prevention Of Money-Laundering Act, 2002]

"Looking at the magnitude of the operation of money laundering carried on by the assessee along with the several other persons and the number of beneficiaries who have availed the services of the assessee in converting that unaccounted income in long-term exempt capital gain, short term capital gain or business losses, [the learned assessing officer has mentioned that there are 32,855 persons who have been identified in several scripts of those listed entities]"

The Hon'ble ITAT passes the following direction to AO to intimate the respective AO of 30000+ assessee. To intimate the above money-laundering activities carried out by all those persons along with the names of the persons, companies and the beneficiaries to the respective authorities for examination of applicability of The Prevention Of Money-Laundering Act, 2002 as per paragraph 11 of schedule of that Act.

Intimate the name of companies involved whose share prices are rigged on stock exchange supported by fictitious turnover and shell structure to MCA/ Registrar of companies to take necessary action/ inquiry in accordance with the law. (ITA-1945&1946/M/2023 Dated 31/08/2023) (AY. 2009-10)

Naresh Manakchand Jain v. ACIT Cir-2(1) (2023)108 ITR 627/(2024) 228 TTJ 349 (Mum) (Trib

Editorial : High Court quashed the direction of the Tribunal, Naresh Manakchand Jain v. Registrar, Income Tax Appellate Tribunal (2024) 296 Taxman 101 (Bom)(HC)

S. 254(1) : Appellate Tribunal-Powers-Commissioner (Appeals)-Procedure-Assessee sought for additional time for written submission-Not given reasonable opportunity-Matter remanded back to the AO for pass a denovo order. [S. 250]

The CIT(A) disposed-off the appeal without considering the request of the assessee seeking additional time for filing written submissions and granting personal hearing. The Tribunal, on request of the assessee, restored all the issues to the file of the AO with the direction to pass a denovo order after providing reasonable opportunity to the assessee..*(*AY.2016-17)

Raj Kumar Chawla v. DCIT (2023) 103 ITR 62 (SN) (Delhi) (Trib)

S. 254(1) : Appellate Tribunal-Powers-New ground-Validity of reassessment-Not challenged before lower authorities-Cannot be raised [S. 147, 148, ITATR,1963, R. 27]

The Assessing Officer initiated section 148 / 147 proceedings against the assessee on the ground that the assessee's taxable income liable to be assessed had "escaped assessment". He made addition of Rs.6,56,89,219 in the hands of the assessee. The assessee invoking rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963 challenged the validity of the reopening on the ground that not only the Assessing Officer had not recorded the appropriate reasons for reopening based on independent opinion but also the notice u/s. 148 had not been served on him. Tribunal held that the assessee's arguments could not be allowed to be raised under rule 27 once he had not pressed them in the lower appellate proceedings. Relied: Commissioner of Customs v.. Dilip Kumar & Co. [2018 6 GSTR-OL 46 (SC). (AY. 2008-09)

ACIT v. Ravi Sellappan (2023)104 ITR 289/ 221 TTJ 681 (Pune)(Trib)

S. 254(1) : Appellate Tribunal-Powers-Limitation-Condonation of delay-Assessee's CA expired-Assesssee made aware only upon intimation of penalty order-Assessee, a cardiac patient undergone treatment-Sufficient cause-Delay condoned.

Held, that the assessee was about 69 years old whose chartered accountant regularly handling his Income-tax matters expired during the pendency of the appeal before the Commissioner (Appeals) and thereafter he had no regular chartered accountant to advise him properly on the

matter. The assessee claimed that only upon intimation regarding the penalty order was he informed by his chartered accountant that quantum appeal had been dismissed by the Commissioner (Appeals). It was further evident from the medical report that the assessee was a cardiac patient and had undergone treatment. There was nothing to show that the assessee stood to benefit by the late filing of the appeal. There existed sufficient cause for not filing the appeal within time and therefore the delay in filing the appeal was to be condoned. Followed Shivsagar Veg. Restaurant v.ACIT (2009) 317 ITR 433 (Bom)(HC)
Vijay Liladhar Mohmaya v. ITO (2023)101 ITR 33 (SN) (Mum)(Trib)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Loss on account of shortage of coal-Loss passed on to transporter-Tribunal last forum to find on facts, purported to find fact on surmise-Error apparent-Order quashed. [Art. 226]
Allowing the petition the Court held that in the fact situation, the Commissioner had correctly concluded that proper internal control system for accounting and finances of the assessee had resulted in the details filed before the Assessing Officer and thereafter, before the Commissioner (Appeals). The details explained and accounted for the shortage of coal. This finding was overturned by the Tribunal stating that the Commissioner had not observed whether the shortage had been passed on to the transporter. Neither in the appellate order of the Tribunal nor in its rectification order was there any reference to the Assessing Officer having made a finding on passing on the loss to the transporters. The Tribunal being the last forum to find on facts, purported to find a fact on surmise. It was an error apparent. The order is set aside and quashed. (AY.2009-10)
National Aluminium Co. Ltd. v. Asst. CIT (2023) 335 CTR 472 / (2024)462 ITR 189 (Orissa)(HC)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Tribunal cannot review its earlier order or reappreciate facts or rectify error of law-Search and seizure-Limitation-Prohibitory order-Department has remedy of appeal to High Court. [S. 132, 153C, 260A]
Held that where the issues had been examined threadbare on the merits considering the case law, merely because the Tribunal, which according to the Department had decided by misinterpretation of facts and law, that could not be a subject matter of rectification under section 254(2). Court held that a bare reading of section 254(2) of the Income-tax Act, 1961 indicates that the Appellate Tribunal may at any time within six months from the month in which the order was passed with a view to rectifying the mistake apparent from the record amend any order passed. The mistake has to be apparent from the face of the record and not one where an extensive delving into arguments and a relook can be sought on questions decided on the merits. Relied on CIT v. Reliance Telecom Ltd (2022) 440 ITR 1 (SC) In respect of the 26 petitions, where the Department had not filed appeals in the respective categories as a result of the low tax effect, once the Tribunal had considered the issues on the merits and undertaken a detailed discussion, no rectification under section 254(2) could be made on the grounds stated in the respective miscellaneous applications and therefore, were dismissed.(AY.2009-10 to 2015-16)
PCIT v.Hitesh Ashok Vaswani (2023)459 ITR 610 /156 taxmann.com 200 (Guj)(HC)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Failure to apply judicial precedents and Circular issued by Central Board Of Direct Taxes-Error apparent on face of record-Tribunal has jurisdiction to rectify the mistake. [S. 10(6)(viii), 143(1), 260A]

Held that on the date when the Tribunal had passed the initial order dismissing the appeal of the assessee there was a binding decision of the court in Utanka Roy v. DIT (IT)(2017) 390 ITR 109 (Cal)(HC) which the Tribunal could not have ignored. The Tribunal having ignored it there was an error which was apparent on the face of the record. The Tribunal ought to have exercised its power when the rectification application was filed by the assessee but had erroneously rejected it. Therefore, the said order dated January 5, 2018 also suffered from perversity. On merit the matter remanded to Assessing Officer. Circular No 13 of 2017 dated 11-4-2017(2017) 393 ITR 91 (St), Circular No. 14 (XL)-35. dated April, 11, 1955, CIT v. Mahalaxmi Sugar Mills Co Ltd (1986) 160 ITR 920 (SC) (AY.2012-13)
Rajeev Biswas v. UOI (2023)459 ITR 36 /(2022) 143 taxmann.com 3 (Cal)(HC)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Value of any benefit or perquisites-Converted in to money or not-Borrowed term loans and working capital loans from bank-One time settlement (OTS)-Principal value of loan-Order of Tribunal dismissing the miscellaneous application is set aside-Directed the Tribunal to reconsider the application-Writ petition-Discretion of the Court. [S. 4,28(iv), Art. 226]
The assessee entered into a one time settlement (OTS) with banks whereby portion of interest charged by bank and part of principal amount stood waived off. Assessee offered interest on waived loan to tax however treated principal amount of loans as capital receipts. The Assessing Officer held that the waiver of loan is taxable. The CIT(A) up held the order of the Assessing Officer. The Tribunal remanded to the Assessing Officer. On miscellaneous application the Tribunal held that waiver of principal amount of working capital loan was liable to be assessed under section 41(1) of the Act. On writ the Court held that the provision of section 41(1) cannot be applied. The Court also held that the amendment to section 28 is made Finance Bill, 2023. Court held that the nature of loan would be of no relevance and waiver of loan in instant case would not satisfy test to make it taxable under section 28(iv) of the Act. Amendment to section 28 vide Finance Act, 2023, wherein legislature included 'benefit' in form of 'cash' arising from business or profession as income chargeable to tax, would reveal that 'benefit' in form of 'cash' would fall outside ambit of section 28(iv) of the Act.Accordingly the order of Tribunal dismissing the miscellaneous application is set aside. High Court directed the Tribunal to reconsider the application. Court also held that the whether writ petition can be entertained or not it is with the discretion of the Court. Referred, CIT v. Mahindra and Mahindra [2018]255 Taxman 305/ 404 ITR 1 (SC) (AY. 2006-07) (SJ)
I.G. Petrochemicals Ltd. v. Income-tax Appellate Tribunal (2023) 295 Taxman 569 (Karn)(HC)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Cash credits-Accommodation entries-Additional evidence-Violation of Rule 46A by CIT(A)-Failure to produce the parties-Assessing Officer should exercise his powers under section 131 of the Act-Assessee cannot be compelled to produce the parties-Order of Tribunal rejecting the miscellaneous application and reversing the order of the CIT(A) is quashed and set aside-CIT(A) is directed to decide the appeal a fresh in accordance with law and following the procedure prescribed as per Rule 46A of the Income-tax Rules, 1962. [S. 68, 131, 254(1), Art. 226]
The assessment of the petitioner was reopened on the basis of information received from the Investigation wing, that the parties who have advanced the money to the petitioner were only name lenders. The Assessing Officer made addition under section 68 of the Act. On appeal the petitioner produced the additional evidence in the form of confirmation, bank statement etc. CIT(A) deleted the addition relying on the additional evidences produced by the

petitioner. The Revenue has filed an appeal before the Tribunal, however the Revenue has not raised the ground of admitting the additional ground in violation of Rule 46A of the of the Income-tax Rules, 1962. The Tribunal allowed the appeal of the Revenue on the ground that the CIT(A) admitted the additional evidence, without following the procedure prescribed as per Rule 46A of the Income-tax, Rules 1962. The petitioner moved an application under section 254(2) of the Act, on various grounds. The Tribunal rejected the application on the ground that, the counsel has not consented for producing the lender if the matter is restored before the CIT(A) or the Assessing Officer. The petitioner filed a writ against and dismissal of the miscellaneous petition and also appeal against the order of the Tribunal wherein the Tribunal has allowed the appeal of the Revenue. Allowing the writ petition the Honourable High Court quashed the order of the Tribunal rejecting the Miscellaneous Application as well as order of the Tribunal allowing the appeal of the Revenue. Honourable High Court directed the CIT(A) to decide the issue on merit by following the due process of law and complying procedure prescribed as per the Rule 46A of the Income-tax Rules, 1962. The Honourable Court also observed that if the Assessing Officer feels that the presence of the certain parties are required by him to probe the matter further or go behind the entries made by the assessee in its books of account, the Assessing Officer should exercise his powers under Section 131 of the Act by issuing a summons to those parties. (WP NO. 2440 of 2023 dt 18-12-2023) (AY. 2011-12) (ITA No 2373 of 2023 dt 18-12-2023) (MA No, 178-179 Mum. 2019 dt. 21-11-2022, ITA No. 2595/ Mum/ 2019, & CO No. 103 /Mum/ 2021 dt 29-4-2022)
Pravin Polymers Private Ltd v. ITO (Bom)(HC) www.itatonline.org

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Limitation-Rectification was filed much prior to amendment made in section 254(2) which came into effect from 1-6-2016-Within a period of four years from date of actual receipt of judgment-Law prevailing on date of filing of miscellaneous application to be applied-Order of Tribunal is set aside.
Tribunal passed order dated 23-12-2009 which was communicated to assessee on 2-8-2010. Assessee filed miscellaneous application on 3-6-2014 for reconsideration of matter. Tribunal dismissed the application on ground of period of limitation. On appeal the Court held that the application for rectification was filed by assessee much prior to amendment made in section 254(2) which came into effect from 1-6-2016 and application was submitted within a period of four years from date of actual receipt of judgment and order passed by Tribunal. Accordingly the Tribunal had committed gross error in complying law prevalent on date of hearing and not law prevalent at date of filing of miscellaneous application. Matter was to be remanded to Tribunal to decide same on merit. [BP. 1996-97 to 2002-03)
Kamal Nayan Singh v. DY. CIT (2023) 292 Taxman 289 (Jharkhand)(HC)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Subsequent Supreme Court decision-Contribution to ESI and PF-Paid before due date of filing of return-Miscellaneous application filed by the Revenue is dismissed. [S. 36(1)(va),139(1), 143(1)]
Tribunal held that the Tribunal has allowed the appeal following the ratio of various High Courts, hence subsequent decision of the Supreme Court miscellaneous application of the Department is dismissed. (AY. 2018-19)
Dy. CIT v. Suman Solanki (2023) 225 TTJ 377 (Jaipur)(Trib)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Subsequent decision of Supreme Court-Delayed payment of employees contribution

towards ESI and EPF-Orders allowing the appeals are recalled. [S. 2(24)(x), 36(1)(va), 43B]

Held that subsequent decision of Supreme Court. Delayed payment of employees contribution towards ESI and EPF.Orders allowing the appeals are recalled. (AY. 2012-13, 2015-16 to 2019-20)

Dy. CIT v. N.R.Wires (P) Ltd (2023) 224 TTJ 450 (Raipur)(Trib)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Application is filed after five months from period of extension granted and six months after original order-Delay is not condoned.

The Tribunal dismissed the appeals of the Revenue as "withdrawn" due to

Held, that though the Supreme Court had extended the period of limitation till February 28, 2022 the Department could not explain the delay from September 14, 2019 till March 15, 2020 (date from which covid-19 restrictions were imposed) and from February 28, 2022 till the filing of miscellaneous applications on August 5, 2022. Despite the extension granted by the Supreme Court, the Department had filed the miscellaneous application after five months from the period of extension granted and also six months after the original order dated September 14, 2019 was passed. The delay in filing the miscellaneous applications is not condoned.(AY.1997-98 to 2001-02)

ITO v. Shivajirao R. Chavan (2023)107 ITR 208(Ahd) (Trib)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Non-consideration of decision of High Court or Supreme Court could said to be a mistake which could be rectified-Employees' contribution to superannuation fund was deposited after due date-Rectification of Revenue is allowed.[S. 36(1)(va), 43B]

On basis of decision of Supreme Court Checkmate Services (P.) Ltd. v. CIT (2023) 290 Taxman 19 / 448 ITR 518 (SC) Revenue had preferred instant application for rectification of order of Tribunal under section 254(2) of the Act. Tribunal held that since employees' contribution to superannuation fund was deposited after due date, following decision of Supreme Court in Checkmate Services (P.) Ltd. (supra), same was to be disallowed. (AY. 2006-07)

Jt. CIT (OSD) v. Reuters India (P.) Ltd. (2023) 202 ITD 247 (Mum) (Trib.)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Recall of order-Speaking order of Tribunal-Recall of observations-Beyond jurisdiction of Tribunal.

Held, that recalling the observations of a speaking order of the Tribunal was beyond the jurisdiction of the Bench. Therefore, the miscellaneous application of the Revenue was dismissed. (AY.2013-14)

ACIT v. Anthony F. R. Madassar (2023)103 ITR 175 (Amritsar)(Trib)

S. 254(2) : Appellate Tribunal-Rectification of mistake apparent from the record-Tribunal adjudicated appeal on merits-Failure to adjudicate legal ground-Mistake apparent from record-Miscellaneous application filed by Assessee allowed

Allowing the miscellaneous application, Tribunal held that failure to adjudicate the legal ground was a mistake apparent from record as it went to the root of the matter. Therefore, the order passed by the Tribunal was to be recalled and the miscellaneous application filed by the assessee allowed. (AY.2013-14)

Amar Singh Saharan v. ITO (2023)103 ITR 388 (Jodhpur)(Trib)

S. 254(2A) : Appellate Tribunal-Stay-Non-Resident having no assets in India-Directed to furnish a bank guarantee covering 20 Per Cent-Recovery of outstanding demand shall remain stayed for a period of 180 days from date of this order or till disposal of appeal, whichever ever is earlier. [S. 226]

Assessee, a non-resident having no assets in India. Tribunal held that to secure interest of revenue the assessee is directed to furnish a bank guarantee covering 20 Per Cent. of outstanding demand.Bank guarantee shall be furnished before Assessing Officer on or before 31-10-2023.Recovery of outstanding demand shall remain stayed for a period of 180 days from date the order or till disposal of appeal, whichever is earlier. (AY.2017-18)

AEP Investments (Mauritius) Ltd. v. Asst. CIT (IT) (2023)108 ITR 37 (Delhi)(Trib)

S. 254(2A) : Appellate Tribunal-Stay-Attachment of fixed deposit by ED as well as Income-tax Authorities-Till attachment would continue assessee would not be required to pay any further payment and stay was to be granted-In event attachment of bank accounts as vacated or revoked or disturbed or modified, assessee shall deposit 20 per cent of outstanding liability [S. 254(1), 281B]

Assessee is engaged in business of distribution of mobile phones and other electronic products. It purchased finished goods from local third party and overseas AEs for purpose of distribution. Assessing Officer passed assessment order making additions with respect to disallowance of royalty expenses paid to AEs and transfer pricing adjustments proposed by TPO.Subsequently, demand notice was issued under section 156 and order under section 281B was passed for provisionally attaching fixed deposits of assessee to protect interest of revenue. The assessee had sought stay of outstanding disputed demand which was inclusive of interest on it under sections 234B and 234C Tribunal held that attachment of fixed deposits was done by Enforcement Directorate as well as by Income Tax authorities and there was overlapping of attachments. Since interest of revenue for relevant assessment year was fully covered, till this attachment would continue assessee would not be required to pay any further payment and stay was to be granted. In event attachment of bank accounts as vacated or revoked or disturbed or modified, assessee shall deposit 20 per cent of outstanding liability. (AY. 2018-19)

Xiaomi Technology India (P.) Ltd. v. DCIT (2023) 202 ITD 816 /225 TTJ 348 (Bang) (Trib.)

S. 255 : Appellate Tribunal-Procedure-Functions-Transferring four appeals of assessee from Bangalore Bench to Mumbai Bench-Jurisdiction of concerned High Court would depend upon where seat of Assessing Officer was and, Assessing Officer who passed order-SLP of Revenue is dismissed. [Art. 136]

High Court allowed petition preferred by assessee and quashed and set aside order passed by President of Tribunal, transferring four appeals of assessee from Bangalore Bench to Mumbai Bench. Assessee submitted that in PCIT v. ABC Papers Ltd. [2022] 289 Taxman 150/447 ITR 1 (SC) it was held that seat of Tribunal and/or jurisdiction of concerned High Court would depend upon where seat of Assessing Officer was and, Assessing Officer who passed order. It was further submitted that in present case, Assessing Officer and Commissioner(Appeals) passed order in Bangalore, therefore, appeal against Assessment order/order passed by Commissioner(Appeals) would only lie before Tribunal, Bangalore. Order of High Court is affirmed. SLP of Revenue is dismissed.

PCIT v. MSPL Ltd. (2023) 454 ITR 280 /294 Taxman 74 /332 CTR 606 (SC)

Editorial: PCIT v. MSPL Ltd (2021) 436 ITR 199 / 127 taxmann.com 379 (Bom)(HC)

S. 255 : Appellate Tribunal-Procedure-Functions-Conflict of interest-CIT-DR is not empowered to file additional grounds of appeal or miscellaneous application including application raising preliminary objection without consent of Assessing Officer-Application of CIT-DR alleging 'conflict of interest' was frivolous and mischievous-Department is advised to provide proper training to him before assigning him to a judicial forum-Tribunal is not right place to disqualify a lawyer or law firm as a regulatory measure; such matters could be dealt with by appropriate bodies like Bar Council of India (BCI).[S. 253]

During appeal proceedings before Tribunal, CIT-DR raised a preliminary issue of conflict of interest, arguing that authorized representatives of assessee Dinesh Inbavadivu and Arjun Rai who represented Tribunal before Central Information Commission (CIC), also represented clients before various benches of Tribunal in cases against revenue and this dual representation created a conflict of interest. Tribunal held that the conflict of interest occurs when personal, financial, or previous involvements could influence judgment, but no such situations were present in instant case. Hence in view of lack of evidence supporting any financial or personal interest between parties involved, CIT-DR's claim that conflict of interest would jeopardize their interests is rejected Whether while Dinesh Inbavadivu represented Central Public Information Officer (CPIO), before CIC, there was no evidence of Arjun Rai ‘s representation of CPIO, and allegation was deemed incorrect. I. Dinesh was appointed by President of Tribunal in an administrative capacity to represent CPIO, and it had nothing to do with his judicial role as a Member of Tribunal. Tribunal also held that CIT-DR is not empowered to file additional grounds of appeal or miscellaneous application including application raising preliminary objection without consent of Assessing Officer, however, no such consent was taken from Assessing Officer in instant case. Tribunal is not right place to disqualify a lawyer or law firm as a regulatory measure; such matters could be dealt with by appropriate bodies like Bar Council of India (BCI).Therefore, application of CIT-DR alleging conflict of interest is frivolous and mischievous and hence, department is advised to provide proper training to him before assigning him to a judicial forum. (AY. 2014-15,2015-16)

Daechang Seat Co. Ltd. v. DCIT (IT) (2023) 202 ITD 395 / 224 TTJ 409 (Chennai) (Trib.)

S. 260A : Appeal-High Court-Procedure to be adopted by High Court-Court must formulate question and admit appeal-Hear parties and dispose of appeal-High Court admitting appeal without formulating substantial question of law and hearing appeal on merits and reserving judgment-Question of law thereafter framed and appeal allowed-Procedure not in consonance with law-Judgment was set aside and matter is remanded to High Court for reconsideration of appeal. [S. 260A(7), Civil Procedure Code, 1908, S. 100, O. XLII, R. 1]

Assessing Officer made addition under section 68 of the Act. Tribunal set aside the order of the Assessing Officer. High Court admitted appeal and held that mere establishing of their identity and fact that amounts had been transferred through cheque payments, did not by itself mean that transactions were genuine and accordingly restored addition made by Assessing Officer. On appeal to Supreme Court held that an appeal before High Court is maintainable only on a substantial question of law however the issuance of notice prior to admission without framing any substantial question(s) of law is not contemplated under section 260A of the Act. High Court has either to admit or not admit appeal. If the High Court admits appeal then substantial question(s) of law has to be framed and respondent put on notice on such substantial question(s) of law, however, if High Court is of view that no substantial question of law arises, then appeal has to be dismissed. On the facts the High

Court did not formulate any substantial question of law at time of admitting appeal, rather appeal was heard on merits and in absence of formulating substantial question of law appeal was reserved for judgment, procedure adopted by High Court was not in consonance with what was contemplated under section 260A of the Act. Accordingly judgment is set aside and matter is remanded to High Court for reconsideration of appeal. (AY. 2011-12)

Bikram Singh v. P CIT (2023) 458 ITR 684 /295 Taxman 399 /334 ITR 473 (SC)

Editorial : PCIT v. Bikram Singh (2017) 399 ITR 407 (Delhi)(HC), is set aside and matter remanded**.**

S. 260A : Appeal-High Court-Transfer pricing-Arm's length price-International transactions-Determination-Court can consider whether relevant guidelines under Act and Rules taken into consideration-Comparability of two companies-Selection of filters judiciously done and on basis of relevant material and evidence on record-Matter remanded to the High Court to take a fresh decision.[S. 92, 92A to 92CA, 92D, 92E and 92F, R.10B to 10E, Art. 136]

Court held that there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the arm's length price, that is final and cannot be the subject matter of scrutiny by the High Court in an appeal under section 260A of the Act. When the determination of the arm's length price is challenged before the High Court, it is always open for the High Court to consider and examine whether the arm's length price has been determined while taking into consideration the relevant guidelines under the Act and the Rules. The High Court can also examine the question of comparability of two companies or selection of filters and examine whether it has been done judiciously and on the basis of relevant material and evidence on record. The High Court can also examine whether or not the comparable transactions have been taken into consideration properly, i. e., to the extent non-comparable transactions are considered as comparable transactions or not. Thus, in each case, the High Court should examine whether the guidelines laid down in the Act and the Rules are followed while determining the arm's length price. There can be no absolute proposition that in the matter of transfer pricing, determination of the arm's length price by the Tribunal shall be final and cannot be subject matter of scrutiny and the High Court is precluded from examining the correctness of the determination of the arm's length price by the Tribunal in an appeal under section 260A of the Act on the ground that it cannot be said to raise a substantial question of law. Within the parameters of section 260A of the Act in an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case whether or not while determining the arm's length price, the guidelines laid down under the Act and the Rules are followed and whether or not the determination of the arm's length price and the findings recorded by the Tribunal while determining the arm's length price are perverse. The court set aside the judgments and orders passed by the High Court and remitted the matters back to the High Courts to decide and dispose of the appeals afresh in the light of the observations in the judgment and examine in each and every case whether or not the guidelines laid down under the Act and the Rules had been followed by the Tribunal while determining the arm's length price and to that extent whether or not the findings recorded by the Tribunal while determining the arm's length price were perverse. The court specifically observed that it had not entered into the merits of the cases nor expressed anything on the determination of the arm's length price either in favour of the assessees or in favour of the Revenue, and that it would be for the High Court to take a fresh decision.(AY. 2003-04)

Sap Labs India Pvt. Ltd. v.ITO (2023)454 ITR 121/ 293 Taxman 263/ 332 CTR 249 / 225 DTR 1 (SC)

Editorial : Decisions of Karnataka High Courts in Indigra Exporters P. Ltd v.Dy.CIT (2018) 407 ITR 396 (Karn)(HC). PCIT v. Kirloskar Toyata Textile Machnery P.Ltd (2019) 412 ITR 359 (Karn)(HC), PCIT v. E. Valuesrve SEZ (Gurgaon) P. Ltd (2019) 416 ITR 51 (De;hi)(HC) PCIT v. Mphass Ltd (2022) 446 ITR 361 (Karn)(HC), and PCIT v.SOftbrands India (P) Ltd (2018) 406 ITR 513 (Karn) impliedly overruled. Sap Labs India Pvt. Ltd. v.ITO (Karn)(HC)(ITA.No. 10 of 2011 dt 9-7-2018) (2010) 6 ITR 81 (Trib), Remanded.

S. 260A : Appeal-High Court-Transfer pricing-Arm's length price-International transactions-Determination-Court can consider whether relevant guidelines under Act and Rules taken into consideration-Comparability of two companies-Selection of filters judiciously done and on basis of relevant material and evidence on record-Matter remanded to the High Court to take a fresh decision.[S. 92, 92A to 92CA, 92D, 92E and 92F, R.10B to 10E, Art. 136]

High Court dismissed the Department's appeals holding they were not substantial questions of law within the scope of section 260A of the Income-tax Act, 1961. On SLP the Court held that since the decision in PCIT v. Softbrands India (P) Ltd (2018) 406 ITR 513 (Karn))(HC) was *consideration before the court in* Sap Labs India Pvt. Ltd. v. ITO (2023) 454 ITR 121 (SC) the judgment of the High Court in so far as it related to transfer pricing, was to be set aside and the matter remitted to the High Court to decide the appeal afresh in accordance with law and on its own merits and in the light of the observations made by the court.(AY. 2009-10)

PCIT v. Subex Ltd. (2023)454 ITR 519/ 293 Taxman 679 (SC)

Editorial: PCIT v. Subex Ltd(Karn)(HC) (ITA No.492 of 2016 dt 1-10-2021)

S. 260A : Appeal-High Court-Delay of 1110 days-Delay was due to change in their Standing Counsel and previous counsel's failure to inform them about appeal's status-Matter was to be restored to High Court-Cost of RS. 5000 was imposed. [Art. 136]

When the appeal was filed there was a delay of 1110 days in re-filing of appeals. Revenue explained that delay was due to change in their Standing Counsel and previous counsel's failure to inform them about appeal's status. High Court dismissed appeals by observing that explanation offered for condonation of delay sought for by appellant could not be accepted, as, for a long time appeals were lying in defect. Apex Court hedl that if substantial questions of law were of significance then, High Court, ought to have condoned delay in refiling appeals and considered cases on merits and therefore, impugned orders were to be set aside and matter was to be restored to High Court**.** With cost of Rs. 50,000 (Rupees fifty thousand only) to be paid by the appellant to the respondents in each of these appeals within a period of four weeks from today.

DIT (IT) v. Western Union Financial Services Inc. (2023) 459 ITR 58 /294 Taxman 704 / 333 CTR 450 (SC)

Editorial : DIT (IT) v. Western Union Financial Services Inc (2023) 459 ITR 56 / 153 taxmann.com 703 (Delhi)(HC)

S. 260A : Appeal-High Court-Delay of 707 days-Sufficient cause-Heavy workload-Lack of man power-Delay was condoned-Directed the High Court to decide on meritS. [S. 263, Art. 136]

Tribunal allowed an appeal filed by assessee against order of lower authorities by holding that exercise of section 263 jurisdiction was not warranted. There was delay in filing of appeal.High Court dismissed the appeal on the ground that sufficient cause was not shown. On appeal the delay was condoned and the High Court was directed to hear the appeal on merits.

CIT (C) v. Surya Vinayaka Industries Ltd. (2023) 456 ITR 773 / 294 Taxman 702 (SC)

Editorial : CIT v. Surya Vinayaka Industries Ltd. (2023) 153 taxmann.com 676 (Delhi)(HC)

S. 260A : Appeal-High Court-Finding of fact-High Court must frame the substantial question of law-Order setting aside the order of Tribunal was quashed and set aside-Order of Tribunal was affirmed. [Interest-tax Act, 1974, S. 2(5A), 2(5B), 2(7)]
Reversing the order of High Court the Court held that the High Court can interfere with findings of fact while deciding a substantial question of law when the findings are not supported by the material on record, so as to be treated as perverse. For this, however, the High Court must frame a separate substantial question of law and only then interfere with the findings of fact recorded by the Tribunal, while applying strict parameters.
Muthoot Leasing and Finance Ltd v. CIT (2023) 450 ITR 496 /292 Taxman 5 (SC)

S. 260A : Appeal-High Court-Delay-Delay is not explained satisfactorily-Appeal is dismissed.
The court dismissed the application for condonation of delay on the ground that there was no proper explanation given for the inordinate delay, nor where the original certified copy of the order of the Tribunal got misplaced or the steps taken by the Department to trace the original certified copy and that the Department was not diligent in taking effective steps to file the appeal under section 260A of the Income-tax Act, 1961.(AY.2009-10, 2010-11, 2011-12)
PCIT v. Britannia Industries Ltd. (2023)459 ITR 786 /156 taxmann.com 737 (Cal)(HC)

S. 260A : Appeal-High Court-Judgement of earlier year is up held by High Court-No question of law.[S. 254(1)]
Held that on appeal against the order of the Tribunal which allowed the assessee's appeal on the ground that the issues involved were squarely covered by the judgment in the case of another assessee against which order the court dismissed the appeal filed by the Department (AY.2017-18)
PCIT v. Jayantibhai Virjibhai Babariya (2023)459 ITR 447 /(2024) 158 taxmann.com 545 (Guj)(HC)

S. 260A : Appeal-High Court-Delay of 380 days-Delay in filling appeal is condoned-Tribunal is directed to decide on meritS. [S. 68, 254(1)]
High Court condoned the delay of 380 days in filling an appeal before the Tribunal.Matter remanded to the Tribunal to decide on merit. Referred Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy [2013] 12 SCC 649(AY.2010-11)
Rarefield Engineers Pvt. Ltd. v. ACIT (2023)459 ITR 766 /156 taxmann.com 643 (Mad)(HC)

S. 260A : Appeal-High Court-Delay of 498 days-Cyclostyled application-Not sufficient cause-Delay was not condoned. [Code of Civil Procedure, 1908, S. 151]
Dismissing the appeal the court held that the application appeared to be a cyclostyled pro forma in which the number of days of delay had been subsequently filled which amply reflected lack of seriousness with which issue of limitation had been taken up. Such negligent or deliberate dormancy on the part of Government officials could not be countenanced. There was no sufficient cause explaining the delay of 498 days in filing the appeal. Delay condonation application was dismissed.
PCIT v. National Fertilizers Ltd. (2023)458 ITR 20 /154 taxmann.com 426/ 334 CTR 305 (Delhi)(HC)
S. 260A : Appeal-High Court-Search and Seizure-Issue given up on appeal to Tribunal-Issue cannot be raised before High court. [S. 143(3), 153A153C]

The assessees were claiming that the Assessing Officer lacked the jurisdiction in terms of section 143(3) read with section 153C of the Act, that question has been concurrently answered on the facts by the Commissioner (Appeals) and the Tribunal in the first round between the parties. The Tribunal had answered this question for a second time in its judgment after considering the various transactions which came to light in the search conducted by the Revenue, which were earlier considered on the first round, after which that ground was specifically given up and not pressed for by the assessees. In these circumstances, that substantial question of law did not arise for determination as it was never the subject matter of remand and decision before the Commissioner (Appeals) or before the Tribunal. The objection could not be considered by the High Court. *(*AY.2007-08, 2009-10 to 2012-13)

Dattaprasad Kamat v.ACIT (2023)458 ITR 201 /153 taxmann.com 702 / 335 CTR 609 (Bom)(HC)

S. 260A : Appeal-High Court-Commissioner-Revision of orders prejudicial to revenue-Capital gains-Penny stock companies-Tribunal quashed the revision order and also on merits-Revenue has challenged only on the ground on merits and not against quashing the revision order-Dismissing the appeal the Court held that a piecemeal challenge of the order passed by the Tribunal on one grounds on which relief was granted to assesseee was not maintainable. [S. 10(38), 45, 68, 254(1), 263]

Dismissing the appeal of the Revenue the Court held that the Tribunal set aside the order passed by the Principal Commissioner under section 263 of the Act. Thereafter, the Tribunal has proceeded to examine the merits of the matter and granted relief. The Tribunal had granted relief to the assessee on two grounds the first being that the exercise of power under section 263 of the Act was not in accordance with law. The Revenue had not raised any question on the finding of the Tribunal which showed that the Revenue had reconciled with the reasoning given by the learned Tribunal. Therefore, a piecemeal challenge to the order passed by the Tribunal on one of the grounds on which relief was granted to the assessee was not maintainable. Referred, PCIT v. Swati Bajaj (2022) 446 ITR 56 (Cal)(HC), Sinhotia Metals and Minerals Pvt Ltd (2023) 455 ITR 736 (Cal)(HC) AY.2014-15)

PCIT v. Reeta Lakhmani (2023)457 ITR 603 /291 Taxman 358
(Cal)(HC)
PCIT v. Ritin Lakhmani (2023)457 ITR 603 /291 Taxman 358
(Cal)(HC)
PCIT v.Jaikihan Lakhmani (2023)457 ITR 603 /291 Taxman 358
(Cal)(HC)
PCIT v.Pravash Lakhmani (2023)457 ITR 603 /291 Taxman 358
(Cal)(HC)
PCIT v. Rachit Lakhmani (2023)457 ITR 603 /291 Taxman 358
(Cal)(HC)
PCIT v. Gopichand Lakhmani (2023)457 ITR 603 /291 Taxman 358 (Cal)(HC)
PCIT v. Ravish Lakhmani (2023)457 ITR 603 /291 Taxman 358
(Cal)(HC)

S. 260A : Appeal-High Court-Delay in filing appeal-Delay was condoned subject to payment of cost of RS. 50000-Cost was not paid-Order condoning the delay is recalled.

Held, that the delay in filing the application by the Revenue was condoned subject to payment of costs assessed at Rs. 50,000 by the Government to the assessee. It had been ordered that in default of payment of costs, the order condoning the delay would stand recalled. Court held thatin the absence of compliance with the direction issued by the court in

its order dated November 21, 2011 and the costs having not been paid to the assessee, the order dated November 21, 2011 was required to be recalled.(AY.1998-99)
CIT v. Manoj Murarka (2023)457 ITR 600/ 330 CTR 613/ 156 taxmann.com 190(Cal)(HC)

S. 260A : Appeal-High Court-Jurisdiction-Assessment order passed by the Calcutta-Madras High Court had no jurisdiction. [S. 127, 143(3) 147]
The assessee filed an appeal before the Kolkotta Tribunal, contending that the Assessing Officer had no jurisdiction to complete the assessment since the jurisdiction over the assessee was duly transferred to the Assistant Commissioner on March 15, 2013, even before the assessment order was passed. The assessee's appeal was allowed. Commissioner transferred the jurisdiction of the case from kolkotta to Chennai. The Revenue filed an appeal before the High Court at Madras. Dismissing the appeal the Court held that the Madras High Court had no jurisdiction and it was open to the Department to work out its remedy before the Calcutta High Court and get the issue redressed.(AY.2008-09)
PCIT v. Ojasvi Motor Finance Pvt. Ltd. (2023)456 ITR 655 (Mad)(HC)

S. 260A : Appeal-High Court-Revision of orders prejudicial to revenue-Order set aside by the Tribunal-Submissions not before the Tribunal-Liberty granted to the Department to approach tribunal for clarification or rectification of order. [S. 254(2), 263]
Dismissing the appeal of the Revenue the Court held that if according to the Department the contents of the letter were otherwise then it was for the Department to file application before the Tribunal for necessary rectification or clarification. The correctness of the order of the Tribunal could not be decided by the court in an appeal under section 260A by bringing certain submissions which were never made before the Tribunal. Therefore, the order of the Tribunal need not be interfered with.(AY.2012-13)
PCIT v. Sinhotia Metals and Minerals Pvt. Ltd. (2023)455 ITR 736 (Cal)(HC)

S. 260A : Appeal-High Court-Territorial Jurisdiction-Delay of 130 days was condoned with liberty given to withdraw appeals-Leave granted to file appeals before High Court with jurisdiction. [S. 254(1)]
The court condoned the delay of 130 days in refiling the appeals by the Department. On the submission of the Department that since the Assessing Officer who made the assessment was located in Gurugram and according to the decision of the Supreme Court in PCIT v. ABC Papers Ltd (2022) 447 ITR 1(SC) the appeals would not lie before the Delhi High Court, the court gave liberty to withdraw the appeals and granted leave to file the appeals before the court with territorial jurisdiction.
CIT (IT) v. Posco Engineering and Construction Co. (2023)454 ITR 201 (Delhi)(HC)

S. 260A : Appeal-High Court-Delay of 707 days-Sufficient cause-Heavy workload-Lack of man power-Delay was not condoned-[S. 263, Art. 226]
Tribunal allowed an appeal filed by assessee against order of lower authorities by holding that exercise of section 263 jurisdiction was not warranted. There was delay of 707 days in filing of appeal.High Court dismissed the appeal on the ground that sufficient cause was not shown.
CIT v. Surya Vinayaka Industries Ltd. (2023) 153 taxmann.com 676 (Delhi)(HC)
Editorial : Delay was condoned and the order of High Court is set aside to decide on merit, CIT (C) v. Surya Vinayaka Industries Ltd. (2023) 456 ITR 773 / 294 Taxman 702 (SC)

S. 260A : Appeal-High Court-Delay of 1110 days-Delay was due to change in their Standing Counsel and previous counsel's failure to inform them about appeal's status-Delay was not condoned-Appeal was dismissed.

High Court dismissed the application for condonation of the delay in filing the appeal, that the explanation of change of standing counsel for the Department and the failure by the earlier counsel to inform the Department about the appeal lying in defect was not tenable. It was not possible to accept that no one in the Department followed up on the filing of appeals and allowed a period of almost three years to elapse before the appeal could be refiled. The application for condonation of the delay of 1110 days in refiling the appeal is dismissed.

DIT (IT) v. Western Union Financial Services Inc (2023) 459 ITR 56 / 153 taxmann.com 703 (Delhi)(HC)

Editorial : Delay was condoned and the order of High Court is set aside to decide on merit, DIT (IT) v. Western Union Financial Services Inc. (2023) 459 ITR 58 /294 Taxman 704 / 333 CTR 450 (SC).

S. 260A : Appeal-High Court-Revision of orders prejudicial to revenue-Appeal-Appeal against the assessment order and revision order-Both orders to be heard together. [S. 10B(7), 80IA (8), 263]

The Commissioner invoked revisionary proceedings because the AO failed to apply his mind to the provisions of section 10B(7), read with sections 80-IA(8) and 80-IA(10). The Commissioner directed the AO to restrict the deduction under section 10B. The Assessee challenged the order passed under section 263 before the Tribunal and subsequently by the Revenue before the High Court. The High Court admitted the appeal filed by the Revenue. Pursuant to the Commissioner's directions, the AO reframed the order under section 143(3) r.w.s. 263.

The Court held that since the order under section 263 was appealed by the Revenue before the High Court and admitted by a co-ordinate Bench of the High Court, the order passed under section 143(3) of the Act that has travelled to the Court ought to be admitted and tagged along. (AY. 2006-07)

PCIT *v.* Spicer India Ltd (No. 2) (2023) 458 ITR 42/ 294 Taxman 740 (Bom)(HC)

S. 260A : Appeal-High Court-Writ-Statutory remedy-Alternative remedy-Writ petition was pending for 13 years-Affirming the order of a single judge division bench held that as a proposition of law, it cannot be countenanced that once a writ petition is entertained and admitted, same can't be dismissed on the ground of availability of alternative remedy at the time of hearing [Art. 226]

Both appellant and respondent had applied to an advertisement for the appointment of Anganwadi Karyakarta in respect of Janpad Panchayat, Bhilaigarh and after a selection process, the appellant was appointed for the same by an order dated 12-10-2017. Respondent preferred an appeal before Collector, and subsequently, Collector set aside the appointment of the appellant. Thereafter, the respondent was appointed for the said position on 25-6-2018. The appellant filed a writ petition challenging her removal from service by collector. Single Judge passed a stay order However, said writ petition was subsequently dismissed for failure to comply with certain directions which were peremptory in nature. Assessee filed a writ appeal on the ground that once the writ petition was admitted, Single Judge ought not to have relegated such admission by directing the petitioner to avail alternative remedy. Division Bench held that as a proposition of law it cannot be countenanced that once a writ petition is entertained and admitted, same cannot be dismissed on grounds of availability of alternative remedy at the time of the hearing. Further, since it was not a case where the writ appellate

court ought to have exercised discretion to entertain the writ petition, there was no infirmity with the view taken by the Single judge.
Mangali Mahinag v. Sushila Sahu (2023) 290 Taxman 563 (Chhattisgarh)(HC)

S. 260A : Appeal-High Court-International transactions-Arm's length price-Comparable-Question of fact [S. 92C]
Dismissing the appeal of the Revenue the Court held that findings of facts arrived at by the Tribunal are final and are binding on the court. The High Court cannot disturb findings of fact unless such findings are ex facie perverse and unsustainable and exhibit a total non-application of mind by the Tribunal to the relevant facts of the case and evidence before the Tribunal. (AY.2013-14)
PCIT v. Bechtel India Pvt. Ltd. (2023)451 ITR 208 / 330 CTR 400 (Delhi)(HC)
Editorial : Order in Bechtel India Pvt. Ltd. v. Add CIT (2021) 86 ITR 544 (Delhi)(Trib), affirmed.

S. 261 : Appeal-Supreme Court-Charge of income-tax-Capital or revenue-Carbon credits-Question not raised before High Court-Department estopped from raising issue before Supreme Court at stage of final hearing.[S. 4, 80-IA(4)(iv), 260A]
The Commissioner (Appeals) confirmed the decision of the Assessing Officer that an amount realised on account of carbon credits had no direct and immediate nexus with the income of the power division and hence did not qualify for deduction under section 80-IA(4)(iv) of the Act. The Tribunal held that carbon credit was a capital receipt. The question of carbon credit being a capital receipt or not was not raised before the High Court, although the Department appealed on other issues. On appeal, dismissing the appeal, that the Department was estopped from raising the issue before the Supreme Court at the stage of final hearing. That apArt. there was no decision of the High Court on this issue against which the Department could be said to be aggrieved and which could be assailed. The question was left open to be decided in appropriate proceedings.(AY.2001-02, 2006-07)
CIT v. Jindal Steel and Power Ltd (2023) 335 CTR 1017/. (2024)460 ITR 162/ 297 Taxman 253 (SC)
CIT v. Reliance Industries Ltd 9 2023) 335 CTR 1017/. (2024)460 ITR 162/ 297 Taxman 253 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Deemed dividend-Unsecured loan from its group companies-Delay of 470 days-SLP dismissed on ground of delay as well as on meritS. [S. 2(22)(e), Art.136]
High Court held that section 2(22)(e) would not be applicable where assessee availed unsecured loan from its group company which was paid back with interest in same year. SLP of Revenue was dismissed on the ground delay of 470 days in filing SLP and also on merits. (AY. 2012-13)
PCIT, Central v. Suprabha Industries Ltd. (2023) 295 Taxman 408 (SC)
Editorial : SLP dismissed, PCIT, Central v. Suprabha Industries Ltd. (2022) 286 Taxman 156 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-disallowance of Fringe Benefit Tax (FBT)-Provision in respect of slow moving and obsolete inventories-Issue not raised in the shpw cause notice-High Court affirmed the orddr of the Tribunal-SLP of Revenue is dismissed. [S. 40A(2), Art. 136]
High Court dismissed the appeal of the Revenue by holding that there was a finding by Tribunal, that no issue was raised by Commissioner in respect of particulars of payment made

to persons specified under section 40A(2)(b) and even show cause notice was silent about that. SLP of Revenue is on account of delay and also on merits. (AY. 2009-10)
PCIT v. Universal Music India (P.) Ltd. (2023) 295 Taxman 232 (SC)
Editorial : PCIT v. Universal Music India (P.) Ltd(2023) 155 taxmann.com 230 (Bom)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Bogus purchases-Order of High Court affirming the order of Tribunal is affirmed-SLP dismissed.[S. 69A,Art. 136]
The Assessing Officer made addition of 3 per cent on bogus purchases over and above GP rate of 4.63 per cent declared by assessee. Principal Commissioner revised the Order. On appeal the Tribunal held that the assessee had produced all necessary details of purchase, sales, audited books of account, quantity details and no discrepancy was found between purchase shown and sales declared. Revision order was quashed. High Court affirmed the Order of the Tribunal. SLP of Revenue is dismissed. (AY. 2010-11)
PCIT v. Pramod Kumar Tekriwal (2023) 295 Taxman 411 (SC)
Editorial : PCIT v.. Pramod Kumar Tekriwal (2023) 153 taxmann.com 761 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-
-Industrial undertakings-Road infrastructure development-High Court affirmed the order of the Tribunal-SLP of Revenue is dismissed. [S. 80IA Art. 136]
Assessing Officer allowed deduction under section 80IA of the Act. Commissioner revised the order on the ground that the assessee was mere a work contractor and Assessing Officer had not correctly applied law on issue of deduction. Tribunal set aside the order of the Commissioner.High Court affirmed the order. SLP of Revenue is dismissed. (AY. 2012-13)
PCIT (Central) v. MBL Infrastructure Ltd. (2023) 295 Taxman 586 /(2024) 461 ITR 150 (SC)
Editorial : PCIT (Central) v. MBL Infrastructure Ltd. (2023) 155 taxmann.com 656 /(2024) 461 ITR 148 (Cal)(HC)
S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limitation-Issues not covered in reassessment proceedings-Limitation to be reckoned from date of original assessment and not of reassessment. [S. 147, 148]
Held dismissing the appeal, the Court held that the Commissioner had exercised powers under section 263 of the Act with respect to issues which were not covered in the reassessment proceedings. Therefore, the issues before the Commissioner while exercising the powers under section 263 of the Act related back to the original assessment order and, therefore, the limitation would start from the original assessment order and not from the reassessment order. Followed, CIT v. Alagendran Finance Ltd (2007) 293 ITR 1 (SC)/ (2007) 7 SCC 215
CIT v. Industrial Development Bank of India Ltd. (2023)454 ITR 811/333 CTR 570 (SC)
Editorial : CIT v. Industrial Development Bank of India Ltd(Bom)(HC) (ITA (L) No. 2115 of 2007 dt. 7-5 2009), affirmed.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failure to claim larger claim of depreciation-SLP of the assessee is dismissed-Matter remanded to the Assessing Officer.[S. 32, 40A(2), 142(2A) Art. 136]
Against the Revision order the Tribunal upheld the order passed by the Commissioner but as regards the applicability of deduction of tax at source, provisions on expenditure claimed by the assessee and benchmarking of the transactions with the group concerns, the Tribunal set aside the order of the Commissioner and directed him to pass a fresh order in respect thereof

after providing reasonable opportunity of hearing to the assessee. The High Court dismissed the assessee's appeal holding that the failure by the Assessing Officer to consider the larger claim to depreciation and consideration only of a part of it, was an error that could be corrected under section 263, and that the Commissioner had the power to consider all the aspects which were the subject matter of the Assessing Officer's order, if in his opinion, they were erroneous, despite the assessee's appeal on that or some other aspect, but that the revision order, to the extent that it did not provide any pre-decisional opportunity to address the issues it dealt with, could not be sustained. Accordingly, it directed the Commissioner to consider the assessee's submissions before passing the revision order. SLP of the assessee is dismissed with the observation that the assessee would be entitled to raise all pleas and contentions before the Commissioner, including the contention that the preconditions for invoking jurisdiction under section 263 of the Act were not satisfied.(AY. 2010-11)

BSES Rajdhani Power Ltd. v. PCIT (2023)454 ITR 436/ 293 Taxman 605 (SC)

Editorial : Decision of Delhi High Court in BSES Rajdhani Power Ltd. v. PCIT(2017) 399 ITR 228 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Registration-Trust or institution-Revision denying benefit for AY. 2010-11 on basis of provision as amended in 1997 requiring to produce certificate of registration-Not valid-Provision prevailing in year when applied for registration is applicable. [S. 12A]

In revision under section 263 of the Act the Commissioner suo motu set aside the assessment order on the ground of failure to produce certificate of Registration. The Tribunal set aside the order passed by the Commissioner, but the High Court, taking into consideration the amendment in the year 1997, set aside the order passed by the Tribunal holding that as the assessee had failed to produce the certificate of registration the assessee was not entitled to the exemption under section 12A. The assessee's review application having been dismissed by the High Court, on appeals to the Supreme Court allowing the appeals, that taking into consideration that since 1987 from the date on which the assessee applied for registration under section 12A, the assessee continued to avail of the benefit of exemption under section 12A at least up to the AY. 2007-08 on the basis of its registration in the year 1987, the Assessing Officer was justified in granting the benefit of exemption under section 12A for the AY. 2010-11. For all these years after 1997 till the year 2007-08 it was never the case of the Department or even the Commissioner that in the earlier years there was any certificate of registration or the registration was not granted. Even from the material on record, it was apparent that the assessee was granted registration on September 22, 1987. Therefore it could not be said that there was no registration at all. The order passed by the Tribunal was to be restored.

By the court : What was required to be considered was the relevant provision prevailing in the year 1987, namely, the day on which the assessee applied for the registration. At the relevant time there was no requirement of issuance of any certificate of registration. (AY. 2010-11)

Maharishi Institute of Creative Intelligence v. CIT (E) (2023)454 ITR 533 / 293 Taxman 445 /332 CTR 380 (SC)

Editorial : Decision in CIT v. Maharishi Institute Of Creative Intelligence (All)(HC) (ITA No. 55 of 2016 dt. 12-1-2017 and Revie Application No 17685 of 2017 in ITA No. 55 of 2016 dt 7-3-2017) reversed.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Total income-Eligible profit-Export profit-Deduction under Section 80HHC to be computed on eligible profits only after reducing profits on which deduction availed of under Section 80IB of the Act-

Revision was affirmed-Special Leave to appeal of the assessee was dismissed. [S. 80HHC, 800IA(9), 80IB(13)]

The High Court affirmed the Tribunal's order holding that when the provisions of section 80IB(13) were read in conjunction with section 80IA(9) of the Act, the deduction under section 80HHC of the Act was to be computed on the eligible business profits only after reducing therefrom the profits on which deduction has already been availed of by the assessee under this section, i. e., 80IB, and if an assessee has claimed deduction of profits or gains under section 80IB, deduction to that extent is not to be allowed under section 80HHC, and that the Assessing Officer had been rightly directed to recompute the total income of the assessee keeping in view the provisions of section 80-IB(13) read with section 80-IA(9) of the Act. On a petition for special leave to appeal, order of the High Court was affirmed. (AY. 2001-02)

Broadways Overseas Ltd. v.CIT (2023)453 ITR 774/ 292 Taxman 33 (SC)

Editorial : Broadways Overseas Ltd v. CIT (P& H)(HC) (ITA No. 234 of 2009 dt. 22-11-2013) is affirmed.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Operating loss-Assessing Officer applying mind and accepting operating loss-Possible view-Revision is not justified [S. 28(i), 37(1)]

High Court held that the Assessing Officer had recorded that he examined the assessee's de-materialised account in order to verify the share trading activities claimed by the assessee and before passing the assessment order, he had also examined the sale, purchase and closing stocks. The Assessing Officer had applied his mind while accepting the claim of the assessee of operating loss of Rs. 8.79 crores, and in any event, the view taken on the facts by the Assessing Officer was a possible view. The order of the tribunal was affirmed. On SLP dismissing the petition the Court held that the issues resolved by the High Court were pure questions of fact and in the absence of any question of law being involved, no case to interfere was made out. (AY.2011-12)

PCIT v. Cartier Leaflin Pvt. Ltd. (2023)452 ITR 242 / 291 Taxman 446 (SC)

Editorial : Decision in PCIT v. Cartier Leaflin Pvt. Ltd (ITA No. 1010 of 2017 dt. 15-10-2019 (Bom)(HC), affirmed.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Cost of improvement-Paid to shareholders under Family Settlement-Discharge encumbrances-Cost of improvement-Relinquishment of rights-Assessing Officer accepting claim-Order erroneous and prejudicial to Revenue-Revision is justified-Order of High Court reversed. [S. 45, 48, 55(1)(b)]

The family settlement was arrived between the share holders of the Company who are family members. As per the Arbitration award the family settlement was recorded between parties. As per the family settlement the building of the company was sold. The assessee claimed the amount paid as part of settlement as cost of improvement while computing the capital gains. The Assessing Officer allowed the claim. Commissioner set aside the order of the Assessing Officer. On appeal the Tribunal held that the Commissioner wrongly invoked the revision Paville Projects Pvt. Ltd v. CIT (2014) 35 ITR 352(Mum)) (Trib). Order of the Tribunal was affirmed by High Court, CIT v. Paville Projects Pvt. Ltd [2017] 398 ITR 603 (Bom) (HC).On appeal by the Revenue allowing the appeal the Court held that the erroneous assessment order had resulted in loss of revenue in the form of tax. Under the circumstances and in the facts and circumstances of the case, the High Court had committed a serious error in setting aside the order passed by the Commissioner passed in exercise of powers under section 263 of the Act. The Court observed that if due to an erroneous order of the Income-

tax Officer, the Revenue is losing tax lawfully payable by person, it will certainly be prejudicial to the interest of the Revenue. The order passed by the Commissioner in exercise of powers under section 263 of the Act was restored.(AY. 2007-08)

CIT v. Paville Projects Pvt. Ltd. (2023)453 ITR 447/ 293 Taxman 38/ 332 CTR 28/ 224 DTR 185 (SC)

Editorial : CIT v. Paville Projects Pvt. Ltd(2017) 398 ITR 603 (Bom)(HC), reversed. Refer Paville Projects Pvt. Ltd v. CIT (2014) 35 ITR 352/ (2016) 71 taxmann.com 287 (Mum)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Interest income business or other sources-Decides the issue on merits and leaves no scope for enquiry by the Assessing Officer-Expenditure on earning interest income-Order of Tribunal and Revision is set aside-Directed the Assessing Officer to decide in accordance with law. [S. 28(i), 56, 57, 254 (1), 260A]

Assessing Officer assessed interest income of assessee under head business income. Principal Commissioner held that interest earned by assessee through lending deposited amounts to its partners could not be treated as business income but had rather to be assessed under head income from other sources and rendered a finding that assessee was not entitled to claim set off interest of expenses against interest income. He set aside assessment order and remanded matter to Assessing Officer for de novo consideration. Tribunal up held the order of Revision. On appeal the Court held that there was no reason to interfere with order of Commissioner under section 263 to extent he remanded matter to Assessing Officer for determining nature of income whether business income or income from other sources, however he-ought not to have rendered a finding that assessee was not entitled to claim set-off of expenses against said income. Court directed the Assessing Officer to determine issue afresh but untrammeled by finding rendered by Principal Commissioner. (AY. 2015-16)

Muthoot Credits & Investments v. Dy. CIT (2023) 334 CTR 456 / 156 taxmann.com 280 (Ker)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-No opportunity of hearing is given-Recording of contrary facts-Order is quashed-Revenue is directed to pay cost of RS. 10000. [Art. 226]

Allowing the petition against order under section. 263 the Court held that the order contained contradictory statements in paragraphs 4 and 5 regarding submission of assessee's reply while paragraph 4 stated no reply was submitted, paragraph 5 asserted submission of reply by assessee. There was an apparent violation of principles of natural justice, as no opportunity was given to assessee for defending or presenting its case, impugned order could not be sustained in eyes of law. Further since impugned order did not refer any finding as enumerated in Explanation-II of section 263 to suggest that assessment order was prejudicial to interest of revenue, it could not be sustained in eyes of law. Revenue is also directed to pay cost of Rs.10000. (AY. 2017-18) (SJ)

M. L. Chains v. PCIT (2023) 335 CTR 737 / 154 taxmann.com 508 /295 Taxman 418 (All)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Generation of reasonable surplus-Order of Tribunal quashing the revision order is affirmed. [S. 11, 12AA]

Dismissing the appeal of the Revenue the Court held that Generation of reasonable surplus cannot be the ground to hold that the Trust is not engaged in charitable activities especially when the registration of the Trust under section 12AA has not been cancelled.(AY. 2016-17)

CIT (E) v. Manna Trust (2023) 333 CTR 210 / 226 CTR 377 (Raj)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-limited scrutiny-Optionally convertible cumulative preference shares at premium-Circulars would not be applicable vis-a-vis power under section 263-Discretion exercised by Commissioner under section 263 could not be restricted vis-a-vis limited scrutiny under CASS-Tribunal's order needed to be re-examined as Tribunal either had substituted or expanded reasoning of Commissioner, thus, matter was to be remitted to Tribunal for reconsideration afresh. [S. 56(2)(viib), 68, 260A, Rule 11UA]

Assessee's case was selected for limited scrutiny. Assessment was completed under section 143(3). Principal Commissioner invoked revisionary proceedings on ground that assessee issued optionally convertible cumulative preference shares at a premium to director of its company and said premium was to be brought to tax under section 56(2)(viib) or section 68 of the Act and the assessment was set aside. On the assessee contended that assessment order could not be said to erroneous as return was selected for limited scrutiny and Assessing Officer was right by confining to limited aspects as per CBDT Circulars Nos. 7/2014, dated 26-9-2014, 20/2015, dated 29-12-2012 and 5/2016, dated 14-7-2016. Tribunal upheld revisionary order on ground that even in case of limited scrutiny assessment, Assessing Officer was duty-bound to make prima facie inquiry as to whether there was any other items which required examination. On appeal the Court held that Circulars would not be applicable vis-a-vis power under section 263.Commissioner had supervisory jurisdiction to find out omission in assessment order and since issue was not examined by Assessing Officer, discretion exercised by Commissioner under section 263 could not be restricted vis-a-vis limited scrutiny under CASS, however, Tribunal's order needed to be re-examined as Tribunal either had substituted or expanded reasoning of Commissioner, thus, matter was to be remitted to Tribunal for reconsideration afresh. (AY. 2014-15)

Sahyadri Agencies Ltd. v.P CIT (2023) 332 CTR 748/ 225 DTR 403 / 149 taxmann.com 202 (Ker)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-

Cash credits-Share capital and share premium-Record-shall include and shall be deemed always to have been included all records relating to any proceedings under this Act available at the time of examination by the Ld. Pr. CIT or Commissioner-Order of Tribunal quashing the revision order is affirmed by High Court.[[S. 68, 153A, 260A]

The AO completed the assessment u/s. 143(3) for A.Y. 2009-10 on 28.03.2011. Search action was carried out at the premises of the assessee on 18.02.2013. The CIT exercised his jurisdiction u/s. 263 of the Act vide order dated 28.03.2013 as the AO had passed order without causing enquiries related to share capital and premium received thereon. The assessee challenged order passed u/s. 263 before the Tribunal. Meanwhile, the AO completed assessment u/s. 143(3) r.w.s. 153A on 23.03.2015 after causing necessary enquiries u/s. 133(6) of the Act in respect of share capital and premium received by the assessee. The Tribunal set aside the revisional order on 1.10.2019. In the miscellaneous application filed by the assessee, the Tribunal rejected the contention of the assessee that in light of the order passed u/s. 143(3) r.w.s. 153A the assumption of jurisdiction by the CIT was unsustainable. The Tribunal directed the CIT to consider the said contention raised by the assessee while passing order giving effect to the Tribunal. The CIT passed order dated 30.03.2021 ignoring the effect of the order passed u/s. 153A of the Act. Hence, the assessee filed further appeal before the Tribunal. The Tribunal held that where any proceeding is initiated in the course of assessment proceedings, having a relevant and material bearing on the assessment to be made and the result of such proceedings was not available with the Income-tax Officer before the

completion of the assessment but the result came subsequently, the revising authority (PCIT) is entitled to look into the search material as it forms part of the assessment records of the particular assessment year. The Tribunal relying on the judgment of the High Court in the case of CIT v S. M. Oil Extraction (P) Ltd. [190 ITR 404 (Cal)] held that the CIT has to examine all the records pertaining to the assessment year at the time of examination by him, which includes in this case the post-search assessment proceedings dated 23-3-2015 and thereafter only if he finds that the order passed by the AO on any issue is erroneous in so far as it is prejudicial to the interest of the revenue, then only he may interfere by enhancing/modifying/cancelling the assessment order. The appeal filed by the Revenue against the order of the Tribunal was dismissed and held that the order of the Tribunal did not need any interference. *(*AY.2009-10)

PCIT v. Techno Tracom (P.) Ltd (2023) 293 Taxman 392/ (2024) 461 ITR 47(Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Reasonable opportunity was not given-Revision order is quashed.

