
# Three Digests of 8000 Important Judgments on Domestic Tax (4400 cases), Transfer Pricing (3100), International Tax (500 cases)

(Pronounced in the period from July 2015 to December 2018)

By Dr. Sunil Moti Lala, Advocate
(assisted by Team at SML Tax Chamber)

ENCLOSED :

## DOMESTIC TAX DIGEST (4400 CASES)

## *PREFACE*

*We have prepared summaries of 8000 important judgments pronounced in the period July-2015 to December-2018. The same have been segregated into 3 Digests viz. :*

*i) Domestic Tax Digest (4400 Cases)*
*ii) Transfer Pricing Digest (3100 Cases)*
*iii) International Tax Digest (500 Cases)*

*In each of the aforesaid Digests the judgments have been classified into various categories and sub-categories to enable ease of reference. Further, each Digest has been indexed separately along with hyperlinks which would enable the reader to straightaway go to the relevant category or sub-category of cases. Also, the case have been sequenced in the priority of Supreme Court, High Court and Tribunal. The High Court and Tribunal cases in each category / sub-category have been further arranged alphabetically i.e. e.g. all Allahabad High Court cases in each category/sub-category are placed together followed by say Bombay High Court decision if any and so on. Similarly, thereafter the Tribunal cases in each category/sub-category are also arranged alphabetically as indicated above. We have also given the date of pronouncement and the appeal numbers in most cases so as to enable the judgments to be retrieved from the website of the respective Court or Tribunal. Thus, with the hyperlinks and control "F" function the reader would be able to locate at one place all decisions rendered by a particular Court or Tribunal with respect to a particular category or sub-category of cases.*

*The* ***Domestic Tax Case Digest of 4400 cases*** *pronounced in the period* ***July-2015 to December-2018*** *is enclosed. We hope you will find the said Digest useful.*

*I must thank and acknowledge the painstaking efforts put in by all my team members at SML Tax Chamber in assisting me in preparing the aforesaid Digests. I would particularly like to thank Advocate/C.A's Bhavya Sundesha, Tushar Hathiramani, Shilpa Dinavahi, Sejal Mistry, Sahil Sheth for supporting me in this endeavour to serve the Tax Fraternity. Special thanks to Bhavya for making the sub-categories of cases (a very time-consuming exercise) which would be of immense use to the Reader.*

*If there are any suggestions the same are most welcome. You may write to ITAT online or inbox me directly at office@smltaxchamber.com.*

*HAPPY READING !! HAPPY RESEARCHING !!*

*August 2019* *Dr. Sunil Moti Lala*
*Mumbai*

**DOMESTIC TAX DIGEST (4400 CASES)**

**(Pronounced in the period July 2015 to December 2018)**

**INDEX**



*For detailed Index P.T.O.*

By Dr. Sunil Moti Lala, Advocate, C.A., LL.B, PhD
(Assisted by the team of SML Tax Chamber)

**DOMESTIC TAX DIGEST (4400 CASE)**

**(Pronounced in the period July 2015 to December 2018)**

## DETAILED INDEX




By Dr. Sunil Moti Lala, Advocate, C.A., LL.B, PhD
(Assisted by the team of SML Tax Chamber)

Go to Index

Go to Index

Go to Index

Go to Index

Go to Index

Go to Index

Go to Index

Go to Index

***a. Income***

*Real Income theory*

**1.** The Apex Court dismissed the SLP against High Court ruling that assessee, a co-operative society, carrying on banking business, was not required to pay tax on interest income on bad debts/doubtful debts or Non-Performing Assets (NPAs) without such interest being actually received or credited in profit & loss account of assessee
***Com. of IT v. Bijapur District Central Co-operative Bank Ltd. - [2019] 101 taxmann.com 159 (SC)- Special Leave Petition (Civil) Diary No(s). 41156 of 2018 dated December 14, 2018***

**2.** The Apex Court dismissed revenue's appeal against the High Court decision wherein the High Court, noting that the assessee-NBFC did not receive any interest on Inter Corporate Deposits categorized as NPA since many years and even the recovery of principal amount was doubtful, had held that interest income thereupon did not accrue in terms of the RBI Prudential Norms. Addressing revenue's argument that the Supreme Court in the case of Southern Technology had held that RBI Act does not override the provisions of Income-tax Act, The Court had clarified that the Supreme Court's observation was in context of allowability of deduction for NPA provision u/s 36(1)(vii), however in respect of income recognition, Supreme Court had held that income is to be recognized in terms of RBI Prudential Norms even though the same deviated from mercantile system of accounting and/or section 145.
***Vasisth Chay Vyapar Ltd - TS-619-SC-2017 - Civil Appeal No. 5811 of 2012 (SC) dated 13.12.2017***

**3.** The Court held that gain arising to the assessee on account of securitization of lease receivables and credited to the Profit & Loss Account is a taxable receipt in the year of securitisation as per T. V. Sunderam Iyengar 222 ITR 344 (SC). It held that the argument that the entry represents hypothetical income and not real income and that the amount is assessable in subsequent years on receivable basis is not correct. Further, the question of whether income can also be deferred to subsequent years under the "Matching concept" as per Taparia Tools 260 ITR 102 (Bom)/ 372 ITR 605 (SC) was left open by the Court.
***L&T Finance Limited vs. DCIT (Bombay High Court) - INCOME TAX APPEAL (IT) NO. 256 OF 2016 dated 17.09.2018***

**4.** The assessee, a NBFC was engaged in business of leasing, hire purchase and other financial activities had securitized certain amount as rent receivables and had adjusted a part of said amount against rent receivable in its books of account and balance amount was recognized as a profit on securitization of lease receivables. The assessee contented that this amount represented a notional gain and not real income, thus, no income tax could be levied on same. However, the AO treated such amount as an income of assessee on ground that assessee itself had credited this amount to its profit and loss account & took a view that the gain was related to

business and arose in the normal course of business to the assessee. The Tribunal and CIT(A) upheld finding of AO on same grounds. The Court concluded that the finding given by the AO were purely based on factual aspects and no substantial question of law arose in the present appeal.

***L&T Finance Ltd vs DCIT- (2018) 98 taxmann.com 91(Bombay)- ITA No 256 & 257 of 2016 dated 17.09.2018***

**5.** The Court held that AO was not justified in holding that CBDT's Circular F .No.201/21/84-ITA-II dated 09.10.1984 (regarding non-taxability of interest not received for three years) applies only to banking companies and not to co-operative banks on the following grounds viz a)The expression "banking company" has been defined under section 5(c) of the Banking Regulation Act, 1949(BR Act,1949) to mean any company which transacts the business of banking in India. b) Clause (a) of section 56 of the BR Act, 1949 provides that throughout the Act, unless the context otherwise requires, - references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operativebank. c) Evidently therefore, the expression "banking company" would take within its sweep a co-operative bank.

***Principal Commissioner of Income tax v. Shri MahilaSewaSahakari Bank Ltd. [2016] 72 taxmann.com 117 (Gujarat) TAX APPEAL NO. 531 OF 2015***

**6.** The assessee, following mercantile system of accounting had advanced loan to two parties. On request of the debtors, it agreed to waive interest on the loan advanced and since no interest was realized it did not offer the interest income to tax. However, the AO noting that the assessee continued to receive the principal amount from the debtors and that the loan advanced was not declared as bad debt and that the assessee was following mercantile system of accounting, taxed the interest income in the hands of the assessee. The CIT(A) and the Tribunal upheld the order of the AO. The Court relying on the Apex Court rulings in the case of Shoorji Vallabhdas [TS-1-SC-1962] and Poona Electric [TS-9-SC-1965] held that no tax could be levied on hypothetical income. Accordingly, it deleted the addition of interest made by the AO.

***Shivlaxmi Exports Ltd. [TS-206-HC-2017(CAL)] ITA NO.134 of 2001 dated 30.03.2017***

**7.** The assesee-society was entrusted with responsibility of collection of VAT and upon collection of same, a part of it was to be deposited immediately in Government Treasury, and remaining amount had to be transferred to State Government after meeting out expenditure incurred by society. The Court held that since assessee-society neither gained anything nor earned any profit and VAT amount recovered by assessee was an entrustment of statutory function of State and, thus, assessee neither created any source of income nor generated any profit and gain out of such source, said balance sum did not partake of character of 'real income' in hands of assessee.

***Pr. CIT, Shimla v. H.P. Excise & Taxation Technical Service Agency [2018] 100 taxmann.com 290 (HP HC)- ITA Nos.85 to 87 & 91 to 93 of 2018- dated December 7, 2018.***

**8.** The assessee, an Association of Person (AOP), was following mercantile system of accounting. AO made an addition and held that the assessee should have recognized interest on NPA on accrual basis as per provisions of Act as it was following the mercantile system of accounting. CIT(A) upheld the order of the AO. Tribunal held that while determining tax liability of an

assessee, two factors would come into play. Firstly, recognition of income in terms of recognized accounting principles and secondly, after such income was recognized, computation thereof, as per the provisions of Act. Tribunal held that since the recognition of income was as per the RBI directions in view of the provisions of section 45-Q of RBI Act, the provisions of Section 145 would not be applicable. Thus, assessee's appeal was allowed.
***ANGUL UNITED CENTRAL CO-OP BANK LTD. vs. DCIT (CUTTACK TRIBUNAL) (ITA NO. 513/CTK/2017) dated May 8, 2018 (53 CCH 0139)***

**9.** The assessee claimed deduction of interest accrued on NPAs according to the guidelines of National Housing Bank (NHB) as per which the debts or loan in respect of which interest had not been received beyond a period of more than 90 days were classified as NPA. The AO, however, as per Section 43D r.w. rule 6EB (which provides that only if interest in respect of a debt or loan was due for more than six months would a loan be treated as NPA) held that the NPA was to be classified as per Rule 6EB of the Rules and not as per the guidelines of NHB and therefore, deduction was not allowable. The Court held that for the permissibility of deduction for the purposes of computing the taxable income is concerned, it is the Act that applies and the purpose of classification of debts as NPA by the NHB was not applicable. Accordingly, it held that deduction was not allowable to the assessee.
***HOUSING AND URBAN DEVELOPMENT CORPORATION LIMITED vs. ACIT (2017) 99 CCH 0073 DelHC ITA Nos.440/2016, 442/2016, 444/2016, 445/2016 & 446/2016 dated 03/07/2017***

**10.** Assessee bank incorporated in Netherlands with limited liability and with branches in India was involved in accepting deposits, giving loans, discounting / collection of bills, issue of letters of credit, etc. The AO observed that assessee bank had not recognized interest income in respect of advances, which were overdue for more than 3 months, in profit and loss account in accordance with RBI guidelines applicable to banks. Thus, the AO proceeded to add interest income on NPA accounts on accrual basis and the same was upheld by DRP. The Tribunal relied on Southern Technologies, wherein it was held that interest income on NPA accounts should not be recognized on accrual basis which was in line with RBI prudential norms for income recognition and further when account becoming NPA was not disputed by Revenue, recognition of income was to be done only on receipt basis which was in consonance with real income theory. Thus, the Tribunal held that interest income on NPA accounts should not be assessed on mercantile basis and same was to be taxed only on receipt basis.
***DCIT (Intl Taxation) vs Royal Bank of Scotland- (2018) 53 CCH 0537 Kol Trib- ITA No. 503, 505/Kol/ 2016 dated 05.09.2018***

**11.** Assessee bank incorporated in Netherlands with branches in India was registered as scheduled bank in terms of Schedule II of Reserve Bank of India Act, 1934. The main activities of assessee in India comprised of accepting deposits, giving loans, discounting / collection of bills, issue of letters of credit/guarantees, executing forward transaction in foreign currencies for importers/exporters, money market lending/borrowings, investment in securities. The AO during assessment proceedings observed that assessee bank had not recognized interest income in respect of advances which were overdue for more than 3 months in profit and loss account in accordance with RBI guidelines applicable to banks and made addition of interest income on NPA accounts on accrual basis and DRP confirmed the same.The Tribunal held that loan

account becoming overdue and becoming sticky was never disputed and relied on Southern Technologies Ltd in context of allowability of deduction towards 'Provision for NPA', wherein it was stated that interest income on NPA accounts should not be recognized on accrual basis which was in line with RBI prudential norms for income recognition. Further, when account becoming NPA was not disputed by Revenue, recognition of income was to be done only on receipt basis which was in consonance with real income theory. Thus, the Tribunal held that interest income on NPA accounts should not be assessed on mercantile basis and same was to be taxed only on receipt basis.
***Royal Bank of Scotland vs DCIT (Intl Tax)- (2018) 54 CCH 0012 Kol Trib- ITA No. 36 & 1885/Kol/2017 dated***

**12.** The Tribunal held that income did not accrue in the hands of the assessee owing to the precarious financial condition of the debtor notwithstanding that the services were rendered and the income was recorded in the books of account of the assessee during the relevant year and bad debts were claimed in subsequent years when the dispute was settled.
***Bechtel International Inc v DDIT – TS-46-ITAT-2015 (Mum)***

**13.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO on account of overdue interest with respect to non-performing asset (NPA) which was not receivable, noting that the assessee-bank had followed the RBI's directions to first debit the said interest to individual debtor (correspondingly crediting P&L A/c) and then derecognize income (by debiting the P&L A/c). It followed the decision in the case of District Co-operative Central Bank, Eluru Vs. ITO wherein the addition on account of interest on NPA was deleted holding that such interest was to be recognized on actual receipt basis but not on accrual basis.
***ACIT v Guntur Co-operative Central Bank (2018) 52 CCH 0551 VishakapatnamTrib - I.T.A.No.75/Vizag/2016 & C.O. No.36/Vizag/2016 dated 06.04.2018***

*Capital Receipt*

**14.** The Apex Court reversed the High Court ruling and held that the payment of subvention received by assessee from its German parent for recoupment of losses was a non-taxable capital receipt as they were voluntary contribution by parent to its loss making Indian company in order to protect the capital investment of the assessee company.
***Siemens Public Communication Networks Ltd [TS-651-SC-2016] (SLP(C) NO. 8353/2014)***

**15.** The Apex Court held that where the assessee had developed a complex for benefit of its shareholders for which it received a deposit towards its construction the same was not taxable as business income as it was in the nature of capital receipt.
***GS Homes and Hotels P Ltd v DCIT – TS-513-SC-2016- SLP(C) Nos.7857-7858 OF 2012***

**16.** The Apex Court dismissed the review petition filed by assessee-company G S Homes (engaged in real estate business) against its judgment dated August 9, 2016 wherein it had modified the decision of the High Court on the issue of taxability of amount received by assessee on account of share capital from various shareholders towards allotment of flats and held that such amount ought not to have been treated as business income since it was capital receipt.

Go to Index

***G. S. Homes and Hotels P. Ltd [TS-594-SC-2016]***

**17.** Where the assessee received exemption of entertainment duty in Multiplex Theatre Complexes newly set up, for a period of three years, and thereafter payment of entertainment duty at subsidized rate of 25 per cent for subsequent two years under a Subsidy scheme provided by the State Governments, the Apex Court held that since the object of incentive schemes was to encourage development of Multiple Theatre Complexes, incentives provided to assessee (by way of waiver of duty / subsidized duty) would be capital in nature and not revenue receipts. Accordingly, it held that the AO was incorrect in treating the subsidy as a revenue receipt contending that it contributed towards the day-to-day running expenses.
***CIT v Chaphalkar Brothers Pune – TS-589-SC-2017 - CIVIL APPEAL NOS. 6511-6514 OF 2012 dated 7.12.2017***

**18.** Where Tribunal held that amount received by assessee amounted to capital receipt and it did not come from assigning assessee's business right so as to treat same as business income, the Court held that no question of law arose out of order of Tribunal. SLP dismissed.
***CIT v. Om Metals Infraprojects Ltd. [2018] 99 taxmann.com 229/259 Taxman 354 (SC) SLP (CIVIL) Diary No. 24602 of 2018 dated October 5, 2018***

**19.** The Court held the non-compete fees received by assessee-individual (Chairman & MD of a pharma company) from other pharma companies during AYs 1998-99 and 1999-00 to be a non-taxable capital receipt, holding that the knowledge and technical know-how are intellectual properties and when an individual is deprived of using such property in future, the same amounts to capital loss and the income derived would, thus, constitute capital receipt and also noting that the Tribunal had held the non-compete fees received by the pharma company in which the assessee was the Chairman to be capital receipt. It rejected the Tribunal's view that the assessee had transferred all the technical know-how to the said company and thus had not suffered any capital loss as he had no capital available when non-compete agreements were entered into, in absence of any specific material showing the same and thus, held that it would be highly presumptuous for the Tribunal to hold that the appellant had no right to use the technology.
***V.C. Nannapaneni v CIT [TS-88-HC-2018(AP)] – I.T.T.A. Nos.159 and 160 of 2005 dated 05.01.2018***

**20.** Where the assessee received a sum of Rs.16.05 crore as compensation for settlement for loss of its bottling rights from Coca Cola USA, which it claimed to be a non-taxable capital receipt, the Court upheld the order of the Tribunal and held that the said receipt representing a loss of a source of income in itself was a capital receipt on which no tax was to be levied. It observed that as per an agreement with Coca Cola, the assessee was allotted the rights to carry on the bottling in Bangalore but subsequently, Coca Cola, in breach of the agreement, decided to set up its own bottling plant which led to a dispute between the assessee and Coca Cola pursuant to which the assessee received the impugned sum.
***CIT v Parle Soft Drinks - TS-554-HC-2017 (BOM) - INCOME TAX APPEAL NO. 978 of 2014 dated 17.11.2017***

Go to Index

**21.** Where the project receivable was not received for 11 years consequent to which the assessee had written it off as there was no chance of recovery, but however subsequently, the assessee recovered the higher amount due to difference in dollar value at the time of write off and year of recovery, the Court held that excess amount received by assessee on account of exchange fluctuation in relation to foreign projects receivable constituted a non-taxable capital receipt and not revenue receipt on the ground that non-recovery and blockage of funds had transformed it into capital investment.
***SDB Infrastructure Private Ltd [TS-649-HC-2016(CAL)]***

**22.** The Court upheld that Tribunal's order wherein it was held subsidy allowed by State Government on account of power consumption which was available only to new units and units which had undergone an expansion, was to be regarded as capital subsidy not liable to tax.
***PCIT v Shyam Steel Industries Ltd. [2018] 93 taxmann.com 495 (Calcutta) – ITA NO. 37 OF 2018 dated 07.05.2018***

**23.** The assessee, a company wholly-owned by State Govt received an amount as grant-in-aid from the State Govt for payment of salary to its employees, Provident Fund dues and for the purpose of flood relief. The assessee claimed the said receipt to be a capital receipt. The AO disallowed the assessee's claim stating that the funds were applied to items which were revenue in nature & in past, such receipts were treated as revenue receipt. The CIT(A) upheld AO's order. However, the Tribunal observed that though the item heads beared the label of revenue receipt, it was apparent that the intention of the State was to keep the company, facing acute cash crunch, floating and to protect employment in public sector organization. It held that there was no separate business consideration on record of the State Govt & the assessee. Further, relying on the decision in the case of Siemens Public Communication Network (P.) Ltd.[2017] 390 ITR 1 (SC) wherein it was held that the voluntary payments made by the parent company to its loss making subsidiary could also be understood to be payments made in order to protect the capital investment of the assessee-company, the Tribunal in the present case held that the State Govt being 100% shareholder, its position was similar to that of a parent company making voluntary payments to its loss making undertaking. Thus, the Tribunal allowed assessee's claim by holding that the fund received by the assessee-company was to be treated at capital receipt.
***PCIT v State Fisheries Development Corporation Ltd [2018] 94 taxmann.com 466 (Calcutta) – ITAT NO. 19 of 2017 dated 14.05.2018***

**24.** The Court dismissed revenue's appeal against Tribunal's order treating the power subsidy received by the assessee-company from State Government under Power Intensive Industries Scheme, 2005, for setting up a new industrial unit in backward area to be capital receipt, following the decision in the case of Pr. CIT v. Shyam Steel Industries Ltd. [2018] 93 taxmann.com 495 (Cal.) wherein it was held that it is the purpose of the grant under a scheme which is of paramount importance while assessing whether the money received thereunder ought to be treated as a revenue receipt or a capital receipt.
***CIT v Keventer Agro Ltd - [2018] 95 taxmann.com 154 (Calcutta) - ITAT NOS. 175 & 176 OF 2014, GA NOS. 3609 & 3610 OF 2014 dated June 19, 2018***

Go to Index

**25.** The Court held that where the assessee received non-compete fee for not competing in the rubber contraceptive and glove manufacturing industry, the same was to be treated as a capital receipt not liable to tax. It held that where the non-compete fee led to impairment to one of the assessee's sources of income, it was to be treated as a capital receipt. Further, it held that post April 1, 2003, all non-compete money would be taxable by virtue of the introduction of section 28(va) of the Act.
***CIT v TTK Healthcare Ltd – (2016) 96 CCH 026 (ChennaiHC)***

**26.** The Court held that the waiver by the lender of even the principal amount of loan constitutes a "benefit" arising from business and is assessable to tax as income under section 28(iv) of the Act. It held that gain on write off of a loan whether capital or revenue in nature would be recorded in the P&L account and accordingly held that it would be taxable.
***CIT v Ramaniyam Homes Pvt Ltd – (2016) 95 CCH 0147 (ChennaiHC)***

**27.** The Court held that amount received by assessee, running a manufacturing unit in a specified backward area, by way of exemption of sales tax payments under the UP state subsidy scheme was taxable as a revenue receipt. The Court noted that the assessee had the flexibility of using the amounts retained for any purpose, not necessarily capital. Further, the Court observed that under the UP State subsidy scheme, the assessee was allowed to retain the sales tax amounts collected from customers/service users, subject to the quantitative limit of 100% of capital expenditure and that the said quantitative limit indicated therein was only a reference point.
***CIT vs. Bhushan Steels & Strips Ltd. (2017) 83 taxmann.com 204(DelhiHC) (ITA No. 315 of 2003 & others dated July 13, 2017)***

**28.** The Court upheld the Tribunal's order holding the non-compete fees received by assessee from a company wherein the assessee was the Managing Director and an erstwhile JV partner as capital receipt stating that the view of the Tribunal was a plausible one. It rejected Revenue's contention that even before the amendment in section 28 vide the Finance Act 2017, non-compete fees received for not carrying out any activity in relation to profession was taxable as income. It referred to the decision of CIT v. Anjum G. Balakhia (2017) 393 ITR 320 (Guj) wherein the Court had noted the Apex Court ruling in the case of CIT v. Sapthagiri Distilleries Ltd. (2015) 53 taxmann.com 218 (SC) had held that compensation received towards loss of source of income and non-competition fee could be treated only as capital receipts and not liable to tax.
***Pr.CIT v SATYA SHEEL KHOSLA - (2018) 101 CCH 22 (Del HC) - ITA 289/2016 dated 29.01.2018***

**29.** The assessee was engaged in the business of real estate and entered into a consortium agreement with one JMA company to purchase a land and would resell it to other buyer. The JMA company defaulted in its commitment within prescribed and extended time limit thereby leading to the arbitration proceeding and as settlement of dispute, the assessee was awarded huge compensation/damage. The AO as well as CIT(A) regarded this amount as revenue in nature holding that the land for which the compensation/damage was received was a part of stock-in-trade. The Tribunal dissented with AO and CIT(A) and followed CIT v Bombay Burmah Trading Corpn (SC) wherein it was held that 'if there was any capital asset, and if there was any payment made for the acquisition of that capital asset, such payment would amount to a capital

Go to Index

payment in the hands of the payee. Secondly, if any payment was made for sterilization of the very source of profit-making apparatus of the assessee, or a capital asset, then that would also amount to a capital receipt in the hands of the recipient.' Therefore, the Court held that the amount received as compensation for immobilisation, sterilization, destruction or loss, total or partial of a capital asset would be capital receipt and dismissed revenue's appeal.
***PCIT v Aeren R Infrstructure Ltd. (2018) 101 CCH 0189 DelHC(2018) 404 ITR 0318 (Delhi) - ITA 235/2017, ITA 236/2017 dated 25.04.18***

**30.** The Court held that where the assessee, engaged in generating electric power, kept margin money in the form of fixed deposits for procurement of various capital goods for setting up of a power project, the interest earned on the said deposits would be in the nature of capital receipt, not liable to tax, since it was inextricably linked with the setting up of power plant.
***Pr CIT v Facor Power Ltd – (2016) 66 taxmann.com 178 (DelHC)***

**31.** The Court held that the transport subsidy received by the assesse could not be regarded as a revenue receipt since the same was to encourage investment in difficult and far-flung states, stimulate industrial activity in backward region, generate employment opportunities, bring about development in the N.E states and was not for providing higher profits to the assesse. Applying the purpose test the court observed that there could be no straightjacket formula for distinguishing a capital receipt from a revenue receipt and the answer had to be decided on the circumstances of each case.
***Shiv Shakti Flour Mills (P) Ltd [TS-694-HC-2016(GAUH)]***

**32.** The Court held that Explanation 10 to sub-section (1) of s 43 came into effect only from 1.4.1999 that too prospectively and, therefore, had no application in impugned case, more so, when plant itself was set-up in AY 1993-94. It further held that subsidy received against investment was made in backward area where industries were not present hence same was for promotion and that would not reduce value of assets.
***Alpha Lab vs ITO - (2016) 96 CCH 0029 (GujHC)***

**33.** The Court held that sales tax exemption benefit was to be treated as a capital receipt as it was meant for capital outlay for set up of units and expansion / diversification of existing units. Since the issue was squarely covered by decisions of the Court in the case of CIT v Birla VXL Ltd and DCIT v Munjal Auto Industries, it held that no substantial question of law arose and dismissed the appeal of the Revenue.
***CIT v Nirmal Ltd – (2016) 96 CCH 0036 (GujHC)***

**34.** The Court dismissed Revenue's appeal in respect of taxability of non-interest bearing refundable security deposit received by assessee as a revenue receipt since the security deposit recovered from the members at the time of their enrollment as a club member was refundable on occurrence of contingencies mentioned in the Rules, Regulations and Byelaws. Further, merely because the security deposit was not kept apart and/or subsequently the amount of security deposit was utilized for other purposes such as construction and providing amenities at the club, the same would not lose the 'character of deposit'.
***Gulmohar Green Golf and Country Club Ltd [TS-691-HC-2016(GUJ)***

Go to Index

**35.** The Court held that compensation received by assessee company (engaged in the business of diagnostic, lab solutions, chemical research) on termination of Share Purchase agreement (SPA) was a 'revenue' receipt on the ground that assessee was pursuing strategic growth through acquisitions and the intent was not to purchase shares but takeover of business for expansion. As assessee was conscious that no injury would be caused to his business in the event of SPA not being materialized and its non-execution would in no manner impair its revenue, the Court upheld the receipt as 'revenue' in nature by relying on SC rulings in Kettlewell Bullen and Co. Ltd., Travancore Rubber & Tea Co., Gillanders Arbuthnot and Company Ltd, P.H. Divecha and Rai Bahadur Jairam Valji.
***Avantor Performance Materials India Ltd v CIT -TS-173-HC-2016(HP)***

**36.** The Court held that the entitlements earned by the assessee on sale of carbon credits was not taxable as business income as it was a capital receipt since carbon credits were not the business of the assessee and nor were they generated as a by-product of a business activity conducted by the assessee. It held that the said sum was earned on account of concern for the environment and generated on account of employment of good and viable practices by the assessee.
***Subhash Kabini Power Corporation ltd – TS-236-2016-Kar***

**37.** The assesee-company, engaged in construction and development business, received certain amount by way of interest from mobilization advances made by it to contractor for purpose of facilitating smooth commencement and completion of work of construction, said receipt was adjusted against charges payable to contractor and, thus, resulted in reduction of cost of construction. It was held that in view of decision in the case of CIT V. Bokaro Steel Ltd. [1999] 102 Taxmann 94/236 ITR 315(SC), receipts being intrinsically connected with construction business of the assessee would be capital receipt and not income of the assessee from any independent source.
***Roads & Bridges Development Corporation of Kerala Ltd. v. Asstt. CIT [2018] 96 taxmann. com 330/257 Taxmann 392(Ker.) -ITA No. 376 of 2010 dated July 6, 2018***

**38.** The Court held that government grants received by the assessee for developing infrastructural facilities at tourist destinations were capital in nature and therefore not liable to tax since the grants were coupled with an underlying obligation to spend the amounts only on projects for which the grant was released and not for the purpose of day to day expenses.
***CIT v Tamil Nadu Tourism Development Corporation Ltd – TS-431-HC-2016 (Mad) - T.C.A.Nos.321 and 322 of 2016***

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

Go to Index

it rejected the assessee's contention that non-compete fees received was capital in nature and held that the same was chargeable to tax.
***R.Radikaa, Radaan Media Works India Ltd TS-339-HC-2017(MAD)(T. C.A.Nos.1365 of 2007 and 1175 of 2008 dated August 8, 2017)***

**40.** The Court held that the Tribunal did not commit any error in holding that the sales tax subsidy received by the assessee in the form of Sales Tax Exemption was a capital receipt and not a revenue receipt by applying the purpose test laid down in Apex Court decision in Ponni Sugars [2008] 306 ITR 392 (SC) wherein it was held that the character of the receipt in the hands of the assessee had to be determined with respect to the purpose for which the subsidy was given. It was noted that the assessee had received sales tax subsidy for capital invetsment to be made for employment generation.
***CIT Ajmer vs Shri Cement Ltd - TS-243 HC-2018 (Raj) - ITA No.204/2010 dated August 22 2018***

**41.** The Tribunal held that where assessee, engaged in business of power generation, received Carbon credits for activity of using agricultural waste as fuel, since Carbon credits were not being linked with power generation, amount received on transfer of Carbon credits would be capital receipt as the same did not have an element of profit or gain.
***DCIT v Kalpataru Power Transmission Ltd - [2016] 68 taxmann.com 237 (Ahmedabad-Trib)***

**42.** The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order treating security deposit received by the assessee-club from its members at the time of their enrollment as a club member to be capital receipt, as same was in nature of deposit (which was refundable on occurrence of the contingencies mentioned in the Rules, Regulations and Bye Laws) and not in nature of income as observed by AO.
***Dy.CIT vs Gulmohar Green Golf and Country Club Ltd [2018] 53 CCH 0481 (Ahd- Trib) IT APPEAL NO. 51 (AHD.) OF 2017dated August 24 2018***

**43.** The Tribunal dismissed appeal of the Revenue and held that the amount received by the assessee on forfeiture of share warrant application money was a capital receipt and not a revenue receipt as it was not earned from regular business activities carried on by the assessee and hence it could not be included in the total income of the assessee.
***Deputy Commissioner of Income Tax Vs. Mahalaxmi Rubtech Ltd (2017) 49 CCH 0070 AhdTrib (ITA No. 1190/Ahd/2014)***

**44.** Where the assessee had taken loans in foreign exchange for construction of plant and realized a foreign exchange gain on revaluation of loan liability for capital expenditure. The Tribunal relying on the Delhi HC ruling in the case of CIT vs. Jagajit Industries Limited [TS-5787-HC-2009(DELHI)-O] held that the entire gain due to the fluctuation in foreign exchange when the source of funds was for capital expenditure was a capital receipt. Accordingly, it upheld the order of the CIT(A) whereas such addition was deleted.
***ACIT vs. L.S.Cable India Pvt Ltd. TS-58-ITAT-2017(DEL) ITA No.1257/Del/2012 dated 09.02.2017.***

Go to Index

**45.** The Tribunal upheld the CIT(A)'s order accepting the assessee's claim that the entertainment tax subsidy granted by the U.P. State Govt. by way of exemption for 5 years was in nature of capital receipt not chargeable to tax. It relied on the decision of the Apex Court in the case of CIT vs. M/s. Chaphalkar Brothers [Civil Appeal Nos.6513 - 6514 of 2012 (SC)] wherein it was held that though the subsidy was in the form of an entertainment duty via sale of tickets for a limited period but since its utilization was predetermined and granted with an assurance to cover up the cost of construction, the subsidy was an incentive to supplement the construction expenditure of new set up of multiplexes and thus in the nature of a capital receipt. It was noted that in the present case also, the scheme was for promotion of construction of multiplexes for a period of 5 years and the overall quantum of subsidy was limited to the cost of construction. The scheme in the present case also provided that if the cost was recovered prior to 5 years, for rest of the period, the entertainment tax would be leviable.
***DEPUTY COMMISSIONER OF INCOME TAX vs. SHIPRA HOTELS LTD. - (2018) 52 CCH 0288 DelTrib - ITA No. 3095, 3096 & 3094/Del./2014 dated April 2, 2018***

**46.** The Tribunal held that amount received by the assessee for not providing benefit of his skills to any other person in India was a capital receipt and accordingly not taxable. It held that since the assessee was not an employee of the payer but was involved in managing its affairs the sum received would not be taxable as profits in lieu of salary under section 17(3) of the Act. Further, it held that the sum was not in the nature of non-compete fee as well as the payment made was not for not competing with the payer and that Section 28(va) taxes amounts received in relation to business and not profession whereas the assessee was providing professional services.
***Satya Kant Khosla v ITO (ITA No. 882/Del/2015) – TS-664-ITAT-2015(Del)***

**47.** The Tribunal relying on its decision in Assessee's own case and held that any subsidy given to the assessee post accomplishment of the project or expansion there, without any obligation to utilize the subsidy only for repayment of term loans undertaken by the assessee for setting up new units/expansion of existing business, or to liquidate the cost incurred in creating the capital asset or its expansion, is only in the nature of the revenue receipt and is liable to brought to tax.
***Maruti Suzuki India Ltd vs Addnl CIT- (2018) 54 CCH 0095 DelTrib- ITA No 467/Del/2014 dated 17.10.2018***

**48.** The Tribunal held that compensation for breach of promise to provide land to the assessee was not compensation for loss of profits but is for injury caused to the profit making apparatus. Such compensation is a capital receipt not chargeable to tax.
***Aerens Developers and Engineers Ltd vs. ACIT (Delhi Trib)- ITA No. 5054/Del/2011***

**49.** The Tribunal held that consideration received by the assessee on sale of carbon credits was a capital receipt as it was not an offshoot of business and was not generated in the course of business and therefore could not be taxed as business income.
***DCIT v Indur Green Power Pvt Ltd (ITA No 505 & 506 / Hyd / 2015) - TS-447-ITAT-2015(HYD)***

Go to Index

**50.** Assessee-company,engaged in business of manufacture of cement and chemicals ,filed return of income offering incomes under normal computation as well as u/s 115JB (book profit provision). AO completed assessment taxing sales tax incentive received as revenue receipt. The assessee contended that sales tax incentive/remission received by company was capital in nature as sales tax incentive was given by Government of Gujarat under new incentive policy for setting up industries to generate employment. CIT(A) accepted the assessee's contention that the incentive received was capital in nature, however he directed the AO to reduce sales tax subsidy from the cost of assets for purpose of depreciation. The assessee as well as the Revenue challenged the order of CIT(A) to exclude sales tax subsidy. The Tribunal held that subsidy granted by government for purpose of setting up/expansion of mills was capital receipt and such receipt was not to be added to book profit u/s 115JB as well as income computed under normal provisions. Further, following the Coordinate Bench decisions in the case of Bajaj Customer Care Ltd c ACIT [ITA No. 365/Hyd/2009] and ACIT v Shree Cement [ITA No. 614,615 & 635/JP/2010], it held that the subsidy amount could mot be adjusted/restricted from the cost of the depreciable assets.
***Sanghi Industries Ltd & Anr v ACIT & Anr (2018) 52 CCH 0351 HydTrib - ITA No. 979/Hyd/17 dated 20.04.2018***

**51.** The assessee, a company owned by the State Government was handed over the land (which was in the ownership of the state government) for development, management and maintenance. It alloted the land to industrialists in consideration of land premium, advance rent and security deposit etc and the land premium was treated as a capital receipt by the assessee. The AO taxed the same as a revenue receipt. The Tribunal noting that i) the assessee had treated the amount as revenue in nature in the earlier years ii) the assessee was engaged in the business of industrial and infrastructure development upheld the order of the CIT(A) confirming the AOs treatment of land premium as a revenue receipt.
***MADHYA PRADESH AUDYOGIK KENDRA VIKAS NIGAM (INDORE) LIMITED & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - ITA No. 347 to 351/Ind/2013, - 2018) 52 CCH 0212 IndoreTrib dated Mar 21, 2018***

**52.** Where the assessee purchased a machine, which was not performing as per performance parameters set out by machine supplier and as a result assessee received certain amount of compensation, the Tribunal held the same to be a capital receipt not liable to tax.
***DCIT v Xpro India Ltd - [2016] 68 taxmann.com 249 (Kolkata-Trib)***

**53.** The assessee- trust was governed by the Rules of a Scheme formulated by the Bank of India for providing financial assistance to its members, i.e., retired employees of bank, by reimbursing to them medical expenses incurred on their self and his/her dependent spouse. The AO observed that since assessee trust was not registered u/s 12A, donations towards corpus fund received by the assessee were liable to be included in its total income. The Tribunal however held that the corpus donations received by assessee-trust with specific directions by donors to be applied towards specific purpose for which respective fund was created would be treated as capital receipts and, therefore, the same could not be brought to tax, despite fact that assessee-trust was not registered u/s 12A.

Go to Index

***Bank of India Retired Employees Medical Assistance Trust v ITO(E) [2018] 96 taxmann.com 277 (Mumbai - Trib.) – ITA No. 6469 (MUM.) OF 2016 dated July 11, 2018***

**54.** The Tribunal held that the amount received by the assessee as IPS incentive on setting up a new unit in Chakan was in the nature of capital receipt not liable to tax. Noting from the scheme that Industrial Promotion Subsidy (IPS) incentive measured as,lower of eligible fixed capital investment and taxes paid to the State Government within a period of 20 years, was granted to the assessee not for carrying on day-to-day business of the unit more profitably but to intensify and accelerate the process of dispersal of industries from developed areas and for development of under-developed regions of Maharashtra.
***ASSISTANT COMMISSIONER OF INCOME TAX vs. MAHINDRA VEHICLES MANUFACTURES LTD [TS-702-ITAT-2018(MUM)]- ITA Nos.6919 & 6920 dated 28.11.2018***

**55.** The Tribunal held that the corpus fund received by the assessee from a developer on redevelopment was a non-taxable capital receipt and rejected the Revenue's stand that the cash compensation received by assessee was nothing but his share in profits earned by the developer which were essentially revenue in nature, on the ground that the corpus fund was received towards hardship caused to assessee on redevelopment and therefore, outside the ambit of income u/s 2(24), not taxable as a revenue receipt. However, it held that the corpus fund receipt was to be reduced from the cost of acquisition of the asset while computing capital gains on transfer on a subsequent date.
***Jitendra Kumar Soneja [TS-459-ITAT-2016(Mum)] ITA. No. 291/Mum/2015***

**56.** The assessee-company having set up manufacturing units in specified backward area was entitled to incentive in form of exemption from payment of excise duty and it claimed such incentive to have been granted for promotion of industries in backward areas and thus, not chargeable to tax being capital in nature, relying on the decision in the case of CIT v. Shree Balaji Alloys (2017) 80 taxmann.com 239 (SC). The AO did not accept with the contentions of the assessee and taxed the same as revenue receipt. Noting that the authorities below had not analysed terms and conditions of excise incentive scheme, the Tribunal remanded the matter to the AO with the direction to examine this issue afresh by duly considering the terms and conditions of the Excise incentive scheme and information and explanations that may be furnished by the assessee in this regard.
***Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018***

**57.** The Tribunal held that the foreign exchange gain arising on account of holding of Global Depository Receipt (GDR) proceeds which were utilised in India for business was capital in nature since money raised by GDR was against capital equity and, thus, not liable to tax, rejecting AO's contention that since the proceeds were utilised as circulating capital in normal course of banking business, the exchange gain thereon was revenue in nature.
***State Bank Of India v ACIT – (2018) 91 taxmann.com 312 (Mum) – ITA Nos. 4598 and 4736 (Mum.) of 2010 dated 31.01.2018***

Go to Index

**58.** The assessee availed sales tax incentives under Package Scheme of Incentives, 1993 of Government of Maharashtra for setting up of industrial unit. Assessee was continuously claiming this incentive as capital and AO in earlier years treated same as revenue. For the relevant AY under consideration as well, the AO treated the incentive to be revenue in nature. However, the CIT(A) held it to be a capital receipt not chargeable to tax at the hands of assessee. The Tribunal on following the decision of High Court in Reliance Industries Ltd. held that incentive received under Package Scheme of Incentives of Govt. of Maharashtra was capital receipt and not chargeable to tax thereby dismissing revenue's ground of appeal.
***ACIT & Anr v Ballarpur Industries Ltd & Anr (2018) 52 CCH 0340 NagTrib - ITA No. 91/Nag/2011, 92/Nag/2011 dated 16.04.2018***

**59.** Based on various decisions in favour of the assessee and also in view of settled law that there is need for upholding the favourable view if there exists divergent views on the issue, the Tribunal held that the corpus specific voluntary contributions being in nature of 'capital receipt', are outside scope of income u/s 2(24)(iia) and, thus, the same cannot be brought to tax even in case of trust not registered u/s 12A/12AA.
***ITO(Exempt.) v Serum Institute of India Research Foundation – (2018) 90 taxmann.com 229 (Pune Trib) – ITA No. 621 (Pune) of 2016 dated 29.01.2018***

**60.** The Tribunal held that the interest awarded u/s 23(1A) and 23(2) r.w.s. 28 of Land Acquisition Act was in nature of solatium and an integral part of compensation and receipt of the same was a capital receipt whereas, interest awarded u/s 34 of the said Act was on account of delayed payment of compensation and was revenue receipt exigible to tax.
***Dnyanoba Shajirao Jadhav v ITO – (2018) 90 taxmann.com 285 (Pune) – ITA No. 168 (Pune) of 2016 dated 29.01.2018***

*Diversion of income*

**61.** The assessee, a stock broker registered with the Madras Stock Exchange, acted as a broker to the Indian Bank in purchase of securities from different financial institutions. The assessee purchased securities of different PSUs at a rate quoted by the Indian Bank (12.75% interest as against 8% interest quoted by RBI) and sold the same to the Indian Railways Financial Corporation for which the assessee was paid a commission. The assessee declared his income at Rs. 4.85 crores which was denied by the AO who demanded a sum of Rs. 14.74 crores holding that the assessee had not acted as a broker in the transaction rather as an independent dealer and that there was no overriding title in favour of the PSUs with regard to the additional amount earned out of the securities and the case was of application of income after accrual. Criminal proceedings were also initiated against the assessee but the CBI Court acquitted the assessee and held that the relationship between the assessee and the Indian Bank was that of principal-agent and the assessee had acted in the capacity of a broker. The Tribunal denied the evidence produced in the criminal proceeding and held that the assessment and criminal proceeding were different in nature. However, the High Court relied on the evidence given in the criminal case and set aside the order of the Tribunal. The Apex Court held that the CBI Court's findings were based on material and evidence placed on record and there was no reason to reject the same. The Court further held that although the assessee's conduct was not as per

the normal course of conduct but the findings of the CBI Court and the material and evidence placed on record suggested that the assessee had acted as a broker and not as an independent dealer. Accordingly, the appeal of the Revenue was dismissed.
***DCIT v. T. Jayachandran – [2018] 92 taxmann.com 385 (SC) – Civil Appeal Nos. 4341 to 4345 & 4346 to 4357 of 2018 dated April 24, 2018***

**62.** The Court held that where there was no factual basis to claim that the assessee was receiving money from its Joint Venture companies and on the other hand remitting a larger amount to its parent company, it could not be held that the assessee was depressing its income.
***Pr CIT v McDonalds India Pvt Ltd – (2015) 94 CCH 0085 Del HC***

**63.** Where assessee-company entered into an agreement with Diageo India, whereby it agreed to manufacture and sell alcoholic products under control and supervision of Diageo India, in view of fact that assessee held Excise Licence in its name from state for manufacture and sale of liquor, where Diageo India had no privity or locus, distributable surplus paid to Diageo India did not amount to diversion of income at source by 'overriding title ' in favour of Diageo India. It was held that terms of agreement were intelligently derafted so as to give a make-believe impression that the assessee was a mere job worker doing bottling work only. However, on a closer and deeper scrutiny, it was nothing but a devious diversion, falling short of legal prerequisites for taking it out of ambit and charge of Income tax Act in hands of the assessee. Income was generated out of liquor business had to be first taxed in hands of Excise Licensee (i.e. assesee) and after payment of Income Tax, 'distribution of surplus' between both parties was their discretion.
***Pr. CIT v. Chamundi Winery & Distillery [2018] 97 taxmann.com 568 (Kar)- ITA Nos. 458 of 2013, 467 of 2015, 155 of 2016 & 172, 173 of 2017 dated September 25, 2018***

**64.** The Court noting that the assessee, a joint venture between two companies was formed merely for the purposes of submission of tender for the construction of railway tunnels and that i) the contract obtained thereon was executed by the JV members and not the assessee and ii) the income received from the contract was allocated to the JV partners (in the ratio of 97:3), allowed the assessee's appeal. Relying on the decision of the Apex Court in Sitaldas Tirathdas, it held that the railway contract receipts was not income of assessee, but was a diversion of income by overriding title. Accordingly, it held that no income accrued to assessee. Separately, it held that the amendment to Section 40(a)(ia) vide Finance Act, 2012 inserting proviso to Sec. 40(a)(ia) [which states that once tax is paid by payee, deductor cannot be treated as assessee-in-default] was retrospective in nature and therefore the amount allocated / distributed by the assessee to JV partners could not be disallowed u/s. 40(a)(ia).
***Soma TRG Joint Venture [TS-405-HC-2017(J & K)] ITA No.34/2013 c/w ITA No.18/2010 ITA No.19/2010 ITA No.52/2013 dated 15.09.2017***

**65.** The assessee engaged in the real estate business received an advance of Rs.8 crore from SIDCPL which it used to purchase land from HDFC Ltd. Since it could not repay the advance to SIDCPL, it entered into an MoU with SIDCPL wherein it undertook to distribute 87.12 percent of the profits arising on sale of the developed land to SIDCPL while retaining the balance and contended that the 87.12 percent of profits distributed by it was not taxable as its income as it

amounted to diversion of profits by overriding title. The Tribunal noted that when the advance was given to the assessee there was no obligation on the part of the assessee to part with any of the receipts or even profit from the sale of such land and it was only when the assessee could not repay the advance to SIDCPL as agreed to and the assessee entered into an MOU to assign/nominate 87.12% of the share in the profit and therefore it was not a case of diversion of income by overriding title but was application / appropriation of income by the assessee. Further, it noted that as per the MOU only the profits were to be shared and losses, if any were not to be shared and therefore held that if there was an obligation at the source, then the losses arising also would get shared. It also noted that in the earlier years, even though the MOU was prevalent, the assessee had not parted with the share of income and reflected the entire amount as its own income. Accordingly, it held that the entire income received by the assessee during the year was taxable in its hands.

***ITO v Kamineni Builders - TS-574-ITAT-2017(HYD) - 149/Hyd/15 & 1486/Hyd/16 dated 30-11-2017***

**66.** The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO to assessee's income on account of Staff welfare fund being 9% of service charges earned by assessee, following the Tribunal's order for earlier year in assessee's on case wherein it was held that the contribution towards staff welfare fund was based on resolution of board of directors of assessee held on 05.12.1979 and by virtue of that resolution there was diversion of income by over riding title at source on service charges received by assessee.

***ITO v WEST BENGAL TOURISM DEVELOPMENT CORPORATION LTD. – (2018) 61 ITR (Trib) 0728 (Kol Trib) – ITA Nos.1538 to 1540/Kol/2014 dated 03.01.2018***

**67.** Where, during the relevant year, the Assessee-Trust, settled by IL&FS Trust Co. Ltd, filed its return of income declaring total income at Nil, showing interest income of Rs. 21,49,72,486/-, from Yes Bank on behalf of 7 mutual funds to whom it had issued pass through certificates which was disclosed under the head "other income" and also reflected a deduction of the same amount on account of Distribution to the mutual funds / Beneficiaries and the AO sought to bring this interest income to tax in the Assessee's hands contending that the Assessee was not a genuine Trust as the contributor and the beneficiaries were the same, hence Sec 160/161(1) was not applicable & 2) Assessee's activity was in the nature of business and therefore Sec 161(1A) was attracted, pursuant to which Assessee was assessable as AOP and taxed at maximum marginal rate, the Tribunal held that the Assessee was a valid trust as all the necessary ingredients for the formation and existence of the trust were fulfilled and further the securitization process was carried out in accordance with RBI Guidelines. It also accepted the contention of the Assessee that interest received from Yes Bank was for and on behalf of the MFs [whose income is exempt u/s 10(23D)] and hence was not chargeable to tax in Assessee's hands in terms of provisions of Sec 160(1)(iv)/161(1) which was applicable to a trustee as a representative Assessee. Further noting that the Assessee-Trust was a revocable Trust, it held that the income would be taxed in the hands of the beneficiaries, i.e. MFs who purchased PTCs from the Assessee Trust and further that irrespective of whether the Assessee was regarded as a 'Trust' or an 'AOP', the doctrine of "diversion at source by overriding title" would apply so as to render the amount not taxable as Assessee's income as even before the money was to flow to the Assessee, it was always clearly intended to be passed on to and only to the

beneficiaries, i.e., the PTC holders in proportion to their interest in the receivables (underlying assets). Accordingly, it ruled in favour of the Assessee.
***Indian Corporate Loan Securitisation vs. ITO [TS-71-ITAT-2017(Mum)] (ITA No. 3986/Mum/2013 dated 17.02.2017)***

*Taxable in the hands of?*

**68.** The assessee company was following mercantile system of accounting. Trade mark and marketing assistance fee was paid by Telelink Nicco to the assessee. The Assessing Officer found that assessee did not credit fee. The Assessing Officer treated income as accrued and added it to income of the assessee. The Court held that, it was found from records that assessee had agreed for deferment of fees. Accordingly, original agreement was modified between assessee and Telilink Nicco for payment of fee and income did not accrue in relevant year. Since accrual of income was deferred prior to closing of accounting year and as right to receive fee was suspended, addition of income was not justified.
***CIT v. Nicco Corpn. Ltd. [2015] 62 taxmann.com 205/234 Taxman 671(Cal.)***

**69.** The Court relying on its decision for the earlier year in the case of the assessee held that maintenance charges received by the assessee was to be treated as its income and rejected the assessee's contention that the maintenance charges received was not its income since the amount was received in trust for specific performance on behalf of the members. Since the assessee had shown the amount of ground rent and maintenance charges together in the balance sheet, it restored the matter to the file of AO to determine the amount of maintenance charges.
***Pr. CIT vs. Delhi State Industrial Infrastructure Development Corp. Ltd. (2017) 99 CCH 0187 DelHC (ITA No. 375/2015 dated August 17, 2017)***

**70.** The Court dismissed assessee's appeal against Tribunal's order confirming taxation of capital gains arising on sale of a property in the hands of the assessee against the assessee's claim of taxing the same in the hands of HUF of which he was the Karta, noting that (i) sale deed was executed by assessee in his individual capacity and not as 'karta' of HUF (ii) in sale deed, PAN of assessee in his individual capacity had been given and not PAN of HUF (iii) in earlier years, property in question had not been shown as owned by HUF and (iv) sale consideration had also not been deposited in HUF's bank account.
***Janak Kanakbhai Trivedi v ITO [2018] 96 taxmann.com 278 (Gujarat) - R/TAX APPEAL NO. 842 of 2018 dated July 16, 2018***

**71.** The Tribunal dismissed the Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO towards interest accrued on FDRs credited to Infrastructure Development Fund Account maintained by the assessee-authority, established under provisions of the Uttar Pradesh Planning and Development Act, 1973, relying on the Tribunal's order in the assessee's own case for earlier year wherein it was observed that the interest receipts are at the disposal only in accordance with Government directions on disposal of the funds relating to infrastructure development and these earnings only add up to the corpus. It was also noted that Saharanpur Development Authority and assessee were statutory authorities which were established under

Go to Index

provisions of the Uttar Pradesh Planning Development Act, 1973, governed by same rules of Government of U.P. and the Delhi High Court in the case of Saharanpur Development Authority vs. CIT [ITA No. 132/Del/2009] had observed that interest earned by investing the surplus fund in banks belonged to state administration and not to the assessee and the same could not be included in the income of the assessee.
***ACIT & ANR. vs. FIROZABAD SHIKOHABAD DEVELOPMENT AUTHORITY & ANR. – (2018) 52 CCH 84 (Agra Trib) – ITA Nos. 270/Agra/2016, 170/Agra/2015 dated 25.01.2018***

**72.** Where assessee-law firm, following cash system of accounting, received certain advance payments from its clients for making payment of fees to Senior Advocates to appear on behalf of them before High Courts and Supreme Court, the Tribunal held that since said amount was received by assessee in fiduciary capacity to discharge certain obligations while representing case of its clients before various courts, same could not be brought to tax as assessee's income.
***Associated Law Advisers v ITO - [2017] 87 taxmann.com 148 (Delhi - Trib.) - IT APPEAL NOS. 5336 & 5846 (DELHI) OF 2014 dated 08.11.2017***

**73.** Where pursuant to search and seizure, the AO made an addition on substantive basis in the hands of an overseas company [which was resident in India under Section 6(3)], the Tribunal held that the AO was unjustified in making a similar addition on protective basis in the hands of the assessee merely because her husband owned 50 percent of the share capital of the overseas company and the overseas company did not admit to the jurisdiction of India and did not file a valid return. Further noting that the AO had also made a similar addition on protective assessment in the hands of the assessee's husband it held that there was no justification in making the same addition in the hands of three people. It further noted that the CIT(A), in the assessee's husband's case, deleted the entire protective addition, and accordingly concluded that the addition made in the assessee's case also ought to be deleted.
***Smt Mala Kalsi – TS-573-ITAT-2017 (Del) -ITA Nos. 5026, 5027, 5029, 5030, 5031 & 5032/DEL/2015 dated 01.12.2017***

**74.** Where assessee's father died intestate leaving behind certain ancestral properties which assessee inherited u/s 8 of the Hindu Succession Act and the assessee contended that the property actually belonged to the HUF and was held by him as Karta of the HUF, the Tribunal held that the said properties devolved on assessee in his individual capacity and not as Karta of HUF and accordingly income from these properties would be assessable in assessee's hands in his individual capacity.
***Mahaveer Yadav v ITO – (2018) 91 taxmann.com 476 (Jaipur Trib) – ITA No. 209 (JP.) of 2017 dated 27.02.2018***

**75.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made towards income from sale of constructed building in hands of assessee-company, noting that (i) the assessee only acted as SPV (Special Purpose Vehicle) for construction with the funds provided by its Parent Co, (ii) the assessee itself neither had resources nor the manpower and expertise to carry out the construction activity (iii) income from the sale of said building had already been assessed and taxed in the hand of its Parent Co and therefore taxing the same again in the hand of the assessee would result into double taxation.

Go to Index

***ITO v Kidderpore Holdings Limited [TS-539-ITAT-2018(MUM)] – ITA No.377/MUM/2016 dated 23.08.2018***

**76.** Where in July 2008, SAIL awarded the contract for installation of cooling pads, pliers and other equipments to the consortium of assessee (a company incorporated under the law of Czech Republic and engaged in steel production and supply of heavy machinery) and BEC (a company incorporated in India), the Tribunal observed that there was a clear demarcation in the work and cost between the consortium members and also noted that the contract provided for consideration to be paid member-wise as well as component-wise and accordingly held that the contract was clearly divisible and therefore the consortium comprising of assessee and BEC, could not be treated as AOP
***DCIT vs Vitkovice Machinery A.S-TS-497-ITAT-2017(Mum) ITA No. 1673/mum/2015 dated 27.10.2017***

*Pre-operative / Pre-commencement Income*

**77.** The common rationale that is followed is that if any surplus money that is lying idle and has been deposited in the bank for the purpose of earning interest then it is liable to be taxed as income from other sources but if the income earned is merely incidental and not the prime purpose of the act which has resulted in the accrual of the additional income then the same is not liable to be assesseed and can be claimed as deduction. The Apex Court applying the above mentioned rationale held that the interest income from the share application money was not taxable income and was inextricably linked with requirement of company to raise share capital and was therefore liable to be set off against public issue expenses.
***CIT v. Shree Rama Muti Tech Ltd. - [2018] 92 taxmann.com 363 (SC) – Civil Appeal Nos. 6391 & 8336 of 2013 dated April 24, 2018***

**78.** The Court held that Interest income earned on amount of deposit kept with bank for purpose of opening letter of credit, which was made out of funds received (from NRI promoters) for purpose of plant and machinery would not be taxable as income from other sources and would be reduced from the cost of asset on the ground that any income earned on such deposit arose out of funds which were for the purpose of investment in plant and machinery and therefore was incidental to acquisition of assets for setting up of plant and machinery.
***Steel Co Gujarat Ltd. vs. ITO (2016) 97 CCH 0096 GujHC (Tax Appeal No.893 of 2006)***

**79.** The Court upheld the Tribunal's order wherein, following the decision of the Hon'ble Supreme Court in the case of CIT v. Bokaro Steel Ltd. [1999] 102 Taxman 94 (SC), the Tribunal had held that the interest income earned by assessee-company, engaged in construction activities, on bank deposits made out of share capital could not be taxed as 'Income from other sources' as the said interest income was earned prior to commencement of operations of company during construction period and thus was on capital account. It was held that the interest income would go to reduce capital cost of project and was eligible for deduction against public issue expenses incurred by company.
***Pr.CIT v Bank Note Paper Mill India (P.) Ltd. - [2018] 95 taxmann.com 158 (Karnataka) - IT APPEAL NO. 690 OF 2017 dated June 21, 2018***

Go to Index

**80.** Where mobilization advance given to the contractor by the assesse for the purpose of contract work of laying down the railway line and the same was intrinsically connected with the capital expenditure of the appellant prior to the commencement of its business, the Tribunal held that the interest income earned by the assessee on mobilization advance which was later adjusted against charges payable to the contractor and which had gone on to reduce the cost of construction, was rightly treated by the assessee as capital receipt and not income from other sources. Tribunal, accordingly, deleted the addition of the same and allowed appeal of the assessee.

***Angul Sukinda Railway Ltd. V. Income Tax Officer - (2017) 49 CCH 0149 CuttackTrib (ITA No. 197/CTK/2016)***

**81.** Where the assessee engaged in the development of commercial complexes, had purchased property which was earlier tenanted and earned rentals from the tenants during the course of eviction of the tenants, the Tribunal held that the rent received by the assessee, being inextricably linked to business of development of commercial complexes, was correctly set of against the work in progress and was not taxable as income from other sources as alleged by the AO.

***DSL Infrastructure and Space Developers P Ltd v ITO – (2017) 51 CCH 0373 Hyd Trib – ITA No 319 to 322 / Hyd / 2017 dated 17.11.2017***

**82.** The Tribunal held that interest income from fixed deposits could be netted off against pre-operative expenses incurred by the assessee in connection with setting up of its project where the investment in fixed deposits was made using the temporary surplus funds raised solely with the intention of utilizing them in setting up its project. Accordingly, it held that income derived during pre-commencement phase could not be regarded as revenue in nature so as to be taxed in the year of receipt / accrual but must be allowed to be netted off against expenses incurred during pre-commencement stage and only net expenditure, if any, should be considered to be pre-operative in nature requiring capitalization.

***SHRISTI HOTEL PVT. LTD. vs. DCIT (2018) 53 CCH 0372 KolTrib - ITA No. 395/Kol/2018 dated July 18, 2018***

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

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

**84.** Where the assessee, engaged in the setting up of power projects required certain desired net-worth, pursuant to which the assessee's parent had stepped in and invested funds in assessee's shares, out of which certain amount was temporarily parked in FDs from which the assessee earned interest income, the Tribunal relying on the decisions of the Apex Court in Challapalli

Sugar Mills (citation) and Bokaro (citation), held that such interest earned by assessee being integrally and inextricably linked with setting up of power project, was a capital receipt which was to be set-off against pre-operative expenditure and was not taxable as income from other sources. It distinguished Revenue's reliance on the Apex Court ruling in Tuticorin Alkali Chemicals & Fertilizers Ltd. observing that in that case, the surplus funds available out of borrowed funds was invested in fixed deposit during the pre-construction period whereas in the assessee' case the fund invested in fixed deposits was inextricably linked to setting up the power project.

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

*Principle of Mutuality*

**85.** The Apex Court held that non-occupancy charges received by assessee-cooperative society from its members utilised for mutual benefits towards maintenance of premises, repairs, infrastructure and provision of common amenities, would be governed by doctrine of mutuality and, thus, same were not exigible to tax.

***ITO v Venkatesh Premises Co-operative Society Ltd - [2018] 91 taxmann.com 137 (SC) - CIVIL APPEAL NOS. 2706 OF 2018 dated MARCH 12, 2018***

**86.** The Court held that contributions received by assessee (an association of air cargo agents) was not chargeable to tax merely because assessee invested surplus amount in mutual funds and rejected the Revenue's contention that investment in mutual funds not being assessee's object, the concept of mutuality was inapplicable and thus, contribution received from members was exigible to tax even though it was used to achieve assessee's objectives. It relied on coordinate bench ruling in Common Effluent Treatment Plant (Thane-Belapur) Association and distinguished Revenue's reliance on the Apex Court ruling in Bangalore Club by holding that in the said case, even though the Apex Court held that complete identity between contributors and participants was ruptured as soon as the excess fund were invested in bank fixed deposit, what was brought to tax was only interest on fixed deposit and not the entire contribution from members, and that in the assessee's case the income from mutual fund investment had already been offered to tax.

***CIT v Air Cargo Agents Association of India - TS-194-HC-2016(BOM)***

**87.** The Tribunal deleted the addition made by the AO and enhanced by the CIT(A) with respect to interest income earned by assesse-AOP from four banks, where the lower authotities had held that the said income would not fall within the ambit of Principle of Mutuality and would therefore be exigible to tax in hands of the assessee-AOP. It was noted that the Tribunal in the first ground of appeal had deleted the said addition and had restored only the issue of allowability of expenses to AO. Thus, the Tribunal (in second ground of appeal) held that AO and CIT(A) had failed to follow order of Tribunal and had exceeded their jurisdiction in making / enhancing addition. Accordingly, it deleted the entire addition made by the AO which was enhanced by CIT(A).

***SWARN JAYANTI RAIL NAGAR FLAT OWNERS ASSOCIATION vs. ITO (2018) 53 CCH 0335 DelTrib – ITA No. 2705/Del./2018 dated 13th July, 2018***

Go to Index

**88.** The Tribunal followed the co-ordinate bench decision of earlier year in assessee's own case and remanded the issue of taxation of interest income received on Fixed deposits with banks back to the AO for fresh adjudication where the assessee, a non-profit making company, claimed that it was catering to the needs of its members only and, thus, in view of the principle of mutuality, the said income was not taxable in its hand. The Tribunal noted that the lower authorities had not adjudicated upon material aspects viz. (i) whether there was a complete identity between the contributors and the participants; and (ii) whether trading had taken place between persons who were associated together and who contributed to a common fund for the financing of some venture or object to the exclusion of any dealings or relations with any outside body.

***POWERLOOM DEVELOPMENT & EXPORT PROMOTION COUNCIL v CIT(E) - (2018) 53 CCH 0392 MumTrib - ITA No. 1185/Mum/2017 dated July 20, 2018***

*Method of Accounting*

**89.** The Apex Court upheld the order of the High Court wherein it was held that if the basis for arriving at the valuation of closing stock is changed by the AO without correspondingly changing the valuation of the opening stock then it results in charging income on a distorted figure which is not permissible in law.

***CIT v Motor Industries – TS-671-SC-2015***

**90.** The Apex Court dismissed SLP against the HC ruling that where assessee had not given cogent reasons for suffering huge loss while most of assessees in said line of business had declared positive income, assessee's books of account was rightly rejected and income was rightly estimated by applying net profit rate on basis of similarly situated identical cases.

***Raja Ram Rajendra Bhandari & Party (Ajmer Group) vs CIT [2018] 97 taxmann.com 348 (SC)- SPECIAL LEAVE TO APPEAL (c ) Nos.38999 of 2016 dated August 20 2018***

**91.** The assessee declared a loss of Rs. 70.24 lakhs and claimed a deduction of Rs. 1.65 crores as lease equalization charges. The assessee relied on the Guidance Note issued by the ICAI for claiming deduction on account of lease equalization charges from lease rental income. The AO disallowed the deduction claimed and added the same to the income of the assessee which was further upheld by the CIT (A). The Tribunal allowed the deduction of lease equalization charges which was further upheld by the High Court. The Apex Court on an appeal by the Revenue decided in favour of the assessee and held that the IT Act was silent on such deduction and therefore the assessee had to take recourse of the method given under the Guidance note prescribed by the ICAI to show the fair and real income which is liable to be taxed under the IT Act. The Court further held that the rule of interpretation makes it clear that when an internal aid is not available for the proper interpretation of the statute, the Court can take help of an external aid and the meaning could be taken as prevalent in common parlance.

***CIT v. Virtual Soft Systems Ltd. – [2018] 92 taxmann.com 370 (SC) – Civil Appeal Nos. 4358 to 4376 of 2018 dated April 24, 2018***

Go to Index

**92.** The Supreme Court granted Revenue's SLP against High Court order wherein the High Court had opined on the method of accounting with relation to bogus purchases assessed under section 153A for an assessee company deriving its income from manufacturing of jewellery and trading in gemstones. The Court had ruled that since average gross profit (GP) rate in assessee's industry was 12 per cent, where ever profit of assessee was more than 12 per cent, same would not be refunded to assessee but where it was less than 12 per cent, income would be assessed on basis of 12 per cent GP.
***CIT vs Clarity Gold (P) Ltd- (2018) 99 taxmann.com 47(SC)- SLP No 29307 of 2018 dated 24.09.2018***

**93.** The Court dismissed appeal of the Revenue wherein the Revenue contended to value closing stock of sugar of the manufacturer assessee at the rates applied for levy free sugar instead of levy sugar. The Court upheld the valuation made by the assessee which was duly certified by the Tax Auditor and held that the stock of levy sugar could not have been valued at free sale sugar price in view of the fact that there was a legal obligation on the assesse to supply such stock of sugar at controlled levy price through public distribution system.
***Principal Commissioner of Income Tax vs. Kishan Sahkari Chini Mills Ltd. (2017) 98 CCH 0090 Allahabad HC (ITA No. 35 of 2016)***

**94.** The Court allowed Revenue's appeal against Tribunal's order upholding the CIT(A)'s order wherein the CIT(A) had directed the AO to determine whether excise duty had been paid/incurred or not by the assessee-manufacturer and recompute value of closing stock accordingly. The AO had made addition on account of excise duty not included in value of closing stock of finished goods (which had otherwise resulted in lower profits for the year). The Court held that excise duty becomes payable, the moment excisable goods were manufactured as the taxable event u/s 3 of the Cental Excise Act was manufacturing or production of the excisable goods and it would be immaterial whether the assessee had paid the excise duty or not for the purposes of arriving at the correct valuation of the closing stock.
***CIT vs. CHHATA SUGAR COMPANY LTD. (2018) 102 CCH 0124(Allahabad HC) - ITA No. 140 of 2007 dated 16th July, 2018***

**95.** The Court held that where assessee, engaged in business of land development, had been consistently following mercantile system of accounting in respect of all its projects, assessee was not justified in adopting cash system of accounting in respect of only one project.
***Ace Real Estate & Developers v. Asst. CIT- [2018] 100 taxmann.com 228 (Bom)-ITA NO. 452 of 2016- dated November 19, 2018***

**96.** The Court held that foreign exchange loss relating to purchase and sales transactions was not a "notional" or "speculation" loss and was allowable as a deduction in light of the decision of the Apex Court in Woodward Governer India Ltd. It held that the CBDT's Instruction No. 3 of 2010 which deals with foreign exchange derivative transactions (forward contracts) was not applicable to cases of losses in dealings with foreign exchange.
***CIT v M/s Vinergy International Pvt Ltd – ITA No 376 of 2014 (Bom)***

Go to Index

**97.** Where assessee billed the license fees receivable for the calendar year in January but accounted its income to the extent it was attributable for period January to March in year and offered the balance to tax in subsequent assessment year, the Court held that since obligation in respect of license fees billed for entire calendar year was yet to be discharged at end of previous year, the same would be due only in the next previous year related to the next assessment year. Accordingly, it rejected AO's contention that as assessee was following mercantile system of accounting, it should have accounted entire income billed for tax in relevant assessment year.

***Pr.CIT v C.U. Inspections India (P.) Ltd. – (2018) 91 taxmann.com 344 (Bom) – ITA No. 620,622 & 711 of 2015 dated 22.01.2018***

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

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

**99.** The Court set aside the Tribunal's order for AY 1990-91 wherein the Tribunal had rejected the assessee's method of valuing the closing stock of shares and securities in the income tax return at lower of market value or cost as against the valuation on cost basis in books of account. The Court noted that during relevant AY, the assessee-bank had invested a proportion of its investment in shares and securities of public limited companies under RBI directions and had treated such investment as stock in trade. It relied on the decision of United Commercial Bank v CIT (1999) 8 SCC 338 wherein the Apex Court had stressed on the determination of real income rather than theoretical principles of accountancy, for the purposes of arriving at taxable income and thus held that the assessee could value the securities and shares at cost or market price to show real income.

***United Bank of India v CIT - [TS-355-HC-2018(CAL)] - ITR No.19 of 1999 & ITR No. 7 of 2000 dated June 27, 2018***

**100.** Where method of accounting followed by the Assessee was "Project Completion Method" as against "Percentage of Completion Method" reflected in the orders passed by the Assessing Officer, the Court held that the mere fact that there does exist a method of accounting for profits of each year was no justification for rejecting an equally recognized method of accounting whereby the profits of the project were determined when the whole project was completed. The Assessing Officer having not drawn any finding that the accounts of assessee suffered from any defect nor that from the method of accounting followed by assessee, true/correct profits of assessee could not be deduced and the assessee having been following the "completed project" method consistently, which being recognized method of accounting, the assessee's method of accounting could not be rejected. The Court, accordingly, upheld order of the Tribunal and dismissed Rrevenue's appeal.

***Principal Commissioner of Income Tax v. Santha Build-Tech India Pvt. Ltd - (2017) 98 CCH 0143 ChenHC (TCA Nos. 161 to 164 of 2017)***

Go to Index

**101.** The Court, in order to preserve the constitutionality of ICDS, restricted the power of Central Government to notify ICDS so as to ensure that they do not override binding judicial precedents or provisions of the Act. It Struck down ICDS I, II, III, VI, VII, Part A of ICDS VIII as ultra vires of the Act/contrary to settled position of law as laid down by Supreme Court and relying on a catena of Apex Court decisions, observed that a tax cannot be levied by way of an executive action. It further held that tax could not be levied by way of administrative instructions as observed by the Supreme Court. It held that Section 145(2) does not permit changing the basic principles of accounting changing the basic principles of accounting unless corresponding amendments are carried out to the Act itself.

***THE CHAMBER OF TAX CONSULTANTS & ANR vs UNION OF INDIA & ORS-TS-499-HC-2017(DEL)- W.P.(C) No. 5595/2017 dated 08.11.2017***

**102.** The AO had primarily rejected assessee's books on the ground of declaring net loss for the current AY as against net profit shown for previous AY and the AO further rejecting books of accounts computed taxable income by applying 4% gross profit ratio.The Court ruled that fall in gross profit ratio could be due to various reasons and cannot be sole and only ground to reject books of accounts so as to frame best judgment assessment. The assessee in the present case had acquired informatic division from Crompton Greaves with objective of consolidating similar types of business under one company and as per terms, assessee had agreed to take over future liability of division towards unexpired warranty and AMC. The AO disregarded the assessee's submission and rejected books of account on grounds that no opening or closing stock was declared and assessee had written back substantial amount and had also claimed provision for doubtful advances. The Court concluded that since the books of account were not rejected by AO as unreliable on grounds of transaction omission, or proper particulars and vouchers were missing or that method of accounting deployed was not regularly followed or it was not possible to deduce profit and gains from method deployed, rejection of books of account was unjustified. Accordingly, thereason given in the assessment order on hypothetical basis was contrary to well settled law and revenue's appeal was dismissed.

***PCIT vs IBILT Technologies- (2018) 98 taxmann.com 255 (DelhiHC)- ITA No 995 of 2018 dated 12.09.2018***

**103.** The Court upheld the Tribunal's order wherein it was held that where assessee, engaged in construction business, was following project completion method, its income could be brought to tax only in year when sale deeds of units sold were registered even though sale consideration might have been received earlier from buyer.

***CIT v Happy Home Corporation [2018] 94 taxmann.com 292 (Gujarat) – R/TAX APPEAL NO. 465 OF 2018 dated 09.05.2018***

**104.** The Court held that where the assessee did not produce supporting vouchers for expenses, details of purchases and stocks the AO was justified in adopting of an estimated net profit rate of 9 percent on gross receipts, since the AO was not able to verify various details such as wages, salaries, general expenses and other expenses.

***SP Construction v ITO – (2016) 68 taxmann.com 334 (Punjab & Haryana)***

Go to Index

**105.** The Tribunal held that excise duty paid but not included in the purchases, shown in the balance sheet as excise duty recoverable could not be reason to make any addition in income of the assessee. It held that merely because the Central Government had not notified accounting standards to be followed by the assessee it could not be stated that Accounting Standards or the Guidance Notes issued by the ICAI could not be adopted as the accounting method by an assessee.
***ACIT v Kiran Industries Pvt Ltd – (2015) 45 CCH 0036 Ahd Trib***

**106.** Taking note of the huge outstanding dues to the assessee from a debtor with no signs of either payment or improvement in financial position of the said debtor, the assessee took a decision to recognize revenue from the said debtor on cash basis. Such a change in method of accounting was not accepted by the AO. Noting that the assesee had furnished detailed explanations for conversion of revenue recognition, the Tribunal held that the assessee company had satisfactorily explained circumstances under which it was forced to change mode of revenue recognition from mercantile system of accounting to cash basis and there was no loss to revenue due to such change, thus, the assessee was allowed to make the said change.
***Delhi International Airport (P.) Ltd. v DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April 19, 2018***

**107.** The Tribunal granted the assessee (a partnership firm engaged in real estate business) deduction with respect to compensation damages (determined under arbitration award in August, 2005) for failure to deliver the property within time-frame stipulated in the JDA even though the same was quantified in the subsequent year. It rejected Revenue's stand that since the time period for delivery of the constructed area was to expire only on March 10, 2006, the liability was not crystallized as on March 31, 2005 and held that the case relates to transfer of constructed area and not sale of goods. It also clarified that even though the event of determining final amount of compensation happened after closing of AY 2005-06, as per Accounting Standard 4 (AS 4) on 'Contingencies and Events Occurring after the Balance Sheet Date' as well as the prudent and conservative accounting principle such contingencies ought to be taken into account. It distinguished Revenue's reliance on Kerala High Court ruling in Asuma Cashew Company wherein the assessee had denied its liability to pay damages and held that in the present case assessee had not denied the liability towards damages in the event of failure to honour its obligation. Thus, the Tribunal concluded that the liability to pay compensation was crystallized when assessee accepted its failure to perform its part under the agreement and thus determination of compensation after the balance sheet date had to be taken into account in view of the principle of prudence and conservatism as well as per AS-4.
***Canara Housing Development Company vs. JCIT - TS-185-ITAT-2017(Bang) - I.T. A. No.193/Bang/2014 dated 12.05.2017.***

**108.** Where the Assessee was engaged in the business of Rice Shelling, the AO rejected the books of accounts and made an addition by adopting GP ratio of 15% for manufacturing goods and 3% for trading goods. While doing so, the AO did not categorically state the basis for arriving at the GP ratios. The CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of the Apex Court in Kachwala Gems Vs. JCIT (288 ITR 10) wherein it was held that estimation of GP should be honest and fair and should not be arbitrary, though it contained certain degree of

guess work. Thus, keeping in view the profits declared by the Assessee and estimation done by the AO and keeping in view the history and earlier profits declared by the Assessee, the Tribunal estimated the GP at 2% for trading goods and 12% for manufacturing goods. Thus, the Assessee's appeals were allowed.
***KRISHNA GRAM UDYOG SAMITI & ANR. vs. DCIT & ANR. (CHANDIGARH TRIBUNAL) (ITA Nos. 287, 288, 1438 to 1442/Chd/2017, 1327 TO 1333/Chd/2017) dated May 25, 2018 (53 CCH 0134)***

**109.** Where AO made addition to the assessee's income valuing the closing stock of packing materials representing scrap based on the scrap sales made in subsequent years, the Tribunal deleted the addition observing that while valuing the scrap as above, the AO had ignored the principles of valuation of stock as enumerated in AS 2 issued by ICAI which is also mandated to be followed u/s. 145A i.e. valuing the stock at cost or net realizable value, whichever is lower.
***Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (Chen Trib) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018***

**110.** The Tribunal held that where assessee had been maintaining a mercantile system of accounting expenditure incurred by assessee on replacement of tools was to be allowed as revenue expenditure in accordance with revised Accounting Standard (AS) 2 and (AS) 10.
***Ucal Machine Tools (P) Ltd v ITO – (2016) 71 taxmann.com 230 (Chennai – Trib) - IT APPEAL NOS. 797 & 798 (MDS.) OF 2016***

**111.** The AO rejected assessee's books of accounts by invoking provisions of section 145 (on the ground that the assessee had not maintained proper books of account for its business activities) and estimated the profits at 1% of turnover (as against 0.06% declared by assessee), which was subsequently reduced to 0.5% of turnover by the CIT(A). The Tribunal held that the AO could not make a wild guess but had to estimate the income of the assessee on the basis of past accepted results and, accordingly, directed the AO to compute income by applying net profit of 0.25% of turnover noting that 0.25% was the highest profit in the preceding five assessment years.
***Bhambra Service Centre. vs ITO [2018] 53 CCH 0414 (Cuttak Trib)- ITA No.301/CTK/2017 and 13/CTK/2018 dated August 02 2018***

**112.** The AO disallowed prior period expenses holding that since assessee was following mercantile system of accounting, it should not be allowed to claim prior period expenses on actual basis. The CIT(A) upheld the order of the AO observing that the assessee did not file any explanations or evidence to substantiate that the prior period expenditure claimed was crystallized during the current year. The Tribunal relied on the assessee's own case for earlier years wherein it was held that the concept of claiming expenses as prior period expenses on basis that they have been actually incurred in impugned Assessment Year and was in accordance with concept of mercantile system of accounting. Thus, Assessee's ground was allowed.
***ORISSA MINING CORPORATION LTD. & ANR. vs. JCIT & ANR. (CUTTACK TRIBUNAL) (ITA Nos. 69 & 183/CTK/2014, 70 & 257/CTK/2014) dated May 17, 2018 (53 CCH 0188)***

Go to Index

**113.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO with respect to the difference between (i) the amount received by the assessee (inter alia engaged in trading of lubricants) under Marketing Assistance Programme (MAP) from a lubricant manufacturing company for financial assistance and (ii) the amount therefrom passed on to its customers (sub-distributor). It was noted that the assessee had received the MAP amount with a condition that the same is passed on to the customers (sub-distributors) as incentives at the time of lifting / purchase of goods by them and accordingly, the differential amount (which was not paid during the relevant year) was to be passed on to the customers on their purchases in subsequent year. Further, noting that the assessee had neither shown such receipt as income nor claimed deduction of amount paid to the customers and such consistently followed method of accounting was accepted in the immediately 2 preceding years, the Tribunal held the CIT(A) had rightly decided in favour of the assessee.
***ACIT v New Delhi Tyre House [TS-589-ITAT-2018(DEL)] - ITA No.3986/Del/2015 dated 04.10.2018***

**114.** The Tribunal held that foreign exchange fluctuation loss arising consequent to restatement of current liabilities as per the year end rates in accordance with Accounting Standard-11 (AS-11) is allowable as a deduction.
***Silicon Graphics Systems (India) Pvt.Ltd vs. DCIT (Delhi Trib)- ITA No. 2976/Del./2013***

**115.** AO rejected books of account of assessee and estimated income in respect of comparative cost to sales ratio and selling and marketing expense ratio. AO made addition. CIT(A) observed that AO made addition of various expenses, only on basis that these were higher than immediately preceding year, without verifying books of accounts and vouchers etc. The Tribunal held that, AO could not have made an addition on account of various expenses simply because of fact that these were much higher than immediately preceding year. If AO wanted to make addition on basis of higher expenses incurred by assessee compared to immediately preceding year, books of account could have been examined along with vouchers/other evidences—If assessee was found wanting in respect of providing evidence/supports in relation to incurring of these expenses, AO could have proceeded to reject Books of Account u/s 145(3) before making any addition on this basis. AO without detecting any bogus expenses and without rejecting explanation of assessee behind higher expenses during year, simply proceeded to apply expense ratio of immediately preceding year resulting in massive additions under two heads—Addition made by AO on account of higher cost to sales ratio and higher selling and marketing expenses was not at all justified.
***Asst CIT vs. Tirupati Infrabuild P. Ltd.- (2018) 53 CCH 0302 DelTrib-ITA No. 6604/Del/2014 & Cross Objection No.212/Del/2015-Dated Jul 9, 2018***

**116.** Assessee Company was asked to explain why accumulated balance of unutilized MODVAT credit be not included in valuation of closing stock and why same should not be treated as income for subject year. AO being not satisfied with assessee's submissions added unutilized MODVAT credit and added whole of amount to value of closing stock by referring to section 145A of Act. CIT(A) upheld order of AO. The Tribunal held that, company was trader of machines/goods and not manufacturing company. This amount was not included in purchases and did not form part of closing stock as well in books of account .AO as well as CIT(A) had not

taken cognizance of actual calculation relating to counter valley duty and service tax paid by assessee. Therefore, this needed to be examined at level of AO. Thus, the Tribunal directed AO to look into this aspect as per provisions of Section 145A as well as in light of provisions of given under Income Tax Act and decide this issue afresh.

***CPS Cash Processing Solutions Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0285 DelTrib. -ITA-No. 5017/ DEL/ 2012, 2671/DEL/2013-July 3, 2018.***

**117.** The AO made addition to the income of the assessee noting that the assesse had not included freight amount in the valuation of closing stock (thus resulting in lower income), as per regularly and consistently followed method of valuation of stock accepted by the Revenue in past. The DRP also upheld the AO's order. The Tribunal allowed the assessee's appeal and deleted the addition, noting that the closing stock of particular year was opening stock of subsequent year and it was not case of revenue that method of valuation of closing stock was materially affecting accounts and profits disclosed by the assesse. It held that materiality is a concept which is well recognized both in accountancy and law and the Accounting standards notified by the CBDT u/s 145(2) mandates that the concept of materiality be taken into consideration when finalizing the accounts of an assessee.

***HERO MOTO CORP LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0200 (Del Trib) - ITA No. 6990/DEL/2017 dated Jun 20, 2018***

**118.** The AO made addition to assessee's total income u/s 145A on account of difference in valuation of closing stock of finished goods lying in the godown as per the books of account and as determined by the AO, increasing the said valuation by the amount liability toward excise duty on such goods.. The CIT(A) deleted the said addition after following CIT vs. Loknete Balasaheb Desai SSK Ltd wherein it was held that in respect of excisable goods manufactured and lying in stock, excise duty liability would get crystallized on date of clearance of goods and not on date of manufacture. Thus, the Tribunal, on concurring with the decision of CIT(A) held that Central excise duty on stock lying in goddown was not to be incurred unless stock was removed, thus, in this case,no question of excise duty liability arose.

***DCIT v Hindustan Tin Works Ltd. (2018) 52 CCH 0402 DelTrib - ITA No. 3531/Del./2016 dated 27.04.2018***

**119.** The assessee had to maintain its books of accounts and prepare its financial statements according to Insurance Act and further as per section 44 r/w First Schedule, Profit and gains from life insurance business had to be computed separately from any other business of assesse. The AO noted that assesse had filed returns under incorrect provisions of Act hence, same was not accepted by the AO, which however was reversed by the CIT(A). The Tribunal held that provisions of section 44 r/w First Schedule are non obstante i.e. they override other provisions of Act and, therefore, income chargeable of tax of an insurance company had to be computed in accordance with provisions thereof and thus concluded that there was no reason to interfere with the directions of the CIT(A).

***DCIT vs Sahara India Life Insurances Co Ltd – (2018) 54 CCH 0139 Del Trib- ITA No-3509,6243,6244,1347,6245,6246/Del/2013 dated 31.10.2018***

Go to Index

**120.** The Tribunal directed the AO to delete the addition for decrease in gross profit rate for the subject year since the AO had examined the bills/ invoices of expenditure with help of the books of accounts and could not allege suspicious decline in gross profit and further, the books of accounts had also not been rejected by the AO by invoking section 145(3).
***Avery Dennison (I) Pvt Ltd vs ACIT [TS-611-ITAT-2018(DEL)-TP] ITA No.7183/Del/2017 dated 27.06.2018***

**121.** The Tribunal allowed assessee's appeal and deleted the addition made by the AO arbitrarily by applying the percentage completion method to a project for development of lands owned by the assessee, noting that (i) project completion method/completed contract method of accounting had been consistently adopted by the assessee and the same was accepted by the Revenue for earlier years and (ii) AS-7 issued by ICAI also recognize the position that in case of construction contracts, assessee can follow either project completion method or percentage completion method.
***Ashoka Hi-Tech Builders (P.) Ltd.vs Dy.CIT [2018] 96 taxmann.com 547 (Indore Trib)- IT APPEAL NOS. 121 & 686 (IND.) OF 2016 dated August 03 2018***

**122.** Where assessee was following Percentage Completion Method, the Tribunal accepted AO's stand of recognizing revenues in respect of advance received by assessee (engaged in residential township development) from the customers to the extent of stage of completion, noting that in terms of the plot buyer agreement, significant risk relating to the real estate was transferred by assessee to the buyer. It held that revenue accrued when plot buyer agreement was entered into and not only when the sale deed was registered. However, referring to ICAI Guidance on recognizing revenues from real estate transactions, it rejected AO's action of recognizing entire sale consideration in case of sale deeds executed instead of proportionate revenues.
***Vastukar Township Pvt Ltd v DCIT - TS-617-ITAT-2017(JPR) - ITA No. 105,106, 119, 120 & 172/JP/2017 dated 22.12.2017***

**123.** The Tribunal dismissed assessee's appeal and upheld CIT(A)'s order taxing interest income accrued during the year though not received but was duly recognized by the debtor in its ledger account, noting that assessee was following mercantile system of accounting and thus it was not permitted to follow cash flow system of accounting in respect of such interest income.
***Sonu Khandelwal vs ITO [2018] 97 taxmann.com 431 (Jaipur Trib)- IT APPEAL NOs. 735 and 736(JP) of 2015 dated August 21 2018***

**124.** The Tribunal held that once there is no material defect is found in the books of account then the same cannot be rejected on the reason that the assessee has declared less G.P. for the year under consideration or day to day moment of material is not reflected in the stock register.
***ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT & ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018***

**125.** Assessee debited certain amount on account of difference arising from foreign exchange in value of sundry creditors account and MMD SBI account. AO observed that it was notional loss and represented contingent liabilities which had not been actually incurred by assessee. AO

Go to Index

disallowed sum debited towards loss for re-statement of foreign exchange and added same to total income of assessee.CIT(A) deleted disallowance made by AO. The Tribunal held that in assessee's own case for A.Y.2005-06. The Tribunal held that adjustment was made by assessee in terms of AS 11 issued by ICAI and in pursuance of mercantile system of accounting as notified u/s 145.Foreign currency transactions should be recorded on initial recognition in reporting currency, by applying to foreign currency amount exchange rate between reporting currency and foreign currency at date of transactions.Exchange differences arising on settlement of monetary items or on reporting an enterprise's monetary items at rates different from those at which they were initially recorded during period, or reported in previous financial statements, should be recognized as income or as expenses in period in which they arose. The Tribunal held that CIT(A) rightly deleted disallowance made by AO and Revenue's ground was dismissed.

***Haldia Petrochemicals Ltd. & ANR. vs. Asst. CIT & ANR. - (2018) 53 CCH 0294 KolTrib-ITA No.1533/Kol/2015,168/Kol/2016-Dated Jul 6, 2018***

**126.** The Tribunal held that in order to derive true net profit in project completion method it is necessary to show estimated expenditures like exp. on minor/miscellaneous work in its books of accounts.

***Bengal Peerless Devt. Co. Ltd vs. Dy.CIT (2018) 54 CCH 0444 KolTrib- ITA No.2414/Kol/2017, 2549/Kol/2017 dated 31.12.2018***

**127.** The Tribunal held that merely because the assessee recognized exchange gain on restatement of foreign currency loan in its books of accounts in compliance with AS 11, it would not automatically take the character of income for income tax purposes as entries in books of accounts were not determinative of whether the assessee had earned any income or suffered any loss.

***ITO v UMT Investments Ltd – (2016) 176 TTJ 0053 (Kol)***

**128.** The assessee, owning the registered trademark 'Vibes', received Rs.22Lfor giving the trademark on franchise basis under the Infrastructure & facility management agreement which was entered for the period of 5 years. One of the agreement-clause enumerated that assessee would terminate agreement on breach of any term without refunding the consideration received. However, since the agreement was for 5 years, the assessee relied on the AS-9 by issued by the ICAI pertaining to revenue recognition & apportioned Rs.1,91,666 as income for AY under consideration treating the remaining amount as goodwill in liability side of balance sheet. The AO also relied on the AS-9 & observing that the assessee shifted entire risk to other person & also the consideration received was non-refundable, he taxed the differential amount shown as liability as income for the AY under consideration. The CIT(A) upheld AO's order. On further appeal, the Tribunal observed that according to agreement, the assessee had to participate in management of business and certain other responsibilities. Thus, relying on Special Bench decision of Chennai Bench in ACIT v. Mahindra Holidays and Resorts India Ltd. [2010] 39 SOT 438 (Chennai) (SB) which upheld the principle of deferment of revenue recognition it directed the AO to delete the said addition.

***Alankar Slimming & Cosmetic Clinic (P.) Ltd v ITO [2018] 94 taxmann.com 11 (Kolkata - Trib.) – ITA NO. 1374 OF 2016 dated 15.05.2018***

Go to Index

**129.** The Tribunal held that where valuation of closing stock of assessee according to LIFO method which was consistently followed by the assessee since its inception was accepted by revenue in earlier assessment years, same could not be rejected in year under consideration on the ground that valuation of inventories should be done on basis of First In First Out (FIFO) method or weighted average method and not on LIFO method as FIFO assumption approximated more closely to reality and LIFO adopted by assessee was not giving true profit of year.
***RoopshreeJewellers (P.) Ltd. v ITO [2018] 93 taxmann.com 159 (Kolkata – Trib.) – ITA NOS. 442 & 828 (KOL.)* OF 2015 dated 17.04.2018**

**130.** During assessment, the AO observed that assessee had carried out large scale trades in different commodities but was unable to produce stock registers to enable the AO to verify quantitative records and to verify trading results. Thus, the AO held that trading results as reported by assessee were unreliable and rejected books of accounts by invoking provisions u/s. 145(3) and held that the GP rate reported by assesse (i.e 0.88%) was on lower side thus, the AO estimated a higher rate (i.e 1.5%). The CIT(A) lowered the GP rate (i.e 1%)as estimated by AO. The Tribunal observed that the AO in the order had not elaborated reasons for adopting higher profit as compared to earlier years and further no comparable cases were brought on record by AO for determining higher rate of profit. Thus, the Tribunal held that profit declared by assessee in earlier years cannot be brushed aside for estimating profit of relevant year until and unless, there are changes in facts and circumstances or AO brings any results of comparable cases to justify the action thus higher rate estimated by AO was to be deleted.
***ACIT vs Shiv Binod Gupta- (2018) 54 CCH 0134 Kol Trib- ITA No 964/Kol/2015 dated 29.10.2018***

**131.** The Tribunal held that in absence of any finding as to incorrectness in books of account or stock details, merely for reason that there is fall in gross profit ratio, books of account cannot be rejected u/s 145(3). Assessee had been maintaining same set of books of accounts and stock register year after year and they had been accepted by AO in past. Even otherwise, assessee had reconciled quantity details of raw materials and finished goods category wise. Under these set of facts, adhoc addition was unjustified. AO erred in rejection of books of account u/s. 145(3) without recording any reasons as to how books of account maintained by assessee were inconsistent with regular method of accounting fattened- and accounting standards. In absence of any finding as to incorrectness in books of account or stock details, merely for reason that there was fall in gross profit ratio, books of account could not be rejected u/s. 45(3), more particularly, when assessee had reconciled difference in gross profit ratio with necessary evidences
***ACIT vs Kamani Oil Industries Ltd- (2018) 54 CCH 0071 MumTrib- ITA No 5010/Mum/2016 dated 10.10.2018***

**132.** The Tribunal remanded the issue of revaluation of closing stock done by the AO by including unutilized MADVAT credit back to the AO, directing him to make such adjustments towards opening stock as well as closing stock, following the decision in the case of CIT vs Indo Nippon Chemicals Co Ltd [245 ITR 384 (Bom HC)] wherein it was held that if unutilized Modvat credit is adjusted in the closing stock, similar adjustment should be made to opening stock also.

Go to Index

***Abbott India Ltd v ACIT – ITA No.6606, 5625, 7824, 5099, 5922, 3362, 6192, 6150, 8130, 4367, 5154, 5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018***

**133.** Where the AO made addition to income of the assessee-company (engaged in project consultany services) on account of advances received for on-going / incomplete project without recording any reasons as to how advance received by the assessee formed part of revenue for the current year, the Tribunal held that the CIT(A) had rightly deleted the addition by holding that once the assessee was following proportionate completion method, being a method of accounting prescribed by ICAI for recognition of revenue from the kind of projects the assessee was undertaking, and such method had been accepted by the department in the earlier year, there was no reason for the AO to deviate from the method followed by the assessee without any change in facts and circumstances.

***Dy.CIT vs Libra Technon Ltd [2018] 53 CCH 0472 (Mum Trib)- ITA No. 4480/Mum/2013 dated August 24 2018***

**134.** Where the assessee recognized revenue based on project completion method, the AO changed the said method to percentage of completion method and thereby made an addition of 10% of the advance received from customers. In view of the Accounting Standard (AS) 7 and AS 9 and relying on the ruling of the Supreme court in Bilahari Investment (P) Ltd. (299 ITR 1), Realest Builders & Services Ltd (307 ITR 202) and the co-ordinate bench in Awadesh Builders (37 SOT 122) & Haware Construct ions Pvt. Ltd. (ITA 5601/Mum/2009), the CIT(A) deleted the said addition and held that the accounting policies consistently followed by the assessee should be adopted. The Tribunal upheld the CIT(A)'s order and held that when the assessee was following project completion method, the AO could not, at its discretion, change said method to percentage completion method.

***ITO vs. BELLOR HOMES AND REALTORS PVT. LTD. – [2018] 53 CCH 0037 (Mumbai ITAT) – ITA No 4445 of 2016 dated May 15, 2018***

**135.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO to the assessee-company's business income with respect to advances received for rendering services in relation to real estate development to a builder, which were not offered to tax by following project completion method. It followed the decision of coordinate bench in assessee's own case for an earlier year wherein it was held that assessee was justified in not offering the said amount to tax when amount received by assessee during year was an advance and actual remuneration was to be quantified at completion of project. Further, in earlier year, since the Tribunal had observed that there was no discrepancy in the books of accounts of the builder and assessee as the said advance payments were not being claimed as expense by the builder, the Tribunal directed the AO to verify such fact for the subject year also before deleting the impugned addition.

***ITO vs Trendsetter Construction Pvt Ltd.[2018] 54 CCH 0386 (Mum- Trib.)- I.T.A. No.2539/Mum/2017 dated 16.11.2018***

**136.** The Tribunal held that the inclusive method prescribed under section 145A of the Act could not be applied selectively to closing stock without applying it to opening stock, purchases and sales as it would lead to distortion of income chargeable to tax.

Go to Index

Further, it observed that section 145A of the Act was introduced during the MODVAT scheme which allowed credit on specific inputs used in in manufacture of final output and in the light the advent of CENVAT credit and the decision of the Apex Court in Eicher Motor wherein CENVAT credit is allowed without one to one correlation, held that section 145A of the Act required realignment with the present indirect tax regime.
***Sunshield Chemicals Pvt Ltd v ITO – [2015] 64 taxmann.com 161 (Mum – Trib)***

**137.** The Tribunal rejected the ground raised by Revenue against the CIT(A)'s deletion of the additions towards diminution in value of investment held as stock-in-trade (its closing stock) which as per the method of accounting followed by the assesse was valued at cost or market value whichever was less and whatever loss was incurred on account of diminution in value of investment was charged off to the profit and loss account as a loss, noting that the issue had been decided in favour of assesse in the case of CIT vs. Bank of Baroda [2003] 262 ITR 334 (Bom) wherein it was held that where the bank valued its investments at cost or market value whichever is less and the difference arising as a result of the valuation has to be allowed to the assessee as a loss. Further, the Revenue had not brought on record any contrary decision to support its argument.
***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. CENTRAL BANK OF INDIA & ANR. - (2018) 53 CCH 0157 MumTrib - ITA No. 1891/Mum/2011 & 3958/Mum/2014, 1431/Mum/2011 & 3757/Mum/2014 (CO. No. 200/Mum/2013) dated Jun 8, 2018***

**138.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order upholding the assessee's method of accounting revenue from incomplete project on proportionate completion method by taking into account percentage of work done for the project, as against the AO's determination of total income by taxing the advance received for incomplete project on the basis of gross profit declared from completed project. It held that once the assessee was following method of accounting which was in accordance with method prescribed by ICAI for recognition of revenue from kind of projects assessee was undertaking and such method had been accepted by department in earlier year, there was no reason for the AO to deviate from method followed by assessee without any change in facts and circumstances.
***LIBRA TECHCON LTD. & ANR. V DCIT (2018) 195 TTJ 0105 (Mumbai) (URO) – ITA No. 2475/Mum/2013, 4480/Mum/2013 dated August 24, 2018***

**139.** The Tribunal held that where the assessee company was dealing in prepaid meal and complimentary coupons which were issued to corporate clients, on calendar year basis and as per accounting policy consistently followed by it and accepted by revenue, it recognized revenue for unutilized coupons after two years of expiry of meal coupons and one year in case of compliment vouchers, revenue could not disturb such method of accounting in relevant assessment year and could not treat all amount of expired coupons in year-end as income of relevant year.
***Edenred (India) (P)Ltd v ACIT- [2016] 68 taxmann.com 183 (Mumbai-Trib)***

**140.** The Tribunal allowed the claim of the assessee-NBFC for deduction towards service tax payment relatable to exempted services in absence of input tax credit availability as per the Service tax Rules. It rejected the Revenue's stand that since assessee followed 'Exclusive

method' for accounting of Service tax i.e. it did not route the collection and remittance of Service tax through the P & L A/c., the claim could not be allowed and accepted the assessee's contention that the method of accounting for service tax liability, i.e., exclusive method or inclusive method did not have revenue implications and noted that the service tax paid by assessee was otherwise eligible for deduction.
***DCIT v Morgan Stanley (India) Capital Pvt Ltd [TS-100-ITAT-2018(Mum)] – ITA No. 5289, 5290, 4962 & 4963/Mum/2015 dated 29.01.2018***

**141.** The assessee- firm, engaged primarily in construction and development of properties, had claimed deduction of interest paid on borrowings for a project completed during the year and given on lease while computing Income from house property and also claimed / added the said interest expense to the WIP of the said project. Noting the accounting treatment laid down under AS 10 and AS 16 providing that companies must capitalize interest costs associated with acquiring or constructing an asset that requires a long period of time to get ready for its intended use and that borrowing costs that are directly attributable to acquisition, construction or production of a qualifying asset should be capitalized as part of cost of that asset, the Tribunal remanded the matter to AO to make a de novo order considering AS 10 and AS 16.
***HGP Community (P.) Ltd. v ITO – (2018) 91 taxmann.com 464 (Mum) – ITA No. 5081 (mum.) of 2017 dated 26.02.2018***

**142.** The Tribunal held that where assessee builder could not prove expenditure incurred with relevant books and vouchers, estimation of income at rate of 11 per cent was reasonable.
***Golla Narayana Rao v. Asst. CIT, Circle-2(1), Vijayawada- [2018] 100 taxmann.com 174 (Visakhapatnam - Trib.)-ITA Nos. 380, 433, 487-489, 499 & 503(VIZ) of 2017 & ORS.- Cross Objection Nos. 80-85 (viz) of 2017-dated October 5, 2018***

**143.** The assessee was engaged in the execution of civil / electrical and air conditioning contracts for defense establishments. During the course of search proceedings on the assessee's premises, certain evidences were found indicating inflation of expenditure, suppression of income and bogus sub-contract payments. The assessee had accepted the same for completion of assessment by reasonable estimation of income. Accordingly, the AO completed assessment by estimating income at 12% of gross contract receipts as net income, clear of depreciation and all other expenses. The CIT(A) directed the AO to estimate income at 12.5% of gross contract receipts and to grant deduction in respect of depreciation out of gross income so arrived at. Tribunal observed that jurisdictional Tribunal as well as Coordinate Benches held that estimation of income in case of civil contracts @ 8% to 12.5% was reasonable and thereby upheld the order of the CIT(A). Accordingly, the Assessee's appeal was dismissed.
***SVC PROJECTS PVT. LTD. & ANR. vs. ACIT & ANR. (VISHAKAPATNAM TRIBUNAL) (ITA No. 169-175/Viz/2013, 183-189/Viz/2013) dated May 23, 2018 (53 CCH 0075)***

**144.** Assessee was in business of Indian Made Foreign Liquor (IMFL) and for assessment year 2011-12, assessee filed return of income declaring income. During previous year relevant to Assessment Year(AY) 2010-11, assessee made purchases of Rs. 2,36,62,794/- and admitted sales of Rs. 3,06,14,597. During assessment proceedings, AO called for details and verified books of accounts—Since assessee failed to produce stock register, sale bills with quantity of

sales item wise and quantitative details of valuation of closing stock etc., AO rejected books of accounts and estimated net profit at 20% of purchases put to sale. CIT(A) was of view that profit could not be uniformly adopted in all cases and it required to be considered on facts of each case. CIT(A) further observed that Government itself had accepted before High Court of A.P., that there were huge violations in liquor trade with regard to sale prices. CIT(A) directed AO to re compute income estimating net profit @10% of purchase price. The Tribunal held that, though CIT(A) had taken support of affidavit filed by Govt. of Andhra Pradesh and Telangana for distinguishing case of this Tribunal, no specific deviations in assessee's case were brought on record. Neither Commissioner nor AO had specifically pin pointed discrepancies for making estimation of income at higher rate than what was adopted by Tribunal. Though CIT(A) held that assessee's case was not normal case, CIT(A) did not specially showed reasons how assessee's case was abnormal. Neither AO, nor CIT(A) had analyzed books of accounts and brought on record specific defects found during course of assessment proceedings to resort for higher estimation. AO rejected books of accounts because of non production of stock register, sale bills, quantitative details of stocks sold and valuation of closing stock with details. Defects pointed out by AO were common in all IMFL cases and assessee's case could not be given separate treatment for resorting to higher estimation of income as held by CIT(A). Order of CIT(A) was set aside and AO was directed to estimate income @5% of goods sold.