Dismissing the appeal of the Revenue the Court held that the notice contemplating initiation of proceeding for revision was issued on March 26, 2021 and the order in revision was passed on March 31, 2021 rejecting request of the assessee for grant of 15 days' time. Therefore, the Tribunal was correct in holding that the Commissioner passed the order without giving any opportunity to the assessee. A mere statement in the appeal filed by the Department that "no documentary evidence is submitted by the assessee in support of its claim" could not be countenanced in view of the categorical finding of fact by the Assessing Officer as also the Tribunal that the assessee did furnish statements, documents and details as sought for in compliance with the notice issued for assessment under section 143. The revisional authority had mechanically sought to apply the decision of the Tribunal in Grama Vidiyal Trust without application of mind. The order of revision was not valid. The Tribunal was justified in setting aside the order.(AY.2016-17)

CIT (E) v.Dhaneswar Rath Institute of Engineering and Medical Sciences (2023)458 ITR 506/ 331CTR 739/ 223 DTR 113 /147 taxmann.com 469 (Orissa)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Joint Development Agreement-Stock in trade-No transfer-Registering authority has not treated as conveyance-Order of Tribunal quashing the revision is affirmed. [S. 43CA. 45]

Dismissing the appeal of the Revenue the Court held that from the clauses in the joint development agreement, it was crystal clear that the assessee continued to be the owner of the property throughout the development of the property and there was no transfer of ownership to the developer. This aspect was rightly noted by the Tribunal. Thus reading of the entire agreement would show that there was no transfer or sale of asset under the joint development agreement rather the agreement was to develop the land making it saleable and in view of the construction of the same, the developer would take a part of the stock-in-trade. The Tribunal had also taken note of how the registering authorities had treated the joint development agreement. The registering authorities had not treated the agreement as a deed of conveyance. The Tribunal took note of the factual position and applied the correct legal principle and granted relief to the assessee.(AY.2014-15)

PCIT v. Emporis Properties Pvt. Ltd. (2023)458 ITR 68 /151 taxmann.com 64 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-

Order of assessment was neither erroneous nor prejudicial to Revenue-Revision is not valid. [S. 143(3)]

Held, that the Tribunal after considering the matter on record found that on all the issues the conclusions arrived at by the Assessing Officer were neither erroneous nor prejudicial to the interests of the Revenue. The Tribunal was right in setting aside the order of revision.(AY.2008-09)
CIT (LTU). v Canara Bank (2023)457 ITR 556 (Karn)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash in excess of RS. 20000-Proper inquiry was conducted-Revision is held to be not valid.[S. 40(a)(ia), 40A(3), R.6DD]
Dismissing the appeal of the Revenue the Tribunal held that the Assessing Officer has conducted proper inquiry before assessment hence the order of the Tribunal quashing the revision order is affirmed. (AY. 2013-14)
PCIT v. Shhukla Dairy Pvt Ltd (2023) 457 ITR 145 (Guj)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Two views-Interest receivable is written off-Explanation 2 is prospective in application-Prior to 1-6-2015 inadequacy of enquiry cannot be the ground for passing the revision order.
Dismissing the appeal the Court held that, the Tribunal had clearly recorded that this was not a case where the Assessing Officer had not made any inquiry and blindly accepted the return filed by the assessee. The Assessing Officer had called for particulars at the time of the scrutiny assessment proceedings, received the reply and following the principles of natural justice, passed an assessment order expressing his opinion in the matter. The Commissioner could not substitute his opinion on the view taken by the Assessing Officer to say that the assessment order was erroneous and prejudicial to the interests of the Revenue. Where two views are possible and the ITO has taken one view with which the Commissioner does not agree, it cannot be treated as an order erroneous and prejudicial to the interests of the Revenue unless the view taken by the Assessing Officer is unsustainable in law. Order of Tribunal is affirmed. (AY.2006-07)
PCIT v. Shivshahi Punarvasan Prakalp Ltd. (2023)456 ITR 336 /155 taxmann.com 408 (Bom)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Development of residential complex-Land converted into stock in trade-Possible view-Order of Tribunal is affirmed. [S. 2(47)(v), 45(2), 260A]
Dismissing the appeal of the Revenue the Court held that, the Tribunal came to a finding of fact that the Assessing Officer had taken a possible view in the matter and there was nothing to indicate that the Assessing Officer had applied the provisions on an incorrect way. Since the view taken by the Assessing Officer was a possible view, the Principal Commissioner had assumed jurisdiction under section 263 without properly complying with the mandate of section 263. No substantial questions of law. (AY. 2011-12)
PCIT v. American Spring & Pressing Works (P.) Ltd. (2023) 295 Taxman 438 (Bom.)(HC)
Editorial : American Spring & Pressing Works (P.) Ltd v. PCIT (2017) 166 ITD 92 (Mum)(Trib), affirmed.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-disallowance of Fringe Benefit Tax (FBT)-Provision in respect of slow moving and obsolete inventories-Issue not raised in the shpw cause notice-Revision is held to be not valid.[S. 40A(2)(b), 260A]
Commissioner issued notice under section 263 on two issues (a) disallowance of Fringe Benefit Tax (FBT) included in miscellaneous expenses and not allowed by Assessing Officer

and (b) provision in respect of slow moving and obsolete inventories-Commissioner also directed Assessing Officer to make enquiry in respect of third issue being particulars of payments made to persons specified under section 40A(2)(b) allowed in assessment order. On appeal the Tribunal held that since issue of payments made to persons specified under section 40A(2)(b), was never raised by Commissioner in notice served upon assessee, said ground could not form basis for revision of assessment order under section 263. On appeal High Court affirmed the Order of the Tribunal. CIT v. Amitabh Bachchan (2016) 240 Taxman 221/ 384 ITR 200 (SC distinguished on facts. (AY. 2009-10)

PCIT v. Universal Music India (P.) Ltd(2023) 155 taxmann.com 230 (Bom)(HC)

Editorial : SLP of Revenue is dismissed, on account of delay and also on merits, PCIT v. Universal Music India (P.) Ltd. (2023) 295 Taxman 232 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Purchase of land-Stamp valuation is more than the consideration paid-No presumption could be drawn on the ground that purchaser of property must have paid more than what was actually recorded in account books-No substantial question of law. [S. 69B, 260A]

Commissioner passed the Revision order on the ground that the valuation as per stamp valuation is more than the actual consideration paid by the assessee. Tribunal set aside the order of the Commissioner on the ground that no presumption could be drawn on the ground that purchaser of property must have paid more than what was actually recorded in account books. On appeal dismissing the appeal of the Revenue the Court held that it is not permissible to draw an inference from the circumstances surrounding a transaction of sale of property that the purchaser of the property must have paid more than what was actually recorded in his books of account. No presumption can be drawn on this aspect. Relied on Gayatri Enterprise v. ITO [2020]271 Taxman 276/420 ITR 15 (Guj)(HC) (AY. 2012-13)

PCIT v. Yogeshkumar Shantilal Mehta (2023) 295 Taxman 623 (Guj.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Bogus purchases-Order of Tribunal quashing the revision order is affirmed.[S. 69A,260A]

The Assessing Officer made addition of 3 per cent on bogus purchases over and above GP rate of 4.63 per cent declared by assessee. Principal Commissioner revised the Order. On appeal the Tribunal held that the assessee had produced all necessary details of purchase, sales, audited books of account, quantity details and no discrepancy was found between purchase shown and sales declared. Revision order was quashed. High Court affirmed the Order of the Tribunal. (AY. 2010-11)

PCIT v.. Pramod Kumar Tekriwal (2023) 153 taxmann.com 761 (Cal)(HC)

Editorial : SLP of Revenue is dismissed, PCIT v. Pramod Kumar Tekriwal (2023) 295 Taxman 411 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Special category states-Form no 10CCB was filed in response to show cause notice-First year of substantial expansion remained unaltered-Commissioner has no jurisdiction to revisit same issue in subsequent assessment years-Order of the Tribunal affirming the revision order is set aside. [S. 80IC]

Assessee filed its return of income claiming deduction under section 80IC for its Unit IV, which was 7th year of such a claim and 2nd year after substantial expansion on 13-11-2012. Assessing Officer granted 100 per cent deduction under section 80IC of the Act. PCIT held that the assessee had not filed Form 10CCB in support of its claim and was thus only entitled to 30 per cent deduction and Assessing Officer had allowed excess depreciation, hence, assessment order was erroneous and prejudicial to interest of revenue. Tribunal dismissed the appeal. On appeal the Court held that year under consideration was second year of substantial

expansion and for first year of substantial expansion namely for assessment year 2012-13, claim made by assessee for deduction at 100 per cent was accepted by Assessing Officer after conducting a detailed enquiry and examining all documents which were produced by assessee. The Court held that as long as benefit granted under section 80-IC for first year of substantial expansion remained unaltered, Assessing Officer would have no jurisdiction to revisit same issue in subsequent assessment years. Tribunal also held that the assessee had filed copy of Form 10CCB before Principal Commissioner in response to show cause notice issued under section 263 which Principal Commissioner had not considered. Order of Tribunal is set aside. (AY. 2013-14)

C and E Ltd. v. PCIT (2023) 295 Taxman 20/(2024) 460 ITR 13 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-
-Industrial undertakings-Road infrastructure development-Order of Tribunal is affirmed. [S. 80IA, 260A]

Assessing Officer allowed deduction under section 80IA of the Act. Commissioner revised the order on the ground that the assessee was mere a work contractor and Assessing Officer had not correctly applied law on issue of deduction. Tribunal set aside the order of the Commissioner.High Court affirmed the order. (AY. 2012-13)

PCIT (Central) v. MBL Infrastructure Ltd. (2023) 155 taxmann.com 656 /(2024) 461 ITR 148 (Cal)(HC)

Editorial : SLP of Revenue is dismissed, PCIT (Central) v. MBL Infrastructure Ltd. (2023) 295 Taxman 586 / (2024) 461 ITR 150 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Anonymous donations-Corpus fund. [S. 2(24((iia), 11, 12, 13(7)]

Assessee-trust received donation towards its corpus fund-It claimed deduction under sections 11 and 12 of the Act. Assessing Officer allowed said deduction. Commissioner revised the order on the ground that the Assessing Officer had not verified critical aspects of donations received by assessee, including relationship between donors and trust, creditworthiness of donors, date and mode of payment, and genuineness of donations and directed to apply the provision of section 115BBC to treat donations as anonymous. Tribunal confirmed the order of the Commissioner. On appeal the Court held that from records that during assessment proceedings assessee had furnished detailed list of donors along with their complete address and amounts of donations given by them and Assessing Officer complied all details filed by assessee and thereafter, did not make any additions or did not treat corpus donations as anonymous donation and passed assessment order under section 143(3) by accepting returned income.Therefore since the assessee made disclosure of identity of donors, their addresses and amount of donations they had made to assessee, same would be sufficient for compliance of requirement under section 115BBC(3), in claiming exemption of donations from being chargeable to income tax. Order of the Tribunal is quashed and set aside. (AY. 2016-17)

Peoples Forum v. CIT (2023) 295 Taxman 433 (Orissa)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Document Identification Number (DIN)-Intimation letter-Rectification of mistake-Failure to mention Document Identification Number in order is violation of mandatory requirement-Dismissal of Department's application for rectification of order is justified. [S. 254(2) 260A]

Tribunal held that the order passed under section 263 did not incorporate Document Identification Number (DIN) and was thus in violation of Circular No. 19 of 2019, dated 14-8-2019 (2019 416 ITR (St.) 140) which stated that any communication which was not in

conformity with said Circular shall be treated as invalid and shall be deemed to have never been issued. The miscellaneous application of the Revenue was also dismissed. On appeal the Revenue contended that intimation letter should be treated as part and parcel of substantive order, however, in intimation letter there was nothing mentioned as to why in substantive order DIN was not mentioned as mandated in Circular. Court also held that in Miscellaneous application proceedings, the Revenue could not answer a specific query as to how a DIN intimation letter along with manual order fulfilled categorical requirement mandated by CBDT Circular. The appeal of the revenue is dismissed Circular No. 19/2019, dated 14-8-2019, (2019 416 ITR (St.) 140) (AY. 2016-17)

PCIT (E) v. Tata Medical Centre Trust (2023) 459 ITR 155 / 295 Taxman 501 / 334 CTR 942 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Principle of natural justice-No opportunity was given-Contrary finding-Order quashed-Cost of Rs 10000, was imposed which shall be paid to High Court Legal Service Committee.[S. 143(3), Art. 226]

Commissioner cancelled the assessment order by passed by holding the same to be erroneous insofar as it was prejudicial to interest of revenue and directed Assessing Officer to pass a fresh order. On writ the assessee contended that Commissioner passed impugned order without affording assessee an opportunity to be heard. Allowing the petition the Court held that the order contained contradictory statements in paragraphs 4 and 5 regarding submission of assessee's reply while paragraph 4 stated no reply was submitted, paragraph 5 asserted submission of reply by assessee and there was an apparent violation of principles of natural justice, as no opportunity was given to assessee for defending or presenting its case. Order was quashed. The Court also directed the Revenue to pay cost of Rs 10000, to High Court Legal Service Committee. (AY. 2017-18)

M.L. Chains v. PCIT (2023) 295 Taxman 418/ (2024) 461 ITR 457 (All.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Revision order is set aside by the Tribunal-Order giving effect to Revision is void ab initio. [S. 143(3), 254(1), 260A]

Tribunal had quashed revisional order passed by Principal Commissioner. Assessing Officer had passed a fresh order of assessment under section 143 read with section 263. Tribunal set aside the order. On appeal the Court held that once section 263 proceedings were set aside by Tribunal, consequent assessment order giving effect to revision order is void ab initio.

PCIT v. Elecon EPC Projects Ltd. (2023) 295 Taxman 194 (Guj.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Matter in issue before Commissioner which was sought to be brought to rest by opting for benefit of Scheme was in context of same-Revision proceeding is quashed. [S. 143(3),147, Direct Tax Vivad Se Vishwas Act, 2020, S. 4]

The appeal of the assessee was pending against the reassessment proceedings. The assessee opted for Direct Tax Vivad se Vishwas Scheme (DTVSV Act) to settle dispute related to assessment. The Designated authority under DTVSV Act determined amount payable and issued a certificate in Form No. 5. Principal Commissioner initiated proceedings under section 263 of the Act. On writ allowing the petition the Court held that on perusal of appeal memo placed on record, it was evident that matter in issue before Commissioner which was sought to be brought to rest by opting for benefit of Scheme was in context of same issue which revenue sought to invoke by issuing notice under section 263. Accordingly the revision proceeding is quashed. (AY. 2012-13)

Amitkumar Chandulal Rajani v. PCIT (2023) 295 Taxman 163 /(2024) 460 ITR 241 (Guj.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Judicial custody-Service of notice-Notice not served through Superintendent of Jail-Notice sent by speed post to last known address-Not valid service of notice-Revision order set aside-Appeal of Revenue is dismissed. [S. 132,143(3), 153C, 292BB]

Dismissing the appeal of the Revenue the Court held that despite being informed that the assessee was in judicial custody the Principal Commissioner did not make efforts to serve the notice upon him through the Superintendent of the jail. Any officer of the Government including a Principal Commissioner should be conscious that once information was received that a person to whom notice had to be served was in judicial custody, an appropriate order should have been passed requiring service of notice on such person through the Superintendent of the jail. This was the bare minimum requirement in law. With the Principal Commissioner having failed to do so, the Department could not contend that mere appearance of a staff of the assessee in judicial custody should be taken to be the appearance by the assessee himself. Notice under section 263 by speed post to the last known address of the assessee did not amount to valid service. No question of law arose.(AY.2009-10 to 2015-16)

PCIT v. Narayan Kumar Khaitan (2023)454 ITR 766 (Orissa)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Charitable purpose-Cancellation of registration-Section 12AA(3) is applicable only from the AY. 2011-12-**Tribunal following its own decision against which appeal of the Revenue was dismissed. [S. 12A, 12AA, 143(3) 147, 260A]**

Dismissing the appeal of the Revenue the Court held Tribunal was right in holding that the action under section 263 of the Act could not be taken subsequent to cancellation of registration for the year when the cancellation order was not available to the Assessing Officer while passing the order under section 147 or section 143(3) and that the cancellation of registration could not be made with effect from April 1, 2009 though the assessee was granted registration under section 12AA and not under section 12A. The Tribunal had followed its own decision referring to Circular No. 1 of 2011, dated April 6, 2011 ([2011] 333 ITR (St.) 7) issued by the Central Board of Direct Taxes and holding that section 12AA(3) was applicable only from the AY. 2011-12 and the appeal against such order was dismissed by the High Court (Mukesh Bhanusali Trust v. CIT(Cal)(HC) (ITA No. 333 of 2017 dt 11-3-2019 (AY 2010-11)

CIT (E) v. Sarlaben Bhansali Charities Trust (2023)454 ITR 44 (Cal)(HC)

Editorial : SLP of Revenue is dismissed, CIT (E) v. Sarlaben Bhansali Charities Trust (2023)454 ITR 46 / 293 Taxman 599 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue Revision-Failure to consider report of Directorate of Vigilance and Anti-Corruption-Order is erroneous-Order of the Tribunal is set aside-Interlocutory order passed by Commissioner (Appeals) is not binding on Tribunal. [S. 254(1) 260A]

Allowing the appeal of the Revenue the Court held that the Appellate Tribunal was at fault while passing the order. It ought to have seen the mistakes committed by the Assessing Officer which resulted in an erroneous order being passed in favour of the assessee which was prejudicial to the interests of the Revenue. The power was rightly exercised by the Commissioner while invoking section 263 of the Act. Therefore, the Tribunal erred in

allowing the assessee's appeal. Court also held that Interlocutory order passed by Commissioner (Appeals) is not binding on Tribunal. (AY. 1994-95)
CIT v. N. Sasikala (2023)454 ITR 387 (Mad)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-
Capital gains-Full value of consideration-Stamp valuation-Land was sold by secured creditors-Order of Tribunal quashing the revision order is affirmed. [S. 45, 50C, 143(1), The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act)]
The return of income is accepted under section 143(1) of the Act. Commissioner revised the order on the ground that a land was sold by assessee to an entity below value adopted by concerned authority for levy of stamp duty, and therefore, there was under-assessment of income to extent of differential amount, and accordingly, assessment made was contrary to provisions of section 50C of the Act. On appeal the Tribunal held that it was not assessee who effectuated sale of subject land and land was actually sold by secured lenders to recover dues owed to them by assessee. Principal Commissioner had failed to notice these underlying facts while invoking his powers under section 263 of the Act. Accordingly the revision order was quashed. On appeal by the Revenue the court held that the twin conditions for invoking powers under section 263 i.e. not only order should be erroneous, but it should also be prejudicial to interest of revenue were not met. Accordingly the order of the Tribunal is affirmed. (AY. 2014-15)
PCIT v. H.T.L Ltd. (2023) 294 Taxman 38 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to Revenue-Tax on distributed income to shareholders-Revision order barred by limitation-Provisions not applicable for the year under consideration. [S. 115QA(1), 154, The Companies Act, S 77, 402]
The AO passed a rectification order stating that section 115QA(1) was not applicable before 1-6-2016. Subsequently, the Principal Commissioner of Income Tax (PCIT) passed an order under section 263 on 10-6-2020, treating the rectification order as erroneous and prejudicial to the interest of the Revenue. The Tribunal, on appeal, held that the Commissioner could exercise jurisdiction only until 31-03-2019. Considering that the PCIT exercised jurisdiction on 10-06-2020 against an order dated 28-12-2017, the revision order was time-barred. Moreover, the Tribunal noted that section 115QA was not applicable before 1-6-2016, concluding that the PCIT was not justified in invoking section 263. The High Court upheld the Tribunal's findings on the issue of limitation and held that "buy back" means the purchase of a company's own shares under section 77 of the Companies Act. As the buy-back was pursuant to an order of the Company Law Board under section 402 of the Companies Act, it was not included in section 115QA. Therefore, the PCIT was not justified in invoking the provisions of section 263.(AY. 2015-16)
PCIT *v.* C. M. Rajgarhia (P.) Ltd. (2023) 294 Taxman 288 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Interest on refunds-Order passeed giving effect to the order of the CIT(A)-Order of Tribunal quashing the revision order is affirmed. [S. 244A]

Dismissing the appeal of the Revenue the Court held that while giving effect to CIT(A)'s order, it resulted in refund of certain sum and subsequently, on verification of records, Commmissioner noticed that AO had failed to conduct proper enquiries and examine issues in an appropriate manner which gave rise to an erroneous enhanced refund as the Commissioner felt that delay in claiming enhanced refund was attributable to assesse and

accordingly interest under section 244A of the Act was not allowable on said refund. The High Court held that since there was nothing in findings of Commissioner as to how the assessee delayed proceedings that resulted in refund or what were reasons that could be attributable to assessee and it was only in giving effect to CIT(A)'s order by AO which resulted in refund therefore it could not be stated that proceedings resulting in refund were delayed for reasons attributable to assessee wholly or in pArt.. Accordingly the order of Tribunal is affirmed. (AY 2007-08).

PCIT v. Bank of Baroda (2023) 294 Taxman 455/333 CTR 835 (Bom)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Business expenditure-Specific query was raised in the original assessment proceedings-Mere failure to issue notice under section 133(6) did not warrant exercise of jurisdiction under section 263 of the Act-Order of Tribunal is affirmed.[S. 37(1), 143(3)]

Dismissing the appeal of the Revenue the court held that the Assessing Officer had raised specific query with regard to job work charges and assessee had also filed party-wise details concerning relevant bills and vouchers including payment made through account payee cheques, withholding of tax and confirmation from concerned parties. Mere failure to issue notice under section 133(6) did not warrant exercise of jurisdiction under section 263 of the Act. Order of Tribunal quashing the revision order is affirmed. (AY. 2015-16)

PCIT v. R.K. Jain Infra Projects (P.) Ltd. (2023) 293 Taxman 465 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Provision for doubtful debts-Air-conditioning charges-Employees contributions(EPF/ ESI-Assessing Officer followed the order of jurisdictional High Court-Order in Checkmate Services (P) Ltd (2023) 290 Taxman 19/(2022) 448 ITR 518 (SC) is considered-Order of Tribunal quashing the revision order is affirmed. [S. 36(1)(va), 37(1)]

Dismissing the appeal of the Revenue the Court held that during regular course of business, assessee had shown sales in preceding year of which some sales turned bad and same had been written off in books of account as bad debts, assessee was entitled to deduction of such bad debts and the Assessing Officer had made a detailed enquiry and assessee had submitted all relevant details. As regards Air-conditioning charges since the assessee had filed complete details along with tax deducted on charges paid and bills were also placed which found to be acceptable by authorities, assessee was entitled to deduction of such air-conditioner charges more so when Assessing Officer had made a detailed enquiry and assessee had submitted all relevant details. As regards Employees contributions(EPF/ ESI, the Assessing Officer has followed the decision of jurisdictional High Court, CIT v. Vijay Shree Ltd (2014) 224 Taxman 12 (Mag.) (Cal)(HC), which held field in relevant assessment year relating to PF contribution received from employees but not deposited to concerned account in due date and completed assessment on said basis, assessment could not be held to be prejudicial to interest of revenue. Order in Checkmate Services (P) Ltd (2023) 290 Taxman 19/(2022) 448 ITR 518 (SC) considered. (AY. 2017-18)

PCIT v. SPPL Property Management (P.) Ltd. (2023) 293 Taxman 458 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash credits-Share capital-Unsecured loans-Record-Principal Commissioner had to examine all records pertaining to assessment year at time of examination by him, which included, post-search assessment proceedings and thereafter only if he found that order passed by Assessing Officer on any issue was erroneous insofar as it was prejudicial to interest of revenue-Order of Tribunal quashing the revision order is affirmed.[S. 68, 153A]

When the matter was pending, the Assessing Officer completed assessment pursuant to search and seizure operation under section 153A of the Act. Commissioner passed the revision order however the Commissioner did not consider effect of order passed under section 153A by stating that it was irrelevant and Commissioner proceeded to pass order under section 263 of the Act. Tribunal held that Principal Commissioner while exercising his jurisdiction under section 263 was bound to look into subsequent action of Assessing Officer i.e. reassessment order under section 153A, wherein no adverse inference was drawn against share capital/premium collected by assessee during year under consideration and same had been accepted after enquiry.Tribunal also held that under section 263, Principal Commissioner had to examine all records pertaining to assessment year at time of examination by him, which included, post-search assessment proceedings and thereafter only if he found that order passed by Assessing Officer on any issue was erroneous insofar as it was prejudicial to interest of revenue, then only he would interfere by enhancing/modifying/cancelling assessment order. High Court affirmed the order of the Tribunal. (AY. 2009-10)

PCIT v. Techno Tracom (P.) Ltd. (2023) 293 Taxman 392/334 CTR 820/ 226 CTR 185 /(2024) 461 ITR 47 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Land used for agricultural purposes-Failure to record satisfaction-Order of Tribunal quashing the revision order is affirmed. [S. 45, 54B]

Assessing Officer passed assessment order after considering submission of assessee with respect to details of sale of property, details of agricultural land and calculation of capital gain including exemption claimed. Principal Commissioner revised the order u on the ground that assessee claimed exemption under section 54B, however, no agricultural income was accounted for in its return for relevant assessment year he held that LTCG claimed on sale of land was to be added back to income of assessee. Tribunal quashed revisionary proceedings on ground that no claim was made by assessee under section 54B in return of income as well as in computation of income which formed part of documentary evidences submitted before Principal Commissioner. On appeal by the Revenue the court held that since Principal Commissioner did not record any satisfaction based on correct and verifiable facts, Tribunal was justified in holding that exercise of jurisdiction under section 263 was erroneous. (AY. 2016-17)

PCIT v. Rachana Todi (Smt.) (2023) 292 Taxman 30 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Co-operative societies-Interest on deposits-Income from other sources-PCIT has not carried out any inquiry on his own-Order of Tribunal quashing the revision order is affirmed. [S. 56, 80P(2)(i)]

Assessee earned interest on deposits of its surplus funds with banks and Government securities and claimed deduction under 80P(2)(a)(i) of the Act. Assessing Officer allowed the claim. On revision PCIT held that interest from surplus funds invested in deposits with banks and Government securities is assessable under the head income from other sources under section 56 which did not qualify for deduction under section 80P(2)(a)(i)of the Act. Tribunal held that the amount deposited in bank by a society was not due to its members and it was not liability to its members and, interest earned from such deposits in bank was eligible for deduction under section 80P(2)(a)(i) of the Act. On appeal by the Revenue the High Court affirmed the order of the Tribunal and also observed that since Principle Commissioner had not carried out any enquiry on his own and had just invoked revision and set aside assessment and remanded it back to Assessing Officer to pass fresh assessment order on issue of claim of

deduction under section 80P, invocation of revision under section 263 was unjustified. (AY. 2016-17)

PCIT v. Gunja Samabay Krishi Unnayan Samity Ltd. (2023) 292 Taxman 46 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Initiation of proceedings based on a proposal given by the assessing officer-Without application of mind-Revision was quashed. [S. 10(38) 45]

Proceedings were initiated under section 263 of the Act based on a proposal given by the assessing officer and not at the behest of the PCIT. High Court observed that before exercise of power under section 263 of the Act, the PCIT had to apply his mind to the issue, record reasons as to how the assessment order is erroneous and prejudicial to the interests of revenue and then issue a show-cause notice to the assessee. High Court observed that there was nothing on record to show that such an exercise was done by the PCIT. Consequently, High Court quashed the order passed under section 263 of the Act. High Court further observed that the revenue in its appeal before the High Court did not challenge the Tribunal's decision holding that PCIT had not validly exercised the powers under section 263 of the Act but the appeal was filed merely on the decision given by the Tribunal on the merits of the case which according to the High Court was not permissible.(AY 2014-15)

PCIT v. Reeta Lakhmani (2023) 291 Taxman 358 (Cal)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital asset-Lease hold right-Capital or revenue-Cancellation of allotment of plot of land-Compensation-Treated as capital-receipt Revision order was quashed.[S. 2(14), 4, 28(i)]

Assessee-company, engaged in business of real estate development, took a plot of land on lease for a period of 30 years. Said plot was treated as capital asset in assessee's books of account. Later on, allotment of said plot made in favour of assessee was cancelled vide Goa Act, 2012 and certain amount was paid to assessee as compensation for same. Assessee claimed said compensation received for cancellation of allotment as capital receipt. Assessing Officer accepted the same. PCIT under section 263 held that compensation received by assessee for cancellation of lease was to be considered as revenue receipt. Tribunal set aside the revision order. On appeal the Court held that since plot allotted to assessee was to be used by for carrying on its business and was an income producing asset for its company, wherein assessee intended to construct a building and further sub-lease or transfer such a building to third parties to earn income, thus, it would constitute a capital asset. leasehold rights held by assessee in plot was a Capital Asset and that compensation received by Assessee from Government of Goa on cancellation of plot was a capital receipt and not a revenue receipt. Order of Tribunal was affirmed. (AY. 2013-14)

PCIT v. Pawa Infrastructure (P.) Ltd. (2023) 457 ITR 392/ 291 Taxman 297 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital asset-Lease hold right-Capital or revenue-Cancellation of allotment of plot of land-Compensation-Treated as capital-receipt Revision order was quashed.[S. 2(14), 4, 28(i)]

Assessee-company, engaged in business of real estate development, took a plot of land on lease for a period of 30 years. Said plot was treated as capital asset in assessee's books of account. Later on, allotment of said plot made in favour of assessee was cancelled vide Goa Act, 2012 and certain amount was paid to assessee as compensation for same. Assessee claimed said compensation received for cancellation of allotment as capital receipt. Assessing Officer accepted the same. PCIT under section 263 held that compensation received by assessee for cancellation of lease was to be considered as revenue receipt. Tribunal set aside the revision order. On appeal the Court held that since plot allotted to assessee was to be used

by for carrying on its business and was an income producing asset for its company, wherein assessee intended to construct a building and further sub-lease or transfer such a building to third parties to earn income, thus, it would constitute a capital asset. leasehold rights held by assessee in plot was a Capital Asset and that compensation received by Assessee from Government of Goa on cancellation of plot was a capital receipt and not a revenue receipt. Order of Tribunal was affirmed. (AY. 2013-14)
PCIT v. Pawa Infrastructure (P.) Ltd. (2023) 291 Taxman 297 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny-Mismatch of amount paid to related persons-Verification of expenditure-The issue which was not subject matter of limited scrutiny-Revision order to disallowance of expenditure under section 14A was quashed.[S. 14A, 40A(2)(b), 57]
Assessee's case was selected for limited scrutiny for introduction of capital in NBFC/investment company, large deduction claimed under section 57 and mismatch of amount paid to related persons under section 40A(2)(b) reported in audit report and return. Assessing Officer passed assessment order.Principal Commissioner invoked revisionary proceedings on grounds that disallowance under section 14A in respect of exempt income was not considered even when case of assessee was selected for limited scrutiny to verify introduction of capital in NBFC/investment companies which was connected with issue of disallowance. Tribunal quashed impugned revisionary order on ground that issue of disallowance under section 14A read with rule 8D in respect of exempt income was not one of issues which was selected for scrutiny. Dismissing the appeal of the Revenue the Court held that as per CBDT Instruction No. 7 of 2014, dated 26-9-2014, Principal Commissioner could not make a roving enquiry in guise of a limited scrutiny, thus, Tribunal was justified in quashing impugned order. (AY. 2015-16)
PCIT v. Naga Dhunseri Group Ltd. (2023) 291 Taxman 278 (Cal.)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Purchase and sale of land-Capital asset-Intention to construct a Tech Park-No development activity-Revision is held to be not valid. [S. 2(14),28(i), 45, 143(3)]
Held that the in view of the admitted facts that the land was purchased and sold without any development, no elaborate enquiry was required and the Assessing Officer has noted the facts required for the case and passed the Assessing orders. Appeal of the assessee is allowed and the Revision order was quashed. (AY. 2008-09)
Embassy Brindavan Developers v. CIT (2023) 457 ITR 234 /291 Taxman 188 (Karn)(HC)
Editorial : Notice issued in SLP filed by the Revenue, CIT v. Embassy Brindavan Developers (2023) 294 Taxman 437 (SC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Commissioner holding view different from that of Assessing Officer on a particular issue-Revision is not justified-High Court cannot set aside finding of Appellate Tribunal unless finding is perverse.[S. 260A]
Dismissing the appeal of the Revenue the Court held that every loss of revenue cannot be treated as prejudicial to the interests of the Revenue and if the Assessing Officer has adopted one of the courses permissible under law or where two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order, unless the view taken by the Assessing Officer is unsustainable under law. Unless and until the order passed by the Tribunal suffers from any perversity or ignores

any vital fact in an appeal under section 260A of the Act, the High Court cannot interfere with such an order. Order of Tribunal is affirmed. (AY. 2016-17)
PCIT v. Britannia Industries Ltd. (2023)453 ITR 576/ 330 CTR 435 (Cal)(HC)
Editorial : Order in Britannia Industries Ltd v. PCIT (2023) 102 ITR 513 (Kol)(Trib), is affirmed.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Write off of interest receivable-Interest expenditure on slum rehabilitation project at Dindoshi-Inadequacy of enquiry does not give jurisdiction to Commissioner to revise the order-Explanation 2 is prospective in nature-[S. 36(1)(iii), 36(1)(vii)), 260A]
Dismissing the appeal of the Revenue the Court held that once the Assessing Officer has raised the queries which the assessee may not have answered fully, cannot be considered as no enquiry was conducted. What section 263 covered prior to insertion of Explanation 2 was a case of no enquiry but not of inadequate enquiry. Explanation 2 is prospective in nature. Accordingly the deduction under section 36(1)(vii) of the Act with respect to write off of interest receivable foregone under One Time Settlement ('OTS') entered into by the asseessee with its borrowers and deduction under section 36(1)(iii) of the Act with respect to interest expenditure incurred with orrowings made for the slum rehabilitation project at Dindoshi, which was allowed by the Assessing Officer, revision order by the Commissioner which was quashed by the Tribunal was affirmed by the High Court. (AY. 2006-07)
PCIT v. Shvshahi Punarvasan Prakalp Ltd (2023) 331 CTR 593 (Bom)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Share transaction-Assessing Officer applied his mind-Order of Tribunal quashing the revision order was affirmed-Appeal-High Court-Condonation of delay-Administrative reasons-The Principal Commissioner had casually termed the delay of 109 days as a delay of only of "few days" which indicated the lack of seriousness on the part of the Department in adhering to the timeline stipulated under the Act. Delay of 109 days was not condoned-Monetary limits-Includes appeal against revision order-Appeal is not maintainable [S. 260A]
Held that the Tribunal had found that the Commissioner was not justified in assuming jurisdiction under section 263 on the ground that no enquiries had been conducted by the Assessing Officer. The Assessing Officer had issued queries regarding investment in unlisted equity shares to which the assessee had responded and had submitted all the details including the details of the shares purchased, the entities from whom they were purchased, copies of the bank accounts evidencing payments of consideration and the computation of the book value of the shares. The Assessing Officer had applied his mind to such information and had made the assessment. The Tribunal had rightly held that enquiry had been conducted by the Assessing Officer and had accordingly, set aside the order of the Commissioner under section 263. No question of law arose. That the order passed by the Commissioner under section 263 indicated that the net tax effect of the order was below the monetary limit specified by the Central Board of Direct Taxes. Although the Commissioner had remanded the matter to the Assessing Officer he had also quantified the income which according to him had been under assessed. That the only explanation for the delay of 109 days in filing the appeal was due to administrative reasons beyond the control of the Principal Commissioner. Each day of delay had to be explained and the Principal Commissioner had not given sufficient explanation for the delay of 109 days. The Principal Commissioner had casually termed the delay of 109 days as a delay of only of "few days" which indicated the lack of seriousness on the part of the Department in adhering to the timeline stipulated under the Act. The delay was not condoned. (AY.2015-16)

PCIT v. Pushp Steel and Mining Pvt. Ltd. (2023)452 ITR 66/ 291 Taxman 586 (Delhi)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Loss on account of sale of shares-Shares were undervalued-Revision is justified. [S. 263(3)]
Revision order of CIT was affirmed by the Tribunal. On appeal, High Court held the Tribunal was right in sustaining the order of revision passed by the Commissioner as the shares were undervalued. (AY.2003-04)
S. Palaniappan v. CIT (2023)452 ITR 91 (Mad) (HC)
S. Manickavasagam v. ITO (2023)452 ITR 91 (Mad) (HC)
Editorial : S. Manickavasagam v. ITO (2010) 3 ITR 304 (Chennai)(Trib), affirmed.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Unexplained investments-Assessing Officer has not enquired into any documentary evidence-Revision was held to be justified [S. 69]
The Tribunal has upheld the revision order passed by the Commissioner. On appeal the Court held that the assessee had not submitted bank statements of either himself or society to specify the nature of the transaction made for the purchase of property and the source thereof-Moreover, assessee had neither submitted any document stating that property had been subsequently transferred to society nor any statement of current ownership of property and status thereof in support of his claim that property belonged to society. Further, during assessment proceedings, Assessing Officer had also not enquired into or called for any documentary evidence relevant to the above issues. Order of Tribunal upheld. (AY. 2016-17)
Himanshu Kukreja v. PCIT (2023) 290 Taxman 453 (Uttarakhand)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Revision was done twice-Revision for the third time is held to be not valid. [S. 143(3), 153A,]
Assessee filed its returns in response to the notice issued under section 153 and the assessment was completed under section 153A, read with section 143(3)of the Act. Subsequently, Principal Commissioner initiated proceedings under section 263 and passed an order directing Assessing Officer to pass a fresh order. In compliance with said order of the Principal Commissioner, a new assessment order was passed under section 143(3) read with section 263 of the Act. Principal Commissioner again initiated revision proceedings for the second time by again cancelling the non-existent first assessment order and further directed Assessing Officer to pass a fresh order. The second assessment order was never cancelled and as such remained valid. Since the assessee's income was scrutinized and examined twice i.e. in the original proceedings and the second assessment order passed after 263 order, thus, the order passed by the Principal Commissioner in the second round of revision directing the Assessing Officer to scrutinize the accounts of the assessee for the third time was not permissible in law. Dismissing the appeal of the Revenue the Court held that the third assessment order passed pursuant to the second order under section 263 passed by the Principal Commissioner had no legal effect hence bad in law. Order of Tribunal affirmed. (AY. 2012-13)
PCIT (C) v. Padma Kumar Jain (2023) 455 ITR 679 / 290 Taxman 394 (Jharkhand)(HC)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Quantity details of consumption-Reflected in tax Audit-Depreciation-Book profit-Interest payment-Revision is not justified-Provision for warranty-Amortisation of employees stock option-Revision is held to be valid.[S. 37(1), 115JB, Form 3CD]

Held that there being no inconsistency in the quantity details of consumption, production and yield of raw materials as reflected in the tax audit report. Depreciation has correctly claimed, even after considering the various adjustments lower than the returned income, interest is not debited to profit and loss account hence revision is not valid. As regards provision for warranty and amortisation of employees stock option, revision is held to be valid (AY. 2016-17)

V.Guard Industries Ltd v. PCIT(2023) 223 TTJ 851 (Cochin)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Fully convertible debentures-Transition amount-Accounting Standard 32-As per terms, would be of a fixed number of equity shares, criteria to classify financial instrument of convertible debentures were not indicative of any compounding financial instrument albeit it was equity-There would not be any transition amount requiring any adjustment in book profit as per section 115JB(2C)-No adjustment is required in the book profit by way of transition amount-Revision order is reversed.[S. 115JB(2C), 143(3)]

As on 31st March 2016, assessee had outstanding Zero Coupon Unsecured Optionally Fully Convertible Debentures (ZOFCDS) and Zero Coupon Unsecured Fully Convertible Debentures (FCDs) crores issued to RIL, its holding company Convertible Debentures, were disclosed as "long-term borrowings" in audited financial statements as on 31-3-2016 as per requirements of Indian GAAP. Since 'Ind AS' had become applicable to assessee-company with effect from financial year 2016-17, it made a transition to Ind AS. Accordingly, it prepared and presented its financial statements from financial year ending 31" March 2017 under Ind AS and re-classified Convertible Debentures as equity instrument in its first Ind AS balance sheet and presented them as "Instruments entirely Equity in nature". CIT, in order passed under section 263, held that all financial instruments under consideration were Compound Financial Instruments (CFI) and, therefore, amount represented by said instruments was taxable as book profit under section 115JB(2C). On appeal the Tribunal held that for categorizing a financial instruments as CFI, there was to be a liability component embedded in it. There are two situations in relation to financial instrument which can be reckoned as financial liability; firstly, there is a contractual obligation to make settlement either by monetary payment or by delivering any other financial asset; or secondly, settlement has to be made by exchange of variable number of its own equity instruments. Since settlement of convertible debentures issued by assessee would be through exchange of own equity instruments of assessee-company only and not by any financial liability as defined in Ind AS 32 and this exchange, as per terms, would be of a fixed number of equity shares, criteria to classify financial instrument of convertible debentures were not indicative of any Compounding Financial Instrument albeit it was equity.Since convertible debentures were purely in nature of equity and there was no kind of financial liability or any interest component, which could be ascertained or determined on said debentures, there would be no transition amount requiring any adjustment in book profit as per section 115JB(2C).Revision order is quashed. (AY. 2017-18)

Reliance Industrial Investment & Holdings Ltd v. Dy.CIT(2023) 233 TTJ 769 / 149 taxmann.com 113 (Mum)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Delay of 932 days is condoned-Merger-Appeal against quantum appeal was dismissed by the CIT(A)-Revision of order is bad in law. [S. 253(5), 250]

Delay of 932 days is condoned. The assessee preferred an appeal before the CIT(A), which was dismissed. The order is merged with the order of CIT(A). Revision order is bad in law. (AY. 2014-15)

Jaipur Telecom (P) Ltd v. PCIT(2023) 223 TTJ 599 (Jaipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash deposited in the bank-Demonetisation-Possible view-Examined in the course of assessment-Revision order is quashed.[S. 68, 144]

Held that the Assessing Officer has examined the cash deposited during the period of Demonetisation and accepted the submission of the assessee. The view being possible view the revision order is quashed and set aside. (AY. 2017-18)

Dhanraj Chhipa v.PCIT(2023) 223 TTJ 620 (Jodhpur)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash deposit-Demonetisation-No lack of proper enquiry-Proper explanation was furnished in the course of assessment proceedings-Revision order is quashed. [S. 68, 143(3)]

Held that in the course of assessment proceedings proper explanation was furnished in the course of assessment proceedings. Accordingly revision order is quashed. (AY. 2017-18)

Gurucharan Singh v. PCIT(2023) 223 TTJ 53 (Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Lack of enquiry-Contribution to Provident fund and ESI-Justified in setting aside the order-Incentive payments-Commission-Tax deduction at source-Not justified in revising the order-Exempt income-Debatable issue-Revision order is set aside. [S. 14A, 36(1) (v), 139(1), 192, 194H]

Held that as regards contribution to Provident fund and ESI the revision order setting aside the assessment order is justified. As regards incentive payments as commission tax was deducted at source under section 192 revision is not justified. As regards the disallowance of exempt income the issue being debatable issue,revision order is set aside. (AY. 2017-18)

O.S. Motors (P) Ltd v. PCIT(2023) 222 TTJ 27(UO)(Jodhpur)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Lack of enquiry-Sales through NSEL-Alleged out of book sales-NSEL has not responded to the letter issued by the Assessing Officer u/s 133(6)-Possible view-Revision is bad in law and quashed. [S. 133(6), 143(3)]

Held that the order passed by the Assessing Officer after considering the explanation of the assessee. NSEL has not responded to the letter issued by the Assessing Officer u/s 133(6) for the alleged sales out of book. The Tribunal held that the view of the Assessing Officer is possible view hence the revision is bad in law and quashed. (AY. 2014-15)

Namdhari Rice & General Mills v.PCIT(2023) 221 TTJ 784 (Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Lack of enquiry-Operating ships in international traffic-valid Tax Resident Certificate-Revision is not valid-DTAA-India-Singapore. [S. 9(1)(vi), 44B,143(3), Art. 7, 8]

Assessee, a tax-resident of Singapore, which is operating ships in international traffic. It had three types of shipping income in year under consideration, viz., income from coastal shipping which was offered to tax under section 44B, income from inward freight and income from outward freight which was claimed as exempt under article 8 of India-Singapore DTAA. Assessing Officer completed assessment under section 143(3) accepting return of income. Commissioner under revision proceedings held that there is no commercial rationale for incorporation of assessee in Singapore and assessee had been interposed as a company in Singapore to derive maximum tax benefit under India-Singapore DTAA, hence assessee was not entitled to benefits of India-Singapore DTAA. Accordingly, he held that impugned

assessment order was erroneous and prejudicial to interest of revenue. On appeal the Tribunal held that allegations made by Commissioner were without any corroborative evidence. It was also observed that Commissioner had restricted his directions only to inward freight income, thereby, accepting assessee's claim under section 44B in respect of income from coastal shipping and claim of exemption under article 8 of DTAA in respect of income from outward freight, revealed that he himself was not sure about nature and character of shipping income earned by assessee. Tribunal held that when the assessee is holding a valid tax resident certificate (TRC) issued by Singapore tax authorities, Assessing Officer was justified in granting treaty benefits to assessee.Since invoices raised by assessee demonstrated that assessee charged fee for transportation of goods and not towards leasing of vessels, therefore, said receipts could not be treated as royalty.Therefore Commissioner is not justified in assuming jurisdiction under section 263 to revise assessment order as same could not be considered to be erroneous and prejudicial to interest of revenue. (AY. 2016-17)
Tata NYK Shipping Pte. Ltd v. CIT(IT) (2023) 223 TTJ 1 / 155 taxmann.com 345 (Delhi)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Assessment quashed by Tribunal-Revision order is bad in law.[S. 143(3), 153A]
Held that revision order cannot be passed if valid assessment does not exist, on the facts the Tribunal has quashed the assessment order under section 153A read with section 143(3) of the Act. Revision order is quashed. (AY. 2010-11)
Salarpuria Properties (P) Ltd v.PCIT (2023) 223 TTJ 644 (Kol)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Merger-Interest free funds-Issue is subject matter of appeal before CIT(A)-Revision is bad in law-Transfer pricing-Section 92BA(i) is omitted.w.e.f. I st April, 2017 No ALP is required to be determined in respect of a domestic transaction-No reference was required to the TPO-Revision is bad in law. [S. 14A, 40A(2), 92BA, 92C, R.8D]
Held that the issue of disallowance of interest expenditure is subject of matter appeal before CIT(A). As regards transfer pricing Section 92BA(i) is omitted.w.e.f. I st April, 2017,no ALP is required to be determined in respect of a domestic transaction. No reference was required to the TPO. Revision is bad in law. (AY. 2014-15)
IMC Ltd v. PCIT (2023) 226 TTJ 180 (Kol)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Invalid assessment-Notice under section 143(2) is not served-Reassessment is bad in law-Issue of shares-Share capital-Order was passed after detailed investigation-Revision is bad in law.[S. 56, 68, 143(2), 147, 148]
Held that revision order is bad in law as the Reassessment order was passed without issuing the notice under section 143 (2) of the Act. When re assessment is without jurisdiction, revision order is without jurisdiction. Tribunal also held that the order was passed after detailed investigation hence even on merit the revision is bad in law. (AY. 2019-20)
Garud credit & Holding (P) Ltd v.ITO (2023) 226 TTJ 989 (Kol)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Mark to Market (MTM)-Specific query in the course of assessment proceedings-Loss was reversed in subsequent year-Revision order is quashed. [S. 43(5)(d), 143(3)]

Held that the Assessing Officer has raised specific query as regards allowability of Mark to Market (MTM) loss. Moreover the MTM loss was reversed in the subsequent year. Revision order is quashed. (AY. 2015-16)
Tata Teleservices (Maharashtra)Ltd v. PCIT(2023) 225 TTJ 137 (Mum)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Source of cash-Neither the Assessing Officer not PCIT examined the source of cash-The matter is remanded to the Assessing Officer to the limited extent to verify the cash available for making deposits in the bank. [S. 68, 143(3)]
Held that the asessee has filed 50 pages tabulated form of cash available with the assessee, however, Neither the Assessing Officer nor PCIT examined the source of cash. The matter is remanded to the Assessing Officer to the limited extent to verify the cash available for making deposits in the bank. (AY. 2017-18)
Sahebganj No 1 Anchalik Samabay Krishi Unnayan Samity Ltd v. ITO (2023) 225 TTJ 19 (UO) (Kol)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Depreciation-Capitalised and treated as revenue receipts-Explained the difference of depreciation-Revision order is set aside.[S. 32]
Held that the Assesee has claimed depreciation on enhanced written value of the plant and machinery. The Assessing Officer has accepted the explanation of the assessee and allowed the claim. Revision order is quashed. (AY. 2015-16)
M.P. Paschim Kshetra Vidyut Vitran Co Ltd v.ACIT (2023) 225 TTJ 57(UO) (Indore)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Gift from son-Failure of the Assessing Officer to examine the creditworthiness of the donor-Revision order is affirmed. [S. 143(3)]
Held that the Assessing Officer has accepted the gift received from the son as genuine only on the basis that the amount was transferred thorough NEFT and hand written confirmation from son, without examining the creditworthiness of the son. Revision order is affirmed. (AY. 2016-17)
Rajinder Singh v. PCIT(2023) 224 TTJ 854(Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-No lack of enquiry-Survey-Income surrendered-Business income-Assessment was finalised after considering the reply of the assessee-Revision order on the basis of surrendered income to be assessed under section 68 @ 60 per.cent as per section. 115BBE is quashed and set aside. [S. 68, 115BBE, 133A, 142(1), 143(2), 143(3)]
Held that the Assessing Officer assessed the income surrendered as business income, after making proper enquiry. Revision order on the basis of surrendered income to be assessed under section 68 @ 60 per.cent as per section. 115BBE is quashed and set aside.(AY. 2017-18)
Avtar Singh Kalsi through L/H Smt.Kuldeep Kaur v.PCIT(2023) 224 TTJ 47 (UO) (Amritsar)(Trib)
Jagtar Singh Kalsi v. PCIT(2023) 224 TTJ 47 (UO) (Amritsar)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Assessment order passed pursuant to notice issued by Officer not having jurisdiction-Order non est-Revision order is bad in law. [S. 124(3)(a), 143(2) 143(3), 254]

Held that as the proceedings before the Principal Commissioner under section 263 of the Act were in the nature of collateral proceedings, the assessee could in the course of appellate proceedings originating from the order passed under section 263 of the Act, dated March 28, 2021 challenge the validity of the assessment order passed by the Assessing Officer under section 143(3), dated November 29, 2017. That when the order of reassessment under section 143(3), dated November 29, 2017 itself had been passed on the basis of invalid assumption of jurisdiction by the Assessing Officer and thus was invalid and bereft of any force of law or in fact non est in the eyes of law, it could not have been revised by the Principal Commissioner under section 263 of the Act. Assessment by Officer having jurisdiction pursuant to notice issued by Officer not having jurisdiction-Non est. Assessee within prescribed time objecting to jurisdiction of Officer issuing notice. Entitled to challenge validity of assessment on ground of lack of jurisdiction**.** (AY.2015-16)
Aruna Tiwari (Smt.) v.PCIT (2023)108 ITR 40/226 TTJ 510 (Raipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny assessment-Principal Commissioner issued show-cause notice entirely different from issues selected for limited scrutiny-Assessing Officer cannot go beyond reasons of limited scrutiny-Principal Commissioner cannot pass revision order on other aspects-Revision order is quashed. [S. 143(3)]
Held, that the case was selected for limited scrutiny on unsecured loans from persons who had not filed their return of income, large increase in unsecured loans during the year and large squared up loans during the year. The issue for which the Principal Commissioner issued the show-cause notice was entirely different from the issues of selection of the case under limited scrutiny by the Assessing Officer. The Assessing Officer cannot go beyond the reasons for limited scrutiny and it would not be open to the Principal Commissioner to pass a revision order on other aspects and remit the matter to the Assessing Officer for fresh assessment. Revision order is bad in law. (AY.2015-16)
Gagandeep Garg v. PCIT (2023)108 ITR 137 (Amritsar) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Fund investors resident of various countries-Non-fulfilment of condition of Liable to tax-Tax Exemption by resident country does not give right to Revenue Authorities to tax income in contracting State-Derivatives-Contention of Principal Commissioner that income earned from derivatives not business income is not accepted-Revision order is quashed. [S. 2(29A),6, 10(23FE, 900, 90A]
Held that the observation of the Principal Commissioner that the assessee was not entitled to treaty benefits being a non-resident for tax purpose because of non-fulfilment of condition of liable to tax criteria was wrong on the facts. Merely because tax exemption was provided by the resident country that would not give an automatic right to the Revenue authorities to tax the income in the contracting State. That the observation of the Principal Commissioner that the assessee had about 21 investors who were non-tax resident of Mauritius and hence the assessee was a conduit could not be accepted. That the assessee had entered into only two transactions in the whole year in G-Sec bonds and few transactions in cash was only a partial truth. In addition to the investments in bonds and exchange traded cash equities, the assessee had a large number of exchange traded derivatives transactions. The contract notes reflected transactions of the assessee on Multi Commodity Exchange of India Ltd., Bombay Stock Exchange and National Stock Exchange. In addition to the investments in India, the assessee had also invested in LME, CMX, SSE and DGCX. Hence, the contention of the Principal Commissioner that the income earned by the assessee from derivatives was not a business income could not be accepted. Therefore, the receipt was not taxable in India, and there was

no prejudice caused to the Revenue and the order passed by the Principal Commissioner is liable to be obliterated.(AY.2017-18)
Sapein Funds Ltd. v CIT (IT) (2023)108 ITR 180 (Delhi)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Share premium-Discounted cash flow method-Revenue could not compel assessee to choose particular method of valuation-Revision order is quashed. [S. 56(2(viib), 143(3), R.11U, 11UA]
Held that the Revenue cannot sit in the armchair of the businessman to decide what is profitable and how business should be carried out. This action of the Commissioner was in direct contravention of the provisions of Explanation (a)(i) to section 56(2)(vii) of the Act read with rule 11UA(2)(b) of the Rules. The Assessing Officer could not have changed the method of valuation opted by the assessee in view of the statutory mandate of rule 11UA(2) of the Rules. Revision order is quashed.(AY.2016-17)
Apna Punjab Resorts Ltd. v.PCIT (2023)107 ITR 11 (Trib) (Chd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Firm-Remuneration to partners-Book profits-interest income not excluded while determining allowable deduction of remuneration to partners-Interest income business income-Deduction admissible-Central Board Of Direct Taxes Circular No. 12 Of 2019, Dated 19-6-2019-Revision is quashed. [S. 40(b)(v)]
Held that section 40(b)(v) restricts a firm from claiming a deduction towards remuneration paid to its working partner exceeding certain limits of book profits income. Explanation 3 to section 40(b)(v) defines the term "book profits" to mean the net profit, as shown in the profit and loss account for the previous year, computed in the manner laid down in Chapter IV-D as increased by the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit. For the purpose of ascertaining the ceiling on the basis of book profits, the profit as appearing in the profit and loss account was to be taken. Hence, the interest income could not notionally be excluded while determining the allowable deduction of remuneration to partners under section 40(b)(v) of the Act. The interest income formed part of business income for the purpose of computing the admissible deduction under section 40(b)(v) of the Act. Revision order is set aside.(AY.2014-15)
Feelings v. PCIT (2023)107 ITR 405 (Panaji)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Business income-Survey-Statement in the course survey-Assessment order is passed due application of mind-No findings recorded by Principal Commissioner how deeming provisions applicable-Survey at business premises alone cannot be basis for revision.[S. 68, 69 69A 69B 69C, 69D 115BBE, 133A, 143(3)]
Held, that there was a difference between undisclosed income and unexplained income which was apparently absent on the face of the show-cause notice. The very basis of invocation of jurisdiction under section 263 suffered from serious fallacies, that the unexplained income found and surrendered during the course of survey proceedings was sought to be brought to tax straightway under section 115BBE of the Act. There were no findings recorded by the Principal Commissioner whether any explanation was called for from the assessee in terms of these undisclosed transactions either during the course of survey proceedings or during the course of assessment proceedings and how the explanation offered was not found acceptable to the Principal Commissioner. The assessee had been asked specific questions not only regarding the discrepancy found during the course of survey and also the nature and source thereof during the course of survey. The source of such income so surrendered was from the assessee's business of running orthopaedics and dental clinic operation since 2014. Though

these transactions were not recorded at the time of survey qualifying as unrecorded transactions, the assessee had provided the necessary explanation about the nature and source of the unrecorded transactions and the necessary nexus with the assessee's business had been established. Thus, it could not be said that these were unexplained transactions. The Assessing Officer had duly taken cognisance of the findings of the survey team, the documents found during the course of survey, the statement of the assessee, the surrender letter and the return of income and after examination thereof and due application of mind, the income had been rightly assessed under the head "Business income". There were no findings recorded by the Principal Commissioner how the deeming provisions were applicable and the order passed by the Assessing Officer was erroneous. Revision order is set aside. (AY.2017-18)