***B. Durga Prasad vs ITO – (2018) 54 CCH 0117 Vishakapatnam Trib- ITA No 451/Viz/2016 dated 24.10.2018***

**145.** The Tribunal set aside CIT(A)'s order wherein the CIT(A) had deleted the disallowance made with respect to interest paid by the assessee-cooperative bank to its member on share capital contributed (where the assessee claimed that payment of interest on share capital was a compulsory obligation under AP Mutually aided Cooperative society) on the ground that the same related to year FY 2010-11 which was relevant for AY 2011-12 and not for impugned year i.e. AY 2012-13. It was noted that neither CIT(A) nor AO had given clear finding with regard to correct assessment year in which interest was accrued. Hence, the Tribunal remitted the matter back to the file of AO to examine the issue with regard to accrual of liability as per system of accounting followed by assessee and decide the issue afresh on facts and merits.

***Asst.CIT vs MAHARAJA CO-OPERATIVE URBAN BANK LTD. & ANR. [2018] 53 CCH 0454 (Vishakapatnam Trib)- ITA No. 211 and 212/Viz/2018 dated August 17 2018***

*Year of taxability*

**146.** The Apex Court held that interest earned on share application money by the assessee was taxable only post allotment of shares and not on receipt of application money. It noted that as per Section 73 of the Companies Act, the assessee was required to keep the application money in a separate bank account and no part of the money including interest could be utilized until allotment was completed.

***CIT v Henkel Spic India Ltd – (2015) 64 taxmann.com 405 (SC)***

Go to Index

**147.** The Apex Court dismissed Department's SLP against the Court order holding that interest on non-performing assets is not taxable on accrual basis looking to guidelines of Reserve Bank of India.
***CIT v Jamnagar District Co-Operative Bank Ltd. [2018] 94 taxmann.com 300 (SC) – SLP (CIVIL) DIARY NO. 12840 OF 2018 dated 07.05.2018***

**148.** The Court dismissed the Revenues appeal against the Tribunal order of deletion of notional interest on debentures since it was waived by the assessee company by holding that even under the mercantile method of accounting, the assessee was justified in following the policy of not recognizing these interest revenues till the point of time when the uncertainty to realize the revenues vanished.
***CIT vs. Neon Solutions Pvt. Ltd - [2016] 95 CCH 134 (Bom)***

**149.** The Court held that where the assessee firm entered into a joint development agreement with a company in 2008 which provided the company with license to enter upon its land only on 25.4.2011 pursuant to obtaining all requisite permissions to develop property, business income sought to be taxed by the CIT(A) viz. the difference between the value of land in the balance sheet and the amount of security deposit attributable to the FSI of the land, could only be taxed in assessment year 2012-13 when possession of land was given and not in assessment year 2009-10.
***CIT v Skyline Great Hills - [2016] 68 taxmann.com 188 (Bombay)***

**150.** Where the assessee had invested the compensation received by her from the Govt. on account of compulsory acquisition of land and had invested the same in the temporary fixed deposit, the Court dismissed the appeal of the assessee and held that the interest received was taxable as IFOS irrespective of the fact that the final determination of compensation was still pending as the right to receive the said income had accrued in the hands of the assessee under the mercantile system of accounting. It dismissed the assessee's contention that since enhanced compensation receivable by her was not yet finally determined by the Court, no income could accrue to her.
***Premlata Purshottam Paldiwal TS-321-HC-2017(BOM) (ITA No. 17- 20 of 2011 dated August 1, 2017)***

**151.** The Court held that overdue charges shall always be chargeable only on cash receipt basis and not on accrual basis. It further held that section 43D would only apply to public financial institutions which charge interest in relation to bad or doubtful debts and since assessee did not fall in the definition of public financial institution as defined under Companies Act, section 43D was not applicable. Therefore, the addition of overdue charges, charged to tax on receipt basis, was deleted.
***CIT Vs. Shriram City Union Finance Ltd. (2016) 97 CCH 0124 ChenHC (Civil Miscellaneous Appeal No. 1422 of 2010)***

**152.** The Court held that where on account pf pendency of appeals arising from proceedings under section 31(2) of the Land Acquisition Act, the right of the assessee to receive impugned sums

was still unclear and therefore the question of bringing to tax enhanced compensation had to await final outcome of pending proceedings.
***CIT v Suman Dhamija – TS-697-HC-2015 (Del)***

**153.** The assessee claimed that consideration received from transfer of property under development agreement was only security deposit which was to be returned on completion of project and it did not offer it for tax. The Court held that since there was no provision in agreement enabling buyer to get refund of any part of sale consideration and further buyer treated amount paid to assessee as stock-in-trade, addition on account of amount of sale consideration received by assessee was justified.
***CIT v. Ansal Properties & Industries [2018] 98 taxmann.com 398/259 Taxman 103 (DelhiHC)- IT Appeal No. 599 of 2004 dated September 18, 2018***

**154.** The Court reversed the Tribunal order and held that the amount received by assessee(individual) on account of professional/management consultancy was taxable in entirety on receipt basis. It rejected the contention of the assessee that since amount was received as advance on account of appointment as hospital/management consultant for five years, it was to be spread over the period of service i.e. five years in view of matching principle. The Court accepted the Revenue's contention that in absence of books of account maintained by assessee it has to be presumed that cash system of accounting was followed, hence concept of accrual would not arise, also accepts Revenue's argument that matching principle / AS-9 (dealing with principle of revenue recognition) were applicable only to companies and not to individuals.
***AmanKhera [TS-447-HC-2016(DEL)] ITA Nos. 653 of 2012, 476 of 2014, 19 of 2015, 21 of 2015 & 326 of 2015***

**155.** The Court dismissed Revenue's appeal and upheld Tribunal's order holding that since the assessee (engaged in providing basic telecom services) was recognizing revenue on prepaid cards based on actual usage, it had rightly carried forward the unutilized outstanding amount on prepaid card at end of FY to next year and recognized as revenue receipt in the subsequent year. It rejected the AO's contention that income had accrued to assessee on the date of sale of prepaid card itself. It was noted that the appropriation of prepaid amount by the assessee was contingent upon the assessee performing its obligation and rendering services to the prepaid customers as per the terms. If the assessee had failed to perform the services as promised, it would be liable and under an obligation to refund advance payment and thus, the amount received on sale of prepaid cards to the extent of unutilized talk time did not accrue as income in the year of sale of prepaid card.
***CIT & Ors. vs Shyam Telelink Ltd and Ors [2018] 103 CCH 0122 (Del-HC)- INCOME TAX APPEAL NO. 70/2013, 73/2013, 1069/2017 dated 15.11.2018***

**156.** The Court held that receipt was to be recorded as income in the books of the assessee, a real-estate developer, only when a conveyance deed was executed or possession was delivered. Further, since the advance received by the assessee was in respect of a project that never took off and a part of the advance was returned in the following year since the transaction fell through, the said advance could not be treated as income.

Go to Index

***Paras Buildtech India Pvt Ltd v CIT – (2015) 94 CHH 0093 Del HC***

**157.** The Court dismissed Revenue's appeal against the order of the Tribunal, wherein the Tribunal held that the gains on sale of certified emission reductions (CERs) could only be taxed at the point of time when they were actually transferred to the foreign entity and not when they are merely receivable. Applying the 'accrual' principles laid down by the Apex court in the case of Excel Industries Ltd [TS-506-SC-2013], the Court upheld the Tribunal's order holding that as neither the carbon receipts were sold nor transferred in favour of the foreign company in the year under consideration, the same could not be included as receipt/income in that year.
***Kalpataru Power Transmission Ltd. [TS-100-HC-2017 (GUJ)] (ITA No. 141/2017) dated 02/03/2017.***

**158.** The Court held that Additional Finance Charges collected by the assessee on borrowers default in payment of EMIs was to be taxed on receipt basis and not accrual basis. It held that the test of real income is the chance or probability of realization and when there was uncertainty in the recovery of EMIs the recovery of the additional finance charge which was an additional burden was equally uncertain and to be taxed on receipt basis.
***CIT v Shriram Investments Ltd [Tax Case (Appeal) Nos 1222 & 1225 to 1228 of 2007] – TS-538-HC-2015 (MAD)***

**159.** The Court ruled that interest income from bank deposits accrued but not due and credited to assessee's account by bank but accrued by the assessee in its balance sheet was taxable and could not be termed as hypothetical income. It further held that the period of deposit being the option of the depositor, the receipt stood deferred at the behest of the assessee. Assessee's contention that u/s 194A, it was the obligation of the banker to pay tax on the interest due was rejected by HC holding that the Bank's liability to deduct tax at source arose only when it paid the interest.
***Pr.CIT v Plantation Corporation of Kerala Ltd - TS-611-HC-2017(KER) - ITA.No. 121 of 2016 dated 20.12.2017***

**160.** The Court allowed the Revenue's appeal and held that interest income from Bank deposits of the assessee which had accrued to assessee but was not received during the assessment year was liable to be taxed. It noted that the assessee produced no evidence to substantiate claim that interest was not payable by the bank in assessment year, but merely asserted that interest accrued was not entirely received and therefore held that the assessee was not justified in claiming that the interest income was hypothetical income moreso when the assessee was following the mercantile system of accounting.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs.PLANTATION CORPORATION OF KERALA LTD. - (2017) 100 CCH 0158 Ker HC - ITA No. 121 of 2016 dated 20.12.2017***

**161.** The Tribunal held that the upfront premium received by the assessee for leasing out port land to companies for 30 years on Build Operate Transfer basis was taxable on receipt basis and not on a year on year basis as there was no corresponding liability or obligation to be discharged by the assessee after the receipt of upfront premium.
***New Mangalore Port Trust v ACIT (ITA No.1299/Bang/2013) – TS-674-ITAT-2015 (Bang)***

Go to Index

**162.** The Assessee-airport became entitled to custom duty credit scrip under 'Served From India Scheme' (SFIS) of Foreign Trade Policy issued by Government of India, which were to be used for import of any capital goods. The AO held that duty credit should be recognized as other income and offered to tax in the assessment year in which the assessee became entitled to them. Noting that these scrips were valid for 2 years from date of issue and that the assessee had utilised duty credit scrips in different assessment years but complete SFIS scrips were not utilised due to expiry of the said scrips, the Tribunal held that it was not proper to tax accrual of duty credit scrips on mercantile basis as life of the scrips was only for 2 years. However, further noting that the CIT(A) had not properly adjudicated character of said receipts and year of taxability, it resorted the matter to the file of CIT(A) with a direction to readjudicate the issue afresh

***Delhi International Airport (P.) Ltd. – DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April 19, 2018***

**163.** Where the assessee had received application money for allotment of plots in advance but there were certain unsuccessful applicant who failed to claim refunds, the Tribunal held that the AO erred in taxing all the unclaimed refund liability as income of the assessee the moment is became unclaimed, noting that there could be a number of reasons for why the refunds remained unclaimed and there was always a possibility of the refunds being claimed in the future or being adjusted by way of allotment of plots. However, it also disagreed with the contention of the assessee that none of the unclaimed refunds were its income and held that as admitted by the assessee itself, since the refund would become barred by limitation after a period of 3 years, liabilities which had been outstanding for a period of more than 3 years were to be treated as income of the assessee after excluding a) refunds against which Court cases have been filed seeking allotment of plots b)refunds which were subsequently adjusted by way of adjustment of plots and c) amounts subsequently adjusted by way of refund claimed even after expiry of 3 years.

***Haryana State Industrial & Infrastructure Dev Corp Ltd v ACIT – TS -541-ITAT-2017 (Chandi) - ITA Nos.184 & 185/Chd/2010 dated 16.11.2017***

**164.** The Tribunal allowed the appeal of assessee (engaged in the business of providing telecom services and operating only on the pre-paid business model) and directed the AO to delete the amount of unearned revenue representing subscription amount received from customers who had not utilized talk time on the prepaid card at the year end, subject to examining whether unearned revenue had been offered to tax in succeeding year. The AO had sought to tax the unearned revenue in the subject year opining that the revenue recognition under AS-9 was satisfied and no additional efforts were to be made by assessee to keep providing services for unused talk time. The Tribunal followed the ratio laid down in case of ACIT vs. Shyam Telelinks (2013) 151 TTJ 464 (Del) wherein on similar facts it was held that income could not have accrued in favour of the payer unless the assessee had fulfilled its obligation to provide talk time to the subscriber and the assessee had rightly offered the said income to tax in subsequent year.

***Telenor(India) Communications Pvt Ltd. vs Asst CIT [2018] 54 CCH 0297 (Del- Trib.)- ITA No.7541/Del/2017 dated 26.11.2018***

Go to Index

**165.** The Tribunal upheld CIT(A)'s order deleting the addition made on account of duty credit scrips received but not utilized by the assessee, as the same could not be taxed during the relevant year. It noted that the assessee had not imported any goods during the year under consideration and, accordingly, it followed the coordinate bench decision in assessee's own case wherein on identical facts and relying on the Apex Court decision in CIT vs Excel Industries Ltd., it was held that income from such duty credit scrips do not accrue until imports are made and raw materials are consumed by the assessee.
***Asst.CIT vs JUBILANT ENPRO P. LTD. & ANR. [2018] 53 CCH 0446 (Del- Trib) ITA No. 3485/Del/2014 (Cross Objection No. 194/Del/2017) dated August 16 2018***

**166.** The Tribunal held that where the assessee was permitted to collect Fuel and other Cost Adjustment by the Maharashtra Electricity Regulatory Commissioner only after the end of financial year, the action of the assessee in offering the same to tax in the next year was correct and in accordance with the principles of accruals.
***ACIT v Maharasthra State Electricity - (2015) 44 CCH 0513 Mum Trib***

**167.** The Tribunal dismissed revenue's appeal against the CIT(A)'s order deleting the addition on account of retention money, being 10% of total contract value, withheld by one of the customer in lieu of satisfactory execution of contract by the assessee. It relied on the decision in the case of CIT v. Associated Cables (P.) Ltd. (2006) 286 ITR 596 (Bom) wherein it was held that the amount retained by the buyers, as per contract, and paid to the assessee on satisfactory completion of contract did not accrue / could not be considered as income in the year in which the amount was retained. With respect to Revenue's contention that the assessee had accounted for the retention money in its books of account, it was held that a mere book keeping entry could not be income unless income had actually resulted and if income did not result at all, there could not be a tax, even though in book keeping an entry was made about a hypothetical income.
***DCIT v Commtel Networks (P.) Ltd. - [2018] 95 taxmann.com 50 (Mumbai - Trib.) - IT APPEAL NOS. 4340, 4872 AND 4873 (MUM.) OF 2015 dated June 19, 2018***

**168.** Where the assessee bank considered income by way of interest pertaining to doubtful loans as income only when it was realized, the Tribunal relying on the decision of the co-ordinate bench in DCIT vs The Washim Urban Co.Op. Bank Ltd. in ITA No.233/NAG/2013 and CBDT Circular No. F. 201/21/84 ITA-II, dt. 9th Oct., 1984 held that the AO was not justified in assessing the said interest as the income of the assessee. It held that the assessee's treatment was in accordance with the aforesaid CBDT Circular which was binding on the AO and therefore held that the addition made by the AO was without any basis.
***THE CHIKHALI URBAN CO.OP. BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0238 NagTrib - ITA No. 251/NAG/2015 dated Mar 6, 2018***

*Clubbing of income*

**169.** The Apex Court held that the clubbing provisions would not apply in cases where the minor children were not entitled to income until they attained majority. For clubbing to apply it has to

be shown that the share of income is taxable in the hands of the minor which was not satisfied in the said case.
***Kapoor Chand v ACIT [CIVIL APPEAL NO.675 OF 2005] - TS-479-SC-2015***

**170.** The Court held that where assessee filed returns of his daughter 'K' declaring income derived from a unit 'P' and stated that the said unit belonged to his wife 'S' and that 'K' had purchased it from 'S'; since it was apparent from record that unit 'P' was neither owned by 'K' nor by 'S', the said unit was benami property of assessee and that income of such unit was rightly clubbed with income of assessee.
***Sri Suru Bhaskar Rao v CIT - [2016] 68 taxmann.com 269 (Orissa HC )***

**171.** The assessee had constructed building by obtaining loan from a trust. The assessee and her husband were trustees of the trust and their 3 children were beneficiaries of the trust. While computing the income from the property (building), the assessee deducted the interest on loan taken from trust. The AO contended that interest earned by the trust from the assessee pertained to the beneficiaries i.e. the 3 children of the assessee and accordingly, clubbed income of 2 minor children in the hands of the assessee u/s 64(1A). The same was confirmed by the CIT(A) and the Tribunal. The Court restored the matter to AO for further verification so as to verify whether deduction of interest claimed by the assessee was offered by the trust as its income and directed the AO to club the income in the hands of the assessee if the same was not offered to tax by the trust. As per the order of Court, during the second round of proceedings, the AO, observed that the trust had not offered equivalent interest on loan to tax as was claimed by the assessee as deduction. Accordingly, he clubbed the interest income relating to minor beneficiaries in the hands of the assessee which was confirmed by CIT(A). The Tribunal held that since the assessee could not establish that the interest income was offered by the trust to tax, the addition made by the AO was justified.
***Dr. Anwar Basith vs. ACIT (2017) 50 CCH 0059 BangTrib ITA No. 495 & 496/Bang/2017***

*Others*

**172.** The Apex Court allowed the assessee's appeal and held that once the assessee had paid income tax at source on winning from lotteries in State of Sikkim as per Sikkim State Income Tax Rules, 1948 applicable at relevant time in Sikkim, same income could not be taxable under the Act as two types of income-tax could not be applied on the same income. It also referred to the decision in the case of Laxmipat Singhania v. CIT [1969] 72 ITR 291 (SC) and Jain Brothers v. UOI [1970] 77 ITR 107 (SC) where it was held that there is no prohibition as such on double taxation provided that the legislature contains a special provision in this regard. However, noting that there was no specific provision in the Act for including the income earned from the Sikkim lottery ticket prior to 1-4-1990 and after 1975, the Apex Court held that the assessee could not be subjected to double taxation.
***Mahaveer Kumar Jain v CIT - [2018] 92 taxmann.com 340 (SC) - CIVIL APPEAL NO. 4166 OF 2006 dated April 19, 2018***

**173.** The Court held that where the assessee had disclosed interest income in its accounts on accrual basis for the purpose of quarterly results and subsequently reversed a portion of the interest

income not received, thereby offering only that interest income received by it, the Revenue was incorrect in seeking to tax the entire interest income, since there was no suppression of income and all the income received by the assessee was duly offered to tax.
***CIT v DLF Hilton Hotels – (2016) 69 taxmann.com 300 (Del HC)***

**174.** The Court held that service tax is not an amount paid or payable or received or deemed to be received by the assessee for the services provided by it and that the assessee was only collecting the service tax for passing it on to the government and therefore it was not to be included in gross receipts under section 44BB of the Act.
***DIT v Mitchell Drilling International Pvt Ltd – (2015) 62 taxmann.com 24 (DelhiHC)***

**175.** The Court held that compensation awarded under Motor Vehicles Act or Employees' Compensation Act in lieu of death of a person or bodily injury suffered in a vehicular accident, is a damage and not an income and cannot be treated as taxable income.
***National Insurance Company Ltd. v. Indra Devi-[2018]100 taxmann.com 160 (HP HC)-CMPMO No.330 of 2018 -dated October 25, 2018.***

**176.** The Court dismissed Revenue's appeal against the Tribunal's order remanding the matter to the file of the AO for fresh consideration on the issue of receipt of commission, where the revenue contended that the amount of personal expenses paid to the assessee by its HUF should be taxed in the hands of the assessee u/s 2(24)(iv) as the said amount was paid out of franchisee commission received by the said HUF from the company in which the assessee was a director. It was noted that in case of another related assessee involving identical issue, the Tribunal had remanded the matter to the file of the AO to determine the entity to which the payment of commission was made, holding that the franchise commission paid by a company to the franchiser owned by HUF of the assessee, who were director of the said company, could not be brought to tax u/s 2(24)(iv) merely because such franchises met personal expenses of the assessee-directors. The Revenue's appeal against the said Tribunal order was dismissed by the Court [CIT v. C.S. Srivatsan (2013) 30 taxmann.com 423 (Mad)].
***COMMISSIONER OF INCOME TAX vs. C.S. SESHADRI - (2018) 404 ITR 0191 (Mad) - T.C. (Appeal).No.884 of 2008 dated April 4, 2018***

**177.** The Tribunal allowed assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed taxation of interest income received by the assessee from bank at a higher amount, being the amount appearing in Form 26AS on the basis of incorrect inputs given by the deductor-bank, as against the lower actual receipt. It noted that the assessee had produced reasonable evidence establishing the quantum of interest income in his hand and such evidence was not found fault with. The Tribunal thus held that the assessee had no control over such inputs which were clearly incorrect and accordingly deleted the addition of interest income over and above the actual receipt.
***Seal For Life India (P.) Ltd. v DCIT [2018] 96 taxmann.com 645 (Ahmedabad - Trib.) – ITA No 1236 (AHD.) OF 2017 dated August 2, 2018***

**178.** The AO taxed the interest accrued on the security deposit made by the assessee-landlord on behalf of its tenant with Mangalore Electric Supply Co. (MESCOM) in the hands of the assessee

since the TDS deducted u/s 194A respect to the same was appearing in Form 26AS of the assessee, despite the fact that the interest accrued on the deposit was adjusted against the electricity dues paid by the tenant. The Tribunal dismissed the assessee's appeal noting that the assessee could not produce any evidence to show that the amount deposited by the assessee was recovered by the assessee from the tenant, in turn to prove that the interest also belonged to the tenant. It held that the person who had made the security deposit would only be entitled to not only the interest accrued on the security deposit but also refund of the security deposit and it was the inter se arrangement between the tenant and the owner as to how the benefit had been passed to the tenant by the assessee.

***Tanglin Developments Ltd v DCIT [TS-78-ITAT-2018(Bang)] – I.T.A No.1701/Bang/2016 dated 25.01.2018***

**179.** The assessee-Airport received 'Passenger Service Fee' (PSF), comprised of two components, namely, security component and facilitation component. As per operational, management and development agreement between the assessee and the Airport Authority of India, the assessee had to deposit security component of PSF in escrow account, which was wholly reserved for security expenses of CISF and the assessee had no control over said deposits. Since the assessee did not disclose income on account of PSF, the Commissioneer initiated revision proceedings. The Tribunal held that the Mumbai Tribunal in Addl. CIT v. Mumbai International Airports (P.) Ltd. [2017] 88 taxmann.com 663 returned a finding that security component of PSF amount did not constitute income in hands of the assessee. However, Co-ordinate Bench of the Delhi Tribunal in the assessee's own case in Asstt. CIT v. Delhi International Airport (P.) Ltd. [2018] 89 taxmann.com 326 had remanded the issue back to the Assessing Officer. The question whether or not security component of PSF constituted income in hands of the assessee was not yet finally decided and, thus, it still remained a debatable issue. Thus, the Commissioner was not justified in invoking jurisdiction under section 263 for revision of said issue.

***Delhi International Airport (P.) Ltd. v CIT [2018] 96 taxmann.com 229(Delhi -Trib.)- ITA No. 137 (DELHI) of 2012 [Assessment Year 2007-08] dated July 5, 2018***

**180.** During relevant year, the assesee-company was engaged in business of inter alia, clearing and forwarding agent. The assessee-company had done major work for and on behalf of 'S' Ltd. In said regard, the assessee made payments to foreign shipping/airline companies through their agents. The Tribunal held that it was noted from records that the non-resident companies had not rendered any services in India. It was also undisputed that non-resident companies did not have any PE in India. In aforesaid circumstances, payments made by the assessee to non-resident companies on behalf of 'S' Ltd. were not liable to tax in India under the Act as well under the relevant DTAA.

***KGL Network (P.) Ltd. v. ACIT [2018] 97 taxman.com 400 (Delhi - Trib.) ITA No. 301 (DELHI) of 2018 dated July 2, 2018***

**181.** Where the assessee received refund of interest on excess tax and interest paid in earlier years, the Tribunal held that the said receipts could not be considered as the income of the assessee more so when the assessee had not claimed any deduction on account of the same.

Go to Index

***AIRPORTS AUTHORITY OF INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - ITA No. 4821/DEL/2014 - (2018) 52 CCH 0128 DelTrib dated Feb 23, 2018***

**182.** Where the assessee (employee of an Indian company) was sent on short term assignment to Switzerland and his residential status was Non-Resident on account of stay in Switzerland for 331 days during the relevant year, the Tribunal held that foreign assignment allowances received by the assessee could not form part of total income u/s 5(2) since the services of assessee were utilised outside India and both accrual and receipt of income happened outside India. It was noted that the Indian company had transfered funds from its Exchange Earners Foreign Currency (EEFC) Account from Deutsche Bank to the Nostro Account of Axis Bank for the purpose of loading/reloading the Axis Travel Currency Card (TCC), which was used by the assessee outside India, and thus, concluded that the first point of receipt for the assessee happened outside India.
***DCIT v Sudipta Maity [2018] 96 taxmann.com 336 (Kolkata - Trib.) – ITA Nos. 416, 424 & 428 (KOL.) OF 2017 dated July 11, 2018***

**183.** The assessee had entered into a celebrity engagement contract with CCIL. She received a sum of Rs.1.45 crores in lieu of settlement for breach of terms of contract. However, it was found only an amount of Rs.50 lakhs were due to the assessee under contractual terms. Accordingly, addition of Rs.95 lakhs was made in hands of the assessee. The Tribunal held that it was found that additional amount of Rs.95 lakhs had been received by the assessee towards damages for being sexually harassed by an employee of CCIL, for having disparaged here professional reputation by false allegations and for repudiatory breach of contract by CCIL. Such compensation could not be termed as any benefit, perquisites arising to the assessee out of exercise of profession, hence, it could not be construed to be assessee's income either under section 2(24) or under section 28 and hence not liable to tax.
***Sushmita Sen v Asst. CIT [2018] 99 taxmann.com 252(Mum-Trib.)- ITA Nos. 4351 & 4352 (MUM.) of 2015 dated November 14, 2018***

**184.** The Tribunal held that merely because Modvat Credit was an irreversible credit available to manufacturers upon purchase of duty paid raw material it would not amount to income liable to be taxed under the Act.
***Aditya Birla Nuvo v DCIT – (2015) 45 CCH 0222 Mum Trib***

**185.** The Tribunal deleted the addition made by the AO considering the reimbursement of cost received by the assessee, an American Co., from an Indian Co. with which the assesse had entered into a training and technical service agreement to the assessee's income, following its decision given in the assessee's own case for an earlier year wherein it was held that the said agreement entered into by assessee envisaged that fee for technical services was different from expenses incurred on third party cost and since there was clear bifurcation in agreement between internal cost incurred by assessee and external cost borne or paid by assessee on behalf of the Indian company, the amount received towards reimbursement of cost could not be taxed at hands of the assesse. The Tribunal in the earlier year had followed the Apex Court decision in the case of DIT v/s A.P. Moller Maersk, 392 ITR 186 (SC) wherein it was held that

Go to Index

once the character of the payment is found to be in the nature of reimbursement of the expenses, it cannot be income chargeable to tax
***GEMOLOGICAL INSTITUTE INTERNATIONAL INC. vs. DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) - (2018) 53 CCH 0183 (Mum Trib) - ITA No. 6556/Mum./2017 dated June 20, 2018***

***b. Income from Salary***

**186.** The Apex Court held that the amount received by the assessee-employee from his employer on account of redemption of Stock Appreciation Rights (SARs) prior to 1-4-2000 could not be brought to tax as perquisite u/s 17, holding that clause (iiia) inserted u/s 17(2) vide the Finance Act, 1999 to provide that the value of any specified security allotted or transferred, directly or indirectly, free of cost or at concessional rate, by the employer to his employee will be taxed as perquisite u/s 17 came into force only on 1-4-2000 and had no retrospective application. It also rejected Revenue's argument that the said amount was taxable u/s 28(iv) holding that the said section was applicable only to a case where there was any business or profession related transaction involved, which was not so in the instant case. The Apex Court thus dismissed Revenue's appeal against the High Court's order wherein the High Court had held that the amount received on redemption of SARs was capital gain but the same was not taxable in absence of any cost of acquisition.
***ACIT vs. Bharat V. Patel - [2018] 92 taxmann.com 386 (SC) - CIVIL APPEAL NOS. 4380 & 4381 OF 2018 dated April 24, 2018***

**187.** The Court held that non-compete fee received by assessee-individual from employer-company at the time of retiring from service at the age of 81 years was taxable as profit in lieu of salary u/s 17(ii) for AY 2002-03, since in the present case assessee received non-compete amount in tranches not only before retirement but also before the date of non-compete agreement and that the assessee did not protest against TDS deducted by employer company while making non- compete fee payment. In view of above, the Court accepted the contention of the Revenue that that non-compete agreement was a subterfuge to colour an amount received in lieu of salary as non-compete fees so as not to pay tax on the same.
***B L Shah v ACIT - TS-69-HC-2016(BOM)***

**188.** The Court held that amount received from a prospective employee for breach of promise on account of non-commencement of employment and not for services provided was a capital receipt and not taxable as profits in lieu of salary under section 17(3)(iii) of the Act.
***CIT v Pritam Das Narang – (2015) 94 CCH 0014 Del HC***

**189.** The Court dismissed the petition filed by the assessee challenging the constitutional validity of section 17(2)(vii) of the Act and Rule 3(7)(i) of the Rules [Section 17(2) provides for the taxability of the value of any fringe benefit and Rule 3(7)(i) specifically prescribes valuation of benefit of employees resulting from provision of interest free / concessional loans to the employee as the difference between the SBI interest rate and the interest charged by the employer) . It dismissed the assessee's reliance on the Apex Court ruling in Arun Kumar v UOI and its contention that

by taking the interest rate charged by SBI for determining the perquisite value, the assessee is deprived of their rights to contest a jurisdictional fact that what was granted to them was not a concession of benefit. It held that the decision of Arun Kumar v UOI was rendered specifically with respect to section 17(2)(ii) and distinguished the decision on the ground that section 17(2)(ii) and its corresponding rule did not make mere allotment of residential property as a perquisite and that It was only the concession in rent that could be taxed as a perquisite and therefore there was a need for adjudication, but in the instant case, where the valuation method was prescribed for determining perquisite value there was no scope of such adjudication.
Further, in dealing with the contention of the assessee that Rule 3(7)(i) was in violation of Article 14 of the Constitution, the Court held that the Rule merely provided for the difference in the SBI rate and the concessional rate paid by the employee as a perquisite and did not make any classification between different categories of employees or between employees of different banks.
***All India Union Bank Federaration v Union of India – TS-281-HC-2016 (Mad) All India Bank Officers Confederation – TS-283-HC-2016 (Mad)***

**190.** The assessee's case was that the second respondent namely Management of Chemplast Sanmar Limited had started deducting tax on perquisites from salary of the employees in terms of amended Rule 3 of IT Rules, 1962 framed u/s 17(2) of the IT Act against which a writ petition was filed before the Court. The Court dismissed the writ with liberty to the petitioners to plead that there was no concession in the matter of accommodation provided by the employer and the case was not covered by section 17(2) for the period 2001-02 to 2008-09 and accordingly remanded the matter to held that the leave sought by the assessee, that there was no concession in terms of accommodation provided to employees and that the matter was not covered by section 17(2)(ii), was granted and accordingly the matter was remanded.
***Mettur Chemicals & Plastics Workers Union v. UOI - [2018] 93 taxmann.com 459 (MadrasHC) - W.P. NOS. 382 AND 383 OF 2006 dated APRIL 12, 2018***

**191.** The Tribunal allowed the assesse's claim for relief u/s 89 with respect to arrears of salary being arrears in lieu of employer's contribution to newly implemented 'Defined Contribution Scheme', which was rejected by the AO opining that the payment made by the employer was in nature of perquisites u/s 17(2) and could not qualify for relief u/s 89(1). The Tribunal held that as per section 17(1)(iv) salary includes perquisites and, since relief u/s 89 is available in respect of salary, as a natural corollary thereof, available qua perquisites also.
***Rajesh Kumar v ACIT [2018] 97 taxmann.com 618 (Agra - Trib.) – ITA No. 198 (AGRA) OF 2018 dated July 16, 2018***

**192.** The Tribunal allowed deduction to assessee-employee with respect to notice pay recovered from his salary by previous employers. The Tribunal rejected Revenue's stand that no deduction for notice pay was available u/s. 16 of the Act and since salary was taxable on due basis, the entire salary due from previous employer was taxable. It held that this was a case of recovery of the salary, for which Sec 16 was not to be referred and that assessee had actually received the salary from his previous employers after deducting the notice period as per the job agreement with them and thus only the actual salary received by assessee was taxable.

Go to Index

***Nandinho Rebello v. Deputy Commissioner of Income Tax - [2017] 80 taxmann.com 297 (Ahmedabad- Trib.) (ITA No. 2378 (Ahd.) of 2013)***

**193.** The Court dismissed assessee's appeal against the Tribunal's order rejecting assessee's contention that the salary received by him, as Managing Director (MD) of a company, being in excess and contrary to the provisions of Companies Act, was subsequently revised downwards by the said company to comply with the said provisions and thus the excess amount received could not be taxed as his income. Noting that the salary already paid to the assessee was not recovered by the said company and it was allowed to remain with the assessee, it was held that even if amount was paid contrary to provisions of Companies Act, it had to be construed as income of the assessee.
***Nate Nandha v ACIT - [2018] 95 taxmann.com 49 (Chennai - Trib.) - IT APPEAL NO. 278 (CHNY.) OF 2017 dated June 8, 2018***

**194.** The Tribunal held that value of Stock Appreciation Rights ('SARs') received by the assessee, an employee of an Indian company, from the US parent company of its employer was taxable either as profit in lieu of salary or perquisite under section 17 of the Act. It dismissed the contention of the assessee that the same was not taxable since it was given by the US company and held that the SARs were given as compensation for services rendered by the assesee to the Indian company. Further, it held that the SARs could not be treated as a capital asset since what was received by the assessee was the right to receive the appreciation value and not the right in the stock. It also noted that since the assessee was a resident of India when it exercised the option for SARs it was immaterial that he was a non-resident during the vesting period.
***Shri Soundarrajan Parthsarathy v DCIT – TS-252-ITAT-2016 (Chny)***

**195.** The Tribunal held that since the assessee was outside India for a period of more than 182 days, he became a non-resident and, therefore, salary income of assessee received outside India could not be held to be taxable merely because his foreign employer had deducted TDS on such income
***Avdesh Kumar v DCIT - [2018] 96 taxmann.com 340 (Delhi - Trib.) – ITA No. 747 (DELHI) OF 2018 dated July 30, 2018***

**196.** The Tribunal dismissed assessee's appeal against CIT(A)'s order restricting assessee's claim for exemption u/s 10(13A) with respect to house rent allowance to Rs.16,250/- as against assessee's claim for Rs.1,07,084/-, noting that claim made by the assessee was in excess of the amount allowable as per the said section read with Rule 2A of the Income-tax Rules. It held that as per the said Rule, the amount allowable was Rs.16,250/- being the excess of 10% of the salary or the actual rent paid whichever is less. The salary of the assessee was undisputedly Rs. 9,08,341/- and 10% of the same comes to Rs. 90,834/-Thus the excess of Rs. 90,834/- of actual rent paid is an allowable deduction and hence the difference between actual rent paid of Rs. 1,07,084/- and Rs. 90,834/- is Rs. 16,250/-, being allowable for exemption
***DEEPAK GUPTA vs. INCOME TAX OFFICER (2018) 54 CCH 0144 JaipurTrib - ITA No. 956/JP/2017 dated 04.09.2018***

Go to Index

**197.** The Tribunal deleted the addition made to assessee's income as perquisite u/s 17(2)(iii) on the reasoning that the assessee and his wife had purchased certain immovable properties from the company in which the assessee was a director at a value lower than the market value determined for stamp duty purposes, without making any enquiry or bringing material on record to demonstrate that stamp duty value was actual fair market value of property. It held that the deeming provision providing for adoption of stamp duty value as the deemed sale consideration is applicable under specific circumstances and cannot be applied to other provisions of the Act. Further, Tribunal held that to treat any sum as a perquisite, it was incumbent on part of AO to establish that a benefit in nature of salary was given by an employer to an employee, including the existence of employer-employee relationship.
***Keshavji Bhuralal Gala v ACIT – (2015) 169 ITD 23 (Mum) – ITA Nos. 4938 of 2016 & 6023 of 2014 dated 08.01.2018***

**198.** The Tribunal held that HRA exemption claimed by the assessee could not be allowed u/s 10(13A) as it was based on sham rent payments supported only by rent receipts from parent and the assessee produced no evidence arising in the normal course of transactions of hiring premises such as leave & license agreement, letter to society, payments through bank, electricity and water bill payments or any other correspondence and further even the assessee's parent's ITR did not reflect rent received from the assessee. The appeal filed by the assessee was, thus, dismissed.
***Meena Vaswani v. Assistant Commissioner of Income Tax, Mumbai - [2017] 80 taxmann.com 2 (Mumbai-Trib.) (IT(A) Nos. 1983 to 1985 (Mum.) of 2015)***

**199.** The Tribunal held that where Assessing Officer added notional interest on deposit made for rent- free accommodation in income of assessee-employee, in view of express words used in rule 3, as amended w. e. f. 01.04.2001. action of Assessing officer was not justified.
***Vikas Chimakurty v DCIT - [2016] 70 Taxmann.com 96 (Mumbai –Trib.)***

**200.** The AO denied assessee's (a development officer with LIC) claim of 30% deduction of incentive bonus received from LIC on the ground that incentive bonus was part of salary and was to be assessed under the head "salary" and thus, no deduction could be claimed other than as per section 16. The Tribunal relied on the CBDT circular dated 19.12.1996 where it was explained that portion of the incentive bonus actually spent by the Development Officer for office duty would be exempt from tax if LIC made the payment against the expenses incurred by the Development Officer by way of reimbursement of expenses (i.e. effectively only the incentive bonus after deduction of expenses would appear in salary certificate). Further, noting that no details or supporting evidence had been furnished by the assessee before it to support its claim, it held that the assessee should have filed a certificate from LIC for determining expenses possibly to be incurred by him for the purpose of procuring LIC business and earning incentive bonus. No such certificate had been submitted nor any details filed to support its case. Accordingly, it remanded the matter issue back to the file of the AO to decide the claim of the assessee
***Ranmalbhai R Rajatia vs ITO [2018] 54 CCH 0364 (Rajkot Trib)- ITA No. 726/RJT/2014 dated 01.11.2018***

Go to Index

## *c. Income from House Property*

*Business Income v/s Income from House Property*

**201.** The Apex Court, upholding the decision of the Bombay High Court, dismissed assessee's appeal and held that rental income arising to assessee-firm from sub-licensing of shopping centre was taxable as 'house property' income and not business income for AY 2000-01. It noted that the assessee was allotted a plot of land by BMC on monthly license basis under auction whereby assessee constructed the market area (i.e. Shopping Centre) thereupon and gave the same to various persons on sub-licensing basis. It held that based on the circumstances under which BMC auctioned the market area to assessee i.e. permitting assessee to carry out additions and alterations and allowing sub-letting of the shops and stalls, the High Court had rightly held the assessee to be a 'deemed owner' of the premises in terms of Sec 27(iiib) read with Sec. 269UA(f) of the Act and accordingly correctly assessed income as house property income. It distinguished the co-ordinate bench rulings in Chennai Properties [TS-238-SC-2015] and Rayala Corporation Pvt. Ltd [TS-437-SC-2016] on the ground that in those rulings the assessees were in the business of letting out of properties and derived entire income from letting out of properties whereas in the instant case, the assessee could not substantiate that its entire income or substantial income was from letting out of the property which was its principal business activity. It held that a mere entry in the object clause of the partnership deed of the assessee stating that the assessee is engaged in sub-letting of properties would not be a conclusive factor.
***Raj Dadarkar & Associates vs. ACIT - TS-183-SC-2017 - CIVIL APPEAL NOS. 6455-6460 OF 2017 dated 09.05.2017***

**202.** The Court dismissed Revenue's appeal and held that since the assessee was in the business of development of real estate projects and letting of property was not the business of the assessee i.e. main object was not acquiring and holding properties, rental income was assessable as income from house property. It followed the ratio in CIT v. Sane & Doshi Enterprises (2015) 377 ITR 165 (Bom HC) wherein the Court had held that the rental income received from unsold portion of the property constructed by real estate developer was assessable as income from house property.
***CIT v. Gundecha Builders (2019) 102 taxmann.com 27(Bom HC) - IT APPEAL NO. 347 OF 2016 dated 31.07.2018***

**203.** The Tribunal dismissed assessee's appeal against CIT(A)'s order holding that income from leasing of warehouse was assessable as income from house property and not business income. It held that merely because one of the main objects clause of MOA mentioned that assessee was engaged in the business of leasing of warehousing, it would not be a conclusive factor in determining nature of income.The Tribunal relied on the decision in case of Raj Dadarakar & Associates v ACIT 394 ITR 592 (SC) wherein it was held that there may be instances where a particular income may fall under more than one head but wherever such income is income from leasing out of premises and collecting rent, normally it is to be treated as income from house property, in case provisions of section 22 of the Act are satisfied with the primary ingredient that the assessee is the owner of the building or land appurtenant thereto. Also, earlier owner was

receiving income from warehouse as rental income and after change of ownership, the nature of income remained the same.

***New Horizon Logiware (P) Ltd v ITO-[TS-657-ITAT-2018(DEL)] – ITA Nos.474/Del/2018; dated 05.11.2018***

**204.** The assessee let out amenities like flooring, Generator, Electrical Cabling, Plumbing, Sprinklers, Hydrants, Signage, Anchor space etc. along with its properties and treated income from the same, i.e. rent as 'Income from House Property'. The AO held that income from letting out amenities was taxable as 'Income from Business or Profession'. While allowing the assessee's appeal, Tribunal relied on the co-ordinate bench ruling in the assessee's own case for earlier years wherein it was held that amenities were part and parcel of the rent agreement and that the amount received was rent and should be taxable as 'Income from House Property'. While doing so, Tribunal also relied on the ruling of the jurisdictional High Court in the case of J.K. Investors (Bombay Ltd.) ITA No. 1089 to 2011 and Bhaktavar Construction Pvt. Ltd. (162 ITR 452) wherein it was held that amenities agreement cannot operate in isolation of the rent agreement.

***ITO vs. Zears Developers P. Ltd. & Anr. – [2018] 53 CCH 0012 (Mum ITAT) – ITA No 6375/Mum/2016, 6274/Mum/2016 dated May 7, 2018***

*Income from Other Sources v/s Income from House Property*

**205.** The Tribunal held that the hoardings rent received by assessee (a co-operative housing society) for granting permission to install hoardings in the compound was assessable as income from house property (on which standard deduction @ 30 percent was allowable) and not as income from other sources. It rejected Revenue's stand that in case of a co-operative society, the residential buildings are owned by the members and not by the society and therefore assessee society could not let out the residential buildings or any land appurtenant thereto, observing that the assessee- society was a tenement co-operative housing society in which ownership of the land and building vested in the society itself. It also rejected Revenue's stand that the land on which the hoardings were erected could not be termed as 'land appurtenant thereto' in terms of Section 22 as there was no building nearby and held that by virtue of the word 'or' used in the expression 'building or land appurtenant thereto', land is not required to be used as an integral part of the building as a unit

***Bimanagar Co. Op. Housing Society Ltd [TS-441-ITAT-2017(Ahd)]- ITA No.423/Ahd/2012 dated 22.09.2017***

**206.** The Tribunal held that income earned by assessee from letting out space on terrace for installation of mobile tower/antenna was taxable as 'income from house property' and not income from other sources and, therefore, deduction under section 24(a) was available in respect of it.

***Kohinoor Industrial Premises Co-operative Society Ltd. v. ITO, Ward-31(2) (2), Mum-[2018]98 taxmann.com 365 (Mum– Trib.)- ITA No.670 (MUM) OF 2018- dated October 5, 2018.***

Go to Index

**207.** The Tribunal held that Income earned by assessee from letting out space on terrace for installation of mobile tower/antenna is taxable as income from house property and, therefore deduction u/s 24(a) is also available.
***Kohinoor Industrial Premises Co-op Society Ltd vs ITO- (2018) 54 CCH 0325 MumTrib-ITA No. 670/Mum/2018 dated 05.10.2018***

*ALV computation*

**208.** The Court held that once interest on interest free security deposits received by assessee from tenant was offered to tax as income from other sources, adding notional interest on interest free security deposit to determine 'Annual letting value' of property under section 23(1)(b) would amount to double taxation and thus the same was not possible.
***Pr. CIT v. Karia Can Co. Ltd. [2018] 96 taxmann.com 193/257 Taxmann 189(Bom.)- ITA Nos.1316, 1326 of 2015 & 8 of 2016 dated July 9, 2018***

**209.** The Court held that assessee allotted space in building complex owned by it on license basis to several sub-licensees and accepted interest-free refundable deposits from them which got merged with business income declared by assessee, no separate addition on account of benefit derived by assessee out of said deposits could be made.
***Commissioner of Income-tax v. Bharat Hotels, [2016] 65 taxmann.com 39 (Delhi), IT Appeal Nos. 69 to 73 of 2000, dated July 24, 2015***

**210.** The Court set aside the order of the Tribunal and held that 'reasonable' rent and not the lower actual rent received by assssee-individual was relevant for computing annual value of the property let out u/s 23(1) for AY 1996-97. It observed that assessee alongwith other co-owners had leased out a portion of the property at Re. 1/ per sq. ft. to the company in which they were directors, however, the AO assessed the annual value at Rs. 4 per sq,ft. on the basis of another portion of the same property leased out to other tenant considering the methodology prescribed u/s 23(1) and therefore held that the Tribunal erred in quashing the AO's action by holding that Sec 23(1) (which provides for computation of annual value of 'let out' property) could not be applied to present case as the co-owners themselves were the lessees. It held that the findings of the Tribunal could not be accepted for the reason that Section 23 did not exempt cases in which buildings have been let out by the owners to firms or companies in which they are interested. Accordingly, it held that Sec 23(1) would be applicable in all cases where annual value has to be estimated on let-out properties.
***Dr. K. M. Mehaboob [TS-618-HC-2016(KER)] (ITA.No. 765 of 2009)***

**211.** The Court held that maintenance charges and taxes paid by the sub-sub-licensee directly to the builder forms part of the sub-licencee assessee's rent for computing annual letting value under section 23 and observed that the term 'rent' is wide enough to to include any amount which is paid in consideration of the property let. It further held that where the agreement provides that the owner shall pay the amounts for the common facilities, maintenance charges, it should be presumed that the same is factored into the rent and same should not be added to the rent. However, if they are stipulated to be payable by licensee it must form part of rent for computing annual letting value.

Go to Index

***Sunil Kumar Gupta-TS-539-HC-2016 (P&H)-ITA No.369/2015***

**212.** The Court held Section 23(1)(b) and (c) would apply only to those properties which were actually let out and for which rent was actually received or receivable by the assessee. These provisions deal with the concept of real income and not notional income. Therefore, the annual value of the properties which are more than one, owned by the assessee and which admittedly remained vacant throughout the previous year would not be assessed under Section 23(1)(c) but under Section 23(1)(a).
***Susham Singla v. CIT, Patiala [2016] 76 taxmann.com 349 (Punjab & Haryana) (It Appeal Nos. 371 TO 377 OF 2015)***

**213.** The Tribunal allowed assessee's claim for deduction of municipality taxes paid by assessee-company during AY 2015-16 while calculating Annual Let Out Value (ALV) of property purchased in e-auction in July 2014 on 'As is where is' and 'As is what is' basis, though the liability related to the earlier year in which the assessee was not the owner of the property. It held that the assessee had purchased the property in e-auction 'As is where is' and 'As is what is' basis which meant that assessee purchased the property along with all liabilities attached to it and thus it was assessee's responsibility to discharge all liabilities attached to the property.
***Technomark Television Network Pvt. Ltd. v ITO [TS-639-ITAT-2018(Bang)] - ITA No.2349/Bang/2018 dated 05.10.2018***

**214.** Where, vide a supplementary lease-deed, the assessee re-fixed and reduced the monthly rent charged to its sister concern to Rs.25,000 per month from Rs.5 lakhs per month, while negotiating interest free security deposit at Rs.25 crores, the Tribunal upheld the Revenue's determination of annual value ('ALV') of property let out by assessee to its sister concern, by adopting 'notional interest' on security deposit received by assessee and rejected the assessee's stand that on account of commercial expediencies the rent was reduced and that the AO did not have power to enhance the ALV on the basis of higher deposit. It observed that it was only on receipt of a substantial amount towards interest-free security deposit that the rent was reduced and therefore held that notional interest on security deposit was to be treated as income from house property.
***Sobha Interiors Pvt. Ltd [TS-633-ITAT-2016(Bang)] (ITA Nos.1607 & 1692/Bang/2012)***

**215.** The Tribunal held that service tax could not form part of income from house property since there was no element of income arising out of service tax. Accordingly, it held that the disallowance of service tax as a deduction under section 23(1) of the Act by the Revenue was not warranted as it could not have been considered as income in the first place.
***Anil Gupta v ACIT – TS-243-ITAT-2016 (Chand)***

**216.** The Tribunal allowed assessee's claim for deduction u/s 24(b) of the entire interest paid on amounts borrowed and utilized for construction of land and building, which was disallowed by the AO to the extent of 50% on the ground that there was no bifurcation of funds used for land and building and other assets used for business activities. It was noted that the land and buildings were constructed as the assets of school and the amount invested in the school land and building was far higher than the amounts borrowed. Further, the assessee had given

complete details before the CIT(A) to show how much own funds were available to the assessee and how much amounts had been borrowed from the Bank and other institutions.
***VIDYA EDUCATION INVESTMENT PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0211 (Del Trib) - ITA.No.6177/Del./2014 dated June 22, 2018***

**217.** The Tribunal held that where assessee indended to let out property and took appropriate efforts in letting property, however, due to fall in property prices failed to let out same year after year because of which property remained vacant, assessee was entitled to claim benefit under section 23(1)(c).
***Ms. Priyananki v. Ass.CIT. - [2019]101 taxmann.com 45 (Delhi-Trib.) - ITA No. 6698(DELHI) of 2015 -dated December 13, 2018.***

**218.** The Tribunal held that notional interest on interest free security deposit could not be added for arriving at annual letting value, not withstanding that amount of security deposit was equivalent to 3 years rent.
***DCIT vs Moni Kumar Subba- (2018) 54 CCH 0083 DelTrib- ITA No 4038 and 3982/Del/2013 dated 12.10.2018***

**219.** The Tribunal held that where AO sought to reopen assessment after expiry of four years from end of relevant year on ground that assessee owned two house properties and, thus, one of said house property was to be treated as deemed let out and annual lettable value of said house property was to be determined as provided under section 23(1), since all relevant facts were brought on record at time of assessment, in view of proviso to sec.147, impugned reassessment proceedings deserved to be set aside. The Tribunal held that where assessee declared annual lettable value (ALV) from house property having regard to municipal rentable value, in view of fact that municipal reteable value is a recognised basis of determination of ALV there was no justification for action of Assessing Officer in disregarding said municipal reteable value for determination of ALV and substitution thereof by some expected rent to be received by assessee.
***Pankaj Wadhwa v. ITO, 1(3)(4) Mum- [2019] 101 taxmann.com 161 (Mum-Trib.) - ITA Nos. 5698(MUM) of 2016 & 5005, 5007(MUM) of 2017 -dated November 30, 2018***

**220.** When property of assessee had remained let out for a period of 36 months, and thereafter could not be let out and had remained vacant during whole of year under consideration, but had never remained under self occupation of assessee, the Tribunal held that annual value of said property was rightly computed at nil by taking recourse to section 23(1)(c.) by assessee.It held that though term ‘property is let' used in section 23(1)(c) is solely with intent to avoid misuse of determination of 'annual value' of self-occupied properties by assessee by taking recourse to section 23(1)(c), however, same cannot be stretched beyond that and, thus, 'annual value' of a property which is let, but thereafter remains vacant for whole year under consideration, subject to condition that same is not put under self-occupation of assessee and is held for purpose of letting out of same, would continue to be determined under section 23(1)(c).
***Sonu Realtors (P) Ltd vs DCIT- (2018) 97 taxmann.com 534 (Mumbai- Trib)- ITA No 2892 of 2016 dated 19.09.2018***

Go to Index

**221.** The assessee owned two house properties, one in USA and other in Mumbai. He treated house in USA as self-occupied and offered income from house property in Mumbai as a deemed let-out based on its Municipal rateable value. Subsequently, assessee filed revised return of income and showed Mumbai property as self-occupied property and house in USA as deemed to be let-out property. The AO rejected such substitution of property and estimated annual letting value (ALV) of Mumbai flat and, accordingly, determined taxable income of assessee at certain amount. The CIT(A) instead of considering substitution of property for purpose of computing income from house property, held that USA property was occupied by daughter of assessee and, thus, could not be considered as self-occupied property and also confirmed action of AO. On cross appeals, the Tribunal held that once the CIT(A) arrived at a conclusion that USA property was not self-occupied, he should have considered it for deemed value of consideration for purpose of computing income from house property and thus, restored the issue to the file of AO to treat USA property as deemed let-out and determine ALV of the said property.
***DCIT v Deepak Shashi Bhusan Roy - [2018] 96 taxmann.com 648 (Mumbai - Trib.) – ITA Nos. 3204 & 3316 (MUM.) of 2016 dated July 30, 2018***

**222.** The Tribunal held that the words 'property is let' does not mean 'property actually let out'. If property is held with an intention to let out in the relevant year coupled with efforts made for letting it out, it could be said that such a property is a let out property and the same would fall within the purview of section 23 (1)(c) and be eligible for vacancy allowance. It held that a reasonable approach should be taken on the assesse's attempts to let out and infallible proof should not be demanded.
***Sachin R. Tendulkar vs. DCIT - ITA No. 3755/Mum/2016 dated 23.08.2018***

**223.** The Tribunal held that the benefit provided in Section 23(1)(c) [i.e. where a property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof was less than the ALV under Section 23(1)(a) then the assessee was to be taxed only on the rent received / receivable], would apply to properties which are ready to let notwithstanding the fact that the properties have not been actually let out in the past. Noting that the property of the assessee was vacant during the entire year but were in the ready to let condition, it held that the AO was incorrect in denying the benefit under Section 23(1)(c) and in taxing the income as per ALV under Section 23(1)(a) of the Act.
***ITO v Metaoxide (P.) Ltd - [2018] 92 taxmann.com 302 (Mumbai - Trib.) - IT APPEAL NOS. 4428 & 5771 TO 5775 (MUM.) of 2016 dated March 28, 2018***

**224.** In the case of assessee, engaged in business of buying of properties and leasing out same, and offering income from such leasing to under the head 'Income from House Property', the Tribunal held that –

- contributions received by it from tenants towards sinking fund could not be assessed as rental income of assessee
- interest paid on loan borrowed from its holding company for acquiring of property was to be allowed as deduction u/s 24(b)
- in view of fact that actual rent received or receivable by assessee in respect of let out property was in excess of sum for which property might reasonably be expected to have

Go to Index

been let out from year to year and the ALV had been determined u/s 23(1)(b), no addition in respect of notional interest on interest free refundable deposits received from its tenants was called for

***ITO v Altitus Management Advisors (P.) Ltd. – (2018) 91 taxmann.com 472 (Mum) – ITA No. 4259 (Mum.) of 2015 dated 28.02.2018***

**225.** The Tribunal confirmed AO's addition of notional interest on security deposit received under 'Leave and License Agreement' by the assessee observing that the security deposit in the instant case was to circumvent real rent. It noted that the Assessee (tenant, who had further sublicensed the property to third party) had offered leave and license fees of Rs. 4,80,000 to tax and that he also received interest free security deposit of Rs. 2.75 Crs from the licensee. It held that the security deposit of Rs.2.75 cr. was hugely disproportionate to the leave and license fees of Rs.4,80,000/- shown by the assessee, and therefore on viewing the transaction as a whole, it held that the transaction in the instant case was a device to reduce the tax burden. Accordingly, it concluded that the 'Leave and License Fee' and 'Security Deposit' were interconnected and part of the same transaction. Accordingly, it held that the held that the notional interest @ 9% was appropriate (based on interest rate on term deposits offered by Public Sector Banks) and taxable.

***Deena Asit Mehta [TS-60-ITAT-2018(Mum)] - ITA No. 3549/MUM/2016 dated 09/02/2018***

**226.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 23 by computing notional annual letting value on unsold shops which were held as stock in trade by the assesse, relying on the decision in the case of M/s. Runwal Constructions v. ACIT [ITA.No. 5408 & 5409/Mum/2016] wherein it was held that since the unsold flats were treated as stock in trade in the books of account of the assessee and the flats sold by it were assessed under the head 'income from business', the AO was not correct in bringing to tax notional annual letting value in respect of those unsold flats u/s 23 as income from house property .

***INCOME TAX OFFICER vs. ARIHANT ESTATES PVT. LTD. - (2018) 53 CCH 0321 MumTrib - ITA NO. 6037/MUM/2016 dated June 27, 2018***

**227.** The Tribunal held that Municipal rateable value is an approved method for determination of ALV of property but if AO is convinced that municipal rateable value did not represent fair market value of rent, then he may resort to prevailing market rental value in locality

***ACIT v Cyrus Investments (P.) Ltd [2018] 93 taxmann.com 493 (Mumbai – Trib.) – ITA NO. 5414 of 2016 dated 09.05.2018***

**228.** The Tribunal held that Section 23(1)(c) of the Act, (which provides that where property or any part of property is let out and is vacant during the whole or any part of the previous year and due to such vacancy the actual rent received was less than the municipal rent, the annual value was to be treated as the amount received), could not apply to the assessee as the assessee did not let out any property for any part of the year. It dismissed the contention of the assessee that the property was intended to be let out and that Section 23(1)(c) would also consider situations where the property was intended to be let out and held that the provisions of the

Go to Index

section were to be construed literally and intention to let out could not be imported to the meaning of let out under the provision.
***Sharan Hospitality Pvt Ltd – TS-511-ITAT-2016 (Mum)- I.T.A. No. 6717/Mum/2012***

**229.** The Tribunal allowed assessee's appeal and deleted the addition made by the AO on account of income from house property owned by the assessee, with respect to which the assessee had admitted certain amount as its annual rental income and the said rental income was considered by the AO to be grossly low. The AO had adopted market rent to determine the annual let out value and assessed the same to tax. The Tribunal observed that the house property was part occupied by the assessee for his personal propose when he visited India and as per the Act, annual value of property under self-occupation was Nil. Further, it accepted the assessee's argument that since he accessed pooja room and internal stairs when he was in self-occupation, there was violation of privacy to the tenants residing in other 50% of the house and thus no other tenant would come forward to take house at high rent. The Tribunal thus held that that fetching of Market Value was not justified and the rent admitted by the assessee was reasonable.
***Vegesna Ananthakoti Raju v DCIT (International Transactions) (2018) 52 CCH 0279 VishakapatnamTrib - ITA No. 528/Vizag/2017 dated 04.04.2018***

*Deductions*

**230.** The Tribunal held that the AO was incorrect in denying the assessee benefit of standard deduction @ 30 percent under section 24(a) of the Act, on the ground that the assessee was not the owner of the structure constructed by the lessee over and above the property leased out by the assessee. It held that merely because the tenant had raised some construction over the property of the assessee, the assessee could not be denied of benefit under section 24(a) of the Act.
***Premier Electrical Industries [TS-579-ITAT-2016(CHANDI)] (I T A No . 96 /CHD/2015)***

**231.** The Tribunal held that where a copy of sanction letter was available on record which showed that the loan was granted for renovation / reconstruction purposes, the assessee was entitled to deduction under section 24(b) of the Act.
***ITO v Mac Overseas Pvt Ltd – (2015) 45 CCH 0269 Del Trib***

**232.** The Tribunal held that where the property in question did not belong to the assessee but belonged to the assessee's mother, the interest claimed by the assessee on house building advance was not allowable under section 24(b) of the Act.
***Raj Sawhney v ITO – (2016) 48 CCH 0253 (Jaipur Trib) – ITA No 699 / JP / 2016***

*Stock-in-trade*

**233.** SLP was granted by the Apex Court against High Court ruling that where flats constructed by assessee were held as stock-in-trade and same were not at all let out for any previous years,

there would be no question of availing vacancy allowance under section 23(1)(c); and assessee would be liable to pay tax on ALV of said flats under section 23(1)(a).
***Ansal Housing & Construction Ltd. v ACIT [2018] 95 taxmann.com 17 (SC) – SLP (C) NOS. 11016 AND 11017 OF 2018 dated 04.05.2018***

**234.** The Court allowed the appeal filed by the Revenue and dismissed the order of the Tribunal wherein it was held that sections 22 and 23 of the Act was not applicable to properties owned by the assessee and used by the assessee for its own business purposes. It held that the levy of income tax in the case of a person holding house property was not premised on whether the assessee carried on business as a landlord, but on ownership and relied on the decision of the Court in Ansal Housing Finance & Leasing Co Ltd wherein it was held that the capacity of being an owner was not diminished because the assessee carried on business of developing, building and selling flats.
***CIT v Ansal Housing and Construction – TS-418-HC-2016 (Del) - ITA 442/2003***

**235.** The Tribunal deleted notional income addition made u/s. 23 towards annual letting value of unsold flats of Runwal builders observing that the flats sold by assessee were assessed under the head 'income from business' and the unsold flats were treated as its stock-in-trade. Accordingly, it held that the AO was incorrect in taxing notional value of unsold flats under the head 'income from house property'.
***Runwal Constructions - TS-124-ITAT-2018(Mum) - ITA No. 5408/Mum/2016 dated 22.02.2018***

***d. Business Income***

*Income from House Property v/s Business Income*

**236.** The High court upheld Tribunal's order holding that income earned by assessee from letting out various shops/stalls in shopping malls constructed by them was to be treated as business income and not as income from house property as the intention of assessee-company was to commercially exploit property by way of complex commercial activities and, it was not a case of letting out property simplicitor. The SLP filed against said decision was granted by the Apex Court.
***Pr.CIT v. E City Real Estate (P.) Ltd. - [2018]100 taxmann.com 94(SC) – SLA (C) Nos.7913 of 2018- dated October, 31, 2018.***

**237.** The Apex Court held that where assesse company was having house property and its business was to lease out its property and to earn rent, income so earned as rent would be taxable as 'business income', and not as 'income from house property'.
***Rayala Corporation (P) Ltd. v. ACIT (2016) 72 taxmann.com 149 (SC) Civil Appeal Nos. 6437 TO 6441 OF 2016***

**238.** The assessee was engaged in the business of acquiring properties on ownership or lease or rental basis and then giving it on lease along with various amenities such as electricity, cooling

towers, elevators, car parking for the lessees/visitors which were inseparable and from which it earned rental income. The Court upheld the order of CIT(A) and the Tribunal holding that the rental income earned by the assessee was business income considering that the object (as per MoA) and the basic intention of the Assessee was commercial exploitation of its properties by developing them as shopping malls/business centers.
***PR. CIT vs. Stellar Developers Pvt. Ltd. (2017) 99 CCH 0196 Bombay HC (ITA NO. 690, 691, 692, 698, 699 & 919 OF 2015 dated August 2, 2017)***

**239.** The Court reversed the order of the Tribunal and held that license fee received by the assessee for giving the hotel along with furniture on license was taxable as business income and not income from house property. Noting that since the assessee's business was in losses it had decided to give the hotel as well as furniture on license, it dismissed the contention of the Revenue that the income was taxable as income from house property.
***Palmshore Hotels P Ltd v CIT – TS-538-HC-2017 (Ker) - I. T. A. No.83 of 2013 dated 19.10.2017***

**240.** The Court held that where assessee was engaged in the business of granting loans to its members for constructing houses as well as to build housing complexes and to sell the units, income from selling the constructed houses was taxable as income from business or profession.
***Punjab State Co-operative Federation vs. CIT***

**241.** Where the assessee company, engaged in deriving rental income from letting out of warehouse, treated rental income received as business receipts but the AO completed assessment u/s 143(3) treating rental income received from letting out of warehouse as Income from House Property, the Tribunal relying on its earlier years order in the case of the assessee held that warehouses constructed by assessee were commercial assets and income that arose from leasing out commercial property constituted business income. It noted that the warehouses constructed were as per international standards and therefore held that the services offered by the assessee could not be regarded as routine services to be rendered by any ordinary property owner as part of lease and therefore held that the rentals constituted business income of the assessee.
***INCOME TAX OFFICER vs. ANJANEYA INFRASTRUCTURE PROJECT PVT. LTD. - (2018) 52 CCH 0220 BangTrib - ITA No. 2509/Bang/2017 dated Mar 23, 2018***

**242.** The Tribunal held that the income received by the assessee (a recognised IT park) from leasing the space as well as providing maintenance services (under two separate agreement) was taxable under the head business income only and not under house property income as contended by Revenue. It relied on the decision in the case of Velankani Information Systems (P) Ltd (2014) 265 CTR 250 (Kar HC) wherein also an IT park had rent out its premises through two separate agreements, it was held that income was assessable under the head income from business since the main intention was to exploit immovable property by way of complex commercial activities.
***Ambattur Infra Developers v DCIT - I.T.A. Nos.195, 196, 377 & 376/CHNY/2016 dated 23.07.2018***

Go to Index

**243.** The Tribunal held that where the assessee received rental income for leasing out commercial complexes as well as the maintenance of such commercial complexes by way of providing indispensable amenities, the CIT(A) was correct in charging 25 percent of rental income as business income. It held that the nature of amenities provided by the assessee such as maintaining common area, lift operation, providing security etc was in the nature of business activity. It rejected the Revenue's reliance on the order of the Court in the case of the assessee in prior years, where such income was treated as income from house property relying on the decision of Chennai Properties and Investments Ltd, since the said decision was later reversed by the Apex Court.
***DCIT v Keyaram Hotel Pvt Ltd – TS-311-ITAT-2016 (Chny)***

**244.** The Tribunal allowed the assessee's appeal and held that the rental receipts as well as maintenance charges received by the assessee by leasing out Information Technology parks to various parties / lessees was to be taxed as business income, where the AO had taxed the entire receipts as income from house property. It held that what is to be looked into is intention of parties while entering into lease and since the agreements entered by assessee with lessees were contemporaneous, it could be concluded that the object of lease was to allow enjoyment of entire property with all services related to its use as technology centers. Thus, the Tribunal held that income both from leasing space as well as providing maintenance services had to be considered only under head income from business.
***AMBATTUR INFRA DEVELOPERS vs. DCIT - (2018) 66 ITR(Trib) 294 (Chennai) – ITA Nos 195 & 196/CHNY/2016, 376 & 377/CHNY/2016 dated July 23, 2018***

**245.** The assessee earned a total sum of Rs. 4.30 crore including Rs. 2.36 crore from rental income / fee for craft stalls installed in a tourism festival called 'Dilli Haat' which it offered to tax under the head Profits and Gains from Business. The Assessing Officer held that the entire rental income constituted 'income from house property' observing that the assessee constructed certain permanent structures as well as temporary constructions which it rented to several organizations. The Tribunal noted that out of the total sum of Rs. 2.36 crore the assessee only disputed the amount of Rs. 1.82 crore earned on account of license fee for use of craft stalls for a period of 15 days and conceded to the balance. Vis-à-vis the receipt of Rs. 1.82 crore, the Tribunal observed that the stalls were set up with main object to promote tourism and to attract tourists and the rent was charged for each craft stall for use of designated area in Dilli Haat. Considering that the stalls were set up in light of overall object of promoting tourism the income from such craft stalls could not be considered as anything other than business income.
***DELHI TOURISM AND TRANSPORT DEVELOPMENT CORPORATION LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 52 CCH 0258 DelTrib - ITA No. 3457/Del/2007, 1505/Del/2009***

**246.** The Tribunal held that where in terms of its memorandum of association, the main object of the assessee was to carry on business of hotels, resorts, boarding, lodges etc and it earned only rentals for occupation of premises on a daily basis, the said income was taxable as business income and not as income from house property.
***Heritage Hospitality Ltd v DCIT – (2016) 68 taxmann.com 150 (Hyd)***

Go to Index

**247.** The Tribunal held that where the assessee was only the licensee of the premises owned by a licensor and the agreement entered into between the assessee and the licensor did not create interest in the property owned by the licensor and the assessee sub-licensed the property to various parties, the income derived therefrom would not be taxed under section 22 read with Section 27 since the assessee did not have exclusive possession of the property and the same was held to be taxable as income from business.
***Bombay Plaza P Ltd v ACIT – (2016) 73 taxmann.com 91 (Kol Trib) – ITA No 1641 & 1203 (Kol) 2014 - ITA No 1641 & 1203 (Kol) 2014***

**248.** Where the assessee was providing warehousing services along with other facilities such as security service and other services to keep goods safe and under hygienic conditions, the Tribunal held that the said activity systematically undertaken by assessee was in nature of business and the AO was not justified in taxing the income as rental income under the head income from house property merely because the payer deducted tax under Section 194-I of the Act.
***DCIT v Tewari Warehousing Co - [2018] 92 taxmann.com 168 (Kolkata - Trib.) - IT APPEAL NO. 1316 (KOL.) OF 2016 dated MARCH 16, 2018***

**249.** The Tribunal held that rent received by the assessee, engaged in business of development of property, from tenants of a property, pending vacation of the said property was inextricably linked with the assessee's business and, hence could not be treated as income from house property. Further, noting that the sums paid by the assessee for vacating the said property were debited to the work-in-progress and the same was accepted by the AO, it held that the assessee was justified in crediting the rent received also to work-in-progress.
***SUN ENTERPRISE vs ITO - (2018) 53 CCH 0353 MumTrib – ITA No. 4987/Mum/2014 dated 16th July, 2018***

**250.** The assessee, engaged in the business of development and leasing of commercial properties including I.T. Parks, offices etc., received income from leasing such properties. The AO treated the same as Income from 'House Property' as against 'business income' offered by the assessee. Relying on the CBDT Circular No.16/2017 dated 25.04.2017 and the AO's orders in the assessee's case for preceding four assessment years, the Tribunal upheld the order of the CIT(A) and held that income from letting out of premises / developed space along with other amenities in industrial park / SEZ was to be charged under head profits and gains of business. As regards the deduction claimed on account of payment of salaries and Directors' remuneration, Tribunal held that such remuneration was paid for the services rendered by the Directors and if the AO wanted to disallow such remuneration considering that the same was unreasonable, he should have brought the facts and materials on record to establish the actual fair market value of the services rendered.
***ACIT vs. Grew Industries Pvt. Ltd. – [2018] 53 CCH 0015 (Mumbai ITAT) – ITA No 5427 of 2016 dated May 9, 2018***

**251.** The Tribunal accepted the assessee's contention that income earned from running a departmental store was taxable as 'íncome from business' and not income from house property as alleged by the AO. It noted that the assessee entered into separate but similar agreements

with the different counter holders, whereby the latter were to bring the goods/products for marketing and sale to the customers at the different counters in assessee's premises for which it received commission from the counter holders. Further noting that the assessee's staff carried out the collection of the sales proceeds as well as packaging and delivery and the commission received by the assessee was based on the actual sales effected and was not a constant amount unlike typical rent it held that the income of the assessee was not taxable as income from house property.
***Asiatic Stores & Soda Fountain [TS-456-ITAT-2017(Mum)] ITA NOS. 394, 395 & 398/MUM/2017 dated 27.09.2017***

**252.** The Tribunal held that income from operations of malls is taxable as business income and it cannot be categorized as income from house property on the ground that assessee company was incorporated with the object of construction and maintaining shopping malls.
***City Centre Mall Nashik Pvt. Ltd. & ANR. Vs. ACIT & ANR. (2016) 48 CCH 0070 (Mumbai Trib) - ITA No. 1783/Mum/2015***

**253.** The Tribunal held that income / loss from letting out of multiplex / shopping mall and cinema theatre along with amenities was to be assessed under the head 'business income' and not 'income from house property' as main intention was found to be exploitation of property by way of commercial activities.
***Shreeji Exhibitors v ACIT – (2015) 44 CCH 0492 Mum Trib***

*Capital Gains v/s Business Income*

**254.** The Court dismissed assessee's appeal against Tribunal's order upholding the AO treatment of taxing short term capital gains as well as speculation income shown by the assessee (housewife) on sale and purchase of shares as business income. The Tribunal had held that the assessee was selling shares with a profit motive after examining that in almost 80% of the transactions, the assessee had sold the shares within a period of one week from date of purchase and further, in the preceding year the assessee had offered the profit from sale and purchase of shares as business income.
***Ramilaben D. Jain vs ACIT [2018] 97 taxmann.com 217 (Bom) - ITA NO. 325 OF 2016 dated August 20 2018***

**255.** The Court held that where assessee had borrowed funds for purchase of shares and had carried out transactions with many brokers which had resulted in income in crores of rupees, income earned on such transactions was to be assessed as 'business income'.
***Ratanlal j. Oswal v. CIT[2015] 63 TAXMANN.COM 57/235 Taxmann 264 (Bom.)***

**256.** The assessee purchased and sold shares of Rs. 22.03 crores and Rs. 24.12 crores respectively and declared the income arising from sale of shares as short-term capital gain. The Tribunal upheld the AO's finding that since the assessee had regularly dealt in purchase and sale of share which indicated period of holding to be very short (assessee had made purchase of shares 57 times and sale of shares 59 times and there were several instances when assessee had purchased shares and sold them either same day or after a few days), the income arising

Go to Index

therefrom was to be considered as business income. Observing that the Tribunal had duly considered volume of holding, duration of holding, and income derived as dividend to investment made. The Court upheld the order of the Tribunal and held that it had rightly held that income arising from sales of shares was assessable as business income.
***Rakesh Kumar Gupta v CIT - [2018] 92 taxmann.com 101 (DelhiHC) - IT APPEAL NO. 86 OF 2018 dated March 15, 2018***

**257.** Where the assessee, a NRI, purchased agricultural land, levelled it and sold same at higher price, , the Court dismissing the contention of the assessee that it was a sale of agricultural land exempt from capital gains, held that transaction of sale of land amounted to 'adventure in nature of trade' and, thus, profit arising from said transaction was taxable as 'business income'. It further noted that the assessee had not obtained the permission of the RBI under rule 47 of the Foreign Exchange Management (Acquisition & Transfer of Immovable Property in India) Regulations, 2000, which prohibited acquisition of agricultural land by an NRI, unless specifically permitted and therefore held that it could not be considered as a purchase of capital asset.
***VA Jose v DCIT - [2018] 89 taxmann.com 2 (KeralaHC) - IT APPEAL NO. 88 OF 2015 – dated 07.12.2017***

**258.** The Tribunal held that amount received by assessee, engaged in manufacturing and trading of automotive products in respect of sublicensing of patented technical know-how was taxable as business income and not capital gains. Pursuant to technical collaboration agreement with its parent company in Germany assessee was granted a non-exclusive, non-transferable rights to use patent and patent application owned and controlled by parent company for manufacture and sale of automobile products, such technical know-how was further sub-licensed by assessee (after taking permissions from the parent) to an Iran based company ('Motogen') for assembling certain type of automotive generators upon payment of lump-sum fees and royalty and by virtue of the sub-licensing, assessee had not extinguished its right to use the patented technology but it had only shared the technology with Motogen; Accordingly, the Tribunal held that there was no transfer of any capital asset giving rise to capital gains since there was no cessation of ownership.
***Dy. Commissioner of Income Tax vs M/s. Bosch Limited-TS-513-ITAT-2017(Bang)-ITA No. 750 & 751 / bang 2014 dated 06.11.2017***

**259.** Where the assessee had acquired shares of a joint venture from its parent company, owing to a fall out between the parent company and the other party to the venture and sold the shares to companies in the Jindal group on the very same day of the acquisition, The Tribunal held that the surplus arising in the hands of the assessee from the said sale of shares was taxable as business income and not capital gains since the assessee was merely an intermediary and contours of the transaction showed that the assessee never intended to hold on to the shares as an investment.
***GDF Suc TSA Energy India Pvt Ltd v ACIT – TS-432-ITAT-2016 (Bang) - I.T(TP).A No.984/Bang/2010, I.T(TP).A No.1030/Bang/2010***

**260.** The Tribunal held that the profits from sale of land was a business income and could not be taxed as Short Term Capital Gain or Long Term Capital Gain, noting that it was a well thought

business project carried out by the assessee jointly with 17 other persons by way of taking the services of Developer. Thus, it held that the intention of entering into an adventure of business was very clear from the very first day of purchase of land and completed on selling the residential plots.

***Anita Singh and ANR. Vs Asst.CIT [2018] 53 CCH 0479 (Indore Trib.) ITA No.261/Ind/2016,474/Ind/2016 dated August 28,2018***

**261.** The AO noted that assessee earned STCG against sale of certain shares. Assessee submitted that shares were allotted in public issues and investments were out of own capital. AO found that assessee traded in 11 scrips/transactions out of which holding period of 10 transactions was less than five days. AO concluded that said income was assessable as business income. Head of income assumed importance in view of fact that STCG on sale of shares assessable under head capital gains attracted concessional rate of tax as against rate when same were treated as business income. CIT(A) stated that assessee was majorly engaged as a trader rather than an investor in shares since frequency of transactions was high and holding period of scrips was very less. AO was justified in treating said gains as business income. The Tribunal held that, holding period chart extracted by AO clearly revealed that assessee dealt in 11 scrips/transactions during relevant AY out of which holding period of 10 scrips/transactions were five or less than five days which indicated that investments were made by assessee as a trader only and primary objective of such investments was to earn gains in a business-like manner. Assessee's intention got manifested from fact that scrips were sold within a very short span of time so as to reap benefits of listing gains only. Assessee was engaged as share broker and as evident from MoA was dealing in shares was one of main objectives of assessee. Thus, it held that, CIT(A) had AO were justified in treating said gains as business income.

***Nirpan Securities Pvt.Ltd. & ANR vs.Dy. CIT & ANR. -(2018) 54 CCH 0302 MumTrib - ITA No. 2584/Mum/2016, 2585/Mum/2016-dated December 5, 2018***

**262.** The Tribunal held that where the assessee, an investment company, invested in 26 percent of the shareholding of AT&T India with the balance held by AT&T Global, with a stipulation in the agreement that both, AT&T Global and the assessee had an exclusive irrevocable right to increase / decrease its shareholding in AT &T India by requiring the assessee / AT &T Global to sell / buy the shares held in AT & T India at an option price equivalent to the equity contribution plus return at 11 percent; the said investment being different from a normal shareholding, on account of the fact that the price of the shares held in AT&T India was to increase irrespective of the performance of the company and that the investments were restricted for transfer making it highly illiquid, the income on investments would be treated as business income in the relevant year as it accrued when the right to receive such income arose, irrespective of the fact that it was realized at a later date.

***Mahindra Telecommunications Investment P Ltd v ITO – (2016) 69 taxmann.com 431 (MumTrib.)***

**263.** Assessee had invested its funds in securities and treated same as its stock in trade. At year end, assessee valued securities at cost or market price whichever was less.Value of current investment as at the year-end was depreciated in AYs 2010-11 and 2011-12 respectively.Assessee created Provision for diminution in value of securities and claimed same

as deduction.Assessee also sold investments and incurred loss in AYs 2010-11 & 2011-12 respectively and claimed same as its trading loss.AO held that assessee was classified as "loan company" by RBI and its object clause as per MoA was to carry on business of money lending, i.e., assessee's object was not to act as an investment company. AO stated that making investments was not assessee's activity and hence investments made by assessee could not be considered as trading assets, but should be considered as its capital asset.Provision for diminution in value of investments as at year end and also loss on sale of investments were on capital field. AO further observed that making investments in securities was not compulsory for assessee, as it was non-deposit taking company.As per provisions of RBI Act, assessee was not required to make any mandatory investments.Investments made by assessee could not be considered as part of its business activities.Assessee had shown investment in securities under head "investments" and not as current assets.A group company named M/s. C treated securities was purchased by it as its investment.AO disallowed assessee's claim by holding that deduction claimed towards "provision for diminution in value of securities" and "loss on sale of securities" were capital losses.CIT(A) confirmed AO's action. The Tribunal held that assessee submitted that, as per provisions of s. 45I(c) of RBI Act, it was permitted to carry on trading business in securities.Assessee also pointed out that Circular relied upon by AO related to NBFC which accept deposits.Since assessee did not accept deposits, said Circular was not applicable to assessee.With regard to query raised by RBI by way of SCN, assessee submitted that fixed deposits held by assessee was not considered as financial instruments and hence RBI gave SCN.Subsequently, it withdrew fixed deposits and made investment in securities.Said modification done by assessee was accepted by RBI.With regard to observation of AO that assessee had shown investments as "Investments" in Balance Sheet, assessee submitted that it was constrained to prepare Balance Sheet as per format prescribed by RBI.Realised loss on sale of investments would constitute business loss only in hands of assessee. Provision for diminution in value of investments was allowable as deduction. AO was directed to allow deduction of same in both years.

***CREDIT SUISSE FINANCE (INDIA) PVT. LTD. & ANR. vs. Dy. CIT & ANR (2018) 54 CCH 0410 MumTrib ITA No. 1435/M/2016, 1436/M/2016, 1415 & 1416/M/2016 dated 21.12.2018***

*Income from Other Sources v/s Business Income*

**264.** The Apex Court dismissed the SLP filed by the Revenue and upheld the High Court's order wherein it was held that taxability of interest income earned by assessee on deposit of advances received from REC for Rajiv Gandhi Gramin Vidyutikaran Yojna (RGGVY), would depend upon subsequent use of said income, noting that a 'MOU' was signed between the REC and the assessee whereby inter alia it was agreed that interest earned on deposits would be used as part of cost of projects and no other purpose.

***Pr.CIT v NTPC Electrical Supply Co. Ltd. - [2018] 93 taxmann.com 430 (SC) - Special Leave Petition (CIVIL) (Diary) No. (S)11488 of 2018 dated April 23, 2018***

**265.** In case of an assessee who was engaged in business of development of Bio Tech park, construction, easing and sale of commercial properties, earned income from sub-lease of property and where assessee's business for development of Bio tech park had already

commenced, the Court upheld Tribunal's finding that the income from sub lease had to be assessed under income from Business and not under Income from other Sources.
***PCIT vs International Biotech Park Ltd- (2018) 98 taxmann.com 218 (Bombay)- ITA No. 370 of 2016 dated 24.09.2018***

**266.** The assessee, engaged in manufacture and sale of Indian Made Foreign Liquor (IMFL) without owning any popular brand, leased out part of its licensed manufacturing facility to JIL for commercial exploitation of its business assets. The assessee also entered into another agreement with JIL for providing various services required for packaging IMFL. The AO held that the receipts from JIL on account of leasing of factory, plant and machinery, part of licensed capacity, provision of packaging services, re-sale of raw and packaging material was assessable under income from other sources against business income as declared by assessee. The Tribunal held that since the nature of business never changed and the assessee derived income from manufacturing of liquor activity, income received from sub-leasing a part of licensed capacity alongwith part of manufacturing unit could not be considered as income from other sources. Similarly, it held that income received by assessee from packaging services was a business income. Further, the Tribunal held that since raw and packing material belonged to assessee and the same was part and parcel of business activity of assessee, income received from resale of raw and packing material could not be considered as income from other sources but business income.
***HYDERABAD DISTILLERIES & WINERIES PVT. LTD. vs. ACIT (2018) 53 CCH 0333 DelTrib – ITA No. 740/DEL/2012 dated 12th July, 2018***

**267.** The Tribunal allowed assessee's appeal and held that the interest income earned from fixed deposits made by the assessee-company (engaged in shipping business) for the purpose of obtaining Stand-By Letter of Credit (SBLC) for two group companies was taxable as business income as against the AO's contention of taxing the same as income from other source. It noted that the said group companies were floated for acquiring shipping assets and operating shipping business and the SBLC was obtained for acquiring a cruise. Thus, the Tribunal held that interest earned on fixed deposit had a direct nexus with business activity of assessee and such interest bore requisite characteristics of business income.
***HighTech Marines Pvt Ltd. vs ITO [2018] 54 CCH 0233 (Del Trib) - ITA No.6924 /Del/2017 dated 14.11.2018***

**268.** Where the Revenue disallowed expenditure incurred by the assessee involved in planning and building Mass Transit System, the Tribunal held that infrastructure projects took time to be completed and the assessee could operate the Metro Rail System only after the infrastructure was built and where the assessee had acquired land, paid compensation to the displaced land owners, floated tenders and awarded contract for building infrastructure. The assessee had already started its business of planning the mass transit system and since the Revenue had not disallowed the business expenditure claimed in the earlier two years, Tribunal held that the said expenditure was allowable as business expenditure. It further held that where assessee earned interest on its business receipts which were temporarily not required for business, and were parked in banks for earning of interest in order to reduce cost, the same attained nature of business income and not income from other sources.

Go to Index

***Hyderabad Metro Rail Limited Vs. Deputy Commissioner of Income Tax (2017) 49 CCH 0112 HydTrib (ITA Nos. 402 & 403/Hyd/2016)***

*Section 28(iv)*

**269.** Where a loan taken for expansion of business was to be repaid only upon receipt of approval from RBI, the AO made an addition under Section 28(iv) in AY 2010-11 as the same was not paid considering the RBI approval was pending. Relying on the ruling of the Supreme Court in Mahindra and Mahindra Ltd (Civil Appeal Nos 6949 - 6950/ 2004) dated 24/4/2018, the Tribunal held that since the AO could not show that the assessee had obtained any benefit arising out of business, by obtaining loan on interest, no addition could be made under Section 28(iv) of the Act.
***Skylark Hospitality India Pvt. Ltd. vs. DCIT – [2018] 53 CCH 0019 (Delhi ITAT) – ITA No 6431/Del/2014 dated May 3, 2018***

**270.** Tribunal held that authorities below were justified in making addition to assessee's income as perquisite u/s 28(iv) on account of a watch worth Rs. 40 lakhs received as gift from company for which she had undertaken advertisements and promotional activities on remuneration basis.
***Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 144 (Mum) – ITA Nos. 2524 and 2769 (Mum) of 2015 dated 16.01.2018***

**271.** Where assessee, a film actress, had done promotional activity on being brand ambassador of NDTV Toyota Greenathon campaign and, accordingly, had promoted brand Toyota, Tribunal held that the receipt of Toyota car as gift in this connection had rightly been added in her hands as perquisites u/s 28(iv)
***Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 1 (Mum) – ITA Nos. 2771 (Mum) of 2015 dated 16.01.2018***

**272.** Where assessee, who was director of a company, alongwith his wife, purchased certain immovable properties from the company at a value lower than the market value determined for stamp duty purposes, Tribunal rejected the Revenue's contention that benefit derived from above activity was an adventure in nature of trade/business taxable under the head profit and gain of business or profession as per section 28(iv), since the assessee had shown the properties as investments in his books and the revenue itself had accepted it to be investment activity.
***Keshavji Bhuralal Gala v ACIT – (2015) 169 ITD 23 (Mum) – ITA Nos. 4938 of 2016 & 6023 of 2014 dated 08.01.2018***

**273.** The Tribunal held that where assessee purchased shares of a non-related company at a price less than fair value as it was a loss-making concern, no benefit arose to assessee which could be brought to tax under section 28(iv).
***Asst. CIT, Circle-4, Nagpur v. Swiftsol (I) (P.) Ltd.- [2018] 95 taxmann.com 286 (Nagpur – Trib.) ITA Nos. 407 (NAG.) of 2016 & Others-dated July 2, 2018***

Go to Index

**274.** AO found that assessee had made investment in shares of 'PPSL' at discounted rate during year under consideration. AO further noted that PPSL had issued shares to few other entities and individuals at higher rate during same period. AO was of opinion that assessee had enjoyed benefit within meaning of provision of section 28(iv) and made addition to income of assessee. CIT(A) deleted addition made by AO. The Tribunal held that, Revenue had not demonstrated what was business connection or business done between seller and purchaser of shares. No case had been made out that privilege or benefit or concession had been passed on by seller to buyer as part and parcel of business transaction. Mere purchase of shares by way of investment could not be considered as business of company though objects of company enable it to invest as well as deal in shares. There was no event which could be said to had resulted in accrual of income to assessee. Thus, on this factual matrix, mere purchase of shares, as investment, with lock in period of holding, for consideration which was less than market value, could not be brought to tax, as benefit or perquisite u/s. 28(iv). PPSL was continuously incurring losses and had huge accumulated losses which clearly indicated that price, at which it was purchased could not be said to be understated. Hence, there was no question of any kind of gain arising in purchase of these shares at stated price above. Investment could not be said to be benefit arising out of business of assessee. Assessee had clearly submitted that there was no business relationship as such between these parties. Assessee had simply purchased some shares of loss-making company at less than face value from third parties. Assessee had not sold those shares and obtained any benefit of any kind whatsoever. Hence, addition u/s. 28(iv) was not at all justified.

***Asst. CIT & ORS. vs. Swiftsol (I) Pvt. Ltd. & ORS. - (2018) 53 CCH 0282 NagTrib-TA No. 407/Nag/16- Dated Jul 2, 2018***

**275.** The Tribunal upheld CIT(A)'s order deleting the addition made by the Assessing officer u/s 28(iv) of the Act with respect to share application money written back in the books of account of the assessee. It held that amount received by assessee on account of share application money which was subsequently written back in books of account, could not be treated as income of the assessee either u/s 41(1) as it had never been claimed it as a deduction in any of the years or u/s 28(iv) as the amount received was not in the course of a trading transaction but was a capital receipt. Revenue's appeal was, accordingly, dismissed.

***Deputy Commissioner of Income-tax, Mumbai v. Nalwa Chrome (P.) Ltd [2017] 79 taxmann.com 413 (Mumbai-Trib.) (ITA Nos. 238 & 299 (Mum.) of 2015)***

*Section 41(1)*

**276.** The Apex Court granted SLP to the assessee-cooperative bank against the High Court order wherein the High Court had upheld the Tribunal's order holding that provision for establishment expenses and other expenses written back to reserves amounted to cessation of liabilities of expenses and was taxable as income in the year in which it was transferred to reserves u/s 41(1). It was assessee's contention that its entire income from banking business was exempt u/s 80P(2).

***Rajasthan State Co-operative Bank Ltd vsACIT [2018] 100 taxmann.com 153 (SC)-SLP (Civil) Diary No.28056/2018 dated August 24 2018***

Go to Index

**277.** The Apex court dismissed SLP against High Court ruling that where revenue had not established that excess provision for bad and doubtful debts allowable under section 36(1)(vii) written back in profit and loss account was allowed as deduction in prvious years, no addition could be made holding that excess provision written back amounted to income and within meaning of section 41(1).
***CIT. v. Pragathi Gramina Bank- [2018] 99 taxmann.com 153(SC) – SLP(Civil) Diary No.35592 of 2018-dated October 26, 1018.***

**278.** The Apex Court held that in the absence of cessation in the hands of the assessee, the difference between the deferred sales tax liability and its settlement payment at Net Present Value was not taxable under section 41(1) of the Act.
***CIT v SI Group India Ltd (Civil Appeal No 10873 of 2011) – TS-703-SC-2015***

**279.** The Apex Court held that the waiver of loan taken for acquiring capital assets could neither be taxed as perquisite u/s 28(iv) nor as remission of liability u/s 41(1) by holding that –
- for invoking provisions of section 28(iv), benefit received has to be in some form other than in shape of money and since the waiver amount represented cash/money, the said section was not applicable
- for application of section 41(1), it is sine qua non that there should be an allowance or deduction claimed by assessee in respect of loss, expenditure or trading liability incurred, however, assessee had not claimed deduction u/s 36(1)(iii) for interest on loan and loan was obtained for acquiring capital assets, hence, the waiver was on account of liability other than trading liability and, thus, provisions of section 41(1) were also not applicable

***CIT v Mahindra And Mahindra Ltd - [2018] 93 taxmann.com 32 (SC) - CIVIL APPEAL NOS. 6949-6950 OF 2004 & OTHERS dated April 24, 2018***

**280.** Where the assessee received Rs. 1 crore by way of 'share application money' from its holding company which was subsequently adjusted against goods sold by assessee to its holding company, the Court held that it being a case of discharge of liability and not cessation or remission of liability, provisions of section 41(1) would not apply to the assessee's case. Accordingly, it dismissed Revenue's appeal.
***CIT v Indo Widecom International Ltd - [2018] 89 taxmann.com 89 (AllahabadHC) - IT APPEAL NO. 715 of 2012 dated 07.12.2017***

**281.** The Court held that where the assessee made a provision for expenses likely to be incurred on re-delivery of aircrafts taken on lease, but the lease was extended for further period along with the liability, the said provision could not have been said to have been ceased for the purpose of invocation of section 41(1) of the Act. Further, it held that where instalment payments, payable in the future were never claimed as a deduction or trading loss by the assessee, section 41(1) of the Act could not be invoked in this regard.
***CIT v Jet Airways (India) Ltd – (2016) 66 taxmann.com 166 (Bom)***

**282.** The Court held that where no deduction / allowance was made in respect of loss, expense or liability during the assessment year or in previous assessment years, cessation of such liability

Go to Index

could not be taxed under section 41(1) of the Act. Further, it held that since the loan written off was a capital transaction, section 41(1) of the Act would not apply.
***Pr CIT v Tinna Finex Ltd - [2016] 95 CCH 0042 (DelHC)***

**283.** Where the AO had made addition u/s 41(1) in case of old creditors i.e., where there was no transaction between the assessee and the creditors during the last three years or more opining that there had to be some time limit for the credit recorded to be carried forward, the Court upheld the Tribunal's order deleting the said addition and held that the assessee being a company whose accounts were audited as per the mandate of the Companies Act, had accepted and acknowledged its liability, in the accounts, on which the creditors could rely for their claim and even otherwise many of the creditors were paid, adjusted or eased in the subsequent years as accepted by the CIT(A) and the Tribunal.
***CIT v BANARAS HOUSE LTD. – (2018) 402 ITR 88 (Del HC) – ITA 583/2005 dated 17.01.2018***

**284.** The Court dismissed Revenue's appeal against the Tribunal's order deleting addition made by the AO u/s 41(1) on account of alleged cessation of liability towards creditors, noting that since the assessee had not written off liability in books of account and rather carried forward the same, the liability continued to exist.
***Pr.CIT v Babul Products (P.) Ltd [2018] 96 taxmann.com 82 (Gujarat) - R/TAX APPEAL NO. 734 OF 2018 dated July 17, 2018***

**285.** The Court deleted the addition made u/s 41(1) of excess provision of bad and doubtful debts written back in books of account of the assessee, noting that the revenue had not established that the said excess provision for bad and doubtful debts allowable u/s 36(1)(viia) was allowed as deduction in previous years. It held that the burden lay on revenue to prove that provision for bad and doubtful debts written back was allowed as deduction in earlier years.
***CIT v Pragathi Gramina Bank – (2018) 91 taxmann.com 343 (KarnatakaHC) – ITA No. 100028 of 2014 dated 09.02.2018***

**286.** The Court upheld that order deleting addition u/s 41(1) (relating to cessation of liability) on account of unconfirmed outstanding creditors' balances and rejected Revenue's stand that since party could not be traced and debts could not be verified, addition u/s 41(1) should be sustained. The Court ruled that in legal parlance, merely because the creditor could not be traced on the date when the verification was made, same could not be a ground to conclude that there was cessation of the liability, and clarified that "Cessation of the liability" has to be cessation in law, and that the debt would be recoverable even if the creditor had expired, by the legal heirs of the deceased creditor.
***CIT v Alvares and Thomas - TS-222-HC-2016(KAR)***

**287.** The Tribunal allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the addition made by the AO u/s 41(1) with respect to sundry creditors outstanding for 6 to 20 years on the ground that where the assessee had not written back these amounts as income in its books of account such outstanding liabilities could not be regarded as income u/s 41(1). The Tribunal held that merely because liabilities were shown in books of account by the

assessee as outstanding and not written back, would not, tie down the Revenue to hold such liabilities to be subsisting liability. Further, it also observed that –

- the AO had made inquiries u/s 133(6) about said creditors in which it was found that certain creditors had categorically denied that they had made any transaction with the assessee
- notices in some cases had returned unserved
- the assessee had failed to produce said creditors as directed
- the assessee had not even furnished correct address of all creditors, their PAN numbers and confirmation

***ACIT v Dattatray Poultry Breeding Farm (P.) Ltd. - [2018] 95 taxmann.com 130 (Ahmedabad - Trib.) - IT APPEAL NO. 2193 (AHD.) OF 2014 dated June 19, 2018***

**288.** The Tribunal held that for the purpose of taxing an amount under section 41 of the Act there had to be a remission or cessation of trading liability in the hands of the assessee and therefore held that that where the assessee received an advance for supply of goods but the transaction did not materialize, the amount outstanding in the books of accounts of the assessee could not be treated as deemed business income in the hands of the assessee since there was no cessation or remission of liability nor was there any benefit of accrual of income. It noted that the amounts remained unpaid and the other party had not made any efforts to collect the advances and that the assessee had not written the said amount in the books and therefore the provisions of section 41 read with section 28 of the Act would not apply.

***Shabina Steels v ACIT – (2016) 48 CCH 0223 (Bang Trib)***

**289.** Where AO added amount due to a group concern to the assessee's income as per section 41(1), taking a view that since the group concern had ceased its business operations, the assessee would not pay the dues, the Tribunal deleted that addition in view of fact that entire balance outstanding was reflected as receivable in books of the group concern, which was also assessed by very same AO and, thus, there could not be any cessation of liability on part of the assessee.

***Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (Chen) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018***

**290.** The Tribunal allowed assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the addition made by the AO u/s 41(1) opining that the liability towards sundry creditors had ceased. The Tribunal noted that the opening balances of the liabilities were already admitted in the immediately preceding assessment years. It was further noted that the assesse had gone into BIFR and it had filed the claim (a list of sundry creditors and other liabilities) before the BIFR. It was thus held that it is only a matter of timing that as the issue is pending before BIFR, the creditors remained suspended but there had been no notice which could have extinguished the existing right except to the extent that they become part of the sanctioned scheme.