Jasjot Singh Garcha v. PCIT (2023)107 ITR 508 (Chd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Business income-Survey-Statement in the course survey-Assessment order is passed due application of mind-No findings recorded by Principal Commissioner how deeming provisions applicable-Survey at business premises alone cannot be basis for revision.[S. 68, 69 69A 69B 69C, 69D 115BBE, 133A, 143(3)]

Held, that there was a difference between undisclosed income and unexplained income which was apparently absent on the face of the show-cause notice. The very basis of invocation of jurisdiction under section 263 suffered from serious fallacies, that the unexplained income found and surrendered during the course of survey proceedings was sought to be brought to tax straightway under section 115BBE of the Act. There were no findings recorded by the Principal Commissioner whether any explanation was called for from the assessee in terms of these undisclosed transactions either during the course of survey proceedings or during the course of assessment proceedings and how the explanation offered was not found acceptable to the Principal Commissioner. The assessee had been asked specific questions not only regarding the discrepancy found during the course of survey and also the nature and source thereof during the course of survey. The source of such income so surrendered was from the assessee's business of running orthopaedics and dental clinic operation since 2014. Though these transactions were not recorded at the time of survey qualifying as unrecorded transactions, the assessee had provided the necessary explanation about the nature and source of the unrecorded transactions and the necessary nexus with the assessee's business had been established. Thus, it could not be said that these were unexplained transactions. The Assessing Officer had duly taken cognisance of the findings of the survey team, the documents found during the course of survey, the statement of the assessee, the surrender letter and the return of income and after examination thereof and due application of mind, the income had been rightly assessed under the head "Business income". There were no findings recorded by the Principal Commissioner how the deeming provisions were applicable and the order passed by the Assessing Officer was erroneous. Revision order is set aside. (AY.2017-18)

Jasjot Singh Garcha v. PCIT (2023)107 ITR 508 (Chd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failing to furnish required information-No further enquiry-Revision is justified. [S. 143(3)]

Held that there was a distinction between merely calling for information on a particular issue and considering such information with due application of mind if and when such information were actually provided by the assessee. The Assessing Officer merely seeking information on an issue and the assessee not giving the full information, could not be considered sufficient. It is necessary that the Assessing Officer actually apply his mind to the information supplied by

the assessee and after considering the information form an opinion as to whether the assessee were actually entitled to deduction. The required information was not furnished by the assessee. This would fall in the category of non-inquiry and not a case of inadequate inquiry. Revision is justified.(AY.2016-17)
Jubilant Pharmova Ltd. v. PCIT (2023)107 ITR 707 (Delhi) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failure to specify exact purpose of accumulation of income-Purpose of accumulation not beyond objects of assessee-Revision is not justified.[S. 11(2), 142(1), 143(3), Form No 10.]
Held that all the technical requirements were duly fulfilled by the assessee, along with a satisfactory response to the queries raised through notice under section 142(1) during the original assessment. The only objection raised by the Commissioner (E) through notice issued under section 263 was that the assessee had not specifically mentioned the purpose of accumulation of income. The assessee had placed on record form 10 furnished before the Assessing Officer specifying the purpose, amount, and period of accumulation. In any case, the purpose of accumulation could not be beyond the objects of the assessee. The assessee is not required to mention the "exact purpose" of accumulation. Revision is held to be not justified. (AY.2018-19)
Medical Education And Research Charitable Trust v CIT (E) (2023)107 ITR 71 (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Share transaction-Capital gains-Inadequate enquiry does not amount to lack of enquiry-Revision is quashed-Tribunal recalling earlier ex-parte order-Second appeal becomes as infructuous-Delay is condoned. [S. 45, 143(3),253, 254(1)]
Held that the very purpose for which the case was taken up for scrutiny assessment was to verify the purchase and sale of shares. In the assessment proceedings, the Assessing Officer had called for information. In response, the assessee had submitted various details. The Assessing Officer verified the transactions and recorded categorical findings that the assessment was completed after examining the information furnished with reference to the income declared under the head short-term capital gains. It was not the case of the Commissioner that the Assessing Officer had not verified the issue at all. The Commissioner cannot assume his jurisdiction and set aside the assessment order. The case at hand was not a case of lack of enquiry but inadequate enquiry. Held that since, the Tribunal had recalled its order in the earlier appeal filed before it against the order of the Commissioner under section 263 of the Act, the second appeal against the same order became infructuous and dismissed. (AY.2010-11)
Saravana Stocks Investments P. Ltd. v. Dy. CIT (2023)107 ITR 37 (Chennai) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Real estate business-Income from house property-Value of unsold flats as stock-in-trade-Two possible views-Not erroneous-Business expenditure-Details filed before Assessing Officer and expenses allowed-Order is not erroneous-Revision invalid-Interest on tax deducted at source-Failure by Assessing Officer to carry out necessary inquiry-Order erroneous and prejudicial to interests of revenue-Revision is justified [S. 23(1)(a), 40(a)(ia)]
Held that the assessee had shown closing stock. Thus during the assessment proceeding the Assessing Officer was aware that there was closing stock of ready flats and decided not to tax on housing property. In the assessment year 2017-18, there were two views on taxability of these ready flats shown as stock-in-trade. When there were two possible legal views of taxability qua unsold flat shown as closing stock and the Assessing Officer had adopted one

of them and not taxed it under housing property, the assessment order was not erroneous qua unsold flats shown as stock.
Held that, the assessee had tax deducted at source and the details were filed before the Assessing Officer during the assessment proceedings. Therefore, the assessment order was not erroneous qua tax deducted at source on payment made to S. The order under section 263 qua the issue of tax deducted at source is set aside. Held that, the Assessing Officer had failed to carry out necessary inquiry and had not called for any details regarding the interest on tax deducted at source. Hence, the assessment order was erroneous and prejudicial to the interests of the Revenue qua the issue of interest on tax deducted at source. Accordingly, the order under section 263 was upheld qua the issue of interest on tax deducted at source.(AY.2017-18)
Sukhwani Promoters And Builders v. PCIT (2023)107 ITR 122 (Pune) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash credits-Assessing Officer accepting genuineness of cash deposits-Revision on account of difference in opinion-Revision is invalid.[S. 68]
Held that apart from the cash receipts on account of professional income, the assessee had enough cash withdrawals during the year under consideration. That the view of the Principal Commissioner that the cash deposited by the assessee in his bank account was out of the undisclosed sources was vague and without any basis. The Assessing Officer had accepted the genuineness of the cash deposited in the bank account after a conscious and independent application of mind. That the Assessing Officer was fully aware of matter, he had appraised the evidence filed by the assessee and then had formed a view to accept it. Revision is quashed. (AY.2012-13)
Vijay Kumar Singla v. PCIT (2023)107 ITR 213 (Amritsar) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limitation-Reference to Transfer Pricing Officer-Pursuant to order of Transfer Pricing Officer, Assessment Order Passed without Making any transfer pricing adjustments-Time-limit for passing order barred by limitation-Assessee given liberty to make application for recall of order if found later that Assessing Officer had passed assessment order considering direction of Principal Commissioner within time-limit allowed.[S. 92CA(3) 143(3), 153]
Held that the Transfer Pricing Officer had passed the order under section 92CA of the Act read with section 263 of the Act on January 24, 2020. The assessment order under section 143(3) read with section 92CA(3) considering the direction of the Principal Commissioner should have been passed on or before December 30, 2020, in terms of the provisions of section 153(3) of the Act. Subsequently, time-limits were extended by the decision of the Supreme Court in Cognizance for Extension of Limitation, In re [2022 441 ITR 722 (SC) ; [2022 230 Comp Cas 423 (SC) till February 28, 2022 and further a period of 90 days was available. According to that direction and various notifications a period of 9.5 months was further added to the time-limit available from March 1, 2022 and therefore, any order under section 143(3) read with sections 263 and 153 of the Act should have been passed on or before December 15, 2022, i. e., outer time-limit for the Assessing Officer to pass order. The assessee submitted that no final assessment order had been passed by the Assessing Officer till date. Therefore, apparently time-limit for passing assessment order pursuant to the direction of the Principal Commissioner had already expired.
Held also, that if it was found later that the Assessing Officer had passed the assessment order pursuant to the order under section 263 of the Act within the time-limit allowed, the assessee was given a liberty to make an application for recall of this order.(AY.2013-14)
KKR India Advisors P. Ltd. v. CIT (2023)107 ITR 4 (SN) (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Book profit-Stepdown subsidiaries and associate companies-Revision order is set aside. [S. 36(1)(vii),43B 115JB]

Held that the assessee had declared its book profits in its profit and loss account and offered them to taxation under the Act for the purpose of computation of income under normal provisions as well as to determine the book profits under section 115JB of the Act. Under the Companies Act, the assessee has to submit the consolidated financial statements of the assessee-company where the assessee has stepdown subsidiaries and associate companies. Accordingly, the assessee had submitted with its financial statements, a consolidated financial statements of the group company being a holding company and its subsidiaries and associates. The stepdown subsidiaries and other associate companies were independent assessees in the eyes of law and they had declared their financial statements and profits independently and filed returns of income. The profit and loss declared by the subsidiaries and associate companies could not be assessed to tax in the hands of the assessee a second time. The observation of the Principal Commissioner to reassess the profits declared by the subsidiaries and other associates in the hands of the assessee was not proper. He had merely remitted the issue back to the file of the Assessing Officer to redo the assessment without giving a finding that the profits declared by the assessee were erroneous in so far as it was prejudicial to the interests of the Revenue. Revision order is set aside. (AY.2018-19)

Polygel Industries P. Ltd. v.PCIT (2023)107 ITR 62 (SN.)(Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Loans-Creditors-Opinion of internal audit machinery not binding on him-Revision is quashed. [S. 143(3)]

Held that the Principal Commissioner did not state either in the show-cause notice or in his order the creditors from whom the alleged amount of Rs. 2,00,00,000 had been received by the assessee, which amount was not the amount of unsecured loan accepted by the assessee during the year, for which the assessee's explanation was ignored by the Principal Commissioner. Instruction No. 7 of 2017, dated July 21, 2017 ([2017 396 ITR (St.) 36), of the Central Board of Direct Taxes stating that on acceptance of the audit objection, it was incumbent upon the Principal Commissioner to take action under section 263 was not accepted by the jurisdictional High Court, which rule was binding on the other courts. The assessee's grievance was justified and to be accepted as such. Revision order is quashed. (AY. 2015-16)

Ganpati International v. PCIT (2023)105 ITR 266(Chd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Bad Debts-Slump sale-Specific query was raised in the assessment proceedings-Not a case of no enquiry-Revision order is quashed. [S. 2(42C), 28(i) 36(1)(vii),37, 50B, 143(3)

Held that the Principal Commissioner had not controverted the detailed reply filed by the assessee to show how the claim was not acceptable. Further, this was not a case of no enquiry but one where due enquiries were made by the Assessing Officer during the course of assessment proceedings and the claim was accepted with due application of mind. Simply because further queries were not raised or the fact that the issue was not dealt with in the assessment order, that would not make the order erroneous. Moreover, no discrepancy had been pointed out either by the Assessing Officer or by the Principal Commissioner in the purchases made by the assessee or stocks maintained by the assessee. The only allegation in the revision order was that certain items claimed by the assessee could not be held to be revenue in nature since this would be allowed only when the assessee was a going concern. No other doubt, whatsoever, had been raised. The assessee had made a claim under

section 36(1)(vii) and considering the nature of certain items, made partial claim under section 28 read with section 37 of the Act which was accepted by the Assessing Officer. Therefore, the revision of the order was not sustainable in the eyes of law and was liable to be quashed.(AY. 2017-18)
Rajkumar Impex P. Ltd. v.PCIT (2023)105 ITR 1 (SN)(Chennnai) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Employee stock option plan (ESOP)-Capital or revenue-Assessing Officer had taken a plausible view on issue based on existing proposition of law with regard to claim of ESOP expenses, revision is unjustified. [S. 37(1)]
PCIT revised assessment order passed by Assessing Officer on ground that incorrect allowance was made by Assessing Officer of employee stock option plan expenses under section 37(1) as ESOP expenses were capital in nature relating to discount on shares issued, and, thus, not allowable. Tribunal held that the Assessee furnished all information as asked for by Assessing Officer in its reply and had explained in detail what ESOP scheme was, and how it was an expenditure for assessee, and also basis for calculating ESOP expenditure.Since entire issue had been duly inquired into during assessment proceedings, reply of assessee was duly considered by Assessing Officer and Assessing Officer had taken a plausible view on issue based on existing proposition of law with regard to claim of ESOP expenses, there was no error in order passed by Assessing Officer in allowing assessee's claim of ESOP expenses and, thus, revision was not justified. Tribunal also held that there has to be a finding of error causing prejudice to revenue by Pr. Commissioner for valid exercise of revisionary power under section 263 and as verification precedes finding of error, any direction for verification of claim under section 263 is not in consonance with requirement of law. (AY. 2018-19)
Comtrade Commodities Services Ltd. v. PCIT (2023) 203 ITD 745 (Ahd) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Interest paid capitalised-Purchase cost-Sale of debentures-Interest salary, etc. paid by firm-Two views possible-Revision order is quashed. [S. 40(b), 45, 55]
Held that the assessee never claimed deduction towards interest of Rs. 6 crore in past, but capitalized it to value of investment initially acquired at Rs. 50 crores. Amount of interest capitalized along with purchase cost, was also liable to be deducted from full value of consideration for computing amount of LTCG on sale of debentures. Revision is not justified. As regards allowability of remuneration paid to partners, since two views were possible on this point and Assessing Officer had taken one of them which was in favour of assessee, impugned revision is unjustified. (AY. 2016-17)
Bharatnagar Buildcon LLP. v. PCIT (2023) 203 ITD 539/ 226 TTJ 488 (Pune) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Sale of seven flats within three years of acquisition-Revision is held to be justified. [S. 54F, 143(3)]
The assessment was completed u/s 143(3) of the Act. Principal Commissioner set aside Assessing Officer's order, stating it was erroneous and prejudicial to revenue on ground that assessee had sold seven flats within three years of acquisition, making them ineligible for deduction under section 54F. On appeal the Tribunal held that assessee having categorically stated that she had sold all flats and thus, not having held flats for a minimum period of 3 years, provisions of section 54F were not fulfilled and therefore, by allowing claim of deduction under section 54F, order of Assessing Officer had become erroneous as well as prejudicial to interest of revenue. Order of revision is afirmed. (AY. 2015-16)
Madhu Devi Jain. (Smt.) v. ITO (2023) 203 ITD 713 (Hyd) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Interest expenditure-Nexus of interest expenditure with interest income-Revision order is affirmed.[S. 57]
Tribunal held that from record that neither details regarding nexus of interest expenditure with interest income was sought by Assessing Officer during assessment proceedings nor same was furnished by assessee. Thus, there was no examination of nexus between interest income and interest expenditure as per section 57. Accordingly the Revision order directing Assessing Officer to reframe assessment after examining allowability of interest expenses as per section 57 is justified. (AY. 2017-18)
Chomansingh M. Deora. v. PCIT (2023) 203 ITD 240 (Mum) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-short-term capital gain on Multiplex sold-Capital gains-Block of assets-Depreciable assets-Service tax-Delay in payment of TDS-Revision order is quashed partly-Employees' contributions (EPF/ESI)-Revision is affirmed. [S. 36(1)(va), 37(1), 43B, 50, 143(3)]
Held that information regarding addition to multiplex account was available in Schedule of Fixed assets and depreciation was a part of Statutory Audit Report and assessees had disclosed details in Form No. 3CD attached with return of income and assessment order was finalised after perusal of said return, assessment order passed by Assessing Officer allowing deduction claimed by assessee from short-term capital gain on Multiplex sold during year under consideration was neither erroneous nor prejudicial to interest of Revenue. Held that information regarding addition to multiplex account was available in Schedule (2.3) of Fixed assets and depreciation was a part of Statutory Audit Report and assessees had disclosed details in Form No. 3CD attached with return of income (ROI). Assessment order was finalised after perusal of ROI, material available on record and replies filed in response to notice issued under section 142(1). Therefore order passed by Assessing Officer was neither erroneous nor prejudicial to interest of revenue. Held that where assessee had paid service tax under reverse charge mechanism and, 0.5 per cent of Swachh Bharat Cess and 0.5 per expenditure and remaining portion of service tax at rate of 14 per cent was set-off against amount payable, Assessing Officer had rightly allowed claim of Service tax Expense. Revision is held to be not valid. Held that assessee-employer is liable to deposit employee's contribution towards PF/ESI on or before due date as a condition for deduction under section 36(1)(va). Following the ratio in Checkmate Services (P.) Ltd. v. CIT (2022) 448 ITR 518 / (2023) 290 Taxman 19 (SC), revision order is affirmed. (AY. 2018-19)
D.V. Properties (P.) Ltd. v. PCIT (2023) 203 ITD 283 (Surat) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Transfer has taken place in earlier years-Provisions of section 56(2)(x) applicable with effect from 1-4-2017 would not be applicable to assessee during relevant year.[S. 56(2)(x)]
Assessee individual purchased a property in assessment years 2004-05 and 2011-12 (1/2 share in financial year 2003-04 and rest ½ share in financial year 2010-11) and entire payments were also made by account payee cheques in these relevant years and possession was taken. Assessee filed his return of income for relevant assessment year, and assessment was completed. Subsequently, Pr. Commissioner invoked revision jurisdiction on ground that documents of property were executed during relevant assessment year, thus, assessee had purchased property below stamp duty value as determined by Stamp Valuation authorities in relevant assessment year. Accordingly, provisions of section 56(2)(x) were applicable in case of assessee which Assessing Officer had failed to do. He added difference between fair market value during year and actual purchase value of property to income of assessee under section 56(2)(x). That documents executed during relevant assessment year were in nature of

correction of defects of title of property for which assessee had deposited additional stamp duty. Tribunal held that to correct defect in title of property would not mean that assessee had purchased new property in relevant year. Since possession of property was taken in earlier years and entire payments were also made in earlier years, effective transfer had taken place in earlier years, hence, provisions of section 56(2)(x) applicable with effect from 1-4-2017 were not applicable to assessee. Revision order is quashed. (AY. 2018-19)
Kiran Kasturchand Shah. v. PCIT *(*2023) 202 ITD 103/ 226 TTJ 684 (Surat) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Co-Operative society-Interest and dividend from Co-Operative Banks-Allowable as deduction-Revision order is quashed.[S. 80P(2)(d)]
Assessee-cooperative society claimed deduction under section 80P(2)(d) with respect to interest and dividend income earned from co-operative bank-During scrutiny assessment, Assessing Officer accepted claim of assessee.Principal Commissioner invoked revisionary proceedings on ground that assessee had not earned said interest income in its business activities, thus, such income was to be taxed under head income from other source. on appeal the Tribunal held that the case of assessee was selected for scrutiny for examination of deduction of Chapter-VIA and assessee while filing response with respect to show cause notice explained admissibility of deduction under section 80P. Furthermore, Tribunal on similar grounds had provided relief to assessee in previous assessment years. Revision order is quashed. (AY. 2018-19)
Shree Madhi Vibhag Khand Udyog Sahakari Mandli Ltd. v. PCIT (2023) 202 ITD 121 (Surat) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-subscription fee for providing access to database pertaining to legal and law related information-Business profits-No permanent establishment-Not taxable in India-Revision is not valid-DTAA-India-USA [S. 9(1)(i), 9(1)(vii), Art.7]
Assessee, a tax resident of USA, engaged in business of maintaining an online database pertaining to legal and law related information, earned subscription fees from customers worldwide including India, by providing access to online database. Assessee filed its return of income claiming that subscription fee received for providing access to database was in nature of business income and was not taxable in India as per provisions of India-US DTAA as it did not have a fixed place of business or a PE in India.Assessment was completed under section 143(3). Commissioner invoked section 263 and held that income of assessee was taxable as FTS/FIS under provisions of Act in conjunction with article 12(4) of India-USA DTAA and directed Assessing Officer to revise assessment order. On appeal the Tribunal held that in subsequent two assessment years 2018-19 and 2019-20 in assessee's own case decided this issue on merits in favour of assessee, holding that in absence of any material available on record to prove that assessee was providing full fledged service and solutions for legal professions, payment received by assessee was in nature of 'Business Profit' which could not be brought to tax in India in absence of PE. Very basis of assumption of jurisdiction by Commissioner under section 263 did not survive. (AY. 2017-18)
Relx Inc. v. ITO (2023) 202 ITD 213 (Delhi) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Income from other sources-Fixed deposit-Deemed Municipality working in name and style as 'Sachin Notified Area'-Issue of interest on fixed deposit which was assessable under head 'income from other sources', had been examined by Assessing Officer during assessment stage by conducting necessary enquiry, order of AO sought to be revised in

impugned order was neither erroneous nor prejudicial to interest of revenue for reason of any lack of inquiry-Delay of 208 days for filing appeal is condoned. [S. 10(20), 56 253]
Assessee is a deemed Municipality working in name and style as 'Sachin Notified Area'. Assessee had filed its return of income for and claimed deduction under section 10(20). Assessing Officer had disallowed deduction claimed by assessee, stating that assessee was not covered by definition of Local Authority as contained in Explanation to section 10(20). Assessee filed appeal against said order before Commissioner (Appeals). During pendency of appeal PCIT, revised the order on the ground that the assessee had received an amount towards interest on FD which was not routed through Profit & Loss account and same was directly shown in balance sheet as Capital Fund, under head Reserve and Surplus therefore, he held that AO had not inquired into issue of income earned from interest on FDs and passed assessment order without application of his mind and thus, assessment order was erroneous insofar as it was prejudicial to interest of revenue. On appeal the Tribunal held that interest income on fixed deposit could not be changed whether it was routed through profit and loss account or taken directly to reserve and surplus in balance sheet and hence there was neither violation of accounting principles, nor avoidance of tax on part of assessee under consideration.Since issue of interest on fixed deposit which was assessable under head 'income from other sources', had been examined by Assessing Officer during assessment stage by conducting necessary enquiry, order of AO sought to be revised in impugned order is neither erroneous nor prejudicial to interest of revenue for reason of any lack of inquiry. Tribunal condoned the delay of 208 days in filing an appeal before the Tribunal. (AY. 2017-18)
Sachin Notified Area. v. PCIT (2023) 202 ITD 573 (Surat) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash deposited-Demonetization period-Assessing Officer has added 20 percent of sales as unexplained cash credits-Revision order is quashed. [S. 68]
On appeal the Tribunal held that the assessee had demonstrated that cash deposit in bank account during demonetization period was not an abnormal occurrence but in fact was attributable to scale and manner of conducting business by assessee having huge turnover, all majorly in cash during year of demonetization. All these explanation given by assessee was rightly taken note of by Assessing Officer and finding anomaly to extent of substantial increase in sales during demonetization period, he considered it fit to treat 20 per cent of sales as unexplained credits. Revision order is quashed. (AY. 2017-18)
Shankarlal Thakordas Narsingani. v. PCIT (2023) 201 ITD 845 (Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Transfer of land used for agricultural purposes-Accepted the claim in another co-owner-Order is passed after [S. 54B]
Assessing Officer allowed exemption claimed by assessee under section 54B after considering submissions of assessee with respect to details of sale of property being agricultural land, etc.-Principal Commissioner invoked revisionary proceedings on ground that assessee claimed exemption under section 54B, however, Assessing Officer had not verified whether assessee was using said land for agricultural purposes for two years immediately preceding date of transfer as required under section 54B and further, no agricultural income was accounted for in its return for preceding assessment year, order was erroneous and prejudicial to interests of revenue. On appeal the Tribunal held that in case of one of other co-owners in instant case, since Assessing Officer had made detailed enquiry before passing assessment order and had also applied his mind while granting exemption under section 54B, his order could not be termed as erroneous and prejudicial to interests of

revenue and, hence, order passed by Principal Commissioner is quashed. The Tribunal also held that where Department had accepted claim of exemption under section 54B in case of one co-owner, then in that situation other co-owners of same land should not be disallowed. Revision order is quashed. (AY. 2017-18)
Bhikhabhai Rajabhai Dhameliya. v. PCIT (2023) 201 ITD 424 /225 TTJ 1104 (Surat) (Trib.)
Dakshben Shailesh Dhameliya v.PCIT (2023) 201 ITD 424 /225 TTJ 1104 (Surat) (Trib.
Ravjibhai Becharbhai Dhamelia v.PCIT(2023) 201 ITD 424 /225 TTJ 1104 (Surat) (Trib.

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Method of accounting-Income Computation and Disclosure Standards (ICDS)-Accrual-NBFC Governed by RBI was not required to recognize its accrued interest on NPAs as income on accrual basis, provisions of ICDS would not be applicable-
Principal Commissioner passed the revision order on ground that he had failed to carry-out detailed enquiries for purpose of assessing assessee's interest income on NPAs on accrual basis in light of recently introduced Income Computation and Disclosure Standards (ICDS) applicable from impugned assessment year onwards. On appeal the Tribunal held that the Assessing Officer issued section 143(2) notice as well as section 142(1) notice, specifically raising issue of Income Computation and Disclosure Standards 'ICDS' compliance. Assessee replied that interest income regarding impugned NPA advances could neither be assessed on accrual principle nor as per recently introduced 'ICDS'. This was indeed coupled with clinching fact that a perusal of 'ICDS No. IV' dealing with 'revenue recognition' itself made it clear that 'in case of conflict between provisions of Income-tax Act, 1961 and ICDS; provisions of Act shall prevail to that extent. The assessee had succeeded on issue of accrual of interest on NPAs right up to High Court and assessee was not required to recognize its accrued interest on NPAs as income on accrual basis. Therefore, CBDT's circular issued in tune with foregoing ICDS also would not apply. Revision order is set aside. (AY. 2017-18)
Bajaj Finance Ltd. v. PCIT (2023) 201 ITD 656 (Pune) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Income from other sources-Expenditure claimed-Allowability of interest-Verified in the course of original assessment proceedings-Revision order is quashed.[S. 36(1)(iii), 56, 57]
Assessee borrowed interest bearing funds and partly utilized same to earn interest income. It incurred interest expenditure on interest bearing funds and inadvertently claimed same against interest income and had shown balance interest expenditure under head 'income from other sources' and claimed deduction of same under section 57. Assessing Officer after considering assessee's reply regarding expenditure claimed under section 57 allowed interest expenditure. Commissioner passed the Revision order. On appeal the Tribunal held that since Assessing Officer after considering details of expenditure claimed by assessee under section 57 had allowed interest expenditure and in immediate procceding year similar claim of interest expenditure was allowed to assessee under section 36(1)(iii), there was neither any lack of enquiry by Assessing Officer during assessment proceedings nor there was any prejudice which had been caused to department. Revision order is set aside. (AY.2017-18)
Asian Box Corporation. v. PCIT (2023) 201 ITD 269 (Rajkot) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny-Purchase of residential property was entered by parties in AY 2008-09 even for consideration lower than market price, provisions of section 56(2)(vii)(b) would not be

applicable as it came into existence from 1-10-2009-Revision order is quashed.[S. 56(2)(vii)(b)]

Assessee had entered into an agreement for sale with Developer on 30-1-2008 for purchase of residential property. Assessee's return was selected for limited scrutiny in respect of purchase transaction of such property. Same was explained by assessee by furnishing sources of investment. Assessing Officer accepted return of income of assessee for relevant assessment year. Commissioner passed the Revision order alleging that the Assessing Officer had failed to make adequate and proper enquiries to ascertain true nature and period of transfer for purchase of property as well as failed to examine applicability of section 56(2)(vii)(b) since market price was much higher than consideration paid for said purchase. On appeal the Assessee contended that section 56(2)(vii)(b) was not applicable at time of booking of flat on 18-7-2006. Tribunal held tha section 56(2)(vii)(b) came into existence from 1-10-2009 and at that relevant point of time, said provision dealt with only those situations where transaction in immovable property was without consideration. Therefore, application of said provision could not be insisted in assessment years prior to assessment year 2014-15 where transaction in immovable property was with consideration, whether adequate or inadequate since such a situation was specifically made applicable for and from assessment year 2014-15. There was a valid and lawful agreement entered by parties in assessment year 2008-09 when subject property was transferred, mere fact that flat was registered in 2014 falling in assessment year 2015-16 did not contemplate application of provisions of section 56(2)(vii)(b) during year under consideration and, hence, assessment order was not erroneous and prejudicial to interest of revenue. (AY. 2015-16)

Shashi Jain. (Smt.) v. PCIT (2023) 201 ITD 33/225 TTJ 577 (Kol) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Deemed to accrue or arise in India-Royalties/fees for technical services-Off-shore sales-Order is passed after detailed enquiry-Revision is quashed-DTAA-India-Singapore. [S. 9(1)(vii), 143(3) Art. 12]

Assessee, a tax resident of Singapore, engaged in business of wholesale distribution of electronic products. It provided after-sales support services through third-party channel partners in India and other parts of world. Assessee claimed that receipts from sales and services were not taxable in India and sought a refund of TDS deducted. Assessing Officer accepted income returned by assessee after conducting an inquiry. Commissioner under section 263 proceedings held that the Assessing Officer had failed to conduct a proper inquiry into true nature of receipts from repairs and maintenance services, and off-shore sale of products. Commissioner held that receipts from repairs and maintenance services were in nature of fee for technical services (FTS) under section 9(1)(vii). On appeal the Tribunal held in the course of assessment proceedings the assessee furnished its reply explaining nature of activities in India and clearly stated that receipts from repair and support services were not taxable in India. Assessee also enclosed a copy of TRC issued by Singapore Revenue Authorities. Further, in response to notice issued under section 142(1), assessee furnished its reply and enclosed final assessment order for assessment year 2016-17, wherein Assessing Officer had accepted assessee's claim that receipts from rendition of repair and support services were not in nature of FTS and hence not taxable in India. Tribunal held that only because view taken by Assessing Officer was not acceptable to revisionary authority or did not match with view of revisionary authority, it could not be said that it was not a possible view. Revision order is quashed. (AY. 2016-17)

Zebra Technologies Asia Pacific Pte. Ltd. v. CIT (IT) (2023) 201 ITD 87 (Delhi) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Survey-Surrender of income-Commissioner cannot look again at same information-Revision is quashed.[S. 133A, 143(3)]

Held that the Revenue failed to point out any error in the order accepting the surrendered income under the stated heads and hence, no prejudice could be said to be caused. The revisionary authority could not seek to look at the very same information again in order to arrive at a different view. A valid order after due enquiries had been passed. The power could not be exercised arbitrarily. The argument that the assessee was still free to argue before the Assessing Officer in case the order was upheld, could not be accepted. The order of revision order is quashed.(AY. 2017-18)
Kashmiri Lal Gupta v.PCIT (2023)102 ITR 1/224 TTJ 370 (Chd)(Trib
Gupta Electrico v.PCIT 2023)102 ITR 1/ 224 TTJ 370 (Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Industrial undertaking-Himachal Pradesh-Audit report filed physically before filing of return-Deposit of cash-Demonetisation period-Detailed filed in the course of assessment proceedings-Revision is held to be not valid.[S. 80IA(7), 80IC, 80IE (6), 143(3)]
Allowing the appeal of the assessee the Tribunal held that Audit report filed physically before filing of return, due to technical reason the audit report could not be filed electronically. As regards deposit of cash during Demonetisation period, the Assessing Officer in the course of assessment proceedings has called for explanation after considering the explanation the no addition was made. Revision is held to be not valid. (AY. 2017-18)
Control Print Ltd v. PCIT (2023) 102 ITR 5 (SN)(Mum)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Record-Unexplained expenditure-Repayment of unsecured loans-Shell Companies-Revision is not justified-Loans from shell companies-Revision is justified.[S. 68, 69C]
Held that the assessee was not found to have incurred any unexplained expenditure. Revision is held to be not valid. Loan transactions revision is held to be valid.(AY.2017-18)
G. T. Homes v.PCIT (2023)102 ITR 11 (SN)(Raipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny assessment-Issues raised in revision thoroughly examined in assessment proceedings-Revision is bad in law.[S. 14A, 36(1)(iii), R.8D]
The issue was the subject matter of discussion by the Assessing Officer during the course of assessment proceedings, although, there was no specific discussion in the assessment order. Therefore, revision on this issue was incorrect, because for application of provisions of section 14A of the Act, there should be an exempt income and in this case, exempt income was absent. Therefore, the question of application of provisions of section 14A did not arise. Borrowed money was utilised for the purpose of business, revision is held to be not valid. (AY.2017-18)
Good Earth Fertilizers Co. P. Ltd. v. ITO (2023)102 ITR 68 (SN)(Chennai) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Assessing Officer disallowed the expenses after considering the reply of the assessee-Extent of inquiry Assessing Officer's prerogative-Commissioner cannot impose his own understanding of extent of inquiry-Revision is not valid. [S. 40(a)(i) 40(ia) 143(3)]
The assessee had given a detailed chart regarding payments made towards advertisement expenditure, legal and professional fees and service charges. At appropriate places, the

assessee also obtained certificate from the payee for lower withholding tax and deducted taxes at the rates mentioned in the certificate. The Principal Commissioner may be of the opinion that the estimate made by the officer was on the lower side but that would not vest the Commissioner with power to re-visit the entire assessment and determine the income himself at a higher figure. It was not the case of the Principal Commissioner that the Assessing Officer had failed to apply his mind to the issues on hand or had omitted to make enquiries altogether or had taken a view which was not legally plausible in the instant facts. Further, the assessee gave a complete reconciliation on the deduction of tax at source on various payments made and gave a detailed explanation on applicability of deduction of tax at source with respect to various payments with the applicable rate. Section 263 of the Act does not visualise a case of substitution of the judgment of the Commissioner for that of the Assessing Officer, who passed the order unless the decision is held to be wholly erroneous. The revision is not sustainable.(AY.2017-18)

Reckitt Benchkiser Healthcare India Pvt. Ltd. v. PCIT (2023)102 ITR 35 (SN)(Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Industrial undertaking-Losses incurred prior to initial year-Deduction allowed by Assessing Officer in accordance with circular-Without setting off brought forward unabsorbed depreciation-Capital gains-Securities Transaction Tax-Own funds-Revision is quashed. [S. 10(38), 80IA,

That the Assessing Officer had called for break-up details of long-term investments, the expenses incurred in relation to exempt income, details of availability of non-interest bearing funds. By notice under section 142(1), the Assessing Officer had called for clarification on the note given by the tax auditor on the expenses related to exempt income. The assessee replied that it had not earned any expenditure relating to exempt income. The Assessing Officer had made enquiries during the course of assessment proceedings with regard to the disallowance to be made under section 14A of the Act. Since the assessee had enough of its own funds, no disallowance out of interest expenses was called for. The order passed by the Principal Commissioner on this issue was liable to be quashed.(AY.2017-18)

Satya Narayan Dhoot v. PCIT (2023)102 ITR 13 (SN)/ 221 TTJ 750 (Jodhpur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Search and seizure-Penalty-Not recording satisfaction-Concealment penalty-Principal Commissioner cannot exercise revisional jurisdiction qua proceedings before an Appellate Authority-Revision is invalid.[S. 132,153A, 271(1)(c)]

Held, that there was no order in so far as penalty proceedings were concerned. If there was no order, there was no question of its being erroneous or prejudicial. Whether the Assessing Officer had not initiated penalty proceedings at all or it was a case of wrong initiation of penalty, in both the situations the Principal Commissioner did not get jurisdiction at all because no order had been passed by the Assessing Officer till the time of examination by the Principal Commissioner under section 263 in the proceedings under examination. Passing of an order in those proceedings, was a condition precedent. Hence, there could not be any question of finding any error or prejudice therein under section 263. The Principal Commissioner or Commissioner could not create proceedings. If he was not permitted to direct the appellate authority he could not be permitted to substitute the jurisdiction or powers of only the Assessing Officer by his satisfaction by creating proceedings where none exist-the assessment having already been completed. According to the Central Board of Direct Taxes Circular No. 9/DV/2016, dated April 26, 2016 ([2016 383 ITR (St.) 21), a mere mention of the penalty in the assessment order is of no value. The notice is to be issued by the competent

officer who is empowered under the Act. The only proceeding and consequent order, is the assessment order and not the penalty proceedings. here must exist some order, which is sought to be revised by the Principal Commissioner. If there is no order, the question of revising the order does not arise. He cannot pass an order under section 263 to pass an order, where there is none. (AY. 2012-13 to 2018-19)

Harish Jain v. PCIT (2023)102 ITR 84/221 TTJ 276 (Jaipur)(Trib)
Ram Kishan Verma v. PCIT (2023)102 ITR 84/221 TTJ 276 (Jaipur)(Trib)
Manoj Kumar Sharma v. PCIT (2023)102 ITR 84 /221 TTJ 276 (Jaipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Expenditure on scientific research-Deduction was allowed after verifying necessary documents-Revision is bad in law.[S. 35, 35(AB), 143(3)]

Tribunal held that sub-section (3) of section 35 clearly provides that if any question arises under this section as to whether and if so to what extent any activity constitutes or any asset was being used for scientific research, the Board should refer the question to the prescribed authority whose decision shall be final and binding. Neither the Assessing Officer nor Principal Commissioner can sit on judgment on the approval granted by prescribed authority i.e. DSIR in the present case. Accordingly, Tribunal held that the assessment order framed under section 143(3) was neither erroneous nor prejudicial to interests of revenue since Assessing Officer had allowed deduction under section 35(2AB) only after verifying all necessary documents and certificates. Consequently, the revision order passed under section 263 by Principal Commissioner was set aside. (AY. 2011-12)

Cavinkare (P.) Ltd. v. Dy.CIT (2023) 102 ITR 436 /221 TTJ 549 /149 taxmann.com 296 (Chennai) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Educational Institution-Revision order is set aside. [S. 10(23C)(iiiad) 12A, 12AA, 143(3)]

The assessee trust was registered u/s 12A/12AA of the Act – Assessment Year: 2017–2018 – Assessment u/s 143(3) accepting the returned income, allowing the exemption u/s 10(23C)(iiiad). The CIT (E) issued the notice u/s 263 on the ground that there was no receipt from education institution or activities, but total income comprised off dividend, interest and surplus from sale of investments and treated the AO's order as an erroneous in so far as prejudicial to the interests of the Revenue and accordingly, CIT (E) directed the AO to assess the income without allowing exemption u/s 10(23C)(iiiad)

The Hon'ble ITAT, while allowing the appeal of the Trust, observed the undisputed fact that the assessee trust was engaged in running an educational institution in which, no fee was charged from the students due to severe poverty and backwardness in the area and local residents were not sending their children to schools, incurred the huge sum towards educational expenses and maintenance of the school, that mere receipts from other sources other than educational activities more than 1 Crore could not be the ground to treat the assessment order passed by the AO, appreciating the crucial facts demonstrated from the submissions/explanations offered by the assessee trust in response to the queries raised by the AO and taking the plausible view to grant the benefit of the provisions of Section 10(23C)(iiiad) of the Act, could not fall within the phrase "an erroneous in so far as prejudicial to the interests of the Revenue". Hence, the assessee trust entitled to exemption u/s 10(23C)(iiiad) of the Act and consequently, the order of the CIT (E) was to be set aside. (AY. 2017-18)

Shri Venkateshwara Educational Institute v. CIT (E) (2023) 102 ITR 45 (SN) /200 ITD 193 (Kol) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Survey-Additional income-Revision order is set aside.[S. 143(3)]

After a compulsory scrutiny and CASS survey at the premises of the assessee, an additional income of Rs. 1Cr was surrendered. Assessment order was passed. The order was set aside under the Revisionary Powers of ld. PCIT claiming that the Order was erroneous so as it is prejudicial to the interest of the revenue in terms of provisions of section 263 of the Act, especially in view of Explanation 2 inserted by the Finance Act, 2015. The tribunal held that the order framed u/s 263 of the Act deserves to be set aside and that of the Assessing Officer deserves to be restored. (AY. 2017-18)

Surya Hatchery (Earlier Known as M/S Neelkanth Breeding Farm) v. PCIT (2023) 102 ITR 186/ 221 TTJ 567 (Chd) (Trib)

Neelkant Hatcheries v.PCIT (2023) 102 ITR 186/ 221 TTJ 567 (Chd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Amounts not deductible-Since the provisions of section 40(a)(iib) does not contemplate tax and VAT does not fall within the ambit of "fee" or "charge", section 40(a)(iib) cannot be attracted in respect of expenditure by way of VAT. Accordingly, the order of the Assessing Officer under section 143(3) allowing assessee's claim for deduction of expenditure by way of VAT cannot be regarded as erroneous and prejudicial to the interest of the revenue in terms of section 263. [S. 40(a)(iib), 143(3)]

Assessee is a company wholly owned by the State Government of Chhattisgarh. The Principal Commissioner of Income Tax (PCIT) initiated revision proceedings under section 263. During the course of revision proceedings, PCIT observed that the assessee had debited an amount under the head "VAT" in its Profit and Loss account for the impugned assessment year. It was observed by PCIT that the Assessing Officer in the course of assessment proceedings had without raising any query as regards the assessee's entitlement for claim of deduction of the expenditure by way of VAT had summarily accepted the same. The PCIT was of the view that the expenditure by way of VAT claimed by the assessee clearly fell within the realm of disallowance contemplated in sub-clause (B) of clause (iib) of section 40(a) as per which any amount appropriated directly or indirectly under any head by whatever name called from a State Government undertaking by the State Government is not to be allowed as a deduction in computing the income chargeable under the head "Profits and Gains from business or profession". Accordingly, the PCIT passed an order under section 263 wherein it was held that the order passed by the Assessing Officer under section 143(3) was erroneous in so far as it was prejudicial to the interest of the revenue in view of Explanation 2 of section 263. Consequently, the PCIT directed the Assessing Officer to give effect to his order passed under section 263 and disallow the assessee's claim for deduction of VAT.

The Tribunal observed that the issue involved was squarely covered by the judgment of the Hon'ble Supreme Court in the case of *Kerala State Beverages Manufacturing & Marketing Corporation Ltd. v. ACIT* wherein it was held that "surcharge of tax" is a tax and section 40(a)(iib) does not contemplate "tax" and surcharge on sales tax is not a "fee" or a "charge". Therefore, no disallowance under the said statutory provision was called for in the hands of the assessee.

Thus, the Tribunal had set aside the order passed by the PCIT under section 263 and had restore the order of the Assessing Officer passed under section 143(3) to the extent he had allowed the assessee's claim for deduction of VAT. (AY. 2015-16 to 2017-18).

Chhattisgarh State Beverages Corporation Limited v. PCIT (2023) 221 TTJ 427(Raipur)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Interest paid to customer-No details are filed in the course of assessment proceedingS. [S. 143(3)]

Held that details were neither brought to the notice of the Commissioner nor discernible from section 143(3) order. The assessee had not filed any details during the scrutiny assessment. The assessee ought to have submitted tabulated details of the customers including collection of particular forms from the customer for not deducting tax at source. No such steps were taken by the assessee either before the Commissioner or before the Tribunal. Therefore, the Principal Commissioner had not committed any error in exercising the powers under section 263 of the Act.(AY.2011-12)

Madhya Bihar Gramin Bank v. P CIT (2023)104 ITR 70 (SN.)(Pat) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny assessment the PCIT can examine the only issue which was before the Assessing Officer during the course of scrutiny assessment and not any other issue which has not been subject matter of the Assessing Officer for the assessment in a limited scrutiny assessment. [S. 143(3)]

The issue under consideration is that once the assessment is framed under section 143(3) for limited scrutiny then can PCIT revise the assessment order on some other issues which is not connected with the issues raised in limited scrutiny by the Assessing Officer.

The Tribunal by relying upon the Instruction No.20/2015 dated 29.12.2015 issued by CBDT observed that in a limited scrutiny case the assessment shall remain confined only to the specific issues for which case has been picked up. The scope of limited scrutiny shall be expanded upon fulfillment of certain conditions. The conditions are that during the course of assessment proceedings in a limited scrutiny case if it comes to the notice of Assessing Officer that there is a potential escapement of income exceeding Rs.5 lakh for normal CIT charge and potential escapement of income exceeding Rs.10 lakh for metro CIT charge requiring substantial verification on any other issue then the case may be taken up for complete scrutiny with the prior approval of PCIT.

In light of the aforesaid circular, the Tribunal held that once the Assessing Officer cannot examine any other issue except the issue as selected for limited scrutiny assessment, the PCIT can examine the only issue which was before the Assessing Officer during the course of scrutiny assessment and not any other issue which has not been subject matter of the Assessing Officer for the assessment in a limited scrutiny assessment. (AY. 2015-16)

Duckwoo Autoind Pvt. Ltd. v. PCIT (2023) 221 TTJ 235 (Chennai)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Since the revisionary order was passed within five days from the date of issuance of show cause notice, proper and effective opportunity of being heard was not provided to the assessee matter restored back to PCIT to pass fresh revisionary order after giving proper and adequate opportunity of being heard to the assessee.[S. 143(3)]

During the course of revisionary proceedings under section 263, the PCIT observed that during the course of reassessment proceedings, the Assessing Officer has not examined/enquired the details of facts of the case and hence the reassessment order is erroneous so far as prejudicial to the interest of revenue. Show cause notice dated 18.03.2021 under section 263 was issued to the assessee and date of hearing was fixed on 22.03.2021. However, the assessee did not give reply on the aforesaid date of hearing. The revisionary order under section 263 was passed on 23.03.2021 which is within 5 days from the date of issue of show cause notice.

Tribunal observed that proper and effective opportunity of being heard was not provided by Ld. PCIT to the assessee before passing the impugned revisionary order

since the said order was passed within five days from the date of issuance of show cause notice. Accordingly, the Tribunal set aside the revisionary order passed by the Ld. PCIT. The matter was restored back to the file of the Ld. PCIT to pass fresh revisionary order after giving proper and adequate opportunity of being heard to the assessee.(AY. 2010-11)
Anil Kumar Singh v. PCIT (2023) 221 TTJ 97 (All) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-No detailed inquiry or verification by PCIT-Failure to point out error in assessment order-Order is quashed. [S. 35(2AB), 143(3)]
After making an enquiry with respect to the claim of deduction made by the assessee u/s 35(2AB), the assessment order was passed u/s. 143(3) of the Act. Subsequently, PCIT issued a show cause notice u/s 263 wherein the assessee furnished detailed explanations. PCIT passed the S. 263 order holding the assessment order as erroneous and prejudicial to the interest of revenue, and set aside the assessment order for fresh assessment. It was held that the PCIT had merely reproduced the exhaustive details submitted by the assessee but did not dwell on the same by giving observations of his examination of the details and data, to point out how and what was erroneous in respect of the claim made u/s 35 of the Act. Further, it was not a case where there was no enquiry at all by the AO as the AO did enquire in to the claim of assessee in respect of S. 35(2AB). Further, PCIT had not carried out any enquiry of his own and has merely set aside the assessment to the file of the AO to re-examine the issue of claim of scientific research expenditure. Therefore, the conclusion arrived at by the Ld. PCIT invoking provisions of S. 263 of the Act on the first issue was not justified. The impugned order u/s 263 of the Act was quashed. (AY. 2016-17)
Britannia Industries Ltd. v. PCIT (2023) 102 ITR 513 (Kol)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-commissioner taking view explanation offered by the assessee to assessing officer not satisfactory and assessing officer had failed to conduct further enquiries, revision based on audit objection is invalid. [S. 68, 69, 69A, 69B, 69C, 69D, 115BBE]
Held that, the Assessing Officer had duly made enquiries from the assessee as to the nature and the source of the surrendered income and called upon him to show cause why it should not be charged at a higher rate of tax according to the provisions of section 115BBE of the Act. The Assessing Officer after considering the submissions and explanations of the assessee had accepted the contention of the assessee that the surrendered income was out of the business income of the assessee. The Principal Commissioner had not pointed out why the explanation offered by the assessee to the Assessing Officer was not satisfactory and what further enquiries were required to be conducted, which the Assessing Officer had failed to conduct. The Principal Commissioner based his opinion and order on the audit objections and report. Therefore, there was no justification on the part of the Principal Commissioner in invoking the revisionary jurisdiction. (AY. 2017-18)
Surender Kumar v. PCIT (2023) 102 ITR 247/ 222 TTJ 5 (UO) (Chd)(Trib.)
Sunil Kumar v. PCIT (2023) 102 ITR 247/ 222 TTJ 5 (UO) (Chd)(Trib.)
Shakti Sagar Chawla v.PCIT (2023) 102 ITR 247/ 222 TTJ 5 (UO) (Chd)(Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Principal commissioner is not justified in initiating revision proceedings when proceedings have already declared under the Direct Tax Vivad Se Vishwas Scheme. [Direct Tax Vivad Se Vishwas Act, 2020, S. 8]

Held that, the declaration under the Direct Tax Vivad se Vishwas Scheme was made for the proceedings in which the disputed amount pertaining to the allotment of shares to shell company on premium. The assessee had filed the necessary forms under the Direct Tax Vivad Se Vishwas Scheme and Form 5 confirming the settlement under the Scheme had been issued. Therefore, the transaction was part of the proceedings declared under the Direct Tax Vivad Se Vishwas Scheme. Without verification of the face value, the Assessing Officer would not have assessed the premium amount and the amount towards the face value of the shares was part and parcel of the entire proceedings which the assessee had opted to settle under the Direct Tax Vivad Se Vishwas Scheme. Therefore, the Principal Commissioner was not justified in initiating the proceedings under section 263 when the proceedings were already declared under the Direct Tax Vivad Se Vishwas Scheme. (AY. 2012-13)

Shiva Ferric Pvt. Ltd. v. PCIT (2023) 102 ITR 173 (Bang.)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Assessment order which is nullity in law-Cannot be revised. [S. 132A, 143(3)]

Rs. 20 Lakhs in old currency was seized by the ITO during municipal elections. Scrutiny notice u/s 143(2) was issued for assessment. After assessment, the order passed was called for revision by the PCIT u/s 263. The assessee contended that when a requisition has been made under s.132A of the Act, the jurisdiction to complete the assessment is governed by the provisions of Section 153A of the Act. The normal provisions of assessment under s.143(3) of the Act would not apply in the case where action has been taken either under s.132 of the Act or under s.132A of the Act.

The Tribunal held that the order which is a nullity in law and has no legal effect, cannot be revised under s.263 of the Act. The assessment order being infructuous in law, the consequential action under s.263 of the Act is equally infructuous. The assessment, in the instant case, has not been framed under s.153A of the Act despite requisition under s.132A of the Act. The error committed by the AO in contravention of express provisions of Act is incurable and has rendered the assessment void ab initio and a nullity in law. Such an assessment order being devoid of any legal effect could not be revised. The revisional order is accordingly quashed and set aside. (AY. 2017-18)

Piyush Kumar Choubey v. P CIT (2023) 221 TTJ 17 (UO) (Raipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Duly examined matter on mere surmise of human probability. [S. 142(1), 143(2), 143(3)]

For the given assessment year, the assessee's return was selected for limited scrutiny to examine cash deposits during the demonetization period. Notices under sections 143(2) and 142(1) of the Income-tax Act, 1961 with questionnaires were issued and after taking into consideration the submissions filed by the assessee, the returned income declared by the assessee was accepted. Subsequently, the Principal Commissioner held the order passed by the Assessing Officer erroneous and prejudicial to the interests of the Revenue and set it aside directing the Assessing Officer to pass a fresh order in accordance with law after providing sufficient opportunity to the assessee.

Upon appeal before the Hon'ble Tribunal, the assessee contended that the deposit of cash during the financial year relevant to the assessment year in question, was out of opening cash-in-hand at the beginning of the financial year and that the opening cash-in-hand was from (i) maturity proceeds from life insurance (ii) policies on death of her husband, (iii) compromise and settlement amounts received pursuant to court orders, (iv) sale of shares (v) sale of plot of land and (vi) withdrawals from the bank account. The Assessee further explained that the reason for keeping cash was due to insecurity of the assessee and

undergoing mental trauma on account of death of her husband, divorce proceedings of her daughter and various court cases. The Assessing Officer had examined these submissions and carried out verification from the banks and after examining earlier years' tax returns, had accepted them in support of cash available at the beginning of the year and deposit therefrom during the demonetization period. Further, regarding other receipts on maturity of insurance policies and sale of land, the factum of these transactions and necessary evidence on record had not been disputed by the Principal Commissioner. The Principal Commissioner could not fathom the explanation of the assessee holding the same against human probability, on the assessee keeping such huge cash-in-hand for such a long period of time.

Held that the human probability must be seen in context of surrounding circumstances of the assessee prevalent at the relevant point in time and a reasonable inference has to be drawn. In the present case, the assessee had sufficiently explained and demonstrated the availability of cash which she kept in her possession instead of depositing it with the bank or any other person and thus, she had discharged the initial onus placed on her. In absence of any contrary evidence on record, the explanation deserved acceptance. (AY.2017-18)

Kanta Rani (Smt) v. PCIT (2023) 102 ITR 49 (SN) (Chd.)(Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Shares issued at premium-DCF method-Commissioner in Revision proceedings cannot direct the Assessing Officer to adopt the NAV method-TDS on interest income-Interest income om fixed deposit for obtaining the loan for obtaining the bank guarantee-Directly linked with activity of setting up hotel and is to be viewed as a capital receipt going to reduce cost of construction-Revision order is quashed.[S. 4, S. 56(2)(viib), 199, R.11UA, R.37BA]

Assessee-company issued shares at premium valuing the shares at DCF method. The Assessing Officer accepted the valuation adopted by the Assesee. Commissioner set aside the order and directed the Assessing Officer to adopt NAV method to determine FMV. On appeal the Tribunal held that valuation method opted by assessee could not be changed in view of statutory mandate of rule 11UA(2) and, thus, action of Principal Commissioner is in direct contravention to provisions of Explanation (a)(i) to section 56(2)(viib) read with rule 11UA. Principal Commissioner also invoked revisionary proceedings on ground that assessee claimed TDS on interest income, however no such income was offered for tax. On appeal the Tribunal held that since interest was earned on fixed deposits made for obtaining bank guarantee against EPCG licenses which were availed to import machinery required for construction of assessee's hotel, said interest was directly linked with activity of setting up hotel and was to be viewed as a capital receipt going to reduce cost of construction. Revision order is quashed. (AY. 2016-17)

Apna Punjab Resorts Ltd. v. PCIT (2023) 200 ITD 75/225 TTJ 957 (Chd) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Profit on sale of property used for residence-Constructed house before one year from sale of flats-Revision order is not valid.[S. 54]

Assessee sold residential flats on 26-9-2012.He purchased land on 27-1-2010 and constructed house thereon before one year from sale of flats.The Assessing Officer allowed exemption. Commissioner revised the order on the ground that conditions relating to investment in new asset within prescribed time frame for allowance of exemption under section 54 were not satisfied. On appeal the Tribunal quashed the Revision order. (AY. 2013-14)

Dineshbhai Jivanbhai Sanspara. v. PCIT (2023) 199 ITD 698 (Surat) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash deposited-Demonetization-No enquiry was made in the assessment proceedings-Commissioner remanding the matter to Assessing Officer for de novo consideration is justified. [S. 69A]

Assessee declared large sum of cash deposited in his bank account during demonetization period on pretext that said income was declared under Income Declaration Scheme, 2016.PCIT passed the revision order of the ground that no inquiry in matter was made by Assessing Officer, and, further no explanation as to nature and source of such cash deposited by assessee in his bank account during relevant previous year with respect to income declared under IDS was provided. He remanded matter back to Assessing Officer for de novo consideration. On appeal the Tribunal up held the order of the PCIT (AY. 2017-18)
Hemant Kumar Mulchandani. v. PCIT (2023) 199 ITD 448 / 224 TTJ 239 (Jabalpur) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Real estate developer-Annual value-Deemed rent-Unsold flats as stock-in-trade for more than one year-Revision is not justified-Amendment to section 23 vide introduction of sub-section (5) by Finance Act, 2017 with effect from 1-4-2018 whereby property held as stock-in-trade was brought to tax, would be effective prospectively. [S. 22, 23]
Assessee is a builder showed value of unsold flats in closing stock During scrutiny, Assessing Officer after perusal of reply of assessee passed assessment order wherein return filed by assessee was accepted. Principal Commissioner noted that assessee filed occupation certificate of unsold flats on 11-6-2015 and same were held by assessee as stock-in-trade for more than one year. He invoked revisionary jurisdiction and held that ALV of unsold flats was to be brought to tax as deemed rent under section 23. Accordingly, he directed Assessing Officer to pass fresh assessment order by computing ALV at 8 per cent of value of unsold flats and taxing same as deemed rent under head income from house property. On appeal the Tribunal held that the assessee was not into business of letting out property for rent but was into real estate development as well as re-development. The Assessing Officer did not determine notional income from unsold flats held by assessee as stock-in-trade after taking note of CBDT circular dated 15-2-2018.The Assessing Officer also carried out investigation with respect to details of unsold flats (stock) which was clearly shown in profit and loss accounts as well as in balance sheet of assessee. Since the Assessing Officer examined relevant facts of unsold flats and decision not to determine ALV was in line with CBDT circular, assessment order could not be held to be erroneous as well as prejudicial to revenue. The Tribunal also held that amendment to section 23 vide introduction of sub-section (5) by Finance Act, 2017 with effect from 1-4-2018 whereby property held as stock-in-trade was brought to tax, would be effective prospectively. (AY. 2017-18)
Dhirajlal Amichand Shah. v. PCIT (2023] 199 ITD 686 (Mum) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny-Civil contractor-Revision order is quashed. [S. 37(1)]
Assessee was a civil contractor. Assessing Officer selected case of assessee for limited scrutiny under CASS to examine interest expenses, sundry creditors and other expenses claimed in profit and loss account.Assessee filed various details and replies. Assessing Officer examined details and replies and out of other expenses disallowed certain expenses due to unsupported vouchers and added back to income of assessee and framed assessment under section 143(3). Subsequently Commissioner relying on Explanation 2 to section 263

passed the revision order for reasons that there was duplication of expenses claimed by assessee, assessee did not explain step reduction in net profit rate, assessee failed to provide any evidence for genuineness of collaborate expenses incurred and set aside assessment order with direction to Assessing Officer to redo assessment in accordance with law. On appeal the Tribunal held that all three aspects of limited scrutiny were duly examined and verified by Assessing Officer and certain addition was made after perusal of all evidences. As assessment was framed after due verification and examination and no error could be found in assessment order, Explanation 2 to section 263 would have no application. Revision order is quashed. (AY. 2015-16)

V.M. & Co. v. DCIT (2023) 199 ITD 142 (Chennai) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Insurance business-Income/funds in shareholders account was taxable separately at rate of 30 per cent instead of 12 per cent-Revision order is quashed. [S. 44, 115B]

Assessee is carrying on life insurance business in India. The Assessing Officer taxed surplus available in shareholders account along with insurance business while computing taxable income. Commissioner invoked revision jurisdiction on the ground that the order passed by Assessing Officer was prejudicial to interest of revenue as income/funds in shareholders account was taxable separately at rate of 30 per cent instead of 12 per cent as applicable on insurance business income. On appeal the Tribunal held that since the Assessing Officer had made adequate enquiries on treatment of income in shareholders account as part of life insurance business and its taxation under section 115B during course of assessment proceedings, Revision order is quashed. (AY. 2017-18)

Tata AIA Life Insurance Company Ltd. v. PCIT (2023) 199 ITD 247 (Mum) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny-No entry in order sheet in assessment proceedings-Non application of mind-Revision is held to be valid.[S. 37(1), 143(3)]

Tribunal held that there was discrepancy emanating from noting's made in order sheet and submissions made by assessee on 21-9-2017 claiming that he had produced bills and vouchers to claim substantial amount of expenses.As per records, hearing of assessment was concluded on 19-9-2017 whereas all relevant explanations related to issue of limited scrutiny formed part of assessee's submissions dated 21-9-2017. Since there was no entry in order sheet in assessment proceedings of aforesaid submission, Assessing Officer had failed to conduct required verification and examination and had not applied his mind before passing assessment order. Revision order is affirmed. (AY. 2015-16)

Karabi Dealers (P.) Ltd. v. PCIT (2023) 198 ITD 221 (Kol) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Amounts not deductible-Value added tax remittances-Collected VAT along with sale price of liquor bottle-VAT payable by assessee would not attract provisions of section 40(a)(iib) of the Act-Revision order is quashed.[S. 37(1), 40(a)(iib)]

Assessee is a state owned undertaking which was engaged in trading and retail vending in liquor. Assessee collected sale price of liquor bottle inclusive of VAT and claimed VAT expenses as expenditure under section 37(1) of the Act. Principal Commissioner invoked revisionary proceedings on ground that as per amended provisions of section 40(a)(iib) any amounts appropriated, directly or indirectly, from a State Government undertaking, by State Government, would not be allowed as deduction for purpose of computation of income of such undertakings under head 'profits and gains of business or profession' and therefore, VAT which was levied exclusively on State Government undertaking by State Government would

come within provisions of section 40(a)(iib) of the Act. On appeal the Tribunal held that since VAT was not exclusively levied on assessee but was only indirect tax collected from customers and remitted to Government and furthermore, assessee could not collect same at a rate higher than specified in Tamilnadu VAT Act, 2006, it could not be considered as surplus appropriation to State, and, thus, VAT payable by assessee would not attract provisions of section 40(a)(iib) and was to be allowed as expenditure. Revision order is quashed. (AY. 2014-15)

Tamilnadu State Marketing Corporation Ltd. v. ACIT (2023) 198 ITD 363 /221 TTJ 65 (Chennai) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Not for corrections, errors & mistake-No order in existence.[S. 271(1)(c), 271AAB(IA)]

Section 263 cannot be invoked to correct each and every type of mistake or error committed by the AO. If there is no order which is sought to be revised by the Pr. CIT, question of revising the order does not arise. In the instant case, though the AO recorded his finding in the order for initiation of penalty under Section 271(1)(c). He issued notice under Section 271AAB(1A).