***HINDUSTAN VEGETABLE OILS CORP. LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0131 (Del Trib) - ITA No. 6776/Del/2015, 6833/Del/2014 (Cross Objection 183/Del/2017) dated Jun 8, 2018***

Go to Index

**291.** The Tribunal held that where Assessing Officer made addition to assessee's income under section 41(1) in respect of difference between creditors recorded in his books vis-a-vis balance in books of creditors, in view of fact that Assessing Officer did not doubt about total sales and purchases made by assessee and, thus balance of creditors was to be regarded as genuine, impugned addition was deleted.
***Tum Nath Shaw v. Asst. CIT, Circle-2, Burdwan-[2019] 102 taxmann.com 56 (Kolkata - Trib.)-IT Appeal Nos. 2043 to 2047 (KOL) of 2017 dated December 31, 2018***

**292.** The Tribunal deleted the addition made u/s 41(1) with respect to amount payable to sundry creditors noting that the AO had made addition merely in view of the fact that the amount was pending for payment for a period of three years and he had not obtained any confirmation from the creditor that there was no outstanding liability. It was also noted the aforesaid amount was paid by assessee in subsequent year and the outstanding liability became nil. Thus, it held that addition u/s 41(1) was not justified and allowed assessee's appeal.
***Patidar Dinesh Kumar and Company vs ITO [2018] 54 CCH 0214 (Indore- Trib) - ITA No.32/Ind/2017 dated 13.11.2018***

**293.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 41(1). The AO had added the same opining that there was cessation or remission of liability, noting that the said liability was standing since long and the directors of the creditor companies were unable to explain transactions giving rise to the said liability. The CIT(A) had noted that the said liability was never doubted in preceding or succeeding assessment years involving regular assessment and that four directors of corresponding entities had been appointed in FY 2001-02 only whereas the impugned liability dated back to almost 30 years. The Tribunal upheld the CIT(A)'s order relying on the decision in the case of CIT vs. Alvares & Thomas (2010) 69 Taxman 257 (Kar) wherein it was held that mere no verification of a liability or for that matter any doubt raised thereupon does not attract cessation of liability principle u/s 41(1) as the same has to be a case of cessation in law only.
***ACIT v vs. SOORAJMULL NAGARMULL - (2018) 53 CCH 0376 KolTrib – ITA No 1907/Kol/2016 dated July 20, 2018***

**294.** Where AO made addition u/s 41(1) on ground that the creditor could not be traced from confirmation letter filed by assessee, the Tribunal upheld CIT(A)'s order deleting said addition holding that mere non-verification of such liability or any doubt raised thereupon does not attract cessation of liability principle u/s 41(1), it had to be proved that the liability ceased to exist.
***ITO vs CD Steel Pvt Ltd [2018] 53 CCH 0495 (Kol Trib) ITA No.1360/Kol/2017 dated August 29 2018***

**295.** The Tribunal held that where assessee had not written back sundry creditors in his profit and loss account and had shown balance outstanding towards those creditors even in next assessment year, it could not be said that there was any cessation of liability under section 41(1).
***Jashojit Mukherjee v ACIT [2018] 93 taxmann.com 366 (Kolkata – Trib.) – ITA NO. 403 OF 2017 dated 04.05.2018***

Go to Index

**296.** Assessee an individual was an interior decorator / contractor and also received remuneration from partnership firm during year under consideration. On perusal of balance sheet, AO treated the sundry creditors as deemed income under Section 41(1), being alleged cessation of liabilities as there was no movement in account of the said parties' account for more than two years. CIT(A) upheld the order of the AO. Tribunal observed that since assessee had shown same balances as outstanding sundry creditors even as on 31.3.2013 (i.e next assessment year), it was undisputed that assessee had not written back these creditors as liabilities no longer payable and hence the liabilities did not cease to exist. Accordingly, the Tribunal held that since there was no clear finding to prove that liabilities had ceased to exist during the relevant AY by the AO or the CIT(A), the provisions of section 41(1) could not be invoked as assessee did not obtain any benefit in respect of these trading liabilities. Accordingly, assessee's ground was allowed.
***JASHOJIT MUKERJEE vs. ACIT (KOLKATA TRIBUNAL) (ITA No. 403/Kol/2017) dated May 4, 2018 (53 CCH 0014)***

**297.** Where the Assessing Officer made an addition u/s 41(1) on the grounds that the assessee had not filed the confirmation from the creditor, the Tribunal after noting that the matter with the creditor was in dispute and sub-judice, deleted the addition by holding that the assessing officer had not brought on record any cogent material to prove that the liability had ceased to exist.
***Income Tax Officer vs Alfa Distilleries Pvt Ltd. (2017) 49 CCH 0068 MumTrib (ITA No. 1582/Mum/2015***

**298.** The Tribunal held that surplus arising out of issue and subsequent repurchase and extinguishment of debentures at a lower price would not be taxable under section 41(1) of the Act as it was not on account of trading liability and also that it could not be considered as income under section 2(24) of the Act.
***Reliance Industries Ltd v ACIT – (2015) 45 CCH 0055 Mum Trib.***

**299.** The Tribunal deleted addition made u/s 41(1) with respect to deferred sales-tax liability appearing in the books of account under the head 'liabilities', relating to 'already transferred' undertaking noting that duty to pay any taxes, cesses, levies of any nature, whatsoever of the undertaking alongwith sales-tax, if any, payable in connection with and relating to the transfer, was cast on assessee. It was also noted that the sales tax liability was discharged by the assessee in subsequent period.
***Abbott India Ltd v ACIT – ITA No.6606, 5625, 7824, 5099, 5922, 3362, 6192, 6150, 8130, 4367, 5154, 5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018***

**300.** Assessee was a tenant of BPT and was liable to pay rentals in respect of premises taken on lease to BPT.BPT increased rentals which was subject matter of litigation for AYs 1990-91, 91-92 & 92-93.Assessee in past, had provided for incremental rentals payable to BPT and claimed same as deduction in returns filed for AYs 1990-91, 91-92 & 92-93 which was disallowed by AO.Rentals were ultimately fixed at a particular price by Supreme Court.Pursuant to order of Apex Court, fixing rentals payable to BPT, High Court held that assessee was entitled for deduction only to extent of rent ultimately fixed by Apex Court.During relevant AY, assessee wrote back liabilities representing incremental rentals payable to BPT pertaining to M/s. S and

credited same to its P&L account.Assessee in return of income filed for AY 2012-13 reduced said sum in computation of income on ground that for earlier years, incremental rentals were not allowed as a deduction pursuant to giving effect order passed for order of High Court.AO made addition u/s 41(1) on ground that ITAT had granted relief to assessee and hence assessee could not be given double benefit for very same amount.CIT(A) confirmed AO's action. The Tribunal held that assessee was entitled for deduction as an item to be reduced from computation of total income.Lower authorities had erroneously proceeded on ground that assessee was granted relief by ITAT for AYs 1990-91,91-92 & 92-93 in respect of provision made for incremental rentals.But lower authorities had grossly erred in not considering giving effect order to High Court order passed by AO wherein, ultimately assessee was denied benefit of deduction towards provision for incremental rentals as increased rentals were determined at a particular figure by Apex Court.There was no double benefit claimed by assessee.Provisions of s. 41(1) could be invoked only if deduction for very same sum was allowed in earlier years for assessee, which in instant case, was not granted by AO.Accordingly, AO was directed to delete addition made u/s 41(1).

***GRAND WOOD WORK & SAW MILLS AND ANR. vs. ITO & ANR (2018) 54 CCH 0509 MumTrib ITA No. 380/Mum/2017 & ITA No.7556/Mum/2016 dated 19.12.2018***

**301.** The Tribunal held that amounts shown as liabilities in the Balance Sheet could not be deemed to be cases of cessation of liability merely because the liabilities are outstanding for several years and the AO had to establish with evidence that there had been a cessation of liability with regard to the outstanding creditors.

***ITO vs. Vikram A. Pradhan (ITAT Mumbai)***

**302.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 41(1) with respect to difference in the sales tax liability resulting from prepayment of the said liability at discounted rate under a deferral sales tax scheme, relying on the decisions in the case of CIT vs. Sulzer India Ltd. [2014] 369 ITR 717(Bom) wherein it was held that where the assessee had made premature payment of deferral sales tax at net present value against the total liability and credited the balance to its capital reserve account, the said credited amount was a capital receipt and could not be a remission or cessation of trading liability u/s 41(1). Further reliance was placed by the Tribunal on CIT vs. Balkrishna Industries Ltd. (2017) 88 taxmann.com 273 (SC) wherein it was held that the premature payment of sales tax liability under Sales Tax Deferral Scheme of 1983 would not amount to remission or cessation of assessee's liability.

***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. JOHNSON & JOHNSON LTD. & ANR. - (2018) 53 CCH 0174 (Mum Trib) - ITA Nos. 1776 & 1777/M/2017 (CO No. 242/M/2017) dated June 18, 2018***

**303.** The Tribunal deleted the addition made u/s 41(1) with respect to outstanding payment of commission payable to an agent with whom the assesse had entered into MOU for procuring business from overseas, where according to the AO the said liability ceased to exist as assessee could not submit any proof of creditor agent making any request to assessee for clearance of outstanding payment. It noted that MOU entered into between assessee and its agent was before the Revenue and it had not brought on record any evidence to prove that said MOU was

not genuine or no commission was payable to the said agent for business generated by him in favour of assessee in earlier years and that the Revenue had also allowed this commission payable in earlier years as an expense.
***Pyramid Consulting Engineers (P.) Ltd. v DCIT – (2018) 90 taxmann.com 411 (Mum) – ITA No. 1972/Mum of 2016 dated 23.01.2018***

**304.** The assessee had availed the benefit of sales tax deferral scheme and the deferred tax payable was converted into interest free loan. The assessee made pre-payment of the said loan at its net present value and the excess of outstanding liability over net present value was written back as not being payable anymore by the assessee and was treated as a capital receipt. However the AO made the addition of the said excess amount considering the same to be remission of liability u/s.41(1). Relying on the ratio laid down in Bombay HC decision of Sulzer India, the Tribunal upheld the CIT(A)'s order deleting the addition made by the AO and held that the write back of the said excess amount had resulted in a capital receipt which could not be added u/s.41(1).
***ACIT vs Johnson & Johnson Ltd [TS-537-ITAT-2018(Mum)-TP] ITA Nos.1776 & 1777/M/2017 and CO No.242/M/2017 dated 18.06.2018***

**305.** The Tribunal held that forfeiture of share application money pursuant to a "Settlement and Clean Break Agreement" (SCB) with foreign collaborator was not taxable u/s 41(1) for AY 2000-01 despite the fact that share application money were disclosed under the head "unsecured loan" in assessee's Balance Sheet on the ground that as per RBI certificate regarding relevant foreign remittance, the receipt was towards share capital and it could not be treated as loan merely based on accounting treatment in assessee's books. The Tribunal further held that compensation received on account of various restrictive covenants imposed on assessee upon termination of JV was a non-taxable capital receipt for AY 2000-01 (i.e pre-Sec 28(va) insertion) since the entire trading structure of assessee's business was adversely affected.
***LML Ltd - TS 392 ITAT 2016 (MUM) - ITA No. : 3668/Mum/2004***

*Section 28(va) – Non-compete Fees*

**306.** The Tribunal held that compensation received by assessee-company for not carrying on any activities in relation to its commodity trading business would be taxable u/s 28(va)(a), rejecting the assessee's contention that (i) since the said compensation was paid by BNP Paribas, a French Bank, (which had invested 27.18% in the assessee' parent company) for getting RBI clearance for further investment in the assessee's parent company (one of the condition being that neither the parent company nor its subsidiary carries on commodity trading business), it was not a non-compete fee and thus not taxable under the said section and (ii) it was a compensation received for loss of source of income/profit earning apparatus and therefore, a non-taxable capital receipt. The Tribunal held that the said section was not restricted, to bringing to tax only the non-compete fee but also any sum that was received or receivable in cash or kind for not carrying out any activity in relation to any business. Further, it was observed that a new company GCL was incorporated under same group by common promoters (not being a subsidiary of the assessee's parent company or the assessee) whereby assessee's commodity trading was transferred entirely along with its clientele and in eyes of clients, business was

carried on in same name and, therefore, profit making apparatus of assessee-company/group company was not impaired by discontinuance of commodity trade business of assessee per se.
***Geojit Investment Services Ltd.vs JCIT [2018] 96 taxmann.com 650 (Cochin - Trib.)- IT APPEAL NO. 5 (COCH.) OF 2017dated August 03 2018***

**307.** The Tribunal held that non-compete fees received by the assessee as the then senior partner of a CA firm from PwC for foregoing his partnership interest in the said firm and relinquishing his right to practice as a Chartered Accountant and Financial Consultant in India for a period of 5 year was non-taxable capital receipt as section 28(va) clearly provides that the same would be applicable in a case where any sum was received or receivable under an agreement for not carrying out any activity in relation to any 'business' and not 'profession' and such intentional absence of the term 'profession' reveals the clear legislative intention. It further held that the insertion of the term 'or profession' in the said section vide the Finance Act, 2016 is prospective in nature and was not applicable to year under consideration.
***Shri Ashok M. Wadhwa v. ACIT - TS-610-ITAT-2017(Mum) - ITA No. 1871 & 2576/Mum/2012 dated 20.12.2017***

*Insurance business*

**308.** The Court held that where assessee was carrying on life insurance business and Tribunal following a decision of Supreme Court, while determining assessee's income under section 44, had taken into consideration total surplus as arrived at by actuarial valuation and further held that income from shareholders account was also to be taxed as a part of life insurance business, there was no substantial question of law arising for consideration.
***CIT v. ICICI Prudential Insurance Co. Ltd., [2016] 73 taxmann.com 201 (Bombay), ITA Nos. 688 & 711 of 2013, dated July 20, 2015***

**309.** Relying on the communication dated 21st February, 2006 of the CBDT to the Chairman of the Insurance Regulatory and Developing Authority and the decision of the Apex Court in General Insurance Corpn. of India v. CIT [1999] 240 ITR 139/106 Taxman 389, the Court held that that the exemption available to any other assessee under clause 10(38) relating to long term capital, would also be available to a person carrying on non-life Insurance business. Accordingly, it dismissed the Department's appeal.
***PrCIT v New India Assurance Co. Ltd - [2018] 91 taxmann.com 433 (Bombay) - IT APPEAL NO. 1025 OF 2015 dated MARCH 5, 2018***

**310.** The assessee was proprietor of the firm of solicitors and advocates. He received advances from its clients for various legal matters for meeting out of pocket payment towards expenses in traveling, preparation of cases, engaging lawyers, etc. Such advances receipts were kept in a separate ledger account in name of clients. The Assessing Officer made an addition of Rs. 10.78 crores representing balances outstanding out of total credit balances of Rs.20.79 crores. The Court held that categorization of a receipt could take place only at the time of appropriation and, in case of legal fees only when legal matters would be over or when the assessee would decide on quantum of fees; entire advance receipt did not bear any particular characterization for purpose of treating it as income.

Go to Index

***CIT v. Om Prakash Khaitan [2015] 62 taxmann.com 324/234 Taxmann 813/376 ITR 390(DelhiHC)***

**311.** The Court allowed assessee's (a general insurance company) claim for exemption in respect of profit on the sale of investments applying CBDT circular 528 of 1988 (which provided that profit and loss on sale of investments would not be taken into account in calculation of insurance profits) for AY 2005-06 and rejectedRevenue's stand that Circular No. 528 was not applicable to assessee and that no exemption can be claimed as assessee's entire income was to be treated as business income in terms of Sec. 44 (insurance specific). The Court held that since the CBDT circular which was beneficial to the Assessee had not been withdrawn,it was binding on the Revenue authorities.Further, the Court observedthat what an insurance company was deprived of by omission of Rule 5(b) (which provided adjustments to balance of profits disclosed in annual accounts)was provided to it bythe Circular. Accordingly, it held that for the period during which there was no Rule 5(b)(like in case of subject AY) the profits on sale of investments were not taxable in the hands ofgeneral insurance companies.
***CIT vs. Oriental Insurance Co. Ltd. TS-361-HC-2017-Delhi (ITA No. 372/2015 dated August 30, 2017)***

**312.** The Tribunal allowed Revenue's appeal against the CIT(A)'s order and thus rejected the claim of the assessee, an insurance company, for reduction of profits disclosed in the annual accounts by the amount of profit on sale of investment. It accepted Revenue's claim that as per the law applicable for the relevant years, there was no provision for any adjustment with regard to profit on sale of adjustment u/s 44 r.w. First Schedule to the Act since Rule 5(b) of the First Schedule (which provides for such adjustment) was deleted by Finance Act, 1988 with effect from 01.04.1989 and it was re-inserted by Finance (No.2) Act, 2009 with effect from 01.04.2011, whereas the year under consideration were AY 2008-09 and AY 2009-10.
***DCIT v Cholamandalam MS General Insurance Co. Ltd. - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018***

**313.** The Tribunal allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the disallowance made u/s 14A holding that the provisions of section 14A were not applicable to insurance company. The Tribunal held that in respect of insurance companies, profit has to be computed as per provisions contained in First Schedule of the Act and, in view of Rule 5(a), expenditure which is not for insurance business cannot be allowed and the same has to be added back. Thus, it set aside the CIT(A)'s order and restored the disallowance made by the AO.
***Royal Sundaram Alliance Insurance Co. Ltd. v DCIT [2018] 97 taxmann.com 644 (Chennai - Trib.) ITA Nos 1622 to 1630 (CHNY) OF 2011 & OTHERS dated August 6, 2018***

**314.** The Tribunal approved assessee's action of aggregating both the policyholders' and shareholders ' account while determining the income from life insurance business for applying the provisions of section 44 r.w. First Schedule after noting that a life insurer is not permitted to carry on any business other than that of life insurance and that investments made out of shareholder funds is an integral and inextricable part of the life insurance business and not an

independent business. In this regard, Tribunal followed Mumbai Tribunal ruling in ICICI Prudential Insurance Co. Ltd. which is approved by Bombay HC. Tribunal deleted additions made in respect of the amount declared and allocated as bonus for participating policy holders and amounts appropriated as Funds for Future Appropriation observing that both the amounts were with respect to ascertained liabilities as against Revenue's stand of including the same in actuarial surplus.
***Max New York Life Insurance Company Limited v DCIT - TS-3-ITAT-2018(DEL) - ITA No.142/Del/2017 & CO No. 123/Del/2017 dated 05.01.2018***

*Speculation Business*

**315.** The Court held that the loss suffered in foreign exchange transactions entered into for hedging business transactions cannot be disallowed as being "notional" or "speculative" in nature.
***CIT vs. M/s. D. Chetan & Co (Bombay High Court)***

**316.** The Court dismissed the revenue's appeal filed against the Tribunal's order allowing the assessee's claim for loss arising on account of damages paid by the assessee for not honouring its commitment to take delivery against some purchase orders placed with foreign sellers consequent to decline in the price of the goods, which was disallowed by the AO considering the said loss to be speculative loss. It held that even if a party in breach accepts the claim for damages that the other party to the contract may put forward, what actually happens is the disposal of a dispute and not any settlement of the kind that is envisaged by the word "settled" used in section 43(5).
***CIT v Ambo Agro Products (P.) Ltd - [2018] 95 taxmann.com 345 (Calcutta) - GA NO. 542 OF 2015, ITAT NO. 37 OF 2015 dated June 20, 2018***

**317.** The Court reversed the decision of the Special Bench and held that the allotment of shares pursuant to application in a public issue did not amount to 'purchase' under Explanation to Section 73 of the Act which provides that assessees dealing in share transactions would be deemed to be carrying on the speculation business with respect to such transactions. It relied on the decision of the Apex Court in Khoday Distelleries Ltd wherein the Court, in the context of gift tax held that allotment of shares by way of application in a public issue did not amount to purchase. Accordingly, it held that the transaction of the assessee could not be deemed to be a speculative business.
***AMP Spinning & Weaving Mills Pvt Ltd v ITO – TS-440-HC-2016 (Guj) - TAX APPEAL NO. 957 of 2006, TAX APPEAL NO. 1644 of 2008***

**318.** In a case where transactions of currency derivatives were conducted by assessee through a recognised stock broker, on a recognised Stock Exchange and they were duly supported by time stamped contract notes, Tribunal held that the same could not be held as 'speculative transaction' as defined in section 43(5) and, therefore, loss on such derivative transactions should be allowed to be set off against other business income.
***Nand Nandan Agrawal v DCIT – (2018) 169 ITD 161 (Agra Trib) – ITA Nos. 349 & 350 (Agra) of 2016 dated 18.01.2018***

Go to Index

**319.** The AO observed that assessee had claimed losses from derivative transactions against profits arising from sale of land and interest income. Further the AO held that loss arising on transactions in derivative segment of shares could not be regarded as eligible transaction u/s 43(5)(d) and further denied set off loss from commodity trading against other income. The Tribunal held that assessee had claimed derivative loss in equity segment as well as in commodity segment. As regards loss that arose from derivative segment in shares, AO himself had noted that contract note issued by share broker which carried relevant details were submitted by assessee and were clearly as per SEBI guidelines, thus as specific order number and trade time were available on record it was not the case of Revenue that no transaction had been executed and thus derivative loss in terms of sec. 43(5)(d) was to be allowed. Further, as regards claim of losses arising in commodity exchange platform, transaction carried out by assessee was non speculative transaction and thus sec. 43(5) was not attracted and the Tribunal held that considering smallness of amount and having regard to documentary evidences, there was no warrant to differ with version of assessee and thus loss claimed by assessee in derivative segment was found to be covered by exception provided u/s.43(5) and consequently, such loss was to be allowed for set off against regular income of assessee.
***Chirayu Exim Pvt Ltd vs ITO- (2018) 54 CCH 0016 Ahd Trib- ITA 2819/2016 dated 17.09.2018***

**320.** The Tribunal held that where there was no specific details brought in by assessee which could show that assessee had entered into a contract for hedging of forward trading of its goods to guard against loss through price fluctuation which might arise from contracts for delivery of goods, hedging loss arising from alleged contracts did not fall under proviso (a) of section 43(5); therefore, alleged hedging loss claimed by assessee was to be disallowed.
***Premier Industries (India) Ltd. v. Jt. CIT, Range-1, Indore- [2018] 100 taxmann.com 337 (Indore - Trib.)-ITA Nos. 610 & 611 (IND.) of 2016-dated November 19, 2018***

**321.** The Tribunal held that forward contracts entered by the assessee, in the capacity of an exporter and not as a dealer in foreign exchange, was to be considered as business transactions being incidental to the export business of the assessee and therefore loss / gains arising from the cancellation or maturity of forward contracts were to be allowed as deduction and not considered as speculative in nature.
***Hiraco India Ltd v DCIT – (2016) 46 CCH 0061 (Mum)***

**322.** The Tribunal held that transactions of foreign exchange forward contracts were directly linked with assessee's business of manufacture and export of fruit pulp and allied items, hence by no stretch of imagination they could be classified as 'speculative business' and therefore the loss was to be allowed as a business loss.
***Foods and Inns Ltd v ACIT - (2016) 47 CCH 0187 Mum Trib***

**323.** Where the assessee, engaged in the export business had entered in forward contracts to hedge itself from foreign exchanges losses and suffered a loss on account of cancellation of such forward contracts, the Tribunal dismissed the contention of the Revenue that the said losses were to be disallowed being speculative in nature and held that since the losses were incidental

Go to Index

to the business of the assessee it would be a loss arising out of its business activity. Accordingly, it directed the AO to delete the disallowance of the impugned losses.
***Essel Propack Ltd v ACIT – (2017) 50 CCH 0033 (Mum – Trib) – ITA No 4116 / Mum / 2013 dated 11.09.2017***

*Business Loss*

**324.** The Court remanded the matter back to the AO for deciding as to whether there was actual irrecoverability of advances which the assessee chose to write off in its account and claimed the same as business loss since the AO had not analysed the nature of the claim himself on the basis of materials on record for determining the character of claim for deduction and merely confined his scrutiny on the accounts submitted by the assessee, where the Tribunal had allowed the assessee's claim noting that the assessee-company after review of the books of accounts and after due diligence and discussion with the statutory auditors had come to the conclusion that detailed reconciliation and accounting adjustments of these advances was no longer possible due to lack of information.
***Pr.CIT v Linde India Ltd. – (2018) 90 taxmann.com 412 (Calcutta) – GA No. 1113 of 2016 ITAT No. 166 of 2016 dated 15.01.2018***

**325.** The assessee incurred loss on sale of units of mutual fund, which was disallowed by the A.O. as a capital loss. The Court held that in view of fact that said units were purchased and sold in same financial year and moreover, said loss had been debited to profit and loss account, assessee's claim for deduction in respect of same as business loss was to be allowed.
***Calibre Financial Services Ltd. v. ITO, Company Ward-1(1), ChennaiHC- [2018]100 taxmann.com 415 (Madras)-TCA Nos.1868 & 1869 of 2008- dated October 31, 2018***

**326.** The Court held that when assessee had made payment for purchase of a particular quantity of material and goods were lying in custody of assessee, though at various ports, same could validly be termed as stock in trade and loss due to fall in value of stocks represented by those purchases had to be allowed.
***Pr. CIT v STCL Ltd - [2016] 68 taxmann.com 224 (KarnatakaHC)***

**327.** The Court held that where assessee, a share broker, suffered loss on account of misdeals in purchase and sale of shares by actual delivery, or trading in derivatives in a recognised stock exchange, said loss was to be regarded as business loss which could be set off against its brokerage income.
***CIT v. Anush Shares & Securities (P.) Ltd. [2015] 62 taxmann.com 287 (Mad.)***

**328.** The Court held where on one hand the Tribunal held that amount paid by assessee, a production company, to exhibitors of its films, for loss incurred by them, was capital in nature and on other hand held that it was compensation paid to stay afloat in business, since Tribunal was giving two divergent views, matter was to be re-adjudicated. Accordingly, the matter was remanded to the Tribunal.
***Seven Arts Films v. Asst. CIT, Media Circle [2015] 63 taxmann.com 340 (Madras), T.C.A. NO. 613 of 2014, M.P. NO. 1 of 2014 Dated July 7, 2015***

Go to Index

**329.** The Court held that where assessee was in business of manufacturing handloom silk, non recovery of deposit made to get distributorship of LPG could not be allowed as business loss.
***M.S.Ramasamy v. ITO, [2017] 80 taxmann.com 110 (Madras), Tax Case (Appeal) No.598 of 2006, dated July 15, 2015***

**330.** The Tribunal held that where the assessee had made advances to three parties for supply of material and labour from whom the net amount of Rs.45.74 lacs was receivable, since the three parties were not traceable even after necessary efforts were made by the assessee, the assessee was justified in writing off their balances and treating the amount receivable as a business loss.
***DCIT v Kalpataru Power Transmission Ltd – (2016) 47 CCH 0543 (AhdTrib) – ITA No 2077 / Ahd / 2011***

**331.** The Tribunal held that in view of CBDT circular No. 18/2015, dated 2-11-2015 and fact that investments made pursuant to SLR requirements of RBI were shown as stock-in-trade in books of account, loss/depreciation on account of fall in value of securities held by assessee-bank were to be allowed as deduction while computing business income of a banking company.
***Canara Bank v JCIT - [2016] 68 taxmann.com 128 (Bangalore-Trib)***

**332.** The Tribunal held that where the profit resulting from agreement between the parties was treated as income of the assessee, the loss on account of cancellation of agreement was to be treated as a loss in the course of regular business.
***ACIT v India Cements Ltd – (2016) 46 CCH 0005 (ChenTrib.)***

**333.** The Tribunal held that where one of the employees of the assessee had embezzled a net amount of Rs.186 lacs and the assessee, failed to recover the said amount in spite of criminal and civil proceedings initiated against the employee, the loss on account of embezzlement, being in the course of its business was allowable as a business loss. However, it rejected the contention of the assessee that the same was allowable as bad debt since for claiming a deduction on account of bad debts, the conditions prescribed under section 36(2) of the Act were to be fulfilled.
***SaravanaSelvarathnam Trading & manufacturing P Ltd v ACIT – (2016) 47 CCH 0620 (Chen Trib) – ITA No 2202 / Mds / 2015***

**334.** The assessee provided engineering & design service to its AE and in order to safeguard any foreign exchange fluctuation losses in sales invoices raised, it entered into 9 forward contracts with the Bank of America. It re-measured its forward contract on March 31, 2009 at the prevalent forward market exchange rate and claimed the resultant loss in its profit and loss account under the head 'exchange difference', which was disallowed by the AO on the ground that it was a notional loss and thus not deductible as a business loss for income tax purposes. The Tribunal dismissed the assessee's reliance on the Apex Court decision in Woodward Governor India (P.) Ltd. [TS-40-SC-2009] and held that in that case there was loan liability in balance sheet which increased due to increase in foreign currency rate for which loss was claimed by the assessee and that it was not the case of a forward contract. It held that in the instant case, the assessee

had an option of measuring its exports receivables on the balance sheet date and claiming resultant losses, which would have been allowed as a revenue loss in light of the Apex Court decision, but it failed to do so. Noting that the assessee was not trading in forward exchange contracts it held that the loss could not be claimed as a trading liability and accordingly held that the loss claimed by assessee on account of fluctuation in foreign currency in respect of hedging forward contract was not allowable.
***Bechtel India Pvt. Ltd [TS-210-ITAT-2017(DEL)] ITA No. 1224/Del/2017 dated 29.05.2017***

**335.** The assessee engaged in the business of trading in securities and shares suffered a loss on account of sale of mutual funds held as stock in trade. The Tribunal, observing that the only income earned by the assessee was interest on securities, upheld the assessee's treatment of the impugned loss as business loss eligible for set off against interest income earned as against AO's treatment of such loss as a capital loss. Further, it noted that in the earlier and subsequent years, the AO had accepted the treatment dopted by the assessee. Accordingly, the assessee's appeal was allowed.
***Cosmos International Ltd vs. Income Tax Officer [I.T.A. No. 6059 (2017) 51 CCH 0015 DelTrib]***

**336.** The Tribunal held that where the foreign exchange losses incurred by the assessee on account of F&O transactions was recorded on settlement date and was not a marked to market loss, the AO was incorrect in disallowing the same on the ground that it was a notional loss. Further, it upheld the order of the CIT(A) that Board's Instruction No. 3/2010, applied by the AO in disallowing the loss, was not applicable to F&O transactions undertaken by the assessee.
***ITO v Samir Jasuja – (2015) 45 CCH 0246 Del Trib***

**337.** The Tribunal held that the loss on revaluation of stock of equity shares could not be allowed as a deduction since the assessee did not engage in the regular activity of purchase or sale of shares of any other company during the year under consideration or in the previous or succeeding years. Mere fact that the shares were purchased out of borrowed funds was not a determinative factor to treat the shares as stock in trade. It held that the facts of the case indicated that the assessee intended to hold the shares as investment.
***DCIT v Robus Marketing Services Ltd – (2015) 45 CCH 0231 Mum Trib***

**338.** Assessee actor advanced money to a production house run by his wife to produce films in which he acted as hero so as to boost his career. However, as films were not successful and his wife suffered loss and advances given by assessee could not be recovered. The Tribunal held that money advanced by assessee was in nature of business expediency and same was to be allowed as deduction either under section 37(1) or under section 28(i) as business loss.
***Jackie Shroff v. Asst. CIT, Range-16(1), Mum. - [2019] 101 taxmann.com 455 (Mumbai - Trib.)-IT Appeal No. 4838 (Mum) of 2016 dated December 31, 2018.***

**339.** The Tribunal allowed the assessee's claim for deduction with respect to write off of stores and spares imported earlier but lying in godown of port authority as the assessee was not able to clear them from the port authorities on account of financial stringency prevailing during that period. The AO disallowed the said claim noting that the said stores and spares were simply

dumped in the port and no part of the same was installed or utilised for the purpose of the business activity. The Tribunal observed that the said imported materials as lying under the custody of Port Authorities were considered as permanently impaired in terms of Accounting Standard 28, because market/realizable value of all such materials were completely eroded and the material was surrendered to the Port Authorities. Further, it relied on the decision in the case of Zenith Steel Pipes Ltd. vs. CIT (1990) 186 ITR 594 (Bom.) wherein it was held that write off of stores & spares imported earlier but lying in the godown of a port authority was a loss incidental to the business.

***ACIT & Anr v Ballarpur Industries Ltd & Anr (2018) 52 CCH 0340 NagTrib - ITA No. 91/Nag/2011, 92/Nag/2011 dated 16.04.2018***

*Others*

**340.** The Court held that where an assessee a Government company, engaged in the business of industrial development, received land from State Government for development and further transferred said developed land to prospective industrialist on long term lease for consideration of payment of advance rent in form of land premium, such land premium being part and parcel of business receipt was taxable as revenue receipt u/s 28.

***M.P Audyogik Kendra Vikas Nigam vs ACIT- (2018) 98 taxmann.com 191(Madhya Pradesh HC)- ITA No 60 to 68 of 2018 dated 06.09.2018***

**341.** Where as per law the assessee was expected to collect sales tax at rate of 2% but the assessee, due to confusion, collected 4% and surcharge at 5% thereon, which it deposited with the Sales tax department, the Tribunal held that the AO was unjustified in taxing the excess collection as the assessee's trading receipt and held that if the assessee collected sales tax and failed to deposit same, then the same was to be treated as part of trading receipt but since what was collected by assessee was already deposited with Sales Tax Department and there was confusion regarding sales tax rate, the amount was not taxable.

***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. TAJ MADRAS FLIGHT KITCHEN PVT. LTD. & ANR. - (2018) 52 CCH 0226 ChenTrib - ITA Nos. 1568 & 1569/Chny/2014, 1705/Chny/2014 dated Mar 22, 2018***

**342.** The Tribunal allowed appeal of assessee, working as contractor of electrical maintenance on board of different companies vessels, for treating the receipts from such companies as income from business or profession, where AO treated receipts as taxable income under head 'Salary' on the ground that the assessee had not maintained books of accounts as per provisions of section 44AA. It held that from entire agreement executed between contracting company and assessee, it was clearly evident that nature of work executed by assessee for Marine Companies was in nature of contract and there was no employer-employee or master-servant relationship and no permanent contract. The Tribunal held that the professional contracts carried on by assessee were 'contract for service' and not 'contract of service', accordingly the said receipts were business receipts and appropriate expenditure were to be allowed.

***SURESH KUMAR HOODA v ITO – (2018) 52 CCH 26 (Del Trib) – ITA No. 3897/Del/2009 dated 08.01.2018***

Go to Index

**343.** The Tribunal held that where assessee had proved that opening and closing balance of share premium money account was same for year under consideration and neither Assessing Officer nor First Appellate Authority had proved that share premium money was utilised by assessee for running its day today business, share premium could not have been treated as business receipt.
***Credit Suisse Business Analysis (INDIA) (P) Ltd v. ACIT [2016] 72 taxmann.com 131 (Mumbai - Trib.) IT APPEAL NO. 993 (MUM.) OF 2015***

**344.** The Court held that where transaction of leasing out assets was found bogus and depreciation claimed on said assets was disallowed, rectification application filed by assessee raising a plea that income from leasing of said equipment should also be excluded from taxable income, could not be allowed.
***Indus Finance Corpn. Ltd. v. CIT[2015] 63 Taxmann.com 244 (Mad.)***

***e. Deductions/ Disallowance***

*Section 30*

**345.** The Court dismissed Revenue's appeal against Tribunal's order allowing assessee's claim for deduction u/s 30 of rent paid to D Ltd. wherein the Tribunal had given factual finding that the assessee was a tenant, paying rent and using the premises for the purpose of its business. The Court held that it was not its domain to exercise jurisdiction under section 260A to enquire into correctness of the Tribunal's fact finding and return a contrary finding that assessee was not a tenant, and was not using premises for business purposes.
***CIT vs Everready Industries Ltd [2018] 98 taxmann.com 90 (CalcuttaHC) ITA NO. 789 of 2004 dated August 09 2018***

**346.** The Tribunal held that expenses incurred by the assessee on renovation and restoration led to enduring benefit as it led to improvements in its trading operations which would bring enduring benefit to the assessee for a long period of time and therefore was capital in nature despite the fact that the assessee was not the owner of the premises wherein the renovations were carried out. It held that other expenses incurred by the assessee such as breaking old plaster, carting away, plastering POP etc was revenue in nature and could be claimed under section 30 of the Act.
***Aries Exports Pvt Ltd v DCIT – (2016) 48 CCH 0025 (Mum Trib) – ITA No 5841 / Mum / 2012***

*Section 32*

» *Rate of depreciation*

**347.** Where High Court upheld order passed by Tribunal allowing assessee's claim of depreciation on public roads treating same as building, SLP filed against said order was to be dismissed.

Go to Index

Where High Court upheld Tribunal's view that optical fibres used exclusively for computer configuration were part of computer system and thus eligible for higher rate of depreciation, SLP filed against said order was to be dismissed.
***Pr. CIT v. GVK Jaipur Expressway Ltd. – [2018] 100 taxmann.com 96(SC)-SLP (Civil) Diary No.32340/2018-dated October 5, 2018.***

**348.** The Apex Court held that ponds specially designed for rearing of prawns were to be treated as tools of the aqua culture business of the assessee and that depreciation was admissible on the ponds at the rate applicable to plant and machinery.
***ACIT v Victory Aqua Farm Ltd – (2015) 61 taxmann.com 166 (SC)***

**349.** The Court held that if the statute permitting depreciation at a particular rate itself had been amended and such amendment was applicable to disputed period of assessment, it was a substantial question of law and could be raised before the court. Further, since it would involve some factual investigation, the Court remanded the matter to the Tribunal to look into this aspect and pass a fresh order in accordance with law.
***Principal Commissioner of Income tax vs U.P. State Bridge Corporation Ltd. [(2017) 98 CCH 0013 Allahabad HC]***

**350.** The Court held that revenue authorities failed to demonstrate that assessee could not have used UPS and computer peripherals for more than 180 days in relevant previous year, benefit of higher rate of depreciation was rightly allowed.
***CIT v. SMCC Construction India Ltd., [2015] 61 taxmann.com 202(DelhiHC), ITA Nos. 439, 511, & 526 of 2014, dated July 3, 2015***

**351.** The Court held that equipment forming the integral part of a plant on which 100 percent depreciation was allowable, were also eligible for 100 percent depreciation even though they were not strictly covered in the 100 percent block as per the Rules, since they functioned with the main plant.
***CIT v Alembic Chemical Works Co Ltd – (2016) 96 CCH 0032 (GujHC)***

**352.** The Court upheld the Tribunal's order holding that where assessee was awarded contract for providing specialised equipments for mining and transportation of excavated minerals on hire, its claim for higher rate of depreciation in respect of those equipments was to be allowed.
***PCIT v Durga Construction Co. [2018] 93 taxmann.com 436 (GujaratHC) – TAX APPEAL NOS 414 AND 425 OF 2018 dated 01.05.2018***

**353.** The Court dismissed the Revenue's appeal and upheld order of the Tribunal granting depreciation on 'Jetty' at 100% under the head 'Building Temporary Structure' instead of 25% under the head 'Plant' by holding that the Jetty/loading platform, in this case, was erected by the Assessee, in order to effectuate its business under the contract, entered into with MMTC, which was tenure based and upon completion of the contract, the Assessee was required to dismantle it, and that the jetty therefore, could not have been treated as anything else, but a temporary erection. The fact that the Jetty had other contraptions attached to it, such as, a conveyor belt, to facilitate the process of loading, could not convert such a structure into a plant.

Go to Index

***Commissioner of Income Tax vs Anand Transport (2017) 98 CCH 0099 ChenHC (T.C.(A) No. 82 of 2017)***

**354.** Where the Assessee, engaged in the business of loading and unloading of cargo, had erected a Jetty/loading platform to execute its business contract, which was tenure based, the Court noting that it was a temporary erection held that 100% depreciation should be allowed to the Assessee. The Court stated that on completion of the contract assessee was required to dismantle it. The Court further held that merely because Jetty had other contraptions attached to it such as conveyor belt for the process of loading it could not be considered a plant and eligible for only 25% depreciation.
***CIT vs. M/s Anand Transport TS-282-HC-2017(Madras HC) (Tax Case (Appeal) No. 82/2017 dated March 7, 2017)***

**355.** The Court rejected the assessee's claim for higher depreciation on machines classified as computer machineries by the assessee since based on their functionality the same was in the nature of plant and machinery since it merely helped in typesetting and faster printing of newspaper and automated stacking of newspaper and therefore could not be classified as a computer. Accordingly, it held that depreciation was to be claimed at 15 percent and not 60 percent as claimed by the assesseee
***Dinamalar v ITO – TS-492-HC-2016 (Mad) - T.C.A.No.624 of 2016***

**356.** The assessee filed its return claiming depreciation @ of 60 percent on printers which was denied by the AO on the ground that these printers were not normal printers but were high value printers used for printing banners and advertisements and could not perform any other function performed by a normal computer. The AO held that the depreciation rate for the same would be 25 percent. The CIT (A) allowed the appeal of the assessee based on the finding that the printer could not be used without the computer and was a part of the computer system which was further upheld by the Tribunal. The Court on appeal by the Revenue stated that the machines could be referred to as computer-printers as a lot of independent functions performed by the computers was done by these printers and could be regarded as an integral part of the computer system and thereby dismissed the appeal of the Revenue.
***CIT v. Cactus Imaging India (P.) Ltd. - [2018] 93 taxmann.com 396 (MadrasHC) - T.C. (APPEAL) NOS. 921 & 922 OF 2008 dated APRIL 16, 2018***

**357.** The Court held that where an assessee, running a hospital, claimed higher rate of depreciation on certain equipments, since said equipments were in nature of life saving equipments, the claim for depreciation was to be allowed even though equipments in question were not specifically listed in list of Life Saving Medical Equipments under new Appendix-I of Income-tax Rules, 1962.The CIT(A) had concurred with AO's view and disallowed the claim pointing out that assessee was not correct in stretching the claim for any item which were not expressely stated in the definition of life saving equipments. The Court upholding Tribunal's order observed that the Tribunal had after examining nature of equipment, purchase of equipment, various write-up on equipments, bills, vouchers, etc., and after having been satisfied that they all formed part of life saving equipments, granted relief, thus the order passed required no interference.

Go to Index

***CIT Corporate Circle vs Vasantha Subramaniam Hospitals- (2018) 98 taxmann.com 292 (MadHC)- TC no 885 of 2016 dated 04.09.2018***

**358.** The Court held that dumper and Volvo were eligible for higher depreciation of 30% (available with respect to motor buses, motor lorries and motor taxis used in a business of running them on hire) since (i) the expression used namely motor buses, motor lorries and motor taxies is having wide amplitude and the term motor lorries used therein, would take in its sweep the said vehicles and (ii) though the said vehicles were used by the assessee for its own mining business, the vehicles in question were used for hire purposes.
***Pr.CIT v Amar Singh Bhandari [2018] 97 taxmann.com 569 (RajasthanHC) - D.B. IT APPEAL NO. 110 OF 2018 dated July 19, 2018***

**359.** Assessee claimed deprecation on certain electrical installation at 15% which was restricted by AO to 10% and CIT(A) upheld the disallowance. The Tribunal held that depreciation had been restricted at the rate of 10% by AO because assessee failed to demonstrate that electrical panel installed by it was part of machinery and he considered electrical installation as independent asset than medical equipments. Thus, as CIT(A) had considered all these aspects in right perspective no interference was called on this issue.
***Ram Krup Medicare P Ltd vs ITO- (2018) 54 CCH 0046 Ahd Trib- ITA No 3461/Ahd/2014 dated 27.09.2018***

**360.** The Assessee claimed depreciation on life saving eqipments @ 40%. AO granted depreciation at the rate of 15% which was confirmed by the CIT(A). The Tribunal observed that list of live saving medical eqipments has been given in this Appendix on which depreciation at the rate of 40% was permissible. It held that where rate of depreciation has been provided on specific machinery, it is not to be granted on each and every machinery installed at the hospital and that the CIT(A) had rightly rejected the stand of the assessee as the machinery on which depreciation had been claimed by the assessee at 40% was not provided in the Appendix. Therefore, the Tribunal upheld that the depreciation on such machinery @ 15% has rightly been upheld by the AO/CIT(A).
***Ram Krup Medicare P Ltd vs ITO- (2018) 54 CCH 0046 Ahd Trib- ITA No 3461/Ahd/2014 dated 27.09.2018***

**361.** The Tribunal allowed assessee's claim for depreciation on helicopter @ 40% which was restricted by the AO to 15%. The AO held that even though helicopter is an aircraft, it is not specifically mentioned in Appendix I of the IT Rules, 1962 under the head III 'Plant and Machinery' at clause 3(i) providing for depreciation @ 40% for 'Aeroplane - Aero engine' and was thus eligible for depreciation @ 15% as allowable to Plant in general as defined in section 43(3). The Tribunal relied to the decision of CIT Vs. Kirloskar Oil Engines (230 ITR 88) (Bom) wherein it was held that "aircraft" inter alia includes helicopters and thus held that the assessee was entitled for depreciation @ 40% on the written down value of its helicopters.
***RANJITPURA INFRASTRUCTURE PVT. LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0309 BangTrib - ITA No. 1104 & 1105/Bang/2015, 1110 & 1111/Bang/2015 dated Apr 10, 2018***

Go to Index

**362.** The Tribunal held that since UPS is integral part of computer, therefore it is eligible for epreciation @60%.
***Turbo Energy Private Ltd vs DCIT- (2018) 54 CCH 0059 ChenTrib- ITA No 2493, 2494/Chny/2016 dated 01.10.2018***

**363.** The Tribunal held that assessee transporting goods of other persons and deriving hire charges would be entitled to claim higher rate of depreciation of 30% on vehicles used by it for transportation on the ground that such vehicles are to be considered as being given on hire for transportation of goods of other persons.
***DCIT vs. Suthanther Assumtha (2016) 48 CCH 0049 (Chennai Trib)-ITA No.203/Mds/2016***

**364.** The Tribunal allowed the assessee's claim that Uninterrupted Power Supply (UPS) is eligible for depreciation of 60% as it is part of computer relying on the co-ordinate bench decisions in the case of Dy. CIT v. International Flowers & Fragrances (I) (P.) Ltd. [2014] 66 SOT 261 (Chen) and Sundaram Asset Management Co. Ltd. v. Dy. CIT [2013] 145 ITD 17 (Chen) wherein, while rejecting the revenue's claim that UPS formed part of general plant & machinery block eligible for 15% depreciation, it was held that UPS forms an integral part of computer and thus eligible for depreciation @ 60%.
***Cholamandalam MS General Insurance Co. Ltd. v. DCIT - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018***

**365.** The assessee claimed depreciation on 'Electrical fittings' @ 15% applicable to 'Plant & Machinery'. The AO rejected the said claim and observed that the correct rate of depreciation was 10% as it fell under classification of "furniture & fittings". CIT(A) upheld AO's order. The Tribunal upheld the orders of CIT(A) and AO noting that the assessee had not shown before the lower authorities how the rate of 15% could be applied and how electrical fittings would fall in the classification of 'Plant and Machineries' to qualify as deduction at the higher rate of depreciation. Accordingly, it dismissed the assessee's ground of appeal.
***Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018***

**366.** The assessee had claimed depreciation on UPS systems and data drive @ 60%. However, the AO allowed depreciation on these items at the rate of 35% and 17.5% on the premise that these equipments were part of plant and machinery for depreciation purposes. He, therefore, disallowed the excess claim of depreciation on UPS system and Data Drive The ld. CIT(A), after following the decision of Hon'ble jurisdictional High Court in the case of CIT vs. BSES Yamuna Power Ltd. (2010) TIOL 636 and CIT vs. Orient Ceramics & Industries Ltd. (2011)TIOL 6, wherein it was held that UPS and Data drive were to be treated as part and parcel of computer system and depreciation had to be allowed at higher rate as applicable to computer, allowed the assessee's claim. The Tribunal upheld the order of the CIT(A).
***EASTMAN INDUSTRIES LTD. & ANR. vs. ACIT & ANR. (2017) 50 CCH 0122 DelTrib ITA No.286/Del./2013, 45/Del./2013 ITA No. 286/Del./2013, 45/Del./2013 dated 09.06.2017***

Go to Index

**367.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing depreciation @ 60% on on UPS and computer peripherals, where the AO had allowed depreciation @15%, being the rate for plant & machinery, relying on the decisions in the case of CIT vs. BSES Yamuna Power Ltd. (2010) TIOL 636 and CIT vs. Orient Ceramics & Industries Ltd. (2011) 56 DTR 0397 wherein depreciation on computer accessories and UPS was allowed at higher rate of 60%.
***DCIT v INTERNATIONAL TRACTORS LTD. & ORS. - (2018) 67 ITR (Trib) 0538 (Delhi) – ITA Nos 5756/Del/2013 & 6239/Del/2013 (C.O. No.130/Del/2014 & 173/Del/2014) dated July 23, 2018***

**368.** The Tribunal held that the assessee was eligible to claim depreciation @ 60 percent on ATMs and other related accessories as it was a computer telecommunication device. Vis-à-vis UPS, the Tribunal noted that though UPS could independently function without assistance or integration with computer and was alternate mode of supply of power and did not depend on any assistance from computer, the computers could only work on power supply and when there was no power supply, it was connected to UPS so that it could work uninterruptedly and without losing unsaved data when power goes off. Accordingly, it held that UPS could be considered as computer if it was connected to ATM Machine or Computer and depreciation thereon was allowable at 60%. Accordingly, it directed the AO to verify if UPS were used for functioning of ATM and allow depreciation accordingly.
***ADARSH COOPERATIVE URBAN BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - ITA No. 1336/Hyd/2015 - (2018) 52 CCH 0246 HydTrib dated ITA No. 1336/Hyd/2015***

**369.** The Tribunal allowed depreciation @ of 60% prescribed for "computers including computer software" on ATM machines on the ground that since ATM machine does logical, arithmetic and memory functions by manipulating electronic, magnetic or optical impulses and thereafter gives a printed receipt, the same were nothing but computers as they dealt with the functions of decoding the information, processing the same and giving the output.
***The Royal Bank of Scotland N.V. v DDIT -TS-205-ITAT-2016(Kol)***

**370.** The Tribunal held that roads constructed by the assessee in factory premises forms part of building and thus, are entitled to claim depreciation @10% on land and site development expenditure.
***Asst. CIT vs. ORISSA MANGANESE & MINERALS LTD. (2018) 54 CCH 0399 KolTrib- ITA Nos.2150 to 2154/KOL/2017 dated 20.12.2018***

**371.** Where the assessee, engaged in the business of providing film projection services to the theatres, claimed depreciation on film projector at a higher rate treating it as 'computer', the Tribunal held that though some elements of computer functions were necessarily involved, the projector could not be said to be a machine whose principal output/object/function was achieved only through computer function and, accordingly, upheld the order of CIT(A) considering the film projector as plant & machinery entitled for depreciation @15% and not a computer entitled for depreciation @60%.

Go to Index

***Cinetech Entertainment India (P.) Ltd. v ITO – (2018) 169 ITD 218 (Mum) – ITA No. 4971 (Mum.) of 2017 dated 05.02.2018***

**372.** The Tribunal held that a standalone CPU could not be considered as a 'computer' for depreciation purposes since the CPU was akin to the brain and since one could not consider the brain alone, as a body, the CPU could not be considered as a computer.
Further, it held that all input and output device which support in receipt of input and outflow of output would be considered as a part of a computer and therefore entitled to deprecation at 60 percent.
***IBAHN India Pvt Ltd v DCIT – (2016) 66 taxmann.com 239 (Mum)***

**373.** The Tribunal held that in case of assessee firm carrying on business of outdoor publicity through use of hoardings, said hoarding structures were to be regarded as 'building' eligible for depreciation @ of ten percent since the hoarding structures were permanent structures embedded in building.
***Asian Advertising v ITO - [2016] 68 taxmann.com 139 (Mumbai-Trib)***

» *Owner of the Asset*

**374.** A partnership firm viz. Mother Hospital had constructed a hospital building on land owned by it and for the purpose of operation of the hospital incorporated the assessee company to whom it handed over possession of the building on completion, on the condition that the entire cost of construction of the building was to be borne by the assessee. The said land was given on lease to the company and the assessee company claimed depreciation on the building. The Apex Court upheld the order of the High Court wherein it was held that the depreciation claimed by the assessee could not be allowed as it was not the owner of the property as the title in the said immovable property could not pass when its value was more than Rs.100/- unless it was executed on a proper stamp paper, duly registered with the sub-Registrar, which was not done in the instant case. Further, it dismissed the alternate contention of the assessee that it was the lessee of the property and was entitled to depreciation as per Explanation 1 to Section 32(1) of the Act and held that the construction was actually done by the firm and not by the assessee himself, which was the precondition to avail the benefit of the said Explanation.
***Mother Hospital Pvt Ltd vs. Commissioner of Income Tax [2017] 79 taxmann.com 375 (SC)***

**375.** The Court held that where assessee constructed a hotel on land on which two other buildings were also constructed and assessee was in full control of three buildings and it was utilizing same as capital asset and met expenses of wear and tear, assessee would be entitled to claim depreciation on all three buildings.
***Commissioner of Income-tax v. Bharat Hotels, [2016] 65 taxmann.com 39 (DelhiHC), IT Appeal Nos. 69 to 73 of 2000, dated July 24, 2015***

**376.** Where the AO disallowed assessee's claim of depreciation on motor car on ground that the car was still registered in the name of the entity from whom the car was purchased, the Tribunal

dismissed Revenue's appeal holding that once AO admitted purchase of car and allowed depreciation claimed during preceding AYs, he had no right to interfere with genuineness of transaction in subsequent (relevant) AYs.
***ACIT vs Crayons Advertising Ltd. and ANR [2018] 54 CCH 0421 (Del- Trib.)- ITA No.4872/Del/2015 dated 27.11.2018***

**377.** The assessee purchased two wind turbines in the current year but paid only part of the consideration during the year. The AO disallowed the claim of depreciation on the same by holding that no power was generated during the year and that the assessee was not the owner of such turbines as full value of consideration was not paid. Setting aside the order of the AO and CIT(A), the Tribunal observed that the assessee had possession of the asset and the same was put to use in the year under consideration. Thus, Tribunal held that there was no such requirement under Section 32 that full consideration should have been paid for purpose of claiming depreciation and hence the assessee's claim was allowed.
***Paradise Merchants Pvt. Ltd. vs. ITO – [2018] 53 CCH 0010 (Delhi Tribunal) – ITA No 4992/Del/2014 dated May 3, 2018***

**378.** Assessee-company had claimed depreciation on a car purchased by it in name of its director. Assessing Officer being of view that assessee-company was not legal owner of vehicle, declined to allow claim of depreciation raised by assessee. It was noted that though car was registered in name of director of assessee-company, payment towards purchase consideration for car was made by assessee. Further, car was reflected as an asset in 'block of assets' of assessee, which duly established that assessee was de facto owner of motor car. On the aforesaid fact the Tribunal held that assessee was entitled to claim of depreciation on aforesaid car.
***Parsoli Corporation Ltd. v. Asst. CIT, 4(2), Mumbai- [2019] 101 taxmann.com 121 (Mumbai - Trib.)-ITA No(s). 149 & 150 (MUM.) of 2016-dated November 16, 2018***

**379.** The Tribunal allowed the assessee's claim for depreciation on cranes and crawlers bought in immediately preceding year which was disallowed by the AO on account of assessee's failure to produce any evidence, holding that if assessee's claim for depreciation was allowed in earlier year then the said claim of depreciation could not be disallowed in the subject year.
***IB Commercial Pvt Ltd vs Dy.CIT [2018] 54 CCH 0192 (Mum Trib) - ITA No.3268 /Mum/2016 dated 09.11.2018***

**380.** Where the only reason for disallowance of depreciation was that the cars were registered in the name of directors of the assessee company, the Tribunal allowed assessee's claim for depreciation on such cars noting that the assessee company was the owner for all practical purposes as funds on purchase of vehicles were provided by the assessee and were been shown as assets of the assessee company.
***IB Commercial Pvt Ltd vs Dy.CIT [2018] 54 CCH 0192 (Mum- Trib.)- ITA No.3268 /Mum/2016 dated 09.11.2018***

**381.** The Tribunal held that the deduction with respect to motor car expenses and depreciation on motor car was allowable where the the assessee has used motor car for the purpose of business even though the car was in the name of director. However, since the assessee failed to furnish

log book to prove the use of vehicle for the purpose of business, the matter was remanded to AO for verification

***Bharat Tiles & Marble (P.) Ltd. v DCIT – (2018) 92 taxmann.com 7 (Mum) – ITA No. 438 (Mum.) of 2015 dated 14.02.2018***

» *Used for the purpose of business*

**382.** The Supreme Court dismissed Revenue's SLP, arising from High Court's order wherein it was held that depreciation u/s 32 in respect of machinery to be allowed to assessee even if the same was used only for trial production. The High Court had concluded that, once plant commenced operations and a reasonable quantity of product was produced, business was set up even if product was sub-standard and not marketable. Mere breakdown of machinery or technical snags that might have developed after trial run which had interrupted continuation of further production for a period of time could not be a ground to deprive assessee the benefit of depreciation claimed. Thus, depreciation was to be allowed even if machinery was used for trial production.

***PCIT vs Larsen & Toubro- (2018) 98 taxmann.com 368 (SC)- SLP 32252 of 2018 dated 24.09.2018.***

**383.** The Court held that for the claim of depreciation to be allowed the conditions precedent were ownership of the asset and user for the purpose of business. Therefore, where the assets were not used by the assessee itself, but used for the purpose of business viz. business of leasing, the assessee could not be denied its claim of depreciation on assets leased out on a financial lease.

***CIT v Apollo Finvest I Ltd – (2016) 95 CCH 0118 (Bombay)***

**384.** The Court allowed the assessee depreciation on assets forming part of 'block of assets' in respect of it's unit which was sold and ceased to exist during relevant AY and rejected Revenue's stand that since the assets pertained to discontinued unit, depreciation u/s 32 could not be allowed as the assessee was neither the owner of assets nor assets were put to use in assessee's business. It held that despite the unit being hived-off, 'block of assets' did not come to an end and assessee was entitled to claim depreciation thereon. It accepted the assessee's reliance on Oswal Agro Mills Ltd.[TS-4-HC-2010(DEL)] and Ansal Properties [TS-267-HC-2012(DEL)] and Infrastructure Ltd. rulings wherein the co-ordinate bench took note of legislative changes brought in Sec 50, special provision for capital gains computation on depreciable assets dealing inter-alia with a situation where any 'block of assets' ceases to exist on account of block being transferred which provided that where an assessee maintains a block of capital assets , the nature and the tax treatment of the same is independent of the existence of the capital asset in whole or in part or whether sold-off or transferred and allowed depreciation on assets of closed unit on the basis that they form part of 'block of assets'.

***Sony India Pvt. Ltd. vs. CIT TS-46-HC-2017(DEL) ITA No. 13/2012 ITA 14/2012 dated 24.01.2017***

Go to Index

**385.** The Court held that the expression 'used for the purpose of business' in section 32 of the Act should be interpreted to include cases where the asset is kept ready for use has not actually been put to use.
***Stitchwell Qualitex (RF) v ITO – (2015) 94 CCH 0015 Del HC***

**386.** The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim u/s 32 of depreciation on asset, which was disallowed by the AO on ground that the assessee was not using the assets for which depreciation was claimed as the factory was closed. It observed that the Tribunal had allowed the claim noting that the assessee was in business but could not run factory during the year under consideration because of stay order granted by Court and thus it could not be said that the assessee stopped /closed the business.
***Pr.CIT v Babul Products (P.) Ltd [2018] 96 taxmann.com 82 (GujaratHC) - R/TAX APPEAL NO. 734 OF 2018 dated July 17, 2018***

**387.** The Court disallowed assessee's claim for depreciation u/s 32 for plant and machinery for AY 1992-93, noting that the actual business of assessee commenced only in April, 1992 and therefore, its plant and machinery was not put to use during assessment year under consideration.
***CIT v Malayala Manorama Co. Ltd. – (2018) 91 taxmann.com 14 (KerHC) – ITA No. 1596 of 2009 dated 01.02.2018***

**388.** The claim of the assessee in regard to the depreciation on air pollution control equipment u/s 32 was remanded by the Court to the AO on the ground that the transaction done by assessee lacked bona fide as dates and events were not clear and the user of machinery between period 22-7-1994 and 22-9-1995 had not been verified by Assessing Officer.
***Sterling Holiday Financial Services Ltd. v. ACIT - [2018] 93 taxmann.com 60 (MadrasHC) - TAX CASE (APPEAL) NO. 564 OF 2008 dated APRIL 3, 2018***

**389.** The Tribunal allowed depreciation on discarded assets viz furniture & fixtures, office equipment and computer items which were used by the assessee for its data processing business which was stopped in the prior AYs, which formed part of the block of assets even though they were not used during the relevant AY was they were in 'ready to use' state. It held that such passive use was also entitled for depreciation.
***Galileo India Pvt Ltd – TS-522-ITAT-2016 (Del) - ITA No. 88/Del./2014***

**390.** The Tribunal held that depreciation claimed by the assessee was to be allowed even if the asset was used for one day provided it is used for the purpose of business or profession. It held that since deprecation was allowable under section 32 of the Act the general provision of section 37(1) of the Act could not be invoked.
***Dr B Narsaiah v DCIT – (2015) 45 CCH 0031 Hyd Trib***

**391.** The Tribunal held that since the 11th Amendment Rules provide that new commercial vehicles put to use are eligible for depreciation at 50 percent, the Principal CIT cannot restrict the same by bring a new condition that they have to be put to use in the business of running them on hire and therefore quashed CITs revisionary order under section 263 of the Act.

Go to Index

***SEC Industries Pvt LTd v DCIT – TS-585-ITAT-2015 (Hyd Trib.)***

**392.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing depreciation on unused machinery, noting that it was not case of the Revenue that the assessee ceased to carry on its business permanently but it was only case of temporary lull in business against which machineries were not put to use and the law laid down by several decisions clearly permited the allowance of depreciation when the machineries were kept for ready to use. It held that on introduction of concept of block assets the provisions of section 32 by the Tax Laws (Amendment) Act, 1986, which came into force w.e.f. 1-4-1980, the concept of usage of asset(s) for the purpose of claiming of depreciation had become redundant.
***DCIT v PRS METALIKS LTD – (2018) 52 CCH 24 (Kol Trib) – ITA No. 450/Kol/2016 dated 10.01.2018***

**393.** The Tribunal allowed depreciation u/s 32 with respect to assets of a sick company which was amalgamated with assessee-company by order of BIFR, irrespective of the fact that in pre-amalgamation assessment, depreciation had been denied to erstwhile sick company on account of non-user of assets. It held that the assets of sick-company after amalgamation became assets of assessee-company by operation of law and it fell into 'Block of assets' of assessee-company and, therefore though such assets, were non-functional, yet they could not be segregated and depreciation had to be allowed in respect of same
***Hindustan Engineering & Industries Ltd. v DCIT – (2018) 90 taxmann.com 230 (Kol Trib) - ITA Nos. 146 to 152 (Kol) of 2017 dated 24.01.2018***

**394.** Where assessee had installed plant and equipment at client's premises and had brought the same to the notice of Revenue by filing sample copies of some of the agreements whereby the assessee had agreed that monitoring equipments and pumps would be installed at the clients premises, the Tribunal held that it was clear that the installation of equipments in the client's premises was necessary and part and parcel of nature of business carried on by the assessee and therefore depreciation on the same should be allowed. The fact that the equipments were used in the business premises of the clients could not be the basis to disallow the claim of the assessee for deduction on account of depreciation. The Tribunal, accordingly, upheld order of CIT(A) deleting disallowance on depreciation.
***Deputy Commissioner of Income Tax v. Nalco Water India Ltd -(2017) 49 CCH 0145 KolTrib (ITA No. 2111/Kol/2013)***

**395.** The Assessee claimed depreciation in respect of texturised unit wich was disallowed by AO on grounds that unit had not shown any activity during year under consideration and thus assessee failed to fulfil conditions laid down in section 32(1). The Tribunal allowed depreciation by relying on CIT vs Oswal Agro Mills Ltd (2012) 341 ITR 467 (Del) and held that provisions of section 32(1) were very clear in as much as once an asset was put to use, then whether same had been used in year under consideration or not was irrelevant for purpose of claiming depreciation and the expression used "for purpose of business" included user of assets in earlier years.
***Eskay Knit (I) Ltd vs ACIT- (2018) 54 CCH 0049 Mum Trib- ITA No 6816/Mum/2011 dated 28.09.2018***

Go to Index

**396.** The Assessee was proprietor of several businesses and in case of one of its business concerns business activity was temporarily suspended. However opening and closing stock as well as debtors and creditors continued to be in business. The AO disallowed administrative expenditure and depreciation. The CIT(A) allowed administrative expenditure but disallowed depreciation expenses. On appeal filed against the CIT(A)'s order sustaining disallowance w.r.t. depreciation, the Tribunal held that when particular asset was added into particular block of assets irrespective of fact that individual item in said block remains, the unutilized depreciation in block of asset had to be granted. Thus, Tribunal set aside order passed by CIT(A) and allowed the assessee's appeal.
***SANJAY SHANKARRAO JADHAO vs. JCIT (NAGPUR TRIBUNAL) (ITA No.66/Nag./2017) dated May 8, 2018 (53 CCH 0153)***

» *Additional depreciation – section 32(1)((iia)*

**397.** The Apex court held that merely because Form 3AA (Form for claim of additional depreciation) was not filed along with the return of income, additional depreciation could not be denied since the said Form was filed during assessment proceedings and before the final order of assessment.
***CIT v GM Knitting Industries Pvt Ltd [CIVIL APPEAL NO. 10782 OF 2013 & 4048 OF 2014] - TS-477-SC-2015***

**398.** The Court dismissed the appeal filed by Revenue and allowed 50% of the balance additional depreciation u/s 32(1)(iia) in the succeeding AY where the asset was purchased and put to use for less than 180 days during the preceeding AY. It relied on the decisions in the case of CIT & Anr v Rittal India Pvt. Ltd (380 ITR 423), CIT v Shri T. P. Textiles Pvt. Ltd (394 ITR 483) wherein it was held that amendment made vide insertion of third proviso to section 32(1)(iia) w.e.f. April 1, 2016 (which allows claim in succeeding year), being clarificatory in nature, would apply to pending cases.
***Principal Commissioner of Income Tax v Godrej Industries Limited - ITA No 511 of 2016 -[TS-683-HC-2018(BOM)] – dated 24.11.2018***

**399.** The Court dismissed the appeal of the Revenue and held that the activity of mining for the purpose of production of mineral ore fell within the ambit of the word "production" entitling the Assessee (engaged in mining, mineral processing for exports and shipping) tothe benefit of additional depreciation u/s 32(iia)(in case of new machinery or plant acquired and installed by an Assessee engaged in the business of manufacture or production of an article or a thing)on equipment, P&M used inthe extraction and processing of ore.
***Pr. CIT vs. SESA Resources Ltd. (2017) 99 CCH 0203 Bombay HC (Tax Appeal No. 57/2016 dated August 16, 2017)***

**400.** The Court held that in terms of section 32(1)(iia), assessee could claim balance additional depreciation in assessment year which followed the assessment year in which machinery had been bought and used for less than 180 days. It held that the Revenue was incorrect in reading the amendment to Section 32(1) vide Finance Act 2015 (which specifically provides that balance

depreciation on assets used for less than 180 days in a relevant assessment year could be claimed in the subsequent assessment year) as a prospective amendment and held that the same was clarificatory in nature. Accordingly, it upheld allowed the asseesee's claim of additional depreciation.
***Commissioner of Income Tax v T.P. Textiles Private Limited - (2017) 98 CCH 0102 ChenHC (T.C.(A) No. 157 of 2017)***

**401.** The Court dismissed Revenue's appeal against the Tribunal's order upholding CIT(A)'s order allowing the assessee's claim for additional depreciation with respect to machineries used by the assessee in the activity of crimping of yarn. The Revenue contended that the said activity was an intermediate process of treating yarn and did not fall within the purview of manufacturing activity. The Court followed the decision in the case of CIT v. Emptee Poly Yarn (P.) Ltd. [2008] 305 ITR 309 (Bom.) wherein in the context of deduction u/s 80IA, it was held that the activity of texturizing and twisting of yarn amounted to manufacturing of article or thing distinct from the original and thus the said activity was a manufacturing activity.
***CIT v Shri Mahavir Crimpers - [2018] 95 taxmann.com 323 (GujaratHC) - R/TAX APPEAL NO. 547 OF 2018 dated June 13, 2018***

**402.** The Court held that where the assessee claimed 50 percent of additional depreciation allowable under section 32(1)(iia) of the Act, which provides for further 20 percent depreciation on new plant and machinery, since its new machinery was put to use for a period of less than 180 days, the balance 50 percent claimed in the subsequent year, was allowable. It rejected the Revenue's stand that additional depreciation was allowable only in the year of purchase and the balance claim could not be carried forward to the subsequent year, in the absence of a specific provision to that effect and that since the provision was introduced to encourage industrialization, it was to be construed reasonably, literally and purposively.
***CIT v Rittal India Pvt Ltd – TS-29-HC-2015 (Karnataka)***

**403.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for additional depreciation on electrical installation consisting of electrical wires, switches, plugs, cables, MCB box and electrical items, holding that they cannot function independently and rather are part of 'Plant & Machinery', relying on the coordinate bench decision in the assessee's own case wherein the said issue was decided in favour of the assessee.
***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. 20 MICRONS LTD. & ANR. - (2018) 52 CCH 0443 AhdTrib - ITA No. 1046/Ahd/2014, 1216/Ahd/2014 dated Apr 11, 2018***

**404.** The Tribunal held that cutting of the coil to the required size as per the specification of the customer did not amount to manufacturing activity and therefore held that the assessee was not entitled additional depreciation u/s 32(1)(iia) on new machinery purchases for this purpose.
***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. JSW STEEL PROCESSING CENTRES LTD. & ANR - (2018) 52 CCH 0167 BangTrib - ITA No. 1978/Bang/2017, 2001/Bang/2017 dated Mar 7, 2018***

**405.** AO disallowed additional depreciation on electrical installation in nature of air circulator installed in assessee's factory. CIT(A) upheld order of AO. The Tribunal held there was nothing on record

to show that electrical installation on which additional depreciation was claimed by assessee was air circulator which could be construed as plant and machinery. Accordingly, lower authorities were justified in denying claim of additional depreciation on said item.
***Turbo Energy Private Ltd vs DCIT- (2018) 54 CCH 0059 ChenTrib- ITA No 2493,2494/Chny/2016 dated 01.10.2018***

**406.** Assessee filed return of income after claiming additional depreciation on mining equipment. AO disallowed assessee's claim on ground that extraction of mining was not manufacturing activity.CIT(A) allowed additional depreciation by holding that assessee had mines in States of Jharkhand & Orissa and equipment on which assessee claimed depreciation help in extraction process conducted during process of extraction of iron ore and manganese ore. The Tribunal noted that CIT(A) placed reliance in case of Integrated Coal Mining Ltd. of Co-ordinate Bench of ITAT wherein, it was held that where assessee acquired various types of equipments and machineries to facilitate extraction of ores from mines which helped in extraction process.Machineries were used in production purpose and were entitled for additional depreciation u/s 32(1)(iia).No infirmity was found in order of CIT(A) and Revenue's ground was dismissed.
***Asst. CIT vs. ORISSA MANGANESE & MINERALS LTD. (2018) 54 CCH 0399 KolTrib- ITA Nos.2150 to 2154/KOL/2017 dated 20.12.2018***

**407.** Where the assessee had claimed additional depreciation u/s 32(1)(iia) with respect to assets purchased and put to use in earlier years, Tribunal held that the said additional depreciation on cost of new plant and machinery was allowable only once in the year in which machinery or plant was acquired and installed and this view was also clear by the insertion of third proviso in section 32. As regards, the sales tax incentive under 'New Package Scheme of Incentive 1992' received by assessee which was considered as capital receipt by AO, Tribunal held that the same was not required to be reduced from cost of asset as per Explanation 10 to section 43(1) for purpose of computing depreciation.
***Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018***

**408.** The Tribunal dismissed the assessee's appeal and upheld CIT(A)'s order holding that the assessee-company was not eligible to claim additional depreciation u/s 32(1)(iia) since it was not engaged in business of 'manufacture or production of article or thing' but was engaged in business of construction and fabrication of factories and cement plants, even though in process of construction and fabrication, it manufactured certain articles which were used in erection of certain factories.
***Ayoki Fabricon Pvt Ltd vs Dy.CIT [2018] 54 CCH 0257 (Pune Trib) - ITA No.1723/Pun/2014, 11/Pun/2015 and 1608/Pun/2015 dated 20.11.2018***

**409.** The Tribunal held that the process of generation of electricity through windmill amounted to manufacture or production of article or thing as mentioned u/s 32(1)(iia) and therefore allowed assessee's additional depreciation claim on windmills for AYs 2011-12 & 2012-13. The third member dissented with the accountant member's view that in light of 'substantive' amendment made by Finance Act 2012 to extend & include activity of 'generation of power' under the ambit

of sec 32(1)(iia) with effect from April 1,2013, benefit of initial depreciation/additional depreciation could not be extended to windmills acquired prior to AY 2013-14,and agreed with the view of the judicial member that the amendment brought to Section 32(1)(iia) was clarificatory and not 'substantive' in nature, and therefore had to be given retrospective application.
***Giriraj Enterprises vs. DCIT TS-74-ITAT-2017-(PUN) ITA No.s.1469&1470/PUN/2015 dated 23.02.2017***

**410.** Where the assessee purchased new plant and machinery partly prior to 31.3.2005 and partly post 31.3.2005, as a result of which installation of new machinery and plant got completed after 31.3.2005 and only thereafter it became operational for commercial production, the Tribunal held that the assessee's claim for additional depreciation was to be allowed u/s 32(1)(iia) not withstanding that the provision mandates acquisition of asset after 31.3.2005 on the ground that provisions of section 32(1)(ii) are a piece of beneficial legislation which should be liberally construed to grant the benefit to the tax payer.
***JCIT v Lotus Energy (India)Ltd - [2016] 68 taxmann.com 364 (Mumbai-Trib)***

» *Leased assets*

**411.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that where assessee had purchased a boiler from a company and leased it to that very same company and claimed 100 per cent depreciation on boiler, since rental income from lease transaction was subjected to tax and even after claiming depreciation in one year, assessee was subjecting itself to tax on income arising from that very transaction, transaction could not be said as dubious and, thus said depreciation was to be allowed
***Pr.CIT v. Bombay Burmah Trading Corpn. Ltd. [2018] 256 Taxman 393(SC) - Special Leave Petition (Civil) Diary Nos. 18622 of 2018 dated July 3, 2018***

**412.** The Apex Court upheld the order of the High Court denying depreciation to the assessee on machinery purchased by it from the Andhra Pradesh State Electricity Board leased back on the very same day, since the lower authorities had concluded that the transaction was sham, taking into account that the documents were not registered, the machinery was attached to the earth and possession was never handed over by the Board and the WDV of machinery was not identified. It further observed that the findings of the lower authorities that the transaction was a pure finding of fact.
***Avasarala Technologies Ltd v JCIT – TS-769-SC-2015***

**413.** Where the assessee had entered into lease agreement, which was not registered and paid security deposit and it had option to purchase leased property on expiry of 3 years from commencement of lease, the assessee claimed depreciation on improvements made, the Court upheld the view of the Tribunal that non-registration of agreement did not imply that benefit available under section 53A of The Transfer of Property Act, 1882 of being entitled to continued possession in part performance of agreement to sell, had to be denied and that deduction in

Go to Index

respect of depreciation could be claimed by the person in whom the dominion over the building vests and one who uses the asset for his business or profession.
***CIT vs. Bhushan Steels & Strips Ltd. (2016) 97 CCH 0145 Del HC (ITA 314/2003)***

**414.** The Court held that where assessee, engaged in business of leasing, had purchased trucks from manufacturers and further leased out those trucks, it was entitled to claim depreciation in respect of trucks so leased out. It further held that it was undisputed that the assessee was a leasing company and income derived from leasing of vehicles was assessed as its business incomer. Since, the assessee satisfied requirement of section 32 that vehicle must be used for purpose of business, its claim for depreciation was to be allowed.
***CIT v. Shriram Chits & Investments (P.) Ltd [2018] 257 Taxmann 395(Mad.HC)- Tax Case (Appeal) Nos. 1079 to 1082 & 1209 to 1211 of 2007 dated July 4, 2018***

**415.** The Assessee company claimed depreciation on lease of milk canes. The AO disallowed the claim treating the entire transaction of purchase and lease of assets as bogus and non genuine, which was further upheld by CIT(A). The Tribunal on appeal held that the assessee had claimed depreciation on such asets, hence it was incumbent upon assessee to prove with plausible evidence that it owned certain assets which had been leased and fetching rent. Further, it was observed that enquiry made by Revenue revealed that entity, from where such assets were purchased were not having capacity to manufacture and hence entire claim was found to be bogus. It was further established by Revenue that purchase consideration was routed back, hence, entire claim proved to be colourable device, thus the Tribunal dismissed assessee's appeal and upheld the disallowance of depreciation.
***Premium Capital Market & Invstment Ltd vs ACIT- (2018) 54 CCH 0039 Indore Trib- ITA No 356/2012 & 390/2012 dated 25.09.2018***

» *Intangible Assets*

**416.** The Apex Court held that where in terms of collaboration agreement entered into with HMCL Japan, lump sum payment as well as royalty paid by assessee to HMCL for giving licence and technical assistance in order to manufacture and sale of automobiles were regarded as capital expenditure, assessee would be entitle to claim depreciation thereon.
***Honda Siel Cars India Ltd. v. CIT- [2019]101 taxmann.com 222 (SC)-CA No.4918 of 2017- dated November 14, 2018***

**417.** The AO disallowed the assessee's claim for depreciation on trademark purchased on the ground that the trademark was not used by the assessee as the assessee did not carry on any manufacturing activities rather only purchased finished products in bulk and sold them in the convenient packaging. The Court noted that the assessee sold the purchased products with acquired trademark and the trademark was advertised for sale promotions of assessee's products. It thus held that the assessee was entitled to claim depreciation on trademark acquired by it and fact that assessee was not engaged in manufacturing activity would not make any difference.

Go to Index

***CIT v Sinochem India Co. (P.) Ltd. - [2018] 97 taxmann.com 51 (DelhiHC) - ITA No. 768 of 2018 dated July 25, 2018***

**418.** The Court held that a radio programme is a "thing" as the dictionary meaning of the word "thing" envisages the possibility of it being intangible in nature. It held that when a radio programme is made, there comes into existence a thing which can be transmitted and sold by making copies which would imply manufacture. Accordingly, the Court held that the assessee could have said to have used plant and machinery for the manufacture of an article or thing, satisfying the requirements of section 32(1)(iia) of the Act.
***CIT v Radio Today Broadcasting Ltd – [2015] 64 taxmann.com 164 (DelHC)***

**419.** The court upheld the Tribunal order wherein it was held that where assessee made payment to its partner to ward-off competition, rights acquired by assessee under said agreement would not only give enduring benefit, but protected assessee's business against competition and fell under expression 'or any other business or commercial rights of similar nature' used in Explanation 3 to section 32 (1)(ii) and, thus, assessee was eligible for depreciation.
***Pr. CIT v. Ferromatic Milacron India (P.) Ltd. [2018]99 taxmann.com 154 (Guj.HC)- R/Tax Appeal No. 1233 Of 2018 dated October 9, 2018***

**420.** The Court held that where the assessee-company had made payments to his partner to ward-off competition and to protect its existing business since said rights acquired by the assessee would not only give enduring benefit, but also protected assessee's business competition, it could be covered under expression 'or any other business or commercial rights of similar nature' used in Explanation 3 to section 32(1)(ii) and, thus, the assessee was eligible for depreciation.
***Principal CIT v. Ferromatic Milacron India (P.) Ltd. [2018] 99 taxmann.com 154 (Guj.HC) Special Leave Petition (Civil) Diary No. 34548 of 2018 dated October 26, 2018***

**421.** Assessee company was engaged in business of manufacturing drugs and pharmaceuticals. It was noticed by AO that assessee had claimed depreciation on block of assets viz. computer and software. AO doubted claim of assessee and issued a show cause notice asking as to why depreciation on software. AO restricted claim of depreciation. CIT(A) set aside AO's order. The Tribunal held that, in case of ACIT Vs. Zydus Infrastructure P.Ltd., it was held that, licenced software were also subjected to depreciation. Tribunal also observed that even if depreciation was lowered, then there would not be any change in taxable income of assessee, as assessee company was unit eligible for deduction u/s 10A of Act, and therefore, in either way, entire exercise would be revenue neutral and adjudication becomes merely an academic. Accordingly, it dismissed Revenue's appeal.
***Dy.CIT vs. Zydus Hospital Oncology P.Ltd.-(2018) 53 CCH 0306 Ahd.Trib -ITA No.81/Ahd/2016-dated Jul.9, 2018***

**422.** AO rejected additional claim made by assessee for claiming depreciation on goodwill arising on demerger of A Energy Ltd from A Gas Ltd. on ground that same was not claimed through revised return of income but claimed during course of assessment proceedings. CIT(A) upheld said order The Tribunal held that, additional claim of such nature could be raised before appellate authorities despite not having included same in return of income. As corollary, claim of assessee

on account of depreciation on goodwill was required to be allowed in accordance with law in parity with conclusion drawn in favour of assessee relevant to AY 2009-10 wherein depreciation for subsequent years had been granted after computing notional depreciation for earlier year.
***DCIT vs Adani Gas Ltd- (2018) 54 CCH 0090 Ahd Trib- ITA No 775/Ahd/2014, 2346, 2797/Ahd/2015, 2775,2776/Ahd/2016 dated 17.10.2018***

**423.** The assessee made payment to P of non-compete fees as per the non-competition agreement and claimed depreciation by treating the same as intangible asset. The AO disallowed the claim on the ground that though non-compete fee was a capital expenditure, it neither facilitated conduct of business nor fell within the ambit of any of intangible assets or business. The CIT(A) deleted the disallowance relying on various decisions including CIT v. Ingersoll Rand International Ind. Ltd. [227 Taxman 176 (Kar)] wherein it was held that non-compete fee was an intangible asset entitled for depreciation. The Tribunal held the non-compete fee paid by the assessee to be a capital expenditure in nature of an intangible right with respect to which depreciable is allowable u/s 32(1)(ii). Accordingly, it dismissed Revenue's appeal.
***Ferromatic Milacron India Pvt. Ltd. v DCIT (2018) 52 CCH 0553 AhdTrib - ITA Nos. 2451 & 2616/Ahd/2015 dated 19.04.2018***

**424.** The Tribunal held that admissibility of depreciation on trademark is not contingent upon its registration in name of assessee in as much as description of intangible asset in Part B of depreciation schedule describes the same merely as 'know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature'.
***Trio Elevators Company (India) Ltd v ACIT - [2016] 67 taxmann.com 348 (Ahmedabad - Trib)***

**425.** The Tribunal held the procurement of technical know-how could not be equated with the mere rendering of services by a technical person and since the evidences were not placed before the AO, it restored the issue to the file of the AO to determine the genuineness of the procurement of technical know-how and the use of technical know-how in the assessee's manufacturing process to determine whether an intangible asset was created by making the payment for the said services and whether depreciation could be claimed on the same.
***Transpek Industry Ltd. & ANR vs. ACIT & ANR (2016) 47 CCH 0621 AhdTrib. ITA No. 1838/ Ahd/2011, 1840/Ahd/2011***

**426.** The Tribunal held that assessee cannot claim depreciation on assets acquired under amalgamation in excess of the depreciation allowable to amalgamating company as per 5th proviso to section 32(1). It rejected assessee's stand that revenue could not reject valuation of goodwill done by assessee and held that same could be rejected by the Revenue by invoking Explanation 3 to section 43(1) which empowers the AO to determine the value of goodwill if he is of the opinion that assessee had deflated the value of assets taken over to claim higher depreciation on goodwill. Since the goodwill of the amalgamating companywas valued at Rs.7 crore, as against the goodwill of Rs.62 crore claimed by the assessee, the AO was correct in invoking the 5th proviso to Section 32(1) of the Act.
***United Breweries Ltd. [TS-553-ITAT-2016 (Bang)] (ITA No. 722/Bang/2014)***

Go to Index

**427.** The Tribunal upheld depreciation disallowance on intangible asset i.e. 'distribution network' and other assets acquired by assessee pursuant to acquisition of colour television ('CTV') business on slump sale basis by invoking Explanation 3 to section 43(1, on the ground that transaction of acquiring business as a going concern was between two related parties and the seller had substantial 50% interest in assessee-company and assets already depreciated in the hands of seller were assigned higher values by assessee-company. It further observed that there was no transfer of any distribution network as seller was 50% stakeholder in assessee company and retained the brand name in company name and held that right to use distribution network does not result in creation of any intangible asset since none of the parties had paid any amount to the distributors.

***Sanyo BPL Pvt Ltd [TS-620-ITAT-2016(Bang)] (ITA No.1395/Bang/2014)***

**428.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for depreciation on certain additional amount paid under Asset Purchase Agreement which inter alia contained clause that stated that the sellers would not engage in any activity which was in competition with the assessee's business. The said amount paid was claimed by the assesse to be goodwill whereas the AO considered the same to be towards non-compete fees. The Tribunal relied on the decision in the case of CIT Vs. M/s. Ingersoll Rand International Ind. Ltd. [227 taxmann.com 176 (Kar)] wherein it was held that on payment of non-compete fees, payer acquired a bundle of rights and these rights are business rights, eligible for depreciation u/s 32.

***DEPUTY COMMISSIONER OF INCOME TAX vs. SANGEETHA MOBILES PVT. LTD. - (2018) 53 CCH 0176 (Bang Trib) - ITA No. 715/Bang/2017 dated June 15, 2018***

**429.** The Tribunal held that the excess amount paid by the assessee over and above the value assigned to various assets of the division purchased which was towards 'customer relationship rights' could be classified as goodwill and therefore eligible for depreciation under section 32(1)(ii) of the Act. The Tribunal dismissed the assessee's alternative contention that the said customer relationship rights were in the nature of fee for non-compete rights, eligible for depreciation under section 32 of the Act, in spite of the fact that the seller of the division agreed not to engage in the business of the division transferred as there was no intention of the parties to pay consideration for such restrictive covenant and therefore, payment could not be treated as non-compete fees.

***Incap Contract Manufacturing Services Pvt Ltd v DCIT – TS-262-ITAT-2016 (Bang)***

**430.** Where the assessee had acquired a brand from its associate and claimed depreciation on the said brand subsequent to which it amalgamated with the said associate company, the Tribunal held that the Revenue was not justified in denying depreciation on the brand on the ground that there was no requirement for assessee to purchase the brand separately as the associate company itself was amalgamated with assessee and claim of depreciation was a colourable device. It noted that the brand was acquired by assessee prior to amalgamation, the payment for which was through banking channel and accordingly held that the assessee was eligible for depreciation as claimed.

***Emerald Jewel Industry India Ltd [TS-573-ITAT-2016(CHNY)] (ITA No.1811/Mds/2015)***

Go to Index

**431.** The Tribunal held that where the assessee introduced an intangible capital asset in its books of accounts, deprecation was to be allowed on the cost of the asset and not based on the amount paid by the assessee towards it purchase.
***ACIT v India Cements Ltd – (2016) 46 CCH 0005 (Chen)***

**432.** The Tribunal dismissed the assessee's claim of depreciation on leasehold rights and relying on the co-ordinate bench decision in Dabur India ltd. vs ACIT, 159 TTJ 563 (Mumbai) held that tenancy rights could not be construed as intangible assets falling within meaning Explanation to section 32(1) and, therefore, there was no question of allowing depreciation on said rights**.**
***MAHANADI COALFIELDS LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0204 CuttackTrib - ITA No.421/CTK/2013 dated Mar 20, 2018***

**433.** The assessee-company had taken over all assets and liabilities of a partnerhip firm alongwith goodwill of the firm. The assesse claimed depreciation on goodwill. The AO opined that since the firm was succeeded by the company with all the partners becoming the shareholders, there was no transfer of goodwill in real sense and thus disallowed the depreciation claim. The Special Bench was constituted for considering the question as to whether depreciation was allowed on goodwill acquired by the assessee, citing contrary sets of decisions viz., one set allowing depreciation on goodwill and the other not allowing it. The Special Bench held that in principle depreciation is available on genuine goodwill. However, it remanded the matter back to the Division Bench to consider the AO's contentions that there was no transfer of goodwill in real sense and further the valuation of goodwill done by the assessee was erroneous
***CLC & Sons (P.) Ltd. v ACIT - [2018] 95 taxmann.com 219 (Delhi - Trib.) (SB) – ITA No. 1976 (Del.) of 2006 dated July 19, 2018***

**434.** The Tribunal allowed Revenue's appeal against CIT(A)'s order and disallowed assessee's claim for depreciation on non-compete fees paid for acquiring a running business, holding that the same did not result in an eligible intangible asset to qualify for depreciation u/s 32(1)(ii). It relied on the decision in the case of Sharp Business Systems wherein it was held that non-compete fee is not an eligible intangible asset since non-compete right is not right "in rem" as well as not transferable. The Tribunal rejected the reliance placed on SC ruling in Smif Securities Ltd, holding that the issue therein was not with respect to non-compete fees but "goodwill" and "Stock Exchange Membership Card".
***DCIT v EAC Industrial Ingredients India P. Ltd [TS-31-ITAT-2018(DEL)] - ITA No. 1801/Del/2011 dated 28.12.2018***

**435.** The Tribunal rejected assessee's depreciation claim u/s. 32 on intangible asset of 'Government Authorizations/Approvals' which it claimed to have acquired under a business transfer agreement ('BTA') in 2004 wherein it had taken over the business of sale of franking machine on a slump sale basis from a company viz. KOAL. It noted that prior to formation of assessee (a subsidiary of a US company, who manufactures franking machines), KOAL was merely authorized by assessee's US parent to sell / market franking machines to customers in India and observed that the assessee could not produce the Approval granted by the Department of Post or other regulatory authority to KOAL. It held that mere authorization to sell / market franking machines in India could not create any rights in favour of KOAL and that the right to

sell the franking machines in India was a result of distribution rights granted by the US parent and not due to Government Approvals granted to KOAL. It held that the rulings of the Apex Court in Techno shares (2010) 327 ITR 323 and of the co-ordinate bench in ONGC Videsh Ltd (2009 – TIOL –758 – ITAT-DEL) were wrongly relied on by the assessee as in both those cases, the rights of business or commercial nature were possessed by the assessees, whereas in the instant case, the approval / rights vested with the Parent company and not in KOAL and therefore the same could not have been acquired by the assessee by way of the slump sale.
***Pitney Bowes India (P) Ltd. [TS-208-ITAT-2017(DEL)] ITA Nos. 289 to 293/Del/2013 dated 29.05.2017***

**436.** The Tribunal upheld the order of the CIT(A) passed in the second round of proceedings wherein the CIT(A) held that the payment of fee for acquiring management rights of a drill ship made by the assessee to its Singapore based group concern was a capital payment eligible for depreciation. It dismissed the Departments contention that the payment was not a genuine transaction and observed that in the first round of proceedings the Tribunal had considered the same allegation and accepted the transaction to be genuine and had remitted the matter to the CIT(A) to determine whether the transaction was a revenue or capital expenditure. Accordingly, it held that there was no merit in raising the same allegation once again.
***ADDITIONAL DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) vs. DOLPHIN DRILLING LTD. - (2018) 52 CCH 0193 DelTrib - ITA No. 197/Del/2013 dated Mar 20, 2018***

**437.** The Tribunal, relying on the decision in the case of DCIT vs ABC Paper ltd [ITA No.2263 / del / 2012] held that the definition of intangible assets u/s 32(1)(iii) was inclusive which included not only know-how, patents and copyrights, trademarks, licenses, franchises but also other business or commercial rights of similar nature which included 'brand' and accordingly the assessee was entitled to depreciation on paper brand.
***DCIT vs Kauntum Paper Ltd – (2017) 51 CCH 0003 Delhi Trib. ITA No 1339 TO 1346/DEL/2017 dated 01.09.2017***

**438.** Assessee company was engaged in business of publishing of newspapers and satellite television broadcasting and had claimed depreciation on opening WDV of film software library @ 25% stating that same was an intangible asset. The AO had disallowed part of the claim on ground that, since assessee was in business of satellite television and film, software library formed an important apparatus of its business and was within definition of 'plant and machinery and accordingly allowed depreciation @ 15% which was further upheld by CIT(A). The Tribunal observed that in assessee's own case for AY 2007-08, it was held that intangible asset could also be treated as plant provided it became integral part of tools used by entity to carry on its business.The Tribunal further held that Films and TV programmes were essential for assessee company to carry on its business of telecasting of films and other programmes, but there was no caveat that assessee company had to telecast only these films and programmes and none other for assessee's business. Further, not only films and programmes in 'Film Software Library', but assessee might also telecast any other programmes or films on its channels. Thus, by purchasing library, assessee was gaining exclusive right over asset but this library could not be held as tool for carrying on of its business as assessee could carry on its business even without

Go to Index

'Film Software Library' Thus, it failed functional test adopted by AO and the Tribunal concluded that asset was 'Intangible Asset' eligible for depreciation at rate of 25%.
***Ushodaya Enterprises P Ltd vs DCIT- (2018) 53 CCH 0534 Hyd Trib- ITA No 1733, 1597/H/14 & 1578,1672/H/13 dated 07.09.2018***

**439.** Where the assessee had acquired the business of SWAS Society for which it made a payment towards client creation cost, the Tribunal held that the client creation cost was an intangible asset which was eligible to depreciation @ 25%.
***Swaws Credit Corporation P. Ltd. vs. DCIT (2016) 48 CCH 139 (HydTrib) (ITA No. 24/Hyd/2013)***

**440.** Assessee company had developed Second Vivekananda Bridge under Build, Operate and Transfer (BOT) basis and it obtained from National Highways Authority of India (NHAI), License to collect Tollway Charges in relation to said Bridge. Assessee claimed depreciation in respect of license to collect Tollway Charges by treating it as Intangible Asset. AO held that assessee was not owner of Infrastructure facility also did not hold any rights in project except recovery of toll fee to recoup the expenditure incurred, it could not therefore be treated as owner of property, either wholly or partly, for purposes of allowability of depreciation u/s. 32(1)(ii). CIT(A) upheld order of AO. The Tribunal held that, in case of Techno Shares and Stocks Ltd. v/s CIT, Supreme Court held that as membership card allowed a member to participate in trading session on floor of exchange, such membership was business or commercial right, hence, similar to license or franchise, therefore, it was an intangible asset. By virtue of Concession Agreement (CA), assessee had acquired right to operate toll road / bridge and collect toll charges in lieu of investment made by it in implementing project. Therefore, right to operate toll road / bridge and collect toll charges was business or commercial right as envisaged u/s. 32(1)(ii) r/w Explanation 3(b) of said provisions. Expenditure incurred by assessee for construction of road under BOT contract by the Government of India had given rise to intangible asset as defined under Explanation 3(b) r/w section 32(1)(ii). Assessee was eligible to claim depreciation on such asset at specified rate.
***Second Vivekanand Bridge Tollway Co.Pvt.Ltd. vs. Dy.CIT-(2018) 53 CCH 0352 KolTrib. - ITA No.19/Kol/2017-dated Jul 11, 2018***

**441.** The Tribunal upheld the assessee's claim for depreciation on intellectual property rights and rejected the AO's stand that depreciation could not be granted as intellectual property was not registered with any government authority. Although the transaction in assessee's case was between two unrelated enterprises, the Tribunal applied the principles enunciated in OECD TP Guidelines (for multinational enterprises and tax administrations) and BEPS Action Plans 8-10 (aligning TP outcomes with value creation) which provides that an enterprise may, for sound business reasons, choose not to register patentable knowhow, which may nonetheless contribute substantially to the success of the enterprise. Getting the intellectual properties registered was within the domain of the assessee and the revenue cannot thrust the mandate of registration of the same and mere non-registration does not render the transaction in-genuine or sham.
***Landis + Gyr Limited [TS-421-ITAT-2016(Kol)] I.T.A No. 37/Kol/2012 // I.T.A No. 1623/Kol/2012***

Go to Index

**442.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing depreciation @ 25% to assessee on 'License to collect Toll' by holding it to be an intangible asset u/s 32(1)(ii). It upheld CIT(A)'s finding that the right was bestowed only for a specified period by the Govt. of Maharashtra under BOT (Built-Operate-Transfer) scheme and also that the assessee had raised loans by assigning this 'right' and thereby it had commercial value.
***ACIT v Ashoka DSC Katni By-Pass Road Pvt. Ltd [TS-715-ITAT-2018(PUN)] – ITA No.212/PUN/2017 dated 11.12.2018***

**443.** The Tribunal upheld CIT(A)'s order disallowing assesse's claim of depreciation on acquisition of commercial rights of 'P' bank which had amalgamated with it, noting that the CIT(A) had rightly followed the Apex Court judgement the case of CIT v. Smifs Securities Ltd. [2012] 348 ITR 302 (SC). It was observed that in the said case, the claim of depreciation was allowed on goodwill which was the amount paid in excess to the net asset acquired. Whereas, in the instant case, the assessee had not paid any consideration for acquisition of P Bank and had only taken over accumulated losses. Further, it was observed that the assessee had not shown any amount towards towards goodwill / commercial rights in the depreciation schedule and thus had not acquired any goodwill / commercial rights.
***Kanaka Mahalakshmi Cooperative Bank Ltd.vs ACIT [2018] 97 taxmann.com 638 (Vishakhapatnam Trib)- IT APPEAL NO. 298/VIZ/2017 dated August 05 2018***

» *Unabsorbed depreciation*

**444.** The Court dismissed Revenue's appeal against Tribunal's order holding that unabsorbed depreciation pertaining to AY 1997-98 to AY 2001-02 was allowable to be carried forward and adjusted after the lapse of eight assessment years in view of section 32(2) as amended by the Finance Act, 2001, relying on the decision in the case of CIT v. Hindustan Unilever Ltd. (2017) 394 ITR 73 (Bom HC) decided against the Revenue on identical issue. It was noted that SLP filed by the Revenue against the said decision was also dismissed by the Apex Court [CIT v. Hindustan Unilever Ltd (2018) 99 taxmann.com 135 (SC)].
***Pr.CIT v Ceat Ltd – ITA No. 670 of 2016 (Bom HC) dated 27.11.2018***

**445.** The Court dismissed Revenue's appeal against Tribunal's order holding that the assessee was eligible to allow carry forward and set-off of unabsorbed depreciation of AY 1999-00 and AY 2000-01 against the profits of AY 2009-10, though as per the provisions of Section 32(2) as they stood prior to the amendment by Finance Act, 2001 w.e.f. 01.04.2002, such unabsorbed depreciation was eligible for carry forward and set-off against business profits only for a further period of eight years, relying on decision in the case of CIT v Hindustan Unilever Ltd. (2017) 394 ITR 73 (Bom HC) on identical question of law. It held that there was no conflict between CIT vs. Hindustan Unilever Ltd (supra) & Miltons Pvt. Ltd [ITA No. No. 2301 of 2013 (Bom HC)] / Confidence Petroleum India Ltd. [ITA No. 582 of 2014 (Bom HC)] because while the former was at the stage of final hearing, the latter were at the stage of admission (i.e. Revenue's appeal on similar question of law was admitted) and thus, the request for reference to a Larger Bench was not acceptable. The Court also held that merely filing of an SLP against the order in case

of CIT vs. Hindustan Unilever Ltd (supra) would not make it bad in law or give a license to the Revenue to proceed on the basis that the order is stayed and/or in abeyance.
***PCIT vs. Associated Cables Pvt. Ltd (Bombay High Court) - INCOME TAX APPEAL NO. 293 OF 2016 dated 03.08.2018***

**446.** Noting that vide the Finance Act, 2001, section 32(2) was amended to remove the restriction against set off and carry forward that was limited to 8 years beyond which benefit could not be claimed, the Court held that once the unabsorbed depreciation from the assessment year 2001-02 and before got carried forward to the assessment year 2002-03 and became part thereof, it came to be governed by the amended provisions of section 32(2) and were available for carry forward and set off against the profits and gains of subsequent years, without any limit whatsoever.
***Pr.CIT v British Motor Car Co. (1934) Ltd. – (2018) 400 ITR 569 (Del HC) – ITA No. 1031 of 2017 dated 09.01.2018***

**447.** The Court held that once amount realized by assessee by sale of building, plant and machinery was treated as income arising out of profits and gains from business by virtue of sub-section (2) of section 41 notwithstanding fact that assessee was not carrying on any business during relevant assessment year, provision contained in sub-section (2) of section 32 would become applicable and, consequently, set-off had to be given for unabsorbed depreciation allowances of previous year brought forward in terms of said provision.
***Karnataka Instrade Corporation v ACIT – [2015] 62 taxmann.com 239 (Karnataka HC)***

**448.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for carry forward and set-off of unabsorbed depreciation pertaining to prior to 01.04.1997 against the income for AY 2004-05 to 2007-08, relying on the Tribunal's order in assessee's own case for AY 2008-09 decided in assessee's favour placing reliance on the decision in the case of General Motors India P. Ltd. Vs. DCIT [354 ITR 244 (Guj)] wherein it was held that any unabsorbed depreciation available to an assessee on 01.04.2002 (A.Y.2002-03) would be dealt with in accordance with the provisions of section 32(2) as amended by the Finance Act, 2001, which was further fortified by CBDT circular No.14 of 2001.
***DCIT v PEERLESS HOSPITEX HOSPITAL & RESEARCH CENTRE LTD. – (2018) 52 CCH 33 (Kol Trib) – ITA Nos. 1263 to 1266/Kol/2015 dated 12.01.2018***

**449.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for carry forward and set-off of unabsorbed depreciation pertaining to AY 1996-97 to AY 2001-02 against the income for the current year i.e. AY 2011-12, where the assessee had contended that vide the Finance Act, 2001, section 32(2) was amended to remove the restriction against set off and carry forward that was limited to 8 years beyond which the benefit could not be claimed. It held that the issue stood covered by the Tribunal's order in assessee's own case for AY 2009-10 decided in assessee's favour placing reliance on the decision in the case of General Motors India P. Ltd. Vs. DCIT [354 ITR 244 (Guj)] wherein it was held that any unabsorbed depreciation available to an assessee on 01.04.2002 (A.Y.2002-03) would be dealt with in accordance with the provisions of section 32(2) as amended by the Finance Act, 2001, which

was further fortified by CBDT circular No.14 of 2001, noting that the revenue could not place on record any contrary judgment to controvert the same.
***ACIT & ORS v INDUSIND MEDIA & COMMUNICATION LTD. & ANR. – (2018) 52 CCH 46 (Mum) – ITA No. 772/Mum/2016, 1167/Mum/2016 dated 17.01.2018***

**450.** The AO disallowed assessee's claim for deduction of depreciation on windmills (pertaining to business eligible for deduction u/s 80-IA) against the gross total income (which included income from construction business) on the ground that the profit and gains of each business would be computed separately and deductions provided u/s 30 to 43D would be allowed before consolidating profit or loss of intra-sources of income. The Tribunal upheld the CIT(A)'s order allowing assessee's claim for deduction, holding that even though income from each source of business had to be computed separately after allowing all expenses including depreciation, yet for purpose of determination of total income from business or profession, unabsorbed depreciation of one source of business could be set off against income of another source of business within same financial year.
***Punit Construction Co. v JCIT – (2018) 92 taxmann.com 28 (Mum) – ITA Nos. 6337 and 6980 (Mum) of 2014 dated 21.02.2018***