Held that if there is no order, it is not open to the Pr. CIT to exercise his revisional powers under Section 263 to create a non-existent proceedings, invocation of provision of Section 263 to correct the section under which the penalty is leviable is beyond the power vested under Section 263 when there are other options available with AO. (AY. 2012-13 to 2015-16)

Harish Jain v. PCIT [2023] 221 TTJ 276 (Jaipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue Capital gains-Penny stocks-Exemption cannot be denied merely based on surrenders made by bogus entry providers claiming that it provided bogus LTCG through shares of such company-Revision order is quashed.[S. 10(38),45 148]

Assessing Officer received report of Investigation Wing wherein it was highlighted that bogus LTCG claims were being made by various parties by sale/purchase of penny stocks. Assessing Officer after considering said information noted that assessee sold its shares in CCLI which were not disclosed in its return of relevant assessment year and issued reopening notice Pursuant to said notice assessee filed revised return claiming LTCG Assessing Officer after making due inquiries with full awareness of issue held that case of assessee was not of penny stock and transactions of assessee were genuine transactions of share trading. Principal Commissioner invoked revisionary proceedings under section 263 on ground that entities providing bogus entries had admitted of providing bogus LTCG through shares of CCLI and financials of scrip of CCLI were unreliable and bogus. On appeal the Tribunal held that from invoices and supporting documents that shares were held in D-Mat account with broker. Further, said shares were sold on stock exchange i.e. BSE; on specific dates at rates as prevalent on stock exchange, and rates, dates and amounts were corroborated from bank accounts, broker's account Since no contrary evidence has been filed by revenue, tax reliefs could not be denied on mere suspicions and conjectures based on surrenders by a bogus entry provider. Revision order is quashed. (AY. 2013-14)

Trivikram Singh Toor v. PCIT (2023) 198 ITD 533/222 TTJ 798 (Chd)(Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Assessing officer made enquiries-Contention of the PCIT that examination not done incorrect-Contention that A.O. had only one day to pass order invalid-Revision not Justified.[S. 143(2)]

Held, that the A.O. had made enquiries and based on the reply given by the assessee the A.O. who had passed the order had satisfied himself by accepting the return of income of the assessee. Further, the A.O. had only one day time to pass the assessment order since the case was getting time-barred could not be a ground for the Principal Commissioner to exercise power conferred under section 263 of the Act. The Principal Commissioner had committed an error in exercising power under section 263. (AY. 2011-12).
ADM Agro Industries Kota And Akola Pvt. Ltd. v. PCIT (2023)101 ITR 93 (SN) (Delhi) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failure of Assessing Officer to inquire loss on disposal of assets/expenditure-Assessing Officer duty bound to disallow expenditure which is not of revenue expenditure in P & L account-Revision is justiied.[S. 37(1)]
Held that Assessing Officer did not inquire about the loss on assets disposed of or any expenditure debited in the P & L account. Further, A.ssessing Officer was duty bound to look at the P & L account and disallow expenditure which was not of revenue in nature. Thus, the revision of PCIT was justified. (AY. 2017-18)
Bombay Transport Co-Operative Consumer Society Ltd. v. ITO (2023)101 ITR 72 (SN) (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failure to verify wages expenditure-Failure to deduct tax at on payments-Casual labour accepted without verification-Assessing Officer accepted certificates filed by assessee without recording reasons-Revision is justified. [S. 37(1), 40 (a) (ia)]
Tribunal held that failure to verify wages expenditure and failure to deduct tax at on payments,casual labour accepted without verification. Assessing Officer accepted certificates filed by assessee without recording reasons. Revision is justified. (AY. 2010-11)
M. K. S. Engineering Co. Pvt. Ltd. v. PCIT (2023)199 ITD 779/ 101 ITR 65 (SN)/ 222 TTJ 880 (Jabalpur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Assessing Officer calling for details of advertisement and sales promotion during assessment-Possible view taken after going through evidences-Order of Assessing Officer is not erroneous-PCIT is not justified-Revision is not warranted.[S. 37(1)]
The Tribunal observed that the Assessing Officer, after conducting necessary inquiries by calling for information and having gone through the details furnished by the assessee had taken a possible view. When the Assessing Officer had made detailed inquiries by raising query on which the case was selected for scrutiny and the assessee had filed requisite details, the order could not be held erroneous so as to invoke the jurisdiction under section 263 of the Act since the twin conditions thereunder were not fulfilled. Thus, the PCIT was not justified in invoking jurisdiction under section 263. (AY. 2016-17).
Mylan Pharmaceuticals Pvt. Ltd. v. ITO (2023)101 ITR 26 (SN) (Hyd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Order of Tribunal-Weightage to Tribunal order not given-Against fundamental Principles of judicial discipline-Revision is not sustainable.[S. 2(22)(e), 254(1)]
Held that that the PCIT in his revision order had not given due weightage to the appellate order passed by the Tribunal, which was against the fundamental principle of judicial discipline, required to be followed by all the lower authorities. The revision order passed by the Principal Commissioner was unsustainable for failure to consider the higher judicial

forum's decision in the assessee's own case for earlier AY 2013-14 on an identical issue. (AY. 2015-16)
Parag Prakash Doshi v. PCIT (2023)101 ITR 42 (SN)(Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Possible view taken by Assessing Officer after pursuing all the evidences-In line with view taken by Tribunal-Revision not warranted. [S. 54]
The Hon'ble Tribunal held that Assessing Officer took a possible view after conducting proper enquiries, in line with order of the Tribunal. Thus, the revision was quashed. (AY. 2016-17)
Prerak Goel v. P CIT (2023) 101 ITR 30 (SN.)(Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital or Revenue expenditure-Consumables revenue expenditure allowable in the year in which put in line of production-Allowance in previous years not erroneous-Assessing Officer taking sustainable view after enquiry-Revision is not warranted. [S. 32, 37(1)]
Held, that an identical view had been taken by the A.O. after detailed examination in earlier years and the view taken by the A.O. was not found to be erroneous. When the judicial precedents were in favour of the assessee that consumables are revenue expenditure and were allowed to the assessee as deduction in the year in which those are put in line of production and no judicial precedent was shown to the effect that consumables were capital expenditure and not allowable in the year of use in production line, the view taken by the A.O. was a plausible and sustainable view. Thus, revision was not warranted. (AY. 2009-10, 2010-11)
SI Group India P. Ltd. v. ACIT (LTU) (2023)101 ITR 70 (SN)(Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-
CIT set aside assessment order to AO holding it as erroneous on the issue of excess deduction allowed, since issues considered by CIT were purely on facts, CIT himself has to decide-Matter remitted back to him to consider material and draw conclusion. [80IC]
The AO allowed deduction u/s. 80IC to assessee. Subsequently CIT took revisional proceedings against assessee and issued show cause notice to effect that AO had allowed excess deduction and he had not verified substantial expansion made by assessee, and set aside assessment order holding it as erroneous. The Tribunal held that, since issues considered by CIT were purely on facts which were verifiable from records of assessee, he had to himself decide whether the assessment was erroneous and thus, matter remitted back to CIT to consider material placed on record and draw conclusion as to whether the order being erroneous insofar as prejudicial to interest of revenue. (AY. 2014-15)
C & E Ltd. v. PCIT [2023] 201 ITD 816 (Kol)(Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny-AO recorded specific finding that books of accounts produced were examined on test check basis-AO even disallowed certain expenditure in assessment proceedings-Order could not be treated as erroneous-Revision order is set aside.
The allegations raised by PCIT were linked to initial Show Cause Notice and it could not have been contended that PCIT did not provide sufficient opportunity of being heard. Further, during assessment, AO had verified costs and other expenses and AO had called relevant details alongwith supporting documentary evidences which were submitted by the assessee. AO passed Order holding that assessee did furnished some handmade bills, vouchers and even disallowed some expenses. Assessee had duly furnished ledger accounts of unsecured loans. Even in the assessment order, the AO has stated that books of accounts produced

examined on test check basis. Thus, assessment order was passed after proper examination and verification and thus, Order u/s. 263 was set aside. (AY. 2017-18)
Ruhela Construction Co. Pvt. Ltd. v. PCIT (2023) 104 ITR 426 / 225 TTJ 587 (Lucknow)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Survey-AO completed assessment after considering survey statement, issued specific notice in this regard during assessment-assessee filed explanation-Order of AO could not be held erroneous-Revision order is set aside. [S. 115BBE, 133A]
During assessment, AO had taken cognizance of findings of survey team, documents found during the survey, surrender letter and return of income and explanations of assessee against specific Show Cause notices during the course of assessment proceedings and after examination thereof and due application of mind, income has been rightly assessed under the head "business income". Surrender is excess cash arising out of past business dealings and advance given to farmers against procurement of agriculture produce regularly dealt with by the assessee in normal course of its business and which have not been recorded in the books of accounts. View of AO taken after due application mind. Order of AO cannot be held to be erroneous. Order of Ld. PCIT u/s. 263 set aside and that of Assessing Office sustained. (AY. 2017-18)
Ved Parkash v. PCIT (2023)104 ITR 613 / 225 TTJ 40(UO) (Chd)(Trib)
Durga Dass Surender Kumar v. PCIT (2023)104 ITR 613 / 225 TTJ 40(UO) (Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-
Provision for doubtful debts-Revision bad in law where the A.O. has taken view possible in respect of standard asset where there was inherent risk of going these debts bad-Revision is upheld in cases where amount was receivable from Government in respect of debts waived off. [S. 36(1)(vii), 36(1)(via)(2)]
The Tribunal quashed the direction which related to disallowance of provision created for standard assets as issue was debatable. However, the Tribunal upheld the revision regarding disallowance related to short provision for waiver of loans as it was held that the reimbursement of debts waived receivable from the government could not be held to be doubtful debtor.(AY. 2009-10 to 2012-13, 2014-15, 2017-18)
Virudhunagar District Central Co-operative Bank Ltd. v. PCIT (2023) 201 ITD 573 (Chennai Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Salary income-Detailed enquiries into claim of assessee's income being 'exempt' under the Act – Revision is held to be not valid. [S. 5, 192]
Tribunal held that AO had made detailed enquiries into claim of assessee's income being 'exempt' under the Act. CIT was not justified in revising said order. Followed: Smt. Sumana Bandyopadhyay Vs. Dy. DIT (IT), [2017] 88 Taxmann.com 847/396 ITA 406 (Cal.), Asim Kumar Bera v.. Dy. DIT (IT) [2017] 147 ITD 509 (Agra) (Trib)) (AY. 2016-17)
Pralay Pradyotkanti Gosh v. Income-tax Officer (IT) [2023] 201 ITD 363 (Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Property held for charitable purposes-Spending from accumulation of income of earlier year-The Assessing Officer had conducted necessary enquiries regarding utilization of income for purpose for which it was accumulated and had accepted same which was a plausible view, impugned revision order was untenable.[S. 11(3), 11 (5)]

Assessee charitable trust, claimed exemption under section 11(5) on income which was accumulated in preceding year and was spent during relevant year. Assessment was completed allowing exemption to assessee. Subsequently, Commissioner invoked revision proceeding under section 263 on ground that assessee had not submitted documentary evidence to support its claim of utilization of said accumulated income for purpose of trust and, thus, there was breach of clauses (a), (b) and (c) of section 11(3). He further held that assessment order was erroneous as it was passed without making verifications and inquiries. It was noted that Assessing Officer had made specific enquiries and called for details of accumulated income and utilization of same which was duly furnished by assessee during assessment proceedings. Even before Commissioner, assessee had furnished specific details of utilization of funds. So it could not be said that it was a case of no enquiry but at best Commissioner could say it was lack of enquiry in manner he thought enquiry ought to be conducted. Since the Assessing Officer had conducted necessary enquiries regarding utilization of income for purpose for which it was accumulated and had accepted same which was a plausible view, impugned revision order was untenable.(AY. 2017-18)
Impact Foundation (India) v. CIT, (E) (2023) 200 ITD 213 (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Corpus donation-Assessment completed after due verification / examination by AO of corpus donation including bank statements, balance sheet and confirmation of donation from donor which was also registered u/S. 12AA-Revision order was quashed. [S. 12AA]
Assessee is a society registered u/s. 12AA of the Act. Corpus donation of Rs. 1 Crore was received by society from one donor. Assessee has mentioned details of corpus donation of Rs. 1 Crore in computation of income. Even in the balance sheet forming part of tax audit report reflects corpus donation. Corpus of Rs. 1 Crore was duly reflected in bank statement of donor. The donor itself was a charitable trust / society registered u/s. 12AA and therefore, there can be no doubt regarding the genuineness of the donor. Thus, allegation of CIT is contrary to the material available on record. Even otherwise, if the corpus donation is assumed to be general donation, then also the assessee society has utilized more than 85% of the income. Thus, no tax liability will arise on the assessee society and as such, the revision proceedings would be tax neutral. Thus, on overall analysis, it was held that AO had passed order after conducting required inquiry and applying his mind with due diligence, such assessment order cannot be considered to be erroneous and prejudicial to the interest of Revenue. Accordingly, Order u/s. 263 of the was quashed and Order of AO was restored. (AY. 2015-16)
Reliable Educational Alliance Society v. CIT(E) (2023) 202 ITD 137/ 104 ITR 448 (Delhi)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-High Court held that the assessee to be a society providing public utility services within the meaning of section 2(15) which was eventually affirmed by the Supreme Court-PCIT was wrong to hold Assessment Order to be erroneous and prejudicial to the interest of revenue.-Revision order was quashed. [S. 2(15), 11, 12 13(8), 143(3)]
On appeal the Tribunal held that the PCIT erred in holding that the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interests of the revenue. That the PCIT had failed to appreciate the Gujarat High Court which had already decided the issue in favour of the Assessee by holding that the assessee was a charitable organization providing general public utility services within the meaning of section 2(15) of the Act. That, subsequently the Hon'ble Supreme Court had also affirmed the view of the High Court. It is in this background that the Hon'ble Tribunal conclusively held that the order passed by the

Assessing Officer cannot be held to be erroneous and prejudicial to the interest of the Revenue. (AY. 2017-18)
Ahmedabad Urban Development Authority *v*. DCIT (E [2023] 201 ITD 274 (Ahd) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Rental income-The Assessing officer has taken one plausible view based on exhaustive inquiries and detailed submissions unless the view adopted is not at all sustainable in law-Revision is held to be not valid.[S. 22, 28(i)]
The Hon'ble Tribunal held that the Assessing Officer, after adequate enquiry, has taken a judicious view. Revision under section 263 is not permissible merely because the Commissioner may entertain a different view on the issue. The stand adopted by Assessing Officer is one which is plausible supported by CBDT Circular and Supreme Court decision and, therefore, cannot be said to be erroneous in terms of the provisions of section 263. The interpretation of the CBDT circular No. 16/2017 dated 25-04-2017 emphasizes that lease rent received by the assessee from letting out the building along with other amenities in a software Technology Park would be chargeable to tax under the head 'Income from House Property'. Therefore, every case of letting out the building along with other amenities would automatically fall in the income from business and it will not be merely restricted to software Technology Park only as misunderstood by the commissioner. Lastly as far as the supreme court decision is concerned, i.e., Chennai Properties & Investments Ltd. *v*. CIT (2015) 373 ITR 673/ 231 Taxman 326 (SC) which stipulates that where object as per object clause of the company was to do business of letting out, the same must be taxed under the head income from business and profession, also could not be distinguished by the commissioner. In this backdrop, the Hon'ble Tribunal held that the commissioner had erred in assuming jurisdiction under section 263 and the order passed by him was quashed (.AY. 2018-19)
Agrani Buildestate *v*. PCIT [2023] 202 ITD 231 (Jaipur)(Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Stock in trade-Builder-Business income-Income from house property-Revision is held to be not valid. [S. 22, 28(i)]
Allowing the appeal the Tribunal held that there was no error in order of Assessing Officer who had accepted the explanation of the assessee that no income from completed units was assessable under the head "Income from House Property" and thus, order of Commissioner under Section 263 was set aside. *Followed: CIT v. Neha Builders Pvt. Ltd. [2007] 164 Taxmann 342 / 298 ITR 661 (Guj.)(HC) (AY. 2017-18)*
Othello Developers v. PCIT, [2023] 201 ITD 370/ 226 TTJ 103 (Ahd)(Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cost of acquisition of asset-The amount paid to intermediary allottee from builder would form part of cost of acquisition-Revision is held to be not valid. [S. 45,48]
The AO completed the reassessment proceedings and accepted the return filed by the assessee. The AO had examined the flat purchase agreement between the assessee and Mrs. Sangita Gupta (the original allottee of the flat by the builder)
PCIT held that the A.O. had not verified the source of repayment of bank loan. The assessee explained that these aspects were duly enquired by the A.O. The assessee also pointed out that Mrs. Sangita Gupta had certificate from the builder that she had paid for the property, she being original allottee and the assessee, along with her wife, had purchased property from her by making payment of consideration through banking channels. The source of income of wife and repayment of loan were also duly explained. However, the PCIT rejected the

contentions and set aside the assessment order and directed the A.O. to re-compute capital gains. On appeal the Tribunal held that 'cost of acquisition of the asset' not only includes the sales consideration incorporated in sale deed or value of asset taken by registration authority for the purpose of stamp duty but also any amount paid to any intermediary under the preceding agreement to sell or any enforceable liability provided intermediary had a enforceable and transferable interest or an interest in the form of an encumbrance upon the asset and sale deed can be executed only on redemption of that interest. Therefore, The amount of consideration agreed in the agreement to sell between the original allottee and the assessee thus forms part of the cost of acquisition of asset. The Tribunal held that the order of the PCIT was not sustainable. (AY. 2012-13)
Vishal Aggarwal v. PCIT [(2023) 200 ITD 603 (Delhi) (Trib.)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny-Co-operative societies-Deduction allowed by AO in limited scrutiny assessment to examine "Deduction under Chapter VI-A".-Possible view-Revision is not valid. [S. 80P(2)(d)]

Tribunal held that where AO has taken one plausible view and, on this issue, there is a specific finding and reference in assessment order regarding deduction claimed in return of income. There was no defect found in the enquiry. AO collected the information based on upon which he has allowed the claim to assessee and has verified the point raised in the limited scrutiny. Further, PCIT did not pin pointed any enquiry which was required to be made by AO. Merely because the AO did not write specific reasons for accepting the explanation of the assessee cannot be reason enough to invoke powers under section 263, and non-mentioning of these reasons do not render the assessment order "erroneous and prejudicial to the interest of the revenue". Order u/s. 263 is quashed. (AY. 2017-18)
Keshoraipatan Sahkari Sugar Mills Ltd., Kota v. PCIT (2023) 153 taxmann.com 290 / 104 ITR 566/ 223 TTJ 922 (Jaipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Depreciation-Additional depreciation-Balance of additional depreciation w.r.t asset put to use in previous year can be claimed in the subsequent year-Revision order is quashed..[S. 32(1)(iia)]
The Hon'ble Tribunal placing reliance on the judgment of the jurisdictional High Court in the case of M/s Brakes India Ltd. v. DCIT [TCA No. 551 of 2013] allowed the claim of the Assessee. While doing so, it was held that the claim is allowable retrospectively and thereby directed the order under section 263 to be quashed. (AY. 2015-16)
Craftsman Automation Ltd. v. ACIT (2023) 103 ITR 31 (SN)(Chennai)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Income from other sources-Receipt of consideration for shares in excess of fair market value-Share premium received from 100 per cent. holding company-Deeming provision cannot be applied-Order passed by AO accepting the returned income was not prejudicial to the interest of the revenue-Revision not sustainable.[S. 56(2)(viib), 68,]
During previous year relevant to A.Y. 2014-15 the assessee had issued to 5,13,978 shares at Rs. 1,284.10 per share against the face value of Rs. 10 each and received a premium to the tune of Rs. 65.48 crores from its holding company. The details thereof had been submitted to the A.O. during the assessment proceedings which was completed u/s. 143(3) accepting NIL return filed without making adjustment in respect thereof. Subsequently, the CIT invoked provisions of section 263 and directed the A.O. to revise assessment for failuure of the A.O. to carry out necessary examination on justification of the share premium and the

creditworthiness of the subscriber to whom shares had been allotted on such a huge premium. On appeal Tribunal held that the section 56(2)(viib) of the Act is wholly inapplicable for transactions between a holding company and its subsidiary company where no income can be said to accrue to the ultimate beneficiary, i. e., the holding company. Fair market value of shares issued was duly supported by the independent valuer's report and there was no change in interest or control over money on issuance of shares. The A.O. was thus also satisfied with the parameters of section 68 of the Act towards such nature and source of such credits in the post-revision proceedings. In this backdrop, the extent of inquiry on the purported credibility of premium charged did not really matter as no prejudice could possibly result from the outcome of such inquiry. The chargeability of deemed income arising from transactions between holding and subsidiary or vice versa militates against the object of section 56(2)(viib) of the Act. The revision by the Principal Commissioner in the context of the facts of the case was wholly unjustified and without meeting the jurisdictional requirement of section 263 of the Act. **Editorial note :-**Dy. CIT v. Ozone India Ltd. [2022 94 ITR (Trib) 609 (Ahd) applied. KBC India P. Ltd. v. ITO (I. T. A. No. 9710/Delhi/2019, dated November 2, 2022) approved.(AY. 2014-15)

BLP Vayu (Project-1) P. Ltd. v PCIT (2023) 201 ITD 283/ 104 ITR 72 (SN)(Delhi)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-

-Requirement of reference to Transfer Pricing Officer-Return of income of assessee selected under "transfer pricing risk" parameter-Failure by AO to make reference or record satisfaction for not doing so-Instruction of Board not followed-Order erroneous and prejudicial to revenue-Revision justified-CBDT Instruction No. 3 Of 2016, Dated 10-3-2016.[S. 92C, 144C, 119, 263 Expl. 2(c)]

For the AY 2018-19 the assessee had entered into several international transactions amounting to Rs. 2,79,457.28 crores. The Commissioner (International Taxation) noticed that the A.O. had not referred the matter of determination of the arm's length price of international transactions to the Transfer Pricing Officer as required by Central Board of Direct Taxes Instruction No. 3 of 2016, dated March 10, 2016 ([2016 382 ITR (St.) 36). Accordingly, he initiated revision proceedings under section 263 of the Act, set aside the assessment order and directed the A.O. to make a reference to the Transfer Pricing Officer as stipulated in Instruction No. 3 of 2016 and passed an assessment order in respect of the international transactions based on the order of Transfer Pricing Officer as per law. Being aggrieved, the assessee filed appeal before Tribunal who upheld the revision. The Tribunal held that in terms of clause (c) of Explanation 2 to section 263, the order passed without complying with the Instruction issued by the Board u/s. 119 of the Act would render the order erroneous and prejudicial to the interests of the Revenue. In view of the Instruction No. 3 of 2016, it was mandatory for the A.O. to refer the matter of determination of arm's length price of the assessee's international transactions to the Transfer Pricing Officer after obtaining approval from the Principal Commissioner or Commissioner, if the return of income of the assessee had been selected under "the transfer pricing risk" parameter. The A.O. having failed to follow the instructions, there was no infirmity or illegality in the revision order passed by the Commissioner (International Taxation).(AY.2018-19)

DBS Bank India Ltd. v. CIT(IT) (2023) 151 taxmann.com 407
/104 ITR 31 (SN) (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Payment to director-AO enquired remuneration paid to directors and taking well-informed decision after considering submissions made by the Assessee and restrict payment to one director.

Revision by Pr. CIT on ground payment to another director should also have been restricted, not justified.[S. 40(2)(b)]

The Tribunal allowing the appeal of the assessee held that, it was not the allegation of the Pr. CIT that no or inadequate enquiries were made by the AO. The Pr. CIT had not disputed the fact that the AO during the course of assessment proceedings had enquired into the aspect of remuneration paid to directors u/s.40A(2)(b) of the Act. The AO had taken a well-informed decision after considering the submissions on this issue placed on record by the assessee during assessment proceedings. This was not a case where there was an omission on the part of the AO to examine this aspect of disallowance u/s. 40A(2)(b) of the Act at all. The AO had put a specific question during the course of assessment and taken its reply on record. Further, the AO also discussed this aspect as part of the assessment order. So this was not a case where no enquiry had been made by the AO during the course of assessment proceedings. It was also not the case of the Pr. CIT that the AO failed to apply his mind to the issues on hand or he had omitted to make enquiries altogether or had taken a view which was not legally plausible in the instant facts. There was no error in the order of the AO, no initiation of 263 proceedings by the Principal Commissioner.(AY. 2011-12 to 2014-15)

Shanti Multilink P. Ltd. v. Pr. CIT (2023)105 ITR 49 (SN) (Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Difference in estimation yield in respect of Tomatoes-Set aside the assessment order-Reason to set-aside is erroneous-No prejudice caused to the interest of the revenue merely on difference in estimation.[S. 144]

The AO completed assessment u/s. 144 estimating agricultural income of Rs. 33,16,600/-on the basis of data obtained from National Horticultural Board. The PCIT noted that the AO estimated higher yield in respect of Tomatoes ignoring fact that the assessee itself has estimated lower yield of Tomatoes and set-aside the assessment order. The Tribunal held that the PCIT cannot exercise power conferred u/s. 263 and set aside assessment order only on the ground that the estimation made by the AO on a particular crop is higher than the estimation made by the assessee.

Sai Organic Farms v. PCIT (2023) 103 ITR 41 (SN) (Chennai) Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Assessee submitted Form 3CM and Form 3CLA-Claim cannot be rejected in absence of intimation to Department in Form 3CL-No lack of inquiry by the AO-Dismissed the order passed by the PCIT.[S. 35(2AB]

The Tribunal noted that that the Assessing Officer had made detailed inquiries into the claim to deduction of the assessee under section 35(2AB). Further, the assessee had duly filed Form 3CM and Form 3CLA. Further, Form 3CL was issued by the prescribed authority after passing of the assessment order. Accordingly, it was held that there was no lack of inquiry on the part of the Assessing Officer. Further, merely because the authority failed to send intimation to the Department in Form 3CL, that would not be reason to deprive the assessee of the deduction under section 35(2AB) of the Act. (AY. 2016-17)

Schaeffler India Ltd. v.PCIT (2023)200 ITD 747 / 103 ITR 19 (SN)(Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Share premium-The AO conducting specific enquiries relating to receipt of share premium-Determining fair market value basis the net asset method-Order not erroneous and prejudicial to revenue warranting revision.[S. 56(2)(viib)]

The Tribunal noted that the AO had conducted specific enquiries relating to receipt of share premium, the basis for the fair market value and the applicability of provisions of section 56(2)(viib). Further, the assessee furnished valuation of a subsidiary company also supported by the valuation certificate issued by a chartered accountant on the basis which the fair market value was determined. Accordingly, it was held that the assessee had duly justified the fair market value before the AO and therefore, the order passed was neither erroneous nor prejudicial to the interests of the Revenue. Therefore, the revision order under section 263 of the Act was quashed.(AY. 2015-16)

Star Health Investments P. Ltd. (Dissolved) v. PCIT (2023) 201 ITD 122/ 103 ITR 8 (SN)(Chennai)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-

The AO failed to make reference to transfer pricing officer for examining issue of specified domestic transactions-Also, allowed huge loss on commodity transactions without proper inquirieS. [S. 43(5)]

The Tribunal noted that the AO did not make reference of the specified domestic transactions to the TPO. Further, the AO not enquiring into how the transaction of commodity exchange loss on NCX & NCDEX qualified as speculative transactions in terms of section 43(5) with necessary evidence. Accordingly, it was held that the same tantamount to the assessment order being erroneous causing prejudice to the Revenue.(AY.2014-15)

Shree Ganesh Intermediary P. Ltd. v. PCIT (2023) 103 ITR 86 (SN) (Ahd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Surrendered income-No inquiry by Principal CIT to arrive at a contrary finding-Revision order is quashed.

The Principal Commissioner issued a show-cause notice u/s. 263 on the ground that the Assessing Officer had passed the assessment order without conducting proper inquiry and taking cognisance of the amended Finance Act, 2016 in respect of surrendered income and set aside the matter to the Assessing Officer to pass a fresh order in accordance with law and after providing reasonable opportunity to the assessee.

On appeal the Tribunal held, that the Principal Commissioner without taking into consideration the examination conducted by the Assessing Officer during the course of assessment proceedings had recorded a finding that the deeming provisions read with the provisions of section 115BBE were applicable. Where the Principal Commissioner disputed the nature of surrender or the findings of Department's own survey team as well as those of the Assessing Officer, he had to lead positive evidence to arrive at a contrary finding. Nothing had been brought on record in this regard. Therefore, the order of the Assessing Officer could not be held erroneous in nature and that of the Principal Commissioner was to be set aside.(AY. 2017-18)

Ved Parkash v. PCIT (2023)104 ITR 613(Chd)(Trib)

Durga Dass Surender Kumar v. PCIT (2023)104 ITR 613(Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash deposits during demonetisation period-Revision order is quashed. [S. 68]

The assessment proceedings were completed in the assessee's case accepting the returned income. From the details of the assessment records, the Principal Commissioner noticed that the total sales during the period October 1, 2016 to November 8, 2016 came to Rs. 33,95,55,859 and total sales in the preceding six months had been shown at Rs. 29,25,42,304. He was of the view that the Assessing Officer failed to examine the issue of unexplained

inflated sales post-demonetisation and held that the assessment order was erroneous and prejudicial to the interests of the Revenue and set it aside and restored the matter to the Assessing Officer

Held that the assessment order had been passed by the Assessing Officer. The issue had been thoroughly examined by the Assessing Officer during the course of assessment proceedings and the Principal Commissioner had not stated how the finding recorded by the Assessing Officer accepting the cash sales and resultant declaration of profits under the Scheme was erroneous in so far as prejudicial to the interests of the Revenue. The order of the Principal Commissioner was set aside and that of the Assessing Officer was sustained. (AY. 2017-18)

Kays Jewels P. Ltd. v. PCIT (2023)105 ITR 324 (Lucknow)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash credits-Revision is quashed. [S. 143(3), 153A]

Assessment was completed u/s. 153A read with section 143(3) making an addition of Rs. 59,16,628 on account of unexplained cash credit found in the books of account. During the pendency of the assessee's appeal before the Commissioner (Appeals), the assessee opted for Direct Tax Vivad se Vishwas Scheme, the appeal was withdrawn and form 5 was issued by the competent authority upon payment of taxes determined under the Scheme. Principal Commissioner set aside the assessment order with the direction to the Assessing Officer to decide the issue afresh after giving sufficient opportunity of being heard to the assessee.

Held, that the order of the Assessing Officer could not be held erroneous and prejudicial to the interests of the Revenue because:

(a) It was not a case where there were just two entries or for that matter, the account was dormant. The credits in the bank account of Loan Creditor had arisen on account of receipt of compensation from the Railways on acquisition of his land. The bank statement of the creditor was submitted by the assessee during the course of assessment proceedings as well as revision proceedings and necessary explanation regarding credit of Rs. 2 crores in the bank account was also submitted. Failure by the creditor to file the return could not be held against the assessee. In any case, once the permanent account number of IS had been submitted by the assessee, the Revenue had all the resources available at its disposal to enquire further regarding the tax return and filing status.

(b) the assessee had submitted the copy of cash book as well as the cash flow statement during the course of assessment proceedings with necessary explanation in terms of opening cash in hand. Therefore, the findings of the Principal Commissioner that cash payment of Rs. 25 lakhs was not accounted for in books of account was incorrect. Further, the assessee would still be eligible to claim availability of funds to the extent of intangible additions of Rs. 59,16,628 which had suffered taxation and also attained finality given that the assessee's application under the Vivad se Vishwas Scheme had been accepted by the competent authority on payment of due taxes. Therefore, the findings of the Principal Commissioner were to be set aside.

(c) the matter had been duly enquired into by the Assessing Officer and the explanation of the assessee had been accepted by the Assessing Officer and in view thereof, the findings of the Principal Commissioner that proper and complete enquiry had not been conducted by the Assessing Officer is incorrect. (AY. 2013-14)

Meet Pal Singh v. PCIT (2023) 105 ITR 584 (Chd)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Difference of opinion-Sale-Cash deposited into bank-Not sustainable. [S. 143(3)]

For the AY. 2011-12, the assessment in the assessee's case was completed by the Assessing Officer after making an addition of Rs. 1,75,322 on account of undisclosed interest on

savings or deposits. The Principal Commissioner observed that the assessee had deposited cash of Rs. 60,00,000 in her savings bank account maintained during the FY. 2010-11 and that the Assessing Officer failed to examine and inquire into the facts in the light of the submissions of the assessee to determine the correctness of the claim of the assessee which was the very purpose of assessment.
Held, that the revision proceedings were not sustainable because:
(a) the assessee had filed documents required by the Assessing Officer in the form of bank statements and a copy of the sale deed of the agricultural land to explain the disputed cash deposits in her bank account.
(b) the source of cash deposits in the assessee's bank account had been duly accepted by the Assessing Officer
(c) there was a direct nexus between the transaction of sale and the cash deposited in the bank account of the assessee and the cash was also deposited by the assessee on the same date. Further, the Assessing Officer had accepted the deal of sale of agricultural land with a conscious and independent application of mind. (AY.2011-12)
Satvir Kaur (Smt.) v. PCIT (2023)105 ITR 387 (Amritsar) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny on Issue of high ratio of refund to credit of tax deducted at source-Books of accounts produced were examined on test check basis-AO even disallowed certain expenditure in assessment proceedings-Order could not be treated as erroneouS. [S. 143(3)]
Assessee engaged in construction activities. Filed return of income declaring total income of Rs. 60.45 Lakhs. Return selected for limited scrutiny on issue of high ratio of refund to credit of tax deducted at source. Assessment proceedings were completed and total income was assessed at Rs. 62.95 Lakhs after making certain additions / disallowances. PCIT issued Show Cause Notice u/s. 263 alleging that (i) AO did not verified whether ICDS followed for allocation of contract cost and contract revenue, (ii) due to high refund-expenses were to examined and verified minutely through third party inquiry which was not undertaken and (iii) AO made addition and was required to initiate penalty proceedings u/s. 270A. However, in 263 Order, PCIT stated that AO was to examine financial statements of the assessee as to whether profit declared was correct or not, no documents filed with respect to increase in unsecured loans, advances given by the assessee – whether interest received or not ?, substantial increase in trade payables, confirmations from trade receivables, VAT / sales tax / service tax returns. Assessee alleged that said points were not mentioned in initial Show Cause Notice u/s. 263 and thus, assessee never got opportunity to file any documents in its defence. In revision proceedings – powers of PCIT are not limited to the matters contained in the initial show-cause notice, and therefore, during the course of revisionary proceedings, PCIT is empowered to enquire about other issued and pass appropriate orders and all that is required is that before recording any findings where are adversial in nature and which result in unsettling the position which has been accepted in the past, the assessee be put to notice and be allowed a reasonable opportunity to put forward its defence. However, the allegations raised by PCIT were linked to initial Show Cause Notice and it could not have been contended that PCIT did not provide sufficient opportunity of being heard. Further, during assessment, AO had verified costs and other expenses and AO had called relevant details alongwith supporting documentary evidences which were submitted by the assessee. AO passed Order holding that assessee did furnished some hand made bills, vouchers and even disallowed some expenses. Assessee had duly furnished ledger accounts of unsecured loans. Even in the assessment order, the AO has stated that books of accounts produced examined on test check basis. Thus, assessment order was passed after proper examination and verification and thus, Order u/s. 263 was set aside. (AY. 2017-18)

Ruhela Construction Co. Pvt. Ltd. v. PCIT (2023) 104 ITR 426 (Lucknow) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-
Assessment filed by the retailer approved by the AO-Purchase of lose diamonds not practical according to AO-Finding of Principal Commissioner that enquiry or verification not done not justified. [S. 143(3)]
The assessee's return of income for the assessment year 2017–18 was chosen for scrutiny due to cash deposits of Rs. 2,65,44,000 made during the post–demonetisation period, and the Assessing Officer accepted the returned loss after issuing a questionnaire and taking the assessee's submission into account. The Principal Commission on the proposal of the AO observed that the AO did not examine the cash deposits properly and passed an erroneous order.
Tribunal held that the AO has issued notices for the high sales for the month of October 2016 and therefore, saying that it missed the cash sales The Department was unable to refute the assessee's factual assertion. Explanation 2 of Section 263 of the Act therefore could not be used against the assessee. It was held that the order of the Principal Commissioner was devoid of merit, did not hold any truth and was unjustified. As a result, the order was set aside. (AY.2017-18)
Kirti Diam v.PCIT (2023)103 ITR 602 (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-survey-Regular books of account not maintained properly-revision of income of return revealed discrepancies-Entitle to set off the loss-Additional income-Direction is contrary to CBDT circular.[S. 115BBE, 119,133A]
An income tax survey was done at the business premises of the assessee under which certain discrepancies were found. The assesee surrendered a certain sum and later on showed nil income declaring a loss. The case was selected for scrutiny and the AO accepted the return after examining the requisite information. The Principal Commissioner assessed the same and observed that the nature of the additional income was nowhere specified. He concluded that the income offered could not be classified as business revenues subject to tax under section 115BBE of the Act in the absence of any inquiry and information provided by the assessee, and he set aside the Assessing Officer's judgement in favour of issuing a new order in conformity with the law. The same was appeal by the assessee.
The tribunal held that the tax impact was nil regardless of the head under which the income was listed. As a result, the order passed by the AO could not be held erroneous or prejudicial to the interests of the revenue. Furthermore, the tribunal held that the show-cause notice issued was subsequent to the CBDT's circular which stated that the term "or set off of any loss" was specifically inserted by the Finance Act, 2016, with effect from April 1, 2017, and the assessee was entitled to claim set off for a loss against income determined under section 115BBE of the Act till the assessment year 2016-17. Hence, the notice issued by the Principal Commissioner was against the CBDT circular. (AY.2016-17)
Lakshmi Farms v.PCIT (2023)103 ITR 265 (Chand)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-No discussion in the assessment order-Assessing Officer applied his mind during assessment proceedings-Revision order is quashed. [S. 143(3)]
The Assessee individual filed his return of income for the AY 2017-18. Scrutiny assessment proceedings were initiated for verification of cash deposits during demonetization period and mismatching receipts. The assessment was completed u/s 143(3) by making additions toward interest income received on fixed deposits from IOB & SBI. In the assessment order, the AO

had discussed the issue of cash deposits during demonetization period and also interest received on fixed deposits in light of various evidence filed by Assessee. The AO also issued a show cause notice u/s 274 r.w.s 270A seeking to initiate penalty proceedings. However, the same was dropped after considering the relevant submissions of the Assessee. Subsequently, revisionary proceedings were undertaken and notice u/s 263 was issued to Assessee on two grounds viz. (i) the assessment order passed by AO is erroneous in so far as it is prejudicial to the Revenue as the AO had initiated penalty proceedings u/s 270A mechanically without recording satisfaction as required under the law;(ii) the AO completed the assessment without carrying out necessary enquiries he ought to have w.r.t the source of income for deposits made with IOB & SBI which rendered the assessment order to be erroneous as it was prejudicial to the interest of Revenue.

The Hon'ble Tribunal observed that before initiating revision proceedings u/s 263 of the Act, the PCIT must satisfy from the records that an erroneous order passed by the AO caused prejudice to the interest of the Revenue. The Tribunal quashed the order u/s 263 on the following grounds (i) it can be ascertained from the penalty show cause notice issued by AO that the penalty proceedings were initiated with proper satisfaction of the AO; (ii) the very purpose of scrutiny assessment was to verify the interest income, which was verified by the AO during the course of assessment proceedings. Thus, it is clear that the issue of fixed deposits with the banks was within the knowledge of the AO. Although the AO specifically did not discuss the issue of source of fixed deposits, he had considered the submission of the Assessee regarding source of the fixed deposits and accepted the same. (AY.2017-18)

Gopal Soundararaj (Mr.*)* v. PCIT (2023) 103 ITR 33 (SN) (Chennai) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Citing the possibility of multiple valid views on the assessment-Revision order is set aside. [S. 2(22)(e)]

The case involves four separate appeals by the assessee against four separate orders of the Pr. CIT, Central-1, Delhi for A.Y.2008-09 to 2011-12. The primary contention is on the assumption of jurisdiction u/s.263 of the Act by the Pr. CIT.

The assessee argues that the Pr. CIT wrongly assumed jurisdiction and deemed the assessment orders as erroneous and prejudicial to the interest of the revenue. A search and seizure operation were conducted, and the assessment was framed. The declared income vis-à-vis the income assessed carrying stark difference, the Pr. CIT issued a show cause notice and picked the issue regarding the assessee being a beneficial owner of shares in a private entity, invoking provisions of section 2(22)(e) of the IT Act.

The Pr. CIT dismissed the assessee's claim that no incriminating material was found, and the decision in the case of Kabul Chawla 380 ITR 573 applied.

The Tribunal considering various decisions and views concluded that when two views were possible, the assumption of jurisdiction u/s. 263 of the Act is unwarranted. Following the Supreme Court's decision in Malabar Industries Company 243 ITR 83, the Hon'ble Tribunal set aside the Pr. CIT's order and restored the assessing officer's order. (AY. 2008-09 to 2011-12)

Moin Akhtar Qureshi v. PCIT (2023) 103 ITR 84 (SN) (Delhi)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-

AO, without examining the matter, simply accepted the explanation of the assessee, which was erroneous and prejudicial to the interests of the Revenue-the issue was complicated and needed detailed verification of Accounting Standards followed & law applicable-Principal Commissioner directed the AO to verify and pass the assessment order afresh in accordance with law after affording an opportunity to the assessee-Held,

no reason to interfere with the order passed by the Principal Commissioner.[S. 92CA, 143(3)]

The assessee-company was engaged in providing business process outsourcing services in the healthcare industry. For AYs 2013-14 and 2014-15, the assessment was completed u/s 143(3) r.w.s. 92CA of the Act without making any transfer pricing adjustment. The Principal Commissioner took the view that the hedge gain or loss of revenue items accounted for in reserves pertaining to forward contracts on highly probable forecast transactions had to be recognised for tax purposes in accordance with the accounting treatment in the year when the gain or loss was finally recognised in the profit and loss account. It was observed that by notice u/s 142(1) of the Act, the AO had asked the assessee to file details in respect of forward contract receivables shown under short-term loans and advances and the assessee also filed a reply stating that an amount of Rs. 1,01,08,500 was shown as "forward contract receivables" under short-term loans and advances and contra shown as "hedge reserve" under "reserves and surplus" and moreover, this amount was recorded both as asset and liability in the books, just to represent the ineffectiveness in hedging of forward contracts in accordance with the Accounting Standards prescribed by the Institute of Chartered Accountants of India. However, the AO had not called for any other details from the assessee or further explanation and had simply accepted the reply filed by the assessee. However, the issue was complicated and needed detailed verification with regard to the Accounting Standards followed by the assessee, and the law applicable to the subject matter. The AO, without examining the matter, had simply accepted the explanation of the assessee, which was erroneous and prejudicial to the interests of the Revenue. It was further observed that the Principal Commissioner had directed the AO to verify and pass the assessment order afresh in accordance with law after affording an opportunity to the assessee. It was therefore held that there was no reason to interfere with the order passed by the Principal Commissioner. (AY.2013-14, 2014-15)

AGS Health P. Ltd. v. ACIT (2023) 103 ITR 95 (SN)(Chennai) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-depreciation-Leased equipment-Revision order is quashed.[S. 32]

Assessee claimed depreciation on leasehold asset as separate deduction under title 'throughput charges'. it was noted that audited financial statement which included statement of profit and loss had and intangible assets which included equipment under lease. Therefore premise on which revisionary proceedings were invoked did not hold good and accordingly impugned revision was set aside. (AY. 2017-18)

Indianoil petronas P. Ltd. v. PCIT (2023) 203 ITD 116 (Kol (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Deposit from members-Revision of order to examine and consider the applicability of section 69A, 115BBE on cash deposits, provisions of section 80P(2) and 269SS of the Act is held to be not justified. [S. 69A, 80P(2), 115BBE, 143(3), 269SS]

Held that the assessment was completed u/s 143(3) of the Act. Revision of order to examine and consider the applicability of section 69A, 115BBE on cash deposits, provisions of section 80P(2) and 269SS of the Act is held to be not justified. (ITA No. 702 / Mum/ 2022 dt. 6-1-2023)(AY. 2017-18)

Adhar Nagri Sahakari Paipedhi v.CIT (2023) The Chamber's Journal-April-P. 144 (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Mismatch of interest income-Enquiries were made-No discussion in the assessment order-Order is not erroneous-Revision is not valid. [S. 143(3), 26AS]

The case of the assessee was selected for scrutiny under CASS for mismatch in interest income offered to tax and reported in form 26AS. The assessment order was passed u/s. 143(3) by making some addition of interest income on Fixed Deposits. The cash deposited was also discussed in the assessment order. Penalty notice was also issued u/s. 270A for under reporting of income after passing the assessment order. Notice u/s. 263 was issued by PCIT to assesssee on the grounds that since AO has not recorded any reasons for initiation of penalty u/s. 270A, the order. is prejudicial to the interest of revenue. The penalty later on was not levied u/s. 270A. Another reason quoted was that the source of fixed deposit was not examined. On appeal the Tribunal held that the AO has not mechanically issued notice u/s. 270A without recording reasons in the assessment order and second that the source of Fixed deposits with two banks was not questioned upon during the assessment. It was held by the ITAT that on grounds of penalty u/s. 270, the notice was very clear so as to mention as to why there should be no penalty levied for under-reporting of income. Therefore, it could not be said that there was no proper satisfaction in initiating the penalty proceedings. On the second issue for source of FDs, it was held that very purpose of assessee was to verify interest income. The AO has verified the interest income and made addition on interest income. Though the AO has not specifically not discussed about the source of fixed deposits in its assessment order, however the details of source were submitted during the assessment proceedings and the same were accepted by the AO. There was abundant enquiry made by the AO, only the same not being recorded in the assessment order, cannot be reason to presume jurisdiction u/s. 263 to invoke revisionary provisions. Revision order was quashed. (ITA No. 181/Chny/2023) dt.6-4-2023) AY. 2017-18)

Gopal Soundararaj v. PCIT (2023) The Chamber's Journal-May-P. 111. Chennai)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-AO made enquiries-Contention of the PCIT that examination not done incorrect-Contention that A.O. had only one day to pass order invalid-Revision not Justified.[S. 143(3)]

Held, that the A.O. had made enquiries and based on the reply given by the assessee the A.O. who had passed the order had satisfied himself by accepting the return of income of the assessee. Further, the A.O. had only one day time to pass the assessment order since the case was getting time-barred could not be a ground for the Principal Commissioner to exercise power conferred under section 263 of the Act. The Principal Commissioner had committed an error in exercising power under section 263. (AY. 2011-12).

ADM Agro Industries Kota and Akola Pvt. Ltd. v. PCIT (2023)101 ITR 93 (SN) (Delhi) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failure of AO to inquire loss on disposal of assets/expenditure-A.O. duty bound to disallow expenditure which is not of revenue expenditure in P & L account-Revision Justified.[S. 143(3)]

Held, that AO did not inquire about the loss on assets disposed of or any expenditure debited in the P & L account. Further, AO. was duty bound to look at the P & L account and disallow expenditure which was not of revenue in nature. Thus, the revision of PCIT was justified. (AY. 2017-18)

Bombay Transport Co-Operative Consumer Society Ltd. v.ITO (2023)101 ITR 72 (SN) (Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Failure to verify wages expenditure-Failure to deduct tax at on payments-Casual labour accepted without

verification-AO accepted certificates filed by assessee without recording reasons-Revision justified. [S. 37(1), 40 (a) (ia), 143(3)]
Held that the AO has accepted certificates filed by assessee without recording reasons. Revision is justified. (AY. 2010-11)
M. K. S. Engineering Co. Pvt. Ltd. v Pr. CIT (2023)101 ITR 65 (SN)(Jabalpur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-AO calling for details of advertisement and sales promotion during assessment-Possible view taken after going through evidences-A.O. order not erroneous-PCIT not justified-Revision not warranted.[S. 143(3)]
The Tribunal observed that the Assessing Officer, after conducting necessary inquiries by calling for information and having gone through the details furnished by the assessee had taken a possible view. When the Assessing Officer had made detailed inquiries by raising query on which the case was selected for scrutiny and the assessee had filed requisite details, the order could not be held erroneous so as to invoke the jurisdiction under section 263 of the Act since the twin conditions thereunder were not fulfilled. Thus, the PCIT was not justified in invoking jurisdiction under section 263. (AY. 2016-17).
Mylan Pharmaceuticals Pvt. Ltd. v.ITO (2023)101 ITR 26 (SN) (Hyd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Not following the order of Tribunal-Revision proposed by PCIT held in favour of assessee in earlier years-Weightage to tribunal order not given-Against fundamental Principles of judicial discipline-Revision not sustainable.[S. 143(3)]
Held that that the PCIT in his revision order had not given due weightage to the appellate order passed by the Tribunal, which was against the fundamental principle of judicial discipline, required to be followed by all the lower authorities. The revision order passed by the Principal Commissioner was unsustainable for failure to consider the higher judicial forum's decision in the assessee's own case for earlier AY 2013-14 on an identical issue. (AY.2015-16)
Parag Prakash Doshi v.PCIT (2023)101 ITR 42 (SN)(Ahd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Possible view taken by A.O. after pursuing all the evidences-In line with view taken by Tribunal-Revision not warranted. [S. 2(47)(v), 54F, 143(3), Transfer of Property Act, 1882, S. 53A]
The Hon'ble Tribunal held that A.O. took a possible view after conducting proper enquiries, in line with order of the Tribunal. Thus, the revision was quashed. (AY. 2016-17)
Prerak Goel v. PCIT (2023)101 ITR 30 (SN)(Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital or Revenue expenditure-Consumables revenue expenditure allowable in the year in which put in line of production-Allowance in previous years not erroneous-AO taking sustainable view after enquiry-Revision not warranted. [S. 37(1)]
Held, that an identical view had been taken by the A.O. after detailed examination in earlier years and the view taken by the A.O. was not found to be erroneous. When the judicial precedents were in favour of the assessee that consumables are revenue expenditure and were allowed to the assessee as deduction in the year in which those are put in line of production and no judicial precedent was shown to the effect that consumables were capital expenditure and not allowable in the year of use in production line, the view taken by the AO was a plausible and sustainable view. Thus, revision was not warranted. (AY. 2009-10, 2010-11)
SI Group India P. Ltd. v. Asst. CIT (LTU) (2023)101 ITR 70 (SN)(Mum) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital Gains-Exemption-Assessee given one more opportunity-Order of PCIT set aside-Matter remanded-Assessee to furnish all information. [S. 54]

Held, that the assessees may be provided with one more opportunity to present their case before the Principal Commissioner. Accordingly, the orders passed by the Principal Commissioner were to be set aside and the issue restored to his file for examination afresh. The assessees had to furnish all information and explanations relating to the issues examined by the Principal Commissioner.(AY. 2013-14)

Kanta Chandak (Smt.) v. ITO (2023)101 ITR 6 (Jodhpur) (Trib)

Mohan Lal Chandak v. ITO (2023)101 ITR 6 (Jodhpur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Cash deposits during demonetisation-AO raised detailed questions and assessee filed responses-AO applied mind to facts-Order of revision quashed.

The Hon'ble Tribunal observed that the issues flagged by the Commissioner had been explained and addressed by the assessee before the Commissioner. These explanations, though available on the record, had not been specifically rejected by the Commissioner. The Hon'ble Tribunal held that the Assessing Officer in this case had duly applied his mind. The order in appeal was arbitrary and whimsical and deserved to be quashed.(AY. 2017-18)

Gurcharan Singh v. PCIT (2023)101 ITR 539 (Chd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Business expenditure-Payment in cash in excess of prescribed limit-No dispute as to genuineness of transaction-Assessee taking loan from family members and making payment to sellers of land in cash-Disallowance not attracted to cash transaction for support to family members in immediate business needs-AO did not initiate penalty proceedings after due consideration-Order not prejudicial to revenue-Revision not justified. [S. 40A(3), 44AD, 269SS, 271D]

Held, that the assessee took a loan from his family members for making cash payment to the sellers of land. Therefore, cash was taken under compelling circumstances and to meet business exigencies and to execute the purchase deed. After weighing the explanation offered by the assessee, the Assessing Officer did not refer the matter for initiation of penalty proceedings under section 271D to the Joint Commissioner which could not be termed as erroneous or prejudicial to the interests of the Revenue as the Assessing Officer after raising a query took one of the possible view which was permissible under the law. The Principal Commissioner invoked clauses (a) and (b) of Explanation 2 to section 263 while setting aside the order of the Assessing Officer. No disclosure was made while issuing show-cause notice that the Principal Commissioner intended to invoke clauses (a) and (b) of Explanation 2 to section 263 in the case of the assessee. Therefore, the order passed by the Principal Commissioner remitting the matter to the Assessing Officer to conduct proper verification and enquiries invoking clauses (a) and (b) of Explanation 2 to section 263 was not justified. The Principal Commissioner held that the required particulars of stock-in-trade were not filled in the return of income. Then the land so purchased could only be treated as an investment to which provisions of section 40A(3) have no application.(AY. 2012-13).

Raghuveer Singh v. PCIT (2023)101 ITR 306 (Jaipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Best judgement assessment-Failure to serve notice under 143(2)-Invalid assessment cannot be subject matter of revision.[S. 143(2), 144].

Held, that issue of notice under section 143(2) of the Act within the statutory period before completion of assessment was mandatory in nature. The Revenue authorities were not in a position to show that there was a valid service of notice under section 143(2) before completion of assessment. Thus, the assessment order was void ab initio and did not survive. Where there was no valid assessment order that order could not be the subject matter of revision under section 263 of the Act by the Principal Commissioner. Therefore, the revision order was to be quashed.(AY. 2017-18).

A.K. Santhosh v. Dy. CIT (2023)101 ITR 581 (Cochin) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Deposit of cash during demonetisation-Non-co-operation and noncompliance of assessee to furnish details to A.O.-Estimation of net profit at 5% by AO without any basis and without consulting any records-Revision is valid.[S. 44AD, 144]

Held, that despite specific notices issued by the Assessing Officer calling upon the assessee to prepare a true and correct return of income and file it with the Income-tax authorities according to the provisions of law, the assessee did not file any return of income. On being asked to show cause time and again, the assessee furnished only partial information to the Assessing Officer. There was totally non-co-operation and non-compliance on the part of the assessee to furnish the required details to the Assessing Officer so as to enable the Assessing Officer to determine the true and correct income of the assessee. Further, the Assessing Officer estimated the net profit at 5 per cent. on gross receipts without any basis and without consulting any records either of the assessee's income in the earlier years or income returned by the other persons having the same type of business as the assessee. There was absolutely no effort to collect information or data by the Assessing Officer for estimating the net profits of the assessee. No enquiry was made by the Assessing Officer in this respect. The Principal Commissioner restored the matter to the Assessing Officer to frame the assessment afresh after conducting necessary enquiries and after giving opportunity to the assessee. Since it was a case of no enquiry by the Assessing Officer and even the assessee had failed to furnish the required information to the Assessing Officer for estimation of net profits, there was no reason to interfere with the revision order passed by the Principal Commissioner.(AY. 2017-18)

Subhadip Gandhi v. ITO (2023)101 ITR 133 (Kol.)(Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Limited scrutiny assessment-Large share application money received against unallotted shares-AO examining and making necessary verifications-Arrived at plausible view-Revision not warranted. [S. 143(3)]

Held, that the Assessing Officer while framing the assessment had carried out exhaustive examination and necessary verifications on the issue which had formed the very basis for selection of the assessee's case for limited scrutiny assessment, i. e., large share application money received against unallotted shares, and after exhaustive deliberations arrived at a possible and a plausible view accepting the claim of the assessee of having received genuine share application money from the investor-company. Therefore, there was no justification for the Principal Commissioner to have invoked his jurisdiction under section 263 of the Act for the purpose of supplanting his view on the issue, on the ground that appraisal of the material that was available before the Assessing Officer ought to have been done in a different manner, which, thus, would have resulted in a contrary view. Therefore, the order of the Principal Commissioner was set aside and the order passed by the Assessing Officer under section 143(3) of the Act restored.(AY. 2013-14).

Sun Developers and Builders P. Ltd. v. PCIT (2023)101 ITR 688 (Raipur) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Deposit of cash by husband of assessee-sale of plot belonging to father and amount deposited in assessee's account-AO raising queries and after all verification accepting return of the assessee-Revision is bad in law. [S. 143(3)]

Held, that in the assessment proceedings, the assessee was required to furnish copies of bank accounts as well as details of cash deposits in the savings bank account with cogent and corroborative documentary evidence and the details of source of cash deposits for the relevant period. The Assessing Officer had gone through the details submitted, agreement to sell as well as sale deed and also of the affidavit of the assessee's husband, wherein, it had been deposed that since he had sold the plot originally belonging to his late father, he had deposited the amount in the bank account of his wife (i. e., the assessee) according to the wishes of his father. The entire documents furnished by the assessee before the Assessing Officer as well as in response to the show-cause notice issued by the Principal Commissioner indicated that the claim of the assessee regarding the source of bank deposits was correct. The query letter issued by the Assessing Officer indicated that the Assessing Officer had duly applied his mind to the issue before him and further the assessee had duly responded to the query raised by the Assessing Officer in this regard and only thereafter the Assessing Officer had accepted the return. Therefore, there was no lack of inquiry on the part of the Assessing Officer warranting invocation of revisionary proceedings by the Principal Commissioner.(AY.2013-14)

Surinder Kaur (MS.) v. PCIT (2023)101 ITR 531 (Chd) (Trib)

S. 263 : Commissioner-Revision of orders prejudicial to revenue-Capital gains-Slump sale-Exemption-Exemption denied in revision-Computation of book profits objected-Transaction not 'Transfer'-AO conforming to legal standards to compute books of accounts-Transactions between subsidiaries not amenable to book profits computation-Revision not justified.[S. 45,47(iv), 115JB]

Held, that as the transaction of slump sale was covered under section 47(iv) and was not a "transfer" within the Act, the findings of the Principal Commissioner was not sustainable. There was no prejudice caused to the interests of the Revenue since the twin conditions to invoke section 263 were not satisfied. The order passed under section 263 was set aside.(AY. 2015-16)

TMF Holdings Ltd. v. PCIT (2023)101 ITR 423 (Mum) (Trib)

S. 264 : Commissioner-Revision of other orders-Undisclosed income-Not maintaining the books of account-Contract works and other sources-Tax deduction at source-Form No 26AS showing the additional income-Payee confirming the payments-8% gross profit is estimated including the undisclosed income-Rejection of revision order is affirmed by High Court-SLP is dismissed. [S. 133(6),143(3), Form No. 26AS, Art. 136]

The Assessee has not maintained the books of account and disclosed 8 Per Cent. of gross receipts as income from contract works and other sources. Form No, 26AS has showed additional income which is confirmed by the payee. The Assessing Officer estimating the income at 8 Per Cent. of gross profit which included undisclosed income. Revision application of the assessee is dismissed by Commissioner. High Court dismissed the writ against the revision application. SLP is dismissed. (AY.2011-12)

Amresh Kumar v. P CIT (2023)459 ITR 364 / 295 Taxman 1 (SC)

Editorial : Amresh Kumar v. PCIT (2023) 154 taxmann.com 221 (Jharkhand)(HC)

S. 264 : Commissioner-Revision of other orders-Interest on income tax refund-Assessed in the year 2012-15-Merely because an assessee has offered a receipt of income in his return does not necessarily make him liable to pay tax on said receipt, if otherwise said income is not chargeable to tax-Double taxation-Directed to pass the Revision order. [S. 56, Art. 226]

On writ against the rejection of application under section 264 of the Act the court held that merely because an assessee has offered a receipt of income in his return does not necessarily make him liable to pay tax on said receipt, if otherwise said income is not chargeable to tax. On the facts a sum received by assessee on account of interest on income tax refund was assessed as income for assessment year 2014-15, however, said amount had already been brought to tax by revenue in assessment year 2012-13, clearly, said amount could not have been taxed twice. Accordingly the Commissioner is directed to Revise the order whereby said amount was brought to tax in earlier assessment year 2012-13. Followed CIT v. Shelly Products (2003) 181 CTR 564/ (2003) 5 SCC 461, Dwarkanath v.ITO (1965) 3 SCR 536 (AY. 2014-15)

Interglobe Enterprises (P.) Ltd. v. PCIT (2023) 334 CTR 805 /148 taxmann.com 121/225 CTR 27 (Delhi)(HC)

S. 264 : Commissioner-Revision of other orders-Commissioner cannot consider application where appeal lies or is pending-Prohibition does not apply where writ petition had been filed. [S. 143(3), 147, 264(4)(a), Art. 226]

Allowing the petition the Court held that once the proceedings were initiated for reassessment by the respondent and the competent authority proceeded to complete the assessment on December 31, 2019, no occasion arose as to any matter being pending before the High Court as the only challenge before the writ court was for initiation of proceedings under section 143(3) read with section 147 of the Act. Once the reassessment was made and the proceedings were completed, the writ petition had practically become infructuous. The ground taken by the Principal Commissioner for rejection of the application did not hold any ground as the writ petition is not an appeal according to section 264(4)(a) of the Act. The rejection of the application for revision was not valid.(AY.2012-13)

Ratan Industries Ltd. v.PCIT(2023) 335 CTR 604 (2024)460 ITR 504 (All)(HC)

S. 264 : Commissioner-Revision of other orders-Taxability of amount declared under Income Declaration Scheme-Rejection Of Application is not valid. [Finance Act, 2016 (2016) 384 ITR 1, 87 (St) (2019) 416 ITR 1(St), S. 183, to 188 Art. 226]

Held, that admittedly the amount payable under the Income Declaration Scheme, 2016 had been paid. Section 188 of the Finance Act, 2016, provides that the amount of undisclosed income declared in accordance with section 183 shall not be included in the total income of the declarant for any assessment year under the Income-tax Act, 1961 if the declarant makes the payment of tax and surcharge referred to in section 184 and the penalty referred to in section 185, by the date specified under sub-section (1) of section 187. The assessee having paid the tax and surcharge and the penalty with interest, the undisclosed income could not be included in the income of the assessee. The Commissioner should have exercised his power under section 264 of the 1961 Act and decided the matter on the merits. The order rejecting the application for revision was not valid.

Smita Rohit Gupta v.PCIT (2023)459 ITR 369 / (2024) 158 taxmann.com 157 (Bom)(HC)

S. 264 : Commissioner-Revision of other orders-Undisclosed income-Not maintaining the books of account-Contract works and other sources-Tax deduction at source-Form

No 26AS showing the additional income-Payee confirming the payments-8% gross profit is estimated including the undisclosed income-Rejection of revision order is affirmed by High Court. [S. 133(6),143(3), Form No. 26AS, Art. 226]

The Assessee has not maintained the books of account and disclosed 8 Per Cent. of gross receipts as income from contract works and other sources. Form No, 26AS has showed additional income which is confirmed by the payee. The Assessing Officer estimating the income at 8 Per Cent. of gross profit which included undisclosed income. Revision application of the assessee is dismissed by Commissioner. High Court dismissed the writ against the revision application. (AY.2011-12)

Amresh Kumar v. PCIT (2023)459 ITR 356 /154 taxmann.com 221 (Jharkhand)(HC)

Editorial : SLP dismissed, Amresh Kumar v. PCIT (2023)459 ITR 364 / 295 Taxman 1 (SC)

S. 264 : Commissioner-Revision of other orders-Mistakenly filed details of the Assessement year 2014-15 instead of Assessment year 2013-14-Rejection of revision application is not justified-Matter remanded to the Commissioner for de novo consideration. [S. 143(1), 154, Art. 226]

Assessee mistakenly filled income details for assessment year 2014-15 in return of income for assessment year 2013-14. Assessing Officer issued a demand based on return filed by the assessee. The assessee filed his return of income for assessment year 2014-15 showing correct income. The assessee made an application for revision. The Commissioner rejected the application stating that intimation under section 143(1) was not an order. On writ the Court held that power conferred under section 264 is very wide and Commissioner is duty bound to apply his mind to application filed by assessee and pass such order. On the facts the assessee in his return of income had made mistake and, it was rather obvious that it was not a deliberate mistake or an attempt to gain some unfair advantage or to evade any tax, order passed under section 264, rectification order and intimation issued under section 143(1) is set aside and matter is remanded for denovo consideration. Referred, Vijay Gupta v. CIT (2016) 238 Taxman 505/ 396 ITR 643 (Delhi)(HC) (AY. 2013-14)

Diwaker Tripathi v. PCIT (2023) 295 Taxman 532 (Bom.)(HC)

S. 264 : Commissioner-Revision of other orders-Bonafide mistake-Commissioner is not justified in rejecting the application on the ground that assessee failed to file revised return without considering the merits of the case-Directed to pass a reasoned and speaking order. [S. 10(38), 139(5), Art. 226, 265]

The assessee filed delayed return showing dividend income and long term capital gains as taxable income. The assessee realized her mistake on receipt of intimation under section 143(1) of the Act. The assessee filed an application under section 264 of the Act before the Commissioner of Income Tax to rectify the said mistake of declaring exempted income as taxable and paying tax thereon. The CIT rejected the application of the assessee on the ground that the assessee has not filed revised application under section 139(5) of the Act for the claim in question. Such claim could not be allowed in application under section 264 of the Act.Hon'ble Calcutta High Court quashed the order passed by CIT rejecting the application filed by the assessee under section 264 of the Act by observing that the assessee made bonafide mistake of including exempt income in her return as taxable income and same could not be rectified by filing revised return as original return itself was filed belatedly. As, the assessee had no other remedy except taking recourse to file revision application under section 264, CIT could not have rejected revision application merely on ground that assessee failed to file revised return under section 139(5) of the Act. (AY. 2007-08, 2008-09) (SJ)

Ena Chaudhuri v. ACIT (2023) 455 ITR 284 / 227 DTR 74 /148 taxmann.com 100 (Cal)(HC)

S. 264 : Commissioner-Revision of other orders-Reassessment-Pendency of writ petition-Revision petition filed by assessee against reassessment order was to be decided.[S. 143(3), 147, 264(4)(a), Art. 226]

A reassessment notice under section 143(3)/147 was issued upon assessee. Assessee filed a writ petition against same which was pending. Principal Commissioner rejected revision on ground that as writ petition filed by assessee against initiation of reassessment proceedings under section 143(3)/147 was pending consideration, in view of provisions of section 264(4)(a), no order could be passed under section 264 of the Act. On writ the Court had made it clear that there was no embargo upon competent authority to proceed in matter Thus, assessment proceeding was completed against which assessee had filed a revision petition under section 264 of the Act. Therefore pendency of writ petition would not amount to pendency of any appeal before any authority as per section 264(4)(a) of the Act.Revision petition filed by assessee against reassessment order was to be decided. (AY. 2012-13)

Ratan Industries Ltd. v. PCIT (2023) 293 Taxman 690 (All.)(HC)

S. 264 : Commissioner-Revision of other orders-Rejecting the prayer for withdrawal of revision petition-Deciding on merit-Order set aside and remanded. [Art.226]

Allowing the writ petition, the High Court observed that it is trite law that whenever a litigant invokes a particular remedy available under a Statute, then the authority before whom the lis (law suit) is preferred and pending, is ordinarily duty bound to decide the same on merits. Further, it also observed that it is also settled in law that the aggrieved person who initiates lis (law suit) has a right to withdraw the same before it is finally decided. This right of withdrawal is absolute but it is subject to the fact that withdrawal can be declined if there are cogent reasons. The High Court basis these observations held that the rejection of the prayer of withdrawal by revisional authority following decision of Bombay High Court in case of Simplex Enterprises v UOI (2002) 257 ITR 689(Bom)(HC) is not correct as in such case the prayer for withdrawal was never made and hence by not allowing the prayer for withdrawal in present case and proceeding to decide the revision on merits, the revisional authority wrongly exercised jurisdiction vested in it.

Rajendra Singh v. UOI (2022) 291 Taxman 168 (MP)(HC)

S. 264 : Commissioner-Revision of other orders-Appeal not filed-Rejection of revision petition is held to be not valid-Commissioner is directed to hear the petition on merits [S. 250, Art. 226]

Against the assessment order, the assessee preferred a Revision application. The Commissioner dismissed the petition on the ground that the assessee had wrongly filed a revision instead of a statutory appeal. On writ, the Court held that if the assessee has chosen not to avail of statutory appeal before the first appellate authority against the assessment order the revision petition was to be heard and disposed of on merits. (AY. 2009-10)

Vikas Nagelia v. CIT (2023) 290 Taxman 258 (Cal.)(HC)

S. 264 : Commissioner-Revision of other orders-Interest received in an income tax refund-Amount taxed twice-Revision power is not limited to correcting any errors committed by the tax authorities but also extended to errors committed by the assessee-Order of Commissioner was set aside. [S, 56, 148, 246A, Direct Tax Vivad Se Vishwas Act, 2020 Art. 226]

The petitioner received the interest on income tax refunds pertaining to assessment years 2009-10 and 2010-11, which was credited in the Financial year 2013-14 (AY. 2014-15). The

interest amount was shown as income in the AY. 2014-15, the assessment was completed u/s 143(3) of the Act. The assessment for the assessment year 2011-12 was reopened on the grounds that the said interest was received during the previous year 2011-12. The AO added the said amount in the assessment year 2012-13, however he has not reduced the said income from the assessment year 2014-15. The petitioner filed an appeal before the CIT(A) for the assessment year 2012-13. When the appeal was pending the petitioner applied for the Direct Tax Vivad Se Vishwas Act, 2020 for the settlement of dispute which was accepted. The petitioner filed Revision application for the assessment year 2014-15. As the application was not taken up for hearing for more than five years the petitioner filed writ petition before the High Court. High Court directed the Commissioner to dispose the application. The Commissioner rejected the application on merits and the petitioner filed a writ petition against the rejection order. Allowing the petition the Court held that it is settled law that same amount cannot be taxed twice. The Court also held that merely because the assessee has offered a receipt of income in his return of income does not necessarily make him liable to pay tax on the said receipt if otherwise said income is not chargeable to tax. High Court directed the Commissioner to pass fresh order as per the direction of the High Court. Relied on CIT v. Shelly Products (2003) 261 ITR 367 / 129 Taxman 271/ 181 CTR 564 (SC) (2003) 6 SCC 461, Vijay Gupta v.CIT (2016) 386 ITR 643 / 238 Taxman 505 / 137 DTR 401 (2017) 291 CTR 517 (Delhi(HC) / (2016) SCC Online Del 161. (WP (L) No. 11708 of 2021 & CM APP 36194 of 2021 dt. 20-1-2023) (AY. 2014-15)

Interglobe Enterprises Pvt Ltd v. PCIT (2023) 148 taxmann.com 121 (Delhi) (HC)

S. 268A : Appeal-Instructions-Circulars-Monetary limits-Appeal of Revenue is dismissed-Reimbursement of expenses would not be liable to be included in income. **[S. 5, (9(1)(i)261, Art. 136]**

Appeal of the Revenue is dismissed as the tax effect is below monetary limit of Rs 2 crores.

DIT (IT) v. Krupp Udhe Gmbh (2023) 333 CTR 209 (SC)

Editorial : DIT (IT) v. Krupp Udhe Gmbh (2010) 38 DTR 251 / (2013] 40 taxmann.com 38/ 219 Taxman 138 (Mag.)/ 354 ITR 173(Bom)(HC)

S. 268A : Appeal-Instructions-Circulars-Monetary limits-Appeal of Revenue is dismissed-[WTACT, 1957, S. 29]

Appeal of the Revenue is dismissed, as the as the tax effect is below monetary limit of Rs 2 crores.

PCWT v. Oriental Building & Furnishing Co Ltd (2023) 333 CTR 1 (SC)

Editorial : From the Judgement from Delhi High Court, WTA No. 4 of 2017 dt. 18-7-2017.

S. 268A : Appeal-Instructions-Circulars-Monetary limits-Low tax effect-Appeal of Revenue is dismissed.[Art. 136]

Appeal of the Revenue is dismissed as the tax amount involved in revenue's appeal was lower than monetary limit fixed to prefer an appeal before Supreme Court. Question of law was left open.

PWT v. Oriental Building & Furnishing Co. Ltd. (2023) 294 Taxman 2 / 333 CTR 1(SC)

S. 268A : Appeal-Instructions-Circulars-Monetary limits-Capital gains-Profit on sale of property used for residence-SLP of revenue is dismissed, since tax amount involved in instant case was less than RS. 2 croreS. [S. 54(1)]

High Court held that not only cost of construction of new property incurred after sale of old property would be eligible for exemption under section 54(1), but also cost of land on which new property was constructed, even if such land had been purchased three years prior to sale

of old property. SLP of revenue is dismissed, since tax amount involved in instant case was less than Rs. 2 crores, in view of Circular no. 17 of 2019, dated 8-8-2019. (AY. 2010-11)
CIT v. C. Aryama Sundaram (2023) 292 Taxman 71 (SC)
Editorial : C. Aryama Sundaram v. CIT (2018) 407 ITR 1/ 258 Taxman 10 (Mad)(HC)

S. 268A : Appeal-Instructions-Monetary limits-Below threshold limit fixed by CBDT-Appeal is dismissed.[S. 260A]
The court dismissed the appeal filed by the Department on the ground of low tax effect for the assessment year 2009-10.(AY.2009-10)
PCIT v. K. B. Capital Markets Pvt. Ltd. (2023)459 ITR 790 /156 taxmann.com 736 (Cal)(HC)
S. 268A : Appeal-Instructions-Monetary limits-Applicable to revision order passed under section 263 of the Act-Appeal dismissed due to low tax effect. [S. 263, 260A]
Tribunal quashed and set aside the order passed by the Commissioner The Department filed an appeal under section 260A of the Act. The assessee raised preliminary objection to the maintainability of the appeal on the ground that the tax effect was less than the prescribed monetary limits in CBDT Circular No. 17 of 2019, dated August 8, 2019 ([2019] 416 ITR (St.) 106). The Department contended that the circular was not applicable to the appeal arising out of the order passed under section 263 of the Act by the Commissioner. Dismissing the appeal the Court held that the Circular No. 3 of 2018 ([2018] 405 ITR (St.) 29), had been amended by Circular No. 5 of 2019 ([2019] 411 ITR (St.) 7) and Circular No. 17 of 2019 ([2019] 416 ITR (St.) 106). After the amendment, Circular No. 3 of 2018, was modified with regard to the monetary limits prescribed under Circular No. 17 of 2019. Circular No. 17 of 2019 substituted paragraph 5 of Circular No. 3 of 2018. On a conjoint reading of all three circulars, paragraph 11 of Circular No. 3 of 2018, which was substituted by Circular No. 5 of 2019, states that the monetary limits specified in paragraph 3 of Circular No. 3 of 2018, shall not apply to writ matters. The circulars do not distinguish orders passed under section 263 or any other section of the Act, 1961. In view of the order passed by the court in CIT v. Pravinchandra S. Shah (ITA No. 419 of 2009 dt. 13 th July 2011, if consolidated tax effect were to be taken in the appeal, it would not exceed the monetary limits prescribed in Circular No. 17 of 2019, dated August 8, 2019. The appeal is dismissed due to low tax effect.
PCIT v. Nalini Surrendrabhai Patel (2023) 458 ITR 540 / 295 Taxman 187 / 335 CTR 1088 (Guj.)(HC)

S. 268A : Appeal-Instructions-Circulars-Monetary limits-Tax liability below 1 crore-Department appeal was dismissed.[S. 260A]
During the assessment proceedings, the AO made the tax addition of more than 1 crore. However, the tax liability was reduced below 1 crore during the appeal proceedings. Where tax liability was less than Rs. 1 crore, the appeal of Revenue would not be maintainable as per CBDT Circular 17/2019. (AY. 2007-08)
PCIT v. Bharat Infra Tech (P.) Ltd. (2022) 291 Taxman 185 (Karn)(HC)

S. 268A : Appeal-Instructions-Monetary Limits-Retention money-Audit objection-Revenue was not able to demonstrate that the Revision was on account of audit objection-Appeal was dismissed in Limine. [S. 143(3) 260A, 263]
Held that the tax effect involved much below the monetary limit as enumerated in Circular No.3 of 2018, dated July 11, 2018(2018) 405 ITR 29 (St) read with Circular No. 17 of 2019 dated August 8, 2019(2019) 416 ITR 106 (St), but none of the exception clauses much less the audit objection was involved. In view of the circulars and the settled proposition of law the appeal by the Department was not maintainable and dismissed in limine.(AY. 2010-11)

PCIT v. Urmila RCP Projects Pvt. Ltd. (No. 1) (2023)453 ITR 36/ 331 CTR 572/ 223 DTR 369 / 293 Taxman 210 (Jharkhand)(HC)

S. 268A : Appeal-Tax effect less than the monetary limit of Rs 1 crore-Appeal of revenue was dismissed [S. 260A]

The tax effect in revenue's appeal before the High court was lower than the increased monetary limit of Rs. 1 crore in terms of Circular No. 17/2019, dated 8-8-2019. The appeal was dismissed. (AY. 2004-05)

CIT v. Flow Link Systems (P.) Ltd. (2023) 290 Taxman 447 (Mad.)(HC)

S. 269SS : Acceptance of loans and deposits-Otherwise than by account payee cheque or account payee bank draft-Dishonour of cheque-Loan exceeding RS. 20,000-Violation of section 269SS or section 271AAD of the Act of 1961 would not render the transaction unenforceable under section 138 of the Act of 1881.[S. 271AAD, 271D Negotiable Instruments Act, 1881, S. 118, 138, 139]

Question before the Court was whether in case a transaction was not shown in the books of account and/or the Income-tax returns of the holder of the cheque in due course and/or was in violation of the provisions of 269SS of the Income-tax Act, 1961 was a "legally enforceable debt" and could be permitted to be enforced by institution of proceedings under section 138 of the Negotiable Instruments Act, 1881.Court held that a transaction not shown in the books of account or in the Income-tax return of the holder of the cheque in due course could be permitted to be enforced by instituting proceedings under section 138 of the Act of 1881 in view of the presumption under section 139 of the Act of 1881 that such cheque was issued by the drawer for the discharge of any debt or other liability and execution of the cheque having been admitted. Violation of section 269SS or section 271AAD of the Act of 1961 would not render the transaction unenforceable under section 138 of the Act of 1881.

Prakash Madhukarrao Desai v. Dattatraya Sheshrao Desai (2023) 458 ITR 174 / 153 taxmann.com 568 (Bom)(HC)

S. 270A : Penalty for under-reporting and misreporting of income-

Excess claim of deduction-Penalty is confirmed at 200 per cent. [S. 270A(9)]

Held that the assessee has suppressed his gross total income by declaring lower than that recorded in Form No. 16 and overstated under Chapter VI-A. No explanation is offered. Penalty at 200 per cent is confirmed as per section 270A(9) of the Act. (AY. 2017-18, 2018-19)

Sanjeev Kumar Manchand Rajput v. ITO (2023) 224 TTJ 899 (Pune)(Trib)

S. 270A : Penalty for under-reporting and misreporting of income-Penalty not leviable if ingredients specified for misreporting is not established by Assessing Officer. [S. 270A(9)]

Held that penalty, even if leviable, would be leviable only on so much of the additions as was upheld by the Tribunal in the quantum proceedings. Once the Assessing Officer has levied the higher penalty of two hundred per cent. of tax payable on the misreported income, the Assessing Officer has to bring the action or omission of the assessee within the scope of sub-section (9) of section 270A of the Act. He must establish that the ingredients mentioned in clauses (a) to (f) of sub-section (9) of section 270A of the Act exist. The Assessing Officer had failed to spell out how the assessee's case fell within the ken of those clauses. Therefore, the levy of penalty could not be sustained. It is trite law that penalty provisions have to be strictly interpreted. The levy of penalty under section 270A of the Act suffered from the vice of non-application of mind and violated the principles of natural justice. The penalty is deleted.(AY.2017-18)

Saltwater Studio LLP v. NFAC (2023)108 ITR 381 (Trib) (Mum) (Trib)

S. 270A : Penalty for under-reporting and misreporting of income-Change of head of income-Rental income-Explanation is not found to be false-Penalty is deleted.[S. 22, 23,24(a), 270A(6)]

Held that the addition is made on account of change in the head of income for assessing the rental income. The assessee had offered rental income under the head "Income from house property", but the Assessing Officer had assessed it under the head "Income from business". The standard deduction at 30 per cent. allowable under section 24(a) while computing income under the head "Income from house property" would not be available when it is assessed under the "Income from business". Thus, it was not a case where the assessee had suppressed or under-reported any income. The addition had arisen on account of computational methodology prescribed in the Act. This kind of addition would not give rise to under-reporting of income. The Assessing Officer should have exercised his discretion not to initiate penalty proceedings under section 270A of the Act in the facts and circumstances of the case. The assessee had offered an explanation why it reported the rental income under the head "Income from house property" and the explanation was not found to be false. Accordingly, the case of the assessee was covered by clause (a) of sub-section (6) of section 270A of the Act. The penalty is deleted.(AY.2017-18)

D. C. Polyester Ltd. v. Dy. CIT (2023)107 ITR 77 (SN)(Mum) (Trib)

S. 270A : Penalty for under-reporting and misreporting of income-Notice not mentioning under which limb of section notice issued-Proceedings unsustainable.[S. 270A(9)]

Assessee disclosed interest and miscellaneous income in its accounts and in original return with full details. Due to ongoing litigation about taxability of income and misconception of law, assessee claiming exemption thereof. Assessee filing revised return, and offering income to tax during assessment proceedings.Neither a case of under-reporting nor misreporting of income. Penalty is not sustainable. *(*AY.2018-19)

Greenwoods Government Officers Welfare Society v.Dy. CIT (2023)107 ITR 81 (SN)/ 226 TTJ 928 (Delhi) (Trib)

S. 270A : Penalty for under-reporting and misreporting of income-Income tax refund-Offered in the course of assessment-Non-declaration of interest cannot be said to be under-reporting of Income. [S. 143(3), 274]

Return selected for limited scrutiny only for examination of issue of foreign assets. No notice regarding interest on income-Tax refund received by assessee. No merit in findings of Assessing Officer that assessee chose to disclose interest only after case selected for limited scrutiny. Suo motu declaration of interest on Income-tax refund, as offered by assessee during assessment proceedings, accepted under Section 143(3), without modification of revised computation in this regard.Explanation for not offering interest on income-tax refund while filing her return bona fide. Non-declaration of interest cannot be said to be under-reporting of income. Penalty cannot be levied. *(*AY.2017-18)

Kavita Jasjit Singh v. CIT (2023)107 ITR 1 (SN)(Mum) (Trib)

S. 270A : Penalty for under-reporting and misreporting of income-Leave encashment-Bona fide belief about exemption-Mere addition-Levy of penalty is deleted. [S. 10(10AA), 80TTB]

Held that the Assessing Officer had initiated penalty proceedings on interest income for "under-reporting of income", but at the time of levying penalty he levied it for "misreporting

of income". Thus, no penalty for misreporting income was justified on this addition. The penalty under section 270A on such addition is to be deleted. As regards the addition of leave encashment the assessee had explained that initially he was employed by the Gujarat State Electricity Board, an organ of the State Government, which was split into seven State-owned companies and that he was under the bona fide belief that he was a Government employee and that he had disclosed all the particulars of his income. Thus, considering such facts there was merits in the submissions of the assessee that he was under a bona fide belief that he was a State Government employee. It is settled position under law that the levy of penalty is not automatic merely on an addition being made. If the assessee had explained his bona fide belief about exemption in respect of any component of income, no penalty is leviable on such component of income. (AY. 2018-19)

Dhansukhlal Maganlal Dhangar v. ITO (2023)105 ITR 51 (SN)/224 TTJ 41 (UO)(SMC) (Surat) (Trib)

S. 270A : Penalty for under-reporting and misreporting of income-Deemed provisions-Cannot fall in the category of underreporting of income. Also pertinent for the Assessing officer alleging underreporting/misreporting of Income is to specify the limb under which penalty proceedings have been initiated. [S. 43CA, 562(2)(x)]

Tribunal held that the sections concerning additions are deeming provisions. In case of deeming provisions there is no option provided in the statute except to make adjustment as per figures derived from deeming section *vis-à-vis* figures disclosed by the Assessee. This being the case, case of the assessee does not fall in the category of under reporting of the income/income concealment. Penalty initiated is not only erroneous but also arbitrary and bereft of any reason as no limb has been specified for under reporting or misreporting of income for initiating penalty proceedings. (AY. 2018-19)

Alrameez Construction (P.) Ltd v. NFAC [2023] 202 ITD 379 (Mum) Trib.)

S. 270A : Penalty for under-reporting and misreporting of income-Addition on the basis of estimation of valuation-Levy of penalty is not valid.[S. 43CA]

Assessing Officer made addition on basis of difference between value declared by assessee and value determined by DVO. The AO levied the penalty for underreporting of income. On appeal the Tribunal held that only basis of addition made was estimate made by DVO, said addition made on basis of estimation could not provide foundation for under-reported income for purpose of imposition of penalty under section 270A and thus, penalty was to be deleted. (AY. 2017-18)

Jaibalaji Business Corporation (P.) Ltd v. ACIT (2023) 200 ITD 58 (Pune)(Trib)

S. 270A : Penalty for under-reporting and misreporting of income-Concealment of income subject to conditions-search and seizure-held, AO cannot make an assumption that the assessee would not disclose income if the due date to file return has not expired based on previous record. [S. 132]

The assessee company, G underwent a search and seizure on its premises on April 30, 2019. The managing director, upon search admitted to not disclosing rental receipts for the assessment years 2017-18 to 2020-21. This led the AO to levying a penalty at 200 percent for assessment years 2017-18 and 2018-19. He also levied a penalty at 60 percent for the assessment years 2019-20 and 2020-21. The Commissioner (appeals) upheld the order of the AO and the same was challenged by the assessee.

The tribunal held that with respect to assessment years 2017-18 and 2018-19, the assessee has misreported its income because incriminating evidence to the tune of rental receipts not reported as income was found during the search. The same was also admitted by the managing director. The tribunal upheld the penalty levied by the AO. With respect to

assessment years 2019-20 and 2020-21, the Tribunal held that the AO was wrong in levying a penalty because the due to file a return for the said years had not expired. Therefore, the AO could not come to the conclusion that the assessee would not disclose the income there as well. As a result, the penalty was deleted. (AY.2017-18 to 2020-21)
S. Manoharan v. Dy. CIT (2023)103 ITR 243 (Chennai)(Trib)

S. 270AA : Immunity from imposition of penalty,etc-Opportunity of hearing must be given before rejecting application. [270AA(2), 270AA(4),Art.226].
The Assessing Officer rejected the assessee's application under section 270AA(2) for immunity from penalty under section 270A on the ground that it was barred by limitation. On writ the Court held that the order rejecting the assessee's application under section 270AA(2) was set aside for non-compliance with section 270AA(4) which provides for opportunity of hearing to the assessee before rejecting the application. The matter was remanded to the Assessing Officer for reconsideration after hearing the assessee. Matter remanded.(AY. 2020-21)
Rohit Kapur v. PCIT (2023)454 ITR 198/ 292 Taxman 135 (Delhi)(HC)

S. 270AA : Immunity from imposition of penalty,etc-Order passed without giving an opportunity of hearing-Matter was remanded back to consider the application of the assessee. [S. 270A, 270AA(4), Art. 226.]
The assessee's application for immunity under section 270AA was rejected on ground that same was filed beyond stipulated period available for filing said application, however, no opportunity of being heard was granted to assessee, On writ allowing the petition the Court held that the proviso to sub-section (4) of section 270AA makes it amply clear that before an application is rejected, applicant must be given an opportunity of being heard. Accordingly the matter was remanded back to consider the application of the assessee. (AY. 2020-21)
Rohit Kapur v. PCIT (2023) 148 taxmann.com 397 / 292 Taxman 135 (Delhi) (HC)

S. 271(1)(c) : Penalty-Concealment-Co-operative societies-Deduction under section 80P-Notice is issued in SLP filed by the Revenue. [S. 80P(2)(a)(i),80P(4), Regional Rural Development Act, 1976, S. 22]
Assessee a primary co-operative agricultural and rural Development Bank claimed deduction under section 80P on ground that it is a co-operative society in terms of provision of section 22 of Regional Rural Development Banks Act, 1976. Assessing Officer rejected claim on ground that regional rural banks were not eligible for deduction on the ground that Circular No. 319 dated 11-1-1982 issued by Central Board of Direct Taxes, deeming status of Regional Rural Banks as Co-operative Society stood withdrawn Tribunal allowed exemption holding that provisions of Regional Rural Development Bank Act overrides provisions of section 80P(4) of the Act. High Court affirmed the order of the Tribunal. Order of Tribunal deleting the penalty was affirmed. Notice is issued in SLP filed by the revenue. (AY. 2012-13 to 2016-17)
PCIT v. Baroda Uttar Pradesh Gramin Bank (2023) 294 Taxman 433 (SC)
Editorial : Refer, PCIT v. Baroda Uttar Pradesh Gramin Bank (2022) 447 ITR 218/ 138 taxmann.com 449 (All)(HC)

S. 271(1)(c) : Penalty-Concealment-Cash sales-Value Added Tax Authorities accepting cash Sales-Independent finding of fact that the assessee had introduced unaccounted income as cash sales-Inaccurate particulars of income-Levy of penalty affirmed by High court-SLP of assessee is dismissed.[S. 80IAC, Art. 136]

On appeal by the Department against the order of the Tribunal setting aside the penalty levied on the assessee under section 271(1)(c) of the Income-tax Act, 1961, the High Court allowed the appeal of the Revenue holding that merely because the value added tax authorities had accepted the cash sales set up by the assessee that was not sufficient ground to hold that the cash sales set up by the assessee were genuine, that the Assessing Officer and the appellate authority, had rightly given a finding of fact that the cash sales were not genuine and the assessee had introduced its unaccounted income in the garb of cash sales. The High Court restored the penalty in view of inaccurate particulars of income furnished by the assessee in the garb of fictitious cash sales with a view to claim exemption under section 80IC of the Act. SLP of assessee is dismissed.(AY. 2007-08)

J. M. J. Essential Oil Company v. CIT (2023)453 ITR 754/ 292 Taxman 314 (SC)

S. 271(1)(c) : Penalty-Concealment-Addition was deleted-Cancellation of penalty is valid [Art. 136]

Held that where the Tribunal deleted the penalty levied on the assessee under section 271(1)(c) of the Income-Tax Act, 1961 on the ground that the quantum additions had been deleted by the Tribunal and the deletion upheld by the High Court, and the High Court dismissed the Department's appeal holding that no question of law arose. SLP of Revenue dismissed.

PCIT v. Ajmer Vidyut Vitran Nigam Ltd. (2023)452 ITR 246 (SC)

Editorial : PCIT v. Ajmer Vidyut Vitran Nigam Ltd (ITA No. 155 of 2019 dt 8-11-2021 (Raj)(HC) is affirmed.

S. 271(1)(c) : Penalty-Concealment-Capital or revenue-Debatable-Deletion of penalty is held to be justified.

Tribunal held that there was no deliberate attempt to conceal the particulars of income or furnishing any inaccurate particulars thereof. The assessee had disclosed the source of an amount and claimed it as a capital receipt. The source of receipt of the amount was correctly disclosed. The issue being debatable order of Tribunal deleting the penalty is affirmed. (AY.1992-93)

CIT v. S. Kumar Tyres Manufacturing Co. Ltd. (2023)456 ITR 637 /147 taxmann.com 49 (MP)(HC)

S. 271(1)(c) : Penalty-Concealment-Notice-Not specifying the limb under which the penalty proceedings are initiated-Order of Tribunal is affirmed. [S. 274]

The penalty notice under section 274, read with section 271(1)(c), did not specify the limb under which the penalty was sought to be imposed, *i.e.,* whether for concealment of income or for the reason that the Assessee had furnished inaccurate particulars. The Court held that penalty proceedings entail civil consequences for the Assessee. When initiating penalty proceedings, the AO must apply his mind to the material particulars and indicate what is alleged against the Assessee. The AO has an obligation to specify which limb of the said provision is being invoked. In the case of concealment, a higher burden is imposed on the Assessee than furnishing inaccurate particulars. Therefore, the AO must indicate the limb under which penalty proceedings are initiated against the Assessee.(AY. 2012-13) (AY.2004-05)

PCIT *v.* Unitech Reliable Projects (P.) (2023)294 Taxman 507 (Delhi)(HC)

PCIT (C) v. Gopal Kumar Goyal (2023) 294 Taxman 746 (Delhi) (HC)

S. 271(1)(c) : Penalty-Concealment-Search-Loss return-Revised return-Violation of principle of natural justice-Faceless assessment-The conduct of the Revenue would

depict a partial violation of principles of natural justice-Personal hearing was not granted-Order of penalty is set aside to pass fresh order after considering the contentionS. [S. 132,143(3), 153A, 274 Art. 226]

Assessee filed a return showing a loss, which was accepted. The Assessing Officer initiated penalty proceedings for furnishing inaccurate particulars of income based on original return filed under section 139(1).Assessee contended that that since revised return was accepted under section 153A, penalty based on previous return filed under section 139 was not maintainable and that Explanation 5A of section 271(1)(c) did not apply. Penalty was levied without granting a personal hearing. However, authorities did not consider contentions fully and passed penalty orders without granting personal hearing. On writ the court held that there was no complete deprival of principles of natural justice, inasmuch as, while initiating penalty proceedings, respondent authorities had invited reply from assessee to show cause notices issued, however had not considered crucial and important pleas and contentions raised by assessee before passing impugned penalty orders, thereby amounting to negation of principles of natural justice. Though in reply notice, assessee sought for personal hearing, same was not accorded to assessee.The conduct of respondents would depict a partial violation of principles of natural justice and, therefore, penalty orders were to be set aside and authorities were to be directed to give assessee a personal hearing and pass fresh orders after considering their contentions.

Divine Chemtec Ltd. v. ITD, NFAC (2023) 294 Taxman 526 (Telangana)(HC)

S. 271(1)(c) : Penalty-Concealment-Penalty notice provided less than 24 hours to assessee to appear in person or through authorized representative-Shorter period could be termed as a pure and simple breach of principles of natural justice-Assessing Officer was to be directed to give an opportunity of hearing to assessee from stage where it was left-Matter remanded.[Art. 226]

Assessing Officer issued a notice under section 271(1)(c) on 28-11-2022 at 2:40 PM asking to appear in person or through authorised representative on 29-11-2022.Assessee sought adjournment on plea that it was not possible to appear in person within less than 24 hours. Assessing Officer without paying any head to assessee's request passed penalty order on 30-11-2022. Since penalty notice provided less than 24 hours to assessee to appear in person or through authorized representative, this shorter period could be termed as a pure and simple breach of principles of natural justice. Assessing Officer was to be directed to give an opportunity of hearing to assessee from stage where it was left.Matter remanded. (AY. 2010-11)

Checkmate Services (P.) Ltd. v. ACIT (2023) 293 Taxman 189 (Guj.)(HC)

S. 271(1)(c) : Penalty-Concealment-Violation of principle of natural justice-Show-cause notice issued gave less than 24 hours to assessee to appear-Shorter period of less than 24 hours could be termed as a pure and simple breach of principle of natural justice-Penalty order was quashed and set aside. [S. 274, Art. 226]

Assessing Officer issued a show cause notice under section 274 read with section 271(1)(c) was issued, requesting assessee to appear within 24 hours. As the assessee could not reply the Assessing Officer passed the penalty order. On writ allowing the petition the Court held that it was practicably impossible to appear in person within 24 hours, assessee sent a letter addressed to revenue pointing out such practical difficulty. On facts, since show-cause notice issued gave less than 24 hours to assessee to appear, such shorter period of less than 24 hours could be termed as a pure and simple breach of principle of natural justice. Accordingly the

order was quashed. Assessing Officer was directed to give an opportunity to the assessee before passing the penalty order. AY. 2010-11)
Sharmila Vikram Mahurkar v. ACIT (2023) 292 Taxman 461 (Guj.)(HC)

S. 271(1)(c) : Penalty-Concealment-Additions was deleted-Penalty order was quashed.
Dismissing the Revenue's appeal, the High Court by placing reliance on the decision of Hon'ble Supreme Court in the case of K.C. Builders v. ACIT (2004) 265 ITR 562 (SC) wherein the Hon'ble Supreme Court held that where additions made in the assessment order on the basis of which penalty for concealment was levied, are deleted, there remains no basis at all for levying the penalty for concealment and therefore in such a case no penalty can survive and the same is liable to be cancelled. Held that the order of assessment, which was subject matter of challenge before this Court at the instance of the Revenue was dismissed. If that be the case, it would automatically result in setting aside the order of penalty imposed on the assessee. (AY 2005-06).
PCIT v. Jayashree Jayakar Mohanka (Smt.) (2023) 291 Taxman 273 (Cal) (HC)

S. 271(1)(c) : Penalty-Concealment-Disallowance of deduction claimed-Deletion of penalty is justified. [S. 260A]
Dismissing the appeal of the Revenue the Court held that penalty proceedings had been initiated against assessee only on account of fact that deduction, which was claimed by assessee had been disallowed, Tribunal rightly deleted penalty levied by Assessing Officer under section 271(1)(c), as, making unsustainable claim could neither amount to concealment nor amount to furnishing inaccurate particulars of income. Order of Tribunal is affirmed. (AY. 2008-09)
PCIT v. E-City Investments & Holdings Company (P.) Ltd. (2022) 144 taxmann.com 61 (Bom)(HC)

S. 271(1)(c) : Penalty-Concealment-Failure to declare capital gains-Quantum addition is confirmed by the Tribunal-Penalty is affirmed.[S. 45]
Held that the assessee has not shown capital gains arising on sale of goodwill at the time of transfer of one business division to its sister concern in spite of the fact that the transferee company has recorded the goodwill in its accounts. It is concealment of income by filing inaccurate particulars. The Tribunal also sustained the addition. Order of the Assessing Officer levying the penalty is affirmed. (AY. 2000-01)
Penta Media Graphics Ltd v.Dy.CIT(2023) 226 TTJ 899 (Chennai)(Trib)

S. 271(1)(c) : Penalty-Concealment-No addition to the returned income-Making a wholistic view of factual panorama of case and circumstances, in which return for year could not be filed within stipulated time, it could be said that there was a reasonable cause, bringing case out of purview of Explanation 3 to 271(1)(c).[S. 11, 12A, 12AA, 153]
Held that making a wholistic view of factual panorama of case and circumstances, in which return for year could not be filed within stipulated time, it could be said that there was a reasonable cause, bringing case out of purview of Explanation 3 to 271(1)(c). In the absence of any addition or disallowance in determination of total income by the Assessing Officer. [AY. 2012-13)
Association of Oral Maxillofacial Surgeons of India v. ITO (2023) 225 TTJ 740 / 156 taxmann.com 332 (Pune)(Trib)

S. 271(1)(c) : Penalty-Concealment-Penalty-Notice not specifying charge-Notice not valid.[S. 273B]

Held, allowing the appeal, that the Assessing Officer had issued the penalty order stating that, "you have concealed the particulars of income or furnished inaccurate particulars of income". Since, the Assessing Officer had not specified under section 274 as to whether penalty was proposed for alleged "concealment of income" or "furnishing of inaccurate particulars of income", the penalty levied is not sustainable.(AY.2011-12)

Media Magnetic Cassettes v.ITO (2023)108 ITR 271 (Delhi) (Trib)

S. 271(1)(c) : Penalty-Concealment-Purchases entered with stock register-Corresponding export-Ad-hoc estimate-Penalty levied under both limbs-Penalty is deleted.

Held that the assessee had submitted the quantitative details of purchases with stock register entry and corresponding export sales which were also verified from the customer appraisal report. Source of payment of purchases had been made through books of account and account payee cheques and there were corresponding sales. Merely because an ad hoc gross profit rate had been applied on alleged bogus purchases to factor in suppression of alleged gross profit, penalty was levied under both the limbs, i. e., for furnishing of inaccurate particulars of income or concealing particulars of income. This showed that his satisfaction was vague. Accordingly, penalty levied on ad hoc estimate could not be sustained and deleted.(AY.2007-08)

Mun Gems v.Asst. CIT (2023)108 ITR 276 (Mum) (Trib)

S. 271(1)(c) : Penalty-Concealment-Business loss-Carry forward and set off-Pendency of appeal-Claim cannot be termed incorrect or erroneous or false-Levy of penalty is not justified.

Held that the assessee had evidently demonstrated the status of the carried forward and set off business loss declared in its return of income and those assessed by the Assessing Officer and had supplied the relevant details in respect of carry forward of business losses and its set off in the returns filed by it right from the assessment years 2010-11 to 2017-18. The returns could not be termed incorrect or erroneous or false. The assessee's claim was based on the position it had taken starting right from the assessment year 2010-11 to the assessment year 2014-15. Hence, no liability would arise for imposition of penalty under section 271(1)(c) of the Act.(AY.2014-15)

Height Insurance Services Ltd. v. Dy. CIT (2023)108 ITR 61 (SN)(Kol) (Trib)

S. 271(1)(c) : Penalty-Concealment-Failure to indicate limb under which proceedings initiated-Penalty is deleted. [S. 133A]

Held, that once the penalty proceedings had been dropped earlier for the assessed income, there was no basis for imposing penalty on the same assessed income subsequently. Besides, the Assessing Officer had failed to indicate broadly the limb under which penalty proceedings were initiated. Therefore, the Assessing Officer was to delete penalty for both assessment years.(AY.2009-10, 2010-11)

Mahaluxmi Realtech P. Ltd. v. Dy. CIT (2023)108 ITR 36 (SN)(Delhi) (Trib)

S. 271(1)(c) : Penalty-Concealment-Undisclosed income determined based on materials seized during search-Not a case of estimation of income-Penalty is justified.[S. 69, 132, 153A]

Held that the Assessing Officer completed the assessment under section 143 read with section 153A determining the total income on account of unexplained money under section 69 based on seized materials. On further appeal, the Commissioner (Appeals) determined the income of. There was no estimation of income made by the Commissioner (Appeals). The addition was sustained by the Commissioner (Appeals) based on materials

seized during the course of search. The finding arrived by the Commissioner (Appeals) following jurisdictional High Court judgments did not require any interference. (AY.2013-14)
Pradip S. Birewar v. ACIT (2023)108 ITR 56 (SN)(Ahd) (Trib)

S. 271(1)(c) : Penalty-Concealment-Pendency of quantum appeal before CIT(A)-Assessing Officer at liberty to proceed in accordance with law after decision of pending quantum appeal.
Held that the quantum appeal challenging the addition on the basis of which penalty proceedings under section 271(1)(c) of the Act had been initiated was still pending before the Commissioner (Appeals). When quantum appeal against the assessment order making addition on account of disallowance is still pending before the Commissioner (Appeals), the penalty proceedings were not sustainable. The order passed by the Commissioner (Appeals) is set aside and the Assessing Officer granted liberty to proceed in accordance with law after the decision of the quantum appeal pending before the Commissioner (Appeals). (AY.2006-07)
Rakhi Anant Sawant (MS.) v.ITO (2023)108 ITR 27 (SN)(Mum)(Trib)

S. 271(1)(c) : Penalty-Concealment-Prosecution on same facts quashed-No ground for levy of penalty. [S. 276C(1), 276D, 277]
Held that the Department's appeal and allowing the assessee's, that the criminal court had discharged the assessee from prosecution under sections 276C(1), 276D and 277 of the Act on the same facts, stating that merely because an amount had been offered as tax in order to buy peace that did not mean that the person had admitted that such amounts belonged to him, that the Department had failed to bring on record any material, document or circumstance suggesting that the assessee had opened the foreign bank account at a particular branch or carried out any transaction with the foreign bank account during the relevant period or availed of the services of the bank account for any purpose or received any benefit or had any link with the entities or accounts stated in the foreign bank account details, that there were inherent lacuna in the very foundation of the prosecution and the question of obtaining necessary incriminating material by conducting further investigation was not permissible in law in such case. Mere suspicion was not sufficient to proceed further by framing of charge and force the accused to face or deal of criminal trial. Considering the facts in totality in the light of the decision of the chief metropolitan magistrate, there is no merit in the levy of penalty under section 271(1)(c) of the Act.(AY.2006-07, 2007-08)
Pradip Burman v.Dy. CIT (2023)107 ITR 59 (SN)(Delhi) (Trib)

S. 271(1)(c) : Penalty-Concealment-Additional depreciation-Claim not sustained by authorities-Penalty is not leviable.[S. 32]
The assessee made a conscious claim and had given a bona fide explanation before the Assessing Officer and the Commissioner (Appeals). Simply because the claim of the assessee was not sustained by the authorities, it could not be held that the assessee had furnished inaccurate particulars of income so as to attract the penalty under section 271(1)(c) of the Act. The penalty is directed to be deleted. (AY.2011-12, 2013-14, 2015-16)
Heidelberg Cement India Ltd. v. Dy. CIT (2023)107 ITR 49 (SN)(Delhi) (Trib)

S. 271(1)(c) : Penalty-Concealment-Provision of interest twice-Bonfide mistake-Deletion of penalty is justified.
The assessing Officer made an additional repeated amount in assessee's total income and also levied a penalty under section 271(1)(c) of the Act. Tribunal held that though assessee had

accounted for the provision of interest twice by mistake since upon realising such a mistake it passed necessary rectification entries in the subsequent year by showing said interest expense as prior period income the penalty levied was deleted. On appeal, High Court affirmed the order of the Tribunal. (AY. 2007-08)
PCIT v. Gujarat State Electricity Corporation Ltd. (2023) 290 Taxman 77(Guj.)(HC)

S. 271(1)(c) : Penalty-Concealment-Disallowance of claim-Mere filing incorrect claim which was not allowed by Assessing Officer would not attract concealment penalty.
Held that mere filing incorrect claim which was not allowed by Assessing Officer would not attract penalty under section 271(1)(c) of the Act. (AY. 2012-13)
Purshottam Farmers Co. Op Cotton Ginning & Pressing Society Ltd. v. DCIT (2023) 203 ITD 698 (Surat) (Trib.)

S. 271(1)(c) : Penalty-Concealment-The assessee has neither concealed the particulars of the income nor furnished such facts which lead to the furnishing of inaccurate particularS.
In quantum, held that the assessee has already declared income on the higher side compared to the earlier assessment year. The additions in the quantum were restricted on the basis of different views taken by CIT (A) and hence appeal was affirmed.
Held that, though the appeal is confirmed, the assessee has neither concealed the particulars of the income nor furnished such facts which lead to the furnishing of inaccurate particulars. Not a fit case for levy of penalty under section 271(1)(c). (AY.2014-15)
Ranjanben G. Kasodaria v. Dy. CIT (2023) 102 ITR 718 (Surat)(Trib.)

S. 271(1)(c) : Penalty-Concealment-Notice-AO had not struck off the inapplicable portion as to whether the levy of penalty was for concealment of income or for furnishing of inaccurate particulars of income-Penalty is not valid.[S. 274]
The penalty notice and levy of penalty were liable to be quashed as the AO had not struck off the inapplicable portion in the notice. followed: Mohd. Farhan A. Shaikh v. Dy. CIT (2021) 434 ITR 1 (Bom.) (HC) (AY.2009-10)
Sonpal Singh Pal Singh Saini v. ITO (2023) 102 ITR 32 (SN) (Mum.)(Trib)

S. 271(1)(c) : Penalty-Concealment-Capital gains-Denial of special deduction claimed against income from long term capital gain-No business income shown-High court decision in favour-Tribunal Denying Deductions On Basis Of Later Supreme Court Ruling-Deduction admissible-Not a case of furnishing inaccurate particular-Penalty not leviable. [S. 45 8oG 80HHC 112(2)]
Held, that, in identical facts and circumstances, the High Court had held that the deduction was allowable despite there being no positive business income by the assessee. The assessee cannot be charged with having furnished any inaccurate particulars of income so as to be liable to levy of penalty. Thus, the penalty was deleted. (AY. 1999-2000)
Atul Ltd. v. Dy. CIT (2023)101 ITR 11 (SN)(Ahd) (Trib)

S. 271(1)(c) : Penalty-Concealment-Additions during reassessment-Reasons recorded for reopening assessment and additions made on different groundS. A.O. failed to prove that assessee concealed income or furnished inaccurate particulars of income-Additions deleted-Penalty deleted.
Held, that the reasons for reopening the assessment revealed that assessment was reopened on the question of excess loss claimed by the assessee but no addition of this amount was made

in the reassessment order. The assessment order was totally silent on the ground on which the addition was made. Thus, the penalty and additions were deleted. (AY. 2010-11).
Babita Devi Kajoria v. ITO (2023)101 ITR 17 (SN)(Kol) (Trib)

S. 271(1)(c) : Penalty-Concealment-Domain name-Appeal pending before High Court-Debatable-Penalty is set aside-DTAA-India-USA [S. 9(1)(vi), r.w.S. 115A, Art. 12] penalty set aside.
In an appeal filed before by the Revenue, the ITAT relied on the decision of *CIT v. Liquid Investment and Trading CO. (ITA No. 240/2009)* and held that since the issue involved in the present appeals was debatable and since a substantial question of law had been framed by the Delhi High Court in the quantum appeal filed by the assessee, the penalties imposed in both AYs were not exigible and dismissed the said appeals. Editorial note: The Delhi High Court held that fees received by the assessee for providing domain name registration services were not taxable as a royalty because the U.S. company was merely acting as a registrar and it did not have any proprietorship rights in the domain name and could not grant the rights or transfer the right to use the domain name to another person or entity.(AY. 2013-14 2014-15)
ACIT (IT) v. Godaddy.com LLC USA (2023) 201 ITD 525 (Delhi) (Trib)

S. 271(1)(c) : Penalty-Concealment-Bogus purchases-Information from Sales Tax Department regarding bogus purchases made by assessee-Ad-hoc addition-Estimate basis-Penalty is deleted. [S. 69C]
The AO has made addition in the assessee's case on the basis of information received from the sales tax authorities that the assessee had made purchases from various suspicious parties, i.e. bogus purchases. AO made addition by applying GP Rate of 12.% of the bogus purchases amount. ITAT reduced the addition by applying GP Rate of 5% in AY 2009-10 and AY 2011-12. Further, adhoc addition made by AO, i.e. addition made on estimate basis, cannot be treated as concealment of income so as to warrant penalty under section 271(1)(c). (AY. 2009-10 to 2011-12)
Sawailal Bhatti v. ITO (2023) 104 ITR 92 (Mum) (Trib)

271(1)(c) : Penalty-Concealment-AO did not struck off irrelevant portion-Show cause notice not specifying limb of Section 271(1)(c) is defective-Penalty proceeding is quashed.[S. 274]
Tribunal held that Notice u/s. 274 should specifically state whether penalty is proposed for concealment of particulars or for furnishing inaccurate particulars. A printed form where all the grounds set out in section 271 are mentioned would not satisfy the requirements of the law. Initiating penalty proceedings on one limb and imposing penalty on another limb of section 271(1)(c) of the Act too would not be proper. The show-cause notice under section 274 of the Act was defective as it did not specify the ground on which the penalty was sought to be imposed. Penalty could not be levied.(AY. 2008-09)
Thomas Muthoot v. ACIT (2023)104 ITR 557 / 225 TTJ 33 (UO) (Cochin) (Trib)

S. 271(1)(c) : Penalty-Concealment-Quantum addition stood deleted by Tribunal there remained no basis for levy of penalty under section 271(1)(c)
Tribunal held that profits embedded in freight receipts were not taxable in India and deleted demand raised on assessee Thus when the quantum addition made by AO was deleted by Tribunal, there remained no basis for levy of penalty under section 271(1)(c). (AY. 2013-14)
LRS Management v. Dy. CIT (IT) (2023) 200 ITD 19(Rajkot)(Trib)

S. 271(1)(c) : Penalty-Concealment-If directions of Tribunal given effect by Assessing Officer basis Transfer Pricing Adjustments would not survive-Levy of penalty is not valid. [S. 92C, 92CA (3), 271C]

The Tribunal directed the inclusion of certain comparables and exclusion of others. The contention of the assessee that if the directions of the Tribunal for inclusion or exclusion of comparables was carried out by the Assessing Officer there would remain no basis for making any transfer pricing adjustments had not been controverted by the Department. In such a situation, no adjustment on the transfer pricing issue would subsist and there would be no question of penalty under section 271(1)(c) on such addition. Therefore the penalty under section 271(1)(c) was to be deleted.(AY.2011-12)

Trip Advisor Travel India Pvt. Ltd. v. A CIT (2023)101 ITR 28 (SN)(Delhi) (Trib)

S. 271(1)(c) : Penalty-Concealment-Reassessment-The return filed in response to section 148 of the Act is accepted-No penalty can be levied. Observation of the AO must be specific and penalty cannot be levied for non-filing of original return u/s 139(1) [S. 139(1), 148]

The assessee failed to file an original return u/s 139(1) of the Act. However, the assessee voluntarily computed the income, paid the tax along with interest and intimated the same to the AO by filing a letter. Subsequently, the AO issued a notice u/s 148 of the Act. In response, the assessee filed a return of income showing the same income which was disclosed by her in the letter voluntarily filed. The AO accepted the return but levied the penalty u/s 271(1)(c) of the Act. On appeal the Tribunal held the the AO did not make any addition but accepted the returned income of assessee and held that in the absence of any addition/disallowance resulting in enhancement of taxable income, no penalty u/s 271(1)(c) of the Act is leviable. The ITAT further observed that the AO initiated penalty u/s 271(1)(c) on the reason that the assessee had not filed return of income u/s 139(1) of the Act and held that the penalty u/s 271(1)(c) could be levied either for furnishing inaccurate particulars of income or concealing the income. The ITAT observed that the penalty u/s 271(1)(c) cannot be invoked for not filing the original return u/s 139(1). On the aforesaid observations, the ITAT deleted the penalty and allowed the appeal of the assessee. [ITA No. 201/ Mum/2023 dt. 15/05/2023 (Mum)(Trib.).

Pushpa Jadhav v. ITO (Mum)(Trib) (UR)

S. 271(1)(c) : Penalty-Concealment-AO should have asked assessee to show cause in assessment proceedings, no enquiry or evidence that there was concealment of income-Further factual analysis of claim of loss not made, notice not specifying under which limb of section notice issued, Penalty not sustainable.

The Honourable Tribunal while allowing the appeal of the Assessee held that, the AO had not made any enquiry to discredit the claim of loss and had accepted the plea of bargain of the assessee to be assessed at nil income instead of the declared loss. Plea of assessee was accepted without observing anything to the contrary on the condition laid by the assessee, but still the AO made an observation that penalty proceedings u/s.271(1)(c) were being initiated separately for concealment of income. At the same time there was no substance in the form of enquiry and evidence that there was a concealment of income. No such observations were made in the assessment order. Further held that when the notice issued was vague and ambiguous having not specified under which limb of s. 271(1)(c), the penalty notice had been issued, the penalty proceedings initiated not sustainable.(AY. 2015-16)

Unitech Realty P. Ltd. v Dy. CIT (2023)105 ITR 77 (SN)(Delhi)(Trib)

S. 271(1)(c) : Penalty-Concealment-Furnishing inaccurate particulars of income-Claimed exemption on bogus long-term capital gain in original return-Taxed as income from other sources in return filed in response to Sec. 148-Penalty cannot be levied as no addition to income of the assessee-Explained source, mode and manner of earning of income.[S. 10(38), 45,148]

The assessee had filed return of income claiming long-term capital gain as exempted u/s. 10(38). Subsequently, in response to such notice under section 148, the assessee filed his return of income treating the long-term capital gain as income from other sources. The AO levied penalty u/s. 271(1)(c) for furnishing inaccurate particulars of income. The Tribunal deleted the additions by placing reliance on DCIT vs. Kulwant Sing reported in 104 taxmann.com 340 wherein it has been held that penalty cannot be levied as no tax sought to be evaded since there is no addition to income of the assessee as per Explanation 4 and the assessee duly explained source, mode and manner of earning of income in reported in return of income. (AY. 2013-14)

Sumit Chatterjee v. ITO (2023) 103 ITR 48 (SN)(Ahd)(Trib)

S. 271(1)(c) : Penalty-Concealment-Notice not specifying the charge-Notice not valid. [S. 274]

Allowing the appeal, that in the show-cause notice issued under section 274 read with section 271(1)(c) the Assessing Officer had not struck off the irrelevant portion as to whether the charge against the assessee was concealing particulars of income or furnishing of inaccurate particulars of income. The issuance of such show-cause notice without specifying whether the assessee had concealed particulars of his income or had furnished inaccurate particulars thereof had resulted in vitiating the show-cause notice. The notice issued by the Assessing Officer under section 271(1)(c) without striking off the irrelevant clause was not valid. Therefore the penalty was unsustainable.(AY. 2013-14)

Right Tight Fastners P. Ltd. v. Dy. CIT (2023)104 ITR 41 (SN)(Mum) (Trib)

S. 271(1)(c) : Penalty-Concealment-Non application of mind by the AO-Not specified penalty levied under which limb-Concealment of income or furnishing inaccurate particulars thereof-Penalty not sustainable.