» *Others*

**451.** The assessee, who had closed its line of business, claimed write off of the value of capital assets which had no realizable value as loss under section 32(iii) of the Act. Section 32(iii) provides for deduction in case of any building, machinery, plant or furniture in respect of which depreciation was claimed and allowed under sub-clause (i) of the Act and is sold, discarded etc for an amount which was less than the written down value of the assets. The Court upheld the order of the Tribunal and noted that the provisions of Section 32(iii) of the Act were only applicable to assessees falling under Section 32(i) of the Act i.e. assessees engaged in the business of generation and / or distribution of power and since the assessee in the instant case was engaged in the business of pharmaceuticals it would not be eligible to claim such loss. Accordingly, it upheld the order of the Tribunal / AO and confirmed the addition.
***CIT v Brawn Pharmaceuticals Ltd – (2017) 99 CCH 0004 (Del HC) – ITA 926 / 2015 dated 04.05.2017***

**452.** Court allowed assessee's claim for depreciation u/s 32 on amount paid to Tamil Nadu Electricity Board towards infrastructure development charges for establishing windmill since the said amount was spent on developing infrastructure of Wind Turbine Generators which is eligible for depreciation, rejecting AO's treatment of the said amount as cost of developing land. The Court held that the excavation of land to install wind turbine generators did not amount to improving or developing land, rather it amounted to a preparatory step for erecting wind turbines and, therefore, land excavation must be taken as part of infrastructure development for establishing windmills eligible for depreciation u/s 32
***Muthoot Finance Ltd. v JCIT – (2018) 90 taxmann.com 69 (Ker) – ITA No. 27 of 2015 (Ker) dated 11.01.2018***

Go to Index

**453.** The Tribunal held that crop compensation paid by the assessee to the land owners for the purpose of compensating them for the damage to crops suffered while laying down pipelines could not be added to the cost of land because even after acquiring the land the assessee could have waited till the crop was harvested by the land owner for which no compensation would have been payable. Accordingly, it held that the compensation should have been added to the cost of the pipeline and hence depreciation was allowable on such compensation.
***Gujarat State Petronet Ltd v ACIT – (2015) 45 CCH 0301 Ahd Trib***

**454.** Where the assessee had incurred civil, interior works expenditure, electrical works expenditure & other repair expenses on premises taken on lease for the purpose of running a business centre and the Revenue contended that in terms of Explanation 1 to Sec 32(1)(ii), such expenses were to be considered as a capital expenditure subject to depreciation allowance, the Tribunal rejected the contention of the Revenue and held that Explanation 1 to Section 32(1)(ii) does not intend to lay down that whenever expenditure is incurred on premises not owned by assessee for construction of any structure/renovation or improvement to the building, such expenditure has to be mandatorily treated as capital expenditure. Unless there was a capital expenditure incurred by the assessee the provisions of explanation(1) to section 32(1) would not be attracted. Thus the Tribunal remitted the matter back to the AO with a direction to examine the nature of the expenses incurred and examine the applicability of Explanation 1. Further, it held that the expenses incurred on the consumables which were necessary for the purpose of running of the restaurant could not be termed as capital in nature and therefore deleted the disallowance made by the AO.
***DCIT vs. Vatika Hospitality Pvt. Ltd. TS-75-ITAT-2017(DEL) ITA No.2331/Del/2012 dated 13/02/2017***

**455.** The Tribunal held that subsidy received by assessee could not be reduced from cost of asset and allowed assessee's claim of depreciation on the gross value of assets on the ground that only in a case where a subsidy or other grant was given to offset the cost of an asset, such payment/ grant would fall within the expression 'met', whereas the subsidy received merely to accelerate the industrial development of the State could not be considered as payments made specifically to meet a portion of the cost of the assets.
***Teck Bond Laboratories Pvt. Ltd. vs.DCIT (2016) 48 CCH 0105 (HydTrib) (ITA No. 1558/Hyd/2014)***

**456.** The Tribunal held that the amount received by the assessee from US Agency for International Development (USAID) was not to be reduced while determining the WDV for the purpose of computing depreciation as USAID was not Central Government/State Government or any person or authority established under any law in India, in terms of Explanation 10 to Section 43(1). It further noted that the grant received by the assessee was conditional and repayable and was thus financial arrangement and not a subsidy grant and also held that even if the grant was treated as a subsidy, since it was not for a specific plant & machinery, such payment/grant would not fall within the expression 'met directly or indirectly' for the asset in terms of Explanation 10 to Sec 43(1).
***Spectrum Coal & Power Ltd TS-341-ITAT-2017(Mum)(ITA No 1295/MUM/2012 dated August 3, 2017)***

Go to Index

**457.** The assessee had claimed depreciation on the assets taken over as part of the merger of a company BMIL with effect from 1-4-1996. It was noted by the AO that before merger, BMIL had not claimed depreciation for AY 1995-96 & 1996-97, and thus the assessee had not made adjustment of the WDV for depreciation allowable for the said years. However, the AO notionally computed depreciation on the said assets for AY 1995-96 & 1996-97 and reduced it from the WDV for computing depreciation for the year under appeal i.e. AY 2008-09. The Tribunal held that as per the provisions of section 32 applicable to the relevant assessment year, the assessee was free to either claim or not claim depreciation as per its own option and it is only after introduction of Explanation 5 to section 32 by Finance Act, 2001, with effect from 1-4-2002, the computation of depreciation became mandatory whether or not the assessee claims it. Thus, it held that the AO was not justified in notionally reducing the depreciation and accordingly allowed the assessee's appeal.
***Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018***

**458.** The Tribunal held that small write offs of capital items in the Profit and Loss Account were allowable, as the assessee, a power distributor, had assets worth thousands of crores.
***ACIT v Maharasthra State Electricity - (2015) 44 CCH 0513 Mum Trib***

**459.** Where the CIT(A) directed the AO to estimate income at the rate of 12.5% and allow depreciation thereon, the Revenue argued that having estimated income, no expenditure was required to be allowed, relying on the ruling of the *Andhra Pradesh High Court in the case of Ramachandra Reddy, [2014] 50 taxmann.com 129*, the Tribunal held that depreciation and interest, which were otherwise deductible in the ordinary course of assessment, retain same legal character, even where profit of assessee was determined on percentage basis. Accordingly, Tribunal confirmed the ruling of the CIT(A) wherein the AO was directed to grant deduction for depreciation out of gross income estimated.
***SVC PROJECTS PVT. LTD. & ANR. vs. ACIT & ANR. (VISHAKAPATNAM TRIBUNAL) (ITA No. 169-175/Viz/2013, 183-189/Viz/2013) dated May 23, 2018 (53 CCH 0075)***

*Section 32A*

**460.** Relying on Apex court ruling in the case of Shaan Finance (P.) Ltd wherein it was held that where the business of the asseesee consisted of hiring out machinery or where the income derived by the assessee from the hiring of any machinery was business income, the assessee must be considered as having used the machinery for the purpose of its business, the Court allowed assessee's claim of investment allowance under section 32A on the value of the plant and machinery leased out. Further, relying on Madras HC ruling in First Leasing Co. of India Ltd, the Court granted additional depreciation under section 32(1)(iia) on assets leased out by the assessee.
***Industrial Credit & Investments Corpn. [TS-11-HC-2017(BOM)]***

**461.** The AO had disallowed the assessee's claim for investment allowance u/s 32A in respect of weighing machines, electrical appliances and computers on the grounds that these items were

not directly engaged in production and that blending of tea or coffee did not amount to manufacture or production of an article or thing. The Court allowed the assessee's said claim holding that blending of tea and coffee amounts to manufacture or production of an article or thing. It also held that as per provisions of section 32A weighing machines, electrical equipments and other machineries, though not directly used in the production/manufacture of the finished goods, were accessories which were integral to the business and without which it could not be possible **to achieve** effective production/manufacture of the final products.
***Brooke Bond India Ltd. v CIT - [2018] 95 taxmann.com 189 (CalcuttaHC) - IT REFERENCE NO. 8 OF 2000 dated June 18, 2018***

*Section 33AB*

**462.** The Court held that deduction u/s 33AB of the Act is to be allowed from the total composite income derived from growing and manufacturing tea and only after such deduction is made, Rule 8(1) of the Income Tax Rules, 1962shall be applied to apportion the resultant income into 60% agricultural income, not taxable under the Act and balance 40% which is taxable under the Act.
***Singlo (India) Tea Ltd v CIT - [2016] 95 CCH 63 (Calcutta)***

**463.** The Tribunal deleted deemed income addition under Sec.33AB(7) in the case of the assessee-company engaged in tea business and held that since the assessee had actually utilized the withdrawn amounts for intended purposes with a slight delay which got spread over next accounting year, the entire spirit of the requirements of the section 33AB(7) of the Act had been fulfilled by the assessee and accordingly the AO was not justified in making the addition. It noted that the unutilized portion was duly utilized before filing return u/s 139(1) and therefore held that the unutilized portion had been duly utilized within a reasonable period after the end of the previous year.
***Stewart Holl (India) Limited [TS-77-ITAT-2018(Kol)] - I.T.A No. 2331/Kol/2016 dated 19.02.2018***

*Section 35*

**464.** The Petitioner trust had taken approval from National Committee in order to get maximum donations for purpose of constructing a new hospital, whereby donors would be qualified to claim deduction under section 35AC. In the meantime, sub-section (7) was inserted in section 35AC with effect from 1-4-2017 providing that no deduction under said section would be allowed in respect of any assessment year commencing on or after 1-4-2018. As a result of the amendment, no donors were coming forward to donate amount which was required for construction of specified hospital and therefore the Petitioner filed a petition challenging vires of section 35AC(7) contending that said amendment would have an adverse effect on projects pending as on 1-4-2017. Before the Apex Court, the Petitioner undertook to pay the amount of tax which the donors would be entitled for exemption along with applicable interest, if the petition filed by it failed. In light of the undertaking, the Apex Court observed that the donors who wanted to donate some money to the petitioner for construction of the specified hospital by the petitioner

may claim exemption under Section 35AC of the Income Tax Act. It listed the matter for final disposal in April.
***Prashanti Medical Services & Research Foundation v UOI - [2018] 92 taxmann.com 71 (SC) - SPECIAL LEAVE TO APPEAL (C) NOS. 34287/2017† dated MARCH 9, 2018***

**465.** The Supreme Court dismissed Revenue's SLP in case of an assessee which had in house research and development centres and had claimed weighted deduction u/s 35(2AB) which was disallowed by the AO to the extent of 50%. The Tribunal had remanded the matter back to AO to verify the nature of expenditure being capital or revenue. The Apex court dismissed Revenue's petition relying on the High court order of the asseessee which had set aside Tribunal's order and had held that both revenue and capital expenditure were allowable as deduction in entirety u/s 35(2AB) and there was no cause of action to remand the matter back to the AO.
***CIT vs Eicher Motors Ltd- (2018) 98 taxmann.com 412(SC)- SLP No 29548 of 2018 dated 20.09.2018***

**466.** The Court held that in case where assessee, a sub-contractor, entered into agreement with BHEL to lay out transmission lines, overhead lines and to fulfill all duties, obligations under BHEL's main agreement of providing technical knowhow to non-resident, deduction under section 35B(1)(a) shall not be allowed on the ground that assessee acted only as sub contractor of BHEL and assessee was responsible to provide service to BHEL an Indian party which in turn would provide service to non-resident and assessee had no obligations to person resident outside India and accordingly, deduction could not be allowed. It observed that for claiming deduction under section 35B(1)(a), assessee should have been exporter of goods or technical knowhow and expenditure should have been incurred in connection with that business.
***Bombay Suburban Electric Supply Ltd. vs. CIT (2016) 97 CCH 0026 (Bombay HC) (ITR NO. 76 of 1998)***

**467.** The Tribunal held that the assessee was entitled to deduction u/s. 35(2AB) on the R&D expenses incurred by it even though registration/recognition was accorded by DSIR in subsequent assessment year.
***DEPUTY COMMISSIONER OF INCOME TAX vs. DEVARSONS INDUSTRIES PVT. LTD. - (2018) 52 CCH 0269 AhdTrib - ITA No. 1130/Ahd/2015 dated Mar 28, 2018***

**468.** The AO had restricted the assessee's claim for weighted deduction u/s 35(2AB) towards R & D expenditure incurred with respect to R&D facility approved by the Department of Scientific and Industrial Research (DSIR) to the amount mentioned in the report of DSIR. The assessee contended that there was no mention in section 35(2AB), as there was in section 35(2B), that the deduction to be allowed thereunder was to be restricted to the amount prescribed by the prescribed authority for exemption and, thus, for allowing exemption u/s 35(2AB), the AO could not depend or follow blindly the amount mentioned by the prescribed authority which was only in respect of approved facilities but had to apply his mind and come to a conclusion on the question of expenditure incurred on scientific research. Relying on the decision in the case of CIT v Biocon Limited (2015) 375 ITR 306 (Kar) wherein it was held that the assessee should develop facility by incurring expenditure for scientific research and would be entitled for

weighted deduction u/s 35(2AB) in respect of all expenditure so incurred, the Tribunal remanded the matter to the AO since he had not rendered any finding with regard to expenses incurred and claimed by assessee for deduction u/s 35(2A) which were not allowed by him.
***METAHELIX LIFE SCIENCES LIMITED v DCIT – (2018) 52 CCH 47 (Bang) – ITA Nos. 1260 & 1261/Bang/2017 dated 17.01.2018***

**469.** The Court upheld the Tribunal's order allowing the assessee's claim for deduction u/s 35 with respect expenditure incurred of capital nature on scientific research, which was disallowed by the AO without obtaining report of the prescribed authority (which was a pre-requisite for such disallowance), though the AO had kept the actual demand in abeyance. It was noted from record that though over 10 years had passed since completion of assessment and filing of return, the said report of prescribed authority was not yet available and it was not even clear as to whether Revenue had sought any such report. It thus upheld the Tribunal deleting the demand raised on account of the said disallowance holding that uncertainty arising out of non-availability of report could not continue forever.
***Pr.CIT v Investment & Precision Casting Ltd. - [2018] 94 taxmann.com 395 (Gujarat) - R/TAX APPEAL NOS. 168 & 169 OF 2018 dated April 23, 2018***

**470.** The Tribunal allowed assessee' appeal against CIT(A)'s order where though the CIT(A) had given a catergorical finding that the revenue expenditure claimed u/s 35(1)(iv) was incurred in connection with R&D work carried out by assessee (and not linked to its agricultural operations, as claimed by the AO), he apportioned the aforesaid expenditure on basis of turnover from commercial activity as well as from agricultural activity (in the ratio of 89:11). It was noted that (i) CIT(A) had completely ignored the fact that separate details were maintained by the assessee including quantitative details of goods produced under both the activities and (ii) no major abnormality in the percentage of expenditure of the total agricultural proceeds was shown. Accordingly, the Tribunal allowed assessee's claim for deduction u/s 35(1)(iv).
***Krishidhan Seeds Pvt Ltd v DCIT [2018] 54 CCH 0280 (Indore Trib) - ITA No.37/Ind/2013, 84/Ind/2013, 231/Ind/2013 and 315/Ind/2013 dated 30.11.2018***

**471.** The Tribunal held that where research institution was enjoying approval as per section 35(1)(ii) on date of receipt of donation, on retrospective cancellation of approval, donor's claim of deduction could not be denied. Since research institution was enjoying approval within meaning of section 35(1)(ii) as on date of receipt of donation from the assessee company, on retrospective cancellation of approval of concerned institution, weighted deduction claimed by the assessee in respect of donation could not be denied.
***P.R. Rolling Mills (P.) Ltd v Dy. CIT [2018] 96 taxmann.com 185/171 ITD 683 (Jaipur.– Trib.) -ITA No. 529 (JP.) of 2018 [Assessment Year 2014-15] dated July 5, 2018***

**472.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for weighted deduction of 175% u/s 35(1)(ii) for donation given to HHBHRF during AY 2013-14, rejecting AO's reliance placed on Notification No.79/2016 & 82/2016 retrospectively cancelling the registration / approval granted to HHBHRF for the purpose of said section. It held that since HHBHRF was enjoying the approval within the meaning of section 35(1)(ii) as on the date of

receipt of donation, retrospective cancellation of such approval could not lead to denial of claim in respect of donation.
***DCIT v Desmet Reagent Pvt. Ltd - TS-605-ITAT-2018(Kol) - ITA No. 15/Kol/2017 dated 10.10.2018***

**473.** The Tribunal held that the AO was not justified in denying the assessee weighted deduction under Section 35(1)(ii) for scientific research donation made by it on the grounds that the registration of the payee to whom donation was made was withdrawn. It held that the withdrawal of recognition u/s 35(1)(ii) in hands of payee organizations would not affect rights and interests of assessee for claim of weighted deduction u/s 35(1)(ii).
***DEPUTY COMMISSIONER OF INCOME TAX vs. MACO CORPORATION (INDIA) PVT. LTD - (2018) 52 CCH 0227 KolTrib - ITA No. 16/Kol/2017 dated Mar 14, 2018***

**474.** The Tribunal remitted the matter back to the AO for giving an opportunity to furnish approval from competent authority in Form No. 3CM which is mandatory for claiming 150% weighted deduction u/s 35(2AB), noting that though the R&D facility of the assessee was approved by the competent authority, i.e., Department of Scientific and Industrial Research (DSIR), the application made for seeking approval in Form No. 3CM was still pending.
***Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018***

**475.** The Tribunal allowed assessee's claim for weighted deduction u/s 35(1)(ii) on account of donation made to a research society approved under the said section. The AO had denied the said deduction holding that donations were bogus in nature. The Tribunal held that though the survey proceedings conducted in the hands of certain donors had revealed that the donations were bogus in nature, no such finding was given in the hands of the assesse and thus the genuineness of payment of donations could not be doubted in the instant case, particularly in the absence of any material to support the view taken by the AO. Further, the Tribunal held that the reliance placed by the CIT(A) (to uphold the AO's order) on the fact that the registration granted to the said research society u/s 12AA was cancelled was unjustified since the registration granted u/s 12AA and the approval granted u/s 35(1)(ii) operate in different fields. Moreover, it held that even if the approval was cancelled subsequently with retrospective effect, various case laws lay down the ratio that the weighted deduction claimed by the assessee u/s 35(1)(ii) could not be denied, if there was valid and subsisting approval when the donation was given.
***VORA FINANCIAL SERVICES P. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0289 (Mum) - ITA No. 532/Mum/2018 dated June 29, 2018***

**476.** The Tribunal held that if recognition to facility given by prescribed authority which is mandate of section 35(2AB) is maintained, assesse has to be accorded deduction under section 35(2AB) and non-receipt of Form No. 3CM is at best a procedural lapse and is not fatal for denial of claim of deduction under section 35(2AB).
***Minilec India (P.) Ltd. ACIT [2018] 93 taxmann.com 213 (Pune – Trib.) – IT APPEAL NO. 690 (PUN.) of 2015 dated 09.04.2018***

Go to Index

**477.** The Tribunal allowed deduction for expenditure incurred by the assessee on raw-materials, salaries / wages for the purpose of designing products holding it to be revenue in nature. It dismissed the Revenue's plea that the expenditure led to enduring benefit to the assessee and held that even if the expenditure was of enduring benefit it was to be allowed as long as it was not incurred in the capital field.
***DCIT v Autoline Industries Ltd (ITA No.1711/PN/2012) – TS-690-ITAT-2015 (Pun)***

**478.** The Tribunal held that assessee was not eligible to claim expenditure u/s 35DD (1/5$^{th}$ of cost of acquisition a cooperative bank which had amalgamated with it) in view of the fact that the assessee was a cooperative bank registered under the Cooperative Societies Act and not an Indian company registered under Companies Act, 1956, as required by the said section.
***Kanaka Mahalakshmi Cooperative Bank Ltd.vs ACIT [2018] 97 taxmann.com 638 (Vishakhapatnam Trib)- IT APPEAL NO. 298/VIZ/2017 dated August 05 2018***

**479.** The Tribunal held that AO was bound to grant deduction if the R&D facility was approved by the competent authority and that he had no jurisdiction to sit in judgement over the approval. It held that the fact that the competent authority did not file the report with the department as prescribed was a technical lapse for which the assessee could not be held liable.
***Efftronics Systems Pvt. Ltd vs. ACIT (ITAT Vizag)***

*Section 35A*

**480.** The Tribunal allowed assessee's claim for deduction u/s 35A being 1/14th of the amount paid towards purchase of trade mark, relying on the HC ruling for an earlier year in the case of the company (erstwhile company) which had originally purchased the said trademark and was subsequently merged with the assessee. The AO had disallowed the assessee's claim on the reasoning that section 35A provides for amortization for patents and copy rights only and not for trade mark. In the case of the erstwhile company, the Court had allowed the said company's claim for deduction u/s 35A holding that the patent right cannot be identified in a pharmaceutical field without its own name trademark, meaning thereby the trademark and patent right move together and if trademark is purchased, the patent right with respect to that particular trademark is also passed on to the buyer in the transactions in the pharmaceutical fields. The Court had also held that even if the assessee's claim of deduction u/s 35A was not allowable, still the deduction claimed had to be allowed u/s 37.
***Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018***

*Section 35AB*

**481.** The Apex Court upheld that order of the High Court granting deduction under section 32AB of the Act to the assessee for utilizing amount withdrawn from the investment deposit account towards repayment of term loans taken from specified banks for the purchase of trucks and tankers since the provision was inserted to boost production in the industry.
***CIT v Nirma Credit & Capital Ltd [SLP No 14009 / 2015] - TS-467-SC-2015***

Go to Index

**482.** The assessee had entered into an agreement with Oldham Batteries Ltd., UK to receive outside India a license to transfer and import information, know-how and drawings as required for the manufacture of miners caplamp batteries and stationery batteries for which a lump sum consideration was paid in three equal instalments and the permission was only to use the know-how and information without the transfer of ownership. The claim of the assessee for deduction u/s 37(1) was denied by the AO on the ground that the assessee's case was covered by Section 35AB and consequently he allowed deduction at the rate of 1/6th of the amount and the balance amount was to be deducted in equal instalments for each of the five immediately succeeding previous years in terms of section 35AB. The appeal of the assessee was dismissed by the Tribunal on the ground that the assessee had acquired ownership rights in the technical know-how included in the agreement and was entitled to deduction u/s 35AB as against 37(1). The Court dismissed the appeal and stated that the payments made in instalments for using technical know-how does not cease to be a lump sum payment. The court further held that the obtaining of technical know-how under license amounted to acquiring the know-how as the words 'on ownership basis' was completely absent u/s 35AB(1) and accordingly decided in favour of the Revenue.

***Standard Batteries Ltd. v. CIT - [2018] 93 taxmann.com 293 (Bombay) - IT REFERENCE NO. 13 OF 2001 dated APRIL 27, 2018***

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

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

**484.** The assessee had expended certain amounts for acquiring technical knowhow for the purpose of setting up new manufacturing unit of soda ash and it claimed 1/6th of such expenditure u/s 35AB (which provides deduction of the lumpsum payment made by the assessee by way of consideration for acquiring knowhow for the purpose of his business over six years from the year of initial expenditure). The AO disallowed the assessee's claim on the ground that the assessee had not yet started soda ash project and accordingly, it was not entitled to deduction u/s 35AB. The CIT(A) upheld the AO's order. The Tribunal held that the fact that the business was not started was of no consequence for claiming the deduction u/s 35AB. It held that the essential requirements for the deduction under the said section were that the assessee should have paid a lumpsum amount for acquiring technical knowhow and that such technical knowhow should be capable of being used for the purpose of business of the assessee. Accordingly, it

allowed the assessee's claim of deduction. The Court observed that the assessee was engaged already in business of manufacturing soap and in order to set up soda ash manufacturing plant, assessee acquired technical knowhow by making lumpsum payment. It held that the setting up of manufacturing facility of soda ash was by way of extension of existing business of assessee of manufacturing soap and accordingly, the assessee was eligible for deduction u/s 35AB.
***CIT vs. Nirma Ltd. (2017) 99 CCH 0038 Guj HC TAX APPEAL NO. 45 of 2007 dated 07.06.2017***

**485.** The Tribunal held that extraction and processing of iron ore amounts to 'production' within section 32A(2)(b)(iii) and deduction under section 10B of the Act is allowable on the same.
***DCIT v Ashok Shetty - (2015) 44 CCH 0505 Bang Trib***

**486.** Assessee, was manufacture of turbochargers.AO curtailed claim of assessee for weighted deduction on R & D expenditure citing reason that DSIR approval was only for lower sum.CIT(A) upheld order of AO. The Tribunal held that, expenditure incurred for purpose of scientific research is required to be allowed as deduction u/s. 35(AB) subject to complying conditions laid down in Rule 6. Expenditure was incurred by assessee which was certified by tax audit report. There was no dispute regarding actual amount incurred by assessee. There was no dispute regarding genuineness of expenditure. Therefore, assessee was entitled for weighted average deduction on amount actually spent.
***Turbo Energy Private Ltd vs DCIT- (2018) 54 CCH 0059 ChenTrib- ITA No 2493,2494/Chny/2016 dated 01.10.2018***

**487.** The Tribunal allowed assessee's claim for deduction u/s 35AB for AY 1999-00 with respect to amount paid for acquiring marketing know-how amortised over 5 years, following Tribunal's order in the assessee's own case for AY 1998-99. In AY 1998-99, the Tribunal had allowed the assessee's claim for amortization relying on the decision in the case of CIT vs. Glenmark Pharmaceutical Ltd [2013] 30 taxmann.com 167 (Bom HC) wherein it was held that expenditure incurred for acquiring marketing know-how is revenue expenditure since it led to an improvement in assessee's existing business resulting in higer sales and profits. It was held that when the entire expenditure is allowable, the claim for amortization could not be denied.
***Abbott India Ltd v ACIT – ITA No.6606, 5625, 7824, 5099, 5922, 3362, 6192, 6150, 8130, 4367, 5154, 5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018***

**488.** The assessee-company discharged its liability towards MBAG, the supplier of technical knowhow for manufacture of passanger cars in India, by allotting its own shares to the supplier's group company (DBAG). The AO did not accept the said manner of payment and was of the view that the said allotment of shares did not amount to expenditure at all so as to become eligible for deduction u/s 35AB (allowing deduction of lumpsum payment for acquiring know-how). The Tribunal also rejected assessee's claim for deduction under the said section on the ground that a) the liability was not discharged by way of payment of actual money to MBAG b) shares were allotted to the supplier's group company, DBAG, and not to the supplier itself c) there was no facts / information to show whether there was any squaring off of liability between DBAG and MBAG.

Go to Index

***Daimler Chrysler India (P.) Ltd. vs Dy. CIT [2018] 98 taxmann.com 53 (Pune - Trib.)- IT APPEAL NOS. 1381 & 1325 (PUN) OF 2003 dated August 08 2018***

*Section 35AC*

**489.** The Court dismissed the appeal of the assessee and held that sub-section (7) to section 35AC withdrawing exception/deduction of expenditure incurred by way of contribution to approved institutions for carrying out eligible project or the scheme or payment made directly on such eligible project or scheme was valid. It held that though the section was introduced for promoting social and economic welfare and upliftment of the public, it was always open for the parliament to withdraw the deduction by framing necessary legislation if the parliament was of the view that such benefit should no longer be granted. It further noted that it was possible that some of the institutions, projects or schemes under the said system may be adversely affected but that itself could not be a ground for annulling the statutory provision.
***Prashanti Medical Services & Research Foundation vs UOI [2017] 85 taxmann.com 266 (GujaratHC) SCP No. 7558 of 2017 dated 14.09.2017***

**490.** The assessee claimed depreciation in relation to assets purchased for its cardiac center out of the grants received which were covered under exemption u/s 35AC. The AO denied assesse's claim on the grounds that on such mentioned grants, the assessee could claim exemption u/s 35AC and the allowance of depreciation would result in double deduction. The Court upholding Tribunal's order held that the assessee had incurred expenditure by way of payment directly on eligible project or a scheme and would enjoy exemption in terms of section 35AC and this exemption, would not cast any shadow on the assessee claiming any depreciation under section 32 on an asset which is owned wholly or partly by the assessee and are for the purpose of business or profession at the specified rates. As these conditions were satisfied in the instant case the Court held that assessee was entitled to depreciation on assets which were purchased out of exempted income u/s 35AC
***CIT(Exemption) vs Charutar Arogya Mandal-(2018) 98 taxmann.com 446 (Guj)-T/Tax Appeal No 1091 of 2018 dated 11.09.2018***

*Section 35AD*

**491.** The Assessing Officer rejected assessee's claim for deduction under section 35AD(5)(aa) on ground that assessee had obtained classification as a three star category hotel only during next assessment year. In view of fact that revenue had not disputed operation of new hotel from relevant financial year and, moreover, assessee had filed application for classification of hotel in three-star category in assessment year in question itself, the Tribunal allowed the claim of the assessee which was upheld by the High Court.
***CIT V. Ceebros Hotels (P.) Ltd.-[2019] 101 taxmann.com 173 (MadrasHC)-TCA No.773 of 2018 dated November 13, 2018***

**492.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing deduction claimed u/s 35AD by the assessee for AY 2012-13, notwithstanding the fact that the assessee

had applied for categorization as three star hotel before the Ministry of Tourism under the aegis of Government of India on 7-6-2013 and such classification as a three star hotel, was awarded by a letter dated 24-9-2013 for the period of 11-9-2013 to 10-9-2018. It held that there no time limit of obtaining star certificate is prescribed in section 35AD and the only requirement was to build an operation of two or more star hotel classified by the Central Government.
***ACIT v River View Hotels - [2018] 94 taxmann.com 433 (Ahmedabad - Trib.) - IT APPEAL NO. 1799 (AHD.) OF 2016 dated June 26, 2018***

*Section 35B*

**493.** The Court held thatexpenditure incurred towards payment of commission for procuring orders cannot be equated to expenditure incurred for maintaining an agency outside India for promotion of sales and thus appointment of an agent and paying him commission only for procuring orders for the assessee to supply goods did not by itself fulfil requirements of section 35B(1)(b)(iv) which provides for weighted deduction of expenditure incurred wholly and exclusively on the maintenance outside India of a branch, office or agency for the promotion of the sale outside India of goods, services or facilities. It is to be noted that section 35B has ceased to apply with respect to the expenditure incurred after 1-3-1983
***CIT v KCP Ltd. - [2018] 94 taxmann.com 46 (Andhra Pradesh) - REFERRED CASE NO. 71 OF 1993 dated 01.05.2018***

*Section 35D*

**494.** The Apex Court held that when the deduction is allowed in the first two years out of period of 10 years under section 35D for share issue expenses it could not be denied in the subsequent period and reliance cannot be placed on the ruling of Brooke Bond India Ltd (SC) since the said ruling was rendered when section 35D was not in statute book.
***Shasun Chemicals and Drugs Ltd.-TS-529-SC-2016- SLP(C)No. 31962 of 2011***

**495.** The Court held that Assessee bank extending financial services, would be entitled to amortisation of preliminary expenses in connection with issue of shares for public subscription.
***Dhanalakshmi Bank Ltd. v.CIT, Cochin-[2019] 102 taxmann.com 442 (KeralaHC)-IT Appeal Nos. 456, 498, 635, 643, 651, 712, 717, 1108, 1318 & 1691 of 2009 & ORS.-dated December 11, 2018***

**496.** The Court allowed the assessee's (a public limited company) claim of amortization of expenditure incurred in connection with rights issue of shares u/s 35D(2)(c)(iv) and rejected the Revenue's contention that assessee's claim ought not to be allowed as rights issue was confined only to a section of public (i.e. existing shareholders) and that to qualify for deduction, shares must be issued for public subscription. The Court held, that as per section 67 of Companies Act, a section of public holding shares in a company would also be treated as public.
***Nitta Gelatine India Limited [TS-2-HC-2017 (KER)]***

Go to Index

**497.** Assessee, engaged in business of running restaurants and related activities, had expanded its existing business by opening three more restaurants at different places. Assessee had treated pre-operative expenditure incurred in connection with establishment of restaurants such as salaries and wages, travelling expenses, restaurant rent, repairs and maintenance and like other general administrative expenses under head 'capital work-in-progress' in its books of account. But, when it came to computation of total income, impugned expenses were treated as revenue expenditure and claimed as such. Assessing Officer disallowed impugned expenses on ground that a particular expense could not have two treatments, i.e., as capital in books of account and as revenue for income tax purposes. Further, according to Assessing Officer, pre-operative expenses could be deducted as per provisions of section 35D(1)(ii). The Tribunal noted that assessee had commenced commercial operations of new units established during relevant previous year. Further, there was no dispute that expenditures claimed by assessee were revenue in nature. Furthermore, impugned expenditure was incurred wholly and exclusively in connection with expansion of existing business of assessee and not any separate distinct business - Whether expenditure was allowable as revenue expenditure irrespective of fact that assessee had given dual status to such expenditure in books of account.
***Olive Bar & Kitchen (P.) Ltd. v. Dy. CIT, 13(1)(1), Mum. - [2019] 102 taxmann.com 98 (Mumbai - Trib.)-IT Appeal Nos. 5097, 5098, 5164 & 5165 (Mum.) of 2017 dated December 5, 2018.***

**498.** The Tribunal held if assessee is engaged in development of infrastructure facilities and maintains separate books of account for each project, then each project should be treated as undertaking within meaning of section 35D and, accordingly, share issue expenses incurred for raising additional capital for such projects would be eligible for deduction under the said section.
***ACIT & ANR. vs. R.P.P. INFRA PROJETS LTD. & ANR. (2018) 53 CCH 0373 ChenTrib – ITA No. 2127/Chny/2016, 3161/Chny/2017 dated 17th July, 2018***

**499.** The Tribunal upheld the disallowance of deduction claimed u/s 35D for AY 2012-13, being 1/5th of the ROC fees paid by assessee-company in relation to increase in its authorised share capital during FY 2008-09. It relied on the decision in the case of Multimetals Ltd [188 ITR 151 (Raj HC)] wherein it was held that fees paid to ROC was a capital expenditure not covered u/s 35D(2)(c) unless the same was in connection with the issue for public subscription (as required by the said section).
***PTC Energy Limited v DCIT [TS-734-ITAT-2018(DEL)] – ITA No. 6136/Del/2015 dated 11.12.2018***

*Section 36*

» *Interest paid on loan taken for business purposes*

**500.** The Apex Court allowed the assessee deduction under section 36(1)(iii) of the interest on loan borrowed from the bank by setting aside the order of the High Court wherein it was disallowed as the assessee had advanced interest free loan to its subsidiary company and a loan to its director at 10 percent wherein the loan taken from the bank was at 18 percent. It held that the advance to the subsidiary company was imperative in view of the undertaking given to the

financial institutions by the assessee that it would provide additional margin to the subsidiary to meet working capital for cash losses suffered. It was also noted that when the assessee off loaded its shareholding in the subsidiary company, the loan was returned with interest which was offered to tax. In so far the loan to directors was concerned, the Apex Court noted that the advances were made out of assessee's surplus funds. Once it was established that there was nexus between the expenditure and purpose of business, the revenue cannot claim to put itself in the arm chair of the businessman or in the position of the board and to determine how much is reasonable expenditure.
***Hero Cycles Pvt Ltd v CIT (CIVIL APPEAL NO. 514 OF 2008) – TS-670-SC-2015***

**501.** The Court dismissed Revenue's appeal against the Tribunal's order allowing assessee's claim for deduction of interest paid on advances received from 2 entities which was disallowed by the AO on the ground that the said advances were not received for the purpose of business. The Tribunal had held that the said advances were received for the purpose of business noting that the assessee was engaged in the business of acquiring satellite and overseas rights of films and CDs and the advances were received for acquiring satellite and overseas business. The Court held that the finding of the Tribunal was essentially a find of fact and the same had not been shown to be perverse and/ or arbitrary in any manner.
***CIT v Lotus Investments Ltd. – ITA No. 1554 of 2007 (BomHC) dated 22.01.2018***

**502.** The assessee, engaged in construction business, obtained a loan for purchase of plot of land for its project. The assessee claimed interest paid on loan taken for purchase of said land as revenue expenditure. However, the Assessing Officer held that the purchase of plot of land was capital nature and, hence, interest must also be capitalized. The Court held that since plot of land was purchased in course of business of the assesee, samd formed part of stock-in-trade of the assessee and, therefore interest paid on loan taken for purchase of said plot of land was to be allowed as revenue expenditure.
***Jayantilal Investments v. Asstt CIT [2018] 96 taxmann.com 38/257 Taxmann 103 (Bom.)- ITA No. 519 of 2003 dated July 4, 2018***

**503.** The Court upheld Tribunal's deletion of disallowance of interest expense under 36(1)(iii) claimed by the assessee on capital borrowed. The Court concluded that since interest was paid by assessee on loan used for acquiring of constructions assets that were used for earning taxable income, the claim for interest expenditure was justified.
***PCIT vs International Biotech Park Ltd- (2018) 98 taxmann.com 218 (Bombay)- ITA No 370 of 2016 dated 24.09.2018***

**504.** Where the assessee, a holding company invested in its subsidiary company without charging any interest and had both borrowed funds as well as interest free funds, the Court noting that the assessee , in the capacity of the holding company, had interest in the success of its subsidiary company held that the amounts invested in subsidiary companies were for purposes of business of assessee and further held that since both interest free and interest bearing funds were available with assessee, then a presumption would arise that investment would had been made first out of interest free funds available. Accordingly, it deleted the disallowance made by the AO under Section 36(1)(iii) of the Act.

Go to Index

***Pr CIT v Midday Multimedia Ltd - [2018] 89 taxmann.com 184 (Bombay) - IT APPEAL NO. 544 of 2015 dated 12.12.2017***

**505.** Where Tribunal rejected assessee's claim for deduction of interest on loan taken for acquiring control over two companies on ground that it would result in earning exempt dividend income, the Court held that impugned order passed by Tribunal based on imaginary income and expenditure of subsequent year, was not sustainable.
***Vikram Somany v. CIT- [2019] 101 taxmann.com 88 (CalHC)-ITA No.653 of 2018-dated November 28, 2018.***

**506.** The Court dismissed Revenue's appeal against the orders of Tribunal upholding the order of CIT(A) allowing the assessee's claim for deduction u/s 36(1)(iii) with respect to interest paid on funds borrowed for setting up a joint venture company for production of milk, where the assessee was engaged in business of manufacture and sale of fruit juice and like products. It was held that since concurrent findings was rendered by the CIT(A) and the Tribunal and the nature of the investment made by the assessee with the borrowed funds appeared to be in the line of its business, the issue did not call for any reconsideration.
***CIT v Keventer Agro Ltd - [2018] 95 taxmann.com 154 (CalcuttaHC) - ITAT NOS. 175 & 176 OF 2014, GA NOS. 3609 & 3610 of 2014 dated June 19, 2018***

**507.** The assessee had borrowed money from the bank. The bank had filed a suit for recovery of the money. The assessee had been disputing that liability. The question arose whether the assessee could be permitted to claim deduction for an amount which had neither been paid nor had been shown to have been accrued in the books of account. The Tribunal decided in favour of assessee holding that the dispute with regard to principal had nothing to do with the liability on account of interest. The Court held that the assessee could not be permitted to claim deduction for interest which was neither paid nor shown to have been incurred in the books of account. If the liability on account of principal itself was disputed, there could be no basis for any liability on account of interest.
***CIT, Cal. West Bengal-IV v. Hanuman Sugar Industries Ltd., [2017] 88 taxmann.com 498 (CalcuttaHC), IT Appeal No. 52 of 2002, Dated July 17, 2015***

**508.** The Court set-aside the order of the Special bench of the Tribunal, wherein the Tribunal denied the assessee claim of interest payable on account of disputed arbitration award for AYs 2001-02 & 2002-03 on the ground that the liability to pay interest was not legally enforceable at the end of relevant AYs as the assessee had contested the issue before higher authorities and stay was granted by the Court. Rejecting the view of the Tribunal, the Court held that once an arbitral award was made by the Court, mere stay of the decree by higher authorities would not relieve assessee of its obligation to pay interest in terms thereof and held that the liability to pay interest under arbitral award commenced in the year in which such decree was passed. It clarified that passing of stay order did not mean that the arbitral award was wiped out from existence. Accordingly, relying on a plethora of Supreme Court rulings including Shree Chamundi Mopeds Ltd., Haji Lal Mohd. Biri Works , Kedarnath Jute Mfg. Co. Ltd, Kanoria Chemicals & Industries Limited, Central India Electric Supply Company, it allowed the claim of the assessee.

Go to Index

***National Agricultural Cooperative Marketing Federation of India Ltd. TS-169-HC-2017(DEL) - ITA 161/2016 dated 19.04.2017***

**509.** Where the assessee utilized borrowed capital for the payment of dividend and the interest on borrowed funds was disallowed, the Court held that where borrowed funds were utilized for the purpose of declaration of dividend, payment of interest on such borrowings would constitute expenditure for the purpose of business of assessee and was allowable deduction in terms of section 36(1)(iii)
***CIT Vs.Sakthi Auto Components Ltd. (2016) 97 CCH 0078 ChenHC (Tax Case Appeal No.549 of 2016)***

**510.** Where investment in subsidiaries/joint venture companies was one of the main objects of assessee the Court held that if assessee holding company advanced borrowed money to subsidiary and same was used by subsidiary for some business purposes, assessee would ordinarily be entitled to deduction of interest on its borrowed loans.
***PCIT vs DLF Hotel Holding Ltd- (2018) 103 CCH 0030 Del HC- ITA No 1012/2018 dated 28.09.2018***

**511.** The Court upheld the Tribunal's deletion of disallowance of interest expense claimed u/s 36(1)(iii) by the assessee on account of loans taken from banks. The AO had disallowed the interest by noting that though the assessee had borrowed funds from bank and claimed deduction on interest paid, it had also advanced loan to its sister concern (a subsidiary) as interest free loan. The AO disallowed interest paid on grounds that advances to sister concern were out of borrowed funds and made additions accordingly. The CIT(A) deleted the said disallowance and observed that during year, assessee had huge amounts by way of sales, paid up share capital and reserves and accordingly concluded that assessee had furnished ample evidence to show that enough funds were available with assessee to give interest free loans to its subsidiary. Further, interest bearing loans taken by assessee were for specific purposes and were duly represented by value of stock. Further the Tribunal had dismissed revenue's appeal agreeing with above said factual findings of CIT(A).
***PCIT vs Basti Sugar Mills Co Ltd- (2018) 98 taxmann.com 401 (DelhiHC)- ITA no 205 of 2018 dated 28.09.2018.***

**512.** The assessee issued redeemable secured premium notes ('SPNs') to raise funds for the purpose of setting up its soda ash plant which were primarily purchased by its promoters. The assessee decided to redeem the SPNs prematurely and prior to the decided date the promoters transferred the SPNs to certain banks and declared long term capital gains on the transfer. The assessee paid a premium on redemption to the banks and claimed deduction under Section 36(1)(iii) on the said premium on redemption. The lower authorities denied the deduction on the ground that i) the borrowing was for capital expenditure ii) it was a contingent liability and iii) the entire transaction was sham. The Court held that i) Section 36(1)(iii) did not specify a pre- condition for usage of borrowed funds only for revenue purposes ii) the liability was not a contingent liability as the interest / premium payable accrued on premature redemption and iii) that all the details of the premature redemption were available in public domain and the bankers

Go to Index

purchasing the SPNs were also aware of the date of redemption. Accordingly, it allowed the assessee deduction under Section 36(1)(iii) of the Act.
***Nirma Ltd vs ACIT – TS – 478-HC(Guj)-2017 ITA No. 1219 of 2006 dated 10.10.2017***

**513.** The Court upheld the Tribunal's deletion of disallowance of interest expense claimed by the assessee on account of loans taken from banking and other institutions, which the AO had disallowed observing that the assessee had given interest free advances to certain parties without accepting assessee's explanation that the said interest free advances were made during the course of business from the surplus funds in the form of share capital / reserve surplus. In this regard, it was noted that the assessee had considerable surplus funds in proportion to the secured loans and, thus, held that since the assessee had advanced interest-free loans out of its surplus funds, the question of disallowing the expenditure in respect of interest incurred on the borrowed funds did not arise, inasmuch as, no part of the borrowed funds had been advanced by the assessee to the concerned parties.
***Pr.CIT v SAHJANAND LASER TECHNOLOGY LTD. - (2018) 401 ITR 0487 (GujHC) - TAX APPEAL NO. 1025 of 2017 dated 29.01.2018***

**514.** The assessee(banking company) had added back the amout of amortization and depreciation in the SLR investments debited to the P&L A/c while computing the profit from which deduction at the rate of 20% u/s 36(1)(viii), was allowable inter alia to a banking company. The AO, however, computed the said deduction of 20% of profit after reducing the amount of amortization and depreciation added by the assessee to the profit. The Court held that the AO was correct in reducing the said amounts from the profit since section 36(1)(viii) does not envisage any such artificial raising of the 'profits', and the profits and gains of business, as simply computed as per the accounting practices followed by the assessee in normal course of business u/s 28 had to be the basis for computing the said 20% deduction. Accordingly, the assessee's appeal was dismissed.
***Pragathi Krishna Gramin Bank v JCIT [2018] 95 taxmann.com 41(KarnatakaHC)– ITA No. 100001 & 100002 of 2018 dated 28.05.2018***

**515.** Court declined to give relief to assessee with respect to disallowance made by AO towards interest on investment expenditure u/s 36(1)(iii) where assessee forayed into a new business and it was found by AO that assessee-company's balance sheet as on 31-3-2006 showed borrowed funds at much higher amount as compared to the assessee's own funds, excluding statutory reserves and thus concluded that assessee had borrowed funds for starting new line of business. Court held that since, assessee could not demonstrate to AO's satisfaction that it actually invested its own funds to start new business impugned disallowance made by AO was justified.
***Muthoot Finance Ltd. v JCIT – (2018) 90 taxmann.com 69 (KerHC) – ITA No. 27 of 2015 (Ker) dated 11.01.2018***

**516.** The Court held that where the assessee, engaged in the business of manufacturing GI Castings, advanced certain amounts to its sister concern who was also engaged in the business of manufacturing castings out of its own loan funds, in the absence of any indication by the revenue authorities about the nature of businesses of the assessee and the sister concern, disallowance

of interest on loan taken by the assessee on the ground that it was utilized for non-business purposes was not valid.
***Industrial Feeders v ACIT – (2016) 68 taxmann.com 92 (Mad)***

**517.** The Tribunal held that in the absence of evidence to indicate that capital was borrowed for capital work in progress or any interest-bearing funds were utilized to create this capital work in progress, interest was not required to be capitalized as per the provisions of provisio to section 36(1)(iii) and the same was allowable as revenue expenditure.
***DCIT vs Raajratna Metal Industries Ltd- (2018) 54 CCH 0062 AhdTrib- ITA No 793,767/Ahd/2016 dated 04.10.2018***

**518.** The Tribunal upheld CIT(A)'s order deleting the disallowance of interest expenses claimed by assessee u/s 36(1)(iii) on account of interest free advances given to related parties u/s 40A(2)(b) and CIT(A) had deleted the said disallowance. The Tribunal held that CIT(A) had rightly relied on ratio laid down in the decision of Hon'ble Bombay High Court in the case of CIT vs. Reliance Utilities & Power Ltd., [2009] 313 ITR 340 (Bom.) wherein it was held that if the interest free funds were available at the disposal of the assessee in excess of the interest free advances, presumption was required to be drawn in favour of the assessee that such interest free investments were out of interest free funds available at the disposal of the assessee.
***Dy.CIT vs Gopal Glass Works Ltd [2018] 53 CCH 0467 (Ahd Trib)- ITA No.1492/Ahd/2016 dated August 21 2018***

**519.** Where the AO had disallowed interest on borrowed funds attributable to interest free advances given to associate concerns and the CIT(A) took note of exact period for which advance was lent and re-worked disallowance u/s 36(1)(iii) as against the AO's approach making disallowance by computing interest for entire 12 months, the Tribunal held that it did not see any infirmity in the approach of CIT(A).
***Arvind Brands Ltd and Anr vs Dy.CIT [2018] 54 CCH 0184 (Ahd Trib) ITA No. 1509 & 1639/Ahd/2012 dated 02.11.2018***

**520.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 36(1)(iii) with respect to interest on borrowings made for installation of captive power plant. The assessee, which was engaged in the business of manufacturing and selling of pharmaceuticals products, had installed new captive power plant for generation of electricity for purpose of its on-going and existing pharmaceutical business. The AO had disallowed the claim for deduction u/s 36(1)(iii) stating that the assessee had wrongly claimed deduction of interest concerning power project which was different from its main stream of business of pharmaceutical products and that the expenditure was pre-operative in nature pertaining to assets before it being put to use. Noting that the power plant was installed for captive power consumption in the larger context of the business necessity to cut down the costs of power consumption of its existing and on-going pharmaceutical business, the Tribunal held that the interest incurred on power plant incidental to pharma unit was allowable deduction on revenue account.
***DCIT v Core Health Care Ltd - [2018] 95 taxmann.com 172 (Ahmedabad - Trib.) - IT APPEAL NOS. 1733 TO 1737 (AHD.) OF 2014 dated June 20, 2018***

Go to Index

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

**522.** The Tribunal deleted the addition made by the AO of notional interest on interest free advances given by the assessee to its sister concerns noting that assessee's own funds were in excess of interest free advances to sister concerns and relying on the ratio laid down in the case of CIT vs. Brindavan Beverages (P) Ltd. 393 ITR 261 (Kar) i.e. if the assessee had sufficient own funds covering interest free advances to sister concerns, a presumption would arise that own funds were utilized and hence, disallowance of interest expenditure could not justified.
***Deccan Mining Syndicate Pvt Ltd. vs Dy. CIT [2018] 53 CCH 0466 (Bang Trib) ITA NO. 1261 (BANG) 2016 DATED AUGUST 21,2018***

**523.** The Tribunal held that where sufficient own funds are available, it is to be presumed that the same have been utilized for investment hence, no disallowance of interest was warranted u/s 36(1)(iii).
***RAJBIR SINGH WALIA vs. Dy. CIT. (2018) 54 CCH 0443 ChdTrib ITA No. 59/CHD/2015 & ITA No. 413/CHD/2018 dated 17.12.2018***

**524.** The AO disallowed the assessee claim for deduction of interest expense u/s 36(1)(iii), noting that assessee on one hand was paying huge interest on loan and on other hand had made advances to subsidiary and fellow subsidiary without charging any interest. The Tribunal allowed the said deduction following the decision in the case of CIT vs. Tin Box Company (2003) 260 ITR 637 (Del) wherein it was held that when capital and interest free unsecured loan with assessee far exceeded interest free loan advanced to sister concern, disallowance of part of interest out of total interest paid by assessee to bank was not justified.
***ACIT vs. ESCORTS HEART INSTITUTE & RESEARCH CENTRE LTD. (2018) 53 CCH 0327 DelTrib – ITA Nos. 5660 & 5661/Del/2015 dated 12th July, 2018***

**525.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO u/s 36(1)(iii) on the ground that huge amounts were given as interest free advance to others for which no business prudence could be figured out and thus, the interest paid on cash credits was not wholly and exclusively for purpose of business, noting that the Tribunal had itself held the interest to be paid for business purposes in the appeal pertaining to subsequent year and in present year also, same advances were held to be for business purposes. As regards new advances, it held that these were small amounts and their aggregate amount was quite insignificant when compared with non-interest bearing funds available with assessee. Further, it relied on the decision of the Apex Court in the case of Hero Cycles (P) Ltd.