The Tribunal held that the AO failed to apply his mind at the time of recording his satisfaction at the time of framing assessment to initiate the penalty proceedings under section 271(1)(c) and specify the limb, furnished inaccurate particulars of income or concealed particulars of income, under which penalty is initiated. Accordingly, initiation of the penalty proceeding was not sustainable in the eyes of law for want of valid satisfaction recorded by the Assessing Officer.*(*AY.2008-09, 2011-12)

Suresh Henry Thomas v. ITO (2023) 103 ITR 79 (SN)(Mum) (Trib)

S. 271(1)(c) : Penalty-Concealment-Concealment of income or furnishing of inaccurate particulars of income-Assessee voluntarily depositing tax with computation of income before issue of notice.[S. 133(6)]

The notice u/s. 133(6) was issued on March 8, 2019 and immediately thereafter the assessee had voluntarily deposited the tax with the computation of income in response to the notice on March 25, 2019. The Assessing Officer issued the notice u/s. 148 on March 30, 2019. The assessee on her own after receiving notice u/s. 148 had voluntarily declared the income in her return and paid taxes thereon. The explanation given by the assessee was neither rejected nor held to be mala fide by the Assessing Officer and once the Assessing Officer had failed to take any objection in the matter, the offer from the assessee on her own was a voluntary offer, and this voluntary action of the assessee could not be considered equivalent to providing

inaccurate particulars of income or concealing the particulars of income. Therefore, the levy of penalty was not sustainable. (AY.2012-13)

Pooja Upadhyay v. ITO (2023)105 ITR 549 (Jaipur) (Trib)

S. 271(1)(c) : Penalty-Concealment-Not specifying the charge-Assessing Officer issuing notice without specifying particular limb under which penalty proceedings initiated-Non-application of mind by Assessing Officer-Penalty cannot be levied.[S. 274]

When the assessee has disguised or provided false information about their income, they are subject to the penalty provisions of section 271(1)(c) of the Income-tax Act of 1961. The notion that the two limbs of section 271(1)(c) of the Act have various interpretations is widely acknowledged. Therefore, it is essential that the Assessing Officer define the pertinent limb in order to inform the Assessee of the allegation leveled against him and provide him with the opportunity to reply appropriately.

It was held that the AO had failed to identify the specific limb for which the penalty procedures had been started when issuing the notice under section 274 read with section 271(1)(c) of the Act. The warning had been provided in an unthinking, stereotypical manner that violated the law and could not be regarded as a proper notice adequate to impose a penalty. This ruling should not be interpreted as a prohibition against starting penalty proceedings from scratch in line with the law, if necessary, should the addition need to be made again in the future. The punishment was to be eliminated.(AY.2011-12)

K. World Developers P. Ltd. v. Asst. CIT (2023)103 ITR 552 (Delhi)(Trib)

S. 271(1)(c) : Penalty-Concealment-Cash deposits in account-partly explained as agricultural income-claim rejected by Commissioner Appeals-Held, penalty deleted as there was sufficient evidence on record to believe the assessee's explanation. [S. 69]

The AO, based on information from annual information returns observed that the assesee had cash deposits in his savings account. The AO stated that the assessee had failed to comply with two notices issued u/s 148 of the IT Act, 1961. AO passed an ex parte assessment order declaring the deposits as income from undisclosed sources u/s 69 of the Act. The Commissioner (appeals) observed that the landholdings by the family was used for agricultural purpose. Despite the evidence of the cold storage, the Commissioner (Appeals) denied the assessee's claim that the income earned was from the sale of potatoes. On appeal:

The Tribunal held that the evidence indicating that the assesse owned the farmland alongside his family is undisputed. Therefore, it would be false to claim that the entire sale proceeds are in the possession of the assessee. The claim of agricultural income cannot be rejected when the assessee has provided information about its agricultural landholdings and established on record that it received money from the sale of agricultural products. It was further held that by investigating the issue of the family members' shares in the income from potato cultivation on the land held in joint ownership, the Commissioner (Appeals) should have entered corroborating documentary evidence into the record. The Tribunal deleted the addition in full and the consequential penalty was hence deleted.

(AY. 2009-10)

Ramandeep Singh Sidhu v. ITO (2023) 153 taxmann.com 612/
103 ITR 1 (Amritsar)(Trib)

S. 271(1)(c) : Penalty-Concealment-Furnishing Inaccurate Particulars Of Income-quantum and penalty proceedings are independent proceedings-no specific finding how disallowance constituted furnishing of inaccurate particulars of income by assessee-Penalty not leviable merely based on confirmation of addition in quantum proceedingS. [S. 14A]

A public limited Company was engaged in the manufacturing business and also undertook construction contracts. During the assessment of the year 2014-15, various additions were made in the assessee company's order as per section 143(3) of the Income-tax Act, 1961 along with section 14A read with rule 8D of the Income-tax Rules, 1962. On an appeal before the Tribunal, the addition made under Section 14A was restricted to Rs. 5,00,000 on an estimated and lump sum basis. Following that, the Assessing Officer issued an order under Section 271(1)(c) and assessed a penalty of Rs. 1,54,500 on the restricted addition of Rs. 5,00,000, concluding that the Assessee had provided false information on his or her income. Without giving any justification, the Commissioner (Appeals) confirmed the penalty's imposition. The assessee appealed the same and the Appellate tribunal held that:

A. Neither of the authorities specifically stated how the disallowance made by the Assessing Officer and confirmed by the Tribunal-even if it was for a small amount-led to the claim that the assessee had provided false information about his or her income.
B. The AO did not show how he had come to the conclusion about the administrative expenditure of the assessee as there was no examination of the books of account.
C. Regarding the disallowance under rule 8D(2)(iii), the assessment order did not dispute the assessee's assertion that it had not incurred any administrative costs for managing the investments. Instead, the Assessing Officer used the standard formula of 0.5 percent of the average investment value specified in the rules to calculate the disallowance and made the disallowance under rule 8D(2)(iii). The phrase used by the assessing officer to express satisfaction that "the assessee has furnished inaccurate particulars of income by charging capital expense to the profit/loss account." Separate penalty actions are being taken under Section 271(1)(c) of the Act, which demonstrated that the satisfaction with regard to recording capital expense in the profit and loss statement had been recorded.
D. The disallowance specified in rule 8D(2)(iii) was primarily due to the deeming fiction and basis on which the amount was computed, and even this deeming fiction had not been applied strictly and had been held amenable to the unique facts and circumstances of the case. As a result, it was not possible to conclude that the assessee had provided inaccurate income information in the return that was submitted.
E. The charge of furnishing inaccurate particulars of income could be levied on the assessee without leading any positive evidence to that effect. The Assessing Officer did not find that incorrect information had been provided regarding investments that had produced or might produce exempt income in the future and that certain administrative costs had actually been incurred for managing these investments during the relevant year, neither during the assessment proceedings nor even during the penalty proceedings. (AY.2014-15)

ISGEC Heavy Engineering Ltd. v. ITO (2023) 152 taxmann.com 90 /
103 ITR 152 (Chd)(Trib)

S. 271(1)(c) : Penalty-Concealment-Assessee declared additional income in his ROI filed in response to S. 148 notice-the same was accepted by the AO without any variation-Held, Penalty was not leviable. [S. 147, 148]

The AO reopened the case of the Assessee u/s 147 of the Act on the basis of information received from the Investigation Wing that the assessee had made transactions in penny stock scrips of T during the previous year. In response, the assessee filed his ROI declaring an additional income on account of income earned on transfer of shares of T. The AO passed a reassessment order accepting the ROI without any variation. He further initiated penalty u/s 271(1)(c) of the Act in view of the fact that had the proceedings u/s 147 of the Act not

been initiated, the assessee would not have offered the correct income for taxation and levied penalty at 100% of the tax sought to be evaded. The CIT(A) upheld the order of the AO. The ITAT observed that the ROI filed by the Assessee, in response to S. 148 notice, included the income earned from transfer of shares of T. This ROI was accepted by the AO without any variation and hence, the AO was directed to delete the entire penalty u/s 271(1)(c). (AY.2012-13)

Ashvin Narayan Bajoria (HUF) v ITO (2023) 103 ITR 25 (SN) (Surat) (Trib)

S. 271(1)(c) : Penalty-Concealment-Transfer pricing adjustment-Application of filters and selection of comparables are debatable issues-not ground for levy of penalty-suo-moto disallowance of provision for doubtful debts-tribunal directed the ao to withdraw disallowance after verification-as addition did not survive-cancellation of penalty justified-denial of deduction u/s 10a-proposed in draft assessment order but deleted by drp-deduction allowed in full in final assessment order-penalty does not survive.

The assessee was a subsidiary of a USA company. For AY 2006-07, based on the additions made in the draft assessment order, the AO initiated proceedings for imposition of penalty u/s 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income and concealment of income and passed an order imposing penalty. On appeal against imposition of penalty, the CIT(A) held that the additions arising out of the transfer pricing adjustment based on change of filters and comparables being debatable issues, it could not lead to imposition of penalty u/s 271(1)(c) of the Act. Insofar as provision for doubtful debts was concerned, the ITAT observed that the assessee itself had disallowed the same in its computation of income and directed the AO to verify the same and withdraw the disallowance, therefore, the addition did not survive and hence the assessee could not be accused of furnishing inaccurate particulars of income.

For AY 2007-08, one of the grounds for imposing penalty u/s 271(1)(c) was transfer pricing adjustment, wherein the ITAT upheld its order passed for AY 2006-07 above. The ITAT further observed that though the addition on account of denial of benefit of deduction under section 10A of the Act was proposed in the draft assessment order, while considering the assessee's objections on the issue, the DRP deleted the addition. In the final assessment order, the AO had allowed the entire claim of the assessee. Thus, the AO had imposed a penalty on a non-existent addition. Therefore, the ITAT held that there was no infirmity in the decision of the CIT(A) deleting the penalty imposed under section 271(1)(c) of the Act.(AY.2006-07, 2007-08)

Add. CIT v. AON Services India P. Ltd. (2023) 150 taxmann.com 344/ 103 ITR 21 (SN)(Delhi)(Trib)

S. 271(1)(c) : Penalty-Concealment-CIT (A) observed that assessee was subjected to pay taxes u/s 115JB, even after taking into consideration additions made in assessment order-held, with reference to cbdt circular no. 25 of 2015, dated 31.12.2015 penalty was not leviable-Order upheld. [S. 115JB]

The CIT(A) noted that even after the additions finally made by the AO, the assessee was subjected to pay taxes u/s 115JB of the Act. Further under Circular No. 25 of 2015, dated 31.12.2015 ([2016] 380 ITR (St.) 34), in the aforesaid circumstances, penalty u/s 271(1)(c) of the Act was not attracted in respect of the additions or disallowances made under the normal provisions of the Act. Held, there was no reason to interfere with the order of the CIT(A). (AY.2012-13, 2013-14)

Dy. CIT v. Havells India Ltd. (2023) 103 ITR 16 (SN)(Delhi)(Trib)

S. 271(1)(c) : Peanlty-Cocncealment-Search-Search initiated on or after 1st June, 2007-Bogus purchases-Penalty in search cases cannot be levied u/S. 271(1)(c) for AY. 2012-13.[S. 271AAA]

The Tribunal dismissed the appeal filed by the Department against the order of the CIT(A) deleting the penalty of Rs. 79,16,580 levied by the A.O. for the AY 2012-13 u/s. 271(1)(c) of the Act in respect of the addition of Rs. 2,44,00,000 made on account of bogus purchases, which was deleted in quantum appeal, on the ground that the penalty had been levied u/s. 271(1)(c) of the Act instead of section 271AAA.(AY.2012-13)

Dy. CIT v.Becon Constructions P. Ltd. (2023)104 ITR 74 (SN)(Delhi)(Trib)

S. 271(1)(c) : Penalty-Concealment-Bogus purchases-Estimate of income-Ex-parte order-Penalty is deleted-Tribunal also observed that when the necessary facts and circumstances and material on the basis of which, the issue in the appeal has to be decided, are already on record, this Tribunal would be slow in directing such remand which may ultimately lead to multiplicity of proceedingS. [S. 250]

The Assessing Officer levied penalty under section 271(1)(c) of the Act, in respect of alleged bogus purchases which was estimated at 12. 5% by the Income Tax Appellate Tribunal. On appeal the CIT (A) passed an ex parte order dismissing the appeal. On appeal against the ex prate order, the Tribunal held that normally, when the order of the First Appellate court is an *ex parte* order, wherein the assessee is not found to be at fault, Tribunal would be inclined to remand the matter back to the First Appellate court. However, when the necessary facts and circumstances and material on the basis of which, the issue in the appeal has to be decided, are already on record, this Tribunal would be slow in directing such remand which may ultimately lead to multiplicity of proceedings. In the present case, the Tribunal found that the circumstances which are relevant for the purpose of deciding the issue involved are matters of record and, accordingly the matter is decided on merit. Tribunal following the ratio in ITO v.Krishi Tyre Retreading & Rubber Industries (2014) 360 ITR 580 (Raj) (HC) CIT v. Whitelene Chemicals (2014) 360 ITR 385 (Guj)(HC), wherein the Courts have held that when the income is estimated levy of penalty is not justified. Accordingly the Tribunal deleted the penalty.(ITA NO. 2734/MUM/2023 dt. 6-12-2023) (AY. 2011-12)

Dombivali Paper Mfg. Co. Pvt. Ltd v. ACIT (Mum)(Trib) www.itatonline.org

S. 271(1)(c) : Penalty-Concealment-Disallowance of claim under section 54 of the Act-Levy of penalty is not justified. [S. 54]

The assessee made an investment in SRA project and claimed exemption under section 54 of the Act. The claim was disallowed and the assessee has not filed an appeal against the disallowance. The Assessing Officer levied the penalty under section 271 (1)(c) of the Act for furnishing in accurate particulars of income. The order of the Assessing Officer is affirmed by the CIT(A). On appeal the Tribunal relying on the ratio in CIT v. Reliance Petroproducts (P) Ltd (2010) 322 ITR 158 (SC) held that the appellant had infact disclosed the amount of capital gains and only aspect is that the claim for exemption was disallowed which cannot lead to an order of imposition of penalty. Accordingly the penalty levied was deleted. (ITA NO. 2839/MUM/2023 dt. 12-12-2023) (AY. 2015-16)

Ramprasad Kamtaprasad Nigam v.ITO (Mum)(Trib) www.itatonline.org.

S. 271(1)(c) : Penalty-Concealment-Denial of special deduction claimed against income from long term capital gain-No business income shown-High court decision in favour-Deduction admissible-Not a case of furnishing inaccurate particular-Penalty not leviable. [S. 80G, 80HHC, 112(2)]

Held, that, in identical facts and circumstances, the High Court had held that the deduction was allowable despite there being no positive business income by the assessee. The assessee cannot be charged with having furnished any inaccurate particulars of income so as to be liable to levy of penalty. Thus, the penalty was deleted. (AY. 1999-2000)
Atul Ltd. v Dy. CIT (2023)101 ITR 11 (SN)(Ahd) (Trib)

S. 271(1)(c) : Penalty-Concealment-Additions during reassessment-Reasons recorded for reopening assessment and additions made on different groundS. A.O. failed to prove that assessee concealed income or furnished inaccurate particulars of income-Additions deleted-Penalty deleted.[S. 133(6), 147, 148]
Held, that the reasons for reopening the assessment revealed that assessment was reopened on the question of excess loss claimed by the assessee but no addition of this amount was made in the reassessment order. The assessment order was totally silent on the ground on which the addition was made. Thus, the penalty and additions were deleted. (AY. 2010-11).
Babita Devi Kajoria v.ITO (2023)101 ITR 17 (SN)(Kol) (Trib)

S. 271AA : Penalty-Failure to keep and maintain books of accounts-Documents-International transaction-Transfer pricing-Non-compliance of provisions occurred due to opinion given by Chartered Accountant-Reasonable cause-Penalty unsustainable. [S. 40A(2)(b), 92D, 92E, 273B]
Held that the assessee, on a bona fide belief, had referred to the chartered accountant as a matter of normal practice, for his opinion and once he had said that these provisions were not applicable, the assessee had acted accordingly. The assessee had taken all necessary steps that a prudent taxpayer would take to comply with the provisions of the Act. Therefore, the assessee fell within the definition of ”reasonable cause” as enshrined under section 273B of the Act. The order of the National Faceless Appeal Centre was set aside and the Assessing Officer is directed to delete the penalty levied.(AY.2013-14)
Jyoti Paper Udyog Ltd. v. Asst. CIT (2023)107 ITR 16 (SN)(Pune) (Trib)

S. 271AA : Penalty-Failure to keep and maintain books of accounts-Documents-International transaction-Transfer pricing-Not specified the documents / information which are required to be kept or maintained-Order of CIT(A) deleting the penalty is affirmed.[S. 92D(1), 92D(2)]
Held that there was no dispute that assessee had maintained requisite documentation in respect of its reported international transaction of FTS and FIS and had also furnished details of various documentations maintained by it. Assessing Officer had not specified documents/information which, in his view, were required to be kept and maintained under section 92D(1) and 92D(2) but were not kept and maintained by assessee. Order of CIT (A) deleting the penalty is affirmed.(AY. 2009-10)
DCIT v. Convergys Customer Management Group Inc. (2023) 198 ITD 100 (Delhi) (Trib.)

S. 271AAA : Penalty-Search initiated on or after 1st June, 2007-Surrender of undisclosed income-Cover discrepancies-Levy of penalty is not valid.[S. 132]
Dismissing the appeal of the Revenue the Court held that the Tribunal was right in holding that the assessee was entitled to immunity from penalty under section 271AAA of the Act in respect of surrender of undisclosed income to cover discrepancies. (AY.2012-13)
PCIT v. Ind Swift Laboratories Ltd. (2023)456 ITR 270 /153 taxmann.com 763 /335 CTR 1105 (P&H)(HC)

S. 271AAA : Penalty-Search initiated on or after 1st June, 2007-Issued notice under wrong section-Non-striking off of the irrelevant limb-Levy of penalty is bad in law.[S. 153A, 271(1)(c)]

In this case a search was conducted by the department pursuant to which a return was filed u/s 153A. After making the assessment, the AO imposed a penalty u/s 271AAA with respect to undisclosed income, which was partially upheld by the CIT(A).

The ITAT observed that the AO had rightly imposed penalty u/s 271AAA, however, the notice for penalty was issued u/s 271 even though S. 271AAA categorically provides that no penalty u/s 271(1)(c) of the Act shall be imposed in respect of undisclosed income referred to in S. 271AAA(1). The ITAT therefore held that not only did the AO invoke the wrong section for imposing penalty u/s 271AAA but he also did not strike off the irrelevant limb in the notice u/s 271(1)(c) r.w.s. 274 of the Act. (AY.2011-12)

Dellip Vijaykumar Kotecha v. DCIT. (2023) 102 ITR 671 (Pune)(Trib)

S. 271AAB : Peanlty-Search initiated on or after Ist day of July 2012-No incriminating document seized during search-Penalty Could be imposed only under Section 271AAB and not under section 271(1)(c). [S. 132, 153A, 271(1)(c)]

Dismissing the appeal of the Revenue the Court held that since the search was conducted on September 3, 2014, i. e., after July 1, 2012 the assessee's case was covered by section 271AAB and the Assessing Officer should have initiated proceedings and levied penalty under section 271AAB(1)(c) and not under section 271(1)(c). On the date of search the due date to furnish the return for the assessment year 2014-15 had not expired and the assessee had furnished the return on November 30, 2014. The assessee had not admitted any income in the statement recorded under section 132(4) nor had paid any taxes on the admitted income. Therefore, the case of the assessee was not governed by section 271AAB(1)(a) or (b) but fell under section 271AAB(1)(c) where the minimum penalty prescribed is 30 per cent. and maximum penalty is 90 per cent. of undisclosed income. Whether incriminating document was found or not was immaterial since the law mandated that the penalty if any should have been levied under section 271AAB. There was no infirmity in the order of the Tribunal affirming the order of the Commissioner (Appeals).(AY.2014-15)

PCIT v.Jai Maa Jagdamba Flour Pvt. Ltd. (2023)455 ITR 74/ 293 Taxman 102/ 333 CTR 317/ 226 DTR 425 (Jharkhand)(HC)

S. 271AAB : Penalty-Search initiated on or after Ist day of July 2012-Assessee declared income including income surrendered during search-A.O. initiating penalty-Show cause notice unclear with respect to which clause-Cash available with assessee as consequence of savings and gift-Cannot be treated as undisclosed income-Penalty quashed.[S. 132, 132(4), 274]

Held, that the show-cause notice issued under section 274 read with section 271AAB of the Act was not clear, i. e., whether it was for clause (a) or clause (b) or clause (c) of section 271AAB(1) of the Act. The assessee declared income which included the surrendered income.Therefore, the income disclosed by the assessee was not undisclosed income in terms of the definition under section 271AAB(1) of the Act. Further on perusal of the statement recorded under section 132(4) of the Act, the income incriminating materials were found during the search were admitted and the assessee on all occasions had voluntarily surrendered income accepting the figure stated by the search team. The Commissioner (Appeals) and the Assessing Officer failed to note that the assessee herself had explained the source of income stating that out of cash surrendered during the search at Rs. 50,000 was withdrawn from the bank account of the assessee and Rs. 1,00,000 was withdrawn by her husband and the remaining was past savings. According to Explanation (c) to section 271AAB of the Act,

being cash available as a consequence of her savings and gifts on various occasions could not be considered as undisclosed income. Therefore, the order of the Commissioner (Appeals) sustaining the penalty was quashed. (AY. 2013-14)
Priyanka Agarwal (Smt.) v. Dy. CIT (2023)101 ITR 391 (Jaipur) (Trib)

S. 271AAB : Peanlty-Search initiated on or after Ist day of July 2012-Statement on oath-Undisclosed Income-Conditions-Admission in statement recorded during search not the sole criteria-A.O. not recording satisfaction-No legal basis for sustaining charge of undisclosed income-No basis for levy of penalty. [S. 132, 132(4)]
Held that in the entire penalty order, the Assessing Officer did not record his satisfaction. There was no legal basis for sustaining the charge of undisclosed income found during the course of search and accordingly, there was no justifiable and legal basis for levy of penalty under section 271AAB of the Act. The Commissioner (Appeals) had rightly deleted the levy of penalty under section 271AAB. (AY. 2013-14)
Dy. CIT v. Sel Manufacturing Co. Ltd. (2023)101 ITR 674 (Chd) (Trib)

S. 271B : Penalty-Failure to get accounts audited-University-Local authority-Failure to get accounts audited not to result in penalty but only in denial of exemption-Penalty not sustainable. [S. 10(23C)(iiiab), 12A(1)(b), 44AB]
Held that the assessee had been established by the National Law University, Delhi Act, 2007, the provisions of which indicated that the university was not engaged in any business or for the purpose of profit but existed solely for educational purposes. The penalty order under section 271B of the Act and the assessment order, both specifically mentioned that the assessee was a local authority. Once the Department accepted the assessee to be local authority certainly it could not be considered to be engaged in "business" or to be earning profit, in the ordinary course of its objectives and functions of imparting legal education and legal research in Delhi. Further, the university had claimed exemption of income earned by it from tax under section 10(23C)(iiiab) of the Act. The Assessing Officer had erroneously introduced provisions of section 12A(1)(b) of the Act to conclude that as the assessee had not got its accounts audited in terms of section 12A(1)(b) of the Act, penalty was liable to imposed under section 271B of the Act. In a case of failure of audit for the purpose of section 12A(1)(b) of the Act, there is no penalty provision except that the assessee shall not be entitled to the benefit of exempt income under section 11 or 12. The tax authorities below had fallen in grave error on the facts and law while invoking the penalty provisions.(AY.2018-19)
National Law University v. Add. CIT (2023)104 ITR 56 (SN)(Delhi) (Trib)

S. 271B : Penalty-Failure to get accounts audited-Failure to show reasonable cause-Levy of penalty is affirmed. [S. 44AB]
Held, dismissing the appeal, that the assessee failed to produce any evidence of filing the audit report before the Commissioner (Appeals) or before the Tribunal, and the assessee had not been able to give any "reasonable cause" for not levying of penalty under section 271B of the Act for failure to audit its account. The penalty is confirmed.(AY. 2013-14)
Space Centre Employees Co-Operative Society Ltd. v. ITO (2023)104 ITR 67 (SN.)(Cochin) (Trib)

S. 271B : Penalty-Failure to get accounts audited-Business of imparting tuition classes-Income is estimated-levy of penalty is affirmed. [S. 44AA, 44AB 271A, 271AB]
Assessee, had been running business of imparting tuition classes-Since he failed to get his books of account audited as required under section 44AB, assessment was made on

estimation basis and, consequently, Assessing Officer levied penalty under section 271B. Held that since assessee did not get his books of account audited, as per provisions of section 44AB read with section 271B, Assessing Officer rightly levied penalty under section 271B of the Act. (AY. 2008-09)
Rakesh Kumar Jha. v. ITO (2023) 201 ITD 565 /224 TTJ 11/ 226 DTR 97 (Ranchi) (Trib.)

S. 271B : Penalty-Failure to get accounts audited-No penalty to be levied when Assessee has voluntarily filed audit report though belatedly and the delay in obtaining tax audit report is on account of bona fide reasons [S. 274]
The issue involved here pertains to imposition of penalty under section 271B of the Act against Assessee for delay in furnishing of audit report within due date.
The Hon'ble Tribunal noted that the Assessee had submitted the audit report though delayed and after the due date but without issuance of any notice. The delay in filing of the tax audit report was caused since the computer data crashed and it took time to recover the data and finalise the accounts again. The Assessee also submitted a sworn affidavit to this effect. No such default was observed by the revenue in the past. Considering the aforesaid fact pattern and voluntary compliance made by Assessee, the Hon'ble Tribunal held that penalty under section 271B of the Act cannot be levied for the reason that the failure was on account of a bona fide reason. Accordingly, the Assessing Officer was directed to delete the penalty levied on Assessee. (AY. 2017-18)
Manju Saran v. ITO (2023) 102 ITR 64 (SN) (Jaipur.) (Trib.)

S. 271B : Penalty-Failure to get accounts audited-Audit report filed along with the return-Levy of penalty is not justified.
Tribunal held that assessee got his account audited but same was filed along with return of income which was filed belatedly, penalty could not be imposed under section 271B.(AY. 2015-16)
Jigneshbhai Rasikbhai Savalia v. ITO (2023) 200 ITD 271/ 224 TTJ 907 (SMC) (Surat) (Trib)

S. 271B : Penalty-Failure to get accounts audited-Builder and developer-Percentage completion of accounts-Gross receipts of were more than RS. one crore-Levy of penalty is justified.[S. 44AB]
Assessee is in business of construction and development of property and followed percentage completion method of accounting. It had not got its accounts audited and offered explanation that it was under bona fide belief that audit was not required as there was no sale and it had only received advances from customers against bookings. Assessing Officer levied penalty under section 271B for failure to get accounts audited as per section 44AB. Tribunal held that since gross receipts of assessee were more than Rs. One crore, it was under obligation to get account books audited as per section 44AB, accordingly levy of penalty is justified. (AY. 2015-16)
Benchmarrk Realty LLP. v. DCIT (2023)199 ITD 511 (Pune) (Trib.)

S. 271B : Penalty-Failure to get accounts audited-Delay in filing audit report due to change of tax auditor-Reasonable cause for delay-Penalty cannot be levied.
For the AY. 2017-18, the audit report was drawn on September 3, 2017. But the report was furnished before the Revenue on January 24, 2018. Therefore, the Assessing Officer levied penalty u/s. 274 read with section 271B.

The delay in the submission of the tax audit report u/s. 44AB before the Revenue authority was due to change of the tax auditor and the delay was only for this AY. and not in any other AY.s. The assessee was not a habitual defaulter in the matter of filing the tax audit report. Therefore, the penalty u/s. 271B was to be deleted. (AY. 2017-18)
Gill Rice Mill Guru Sar Sahnewala v. Dy. CIT (2023) 105 ITR 717 (Amritsar)(Trib)

S. 271B : Penalty-Failure to get accounts audited-Books of account not maintained-Can be penalised under section 271A and not under section 271B. [S. 44AA, 44AB,271A]
AO imposed penalties upon assessee u/s 271A for failure to maintain his books of account and other documents as required u/s 44AA and u/s 271B for failure to get his books of account audited as per provisions of sections 44AB. The assessee filed an appeal against the imposition of penalty u/s 271B contented that the AO was divested for further saddling him with penalty u/s 271B for getting non-existing books of accounts audited. Tribunal held that when the assessee had been penalised u/s 271A of the Act then he could not have further been saddled with failure of getting such books of accounts to be audited. The penalty imposed of Rs.. 1,00,000 u/s 271B is quashed. (AY. 1993-94 to 1995-96)
Santosh Jain v. ITO (2023) 203 ITD 102/108 ITR 636 /225 TTJ 388 (Raipur) (Trib)

S. 271B : Penalty-Failure to get accounts audited-Books of account not maintained-Penalty cannot be levied for not getting the accounts audited.[S. 44AB, 44AD]
Penalty proceedings u/s 271B was initiated for violation of Sec 44AB against the assessee while finalizing the assessment proceedings and show cause notice was issued. Assessee filed his reply. However, the AO without appreciating the same levied the penalty of 53,518/-. The assesse preferred an appeal before the NFAC/ CIT(A). The CIT(A) confirmed the levy of the penalty holding that the assessee was not covered under the any reasonable clause. Since the assessee did not comply with the statutory provisions, the action of levy of penalty was confirmed by CIT(A). On appeal the Tribunal held that there was no dispute regarding the fact that the assessee had not maintained books of account. The ITAT perused the decisions of coordinate benches on the issue and observed that a consistent view has been taken that no penalty is leviable u/s 271B of the Act when books of accounts are not maintained. Appeal of the assessee was allowed. (ITA. No. 43/ JP/2023 dt. 22-3-2023) (AY. 2015-16)
Bhawani Shankar Gupta v. ITO (2023) The Chamber's Journal-May-P. 112 (Jaipur)(Trib)

S. 271C : Penalty-Failure to deduct at source-Failure or delay in remittances of tax deducted at source-Attracts interest and prosecution-No provision for levy of penalty-Interpretation Of Taxing statutes-Penal provisions-Strict construction.[S. 115O(2), 194B, 201(1A), 271C, 276B]
Allowing the appeals the Court held that all these cases were with respect to the belated remittance of the tax deducted at source by the assessee and not a case of non-deduction of tax at source at all and therefore, section 271C(1)(a) shall be applicable. As the respective assessees had remitted the tax deducted at source though belatedly and these were not cases of non-deduction of tax at source at all they were not liable to penalty under section 271C of the Act. Any question of applicability of section 273B of the Act did not arise. Courts also held that The Central Board of Direct Taxes Circular No. 551 dated January 23, 1990 ([1990] 183 ITR (St.) 7) deals with the circumstances under which section 271C was introduced in the statute, for levy of penalty. Paragraph 16.5 of the circular talks about the levy of penalty for failure to deduct tax at source. It also takes note of the fact that if there is any delay in remitting the tax, it will attract payment of interest under section 201(1A) of the Act and

because of the gravity of the mischief involved, it may involve prosecution proceedings as well, under section 276B of the Act. Any omission to deduct the tax at source may lead to loss to the Department and hence remedial measures have been provided by incorporating the provision to ensure that tax liability to that extent would stand shifted to the shoulders of the party who failed to effect deduction, in the form of penalty. On deduction of tax, if there is delay in remitting the amount to Department, it had to be satisfied with interest as payable under section 201(1A) of the Act, besides the liability to face prosecution proceedings, if launched in appropriate cases, in terms of section 276B of the Act. Even the Board has taken note of the fact that no penalty is envisaged under section 271C of the Act for non-deduction tax at source and no penalty is envisaged under section 271C for belated remittance/payment/deposit of the tax deducted at source. (AY. 2003-04, 2010-11 to 2012-13)

US Technologies International Pvt. Ltd. v CIT (2023)453 ITR 644/ 293 Taxman 27/ 332 CTR 176/ 224 DTR 265 (SC)

Eurotech Maritime Academy Pvt. Ltd. v CIT (TDS) (2023)453 ITR 644/ 293 Taxman 27/ 332 CTR 176/ 224 DTR 265 (SC)

Editorial : Decision in CIT (TDS) v. Eurotech Maritime Academy Pvt. Ltd(2019) 415 ITR 463 (Ker) (HC), reversed.

S. 271C : Penalty-Failure to deduct at source-Notice issued nine years after the end of the relevant financial year-Barred by limitation-Order was quashed.[S. 274, 275 (1)(c), Art. 226]

The assessment was completed u/s 143(3) on 28-10-2011. After four year the AO, in an internal communication dated 9-9-2013 addressed to Additional Commissioner of Income-tax, wrote that penalty should be imposed on assessee for failure to deduct tax at source qua AY 2007-08. On 9-11-2017 a show cause notice (SCN) was issued under section 274 for initiating penalty proceedings under section 271C. The Assessee contended that proceedings triggered via said SCN were barred by limitation. However the Assessing Officer fixed the hearing for levy of the penalty. The petitioner filed the writ petition challenging that the notice was barred by limitation. Allowing the petition the Court held that the notice issued nine years after the end of the relevant financial year was barred by limitation. Accordingly the order was quashed. (AY. 2007-08)

Clix Capital Services (P.) Ltd v. JCIT (2023) 149 taxmann.com 279(Delhi)(HC)

S. 271C : Penalty-Failure to deduct at source-External development charges to Haryana Urban Development Authority (HUDA)-Not liable to deduct tax at source-Levy of penalty is not justified.

Held that issue of levy of penalty under section 271C for failure to deduct tax on payment made to HUDA had been examined by Tribunal in case of Vipul Ltd. v. ACIT [IT Appeal No. 1856 (Delhi) of 2020, dated 29-7-2022] and it was held that EDC received by HUDA was deposited in consolidated Fund of State and so assessee-builder was not required to deduct tax on such payment. Appeal of assessee is allowed.(AY. 2017-18)

Regards Developers (P.) Ltd. v. ACIT (2023) 199 ITD 1 (Delhi) (Trib.)

S. 271C : Penalty-Failure to deduct at source-Interest payable to Uttarakhand Environment Protection and Pollution Control Board on FDs with the assessee-Board not a taxable entity, established under Central Act-Penalty not leviable. [S. 194A(3)(iii)(f), Notification No. S. O. 3489(E), Dated 22-10-1970.]

Held, that the depositor had been formed by an Act of the State Legislature and was a non-taxable entity. Hence no penalty was leviable on the assessee-bank under section 271C. (AY. 2013-14, 2014-15)
Yes Bank Ltd. v. Add. CIT (TDS) (2023)101 ITR 13 (SN) (Dehradun) (Trib)

S. 271C : Penalty-Failure to deduct at source-Tax deducted at source-Deposited with interest-Survey-Reasonable cause-Levy of penalty is not justified. [S. 133A]
During survey action carried out at the premises of the assessee that the default in TDS on interest payment came to the fore. The AO initiated penalty proceedings u/s. 271C of the Act. In the meantime, the assessee deposited the entire amount that was required to be deducted as tax at source on interest payment to DHFL along with interest to the Government Exchequer. The Tribunal held that since payments were made to NBFC, the omission to comply with TDS provisions was under bonafide belief that TDS was not required to be deducted. After coming to know of the default, paid the taxes and started deducting tax at source on future payment. Levy of penalty is not justified. (ITA 1729/1730/M/2022 Dt:09/08/2023, (AY. 2017-18, 18-19)
Kundan Industries Ltd. v. JCIT(TDS) (Mum)(Trib) (UR)

S. 271C : Penalty-Failure to deduct at source-Purchased two immovable properties-Bonafide mistake-Furnished documents in support that the recipients /payee had shown the sale consideration in their respective returns of income and paid taxes-Penalty levied is deleted.[S. [S. 194IA, 201]
AO imposed penalty for non deduction of TDS in respect of purchase of two properties. The Assessee furnished documents in support of fact that recipients/payees had duly reflected sale consideration in their respective returns of income and also paid taxes thereon. Tribunal deleted the penalty as there was a bona fide mistake on part of assessee in not deducting taxes at source at time of purchase of property.(AY. 2016-17)
Arrone Ceramic v. JCIT (2023) 203 ITD 123 (Rajkot) (Trib)

S. 271C : Penalty-Failure to deduct at source-International transaction-Arm's Length Price-Concealment of income or furnishing inaccurate particulars-Penalty levied on enhancement of Transfer Pricing adjustments-Tribunal directing inclusion or exclusion of certain comparables-If Directions Of Tribunal Given Effect By Assessing Officer Basis Transfer Pricing Adjustments Would Not Survive-No Question Of Penalty. [S. 92C, 92CA (3)]
Held that the enhancement of the transfer pricing adjustments directed by the Commissioner (Appeals) was challenged by the assessee before the Tribunal. The Tribunal directed the inclusion of certain comparables and exclusion of others. The contention of the assessee that if the directions of the Tribunal for inclusion or exclusion of comparables was carried out by the Assessing Officer there would remain no basis for making any transfer pricing adjustments had not been controverted by the Department. In such a situation, no adjustment on the transfer pricing issue would subsist and there would be no question of penalty under section 271(1)(c) on such addition. Therefore the penalty under section 271(1)(c) was to be deleted.(AY. 2011-12)
Trip Advisor Travel India Pvt. Ltd. v.Asst. CIT (2023)101 ITR 28 (SN)(Delhi) (Trib)

S. 271C : Penalty-Failure to deduct at source-Interest payable to Uttarakhand Environment Protection and Pollution Control Board on FDs with the assessee-Board not a taxable entity, established under Central Act-Penalty not leviable. [S. 194A(3), Notification No. S. O. 3489(E), Dated 22-10-1970.]

Held, that the depositor had been formed by an Act of the State Legislature and was a non-taxable entity. Hence no penalty was leviable on the assessee-bank under section 271C. (AY. 2013-14, 2014-15)
Yes Bank Ltd. v. Add. CIT (TDS) (2023)101 ITR 13 (SN) (Dehradun) (Trib)

S. 271D : Penalty-Takes or accepts any loan or deposit-Acceptance of loans and deposits-Otherwise than by account payee cheque or account payee bank draft-Reasonable cause-Order of High Court deleting the penalty is affirmed.[269SS, 273B]
Assessing Officer levied penalty on assessee which is a non-banking finance company, which had accepted cash deposit in violation of section 269SS. High Court deleted penalty on ground that depositors belonged to rural areas where adequate banking facilities were not available. Order of High Court is affirmed. (AY. 2009-10)
CIT v. Sahara India Financial Corp. Ltd. (2023) 456 ITR 788 / 295 Taxman 2 (SC)
Editorial : Order of Delhi High Court is affirmed, CIT v. Sahara India Financial Corp. Ltd (2012) 26 taxmann.com 269 (Delhi)(HC)

S. 271D : Penalty-Takes or accepts any loan or deposit-Mobilizing deposits from people of small incomes, agriculturists and rural dwellers-Order of High Court deleting the penalty is affirmed. [S. 269SS, 269T, 271E, 273B]
Assessee is a mutual benefit company doing business of mobilization of deposits from members/shareholders. Tribunal deleted penalty imposed on assessee under sections 271D and 271E after considering assessee's business realities, difficulties in mobilizing deposits from people of small incomes, agriculturists and rural dwellers. Order of Tribunal was affirmed by High Court. Order of High Court is affirmed. (AY.1992-93, 1993-94, 1996-97, 1999-2000, 2000-01)
CIT v. Sahara India Mutual Benefit Co. Ltd. (2023) 456 ITR 782 /294 Taxman 429 (SC)
Editorial : CIT v. Sahara India Mutual Benefit Co. Ltd (2012) 28 taxmann.com 119 / 212 Taxman 97 (Mag.)/ (2013) 83 DTR 171 / 257 CTR 225 (Delhi)(HC)

S. 271D : Penalty-Takes or accepts any loan or deposit-Transfer of money through journal entries-No penalty is leviable-Appeal of Revenue dismissed as infructuouS. [S. 269SS, Art. 136]
Assessing Officer levied penalty under section 271D for having received loan in cash which was utilized for purchase of land in violation of provisions of section 269SS of the Act. Commissioner (Appeals) held that no cash loan was actually received by assessee in course of transaction remanded matter to Assessing Officer. On appeal by revenue, both Tribunal and High Court upheld order of Commissioner (Appeals) Revenue filed a Special Leave Petition before Supreme Court on the ground that penalty is leviable under section 271D where transfer of money had taken place through journal entries. On the facts the Assessing Officer in set aside proceedings held that entries made by assessee were only journal entries and therefore did not call for imposition of any penalty. In view of subsequent turn of events, issue raised had become infructuous. (AY. 2007-08)
CIT (Central) v. C. Swapna (2023) 295 Taxman 4 / 335 CTR 1015 (SC)
Editorial : Refer, CIT v. C.Swapna (AP)(HC), (ITA No. 123 of 2015 dt. 6-8-2015)

S. 271D : Penalty-Takes or accepts any loan or deposit-No satisfaction is recorded-Matter is remanded back to the file of Assessing Officer to pass fresh order in accordance with law. [S. 269SS, Art. 226]
On writ against the penalty order, the Court held that no penalty could be levied without recorded satisfaction. Accordingly the order is set aside and the matter is remanded back to

the file of the Assessing Officer to pass a fresh order in accordance with law after giving a reasonable opportunity of hearing. Followed CIT v. Jai Laxmi Rice Mills (2016)286 CTR 159 / 134 DTR 223 (SC) (AY. 2016-17)
Srinivasa Reddy Reddeppagari v. JCIT (2023) 332 CTR 614 (Telangana) (HC)

S. 271D : Penalty-Takes or accepts any loan or deposit-Cash transactions between group company-Common cashier-Book entries-Reasonable cause-Penalty is deleted.[S. 269SS, 269T, 271E, 273B]
Held that transactions between group company by journal entries by a common cashier cannot be treated as loan or deposit. There was reasonable cause and plausible reasons for making adjustment entries in the books of both the companies. Levy of penalty is deleted. (AY. 1995 –96)
Lok Vikas Housing Funds Ltd v. Add.CIT(2023) 223 TTJ 746 (Jaipur)(Trib)

S. 271D : Penalty-Takes or accepts any loan or deposit-Loan from its director-Purchase of lands in name of company-Current account transaction-Neither loan or deposit-Penalty is deleted. [S. 269SS]
Assessee-company had taken loan from its director in cash for purpose of purchase of lands in name of company. Assessing Officer levied penalty under section 271D. Tribunal held that the entire amount of loan had been utilized for acquisition of capital asset for purpose of business of company; and assessee and director both had disclosed transactions in their books of account for relevant previous year. since said transaction between assessee-company and director was in nature of current account transactions, which did not come under purview of loan and deposit as per section 269SS, impugned penalty levied under section 271D was to be deleted. (AY. 2008-09)
Thamira Green Farm (P.) Ltd. v Add. CIT (2023) 155 taxmann.com 320/ 226 TTJ 1052 (Chennai)(Trib.)

S. 271D : Penalty-Takes or accepts any loan or deposit-Cash loan from relative-Investment in properties-Levy of penalty is deleted. [S. 269SS]
Held that when Assessing Officer had rejected assessee's explanation that investment to tune of Rs. 1.60 lakhs in aforesaid properties was sourced out of cash loan that was raised by him from his relative and had held same as having been sourced out of his undisclosed income, then Additional Commissioner could not have taken a contrary view and saddled assessee with penalty under section 271D for having carried out aforesaid loan transaction, existence of which in itself had been rejected by Assessing Officer. Penalty order is quashed. (AY. 2012-13)
Anil Manhare v. ITO (2023) 203 ITD 298 (Raipur)(Trib.)

S. 271D : Penalty-Takes or accepts any loan or deposit-Ignorance of law and bona fides-Non-Resident directors not material-Not mere technical violation in case of companies-Levy of penalty Justified. [S. 269SS, 269T, 271E]
Held that the assessee-company is unable to establish on the basis of any evidence that the disputed loans received in cash were even genuine loan transactions. Violations of section 269SS and section 269T of the Act, which deal with the modes of accepting certain loans deposits and specified sums, and the modes of repayment of certain loans for deposits, respectively, are not to be examined from the perspective of the person who has given the loan or to whom the loan was returned but from the perspective of the recipient of the loan. Thus, the innocence pleaded on account of ignorance of law of directors who claimed to be non-resident was insignificant. There was no question of any benefit to the assessee-company

on the basis of claim of bona fides of the directors. The provisions of sections 269SS and 269T of the Act imposed a statutory liability and could not be said to held to be mere technical violation in the case of companies. Penalty is confirmed. (AY.2002-03)
Sofitra Impex P. Ltd. v.Asst. CIT (2023)107 ITR 52 (SN)(Delhi) (Trib)

S. 271D : Penalty-Takes or accepts any loan or deposit-Sale of immovable property to agriculturist from small village-Banking facilities not available-Reasonable cause-Levy of penalty is deleted. [S. 273B]
Allowing the appeal When the purchaser was summoned the Assessing Officer was satisfied with her reply accepting the returned income without making any additions. Thus, the grievance made out by the assessee was genuine and reasonable cause. In the above circumstances the levy of penalty under section 271D was unwarranted.(AY. 2017-18)
Narendrakumar Chunilal Soni v.JCIT (2023)104 ITR 36 (SN) (Ahd) (Trib)
S. 271D : Penalty-Takes or accepts any loan or deposit-Penalty could not be imposed after expiry of period of limitation. [S. 275(1)((c)]
The assessment was completed on December 28, 2017 u/s. 143(3) at a total income of Rs. 4,19,430. However, no appeal was filed against the additional income. The Joint Commissioner issued a show-cause notice on November 6, 2018 u/s. 271D. The Joint Commissioner imposed penalty of Rs. 47,50,000.
Held the, u/s. 271D could not be imposed after the expiry of the period of limitation. During the course of assessment proceedings, the default of accepting cash over the prescribed limit was noted by the Assessing Officer and the assessment proceedings were completed on December 28, 2017. The related financial year ended on March 31, 2018. According to section 275(1)(c), the first time-limit expired on March 31, 2018. For the second time-limit, the period of six months had to be reckoned from the date of the assessment order and six months from the end of that month expired on June 30, 2018. Hence, the penalty was imposed much later on May 28, 2019. Hence, it was clearly barred by limitation. (AY 2015-16)
Jagdish Chandra Suwalka v. Jt. CIT (2023) 154 taxmann.com 504/ 105 ITR 480 / 225 TTJ 161 (SMC) (Jaipur) (Trib)

S. 271D : Penalty-Takes or accepts any loan or deposit-Sale of flat-assessee collecting sale proceeds and also purchasing for daughter's wedding-Failure on part of assessee reasonable-Words, “reasonable cause” and “Reasonable” to be taken into consideration as per 273B-Held, a penalty not to be imposed. [S. 273B]
The assessee had sold a flat for the A.Y. 2017-18, the sale proceeds of which were accepted in cash. Accordingly, a penalty was levied on her u/s 271D. The assessee filed a reply which was not accepted by the AO. The Commissioner (Appeals) confirmed the penalty order. The assesee appealed before the Tribunal.
The tribunal held that there was documentary evidence to support that the purchaser could not make full payment of the flat and hence the sale proceeds were given in instalments. The assessee had to travel to collect the same from Delhi and at the same time, she also made purchases for her daughter’s wedding. The issue to be decided under the umbrella provisions of Section 273B and not take the plea of ignorance. The assesee was successful in showing a reasonable cause for acting in such a manner. Hence, the penalty was to be quashed. (AY.2017-18)
Sonia Verma v. ITO (2023) 200 ITD 1/103 ITR 282/ 223 TTJ 870 (SMC) (Chd) (Trib)

S. 271D : Penalty-Takes or accepts any loan or deposit-Long term capital gains-Received cash on sale of immovable property in AY 2016-17-Deposited cash during

demonetisation period-Levied penalty for contravention of S. 269SS-Deleted penalty as S. 269SS was violated in AY 2016-17 and not in AY. 2017-18.[S. 45, 269SS]
During the scrutiny proceedings, the assessee explained that the cash deposited in the bank were out of the sale proceeds of property sold during AY 2016-17 and the assessee had also declared long-term capital gains in the return of income filed for AY 2016-17. The Assessing Officer accepted the explanation of the assessee, however, levied penalty u/s. 271D for contravention of the provisions of Sec. 269SS. The Tribunal held that initiation of penalty u/s. 271D for AY 2017-18 was void-ab-initio since provision of S. 269SS is not contravened in the assessment year under consideration. (AY. 2016-17, 2017-18)
Ramachandran Bandhuvula v. ITO (2023) 103 ITR 81 (SN)(Hyd) (Trib)

S. 271E : Penalty-Repayment of loan or deposit-Limitation-Assessment order was passed on 31st Dec., 2010-Penalty order passed on 30th Dec., 2011 was barred by limitation-No substantial question of law. [S. 260A, 275(1)(c)]
Dismissing the appeal of the Revenue the Court held that since the action for imposition of penalty was taken when the assessment order was passed i.e., 31st Dec., 2010, the second limb of s. 275(1)(c) suggests that the period would extend by another six months i.e., till 30th June, 2011. On the facts of the case the assessment order was passed on 31st Dec., 2010. Penalty order passed on 30th Dec., 2011 was barred by limitation-Contention that the AO could not have triggered the penalty proceedings and hence, the limitation would commence, as prescribed, only from the date when the Jt. CIT issued the notice on 13th June, 2011 is not sustainable. If the limitation period is connected to when the concerned officer issues notice, then the Revenue can extend the period of limitation, way beyond the timeline prescribed in s. 275(1)(c). No substantial question of law. (AY. 2008-09)
PCIT v. Thapar Homes Ltd. (2023) 335 CTR 1096/ (2024) 159 taxmann.com 450 (Delhi)(HC)

S. 271FA : Penalty-Annual information return (AIR)-Failure to furnish-Delay of 525 days-No reasonable cause-Order imposing the penalty is affirmed.[S. 273B, 285BA(1)(b), Art. 226]
Dismissing the petition the court held that the Reason stated by petitioner, Sub-Registrar, that he was under a bona fide impression that annual information return (AIR) under section 285BA(1)(b) was already filed by his predecessor was not a reasonable cause to excuse delay of 525 days in submitting AIR and, therefore, penalty under section 271FA was rightly imposed upon petitioner. (AY. 2011-12)
Sub-Registrar, Sri. V.G. Cleetus v. DIT (Intelligence) (2023) 333 CTR 773 / 154 taxmann.com 546 (Ker)(HC)

S. 271FAA : Penalty-Furnishing inaccurate statement of financial transaction or reportable account-Rectified the defects-Revised Form No 61B within the time allowed under section 285BA(4)-Penalty is deleted. [S. 285BA(4), Form No 61B]
Held that the assessee rectified the defects pointed out by the prescribed authority and filed revised Form No. 61B within the time allowed under section 285BA(4). Hence penalty levied is deleted. (AY. 2018-19 to 2020-21)
Keb Hana Bank v. JDIT (2023) 226 TTJ 1 (UO) (Chennai)(Trib)

S. 271G : Penalty-Documents-International transaction-Transfer pricing-Neither Assessing Officer nor Commissioner (Appeals) asked to furnish any specific information or documents-Penalty is deleted. [S. 92B,92D(3), 273B]

Held that since neither the Assessing Officer during the course of assessment proceedings nor the Commissioner (Appeals) during the course of appellate proceedings had required the assessee to furnish any specific information or documents in terms of section 92D(3), there was reasonable cause for the failure on the part of the assessee, which if at all any, had inadvertently occurred. Hence, the provisions of section 273B applied and the penalty imposed under section 271G is deleted.(AY.2014-15)
Tapi Jwil JV v.ITO (2023)108 ITR 27 (Delhi) (Trib)

S. 271-I : Penalty-Deduction of tax at source-Remittances against import of goods-provision for withholding tax and requirement to furnish details not mandatory-forms 15CA and 15CB to be submitted only for payments chargeable to tax in India-PPenalty not attracted for failure to furnish formS. [S. 195(6), Form, 15CA, 15CB, Rule 37BB]
In the present case it has been held that the remittance made by the assessee was against the import of goods and did not attract the provision of withholding tax and therefore the requirement to furnish the details under section 195(6) read with rule 37BB of the Income-tax Rules, 1962 was not mandatory. Further, Form 15CA/15CB was required to be submitted only for those payments which are chargeable to tax in India. The appellate tribunal further observed that there was a conflict between section 195 and rule 37BB regarding the compliance with form 15CA and that the Rules were amended with effect from December 16, 2015 in which the list of payments of specified nature mentioned in rule 37BB, which do not require submission of forms 15CA and 15CB, had been expanded from 28 to 33 of the Act. Hence, there was lack of clarification of words expressively in the provisions and therefore the amendment came into effect from December 16, 2015. In view of the above the penalty provisions under section 271-I of the Act would not be applicable in the case. (AY. 2016-17)
Asst. CIT v. Vinay Diamonds (2023) 105 ITR 31 (SN) (Surat) (Trib)

S. 273 : Penalty-Advance tax-false estimate-Failure to pay-Mere mistake in mentioning particular provision-Subsequent correction of mistake-Order of penalty is valid.[S. 273(2)(a), 273(2)(aa).]]
Dismissing the appeal the Court held that the penalty was imposed after allowing proper opportunity to the assessee with respect to specific default under section 273(2)(aa). The Tribunal held that the mistake in mentioning the wrong section in the assessment order and the first notice was only of a clerical nature which was subsequently rectified. The Tribunal had rightly held that the penalty had been imposed by the Assessing Officer after due application of mind and the technical ground that the initial notice was given under section 273(2)(a) could not be made a ground for quashing the penalty levied under section 273(2)(aa).(AY.1988-89)
Industrial Cables (India) Ltd v. CIT (2023)456 ITR 798 (P&H)(HC)

S. 275 : Penalty-Bar of limitation-Natural justice-Notice issued in November 2017-Barred by limitation. [S. 271, 274, 275(1)(c)]
The principles of natural justice are engrafted under section 274 of the Act, inter alia, mandate that no order imposing a penalty under the Chapter, i. e., Chapter XXI shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard. Court held that the initial return qua the assessment year in issue, i. e., assessment year 2007-08 was filed on March 31, 2007, and the revised return was filed on March 31, 2009. The scrutiny assessment under section 143(3) concerning the assessment year 2007-08, was framed on October 28, 2011. Despite the fact that the issue concerning limitation was flagged as far back as on September 9, 2013, and then again in an internal communication dated July 11, 2014, no steps were taken for the issuance of a show-cause notice. The show-cause notice

was issued only on November 9, 2017. The delay in issuing the show-cause notice dated November 9, 2017 was inexcusable. There was no explanation, whatsoever, available on the record, as to why the show-cause notice under section 274 of the Act was not issued in 2013-14, if not earlier. As a matter of fact, there was no explanation, even with regard to the period falling between the time when the scrutiny assessment was framed (i.e., on October 28, 2011) and the communication dated September 9, 2013. Thus, even if the period for commencement of limitation prescribed in terms of the second limb of clause (c) of sub-section (1) of section 275 were considered, limitation would commence either from 2013 or 2014. There was a period of unexplained substantial delay, as the show-cause notice, concededly, was issued only on November 9, 2017. The show-cause notice dated November 9, 2017 was quashed.(AY.2007-08)

Clix Capital Services Pvt. Ltd. v. Jt. CIT (2023)459 ITR 470 /149 taxmann.com 279/ 334 CTR 574/ 225 DTR 232 (Delhi)(HC)

S. 275 : Penalty-Bar of limitation-Limitation-Limitation starts from the date of assessment when the Assessing Officer initiates penalty proceedings and not from the date of sanction for penalty proceedings [S. 271D, 275(1)(c)]

Dismissing the appeal of the Revenue the Court held that the quantum proceedings were completed by the Assessing Officer on December 17/18, 2008, and the Assessing Officer initiated the penalty proceedings in December 2008. Thus, the last date by which the penalty order could have been passed was June 30, 2009. The six-month period from the end of the month in which the action of imposition of penalty was initiated would expire on June 30, 2009. However the penalty orders were passed on September 29, 2009, and therefore, the Tribunal rightly held that the orders were barred by limitation. (AY.2006-07)

PCIT v. Rishikesh Buildcon Pvt. Ltd. (2023)451 ITR 108 (Delhi)(HC)
PCIT v. Rishikesh Properties Pvt.Ltd (2023)451 ITR 108 (Delhi)(HC)
PCIT v. Rupa Promoters Pvt Ltd (2023)451 ITR 108 (Delhi)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Failure due to inadvertence-Deposited tax deducted at source with interest Though After Delay-Instruction F. No. 255/339/79-IT(Inv.) dated May 28, 1980-Prosecution orders were quashed-SLP of revenue dismissed. [S. 201(1), 201(IA),278AA, 278B, 279(1), Rules 30(2), Criminal Procedure Code, S. 482]

The High Court quashed criminal proceedings and orders passed by the Special Economic Offences court taking cognizance against the assessee of offences under sections 276B and 278B of the Income-tax Act, 1961 holding that the tax deducted at source in all the cases had been deposited with interest, that there was some delay in depositing the tax, that apart from one or two cases, the deducted amounts were not more than Rs. 50,000, and the Instruction of the Central Board of Direct Taxes mentioned that prosecution under section 276B shall not normally be proposed when the amount involved or the period of default was not substantial and the amount in default had been deposited in the meantime to the credit of the Government. SLP of Revenue is dismissed. AY.2017-18)

ACIT v. At-Dev Prabha (JV) and Ors (2023)454 ITR 59/ 293 Taxman 172 (SC)
Editorial : AT-Dev Prabha (JV) v. State Of Jharkhand (2023)454 ITR 48 (Jharkhand)(HC), affirmed.

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Failure to issue notice treating director as Principal Officer of company-Cannot be decided in writ proceedingS. [S. 2(35), 278B, Art. 226]

Dismissing the petition the Court held that whether the notice which issued to the second petitioner on July 27, 2017 treating the petitioner as a principal officer of the company, under section 2(35) of the Income-tax Act, 1961. In the complaint a specific reference had been made treating the petitioner as a principal officer. The question whether the petitioner was a principal officer of the company could not be considered on a writ petition. Referred Madhumilan Syntex Ltd. v. UOI (2007) 290 ITR 199 (SC)

Dr. A. M. Arun (2023)456 ITR 110 / 154 taxmann.com 661 (Mad)(HC)

Meera Arun (Smt.) v. ITD(2023)456 ITR 110 / 154 taxmann.com 661 (Mad)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Not Principal officers of the company-More than 70 years of age-Writ petition to quash the proceedings was rejected.[S. 2(35), 278B]

Dismissing the writ petition the Court held that the general rule that persons above 70 years could not be prosecuted was subject to exceptions and in this case, the Commissioner considered that this was a fit case for launching prosecution. The other submission of the assessees was that there was no averment to show how the assessees were either principal officers or persons in charge of and responsible for the conduct of the business. This point could be adjudicated only by the trial court. The complaints could not be quashed. Instruction No. 5051 of 1991 dated February 7, 1991, Subsequent Circular on April, 24 2008.

Bharathiraja hospitals and research centre pvt. Ltd. v. Dy. CIT (2023)455 ITR 30 /152 taxmann.com 300 ((Mad)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Failure due to inadvertence-Deposited tax deducted at source with interest Though After Delay-Instruction F. No. 255/339/79-IT(Inv.) dated May 28, 1980-Prosecution orders were quashed. [S. 201(1), 201(IA),278AA, 278B, 279(1), Rules 30(2), Criminal Procedure Code, S. 482]

Allowing the Criminal miscellaneous petitions the Court held that the tax deducted at source in all the cases was deposited with interest by the assessees and there was no reason to proceed with the criminal proceeding after receiving the amount with interest though a delay had occurred in depositing the amount. The continuation of the proceedings would amount to an abuse of the process of the court. Apart from one or two cases, the deducted amount was not more than Rs. 50,000. While passing the sanction under section 279(1) the sanctioning authority had not considered the Instruction dated May 28, 1980 issued in this regard by the Central Board of Direct Taxes. Accordingly, the entire criminal proceedings and the cognizance orders in the respective cases passed by the Special Economic Offices whereby cognizance had been taken against the assessees for the offences under sections 276B and 278B were quashed. Court referred the Instruction F. No. 255/339/79-IT(Inv.) dated May 28, 1980, issued by the Central Board of Direct Taxes states that prosecution under section 276B of the Income-tax Act, 1961 shall not normally be proposed when the amount of tax deducted at source involved or the period of default is not substantial and the amount in default has also been deposited in the meantime to the credit of the Government. But no such consideration will apply to levy of interest under section 201(1A). ITO v. Sultan Enterprises (2002) 256 ITR 185 (Bom)(HC), Shaw Walllace and Co Ltd v.CIT (TDS) (No. 1) (2003) 264 ITR 241 (Cal)(HC), distinguished, Sonali Autos Pvt Ltd v. State of Bihar (2017) 396 ITR 636 (Pat)(HC), relied on. (AY. 2017-18)

Dev Multicom Pvt. Ltd v. State Of Jharkhand (2023)454 ITR 48 /333 CTR 516 (Jharkhand)(HC

Jaya Devi v. State Of Jharkhand (2023)454 ITR 48 /333 CTR 516 (Jharkhand)(HC

AT-Dev Prabha (JV) v. State Of Jharkhand (2023)454 ITR 48 /333 CTR 516 (Jharkhand)(HC
Dev Prabha Construction Pvt Ltd v. State Of Jharkhand (2023)454 ITR 48 /333 CTR 516 (Jharkhand)(HC
AT-Dev PL (JV) and Another v. State Of Jharkhand (2023)454 ITR 48 (Jharkhand)(HC
Aarti Devi @ Arti Devi v. State Of Jharkhand (2023)454 ITR 48 (Jharkhand)(HC
Vishwa Vijay Singh v. State Of Jharkhand (2023)454 ITR 48 (Jharkhand)(HC
Editorial : SLP of Revenue is dismissed, ACIT v. At – Devi Prabha (JV) and others (2023) 454 ITR 59 (SC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-High Court dismissed the petition to quash the proceedingS. [S. 200, 204, 278B]
Assessing Officer lodged a complaint against assessee, a director of company, and others alleging that the directors of company and responsible for paying tax as per section 204 had committed a default under section 200 read with rule 30 by failing without reasonable cause to pay tax so deducted from payments made to parties and said default amounted to an offence punishable under section 276B read with section 278B. Magistrate passed an order issuing process against assessee and others.Dismissing the petition the Court held that since sanction order and Commissioner's order indicated prima facie application of mind by statutory authorities before initiation of complaint, Assessing Officer had made out a sufficient case for proceeding against assessee. Whether no interference was called for in order of issuance of process. (AY. 2017-18)
Petrus Lambertus Maria Hermans v. ACIT (TDS) (2023) 293 Taxman 176/334 CTR 933 /(2024)) 460 ITR 513 (Bom.)(HC)

S. 276B : Offences and prosecutions-Failure to pay to the credit tax deducted at source-Company-Directors-Separate notice to directors is not necessary-Directors could be as principal officer-Could be agitated before Trail court. [S. 2(35), 278B]
Dismissing the writ petition, the Court held that the complaints could not be quashed on the ground that no notice under section 2(35) of the Income Act was issued to the directors. Further, the question as to whether the directors were in charge of and responsible to the company for its business was factual and had to be agitated only before the trial court. Explained the ratio in Madhumilan Syntex l td. v. UOI (2007) 290 ITR 199 (SC)
Mehala Machines India Ltd. v. ITO (2023)455 ITR 20/151 taxmann.com 404 (Mad) (HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-
Application for bail-Time to surrender before Trial court and consider the application for bail-SLP of the assessee is dismissed. [S. 276(2) 278EE, Code Of Criminal Procedure, 1973, S. 482. [Art. 136, 226]
The High Court disposed of the bail application of the assessee under section 482 of the Code of Criminal Procedure, 1973, arising out of proceedings under section 276C(2) read with section 278E of the Income-tax Act, 1961, directing that if the assessee appeared and surrendered before the court below within 30 days and applied for bail, his prayer for bail shall be considered and decided in view of the law settled by the court. SLP of the assessee is dismissed. Followed Lal Kamlendra Pratap Singh v. State U.P. (2009) (3) ADJ (SC)
Ramendra v. PCIT (2023)453 ITR 751 / 294 Taxman 77 (SC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Penalty proceeding initiated against assessee for concealment of income was dropped-Trial Court rightly acquitted assessee. [S. 139(5), 277]

Assessee filed return showing income at Rs. 8860. Assessing Officer accepted return and completed assessment. Subsequently Assessing Officer having found that assessee had construed a building during relevant assessment year without disclosing source of investment reopened assessment. Thereupon assessee filed second return showing a loan of Rs. 25000 taken from a party and adding said amount to Rs. 8860 (as shown in first return) disclosed income at Rs. 33,860. Assessing Officer assessed income at Rs. 74510. Addition was affirmed by the CIT(A) and Tribunal. The Assessing Officer filed a complaint against assessee alleging that she had committed offences punishable under sections 276C and 277 Trial Court acquitted assessee on the ground that penalty proceedings were dropped. On appeal against the acquittal dismissing the appeal the Court held that in view facts that in instant case penalty proceeding was initiated against assessee for concealment of income but it was subsequently dropped and further there was no evidence on record to establish that assessee made deliberately or intentionally false statement, there was not any error with order of trial Court acquitting assessee. (AY. 1980-81) (SJ)

UOI v. Pusparani Khana (2023) 335 CTR 863 / 151 taxmann.com 249 (Orissa)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-
Self-Assessment tax shown in return but paid late-Penalty levied-Nothing on record to show deliberate and wilful default of evasion of tax-Complaint and summoning order quashed.[S. 276(2), 278]

Allowing the petition, the court held that there was undoubtedly delayed payment, but for that penalty had already been levied. While maintaining both these proceedings simultaneously, the one fact that must be present there, that there was or has been a criminal intent in the mind of the accused right from the beginning. The income tax was self-assessed and payment was also made by the assessee-company, though belatedly. Thus, the question of evasion of tax did not arise in the present facts and circumstances. The facts and circumstances of the case did not reveal that there was a deliberate and wilful default of evasion of tax on the part of the assessee. The complaint and all the consequential proceedings arising therefrom, including the summoning order were quashed.(AY.2011-12)

Health Bio Tech Ltd v. Dy. CIT (2023)459 ITR 349/156 taxmann.com 220 (P&H)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Acquittal after 29 years of launching of prosecution-No finding against assessee in penalty proceedings-Trial Court is justified in a. 277]

On an appeal against an order of acquittal by the trial court,dismissing the appeal held that no judgment of acquittal can be interfered with after about 29 years, more particularly in a case of this nature, where the assessee was charged with offences under sections 276C and 277 of the Income-tax Act. The trial court had rightly framed the points of determination and proceeded to appreciate the evidence on record. The assessee was never given an opportunity to explain why a complaint should not be filed against him and there appeared from the record that a penalty proceeding was also pending at the time of institution of the complaint, which was contrary to law. Even if the evidence for the prosecution were taken into consideration, the assessee could not be convicted of the offences with which he stood charged for want of sanction, which was defective and illegal. The pendency of penalty proceedings under section 271(1) against him was a bar on institution of the complaint. The trial court after due analysis of the provisions and the evidence, had concurred with the pleas of the assessee, and the Department could not validly dispute the findings of the trial court.

The Department had failed to satisfy the court either on the merits or on the ground of technicalities. The acquittal of the assessee was justified.(AY.1990-91)(SJ)
ITO v. Nagendranath Khuntia (2023)456 ITR 631 (Orissa)(HC)

S. 276C : Offences and prosecutions-Willful attempt to evade tax-Directors-Winding up petition-Liquidation-Discharge application-Official liquidator has to be a party-Directed the trial court consider the application-After adding official liquidator as a party to the case. [S. 278B, 279, Companies Act, 1956, S. 446, Companies Act, 2013, S 279]
Due to economic slowdown and other factors, company faced financial difficulties and was unable to repay its creditors. As a result, High Court issued an order of winding up of company dated 8-9-2015. Subsequently, assessment was reopened and demand was raised. Complaint was filed for offence under section 276C(2) and 278B. Before the Court it was submitted that once a winding up order was passed or a provisional liquidator was appointed, no legal proceedings could be initiated against company without permission of Tribunal and as a result of winding up order, all directors of company (under liquidation) ceased to be directors, and they were not authorized to take any actions on behalf of company. It was also argued that since company was under custody of official liquidator, they had no liability or responsibility regarding company's affairs, and therefore, proceedings against them should be quashed. Court held that considering fact that official liquidator was a necessary party, since it was now in charge of affairs of company under liquidation, petitioners' request for discharge was to be considered by trial court after adding official liquidator as a party to case. (SJ)
Chhatar Singh Dugar v. ITO (2023) 294 Taxman 384 (Cal.)(HC)

S. 276C : Offences and prosecutions-Willful attempt to evade tax-Failure to disclose capital gain tax-Civil suit-Cost of RS. 50000 was expunged-Writ petition was dismissed-Civil Judge was directed to dispose the case preferably within a period of twelve months. [Indian Evidence Act, 1872, S. 120, Art. 226]
Appellant's wife filed a civil suit in respect of a property against one P.M. Elavarasan and P.M. Elavarasan also filed cross suit, wherein parties had been examined and suits had been transferred to Civil Judge, Chennai Subsequently, suit property was sold by ' P.M. Elavarasan . Appellant sent a representation along with copies of sale deeds to concerned Assessing Officer for necessary legal action to be initiated against P.M. Elavarasan. Thereafter appellant filed a writ petition seeking a mandamus directing ITO to initiate action on P.M. Elavarasan on his representation dated 1-9-2021 Appellant also claimed that P.M. Elavarasan had purchased a house site for Rs. 25 lakhs and sold same for Rs. 125 lakhs but did not pay any capital gain tax on said transaction. Single Judge of High Court dismissed petition and also imposed cost on ground that neither appellant's wife nor P.M. Elavarasan had been made a party. It was noted that appellant could not rely on section 120 of Indian Evidence Act, 1872 to justify in filing writ petition.It was held that only in a proceeding initiated before a Court of law or any authority, appellant could appear and depose evidence on behalf of his wife but writ petition could not have been filed by him as a witness of his wife and it was for appellant's wife to have filed writ petition after impleading proper and necessary parties. Writ appeal filed by appellant was dismissed. Cost imposed on appellant was expunged considering fact that appellant's wife might have a case against P.M. Elavarasan. Cost of Rs.50000 was expunged.
P.S. Mallikarjun v. ITO (2023) 291 Taxman 275 (Mad.)(HC)
Editorial : Order of single Judge is modified, P.S. Mallikarjun v. ITO (WP No.20575 of 2022 dt. 11-8-2022 (Mad)(HC)

S. 276C : Offences and prosecutions-Wilful attempt to evade tax-Failure to produce accounts and documents-Admission regarding Foreign Bank account after an investigation by department-Revised return was filed after issue of notice-Failure to disclose foreign account opened in year 1991 when the assessee was 55 years of age-Cannot take benefit of circular recommending any prosecution where the assessee is aged 70 years or more at time of offence-Launching of prosecution is justified[S. 132, 153A, 271, 271(1)(b), 274, 276C(1),276D, 277, Code of Criminal Procedure, 1973, S. 245(2), Central Board Of Direct Taxes Instruction No. 5051, Dated 7-2-1991.]

In the year 2011 based on information received from France that the assessee had opened an account in a bank in London on August 20, 1991 a search and seizure was conducted under section 132 of the Income-tax Act, 1961 at various business premises and residence of the assessee on August 23, 2011. A notice under section 153A was issued to the assessee to file a return. Penalty was levied for failure to comply with notices issued under section 142(1). The assessee filed a revised return for the assessment year 2006-07 declaring the balance in the bank account in London as income from other sources on the basis of details provided at the time of search and assessment proceedings. A notice under section 277 read with section 279(1) was issued and the assessee furnished details of payment of entire taxes, penalties and interest. Thereafter, criminal complaints under sections 276C(1)(ii) and 277 were filed against the assessee. The assessee filed an application under section 245(2) of the Code of Criminal Procedure, 1973 for discharge on the ground that he was eighty years old citing Instruction No. 5051 dated February 7, 1991 issued by the Central Board of Direct Taxes. Dismissing the petition, the Court held that the assessee could not take benefit of Instruction No. 5051 dated February 7, 1991. He had opened the account in the bank in London on August 20, 1991 and it was only after the Government of France brought to the knowledge of the competent authorities that the assessee disclosed it in the year 2011. During the period relevant to the assessment year 2006-07 the assessee allegedly had the maximum credit balance in his foreign bank account. The foreign account was opened in the bank in London on August 20, 1991 and was not disclosed. Taking the date of birth of the assessee, as claimed by him, as March 30, 1936, at the time of commission of offence in the year 1991 he was 55 years of age. Instruction No. 5051 dated February 7, 1991 stated that prosecution normally be not initiated against a person who has attained the age of 70 years at the time of commission of offence. Therefore, in terms of Instruction No. 5051 dated February 7, 1991, the age of the assessee had to be taken at the time of commission of offence and not when the proceedings were initiated. It was only after the notice under section 274 read with section 271 of the Act was issued and penalty under section 271(1)(b) of the Act for failure to comply with notice under section 142(1) of the Act was also levied on September 26, 2013 that the assessee had chosen to file a revised return on February 16, 2015. By doing so he could not evade the judicial process of law for not disclosing his correct income and foreign account since the year 1991.(AY.2006-07)(SJ)

Rajinder Kumar v. State. (2023)451 ITR 338 (Delhi)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Failure to pay self assessment tax-Criminal complaint is filed before the Magistrate Court-Petition filed before the High Court to quash the proceedings is dismissed-Notice is issued in SLP filed by the assessee. [S. 139(1), 139(4), 140A,,276C, 278E,Code of Criminal Procedure, 1973, S. 482]

There was delay in filing of the return and failed to pay the self assessment tax. On receipt of the notice the assessee has paid the self assessment tax. Notice was issued for committing offences under sections 276CC and 276C and initiated criminal prosecution proceedings. The

Assessee filed petition under section 482 of Cr.PC against initiation of such proceedings against it.-High Court held that term 'wilfully fails to furnish in due time' as contained in section 276CC takes within its fold due time that has been fixed under section 139(1) and not extended time provided under section 139(4) and thus mere filing of return during extended time would not come to aid of assessee to escape from criminal prosecution. High Court further held that issue as to whether there was wilfulness in not filing returns on time and not paying tax on time, was only a matter of fact, which could be ascertained only through appreciation of evidence; Court, exercising its jurisdiction under section 482 of Code, could not presume innocence or absence of wilfulness on part of assessee. Notice is issued in SLP filed against the order of High Court. (AY. 2013-14)

D.M. Kathir Anand v. N.S. Phanidharan (2023) 295 Taxman 234 (SC)

Editorial : D.M. Kathir Anand v. N.S. Phanidharan (2023) (2023) 154 taxmann.com 52 (Mad)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Failure to pay self assessment tax-Criminal complaint is filed before the Magistrate Court-Petition filed before the High Court to quash the proceedings is dismissed. [S. 139(1), 139(4), 140A,,276C, 278E,Code of Criminal Procedure, 1973, S. 482]

There was delay in filing of the return and failed to pay the self assessment tax. On receipt of the notice the assessee has paid the self assessment tax. Notice was issued for committing offences under sections 276CC and 276C and initiated criminal prosecution proceedings and the complaint is filed before the Magistrate Court. The Assessee filed petition under section 482 of Cr.PC against initiation of such proceedings against it.High Court held that term 'wilfully fails to furnish in due time' as contained in section 276CC takes within its fold due time that has been fixed under section 139(1) and not extended time provided under section 139(4) and thus mere filing of return during extended time would not come to aid of assessee to escape from criminal prosecution. High Court further held that issue as to whether there was wilfulness in not filing returns on time and not paying tax on time, was only a matter of fact, which could be ascertained only through appreciation of evidence; Court, exercising its jurisdiction under section 482 of Code, could not presume innocence or absence of wilfulness on part of assessee. (AY. 2013-14)

D.M. Kathir Anand v. N.S. Phanidharan (2023) 154 taxmann.com 52 (Mad)(HC)

Editorial : Notice is issued in SLP filed by the assessee, D.M. Kathir Anand v. N.S. Phanidharan (2023) 295 Taxman 234 (SC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Return filed after due date but before notice issued-Payment of tax with interest-In due time-"Or" and "And"-Word "Or" is normally disjunctive and "And" is normally conjunctive-Application to quash the proceedings is dismissed. [S. 139(1) 139(4),234A, 278E, Code of Civil Procedure 1908, S. 482]

Dismissing the petition the Court held that filing of returns under section 139(4) would not take away the liability of filing the return "in due time" as provided in section 276CC, merely because no notice was issued by the Department prior to filing of the return. The words "in due time" used in section 276CC of the Income-tax Act, 1961 are significant and relate to non-furnishing of return within the time in terms of sub-section (1) or indicated in the notes given under sub-section (2) of section 139. There is no provision for condonation of the infraction even if a return is filed in terms of sub-section (4) of section 139 because due time as prescribed under sub-section (1) or (2) of section 139 would not get diluted by filing return under section 139(4) much later as it is against the legislative intent. Therefore, the ratio therein being that, though, the plea of lack of culpable mental state may be evoked by an

accused in defence, that cannot be seen at the time of filing of the complaint or at the stage of taking cognizance in terms of the provisions contained in section 278E(1) which deals with presumption of existence of such mental state being a matter of trial, the application was dismissed. Court also hedl that the assessee's contention that return was filed prior to issuance of any notice by the Department was to be examined in terms of the use of word "or" under sub-section (1) or (2) of section 139. The word "or" is normally disjunctive and "and" is normally conjunctive and "or" in its natural sense denotes an "alternative" and is not read as "substitutive".(AY.2015-16) (SJ)

Jai Shankar Singh v. UOI (2023)455 ITR 562 (All)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Filed belated return and also deposited amount of tax along with interest for delay which was accepted by authority concerned-No sentence could be imposed u/s 276CC of the Act. [S. 153A, 279(1). Code of Criminal Procedure, 1973, S 397]

Allowing the petition of the Assessee, the High Court relying strongly on the Calcutta High Court's decision in the case of Gopal Ji Shaw v. ITO(1998) 173 ITR 554 (Cal)(HC) observed that the Department should not rush with the prosecution without any determination by the ITO of the liability of the accused-assessee, which is sought to be made the basis for prosecution and mens rea is one of the essential ingredient of a criminal offence. The High Court further observed that in the present case, the petitioner has already deposited the tax as well as the interest in light of the statute. When the ITO has levied interest on filing of the return, it must be presumed that the ITO has extended the time for filing the return after satisfying himself that there was ground for delay in filing the return. Hence, in such a case, no sentence could be imposed under Section 276CC of the Act.(SJ) (AY. 2013-14).

Suresh Kumar Agarwal v. UOI (2023) 456 ITR 148/ 291 Taxman 258 / 332 CTR 762/ 225 DTR 499 (Jharkhand)(HC)

S. 276CC : Offences and prosecutions-Failure to furnish return of income-Return filed late-Directors of the firm held guilty-Sent to rigorous imprisonment for six months. [S. 139, 278E CPC, 248(2), 313]

The accused was having taxable income for A.Y. 2014-2015. The director of the company by written submission stated that the profit of company had reduced for A.Y. 20142015 and the accused has financial difficulties, therefore, the return was not filed. As the accused have failed to file their return within stipulated time. However the Commissioner was not satisfied with the explanation hence the complaint was filed with the competent magistrate court. The audit report is the crux of the case which is a document of the accused and not denied by them wherein the amount is given. In the balance sheet the profit of Rs.10,00,00,000/ and turnover of Rs.1,19,00,00,000/ is mentioned. Accused have certain sources to file the return, even though they did not file the same. Defence witness has admitted that the audit report is found in their business premises. The Court held that the accused failed to prove the delay in filing of the return and they are habitual offenders. Accordingly the Court awarded minimum six months of rigours imprisonment as prescribed under section 276CC of the Income-tax Act.C. C.NO.276/SW/2018 dt. 17-4-2023)) (AY. 2015-16)

ITO v. Saloni Jewellers Pvt Ltd (Add. Chief Metropolitan Magistrate (Mum)
ITO v. Jitendra Patechand Jain (Add. Chief Metropolitan Magistrate (Mum)
ITO v. Kiran Patechand Jain (Add. Chief Metropolitan Magistrate (Mum)

Editorial : Bail is granted the appeal is proposed to be filed before Session Court.

S. 276CCC : Offences and prosecutions-Search cases-Failure to furnish return-Search and seizure-Block Assessment for Assessment prior to 1-1-1997-No provision for prosecution prior to that date. [S. 132, 158BC(a)(ii), 158BFA, 277, 278B, 278E]

Failure to show the additional income in the original return, prosecution was launched against the company and directors. The petitioners have filed a criminal revision petition to quash a prosecution for alleged offences under sections 276C(1) and 277 read with section 278B of the Income-tax Act, 1961, in respect of block assessment for the period April 1, 1985 to January 5, 1996. Allowing the petition the Court held that that there being no provision existing at the relevant point of time whereby the Income-tax Department could launch a prosecution as regards income disclosed in block assessments for the period between July 1, 1995 to January 1, 1997, automatically and as a direct consequence, quashing of prosecution was the only necessary corollary. Followed N.R.Agarwal Industries Ltd v. JCIT (2016) 416 ITR 578 (Guj)(HC) (AY. 1-4-1985 to 5-1-1996)

Suman Paper And Boards Ltd. v. Jt CIT (2023)454 ITR 296/ 225 DTR 34 (Guj)(HC)

S. 277A : Offences and prosecutions-Falsification of books-or documents etc.-Principal Director of Income-tax (Inv.) filed a complaint against assessee for offences under sections 277A and 278B-Warrant of arrest was issued against assessee-A senior officer of income-tax department was complainant, there would be no requirement of compliance with section 202 of CrPC-Assessee is an artificial person and not a natural person, warrant of arrest could not be issued. [S. 278B, Code of Criminal Procedure, 1973, S. 202, 305]

Revision application was filed challenging the proceedings before the Magistrate Court. The complaint was filed by Principal Director of Income-tax (Inv.) filed a complaint against assessee for offences under sections 277A and 278B. Warrant of arrest was issued against assessee. Court held that a senior officer of income-tax department was complainant, there would be no requirement of compliance with section 202 of CrPC-Assessee is an artificial person and not a natural person, warrant of arrest could not be issued.

Karan Kothari Jewellers (P.) Ltd. v. State of West Bengal (2023) 292 Taxman 177 (Cal.)(HC)

S. 279 : Offences and prosecutions-Compounding of offences-Compounding fees-Failure to deposit tax deducted at source-Subsequent offences-Compounding fee of 5 percent is affirmed-Compounding fee by all directors instead one director, directed to re examine. [S. 2(35), 276B, 278B, Art. 226]

For the financial year 2012-13 the Revenue has charged compounding gee of at the rate of three percent. For the financial year 2013-14 and 2015-16 the compounding fee was charged at the rate of five percent. Revenue also charged compounding fee to all the directors instead of treating only one director treating him as principal Officer. On writ the Court held that the charge of compounding fee of 5 percent is affirmed. However as regards compounding fee by all directors instead one director, directed to re examine especially in the year 2012-13 the compounding fee was levied only on one of director (Mr.Aman Gulati) and not other directors. Directed to pay the compounding fee. (Financial year 2013 14 to 2015-16)

Maspar Industries (P) Ltd v. CCIT (2023) 333 CTR 10 / 221 DTR 452 (Delhi)(HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Compounding of offence-Belated filing of application-Affidavit is filed explaining the delay-Matter is remanded to be decided on merits. [S. 276B, Art.226]

Court held that by filing the affidavit, the defect in the application stood removed. Thereafter, it cannot be held that the application for compounding was filed on 5th Feb., 2020 or the

compounding application was time-barred. The order dt. 11th Feb., 2020 is set aside and the matter is remanded back to the ITO in the Office of the Principal Chief CIT for deciding the application of compounding on merit within a period of 30 days after giving the opportunity of personal hearing to the assessee.
SMV Beverages (P) Ltd. v. PCIT (2023) 334 CTR 709 (Orissa) (HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Offences and prosecutions-Failure to pay to the credit tax deducted at source-Sanction for prosecution-Reasonable cause-Failure to deposit tax deducted at source due to prevalence of pandemic-Reasonable cause shown for failure-Sufficient cause-Assessee depositing tax deducted at source in phased manner with interest though after delay-Prosecution orders set aside. [S. 2(35), 276B, 278AA, 278B, 279]
Allowing the revision petition, that the assessee and its principal officer had deposited the entire tax deducted at source with interest for the delayed deposit before the time of consideration of the matter as to launching of the prosecution under section 279(1) of the 1961 Act. The tax deducted at source with interest had been accepted and gone to the State exchequer when by then no loss to the Revenue stood to be viewed. The assessee and its principal officer in their show-cause had described all the difficulties which they had faced during the prevalence of the covid-19 situation. The real estate sector heavily faced the wrath of the pandemic covid-19 situation and there were serious labour migrations, stoppage of all forms of construction activities and also buying and selling of real estate projects which were all undeniable facts. The point for consideration by the authority was not to cull out the justification for delay in depositing the tax deducted at source but was whether to launch the prosecution. Hence, the order under section 279(1) passed by the Commissioner (TDS) suffered from the vice of non-consideration of the admitted factual settings as to the existence of reasonable cause for the failure to deposit the tax deducted at source and the complaint was vitiated since the failure was on account of the reasonable cause of the prevalence of covid-19 pandemic. The order of sanction having been passed without due application of mind and in a mechanical manner and putting the blame upon the assessee and its principal officer for not filing any exemption or relaxation notifications or circulars stood vitiated. Hence, the trial court ought not to have taken cognizance of the offences under sections 276B, 2(35) and 278B when even the latter two were no penal provisions and its orders were bad in law and, therefore, set aside.(AY.2021-22)
D. N. Homes Pvt. Ltd v. UOI (2023)459 ITR 211 /156 taxmann.com 169 / 335 CTR 942 (Orissa)(HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Tax deduction at source-Compounding application-Application was filed beyond twelve months-Rejection of application was set aside by High Court-SLP of Revenue is dismissed. [S. 200, 276B, 278B, 279(2), Art. 136]
Assessee voluntarily deposited TDS due to be credited to Central Government along with penal interest liability, though beyond the time stipulated, but before any demand or show-cause notice was issued upon it. Order of Chief Commissioner (TDS) rejecting assessee's application for compounding of the offence charged u/s. 276B r.w.s.287B on the ground that the same was filed beyond twelve months which was contrary to the provision of s. 279(2) the order is set aside. SLP of Revenue is dismissed. (AY. 2010-11)
ITO v. Footcandles Film (P.) Ltd. (2023) 295 Taxman 410/(2024) 460 ITR 671 (SC)
Editorial : ITO v. Footcandles Film (P.) Ltd. (2023) 453 ITR 402 /146 taxmann.com 304/ 333 CTR 612 (Bom)(HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Commissioner-Tax deduction at source-Delay in depositing the amount-No Limitation period for filing of Compounding application-The application cannot be rejected on the ground of delay in filing the application-Central Board of Direct Taxes cannot issue guidelines overriding the statutory provisionS. [S. 119, 276B, 278B, 279(2), Art. 226]

The assessee made an application for compounding of offences, however, failed to deposit the compounding fees. Pursuant to the same, the revenue filed a complaint before the Metropolitan Magistrate. The assessee filed a fresh compounding application after making payment of compounding fees which was not considered or disposed-off. On writ the Court held that the compounding application cannot be rejected on the ground that delay in filing of the application, since no limitation period has been provided u/s 279 for filing or consideration of the compounding application.

The Court also held that the CBDT guidelines cannot provide for limitation nor can restrict the operation u/s. 279 and guidelines are subordinate to the principal Act and Rules and cannot override or restrict the application of specific provisions enacted by the legislature. Further, the Court also observed that there is no restriction on the number of applications that could be filed, and the only requirement of the provisions is that the complaint filed by the revenue should be still pending, which is admittedly pending in the present case. Accordingly, the Court directed to put a stay on the prosecution proceedings before the Metropolitan Magistrate, until the compounding application is disposed of. (Para 8(vii) of the circular dated December 23, 2014 [2015] 371 ITR (St.) 7)

Sofitel Realty LLP v. Income-tax officer (TDS)(2023) 457 ITR 18 / 294 Taxman 766 ((Bom) (HC)

S. 279 : Offences and prosecutions-Sanction-Chief Commissioner-Tax deduction at source-Compounding application-Application was filed beyond twelve months-Rejection of application was set aside. [S. 200, 276B, 278B, 279(2), Art. 226]

Assessee voluntarily deposited TDS due to be credited to Central Government along with penal interest liability, though beyond the time stipulated, but before any demand or show-cause notice was issued upon it. Order of Chief Commissioner (TDS) rejecting assessee's application for compounding of the offence charged u/s. 276B r.w.s.287B on the ground that the same was filed beyond twelve months which was contrary to the provision of s. 279(2) the order is set aside. SLP of Revenue is dismissed. (AY. 2010-11)

Footcandles Film (P.) Ltd. v. ITO [2023] 453 ITR 402/ 146 taxmann.com 304 / 333 CTR 612 (Bom)(HC)

Editorial : SLP of Revenue is dismissed, ITO v. Footcandles Film (P.) Ltd. (2023) 295 Taxman 410 (SC)

S. 281 : Certain transfers to be void-Recovery of tax-Secured creditor-Priority of debt-Mortgage of land and construction-Attachment of property-Transfers void against Department-Finding on date of initiation of proceeding prior to date of creation of mortgage not found in order-Order vague-Order set aside-[ITRule. 83, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002-Recovery of Debts and Bankruptcy Act, 1993, Art. 226]

Allowing the petition the Court held that there was no dispute on the fact regarding creation of the mortgage. However, in the order there was omission to mention finding on dates of initiation of proceedings and creation of the mortgage, to demonstrate that the mortgage was created subsequent to initiation of the proceeding. The Tax Recovery Officer has power under rule 83 in the Second Schedule empowering him to take evidence exercising power of a civil court. But in exercise of the power there must be laid evidence to substantiate the declaration of the mortgage being void. So far as rule 86 was concerned, the Department had

not argued that order was not one, which was conclusive in declaring the mortgage void. No finding that the date of initiation of proceeding was prior to date of creation of the mortgage could be located in the order. Order was bad for being vague. The order is set aside.(AY. 2012-13)
Bajaj Finance Ltd. v.Tax Recovery Officer(2023) 334 CTR 465 / (2024) 461 ITR 397 (Orissa)(HC)

S. 281B : Provisional attachment-Fixed deposit of two banks-Recording of satisfaction-Mere apprehension that huge tax demands were likely to be raised on completion of assessment was not sufficient to constitute formation of opinion for purpose of provisional attachment-Order of provisional attachment is held to be illegal.[Art. 226]
Revenue provisionally attached the fixed deposit of two banks. The assessee filed the writ petition against the said attachment. allowing the petition the Court held that mere apprehension that huge tax demands were likely to be raised on completion of assessment was not sufficient to constitute formation of opinion for purpose of provisional attachment. Order of provisional attachment is held to be illegal and arbitrary. The order of attachment was quashed and set aside. (AY. 2018-19) (SJ)
Xiaomi Tecnology India (P) Ltd v.Dy.CIT(2023) 291 Taxman 315 (Karn)(HC)

S. 281B : Provisional attachment-Should be exercised in judicial manner-Order modified. [S. 133A(3)(ia), Art. 226]
An order of provisional attachment was passed in respect of two of its accounts with two banks. On a writ the Court held that the provisional attachment should be exercised in judicial manner. Accordingly the order is modified. (AY.2021-22)
FCS Manufacturing (India) Pvt. Ltd. v Dy. CIT (Inv) (2023)456 ITR 89/ 330 CTR 151/ 221 DTR 64/(2022) 145 taxmann.com 393(Guj)(HC)

S. 281B : Provisional attachment-Mere apprehension that huge demand would be made is not sufficient-Tangible reasons are required-Grant of approval cannot be mechanical-Approval for attachment cannot be given without considering factS. [Art. 226]
On writ, the court held that mere apprehension that huge tax demands are likely to be raised on completion of assessment is not sufficient for the purpose of passing a provisional attachment order and it must necessarily be preceded by the formation of an opinion that it was necessary to do so for the purpose of protecting the interest of Government revenue, that too on the basis of tangible material that the assessee was not likely to fulfil the demand and on the other hand, was likely to defeat the demand. The apprehension that huge tax demands are likely to be raised on completion of assessment is not sufficient to constitute the formation of opinion and existence of proximate and live link for the purpose and necessity of provisional attachment which implicate the doctrine of proportionality. Court also held that it is trite law that grant of approval should not be a mechanical act and should reflect the independent application of mind and this important safeguard of taking prior approval of the Commissioner under section 281B of the Income-tax Act, 1961 is not a mere empty formality and cannot be taken lightly. Court also directed that the respondents were to complete the draft assessment proceedings of the assessee for the assessment years 2019-20, 2020-21 and 2021-22 on or before March 31, 2023.(AY.2019-20 to 2021-22)
Xiaomi Technology India Pvt. Ltd. v. Dy. CIT (2023)451 ITR 58 / 330 ITR 113 / 221 DTR 225 / 291 Taxman 315 (Karn)(HC)

Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015)

S. 10(1) : Undisclosed Foreign Income or Assets-No Evidence of undisclosed Foreign income-Notice Issued Under Black Money Act is not valid-High Court can quash a notice if issued without jurisdiction-Interpretation of Taxing Statutes-Strict Interpretation [S. 8(1), 8(2), Income-tax Act, S. 132, 232(4), 153A, Art. 226] Constitution Of India, Art. 226.

Held, that a charge/set aside by a judicial forum cannot be reopened in parallel proceedings. The authority under the 2015 Act had alleged several transactions listed therein as illegal transactions. A careful perusal of the notice clearly indicated that the authority under the Act had prejudged and formed an opinion that the petitioner was the beneficial owner of Romulus Assets Ltd (RAL) This contention of the Revenue had not been accepted by the Tribunal which held that the Assessing Officer had not discharged the burden to prove that the petitioner was the beneficial owner of RAL.(Jitendra Virwaani v. Dy.CIT (2022)28 ITR (Trib)-OL 435 (Bang.) At least a portion of the notice was based on the allegations set aside by the Tribunal. Therefore, the notice was not valid. Strict rules of interpretation will have to be followed while dealing with fiscal statutes. The Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015 has been enacted to deal with the problem of undisclosed foreign income and assets. Penalties defined in Chapter IV and the punishments described in Chapter V, entail serious consequences. It is settled that when a citizen is called upon to answer a statutory notice, such notice must be clear and unambiguous ; describe the violation committed by the noticee, the material relied upon by the statutory authority, to enable the noticee to submit his defence. (AY. 2022-23)

Jitendra Virwani v. Jt.CIT (NO. 2) (2023)453 ITR 342 / 330 CTR 34/ 220 DTR 433 (Karn)(HC)

Editorial : Jitendra Virwani v. JTCIT (NO. 1) (2023)453 ITR 323 / 330 CTR 747/ 220 DTR 445 (Karn)(HC).Decision of the single judge reversed

S. 10(1) : Undisclosed Foreign Income or Assets-Interpretation-Fiscal statutes and in determining the tax liability, strict rules of interpretation-Notice issued beyond 30 Days of receiving information-Search and seizure-Response not filed-Enquiry cannot be truncated at stage of issue of notice-Guidelines issued by Central Board Of Direct Taxes-Information and Intelligence-Notice is valid-Writ petition is dismissed.[S. 8(1), 8(2), Income-tax Act, S. 132, 232(4), 153A, Art. 226]

Against the issue of notice under section 10(1) of the Act, the assessee filed the writ petition.Dismissing the petition the Court held that, the settled proposition is that in construing fiscal statutes and in determining the tax liability, strict rules of interpretation will have to be followed without adding or importing significance beyond the language used in such statutes. In view of the scheme under section 10 and the express provisions of section 8(2) the contention of the assessee that the provisions of section 8 of the 2015 Act would indicate a distinct and separate enquiry on the "jurisdictional fact" from an enquiry contemplated under section 10 of the 2015 Act would be a contrived reading. Therefore, the Assessing Officer must necessarily decide on the "jurisdictional fact" whether the assessee could be called a beneficial owner of the specified undisclosed asset considering the material that the assessee produced and there would be sufficient opportunity to the assessee to produce further documents. That the question of issuance of notice under section 10(1) of the 2015 Act being beyond the period of thirty days, and therefore the need for approval from the concerned authority would have to be decided on the basis of paragraph 6 of the guidelines issued by the Central Board of Direct Taxes which made a distinction between information

and intelligence. In so far as information is concerned, the guideline is categorical that it could be information received from other law enforcing agency (which would include the Income-tax authorities) unearthed during search or survey or other investigation. The notice was categorical that information in the assessee's case was received on a reference by the Joint Commissioner. The contention that the Assessing Officer should be presumed to have had information of the transaction could not be drawn at this stage to truncate the enquiry. Therefore, it could not be opined that the notice was issued beyond thirty days from the date of information and therefore prior approval ought to have been obtained. It was a detailed notice and there were multiple references to different transactions between and amongst Romulus Assets Ltd (RAL) and other entities. The notice also referred to certain minutes of meetings and instances of payments with necessary documents illustrated. The transactions were multi-fold and when the assessee was yet to file a response and produce documents, accounts and evidence and the Assessing Officer was yet to consider those materials it could not be held that the notice lacked in material details or did not consider material circumstances, including the orders of the Tribunal. The notice under section 10(1) of the 2015 Act was sustainable.(AY 2022-23)

Jitendra Virwani v. JTCIT (NO. 1) (2023)453 ITR 323 / 330 CTR 747/ 220 DTR 445 (Karn)(HC)

Editorial : Jitendra Virwani v. Jt.CIT (NO. 2) (2023)453 ITR 342 / 330 CTR 34/ 220 DTR 433 (Karn)(HC), order of single judge reversed.

S. 41 : Penalty in relation to undisclosed foreign income and asset-Penalty for failure to furnish in return of income, an information or furnish inaccurate particulars about an asset (including financial interest in any entity) located outside India-Pendency of appeal-Directed to hear the assessee and pass the order after considering the submission of the assessee. [S. 15, 42, 43, Art. 226]

Penalty proceedings were initiated against assessee on account of undisclosed foreign investments. Assessee claimed that such alleged investments could have been made by his late father, however, he was unable to trace out files pertaining to same. Revenue rejected such explanations and passed an order raising demand on assessee. Subsequently, two show cause notices were issued upon assessee seeking explanation as why penalty under sections 41 and 43 of BMI Act should not be levied. Writ petition was filed by assessee challenging said notices. Court held that the assessee had preferred an appeal under section 15 against assessment order. Immediately on receipt of said notices, assessee had issued a detailed reply and sought to defer penalty proceedings, as appeal filed by him was pending. Since the assessee had responded in great detail to impugned notices, writ petition was to be disposed of directing assessee to appear before concerned authority and make his submissions and thereafter revenue to pass an appropriate order. Till such time orders were pronounced, no coercive steps should be initiated by revenue. (AY. 2017-18)

Periyasamy Ramesh Rajah v. Addl. CIT (2023) 459 ITR 381/ 292 Taxman 551 (Mad.)(HC)

S. 43 : Penalty-Show cause notice-Since matter was at stage of show-cause notice, directed the statutory authority to adjudicate impugned show-cause notice having regard to response submitted by assessee and also specifically deal with issue relating to jurisdiction. [S. 131 (IA), Art. 226]

On writ against the show cause notice the Court held that penalty proceedings under section 43 of Black Money and Imposition of Tax Act, 2015 were initiated against assessee for alleged failure to disclose foreign income/assets, since matter was at stage of show-cause,

directed the statutory authority to adjudicate show cause notice having regard to response submitted by assessee. (AY. 2016-17)
Sundeep Kathuria v. Dy. DIT (2023) 333 CTR 202 / 148 taxmann.com 212 (Delhi)(HC)

S. 43 : Penalty for failure to furnish return of income an information or furnish inaugurate particulars of an asset (Including financial interest in any entity) outside India-Asset was not disclosed in Schedule FA-Disclosed in Schedule Part A-85-Bonafide mistake-When there is no defiance of law or malafide or dishonest breach-Levy of penalty was not justified-Penalty was cancelled.
Assessee is a domestic resident Co. It had invested in foreign entities in Panama. It disclosed the assets in its balance sheet and also in another schedule in the IT return. AO levied penalty u/s 43 of Black money Act as the asset was not disclosed in schedule FA which is for foreign assets. In appeal the Mumbai ITAT held that asset has been disclosed in balance sheet as well as schedule part A-85 of IT return but not in schedule FA. Under sec 43 of BMA act though the AO has discretion to levy penalty, but it should be done at the wisdom of authority Discretion should be judicious and should be reasonable and justifiable and be made to impart justice and if discretion against assesee then it has to be used cautiously and consciously. On facts of the assessee has disclosed the same in balance sheet as well as IT return and thus has indirectly complied with the law. Tribunal held that no doubt Schedule FA is for foreign assets to check economic offenders but it is specifically applicable whose accounts are not audited and if Audited, such books are not disclosed in IT return. In this case, there is no defiance of law or malafide or dishonest breach and thus rigour of sec 43 cannot be applied to it. Held penalty u/s 43 not was held to be justifiable and cancelled (BMA 22/ m/23 dt. 30-8 20023
Ocean Diving Centre Ltd v. Dy. CIT (Mum)(Trib) www.itatonline. Org

S. 43 : Penalty for failure to furnish in return of income, information or furnish inaccurate particulars about an asset (including financial interest in any entity) located outside India-Foreign insurance policy was not declared in the return-Bonafide mistake-Levy of the penalty of Rs 10 lakhs was deleted. [S. 10(3), Income-tax Act, 1961, 139]
Assessee an Indian Resident held a foreign insurance policy outside India Under the income tax act, the assessee was obliged to disclose the same in Schedule FA of the IT return. Since the assessee failed to disclose in its return, the AO levied penalty u/s43 of Black Money Act.. CIT(A) deleted the penalty relying on the decision of the Tribunal in Add.CIT v. Leena Gandhi Tiwari (MBA No 1/Mum/ 2022 dt.29-3-2022) (2022) 216 TTJ 905 /96 ITR 384 / 212 DTR 105 (Mum) (Trib) Revenue filed an appeal before the Tribunal. Dismissing the appeal of the Revenue the Tribunal held that, during the year the policy was matured thus at the end of the year the policy did not exist. Assessee in its return declared the maturity proceeds as exempt income, thus disclosing the maturity value of the policy. In the declaration filed under Black Money Act it declared the same and paid taxes and penalty on it. The surrender value of the policy was declared in the IT return and only in schedule FA which is for disclosing foreign assets held during the year, it was not shown, amounting to a bonafide mistake. Furnishing inaccurate particulars about assets located outside India cannot be imputed on the assessee as it has already made a declaration under the Black Money Act, which was accepted by the Revenue. Thus it cannot be accepted that the foreign insurance policy was not declared in the return. Held penalty u/s 43 is not justified. (BMA No. 5 /Mum/ 2022 dt. 3-4-2023)(AY. 2016-17)
Addl. CIT v. Tejal Ashis Mehta (Mum)(Trib) www.itatonline.org

S. 43 : Penalty for failure to furnish return of income an information or furnish inaugurate particulars of an asset (Including financial interest in any entity) outside India-Did not disclose foreign asset in ITR Schedule FA, order of Commissioner (Appeals) confirming levy of penalty under section 43 of Black Money Act is affirmed. [ITAct, S. 139]

Assessee-Individual, made a joint investment (with her husband) in Global Dynamic Opportunity Fund having 40 per cent share but failed to disclose said foreign asset in schedule FA of income tax return. Assessing Officer levied penalty towards non-disclosure under section 43 of BM Act for each of assessment years which was confirmed by Commissioner (Appeals). Tribunal held that it is apparent from language of section 43 of BM Act that disclosure requirement is not only for undisclosed asset but any asset held by assessee as a beneficial owner or otherwise.Provisions of section 43 of BM Act does not provide any room not to levy penalty even if foreign asset is disclosed in books since penalty is levied only towards non-disclosure of foreign assets in schedule FA. Therefore, there was no infirmity in order of Commissioner (Appeals) confirming levy of penalty under section 43 of BM Act for non-disclosure of foreign assets in return of income filed by assessee (AY. 2016-17 to 2018-19)

Shobha Harish Thawani (MS.) v. Jt. CIT (2023) 154 taxmann.com564 / 226 TTJ 593(Mum) (Trib.)

Editorial : Appeal is pending for admission before Bombay High Court.

S. 50 : Punishment for failure to furnish return of income-Information about an asset-located outside India-Punishment for wilful attempt to evade tax-Foreign asset-Prosecution-Pendency of appeal before CIT(A)-Criminal provision of sections 50 and 51 could not have a retrospective effect-Stay of criminal proceedings-Notice was issued to Advocate General regarding petition filed by petitioner and stay granted earlier to be extended till next date of hearing. [S. 51, Income-tax Act, 1961, S. 276C, Art. 226]

A show-cause notice was issued under sections 50 and 51 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 on petitioner based on assessment made against him by Deputy Director of Income-tax. Petitioner challenged said notice on ground that since his civil appeal against said assessment was pending before Commissioner (Appeals), it would be premature at this stage to take any criminal action-He further filed a petition challenging vires of certain sections of Black Money (Undisclosed Foreign Income & Assets) and Imposition of tax Act, 2015 on ground that since said act came into force in year 2015 whereas alleged transactions were of assessment year, 2006 and 2010-11, criminal provision of sections 50 and 51 could not have a retrospective effect High Court ordered stay of criminal proceedings pursuant to impugned show-cause notice until respondent had made their submissions sought by assessee in reply to show-cause notice. Notice is issued to Advocate General regarding and stay granted earlier to be extended till next date of hearing. (AY.2019-20)

Anil Dhirajlal Ambani v. UOI (2023) 292 Taxman 17 (Bom.)(HC)

Direct Tax Vivad Se Vshwas Act, 2020 (2020) 422 ITR 121(St)

S. 2(1)(j) : Disputed tax-Each appeal, writ petition or special leave petition to be treated as a separate dispute-Assessee has option to choose appeal to be settled under Act-No obligation to settle all disputes for a particular assessment year-Interpretation of taxing statutes-Beneficial statute to be interpreted liberally.[S. 2(1)(a), 3, ITAct, S. 115JB, 234B, Art. 226]

The petitioner challenged the assessment order by filing an appeal before the Tribunal, which was disposed by the Tribunal deciding various issues. The petitioner challenge the order before High Court. High Court admitted some of the issues and remanded the matter in some of the issues. After giving effect the petitioner challenged the matter before Tribunal. Supreme court issued notice in the SLP filed by the Revenue. On March 17, 2020 the Direct Tax Vovad Se Viswas Act was passed by Parliament (2020) 422 ITR 121(St). The petitioner filed an application under Direct Tax Vivad Se Vishwas Act to settle the deemed appeal of the Department against the order of the Tribunal dated 16-9-2019. The application was rejected on the ground that the assessee has not settled the SLP pending in the Supreme Court. Revenue relied on the questions and answers of the CBDT circular No 99 of 2020 dated Aprl 22, 2020 (2020) 422 ITR 131 (St., (134) On writ allowing the petition the Court held that the issue raised by the Department in the special leave petition filed before the Supreme Court was in respect of deduction for salary paid to expatriates and the applicability of section 115JB of the Income-tax Act, 1961. However, this issue was not at all connected with the appeal arising from the order of the Tribunal dated September 16, 2019 wherein the issues of taxability of interest on external commercial borrowings and levy of interest under section 234D of the 1961 Act were involved. Since, the issues involved in the two appeals were different and unconnected the contention of the Department that the assessee ought to have settled the special leave petition pending in the Supreme Court, along with the appeal of the Department was incorrect and bad in law. (AY. 2007-08)

MUFG Bank Ltd. v. CIT (2023) 450 ITR 597/330 CTR 379/221 DTR 250/145 taxmann.com 322 (Delhi)(HC)

S. 3 : Amount payable by the declarant-Time and manner of payment-Amount recovered attaching the bank account-Authorities concerned directed to refund excess amount recovered and accept the declaration as per the law. [S. 5, Art. 226]

Assessee opted for Vivad se Vishwas Scheme. The application was accepted and assessee was directed to pay a sum of Rs. 1 crore by 30-9-2021. Bank account of assessee was attached by Income-tax department on 2-8-2021 and revenue appropriated Rs. 93 lakhs by encashing cheques leaving a balance of Rs. 7 lakhs. Thereafter, revenue appropriated from assessee's bank Rs. 17 lakhs on ground that balance amount of Rs. 7 lakhs was not appropriated by due date. On writ the Court held that the assessee's account was attached by Income tax department and assessee had surplus of amount to meet out liability under scheme, there would be no justification in recovering amount in excess of which was to be paid when Rs. 93 lakhs was recovered by assessee on or before 30-9-2021. Only Rs. 7 lakhs was payable, balance amount after appropriation was to be refunded to assessee. Accordingly the writ petition is allowed by directing the revenue to refund a sum of Rs. 9.32 lakhs as expeditiously as possible and accept the declation as per the law. (AY. 2012-13)(SJ)

Ramesh Pejathaya v. CBDT(2023) 295 Taxman 426 (Mad.)(HC)

S. 3 : Amount payable by declarant-Disputed tax-Amount paid by assessee under IDS, 2016 which was lying with revenue should be adjusted while determining tax payable by assessee under DTVSV Act. [S. 4, Finance Act, 2016, S. 191]

The assessee declared his undisclosed income under Income Declaration Scheme, 2016 and deposited certain amount of tax by way of two challans but could not deposit rest amount, amount deposited under said two challans. When the Direct Tax Vivad Se Vishwas Act, 2020 was enacted the assessee applied thereunder and submitted forms 1 and 2 declaring a disputed income of Rs. 15,50,500. Form 3 issued under the Direct Tax Vivad Se Vishwas Act, 2020 required the assessee to pay a sum of Rs.6,97,500 on or before March 31, 2021 and if the amount was not paid by that date, an amount of Rs. 7,67,250 after March 31, 2021. The assessee stated that credit was not given for the taxes paid and the request made to the Principal Commissioner for rectification in form 3 was not responded to. On a writ petition Held, allowing the petition, that the amount deposited by the assessee under the 2016 Scheme could not have been forfeited as it had neither been refunded nor adjusted. It was not a case where the assessee had failed to make the payment within the time prescribed under the 2020 Act which would result in denying the benefit of the Scheme but a case where the money which was lying in the corpus of the Department had only to be adjusted by way of a mathematical exercise and benefit accorded to the assessee under the 2020 Act. A revised form 3 was issued on September 27, 2021, which required the assessee to deposit an amount of Rs. 1,90,000 before September 30, 2021 and Rs. 2,59,750 after September 30, 2021. The amount so specified in form 3 also took into consideration an amount of Rs. 2,09,400 deposited by the assessee on October 30, 2021. The assessee had paid an amount of Rs. 51,000 in the month of November 2021. As on the last date specified, i. e., October 30, 2021, the assessee had admittedly not paid the entire amount in terms of the revised form 3, dated September 27, 2021. After adjusting the amount earlier deposited, the assessee would be entitled to refund which would accordingly be considered for payment. This would be in accordance with the purpose, intent and the spirit of the 2020 Act aimed at eliminating and resolving the disputes between the assessee and Department. The Court directed the respondents to issue a fresh form 3, after giving to the assessee credit of the amount paid under the 2016 Scheme and the balance amount if any be refunded. (AY. 2016-17)

Sunil Wamanrao Sakore v. UOI [2023] 454 ITR 659 / 293 Taxman 644 / 332 CTR 641 (Bom)(HC)

S. 3 : Amount payable by declarant-Disputed tax-Bogus purchases-Tax to be calculated after giving effect to the order of the Tribunal-Competent Authority was directed to grant the certificate after determining the tax payable giving effect to the order of the Tribunal [S. 2(1)(j)(B), Art. 226]

Assessee's income was reassessed after making an addition of 100 per cent of alleged bogus purchases. Commissioner (Appeals) restricted addition to 25 per cent of amount of purchases made. Tribunal held that additions would be made to extent of difference between gross profit rate on genuine purchases and gross profit rate on hawala purchases. However, since specific details were not available for facilitating calculations of gross profit rates of genuine and hawala purchases, Tribunal remanded back matter to Assessing Officer to calculate same accordingly. Subsequently the, assessee filed declaration in Form-1 under Direct Tax Vivad Se Vishwas Act and declared thereunder an amount to be taxed. In response to same, Pr. Commissioner issued certificate in Form-3 and made demand on account of disputed tax, however, demand raised was as per order of Assessing Officer which was more than what was declared by assessee. On writ, allowing the petition the Court held that the order of remand passed by Tribunal was certainly not one where Assessing Officer was directed to carry out a fresh examination on any issue. It had only remanded matter for calculation of tax based on its finding. Since Tribunal had already passed an order before specified date and time for filing for appeal had not expired, disputed tax had to be calculated in terms of

section 2(1)(j)(B) by giving effect to order of Tribunal. Accordingly the action of Pr. Commissioner raising tax demand based upon order of Assessing Officer was unsustainable and same was set aside. (AY. 2011-12)(dt. 23-2-2023)
Agarwal Industrial Corporations Ltd. v. UOI [2023] 455 ITR 404 /150 taxmann.com 438 (Bom)(HC)
Agarwal Industrial Corporations Ltd. v. UOI [2023] 332 CTR 861 / (2024) 461 ITR 74 (Bom)(HC)

S. 3 : Amount payable by declarant-Disputed tax-Rectification order-Reduction or increase in income and tax liability-Disputed tax would be calculated after giving effect to said rectification order passed-The respondents are directed to act in furtherance of the petitioner's declaration by way of Form-3, dated 18th January 2021 in accordance with the clarification of the Act of 2020. [S. 2(1)(J), 154, Art. 226]
Assessee's case was selected for scrutiny and assessment order was passed making an addition in income of assessee which was taxed at 30 per cent. The Assessee filed rectification application seeking rectification of computation of tax payable. Assessing Officer allowed said application on ground that there was an error in treating income as taxable business income instead of taxable long-term capital gains. Accordingly, tax and interest demand earlier raised was reduced. The assessee filed declaration under Direct Tax Vivad se Vishwas Act. Principal Commissioner issued revised Form 3 ignoring rectification order and treated income liable to be taxed at 30 per cent instead of 20 per cent. On writ allowing the petition the Court held that as per clarification issued by CBDT if there was a reduction or increase in income and tax liability of assessee as a result of rectification, disputed tax would be calculated after giving effect to rectification order passed. The respondents are directed to act in furtherance of the petitioner's declaration by way of Form-3, dated 18th January 2021 in accordance with the clarification of the Act of 2020. (AY. 2014-15)
Rajpal Lakhmichand Arya v. PCIT [2023] 150 taxmann.com 184 /333 CTR 324/ (2024) 461 ITR 79 (Bom)(HC)

S. 3 : Amount payable by the declarant-Time and manner of payment-Failure to pay the amount of disputed tax before the last date-Declarations ought to be accepted and payment to be made with simple interest @9% within four weekS. [S. 5, Art. 226]
The assessee having filed declarations under the Direct Tax Vivaad Se Vishwas Act, 2020, even if it failed to make payment before the last date stipulated for paying the disputed tax due to the death of one of the directors of the company, it ought to be allowed an extended time to make payment within four weeks with simple interest @9% since COVID-19 was prevalent at the relevant time and the assessee could not bona-fide make the payment due to the aforesaid reason and no prejudice would be caused to the Department.
Srishtii Infra Housing Pvt. Ltd. v. PCIT (2023) 330 CTR 167(Delhi)(HC)
IA Housing Solution Pvt Ltd v. PCIT (2023) 330 CTR 167(Delhi)(HC)

S. 4 : Filing of declaration and particulars to be furnished-Pendency of appeal-Filing of declaration-Pendency of miscellaneous application before the Appellate Tribunal-Rejection of application by the Principal Commissioner was held to be not valid-PCIT was to be directed to issue acknowledgement in Form No. 3 against application made by assessee in Form No. 1 and Form No. 2. [S. 2 (1)j), Income tax Act, 1961, S. 254(1), 254(2) 264, Art. 226]
Tribunal by an order dated 20-5-2016 dismissed appeal of the assessee. The assessee preferred a miscellaneous application before Tribunal seeking adjudication of ground Nos. 3

and 4 that remained undecided. Tribunal by an order dated 14-5-2019 modified its earlier order. Assessee again preferred a miscellaneous application before Tribunal seeking adjudication of ground No. 4 which yet remained undecided by Tribunal. When the said application was pending for adjudication Direct Tax Vivad Se Vishwas Act, 2020 (DTVSVA) was introduced. The assessee made an application to avail benefit of said Act. Principal Commissioner rejected application on basis of FAQ No. 61 of Circular No. 21/2020, dated 4-12-2020 issued by CBDT stating that since appeal of assessee was not dismissed by Tribunal in limine case was not eligible under DTVSVA. On writ allowing the petition the Court held that the Principal Commissioner was not justified. PCIT was directed to issue acknowledgement in Form No. 3 against application made by the assessee in Form No. 1 and Form No. 2. Circular No. 21/2020, dated 4-12-2020(2020) 429 ITR 1 (St) (AY. 2009-10)

Oerlikon Balzers Coating India (P.) Ltd. v. UOI (2023) 294 Taxman 5 / 333 CTR 337 (Bom.)(HC)

S. 4 : Filing of declaration and particulars to be furnished-Delay in filing of an appeal-Pending-Pendency of appeal-[S. 2(1)(a), 10, Art. 226]

Assessee filed an appeal with Commissioner (Appeals) against assessment order, however, there was a delay in filing said appeal While the appeal was pending the assessee opted for VSV scheme and filed a declaration. Assessee's declaration was rejected on ground that appeal pending before Commissioner (Appeals) was not valid as same was filed after a delay. On writ the Court held that what is required for being eligible to settle a dispute under VSV scheme was that an appeal should be pending before appellate forum and there is no need to introduce qualification that it should be filed in time or admitted. CBDT under Section 10 of VSV Act cannot issue circulars adverse to assessee; FAQ no. 59 of Circular No. 21/2020 dated 4-12-2020 issued by CBDT to extent it contemplates admission of an appeal by appellate authority before filing of declaration as condition precedent in order for appeal to be treated as pending and to be eligible for settlement under VSV Act was contrary to law and same was quashed. Revenue was directed to treat appeal filed against assessment order under section 143(3) before Commissioner (Appeals) as pending and issue revised Forms 3 to assessee. (2014-15)

Medeor Hospital Ltd. v. PCIT (2023) 291 Taxman 368/ 330 CTR 331 (Delhi)(HC)

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Medeor Hospital Ltd. v. PCIT (2023) 291 Taxman 368 (Delhi)(HC)

S. 4 : Filing of declaration and particulars to be furnished-Delay in filing appeal-Delay of 958 days was condoned-Delay was condoned-Directed to accept the declaration filed by the assessee. [S 2(1)(a) ITACT, S. 250, 260A]

The appeal was filed with a delay of 958 days and the delay was condoned assigning certain reasons and as a consequence of the order passed by the court condoning the delay it was deemed that the appeal was filed within the period of limitation. Had the appeal been filed by the Department before the time stipulated under the Direct Tax Vivad Se Vishwas Scheme, 2020 the assessee could have very well availed of the benefit of the Scheme for the assessment year 2014-15. The assessee was directed to file the requisite application under the Scheme and such application should be deemed to have been presented well before the last date on which the benefit of the Scheme had come to an end the application should be processed and the requisite forms be issued to enable the assessee to pay the disputed tax in terms of the conditions contained under the scheme. The questions of law raised in the appeal under section 260A by the Department were left open (AY.2014-15).

PCIT v. Aditya Saraf (HUF) (2023) 452 ITR 87/ 330 CTR 321/ 221 DTR 241 (Cal)(HC)

S. 4 : Declaration-Delay in payment of tax Time limit for deposit of tax-Substantial amount was deposited-Failure of the Chartered Accountant to information from the portal-Directed the Revenue to accept the balance deposit of tax with interest. [S. 119(2)(b), Art. 226]

The assessee was aware of the intimation given by the designated committee in form 3, requiring it to deposit the balance amount of tax before March 31, 2021, only on March 11, 2022. The order was passed on August 25, 2022, and communicated to the assessee only on November 22, 2022 through e-mail sent by the Central Board of Direct Taxes. The mistake, if any, was made by the chartered accountant who was not vigilant in accessing the information which was available on the assessee's portal albeit through his login ID and password. If the Central Board of Direct Taxes had immediately responded to the assessee's application dated March 25, 2022 for an extension of time, the intervening delay from March 2022 to date would not have occurred. The overall conduct of the assessee showed that it had made substantial compliance, inasmuch as a major portion of the tax was deposited even before the declarations were filed in forms 1 and 2 and there was no good reason why the balance amount would not have been paid by it. The Central Board of Direct Taxes was to accept the balance amount payable by the assessee with interest at the rate of 9 per cent. on the amount shown in form 3 which commencing from April 1, 2021 till the date of deposit if deposited within the time frame given.(AY.2006-07)

Vidhi Garments Pvt. Ltd. v. CBDT (2023)451 ITR 84/ 332 CTR 310/ 224 DTR 473 (Delhi)(HC)

S. 4 : Declaration-Delay in payment of tax-Condonation of delay-Object of legislation beneficial and to reduce litigation-Rejection of belated declarations filed due to death of director of assessee-Delay in payment of disputed amount-Delay was condoned-Directed to treat declaration as valid and accept the payment with interest-Interpretation of statutes-Beneficial legislation-Liberal interpretation. [S. 5, 10(2), 67(2), Art. 226]

The petitioners have filed valid declaration, however the petitioners could not pay the tax due to death of director of the company who was looking after the taxation and affairs of the company on July, 20, 2021. The petitioners have filed writ petition seeking direction to the respondents to accept the declaration filed by the petitioners. Allowing the petition the Court held that, The Direct Tax Vivad Se Vishwas Act, 2020 is a beneficial piece of legislation with the avowed object to provide for resolution of disputes whereby the assessee is

permitted to settle the dispute pending before any appellate authority, resulting in reduction in litigation and generation of timely revenue for the Government. Consequently, being a beneficial or a remedial statute, the provisions of the 2020 Act must be interpreted in a manner which advances the purpose for which it is enacted and a strict interpretation of this Act will defeat the very purpose for which it was introduced by the Legislature. The 2020 Act is a beneficial piece of legislation the provisions of which must be interpreted liberally. In recognition of intermittent lock down on account of the Covid-19 pandemic the scheme was amended several times to extend the deadline for payment. The power of the High Court under article 226 of the Constitution of India to grant relief in extraordinary and exceptional circumstances cannot be taken away or curtailed by any legislation. Delay was condoned and directed to treat declaration as valid and accept the payment with interest.
I A Housing Solution Pvt. Ltd. v. PCIT (2023) 450 ITR 50 (Delhi)(HC)
Srishti Infra Housing Pvt Ltd v. PCIT (2023) 450 ITR 50 (Delhi)(HC)

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I A Housing Solution Pvt. Ltd. v. PCIT (2023) 450 ITR 50 (Delhi)(HC)
Srishti Infra Housing Pvt Ltd v. PCIT (2023) 450 ITR 50 (Delhi)(HC)

S. 5 : Time and manner of payment-Filing of declaration and particular to be furnished-Short payment of tax of RS. 300 before specified date-Directed to accept the declaration by paying interest of 10% on balance payment of tax. [S. 4, Art. 226]
Assessee for settlement of disputes under Direct Tax Vivad Se Vishwas Act, 2020 submitted Forms 1 and 2 with Principal Commissioner. Principal Commissioner issued Form 3 reflecting therein an amount of Rs. 8,39,676 as balance tax payable-Assessee responded to Form 3 and deposited an amount of Rs. 8,39,376, which was short by Rs. 300, before specified date. Principal Commissioner had not issued Form 5 to assessee on account of short payment of balance tax payable. On writ allowing the petition the Court held that since payment which was required to be paid in terms of Form 3 was short only by Rs. 300, this clearly appeared to be an inadvertent error on part of assessee which was neither deliberate

nor intentional. Accordingly the Principal Commissioner was to be directed to accept balance payment of Rs. 300 with interest and issue Form 5 in terms of Scheme. (AY. 2013-14)
Kartik Pravinchandra Mehta v. PCIT [2023] 149 taxmann.com 482 / 293 Taxman 81 (Bom)(HC)

S. 9 : Act not to apply in certain cases-Tax arrear-Prosecution has been instituted on or before the date of filing of declaration-Wilful attempt to evade tax-Tax deduction at source-Prosecution-Q. 73 of CBDT Circular 21 of 2020 dated 4/12/2020 (2020) 429 ITR 1 (St) would stand set aside and quashed-SLP of Revenue dismissed. [S. 2(1)(o), 9(a)(ii), Art. 14, Art. 226]
The assessee deposited self assessment tax along with interest for relevant year, after due date of filing return of income. Revenue initiated prosecution against assessee for delayed payment of self assessment tax. Assessee filed a declaration under DTVSV scheme but same was not accepted in view of circular No. 21/2020 High Court held that where there was a pending prosecution for assessment year in question on an issue unrelated to tax arrear, assessee would be eligible to file a declaration under Vivad se Vishwas Act High Court also held that Clarification given by revenue by way of answer to FAQ No. 73 of CBDT Circular No. 21/2020 dated 4-12-2020 (2020) 429 ITR 1 (St) dealing with ineligibility to file declaration under Vivad se Vishwas Act made after institution of prosecution for a particular assessment year not being in consonance with Vivad se Vishwas Act was to be set aside. SLP of Revenue is dismissed.filed by revenue against said impugned order was to be dismissed. (AY. 2015-16)
PCIT (Central) v. Macrotech Developers Ltd. (2023) 295 Taxman 218 / 335 CTR 990 (2024) 460 ITR 1(SC)
Editorial : Macrotech Developers Ltd. (2021) 434 ITR 131/ 280 Taxman 137 / 320 CTR 79/ 200 DTR 121 (Bom)(HC)
S. 9 : Act not to apply in certain cases-Tax arrear-Prosecution has been instituted on or before the date of filing of declaration-Prosecution has to be in respect of tax arrear which is relatable to an assessment year-Directed the authorities to decide the declation in conformity with the DTVSV Act. [S. 2(1)(o), S. 276C(2), 278B, Art. 226]
The petitioner has filed the declaration for settling the dispute in respect appeals pending. The Authorities rejected the declaration on the ground that the prosecution has been initiated for failure to deposit the self assessment tax. On writ allowing the petition the Court held that where the prosecution had been instituted against assessee under section 276C(2), prosecution cannot be said to be in respect of tax arrear and hence, declaration of assessee would have to be decided in conformity with provisions of DTVSV Act.
Circulars and Notifications : Circular No. 21/2020, dated 4-12-2020. (2020) 429 ITR 1 (St). Relied on Macrotech Developers Ltd. (2021) 434 ITR 131/ 280 Taxman 137 (Bom)(HC).(AY. 2010-11, 2011-12)
Pragati Pre Fab India (P.) Ltd. v. PCIT (2023) 295 Taxman 269 /(2024)460 ITR 387 (Bom.)(HC)

Income Declaration Scheme, 2016 (IDS) (Finance Act, 2016/)(2016) 381 ITR 134 (St) 2016) 384 ITR 87 (St).

S. 184 : Charge of tax and surcharge-Advance tax-Payment of tax-Credit for advance tax-Credit for advance tax must be given-Directed the respondents to issue certificate as required by Rule 4(5)-Notice issued in SLP filed by the Revenue.. [S. 183, 185 ITACT, S. 199, 219 Art. 226]

High Court held that where assessee (declarant) filed a declaration under Income Declaration Scheme, 2016 declaring certain undisclosed income relating to assessment years 2011-12 to 2014-15, advance tax payment made by assessee during said assessment years would retain character of tax and assessee would be entitled to and given credit for advance tax already paid by it and Commissioner would not refuse to issue certificate in Form 4 on said count. Notice is issued in SLP filed against impugned order of High Court. (AY. 2011-12 to 2014-15)

PCIT v. Kamla Chandrasingh Kabali (2023) 294 Taxman 608 (SC)

Editorial : Kamla Chandrasingh Kabali v. PCIT (2022) 443 ITR 148/ 286 Taxman 580 (Bom)(HC)

S. 183 : Declaration of undisclosed income-Reassessment notice was quashed. [Income-tax Act, 1961, S. 148, Art. 226]

Assessing Officer issued reopening on ground that income chargeable to tax had escaped assessment. On writ the High Court held that since assessee availed benefit of Declaration of Income Scheme, 2016 and submitted a declaration with respect to undisclosed income relevant assessment year, Assessing Officer would have no jurisdiction to assessee income for which declaration was made and reopening notice was set aside. (AY. 2012-13)

Kamla Chandrasingh Kabali v. ACIT (2023) 151 Taxmann.com 435 (Bom)(HC)

Editorial : SLP of Revenue is dismissed, ACIT v. Kamla Chandrasingh Kabali (2023) 293 Taxman 492 (SC)

S. 183 : Payment of tax-Failure to make third installment-Non-compliance-Order of single judge is set aside-Directed the assessee to make a fresh representation before the Competent Authority. [Art. 226]

The assessee failed to make payment of the third instalment under the Income Declaration Scheme, 2016 within the due date but however in view of the amendment by the Finance Act, 2019 to the provisions of the scheme where interest is payable under the scheme for late payment and the due date extended, the single judge dismissed the petition is to examine afresh whether the scheme is applicable to the applicant, since the payment was made before the cut off date stipulated after amendment. The assessee was directed to make a fresh representation before the Competent Authority.

Satyajit Bose v. DCIT (2023) 330 CTR 233 (Cal)(HC)

Expenditure Tax Act, 1987

S. 2(6) : Hotel-Dual occupancy room in Hotels-Expenditure-Tax chargeable where room charges "Per Individual" Less than RS. 1,200-Exemption not allowable.[S. 2(8),2(10), 3, 4(a), Art 136]

On writ petitions by hotels contending that the Expenditure Tax Act, 1987 did not apply to them because the room charges for any unit of residential accommodation at their hotels are fixed on "double occupancy basis" and though room charges per se may appear to exceed Rs. 1,200 per day, having due regard to the expression "per individual" appearing in section 3(1) of the Act, such room charges had to be "divided into two" the High Court dismissed the petitions, holding against the assessees on the questions whether in view of the express provisions of section 3 of the Expenditure Tax Act, 1987 Expenditure-tax would be chargeable where the room charges were less than Rs. 1,200 and whether an exemption under section 4 of the Expenditure-tax Act, 1987 was allowable. On petitions for special leave to appeal to the Supreme Court. SLP of assessee is dismissed. (AY.1996-97)

Fomento Resorts and Hotels Ltd. v. ACIT (2023)452 ITR 248 (SC)

Editorial : SLP of the assessee is dismissed, Fomento Resorts and Hotels Ltd. v. ACIT (T.A. No. 64 of 2007 dt 30-8-2019 (Bom)(HC)

Interest-tax Act, 1974

S. 2(7) : Interest-Credit institution-Financial company-State Financial corporation-Non-Banking Financial Companies, Hire-purchase agreements-Loans and advances-Not liable to pay Interest-Tax on interest component imbedded in hire-purchase instalment-Order of High Court remanding the matter was set aside-Interpretation of taxing statute-Precedent. [S. 2(5A), 2(5B), 2(7), Income-Tax Act, 1961, 260A Companies Act, 1956, S 4A, State Financial Corporation Act, 1951, S. 3, 3A, Motor Vehicles Act, 1988, S. 51]

The assessees were non-banking finance and leasing companies registered with the Reserve Bank of India and credit institutions within the meaning of section 2(5A) of the Interest-tax Act, 1974. Some of the assessees were hire-purchase finance companies which under hire-purchase agreements, hired out vehicles to customers. The Tribunal recorded findings of fact that under the hire-purchase agreements, the assessees were the owners of the vehicles, the hirer must pay rent to the owner during the hiring as in the agreement on the dates mentioned therein, the hirer had to take proper care of the vehicle and keep it in good condition, pay all rents, rates, taxes and outgoings payable, keep the vehicle in his sole custody and possession at the address mentioned in the agreement, if the hirer failed to pay the hire instalments within the stipulated time, became insolvent, pledged or sold, or attempted to pledge or sell or otherwise alienate or transfer the vehicle, or did or suffered any act or thing whereby, or in consequence of which, the vehicle may be distrained, seized or taken into execution under legal process, or broke or failed to perform or observe any condition as mentioned in the hire-purchase agreement, the owner was entitled to forthwith determine the agreement and, thereupon, enter the place where the vehicle was kept and seize, remove and retake possession thereof, the owner was also entitled to sue for all the instalments due, damages for breach of the agreement, and the cost in retaking possession of the vehicle, the owner, if agreeable, might permit the hirer to have the registration of the vehicle in his own name, provided that the hirer shall transfer the registration in the name of the owner whenever required to do so by the owner, especially when the hirer committed breach of any of the conditions of the agreement, due to which the owner was obliged to seize the vehicle. On these facts, the Tribunal accepted the plea of the assessees that they were not liable to pay interest-tax on the interest component imbedded in the hire-purchase instalment. The High Court reversed the finding of the Tribunal, observing that the hire-purchase instalment included “finance charges”, which were nothing but interest, and therefore, interest-tax was leviable on the interest component. On appeals, allowing the appeals, that the High Court did not frame a specific substantial question of law and thus, interference with the findings of fact was unwarranted. This did not mean that the tax authorities were not entitled to examine the surrounding facts and circumstances to ascertain the true character and nature of the transaction, regardless of the nomenclature given by the parties. However, remanding the matters to the Assessing Officer for fresh adjudication and to re-examine all the transactions keeping in mind the dictum laid down in Sahara India Savings and Investment Corporation Ltd(2010)) 321 ITR 371 (SC), and State Bank of Patiala (2016) 383 ITR 244 (SC) to rule out cases where camouflage or subterfuge had been adopted to avoid payment of interest-tax, would entail not only looking at the documents but also several other factors, which would mean getting information and ascertainment of facts in detail from the assessee and the hirer. Hence, at this distant point of time, it would not be appropriate to pass an order of remand. Also, the Act had ceased to operate with effect from March 31, 2000. Therefore, the additions made by the Assessing Officer were to be set aside and the orders passed by the Tribunal deleting the additions in the case of the assessee and other cases were to be upheld. Findings of fact generally recorded by the Tribunal are treated as conclusive. The High Court can

interfere with findings of fact while deciding a substantial question of law when the findings are not supported by the material on record, so as to be treated as perverse. For this, however, the High Court must frame a separate substantial question of law and only then interfere with the findings of fact recorded by the Tribunal, while applying strict parameters. Ratio of judgments relating to one tax enactment not to be treated as precedent in case relating to another tax enactment.Especially when language, object and purpose of enactments are different.

Muthoot Leasing and Finance Ltd v. CIT (2023) 450 ITR 496 / 292 Taxman 5/ 330 CTR 209(SC)
Art Leasing Ltd v. CIT (2023) 450 ITR 496 (SC)
Bell Leasing and Hire Purchase (P) Ltd v. CIT (2023) 450 ITR 496 (SC)
Kerala State Financial Enterprise Ltd v. CIT (2023) 450 ITR 496 (SC)
Mulamoottil leasing and Hire Purchase Co Ltd v. CIT (2023) 450 ITR 496 (SC)
Right Leasing and Hire Purchase Co Pvt Ltd v. CIT (2023) 450 ITR 496 (SC)
Royal Hire Purchase (P)(Ltd v. CIT (2023) 450 ITR 496 (SC)
Right Hire Purchase Co.Pvt Ltd v. CIT (2023) 450 ITR 496 (SC)
Varthakakshemam Hire Purchase and Leasing Co (P) Ltd v. CIT (2023) 450 ITR 496 (SC)
Vyparavijayam Hire Purchase (P) Ltd v. CIT (2023) 450 ITR 496 (SC)
Muthoot Leasing and Finance Ltd v. CIT (2023) 450 ITR 496 / 292 Taxman 5 (SC)
Art Leasing Ltd v. CIT (2023) 450 ITR 496 (SC)
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Kerala State Financial Enterprise Ltd v. CIT (2023) 450 ITR 496 (SC)
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Right Hire Purchase Co.Pvt Ltd v. CIT (2023) 450 ITR 496 (SC)
Varthakakshemam Hire Purchase and Leasing Co (P) Ltd v. CIT (2023) 450 ITR 496 (SC)
Vyparavijayam Hire Purchase (P) Ltd v. CIT (2023) 450 ITR 496 (SC)
The Kar Vivad Samadhan Scheme, 1998 (Chapter IV of the Finance (No. 2) Act, 1998)

S. 88 : Settlement of tax payable-Notice of demand-Petition against notice of demand-No due certificate was issued-Summary dismissal-No dues-Certificate under Kar Vivad Samadhan Scheme-Order of High Court not stating facts or adverting to contentions of parties-Order set aside. [S. 92, ITACT, S. 156, Art. 136, Art. 226]

High Court dismissed the assessee's writ petition, against the demand raised by the Revenue. On a petition for special leave to appeal to the Supreme Court claiming that the assessee had taken the benefit of the Kar Vivad Samadhan Scheme, 1998 which was accepted by the Department and a "no dues" certificate was issued for the relevant period, but that nevertheless the Department sought to reopen the same issues, and that therefore he had filed the writ petition.High Court dismissed the petition. The Court held that no reply or counter affidavit was filed in the writ petition. The order barely contained any reason much less the facts or advertence to the contentions of the parties. The order was accordingly set aside. The High Court shall proceed to hear and dispose of the writ petitions on the merits expeditiously.

R. P. Gupta v. CIT (2023)453 ITR 739 (SC)

Editorial : Order in R. P. Gupta v. CIT (All)(HC) (WT No. 888 of 2018, WT No.889 of 2018 dt. 25-7 2018) set aside.

S. 88 : Settlement of tax payable-Determination of disputed tax-Total assessed tax to be reduced by taxes already paid (including any refunds issued by revenue and interest paid on those refunds). [S. 87(e), 87(f) 88(a)(i) 90(1) Art. 226]

The assessee challenged the legality of orders issued by the Department determining the tax payable under the Kar Vivadh Samadhan Scheme, 1998. The assessee contested the deduction of refund and interest from the aggregate of advance tax paid and tax deducted at source arguing that only the refunded tax amount should be considered for calculating the tax paid, excluding the interest amount since any reduction should be limited to the refund of tax and not the refund of interest. Dismissing the writ, the Hon'ble Bombay High Court upheld the Departments approach to deduct the refund and interest amount from the tax paid by the assessee while emphasizing that to determine the disputed tax accurately, it was essential to consider any refunds issued by the revenue to the assessee and any interest paid on those refunds since disputed tax must be total tax determined and payable but which remains unpaid.

Bombay Dyeing & Manufacturing Co. Ltd. v. H.D. Trivedi, DCIT (2023) 456 ITR 569/ 294 Taxman 179/ 334 CTR 680 (Bom)(HC)

Interpretation of Taxing Statutes-Ejusdem Generis-Noscitur A Sociis.

The principle of ejusdem generis applies when the following conditions are present : the statute contains an enumeration of specific words, the subjects of enumeration constitutes a class or category, that class or category is not exhausted by the enumeration, the general terms follow the enumeration, and there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad based genus as also to a narrower genus, there is no principle that the general words should be confined to the narrower genus.

The rule of noscitur a sociis is a rule wider than the rule of ejusdem generis ; rather the latter rule is only an application of the former.

D. N. Singh v.CIT (2023)454 ITR 595/ 293 Taxman 550/ 332 CTR 665 / 226 DTR 17 (SC)

Interpretation of taxing statutes.

S. 90 : Interpretation-Double taxation avoidance agreements-Most favoured nation-DTAA-India-France-Netherlands-Switzerland. [S. 90(1), Art. 73]

A notification under section 90(1) of the Income-tax Act, 1961, is necessary and a mandatory condition for a court, authority, or Tribunal to give effect to a Double Taxation Avoidance Agreement, or any Protocol changing its terms or conditions, which has the effect of altering the existing provisions of law.

The fact that a stipulation in a Double Taxation Avoidance Agreement or a Protocol with one nation, requires the same treatment in respect to a matter covered by its terms, subsequent to its being entered into, when another nation (which is a member of a multilateral organization such as the Organisation for Economic Co-operation and Development), is given better treatment, does not automatically lead to integration of such term extending the same benefit in regard to a matter covered in the Double Taxation Avoidance Agreement of the first nation, which entered into the Agreement with India. In such event, the terms of the earlier Agreement require to be amended through a separate notification under section 90.

The interpretation of the expression "is" has present signification. Therefore, for a party to claim the benefit of the "same treatment" clause, based on entry into a Double Taxation Avoidance Agreement between India and another State which is a member of the Organisation for Economic Co-operation and Development, the relevant date is that of entering into treaty with India, and not a later date, when, after entering into a Double Taxation Avoidance Agreement with India, such country becomes an Organisation for Economic Co-operation and Development member, in terms of India's practice.

The "most favoured nation" clause contained in various Indian treaties with countries that are members of the Organisation for Economic Co-operation and Development provides for lowering of the rate of taxation at source on dividends, interest, royalties or fees for technical services as the case may be, or restriction of the scope of royalty or fees for technical services in the treaty, similar to concessions given to another Organisation for Economic Co-operation and Development country subsequently.

There is no right to invoke the most favoured nation clause when the third country with which India has entered into a Double Taxation Avoidance Agreement was not yet a member of the Organisation for Economic Co-operation and Development (at the time of entering into such Double Taxation Avoidance Agreement). The most favoured nation clause comes into effect after a notification is issued.

Assessing Officer (IT) v. Nestle SA (2023)458 ITR 756 / 335 CTR 145 /(2024) 296 Taxman 580 (SC)

Interpretation of taxing statutes-Interpretation which effectuates object and purpose of statute preferred.-Amendment by substitution-Rule against retrospectivity. [S. 153C]

Court held that while interpreting machinery provisions of a taxing statute, the court must give effect to its manifest purpose by construing it in such a manner as to effectuate the object and purpose of the statute. Once the primary intention is ascertained and the object and purpose of the legislation is known, it becomes the duty of the court to give the statute a purposeful or a functional interpretation. The ascertainment of the legislative intent is a basic rule of statutory construction and a construction should be preferred which advances the purpose and object of a legislation.

ITO v. Vikram Sujitkumar Bhatia (2023)453 ITR 417/ 293 Taxman 4/ 332 CTR 1/ 224 DTR 217 (SC)

Interpretation of Taxing statute-Binding precedent-Decision rendered following earlier decision-Subsequent overruling of earlier decision does not revive judgment passed earlier.

Court held that once a judgment is passed by a court following another judgment and subsequently the latter judgment is overruled on a question of law, it cannot have an effect of reopening or reviving the former judgment passed following the overruled judgment nor can the same be reviewed. The Explanation to rule 1 of Order XLVII of the Code of Civil Procedure, 1908 is in the nature of an exception. In other words, the Explanation being in the nature of a proviso qualifies or is an exception to what is stated in rule 1 of Order XLVII of the Code, which states the grounds for seeking a review. Hence, the object and intendment of the Explanation must be given its full effect. The object and purpose of the Explanation can be related to the three maxims : nemo debet bis vexari pro una et eadem causa (no man should be vexed twice for the same cause), interest reipublicae ut sit finis litium (it is in the interest of the State that there should be an end to a litigation), and res judicata pro veritate occipitur (a judicial decision must be accepted as correct). There must be an end to litigation, otherwise, the rights of persons would be in an endless confusion and fluidity and justice would suffer. This is against public policy and not in the interest of the State.
CIT (IT) v. Gracemac Corporation (2023) 456 ITR 135 / 294 Taxman 708(SC)

Interpretation of taxing statutes-Precedent-Ratio of judgments relating to one tax enactment not to be treated as precedent in case relating to another tax enactment-Especially when language, object and purpose of enactments are different.[Interest-tax Act, 1974, S. 2(5A), 2(5B), 2(7)]
Taxation depends upon the language of the charging section and what is brought to tax within the four corners of the charging section. Therefore, one should be careful and cautious when applying the ratio of judgments relating to one tax enactment as a precedent in a case relating to another tax enactment. This rule of caution is important and should not be overlooked, especially when the language of the enactment and the object and purpose of the enactment are different.
Muthoot Leasing and Finance Ltd v. CIT (2023) 450 ITR 496 (SC)

Interpretation of taxing statute-If statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner-Reassessment-Conducting inquiry, providing opportunity before issue of notice-Faceless Jurisdiction of income-tax authoritieS. [S. 148A, Art. 226]
Court held that it is well settled solitary principle that if statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. Chandra Kishore Jha v. Mahaveer and others 1999 8 SCC 266 Cherrukurimani v. Chief Secretary Government of Andhra Pradesh and others 2015 13 SCC 722, Municipal Corporation Greater Mumbai v. Abhilash Lal and others 2020 13 SCC 234, Opto Circuit India Limited v. Axis Bank and others 2021 6 SCC 707, Union of India v. Mahesh Sing (CAP.No.4807 of 2022), Tata Chemicals Limited v. Commissioner of Customs (preventive) Jam Nager 2015 11 SCC 628. (WP Nos.25903 of 2023 and Ors dt.14-9-2023 (AY. 2016-17)
Kanakanala Ravindra Reddy and Ors v.UOI (2023) 295 Taxman 652 / 334 CTR 646 (Telangana)(HC) www.itatonline.org

Advocate Act, 1961

S. 16 : Senior and other advocates-Regulation of process for designation as Senior Advocates-Fine tuning of process-The designation of Senior Advocates in India is a privilege awarded as a mark of excellence to advocates who have distinguished themselves and have made a significant contribution to the development of the legal profession-Objective is to provide better assistance to litigants and the CourtS. [S. 16(2), Art. 32]

The practice of having a distinguished class of senior pleaders with considerable status and experience in India can be traced back to legal practice in the United Kingdom. This category is said to have originated in the 13 th century as a distinguished class of senior pleader known as Serjeants-at Law. In the 18 th century, selection in another such category, known as King's / Queen's Counsel became a matter of honour and a recognisation of profession of eminence.

The designation of Senior Advocates in India is a privilege awarded as a mark of excellence to advocates who have distinguished themselves and have made a significant contribution to the development of the legal profession. It identifies advocates whose standing and achievements would justify an expectation on the part of the clients, judiciary and the public, that they can provide outstanding services as advocates in the best of the administration of justice. The designation of Senior Advocates in India is provided by section 16 of the Advocates Act, 1961. Each High Court has their rules and regulations for designation of Senior Advocates. The Honourable Supreme Court of India has fine tuned the process of Designation of Senior Advocates by the Honourable Supreme Court of India. Highlights of the guidance are, generally advocates over age of 45 years are designated as Senior Advocates, only exceptional Advocates below age of 45 years should be considered, power of suo motu designation by Full court was not taken away by Supreme Court Guidelines to regulate Conferment of Designation of Senior Advocates of 2018. The Permanent Committee was empowered to assess applications on the basis of point based format.

Indira Jaising v. Supreme Court of India, Through Secretary General AIR 2023 Supreme Court SC 3009

S. 34 : Power of High Courts to make rules-Imposition of dress code for advocates-National company law Tribunal-Only High Courts can frame rules for dress code for the appearance of advocates before courts and Tribunals, subordinate to it-Tribunals have no authority to issue any instructions determining the dress code for the appearance of advocates before it.[Bar Council of India Rules (1975), Chap.4, Companies Act (18 of 2013), S. 432, National Company Law Tribunal Rules (2016) R. 16 (f), 124]

The petitioner challenged the dress code prescribed by the National Company Law Tribunal for advocates appearing before the Tribunal. Allowing the petition the Court held that Only High Courts can frame rules for dress code for the appearance of advocates before courts and Tribunals, subordinate to it. Tribunals have no authority to issue any instructions determining the dress code for the appearance of advocates before it. Accordingly, Rule 124 of the NCLT Rules states that professionals shall follow the dress code prescribed in their code of conduct, hence the order of NCLT dated 14-11-2017 prescribing the dress code for advocates for appearance before the Tribunal is held to be illegal. (WP No. 31852 of 2017 dt 8-2 2023)

R.Rajesh v.UOI AIR 2023 Madras 107

GST-Finance Act, 1994.(1994) 207 ITR 53 (St)

S. 65(12) : Taxable services-Banking and other financial services-Issuance of corporate guarantee to a group company without consideration-Not received any consideration-Appeal of Revenue is dismissed.[S. 65B(14), Art. 136]

Dismissing the appeal of the Revenue, the Court held that the Revenue has made no effort to assail the concurrent finding recorded by the Principal Commissioner of GST and the Tribunal that the assessee has not received any consideration while providing corporate guarantee to its group companies or to demonstrate that issuance of corporate guarantee to group companies without consideration would be a taxable service. Appeal of Revenue is dismissed.

Commissioner of CGST & Central Excise v. Edelweiss Financial Services Ltd. (2023) 332 CTR 40 /224 CTR 194(SC)

The Prohibition of Benami Property Transactions Act, 1988(As amended by the Benami Transactions (Prohibition) Amendment, Act, 2026.

S. 2(8) : Benami property-Attachment of property-Transactions took place before amendment Act came into force-Criminal prosecution or confiscation proceedings could not be initiated for transaction entered into prior to coming into force of Amendment Act, 2016-Provisional order of attachment and order of reference was quashed. [S. 24, Art. 226]

Petitioner challenged order of provisional attachment and confiscation proceedings under Prohibition of Benami Property Transactions Act, 1988, as amended by Benami Transactions (Prohibition) Amendment Act, 2016 on the ground that date of transaction for Benami properties was before Amendment Act came into force, hence the proceedings ought to be quashed. Respondents admitted that transactions took place before amendment act came into force, but raised objection that a review petition was pending hearing before Apex Court. Following the ratio in UOI v. Ganpati Dealcom (P.) Ltd (2022)) 141 taxmann. com 389/ 289 Taxman 177/ 447 ITR 108 (SC), the court held that where date of transaction for Benami properties was before Benami Transactions (Prohibition) Amendment Act, 2016 came into force, provisional order of attachment and order of reference were liable to be quashed.

Parvesh Construction (P.) Ltd. v. UOI (2023] 150 taxmann.com 427 (Bom)(HC)

S. 2(9) : Benami Transaction-Provisional attachment-Transactions entered into prior to coming into force of 2016 Act-Order of High Court quashing the proceedings is affirmed-SLP of Revenue is dismissed. [S. 26(3), Art.136]

Petitioner challenged orders passed by Adjudicating Authority under section 26(3) in respect of property on the ground that transaction for which provisional attachment order was passed and subsequently affirmed by Adjudicating Authority took place on 20-12-2014 much prior to coming into force of Benami Transactions (prohibition) (Amendment) Act, 2016.High Court held that 2016 amendments were, in effect, creating new provisions and new offences and were not merely procedural in nature and, thus, 2016 Act could only be applied prospectively and not retroactively hence could not be initiated for transactions entered into prior to coming into force of 2016 Act. SLP of Revenue is dismissed. Referred, UOI v. Ganpati Dealcom (P.) Ltd. [2022] 289 Taxman 177/447 ITR 108 (SC)

ACIT v. Goluguri Srirama Reddy (2023) 295 Taxman 231 (SC)

Editorial : Goluguri Srirama Reddy (2023) 155 taxmann.com 196 (Telengana)(HC)

S. 2(9) : Benami transaction-Amendment of Act in 2016 Provisions are substantive-Not applicable with retrospective effect-Every litigant has a vested right in substantive law, but no such right exists in procedural law-Interpretation of taxing statutes-Rule against retrospectivity-Transactions prior to amendment in 2016-Notices, orders for provisional attachment and adjudicating orders are set aside-Oder of High Court affirmed. [S. 2(9)(A) (2(9)(C), 4(a)(i), 24(3) 26(3), Art. Art.20 136]

High Court held that section 2(9)(A) and section 2(9)(C) are substantive provisions creating offence of benami transaction and are substantially wider than definition of benami transaction under section 2(a) of unamended 1988 Act, section 2(9)(A) and section 2(9)(C) can only have effect prospectively i.e. 1-11-2016. High Court, further, held that since transaction in question was dated 14-12-2011 provision of section 2(9)(A) could not be applied, accordingly the order of provisional attachment would be null and void. Referred UOI v. Ganpati Dealcom (P.) Ltd. [2022]289 Taxman 177/447 ITR 108 (SC). SLP of Revenue is dismissed.

ACIT v. Nexus Feeds Ltd. (2023) 453 ITR 459/ 294 Taxman 438 (SC)

Editorial : Nexus Feeds Ltd v. ACIT (2022) 444 ITR 261 / 137 taxmann.com 261 (Telengana)(HC)

S. 2(9) : Benami Property transactions-Benami Transaction (Position prior to 1-11-2016)-Transaction which took place prior to 1-11-2016-Order of High Court is affirmed. [Art. 226]

Adjudicating authority passed an order of attachment against assessee-company by applying provisions of Benami Transactions (Prohibition) Amendment Act, 2016 on transaction which took place prior to 1-11-2016. Assessee filed writ petition for setting aside order issued by adjudicating authority on ground that transactions could not have been classified as benami transaction by retroactively applying law enacted in year 2016. High Court allowed the petition by holding that section 2(9)(a) as inserted by Amended Act of 2016 was prospective in nature, it could not be applied to transaction which took place prior to 1-11-2016. Against order department filed special leave petition. Since issues raised in this petition was squarely covered by judgment of this Court in Union of India v. Ganpati Dealcom (P.) Ltd. [2022] 141 taxmann.com 389/289 Taxman 177/477 ITR 108, special leave petition was to be dismissed.

ACIT v. Nutrient Marine Foods Ltd. (2023) 293 Taxman 602 (SC)

Editorial : Nutrient Marine Foods Ltd v. Adjudicating Authority (2023) 152 taxmann.com 86 (Telengana)(HC)

S. 2(9) : Benami Property transactions-Benami Transaction (Position prior to 1-11-2016)-Transaction which took place prior to 1-11-2016-Order of High Court is affirmed. [Art. 226]

Adjudicating authority passed an order of attachment against assessee-company by applying provisions of Benami Transactions (Prohibition) Amendment Act, 2016 on transaction which took place prior to 1-11-2016. Assessee filed writ petition for setting aside order issued by adjudicating authority on ground that transactions could not have been classified as benami transaction by retroactively applying law enacted in year 2016. High Court allowed the petition by holding that section 2(9)(a) as inserted by Amended Act of 2016 was prospective in nature, it could not be applied to transaction which took place prior to 1-11-2016. Against order department filed special leave petition. Since issues raised in this petition was squarely covered by judgment of this Court in Union of India v. Ganpati Dealcom (P.) Ltd. [2022] 141 taxmann.com 389/289 Taxman 177/477 ITR 108, special leave petition was to be dismissed.

ACIT v. Nutrient Marine Foods Ltd. (2023) 293 Taxman 602 (SC)

Editorial : Nutrient Marine Foods Ltd v. Adjudicating Authority (2023) 152 taxmann.com 86 (Telengana)(HC)

S. 2(9) : Benami Property Transactions-Amendment of Act in 2016 Provisions are substantive-Not applicable with retrospective effect-The amendments to the Prohibition of Benami Property Transactions Act, 1988 brought by the Benami Transactions (Prohibition) Amendment Act, 2016 do not have retrospective effect.[S. 2(9)(A) (2(9)(C), Art. 20, 136, 226]

On a petition for special leave to appeal from the decision of the High Court holding that section 2(9)(A) and (C) of the Benami Transactions (Prohibition) Act, 1988 as amended by the Benami Transactions (Prohibition) Amendment Act, 2016 can only have effect prospectively, and that the Central Government having notified the date of coming into force of the Amendment Act of 2016 as November 1, 2016, these two provisions could not be applied to a transaction which took place prior to November 1, 2016. The Court held that the amendments to the Prohibition of Benami Property Transactions Act, 1988 brought by the

Benami Transactions (Prohibition) Amendment Act, 2016 do not have retrospective effect. Followed, UOI v. Ganpati Dealcom Pvt Ltd.(2022) 447 ITR 1008 (SC)
ACIT v. Nexus Feeds Ltd (2023)453 ITR 459 (SC)
Editorial: Nexus Feeds Ltd v. ACIT (2022) 444 ITR 261 (Telangana) (HC), affirmed.

S. 2(9) : Benami Transaction-Provisional attachment-Transactions entered into prior to coming into force of 2016 Act High Court quashed the proceedingS. [S. 26(3), Art. 226]
Petitioner challenged orders passed by Adjudicating Authority under section 26(3) in respect of property on the ground that transaction for which provisional attachment order was passed and subsequently affirmed by Adjudicating Authority took place on 20-12-2014 much prior to coming into force of Benami Transactions (prohibition) (Amendment) Act, 2016.High Court held that 2016 amendments were, in effect, creating new provisions and new offences and were not merely procedural in nature and, thus, 2016 Act could only be applied prospectively and not retroactively hence could not be initiated for transactions entered into prior to coming into force of 2016 Act. High Court quashed the proceedings. Referred, UOI v. Ganpati Dealcom (P.) Ltd. [2022] 289 Taxman 177/447 ITR 108 (SC)
Goluguri Srirama Reddy (2023) 155 taxmann.com 196 (Telengana)(HC)
Editorial : SLP of Revenue is dismissed, ACIT v. Goluguri Srirama Reddy (2023) 295 Taxman 231 (SC)

S. 2(9) : Benami Transactions-Prohibition of benami transactions-Prohibition of right to recover property held benami-Co-owner-25 percent share in suit property-[S 3.(2), The Civil Procedure Code 1908, Order VII Rule 11 Criminal Procedure Code, 1973, S. 340]
Plaintiff claimed to be co-owner of 25 per cent share in suit property which was purchased by his deceased father in name of mother vide registered deed, on grounds that consideration was paid by his father and thus, after his death it devolved to his sons, including plaintiff. Plaintiff had further sought relief of cancellation of gift deed executed by mother, in favour of defendant no. 1 on contention that instant case would fall within well recognized exceptions under Benami Act, i.e., husband purchasing property in name of wife, to be held by wife in name only, for benefit of husband and/or entire family. Defendant no. 1 filed instant application under Order 7 Rule 11 for rejection of plaint on contention that said suit was barred by limitation. It was also found that present transaction was of year 1970 i.e. before enactment of Benami Act not only recorded owner, i.e. mother alone, but rather entire family stayed in suit property. Furthermore, original title deed of suit property was not in possession of mother, but in possession of plaintiff. Court held that disputed questions raised on behalf of parties, could not be decided at time of considering an application filed under Order 7 Rule 11 CPC and thus, suit could not be dismissed at this stage merely based on contention raised on behalf of defendant no. 1 that suit was barred by Benami Act. Cause of action in favour of plaintiff wherein plaintiff had asserted his title and ownership to share in suit property and reading of plaint did not disclose prima facie that plaint was barred by any law, therefore, plaint could not be rejected under Order VII Rule 11 CPC in a summary manner without trial.
Parmod Kumar Jain v. Satish Jain (2023) 294 Taxman 673 (Delhi)(HC)

S. 2(9) : Benami Property transactions-Section 2(9) of Benami Transactions (Prohibition) Amendment Act, 2016 being prospective in nature, it could not be applied to transaction which took place prior to 1-11-2016. [Art. 226]
Adjudicating authority passed an order of attachment against assessee-company by applying provisions of Benami Transactions (Prohibition) Amendment Act, 2016 on transaction which

took place prior to 1-11-2016. Assessee filed instant writ petition for setting aside order issued by adjudicating authority on ground that transactions could not have been classified as benami transaction by retroactively applying law enacted in year 2016. In view of decision in case of Neopride Pharmaceuticals Limited v. Adjudicating Authority W.P. No. 33191 of 2022 dated 13-9-2022, wherein it was held that section 2(9)(a) inserted by Amended Act of 2016 was prospective in nature and it could not be applied to transaction which took place prior to 1-11-2016. Writ petitions were to be allowed.

Nutrient Marine Foods Ltd v. Adjudicating Authority (2023) 152 taxmann.com 86 (Telengana)(HC)

Editorial : SLP of Revenue was dismissed, ACIT v. Nutrient Marine Foods Ltd. (2023) 293 Taxman 602 (SC)

S. 3 : Benami Property Transactions-Act not retrospective in operation-Not applicable to transactions entered into prior to coming into force of the Act ie. 25-10-2016. [S. 2(9)(A)(b), 3(2), 5, Art.20(1), Art. 226]

Court held that proceedings initiated under the Prohibition of Benami Property Transactions Act, 1988, were for attachment and confiscation of properties which were admittedly acquired prior to the enforcement of the Benami Transactions (Prohibition) Amendment Act, 2016. Hence the proceedings were not valid. Followed UOI v Ganpati Dealcom Pvt Ltd. (2022) 447 ITR 108 (SC) the Supreme Court held that (a) section 3(2) of the unamended 1988 Act was unconstitutional for being manifestly arbitrary. Accordingly, section 3(2) of the 2016 Act was also unconstitutional being violative of article 20(1) of the Constitution, (b) the in rem forfeiture provision under section 5 of the unamended Act of 1988, prior to the 2016 Amendment Act, was unconstitutional for being manifestly arbitrary, (c) the 2016 Amendment Act was not merely procedural, but prescribed substantive provisions, (d) the in rem forfeiture provision under section 5 of the 2016 Act, being punitive in nature, can only be applied prospectively and not retroactively, (e) the authorities cannot initiate or continue criminal prosecution or confiscation proceedings for transactions entered into prior to the coming into force of the 2016 Act, viz., October 25, 2016.

Jaladi Prasuna v. UOI (2023)451 ITR 477/ 290 Taxman 47 (Delhi)(HC)

S. 3 : Benami Transactions-Notice in respect of transactions entered into prior to amendment in 2016-Amendment to have effect only prospectively-Notice was quashed[Benami Transactions (Prohibition) Amendment Act, 2016, S 53]

Held accordingly, allowing the petition, that the benami transactions with respect to purchase of lands by the company AK between the period from 2007 to 2010 and transfer of shares held by the assessee in the company on May 31, 2014 undertaken by the petitioner were entered into prior to November 1, 2016. The notice issued under section 53 of the Prohibition of Benami Property Transactions Act, 1988 as amended by the 2016 Act was quashed.Followed UOI v. Ganpati Dealcom Pvt Ltd. (2022) 447 ITR 108 (SC)

Rajesh Katyal v.IT Department (2023)451 ITR 455 (Delhi)(HC)

S. 5 : Property held benami liable to confiscation-Benami property-Benami transactions-Benami Transactions-Attachment, adjudication and confiscation-Sections 3 and 5 which deal with criminal offences applicable effective only from 25-10-2016-Provisions are prospective. [S. 2(8), 2(9), 3, 24]

Held that Supreme Court In UOI v. Ganpati Dealcom Pvt. Ltd. [2022] 447 ITR 108 (SC)has laid down certain guidelines on the applicability of the Benami Transactions (Prohibition) Amendment Act, 2016. By the Amendment Act of 2016, a criminal offence was introduced in the form of section 3 and section 5 of the Act. The Supreme Court held that the

amendment would be effective only from October 25, 2016.Accordingly, that in view of the undisputed fact that the transactions in question in these cases were of a period prior to 2016, the amendment to the Act made in the year 2016 would not be applicable. Therefore, the notices under section 24 of the Benami Transactions (Prohibition) Act, 1988 were not sustainable in law hence quashed.

Banamali Das v. Dy. CIT (2023)453 ITR 569 (Gauhati)(HC)
Ganesh Chandra Das v. Dy. CIT (2023)453 ITR 569 (Gauhati)(HC)
Ganesh Chandra DaS. v. Dy. CIT (2023)453 ITR 565 (Gauhati)(HC)
Salien Das v. Dy. CIT (2023)453 ITR 569 (Gauhati)(HC)

S. 24 : Benami transactions-Transactions prior to amendment in 2016-Notices, orders for provisional attachment and adjudicating orders are set aside-Oder of High Court affirmed. [S. 4(a)(i) 24(1), 26(3) Art. 136]

Petitioners challenged orders of provisional attachment and confiscation of properties. Petitioners claimed that properties were acquired prior to 25-10-2016 or 1-11-2016 and such transaction could not be classified as benami retrospectively by applying Benami Transactions (Prohibition) Amendment Act, 2016. High Court relying on the Supreme Court in UOI v. Ganpati Dealcom (P.) Ltd. [2022]289 Taxman 177/447 ITR 108/2022 SCC Online SC 1064 held that section 3 read with sections 2(*a*) and 5 of unamended 1988 Act which dealt with criminal proceedings were overly broad, disproportionately harsh and operate without adequate safeguards in place and thus were unconstitutional from their inception, which would mean that 2016 amendments were, in effect, creating new provisions and new offences, thus Amendment Act, 2016 was not merely procedural but prescribes substantive provisions.High Court quashed the show cause notices, provisional attachment orders and adjudicating orders passed.SLP of Revnue is dismissed. (AY. 2015-16)

ACIT (Initiating Officer) v. Neopride Pharmaceuticals Ltd. (2023)454 ITR 580/ 294 Taxman 262 (SC)

Editorial : Neopride Pharmaceuticals Ltd v. Adjudicating Authority (2023) 454 ITR 571 / 152 taxmann.com 343 (Telengana)(HC), affirmed.

S. 24 : Notice and attachment of property involved in benami transaction-Benami Property-Provisional Attachment-Sufficient material-The Assessee was advised to approach the adjudicating officer to explain why the provisional attachment order is bad in law [S. 24(1), Art. 226]

The Initiating Officer issued a notice under section 24(1), directing the Assessee to show cause as to why properties should not be treated as benami properties. Subsequently, the company's and its directors' properties were provisionally attached. The Assessee challenged the provisional attachment before the High Court.

The Court held that the provisional attachment is merely a preliminary step. Given the existence of material raising suspicion that the property was benami, the suspicion is deemed sufficient for the initiating authority to form an opinion on provisional attachment. The Act incorporates various checks and balances, eliminating the necessity for court intervention. The Assessee was advised to approach the adjudicating officer to explain why the provisional attachment order is bad in law.(SJ)

M. Kumudhavalli *v.* Initiating Officer Joint Commissioner of Income-tax (OSD) (2023) 294 Taxman 633 /(2024) 460 ITR 43(Mad)(HC)

S. 24 : Notice and attachment of property involved in benami transaction-Benami Property-Provisional Attachment-Show cause notice-Writ petition against show cause notice is dismissed-Directed to file the reply-Time to file reply is extended by a period of two weekS. [S. 24(1), Art. 226]

Petitioner had invested in movable property in form of mutual fund in financial year 2018-19. Revenue issued show-cause notice dated 30th May, 2023, under section 24 of Prohibitions of Benami Property Transactions Act, 1988 by which petitioners were asked to give reply to same within 15 days from date of receipt of said show-cause notice and a date of hearing was also fixed on 13th June, 2023. Petitioner challenged the show-cause notice on ground of jurisdiction of revenue authority concerned. Dismissing the petition the Court held that show-cause notice could not be interfered at this stage, however, time to file objection/response to a show-cause notice was extended by a period of two weeks. (AY. 2018-19) (SJ)
Aachman Marketing (P.) Ltd v. Dy.CIT [2023] 294 Taxman 737 (Cal)(HC)

S. 24 : Notice and attachment of property involved in benami transaction-Show cause notice-Court held that the show-cause notice could not be interfered however, time to file objection/response to show-cause notice was extended by a period of two weekS. [S. 2(9), Art. 226]
Petitioners had invested in movable property in form of mutual fund in financial year 2018-19. Revenue issued show-cause notice dated 30th May, 2023, under section 24 of Prohibitions of Benami Property Transactions Act, 1988 by which petitioners were asked to give reply to same within 15 days from date of receipt of said show-cause notice and a date of hearing was also fixed on 13th June, 2023, which petitioners did not avail. Petitioner filed instant writ petition after expiry of date of filing of reply to show-cause notice. Dismissing the petition the Court held that show-cause notice could not be interfered however, time to file objection/response to show-cause notice was extended by a period of two weeks. (AY. 2019-20)
Aachman Marketing (P.) Ltd. v. DCIT (2023) 294 Taxman 737 (Cal.) (HC)

S. 26(3) : Benami Transactions-Principles of natural justice-Ex oarte Order-Matter remitted to adjudicating authority.[Art. 226]
Held that the order passed under section 26(3) of the 1988 Act in his absence was in violation of principles of natural justice. Therefore, the order was set aside and the matter was remitted back to the Adjudicating Authority for fresh consideration and passing of appropriate order after affording due opportunity of hearing. Matter remanded.(SJ)
Irfanudeen Abdul Munaf v.Adjudicating Authority (2023)459 ITR 564 (Mad)(HC)

Companies Act, 2013.

Shell Company-Natural justice-Before declaring any company as shell Company a notice or opportunity of being heard shall be given-Order of SEBI was set aside.[Art. 226]

SEBI has passed the order treating the company as a Shell Company. On writ the Court held that, shell company was defined in other jurisdictions in India there is no statutory definition of the term. However, the general perception is that with presence of shell companies there can be a potential use for such companies for illegal activities that threatens the very economic foundation of the country and severely compromise its economic foundation and ultimately sovereignty. The Court held that before declaring any company as a shell Company, a notice or an opportunity of being heard shall be given having regard to its negative implications and serious consequences. (WP(C) 2572 /2018 dt. 7-3-2019)

Assam Company India Ltd &Ors v,UOI (2023) BCAJ-July-P. 109(Assam, Ngaland, Mizoram and Arunachal Pradesh)(HC) ?

Goods and Service Tax, Act, 2017

Website-Maharashtra Sales Tax Tribunal-Court directed the State Government to take required steps expeditiously on or before 31st "December.2023-The matter is kept hearing of further progress on 28 th November, 2023.

Court observed that in the present era, the courts and tribunals, which cater to the demands of the consumers of justice, cannot be expected to function without the basic requirement of official website to say the least – Court directed the State Government to take required steps expeditiously on or before 31st "December.2023 – The matter is kept hearing of further progress on 28 th November, 2023. (WP NO. 655 of 2023 dt. 12 th October 2023.

Ascendas IT Park (Pune) Pvt Ltd v.State of Maharashtra and Ors (Bom)(HC) www.itatonline.org.

Right to Information Act, 2005

S. 3 : Right to information-Non-Citizens can also get the information under Right to Information Act-There is no bar.. [S. 4, 5,6,7,18 Art. 5, 21, 226]

Tibetan national had sought information regarding the service benefits available to him. He had enjoyed privileges as a Tibetan refugee with an identity card as a Tibetan.Public information officer (PIO) refused information on the ground that the applicant's nationality is Tibetan therefore information under RTI Act, cannot be provided. The appeal was rejected. On further appeal The Central Information Commissioner (CIC)) directed in second appeal to provide the information sought by the RTI applicant. Simultaneously, the CIC also issued notice to the PIO for levy of maximum penalty. The PIO filed the writ petition against the said order, the Court held that restricting the right to information only to citizens would be contrary to the spirit of the Constitution as well as RTI Act. Section 3 have to be read as positive recognition of right in favour of citizens but not as prohibition against non-citizens. Court also held that the approach of public Information Officer (PIO) refusing to give information to RTI applicant cannot be faulted to such a great extent as to be considered as malicious and mala fide merely on ground that information was initially rejected as RTI applicant had declared himself to be Tibetan national. Finding of CCI that PIO's conduct was mala fide and imposition of penalty was not sustainable. (W.P.(C) No. 2670 of 2017 dt. 13-3-2023)

A.S Rawat v. Dawa Tashi AIR 2023 DELHI 252

S. 8 : Exemption from disclosure of information-Donation-CBDT-Shri Ram Janmabhoomi Teerth Kshetra Trust-CPIO having made out a prima facie case for grant of interim relief, order shall remain stayed till next hearing and no coercive steps shall be taken against CPIO, pursuant to same. [S. 8(1)(e), 8(1)(j), 11, 19(4)(ii), Income-tax Act, 1961, S. 80G(2)(b), 119, 138, Art.226]

Applicant filed RTI application with CPIO, CBDT seeking information related to application filed by `Shri Ram Janmabhoomi Teerth Kshetra Trust' for getting deduction under section 80G(2)(b) of Income-tax Act. CPIO denied the information under section 8(1)(j) of the Act. Applicant approached Appellate Authority by way of an appeal. Appellate Authority, upheld order of CPIO, and also stated that information sought in RTI application was protected under section 8(1)(j) and section 8(1)(e) as CBDT was holding said information in fiduciary capacity also held that public interest in matter had not been disclosed, which was a mandatory requirement under section 11 for disclosure of confidential and personal third party information. On second appeal, CIC reversed orders of CPIO and Appellate Authority CPIO sought quashing of impugned order passed by CIC-It was found that CIC (i) did not issue notice to Trust whose information was sought as mandated under section 19(4), (ii) did not consider fact that information relating to income tax records was exempted under section 138 of Income-tax Act,1961, (iii) did not consider that information which was being sought in RTI application related to a third party and was held by CBDT in fiduciary capacity, and, (iv) CIC had not given any reasoning whatsoever to reverse orders of CPIO and Appellate Authority.On writ the Court held that CPIO having made out a prima facie case for grant of interim relief, order shall remain stayed till next hearing and no coercive steps shall be taken against CPIO, pursuant to same.

Central Public Information Officer v. Kailash Chandra Moondra (2023) 292 Taxman 385 (Delhi)(HC)

S. 8(1)(e) : Exemption from disclosure-Legal advice given by Advocate General to State Government-Lawyer and client is fiduciary relationship-exempt from disclosure. [Art. 165(2)]

High Court held that the legal opinions given by the Advocate General to the Govt. are exempted under section 8(1)(e) of the Act. All communications between the lawyer and his client are to be protected because these communications are confidential. There may be delicate and sensitive issues, in which the Govt. wants the opinion of the Advocate General. Those are confidential communications between the Govt. and the Advocate General. The Advocate General's legal advice to the Government should always be kept private. Accordingly, to S.8(1)((e) of the Act, that is protected. Relied Kokanada B.Poondacha and Ors v.K.D.Ganapath and Ors (2011) 12 SCC 600/ AIR 2011 SC 1353, Himalyan Co-Op-Group Housing Society v. Balwan Singh and Ors (2015) 7 SCC 373/ AIR 2015 SC 2867. ((W.P.(C) No. 7240 of 2013 dt.30-9-2022)

Secretary to Advocate General, Ernakulam v. State Information Commissioner AIR 2023 Kerala 72

Maharashtra Stamp Act, 1948,

S. 41 : Endorsement of instruments on which duty has been paid-Development agreement-Alternative accommodation-Re development-Reference to re-development and homes is to be read to include garages, galas, commercial and industrial use and every form of society re-development-No stamp duty on permanent accommodation agreement(PAAA), if the development agreement is stamped-Findings are not limited to the facts of the present cases only. [S. 34, 39, 40]

The petitioners raised a common question of law under the Maharashtra Stamp Act, 1958. All of them relate to Stamp Duty sought to be levied on what are called Permanent Alternate Accommodation Agreements ("PAAA"). The challenge was against two circulars issued by the Inspector General of Registration & Controller of Stamps, Maharashtra under the authority of the Chief Controlling Revenue Authority and the State Government of Maharashtra, dated 23.06.2015 & 30.03.2017.

The first circular directed that any PAAAs between the society members and the developer is different from the DA between the society and the developer. The second circular which came out as a clarificatory circular specifies compliance and the criteria for such compliance to the PAAAs with individual society members. The Stamp authorities contended that on contentions of the payment of stamp duty in incidents where there is increase of additional area or square footage after redevelopment and question of members having to pay stamp duty on acquisition of additional built-up area or carpet area derived from fungible FSI.

The question before the High Court was, whether the demand by Stamp Authority that the individual PAAAs for members must be stamped on a value reckoned · at the cost of construction and a question of validity regarding the two circulars dated 23.06.2015 and 30.03.2017?

The Honourable Court held that the Impugned Circulars dated 23rd June 2015 and 30th March 2017 were held to be beyond jurisdictional remit of revenue authorities to dictate instruments of payment of stamp duty.

It was held as under : ·

(a) A Development Agreement between a cooperative housing society and a developer for development of the society's property (land, building, apartments, flats, garages, godowns, galas) requires to be stamped.

(b) The Development Agreement need not be signed by individual members of the society. That is optional Even if individual members do not sign, the DA controls the re-development and the rights of society members.

(c) A Permanent Alternative Accommodation Agreement between a developer and an individual society member does not require to be signed on behalf of the society. That, too, is optional, with the society as a confirming party.

d) Once the Development Agreement is stamped, the PAAA cannot be separately assessed to stamp beyond the Rs. 100 requirement of Section 4(1) if it relates to and only to rebuilt or reconstructed premises in lieu of the old premises used/occupied by the member, and even if the PAAA includes additional area available free to the member because it is not a purchase or a transfer but is in lieu of the member's old

premises. The stamp on the Development Agreement includes the reconstruction of every unit in the society building. Stamp cannot be levied twice.

e) To the extent that the PAAA is limited to the rebuilt premises without the actual purchase for consideration of any additional area, the PAAA is an incidental document within the meaning of Section 4(1) of the Stamp Act.

f) A PAAA between a developer and a society member is to be additionally stamped only to the extent that it provides for the purchase by the member for actual stated consideration and a purchase price of additional area over and above any area that is made available to the member in lieu of the earlier premises.

g) The provision or stipulation for assessing stamp on the PAAA on the cost of construction of the new premises in lieu of the old premises cannot be sustained.

Court held that, reference to re-development and homes is to be read to include garages, galas, commercial and industrial use and every form of society re-development. The Court also held that these findings are not limited to the facts of the present cases before us. (WP Nos 4575 of 2022/ 4609 of 2022/ 4580 of 2022 dt 17-2-2023)

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Prevention of Money Laundering Act, 2002.

S. 3 : Offence of money-laundering-Offences And Prosecution-Money-Laundering-Auditor-Transfer of foreign exchange-Fictitious Bank accounts-Issue of tax determination certificates in Form 15CCA without ascertaining genuineness of documents-Not an offence-The Chartered Accountant is required to only examine the nature of remittance and nothing more. [S. 4, ITRules, 1962, 37BB, Form 15CA, Indian Penal Code, 420, 465, 467, 471 Art. 226]

The prosecution was launched for issuing the Form No 15CCA for transferring the amount. The accused challenged the prosecution proceedings. Quashing the proceedings the Court held that in issuing form 15CA under rule 37BB of the Income-tax Rules, 1962, a chartered accountant is required only to examine the nature of the remittance and nothing more. The chartered accountant is not required to go into the genuineness or otherwise of the documents submitted by his clients. Held, that the accused Murali Krishna Chakrala had issued five form 15CB in favour of B.K.Electro Tool Products which were handed over by him to his client Kiyam Mohammed for which, a sum of Rs. 1,000 per certificate was given to him as remuneration. The prosecution Murali Krishna Chakrala in the facts and circumstances of the case at hand, could not be sustained.Court also observed that the Chartered Accountant is required to only examine the nature of remittance and nothing more.

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Allowing the petition the court held that, the Bank as secured creditor had first charge to sell mortgaged property in view of priority under section 26E of the Act. The Tax Authority had second charge. Purchaser of property from private sale held by bank Paid full consideration. Tax Authority had no right to disturb title, interest and possession. Charge created by the Tax Authority was quashed. (SCA No. 14194 of 2022 dt. 20-1-2023)

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