Go to Index

v CIT wherein it was held that if non-interest bearing funds were more than non-interest bearing loans, no disallowance u/s 36(1)(iii) could be made.
***ITO v COUNT TRADE LINK PVT. LTD. – (2018) 52 CCH 15 (Del Trib) – ITA No. 5830/Del./2010 dated 04.01.2018***

**526.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the disallowance made u/s 36(1)(iii) with respect to interest paid on loan taken from the bank for acquiring vehicles and business properties, noting that the AO had made the said disallowance on the ground that the assesse had given interest free advances to its relatives and friends whereas the said advances were made even prior to the assessee had taken the bank loan. It thus held that the AO had failed to establish nexus between the interest bearing and the interest free advances given by assessee to his relatives and friends.
***Asst.CIT vs Rohit Kochar [2019] 54 CCH 0418 (Del- Trib.)- ITA No.3872/Del/2015 dated 28.11.2018***

**527.** The Tribunal allowed the assessee's claim for deduction u/s 36(1)(iii) w.r.t. interest paid on amount borrowed for investment in two 100% subsidiary company which were in same line of business, noting that it was not shown that investment was made only for the purpose of earning dividend. It relied on the decision in the case of CIT Vs. Phil Creation [(2011) 202 Taxman 368 (Bom)] wherein it was held that as the investment was made by the assesse-company out of bank overdraft in the shares of its subsidiary company to have control over that company being an integral part of its business, interest paid by the assessee attributable to said borrowings was allowable as deduction u/s 36(1)(iii)
***DEPUTY COMMISSIONER OF INCOME TAX vs. T.G. LEISURE & RESORTS PVT. LTD. - (2018) 53 CCH 0239 (Del Trib) - I. T. A. Nos. 3844 & 6138 & 3863 & 5777 (Del) of 2014 dated June 25, 2018***

**528.** The AO had noted that assessee had given interest free loan to 7 different parties and could not justify business expediency of the same. The AO computed interest at the rate of 12% and disallowed the interest paid by the assessee to that extent. The CIT(A) upheld AO's order. The Tribunal noted that in assessee's own case for another year in 324 ITR 396, Delhi High Court had upheld interest disallowance for reason that assessee could not establish that there was any commercial expediency. However, in the present case, assessee had submitted copy of balance sheet showing that the partners current account balances (on which no interest had been paid) exceeded the amount of advance given interest free. Thus following the decision of Reliance Utilities Ltd. 313 ITR 340 (Bom) wherein it was held that if assessee had more interest free funds then advances given free of interest for that case presumption was available to assessee that amount was advanced out of non-interest bearing funds, the Tribunal held that disallowance out of interest expenditure was not sustainable. However, noting that there was also a statement that assessee had paid interest on Fixed capital of partners and this fact required to be verified, the Tribunal set aside the issue to the file of the AO for verification.
***Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018***

Go to Index

**529.** The assessee, engaged in business of real estate development, had paid interest on loans taken from banks for business purposes and had also given loans / advances to various parties for purchase of plots as well as share application money. Since the total advances given by assessee exceeded total amount outstanding against loan from various banks, CIT(A) confirmed the disallowance of interest expenditure made by the AO. The Tribunal held that interest expenditure incurred by assessee was an allowable deduction under Section 36(1)(iii) as the same was paid in respect of capital borrowed for purposes of business or profession. It further held that since the advances was far less than the interest free funds available, no disallowance of interest could be made.
***Gaursons Realty Pvt. Ltd. & ANR. vs. ACIT – [2018] 53 CCH 0023 (Delhi ITAT) – ITA No. 753/Del/2018 (SA No. 107/Del/2018) dated May 7, 2018***

**530.** Where Assessing officer disallowed interest expenses on account of interest free loans advanced by the assessee, the Tribunal held that if the assessee was having its own interest free surplus funds and such funds were utilised as interest free advances even for non-business purpose, there could not be any disallowance of interest paid on interest bearing loans where such loans were used for the purpose of business or profession. Accordingly, the Tribunal upheld CIT(A)'s order deleting the disallowance and dismissed appeal of the Revenue.
***Deputy Commissioner of Income Tax v Escort Heart Institute & Research Centre ltd - (2017) 49 CCH 0175 DelTrib (ITA No. 6674/Del/2013)***

**531.** Where the AO had disallowed interest on unsecured loan on the ground that the same was for non-business purpose and for the purpose of making investments, the Tribunal held that since the assessee had adequate interest free funds, it could be presumed that the investment was made out of the interest-free funds and that the unsecured loan was used for business purposes exclusively. Accordingly, the Tribunal deleted the addition on interest expense made by the AO.
***Alkesh Tacker vs.ACIT (2016) 48 CCH 0125 (Del Trib) (ITA No. 6040/DEL/2015)***

**532.** Where the assessee (partner) had borrowed funds and provided the same as interest free advance to the partnership firm, the Tribunal confirmed the disallowance of interest on borrowed funds in the hands of the assessee-partner to the extent relatable to share of profit derived from firm as the same was exempt u/s 10(2A), however remuneration and interest from firm was taxable as business income in the hands of assessee and therefore, interest in this regard could not be disallowed. Accordingly, it directed the assessing officer to recompute disallowance to the extent relatable to share of profit from firm.
***Vineet Maini [TS-140-ITAT-2017(DEL)] (ITA No. 5240/Del/2016)***

**533.** The Tribunal held that where assessee company made advances to its subsidiary companies out of borrowed funds who further gave said advances to SPVs of assessee who utilised it for carrying on business activity of construction and development of airports, since there was no business activity undertaken by assessee except for making investment and earning dividend, expenditure incurred under head finance charges was not allowable under section 36(1)(iii).
***GVK Airport Developers Ltd. v. ITO [2018] 96 taxmann.com 236/172 ITD 109(Hyd. -Trib)- ITA No. 488 (HYD.) of 2017 [Assessment Year 2012-13] dated July 5, 2018***

Go to Index

**534.** The Tribunal held that where the assessee had paid interest on loan taken from SBI for which it had hypothecated its debtors and there was no other loan in its financial statements, considering there was a one to one correlation between the loan taken and the hypothecation of its debtors it was reasonable to accept the assessee's claim that the interest free loans given to its sister concerns were not out of any loan funds. It therefore held that the CIT(A) erred in remitting the issue of disallowance under Section 36(1)(iii) to the AO to conduct further enquiry and should have deleted the said disallowance.
***SURYAJYOTI INFOTECH LIMITED & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 52 CCH 0191 HydTrib - ITA No. 1241/Hyd/2015, 1278/Hyd/2015 dated Mar 16, 2018***

**535.** The Tribunal allowed the assessee's appeal and deleted the disallowance made u/s 36(1)(iii) on account of interest paid on borrowed money where the assessee had given interest-free loans and advances to its associate concerns and the AO claimed that the interest expense could not be said to be for the purpose of business. It was noted that the advances related to regular transactions for purchase/sales/rent with associate concerns and balances were in normal course of business. Accordingly, the Tribunal held that the said advances were purely in regular course of business with an intent of maximization of profit as well as revenue and that the said advances were advanced for commercial expediency as the assessee had deep interest in its subsidiaries/ associate concerns.
***Krishidhan Seeds Pvt Ltd vs Dy.CIT [2018] 54 CCH 0280 (Indore- Trib.)- ITA No.37/Ind/2013,84/Ind/2013,231/Ind/2013 and 315/Ind/2013 dated 30.11.2018***

**536.** The Tribunal held that where assessee had itself accepted that interest bearing funds were applied for making investment in equity shares and alleged investment was for non-business purposes, additions under section 36(1)(iii) upheld by Commissioner (Appeals) in respect of Interest expenditure paid on such interest-bearing funds was justified.
***Premier Industries (India) Ltd. v. Jt. CIT, Range-1, Indore- [2018] 100 taxmann.com 337 (Indore - Trib.)-ITA Nos. 610 & 611 (IND.) of 2016-dated November 19, 2018***

**537.** The Tribunal held that when assessee has explained the availabilities of interest free funds for the interest free advance to the group concern then no disallowance on account of interest was called for
***ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT & ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018***

**538.** The Tribunal allowed assessee's claim for deduction of interest paid on borrowed capital which was disallowed by the AO on the ground that the borrowed money was not utilized for business purposes. Noting that the assessee had purchased agricultural land during the year and had immediately applied for conversion of such agricultural land into residential, it held that land was purchased for purpose of doing business of real estate by developing plots etc and further the process of conversion of land and then getting approval of site plan established that assessee had already set up its business during the relevant previous year. Accordingly, the Tribunal held that the interest paid on borrowed capital for acquiring land was allowable to assessee as business expenditure.

Go to Index

***PRATIK GOYAL vs. ITO (2018) 53 CCH 0408 JaipurTrib - ITA No. 696/JP/2017 dated July 24, 2018***

**539.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO with respect to partial interest expenses claimed on borrowings noticing that the assessee had given certain short term loan & advance on which no interest was charged. It held that the assessee had demonstrated that is had used only interest bearing loan for the purpose of business i.e term loan used for acquiring plant & machinery and working capital loan used for working capital, and the existence of own fund of the assessee was far better than the advances given by the assessee.
***DCIT v PRS METALIKS LTD – (2018) 52 CCH 24 (Kol Trib) – ITA No. 450/Kol/2016 dated 10.01.2018***

**540.** The Tribunal allowed the assessee's claim for deduction of entire interest paid on loan availed from bank, which was disallowed by the AO u/s 36(1)(iii) in view of the fact that the assessee-company had given interest free loan to its director (also a major shareholder) and a sister concern. With respect to the loan given to the director, it was noted that while dealing with the issue of deemed dividend u/s 2(22)(e) in the case of the director on account the said loan, the Tribunal had deleted the addition made holding that the funds were given to the director only to facilitate the company's business since the director had permitted his properties to be mortgaged to the bank for enabling the bank to grant credit facilities to the assessee company. Thus, in the present case also, the Tribunal held that the amount lent to the director was for the purpose of business and hence no proportionate disallowance of interest paid on borrowed capital could be made in respect of amounts advanced to him. With respect to the loan given to the sister concern, it was noted that in the preceding year interest was charged on the said loan and the same was offered to tax. However, during the current year, the sister concern was facing financial crunch and was in a bad position, thus the assessee-company had waived its right to charge interest. Further, it was noted that during the relevant year the assessee had recovered substantial portion of the loan amount and, as evident form the balance sheet, the assessee had sufficient own funds to given loan to the sister concern
***Rawalwasia & Sons Exim Ltd. v ITO (2018) 52 CCH 0297 KolTrib - ITA No. 273/Kol/2016 dated 06.04.2018***

**541.** The Tribunal held that interest on loan taken for renovation and modernisation of assessee's factory premises qualified to be allowed under section 36(1)(iii).
***DCIT v Laboratories Griffon (P.) Ltd. [2018] 93 taxmann.com 29 (Kolkata – Trib.) – ITA NO 133 OF 2016 dated 11.04.2018***

**542.** The Tribunal held that where the assessee had sufficient funds of its own which was substantiated by the statement of funds generated during the year, out of which it granted an interest free loan to its Group company, the Revenue was incorrect in disallowing the interest paid on loan acquired by the assessee from its banker on the ground that the loan was utilized for providing onward interest free loans loan to its Group companies and therefore not for business purposes. Relying on various decisions, it also held that the assessee was free to utilize its own funds in the manner it desired.

Go to Index

***JCT Limited v JCIT – (2015) 45 CCH 0289 Kol Trib***

**543.** The assessee-company was a Part IX company formed by conversion of partnership firm into a company. Prior to conversion, the firm had revalued its land increasing its value by Rs. 2.028 crores and had credited the revaluation amount to the partner's capital account subsequent to which the partners were paid Rs. 3.3 crores by overdrawing from bank account. After succession, this amount was brought back by issuing debentures of Rs.3 crores by the company to the directors (erstwhile partners) on which the assessee sought to claim deduction of interest under Section 36(1)(iii) of the Act. The Tribunal upheld the AO disallowance of the interest expenses claimed on the ground that there was no corresponding inflow of capital and the debentures were issued on the basis of a mere revaluation. It further held that the credit of the revaluation of the partner's capital account was inconsistent with the partnership law. Accordingly, it held that the borrowings representing only an increase in the valuation by the firm of its capital asset would not be entitled for interest deduction as the same was not for any business purpose.
***Kali BMH Systems Pvt. Ltd.-TS-496-ITAT-2017 /ITA Nos.1186, 1631, 1632 & 1633/Mds/2015 dated 31.10.2017***

**544.** The Tribunal deleted the disallowance made u/s 36(1)(iii) with respect to interest expense claimed while computing income earned from proprietary concern, which was made by the AO noting that the assessee had advance interest free loans and advances to certain parties. The Tribunal noted that the said loans and advances formed part of the assessee's personal balance sheet and thus held that no part of loan funds obtained in proprietary concern was used for making the above investments.
***Viren Shah v ACIT – ITA No. 1162/Mum/2017 dated 12.09.2018***

**545.** The Tribunal allowed assessee's (engaged in the business of 'speciality eye care hospital') claim for deduction on account of interest expense on loan taken for acquiring a residential flat for use by its director (who was a doctor and CMD of assessee-company, having 99% share), holding that the loan was taken for business purpose. It was noted that the flat was near to the hospital which facilitate the treatment of eye patient at any time and thus even in the case of emergency the CMD could approach to the hospital promptly. The Tribunal also allowed the assessee's claim for depreciation on the said flat @ 5%.
***Aditya Jyot Eye Hospital PVt. Ltd v ITO – (2018) 54 CCH 115 (Mum Trib) - I.T.A. No.5325/Mum/2015 dated 24.10.2018***

**546.** The Tribunal disallowed the deduction claimed by the assessee u/s 36(1)(iii) with respect to expenditure incurred under the head finance charges which represented interest payment made on borrowed funds, noting that the assessee was engaged in activity of investment in shares of a group of companies for holding controlling interest which could not be considered as main business activity of the assessee in the nature of trade or commerce since such investment had been treated as long-term investment in its financial statements, the statutory auditors of the company had reported that the company was not engaged in carrying on any business or as part of its business activity of acquisition of shares except making long-term investments and

Go to Index

the objects clause in Memorandum of Association did not encompass the activity of the acquisition of shares for controlling interest.
***Asia Investments (P.) Ltd. v ACIT – (2018) 91 taxmann.com 431 (Mum) – ITA Nos. 7539 (Mum.) of 2013 and 62 & 4779 (Mum.) of 2014 dated 23.02.2018***

**547.** The assessee company had given advance for purchase of business premise in Bharat Diamond Bourse and other immovable properties. The AO held that these advances were for fixed assets and they had not been put to use during year, and thus worked out average investment on all these projects and disallowed interest u/s 36(1)(iii) attributable to these advances. The CIT(A) held that the loan funds were for specific purpose and there had been no dilution of same and thus deleted the disallowance made by the AO. The Tribunal observed that the investment was done out of mixed funds and assessee had own funds which covered more than investment made and followed Reliance Utilities & Power Ltd (313 ITR 340) wherein it was held that that if there were funds available both interest-free and overdraft and/or loans taken, then a presumption would arise that investments would be out of the interest free funds generated or available with the company, if the interest free funds were sufficient to meet the investments and thus upheld CIT(A)'s order thereby dismissing Revenue's appeal.
***ACIT v Kiran Gems Pvt. Ltd. (2018) 52 CCH 0586 MumTrib - I.T.A. No.1108/Mum/2016 dated 09.04.2018***

**548.** The Tribunal deleted the proportionate interest disallowance made by the AO u/s 36(1)(iii) on account of investment made by the assessee in a company (i.e. engaged in power generation) during the year, noting that the assesse-company, engaged in production of various steel items, was in continuous need of uninterrupted power supply and in view of the said investment it was entitled to obtain 35KWH power supply. The Tribunal held that the said investment was beneficial for the business interest of the assessee and thus did not warrant disallowance u/s 36(1)(iii).
***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. MAHINDRA CIE AOTOMOTIVE LIMITED & ANR. - (2018) 52 CCH 0300 MumTrib - ITA No. 6659/Mum/2014 (Cross Objection No. 96/Mum/2016) dated Apr 11, 2018***

**549.** The Tribunal held that where assessee had clearly showed commercial expediency and corporate strategy for advancing interest bearing funds as interest free advances to a company wherein assessee had 50 per cent of stake through its 100 per cent subsidiary company, disallowance of part of interest on borrowed funds by Assessing Officer was unjustified.
***Dy. CIT, Circle 7(3)(2), Mumbai v. Piramal Realty (P.) Ltd. [2018] 100 taxmann.com 294 (Mumbai - Trib.) - ITA No. 2317 (MUM) of 2017-November 16, 2018***

**550.** The Tribunal held that where assessee acquired loan for reconstruction or renovation of its existing cold storage which was destroyed by fire, such reconstruction or renovation could not be considered as 'acquisition of an asset', thus, interest paid on such loan could not be disallowed under section 36(1)(iii).
***K.S. Cold Storage v. ACI, Circle-3(1), Dhule- [2019] 101 taxmann.com 120 (Pune-Trib)-ITA Nos.1448 & 1580(Pun) of 2014-dated November 28, 2018.***

Go to Index

**551.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing partial relief to the assessee with respect to disallowance made by the AO u/s 36(1)(iii) of interest expenses incurred on account of borrowed funds. The CIT(A) had noted that the entire borrowed funds of Rs.4.30 crores were not diverted by the assessee for non-business purposes (as claimed by the AO) but only funds amounting to Rs.1.41 crores, appearing as the debit balance in the name of the assessee (in the books of assessse's proprietary concern), were diverted. Accordingly, the CIT(A) had upheld the disallowance of interest expense pertaining to the borrowed fund of Rs.1.41 crores only. The Tribunal held there was no infirmity in the CIT(A)'s findings.
***DCIT v RAJENDRA BANSILAL RAISONI - (2018) 53 CCH 0606 PuneTrib – ITA Nos. 1264 & 954/PUN/2016 dated July 20, 2018***

**552.** The Tribunal upheld the proportionate disallowance made by the AO with respect to assesse's claim for deduction u/s 36(1)(iii) where the assessee had given advances to unrelated parties during course of business and contended that it had not charged interest on advance given to seven parties as they were not traceable or in financial difficulties but could not furnish a single evidence in support of its contention / claim.
***Rajmal Lakhichand v JCIT – (2018) 92 taxmann.com 94 (Pune) – ITA Nos. 670 & 832 (PUN.) of 2015 dated 28.02.2018***

» *Bad and doubtful debt*

**553.** The Court upheld the order of the Tribunal and held that the AO was incorrect in denying the assessee deduction on account of bad debts written off on the alleged ground that the assessee had not discharged its onus to prove that that the debt had become bad as the issue had been settled by the Apex Court in TRF v CIT (2010) 323 ITR 397 (SC) wherein the Court allowed the assessee to write off a debt when it became irrecoverable. Further, it also relied on Circular No 12 / 2016 wherein it was provided that for the purpose of allowing deduction for the amount of any bad debt under section 36(1)(vii) of the Act it was enough if the bad debt was written off as irrecoverable in the books of accounts of the assessee.
***CIT & Another vs. Modi Olivetti Ltd.(2016) 97 CCH 0086 AllahabadHC (ITA No.140 of 2008)***

**554.** The Court dismissed Revenue's appeal against the Tribunal's order holding that for the purpose of section 36(1)(viia) r.w. Rule 6ABA of the Income Tax Rules, 1962, the aggregate monthly average advances made by the rural branch of the assessee, a Schedule Bank, is to be computed by taking the amount of advances by each rural branch of such Bank as outstanding at the end of the last day of each month comprised in the previous year and aggregating the same separately, unlike the CIT(A)'s interpretation of considering the loans and advances made during the year only.
***Pr.CIT v Uttarbanga Kshetriya Gramin Bank - [2018] 94 taxmann.com 90 (CalcuttaHC) - ITAT NO. 76 OF 2016 dated May 7, 2018***

**555.** The Court held that write off of non-rural bad debts under sub-clause (vii) are independent of provision for rural bad debts made under sub-clause (viia) and thus, bad debts written off relating to non-rural branch of assessee bank would be allowable as deduction under section 36(1)(vii).

Go to Index

***Dhanalakshmi Bank Ltd. v.CIT, Cochin- [2019] 102 taxmann.com 442 (Kerala)-IT Appeal Nos. 456, 498, 635, 643, 651, 712, 717, 1108, 1318 & 1691 of 2009 & ORS. -dated December 11, 2018***

**556.** The Court held that proviso to s. 36(1)(vii) mandates that in case of a Bank to which clause (viia) applies, i.e., a provision was made for bad debts with respect to its rural branch advances, then amount of deduction granted u/s 36(1)(vii) should be limited to amount by which written off amounts exceeded credit balance in provision for bad and doubtful debts account.
***South Indian Bank Ltd. vs. CIT (2018) 103 CCH 0353 KerHC-ITA Nos.264/2009 & 361/2009-dated December 4, 2018.***

**557.** The Court held that the failure of subscribers of chit fund to make payment of their instalments was to be allowed as 'bad debts', in view of decision in case of Sriram Chits & Investments (P.) Ltd v Union of India AIR 1993 SC 2063.
***CIT v. Shriram Chits & Investments (P.) Ltd [2018] 96 taxmann.com 300/257 Taxman 395 (Mad.)- Tax Case (Appeal) Nos. 1079 to 1082 & 1209 to 1211 of 2007 dated July 4, 2018***

**558.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 36(1)(viia) with respect to provision of bad and doubtful debts on the basis of advances given by the rural branches, which was disallowed by the AO without giving any concrete reason but only stating that the definition of rural branches is not to be restricted to a village only where the branch is situated rather, it is "region" for which the branch has been set up by the parental Bank. For the purpose of section 36(1)(viia), "rural branch" means a branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year. The Tribunal followed the decision in the assessee's own case for another year wherein it was noted that the relevant figures of last preceding census obtained from Website of Census of India and produced by the assessee were rejected by the AO, holding the assessee to be negligent for not providing letter from Tehsildar, or from other Government Agencies or the copy of Census Report, whereas even before the Tribunal, the figures produced by the assessee were not shown to be wrong or false. In that case, noting that the CIT(A) had verified the chart of aggregate average advances by the assessee's rural branches, on a test-check basis with the primary records of the assessee bank, the Tribunal had upheld the CIT(A)'s order allowing the assessee' claim in full.
***DEPUTY COMMISSIONER OF INCOME TAX vs. KSHETRIYA KISAN GRAMIN BANK - (2018) 53 CCH 0278 AgraTrib - ITA No. 382/Agra/2017 dated June 01, 2018***

**559.** The assessee was engaged in commodity trading business on NSEL platform. It had entered into several delivery-based contracts for buying and selling of various commodities on NSEL platform. On account of substantial fraud committed by management of NSEL, trading activity on NSEL platform was suspended. The assessee, thus, claimed to have written off certain amount receivable from its two brokers against unrealised contracts in commodities. The Assessing Officer declined claim of bad debts of such unrealised contracts taking view that it was premature. The Tribunal held that it was undisputed that debt had arisen in course of commodity trade and such debt or part thereof had been taken into account while computing

chargeable income of the assessee. Moreover, amount outstanding from respective brokers had been shown to be duly written off in books of account. Since lower authorities had failed to examine such crucial aspect, impugned order was to be set aside and, matter was to be remanded back to consider the assessee's claim for bad debt afresh.
***Omni Lens (P.) Ltd. v. Dy.CIT [2018]99 taxmann.com 333(Ahd. -Trib.)- ITA No. 2818 (AHD.) of 2017 dated October 16, 2018***

**560.** Where the AO had disallowed the assessee's claim for bad debt u/s 36(1)(vii) on the ground that the assessee had not established that amount had gone bad inspite of all efforts taken by him, the Tribunal held that after the amendment in the said section and as per the CBDT Circular No.12/2016 dated 30.05.2016 it was not necessary for assessee to establish that debt had become irrecoverable and if the bad debt was shown irrecoverable in accounts of assessee, it fulfilled condition stipulated in section 36(2). Thus, noting that nothing was established by the Revenue that condition stipulated u/s 36(2) was not fulfilled, it directed the AO to allow claim of bad debt raised by the assessee.
***VASCULAR CONCEPTS LTD. v DCIT – (2018) 52 CCH 65 (Bang Trib) – ITA Nos. 1921 to 1927/Bang/2016 dated 29.01.2018***

**561.** Where the assessee had created provision for bad and doubtful debts in the books of account and claimed deduction u/s 36(1)(viia) based on Aggregate Rural Advances (AAA) computed as per Rule 6ABA and the AO was of view that it was only incremental advances that had to be considered for computing AAA, the Tribunal held that Rule 6ABA did not provide for only fresh advances made by each rural branch during each month alone had to be considered and it only prescribed that amount of advances made by rural branch and was outstanding at end of last day of each month should be aggregated. Thus, it directed the AO to rework the deduction u/s 36(1)(viia) accordingly.
***VIJAYA BANK HEAD OFFICE & ORS. v JCIT – (2018) 52 CCH 19 (Bang) – ITA Nos. 915/Bang/2017, 845/Bang/2017, 1647/Bang/2016, 1651/Bang/2016, 1284/Bang/2016, 1252/Bang/2016 dated 05.01.2018***

**562.** The Tribunal held that where assessee-bank had not written off impugned bad debt in its books of account but had reduced it from sundry debtors account in balance-sheet, it would amount to write off and assessee would be entitled to deduction under section 36(1)(vii).
***Canara Bank v JCIT - [2016] 68 taxmann.com 128 (Bangalore-Trib)***

**563.** The Tribunal allowed assessee's claim for deduction for bad debts written off with respect to the amount receivable from Company K noting that (i) the assessee had entered into distribution agreement with Company K whereby it collected pay channel revenues on behalf of the assessee company,(ii) assessee booked the entire amount for which bill/invoice was raised as its income/revenue (iii) however, since certain billed amount were not recoverable from the Cable TV Operators, it was written off as bad debts by assessee in its books of account. It relied on SC ruling in TRF Ltd v CIT (323 ITR 397) wherein it has been held that it is not necessary for the assessee to establish the debt to have become irrecoverable but it is enough if the bad debts is written off as irrecoverable in the books of the assessee.

Go to Index

***M/S SUN TV NETWORK LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX – [TS-687-ITAT-2018(CHNY)] - ITA No. 889,994/CHNY/2018 dated 12.11.2018***

**564.** The Tribunal held that where the assessee obtained loans from financial institutions at an interest rate of 6 percent and advanced the said funds to its subsidiary company without any interest charge, no disallowance of interest payment could be made in the hands of the assessee since the subsidiary company used the funds advanced for business purposes.
Further, it held that where the subsidiary company had not misused the funds for any other purpose, no addition on account of notional interest could have been made in the hands of the assessee.
***ACIT v India Cements Ltd – (2016) 46 CCH 0005 (Chen)***

**565.** Kerala State Electricity Board is not covered by section 36(1)(vii) and therefore, it is not entitled to deduction of any provision created for bad and doubtful debts, notwithstanding that such provision is created based on guidelines issued by RBI.
***Asst.Com.IT, Circle-1(1), Trivendrum v. Kerala State Electricity Boar- [2018] 100 taxmann.com 132 (Cochin – Trib) – ITA Nos.29 & 30 (Coch)of 2018-dated November 1, 2018***

**566.** The Tribunal held that claim disallowed u/s.36(1)(viii) could not be allowed under sec. 36(1)(viia) in absence of provision made for same in P-L account under head bad debt.
***Jila Sahakari Kendriya Bank Maryadit vs Dy.CIT [2018] 97 taxmann.com 641 (Indore Trib)-IT APPEAL NO. 386 (Ind) of 2017 dated August 17 2018***

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

**568.** The Tribunal, relying on the decision of the Court in the case of State Bank of Patiala v CIT (2005) 198 CTR 0407 (Punjab & Haryana), held that as per section 36(1)(viia) of the Act, the claim for bad debts was to be limited to the provision created by the assessee and could not exceed the same and therefore limited the allowance to the provision existing in the books of the assessee.
***UCO Bank v DCIT – (2016) 47 CCH 0399 (Kol) - ITA No. 585 & 911/Kol /2013***

**569.** The Tribunal held that where bad debts claimed by assessee in year under consideration were recovered in subsequent assessment year and offered for taxation, it was to be concluded that debtors shown by assessee were genuine and, thus, assessee's claim was to be allowed.
***DCIT v Xpro India Ltd - [2016] 68 taxmann.com 249 (Kolkata-Trib)***

Go to Index

**570.** The Tribunal held that deduction under section 36(1)(viii) of the Act was to be allowed to the assessee bank which was engaged in the business of providing long term finance for industrial, agricultural and infrastructure development in India since banking companies were duly included in 'specific entity' under section 36(1)(viii) of the Act and the amount of deduction would be restricted to the amount transferred to the special reserve subject to the percentage limit prescribed in the given section.
Further, it held that provision for bad debts was allowable under section 36(1)(viia) only in respect of provisions made against advances of rural branches and bad debts of non-rural branches was to be allowed fully under section 36(1)(vii) and was not required to be set of against provision for bad debts claimed under section 36(1)(viia) of the Act.
***Allahabad Bank v ACIT – (2016) 67 taxmann.com 25 (Kol)***

**571.** Where the assessee claimed deduction on account of reversal of NPA interest credited to its P&L account (as the amount it was supposed to receive from the Government was no longer receivable), the Tribunal held that the AO was not justified in denying the assessee deduction of the same on the basis that the same amount had been claimed as deduction in the subsequent year without appreciating that though the assessee had claimed the deduction in the subsequent year, it reversed its claim by making an addition in its computation of income as it realized that it had claimed the impugned deduction during the year under review.
***BULDHANA DISTRICT CENTRAL COOP. BANK LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0237 NagTrib - ITA No. 127 & 128/NAG/2015 dated Mar 6, 2018***

**572.** During the course of assessment proceedings, AO observed that assessee had claimed bad debt and debited same in profit & loss account and had claimed write-off on the ground that the same were in relation to trade debtors which had been claimed as bad. The AO held that assessee must prove that the debt had actually became bad and disallowed the claim on failure of assessee to prove. However, the CIT(A) deleted the disallowance holding that write-off of bad debts in books of account was sufficient for claiming deduction under amended provisions of Section 36(1)(vii) and assessee was not further required to prove that debt had become bad. The Tribunal concurred with the CIT(A) and dismissed revenue's ground of appeal.
***ACIT & Anr v Ballarpur Industries Ltd & Anr (2018) 52 CCH 0340 NagTrib - ITA No. 91/Nag/2011, 92/Nag/2011 dated 16.04.2018***

**573.** Since the provisions of section 36(1)(vii), it has two limbs, wherein the deduction can be computed either on the basis of 7.5 per cent of total income or 10 per cent of aggregate average advances made by rural branches. The Tribunal held that a co-operative bank is entitled to claim deduction of bad debts provided in first part of section 36(1) (viia)(a) being 7.5 per cent of total income even in absence of rural branches.
***Bhagini Nivedita Sahakari Bank Ltd. v. Dy. CIT, Circle-1(1), Pune- [2018] 100 taxmann.com 375(Pune-Trib.) -ITA Nos.167(Pune) of 2015, 465 to 467 (Pun.) of 2016 & Others-dated November 30, 2018.***

Go to Index

**574.** The Tribunal allowed Department appeal and held that Provision for standard assets is purely contingent and could not be included in provision for bad and doubtful debts, thus, same could not be allowed as deduction under section 36(1)(viia).
***ACIT v Chaitanya Godavari Grameena Bank [2018] 93 taxmann.com 400 (Vishakhapatnam – Trib.) – ITA NOS 326-327 of 2016 dated 04.05.2018***

» *Contribution towards PF, ESIC, etc.*

**575.** The Court held that Explanation to Section 36(1)(va) of the Act provides that the deduction shall be allowed in respect of the sum paid by Assessee to employees' account, in the relevant fund, on or before 'due date', i.e. the date by which Assessee (employer) is required to credit employees contribution in the relevant fund and if the Assessee (employer) pays such tax, duty, cess or fee even after closing of accounting year but before date of filing of Return under Section 139(1) of Act, 1961, the assessee would be entitled to deduction under Section 43B on actual payment basis and such deduction would be admissible for the accounting year.
***Sagun Foundry Pvt. Ltd. vs. CIT(2016) 97 CCH 0160 AllahabadHC (ITA No. 87 of 2006)***

**576.** The Court held no substantial question of law arose from the Tribunal's order deleting the disallowance made u/s 36(1)(va) r.w.s. 2(24)(x) on account of payment of employees' contributions to ESIC beyond the due dates under ESIC Act as the issue stood concluded in favour of the assessee by Bombay High Court decision in CIT v. Ghatge Patil Transports Ltd. (2015) 368 ITR 749 (Bom) wherein it was held that as per section 43B the assesse would be eligible for the said deduction if the payment was made before the due of filing of return u/s 139(1).
***Pr.CIT vs Starflex Sealing India Pvt Ltd. [2018] 102 CCH 0184 (Bombay HC)- INCOME TAX APPEAL NO. 130 OF 2016, 151 OF 2016, 293 OF 2016 dated August 02 2018***

**577.** The Court allowed the assessee's claim of deduction u/s 36(1)(v) for contributions paid to the LIC as premium for the policy obtained for indemnification of the gratuity liability towards the employees, including for the period during which the employees were in employment of the Company taken over by the assessee. It held that the take over and the specific term fastening the liability to gratuity for even the past service on the assessee, made the assessee the employer for the past period also, at least with respect to the liability for payment of gratuity. The Court further held that such disallowance would otherwise be creating unnecessary impediment especially looking at the intention of the provision u/s 36(1)(v), which was that the employer should not have any control on the funds of the trust exclusively created for the employees.
***Nortrans Marine Services (P.) Ltd.vs Asst. CIT [2018] 97 taxmann.com 212 (KeralaHC)- IT APPEAL NO. 27 of 2011 dated August 06 2018***

**578.** The Court held that contribution made by assessee in pension fund could not be disallowed on ground that same was not recognised by Jurisdiction Commissioner, as under section 36(1)(iv) it is nowhere mentioned that pension fund should be recognised only by Jurisdiction Commissioner and that approval of Jurisdictional Commissioner is mandatory.

Go to Index

***CIT v. Tamil Nadu State Transport Corpn.(Salem) Ltd. [2015] 62 taxmann.com 206/234 Taxman 663(Mad.HC)***

**579.** The Tribunal deleted the disallowance made u/s 36(1)(va) where assessee had not deposited employees' contribution towards provident fund on due date as prescribed under relevant statute but before the due date of filing of return of income. It relied on the ratio laid down Apex Court in Pr. CIT vs Rajasthan Beverage Corporation Ltd. (2017) 84 Taxman.Com 185 (SC) wherein it was held that amount claimed on payment of PF and ESI having been deposited on or before due date of filing of returns, could not be disallowed u/s 36(1)(va) or 43B.
***Bhambra Service Centre. vs ITO [2018] 53 CCH 0414 (Cuttak Trib)- ITA No.301/CTK/2017 and 13/CTK/2018 dated August 02 2018***

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

**581.** During the course of assessment proceedings, the AO noticed that the assessee had collected Rs 9,03,378 on account of provident fund but same was deposited only to extent of Rs. 2,18,064 and thus the balance amount not deposited was disallowed. The CIT(A) confirmed the disallowance. The Tribunal observed that the amounts of provident fund advance given, provident fund realised and amounts settled had not been taken into consideration by the lower authorities. Further, taking note of the assessee's claim that the entire provident fund collected upto February, 2002 was fully paid by assessee and only provident fund collected during March was outstanding at the year end which was also paid in time, it restored the said issue to file of AO for deciding afresh after verifying the aforesaid claim of the assessee.
***Manipur Tea Co. Pvt. Ltd. v ACIT (2018) 52 CCH 0285 KolTrib - ITA No. 1749/Kol/2017 dated 06.04.2018***

**582.** The AO had recorded in its assessment order about this fact that employee contribution towards PF and ESI was deposited late with statutory authorities but admittedly the same was deposited prior to the due date of filing of return of income as prescribed u/s 139(1). The Tribunal held that as the said employee contribution of PF/ESI was deposited before the due date of filing of return of income u/s 139(1) the same was allowable.
***SAYENDRA SINGH vs. Asst. CIT (2018) 54 CCH 0371 MumTrib ITA No. 4633/Mum/2018 dated 14.12.2018***

» *Others*

Go to Index

**583.** The Apex Court held that bonus paid to employees is allowable expense under section 36(1)(ii) and section 40A(9) and that section 43B does not cover / apply to such bonus payments.
***Shasun Chemicals and Drugs Ltd.-TS-529-SC-2016- SLP(C)No. 31962 of 2011***

**584.** The court held that where assessee filed a revision petition raising claim for deduction of employee's contribution to PF which was erroneously not claimed in return of income, in view of fact that all payments towards employee's contribution to PF had been made before due date of filling of return, Commissioner was not justified in refusing to entertain assessee's claim on merits.
***Geekay Security Services (P.) Ltd. v. Dy.CIT, Circle-3(1)(2)-[2019]101 taxmann.com 192(Bom)-WP No.1984 of 2018-dated December 7, 2018.***

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

**586.** The Court held that payments of employer's contribution to provident fund and ESI made on or before due date for filing return of income under section 139(1), has to be allowed as deduction under section 43B while computing taxable income as so far as employee's contribution is concerned, assessee is entitled to get deduction of amount as provided under section 36(1)(va) only if amounts so received from employee is credited in specified account within due date as provided under relevant statute.
***Popular Vehicles & Services (P.) Ltd. v. CIT, Ernakulam- [2018] 96 taxmann.com 13 (KeralaHC) ITA No. 172 of 2016-dated July 2, 2018***

**587.** The Court held that if employees' Contribution received by assessee from employee is treated as income for purpose of Section 36(1) (va), then assessee could be entitled for deduction only if, said amount is credited by assessee to employees account on or before due date as provided under Explanation 1 to Section 36(1) (va).
***Popular Vehicles & Services Pvt.Ltd. vs. CIT-(2018)102 CCH 0119 KerHC-ITA No.172 of 2016-dated Jul 2, 2018***

Go to Index

**588.** The assessee incurred huge expenses for repair and maintenance of leased property in which cement bags, sand, labour charges, etc were consumed for construction of building structure. The AO disallowed such expenses as the assessee was only required to keep the leased premises clean and water proof and maintain it in good condition. CIT(A) allowed the claim of the assessee on the basis of additional evidences in the form of social audit report and considering that the property leased was more than 30 years old which required huge maintenance to keep it in working condition. However, since the CIT(A) neither conducted any independent enquiry, nor called for remand report from AO, the Tribunal remanded the matter to the CIT(A) for fresh determination of case as the appellate order lacked quasi-judicial investigation and analysis.

***DCIT vs. Amar Brother Global Pvt. Ltd. – [2018] 53 CCH 0088 (Lucknow ITAT) – ITA No. 236/LKW/2017 dated May 2, 2018***

**589.** During assessment proceeding, a amount paid by assessee as remuneration to its director namely, Mr. M was disallowed by AO by invoking provisions of s. 36(1)(ii). AO observed that no such payment was made in earlier years. AO found that during relevant AY, no remuneration was paid to other directors of assessee. Despite specific directions, assessee failed to place on record a copy of resolution which was passed at meeting of 'board of directors', resolving to pay remuneration to said director who was also a 99.9% shareholder of assessee. CIT(A) confirmed action of AO. Held, CIT(A) after deliberating at length on contentions advanced by assessee for vacating disallowance made by AO u/s 36(1)(ii) was however not persuaded to subscribe to same. CIT(A) observed that it was an admitted fact that Mr. M, director of assessee was 99.9% shareholder of same. It was observed by him that in present case, assessee failed to substantiate veracity of its claim by placing on record a copy of resolution that otherwise was passed at meeting of 'board of directors', resolving to pay remuneration to mentioned directors. The Tribunal held that Assessee had not only failed to place on record said documentary evidence substantiating its claim before AO during course of assessment proceedings, but had also not place on record same by way of an additional evidence before him. Sec. 36(1)(ii) was made available on statute by legislature with purpose to prevent evasion of tax by describing a payment to an employee as bonus or commission, when in fact ordinarily it should have reached shareholder as profit or dividend. It could safely be gathered that same contemplates a check on the dwindling of the profits of a business by merely describing the payment as bonus or commission, if payment was in lieu of dividend or profit. Shri M, director of assessee was 99.9% shareholder and was thus in a position to take any decision regarding either payment of dividend or payment of remuneration. Assessee's claim that payment of remuneration to said director was for services rendered by him was found to be totally unsubstantiated. Assessee failed to place on record any material which would irrefutably prove that services that were rendered by director, in lieu of which said amount was paid to him. No such payment was made to said director in earlier years. Amount paid by assessee to Mr. M, director was rightly disallowed by AO u/s 36(1)(ii).

***Mishka Gold Jewellery Ltd & ANR. Vs. Addl.CIT & ANR-(2018) 54 CCH 0311 MumTrib-ITA No(s).5972/Mum/2017, 5438/Mum/2017-Dated December 7, 2018.***

**590.** The Tribunal upheld the CIT(A)'s order allowing assessee's claim for deduction u/s 36(1)(ii) with respect to commission paid by the assessee-company to its Managing Director (MD) who also

held majority shareholding of 75% of the total shares. The commission was disallowed by the AO pointing out the exception carved in the said section i.e. any sum paid to an employee as bonus or commission for services rendered is allowable deduction, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission. It held that the said rider or the exception carved out in section 36(1)(ii) would apply only to an employee who was also a shareholder in the company. Though the MD was a major shareholder of the assessee-company, but was not its employee and thus the allowability of the commission paid to him as sales agent would not be hit by the provisions of section 36(1)(ii).
***Nat Steel Equipment (P.) Ltd. v DCIT - [2018] 95 taxmann.com 159 (Mumbai - Trib.) - IT APPEAL NOS. 4011, 4681, 5070 & 5270 (MUM.) OF 2013 dated June 13, 2018***

**591.** The Tribunal held that the assessee bank, engaged in providing long term finance for industrial or agricultural development or for development of infrastructure facility to which Banking Regulation Act, 1949, applied, could not be regarded as a financial corporation, hence was not eligible entity under section 36(1)(viii) and consequently could not claim deduction under the said section.
***State Bank of India v CIT – (2016) 73 taxmann.com 154 (Mum Trib) – ITA No 3145 Mum of 2009***

*Section 37*

» *Explanation 1*

**592.** The Court, held that where the assessee paid liquidated damagesto its customers on account of failure in delivery of machinery/late completion of terms and conditions of orders/ execution of contract, the said payment could not be disallowed under section 37 of the act since it was incurred in the ordinary course of business and was not opposed to public policy. Accordingly, it held that since the expenditure was not incurred for any purpose which was an offence or which was prohibited by law the Tribunal was justified in granting a deduction in respect of such expenditure u/s 37(1).
***Pr.CIT vs Mazda Ltd (2017) 100 CCH 0019 GujHC ITA no. 647 of 2017 and 949 OF 2013 DATED 12.09.2017***

**593.** The Court held that where the assessee made payment to the Pollution Control Board on account of failure to comply with the order of the Board with respect to its obligation of installing pollution control equipment before the prescribed time limit, the said payment could not be disallowed under Explanation 1 to Section 37 since the assessee did not carry out any illegal business and the payment was made for the purpose of business and was in consequence of business carried on by the assessee.
***Shyam SEL Ltd v DCIT – (2016) 96 CCH 0085 (Kol) - ITA NO. 850 OF 2008***

**594.** The Court held that re-insurance arrangement by assessee insurance company with a foreign reinsurance company was not prohibited and; therefore, reinsurance premium paid by assessee

insurance company to non-resident reinsurance company was to be allowed under section 37(1).

***Cholamandalam Ms General Insurance Co. Ltd. v. Dy. CIT, LTPU, -[2019] 102 taxmann.com 292 (Madras) Chennai -Tax Case Appeal Nos. 754, 834, 836, 837, 838, 840, 841, 845, 847, 851, 856, 862, 866, 868, 871, 903, 907, 910, 913 of 2018 dated December 12, 2018***

**595.** The assessee-company was engaged in the business of imports & re-sale of medical electronics equipment and providing after sales & warranty services for the same. It supplied certain products free of cost to Government hospitals and other hospitals in pursuance of purchase order placed by such hospitals and claimed same as deduction under head 'sales promotion expenses'. The AO was of view that goods supplied to doctors and other professional association free of cost were prohibited in terms of CBDT Circular No. 5/2012 dated 1-8-2012 [which provides that expenses claimed by pharmaceutical and allied health sector Industries with respect to freebies given to medical practitioners and their professional associations were in violation of the regulations issued by Medical Council of India and thus not allowable u/s 37(1)] and thus, disallowed the said expenses claimed. The CIT(A) reversed the AO's order by observing that the assessee was not a pharmaceutical company and thus the said Circular was not applicable. The Tribunal dismissed Revenue's appeal holding that the CBDT circular no. 5/2012 dated 1-8-2012 is prospective in nature and, thus, could not be applicable to case of assessee for AY 2012-13.

***DCIT v Esaote India (NS) Ltd. - [2018] 96 taxmann.com 624 (Ahmedabad - Trib.) – ITA No. 55 (AHD.) OF 2016 dated July 31, 2018***

**596.** The Tribunal invoking Explanation 1 to Sec. 37(1), disallowed cost of production of goods incurred by assessee (manufacturer of pan masala) (containing magnesium carbonate, a known carcinogenic substance) in excess of permissible limits, noting that in terms of a court order under the Prevention of Food Adulteration Act, the goods had to be destroyed and therefore held that the expenditure for making this product was something "prohibited by law". It held that expenditure on manufacturing such products whether deliberately or inadvertently, could not be allowed as deduction and rejected assessee's contention that no penalty, etc. was imposed on it. It held that as long as the expenditure was incurred for a purpose which is prohibited by law, it was immaterial whether the said act of the assessee constituted an offence or not.

***ACIT v M/s. Vishnu Packaging – TS-532-ITAT-2017 (Ahd) - ITA No. 1869/Ahd/2016 dated 15.11.2017***

**597.** The Tribunal held that interest on delay in payment of Sales Tax was allowable as a deduction under section 37(1) of the Act as it was compensatory in nature and nowhere in the form of penalty.

***ACIT v Jamkash Vehicleades Pvt Ltd – (2015) 45 CCH 0322 Amritsar Trib***

**598.** The Tribunal allowed assessee's claim for deduction of expenditure u/s 37(1) with regards to interest paid on delayed remittances of service tax. It held that payment of interest was only compensatory in nature and would not be in nature of penalty which would be hit by Explanation

to section 37(1). Thus, interest paid on delayed remittances of service tax was allowable as deduction under section 37(1).
***Velankani Information Sysytems Ltd vs DCIT- (2018) 97 taxmann.com 599 (Bang- Trib)- ITA No 218 & 283 of 2017 dated 12.09.2018***

**599.** Where the assessee's claim for business promotion expenses incurred on Doctors who attended Seminars and Conferences u/s 37(1) was disallowed by the AO since the assessee could not furnish details of Doctor-wise expenditure and confirmation letter from Doctor and on basis of the CBDT Circular dated 01.08.2012 which stated that the said expenses were prohibited by the Notification issued by MCI and thus, not eligible for deduction u/s 37(1) being expense prohibited by law clarified, the Tribunal held that the expenditure incurred upon Doctors to attend Seminars and Conferences may be business expenditure of assessee before 01.08.2012 (i.e. date of CBDT Circular), but the same could not be allowed after 01.08.2012 as it was prohibited by Notification issued by MCI. Accordingly, noting that the AO had simply disallowed entire expenditure having invoked Circular issued by CBDT, it held that the expenditure incurred till 01.08.2012 should be allowed as expenditure towards business the nature of expenditure incurred thereafter on Doctors to be examined by AO.
***VASCULAR CONCEPTS LTD. v DCIT – (2018) 52 CCH 65 (Bang Trib) – ITA Nos. 1921 to 1927/Bang/2016 dated 29.01.2018***

**600.** The Tribunal allowed Revenue's appeal against the CIT(A)'s order restricting the disallowance to 15% of re-insurance premium paid to non-resident re-insurance companies. Noting that section 2C r.w.s. 2(9)(c) of Insurance Act, 1938, prohibited any person from doing insurance or re-insurance business in India otherwise permitted under Insurance Act, 1938, it held that there was a clear prohibition for payment of re-insurance premium to non-resident re-insurance companies. The Tribunal, thus held that re-insurance arrangement of assessee-company was in violation and contrary to provisions of section 2(9) of Insurance Act and, thus, entire re-insurance premium had to be disallowed under Explanation 1 to section 37.
***Royal Sundaram Alliance Insurance Co. Ltd. v DCIT [2018] 97 taxmann.com 644 (Chennai - Trib.) ITA Nos 1622 to 1630 (CHNY) OF 2011 & OTHERS dated August 6, 2018***

**601.** The Tribunal held that conference expenses incurred by law firm for enhancing visibility and recognition of law firm being in violation of the rules of the Bar Council, cannot be allowed u/s 37.
***LUTHRA & LUTHRA LAW OFFICES vs. Jt. CIT (2018) 54 CCH 0398 DelTrib- ITA No.802/Del/2015 dated 20.12.2018***

**602.** The Tribunal allowed deduction under section 37(1) of the Act for expenditure incurred on free samples given by the assessee to doctors and medical practitioners as they were distributed in pursuance to their requests and not as gifts therefore not attracting CBDT Circular No 5 / 2012 disallowing free samples given as gifts / freebies.
***Eli Lilly & Co (India) Pvt ltd v ACIT (ITA No.788/Del./2015) – TS-680-ITAT-2015 (Del)***

**603.** The Tribunal allowed assessee's (a PSU engaged in mining) claim for deduction u/s 37(1) with respect to penalty / compensation paid towards encroachment of the mining area beyond the

sanctioned leased area, holding that payment not punitive in nature. Based on the report of the Special Committee (on illegal mining activities), the Tribunal opined that there would have been marginal illegalities committed by the assessee and the compensation / penalty was only to compensate the Government for the loss of revenue from such mining or marginal illegalities and not as a penalty. It also held that the payment was made by assessee for resuming the mining activity, and not for any violation of law.

***NMDC Limited v ACIT [TS-609-ITAT-2018(HYD)] - ITA No. 1785, 1786, 1823 & 1824/Hyd/2017 dated 17.10.2018***

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

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

**605.** Where the Assessee paid penalty to the Stock Exchange for procedural defaults such a delay in submission of return, etc., the AO made addition on account of payment of such penalty. The CIT(A) deleted the addition made by the AO. The Tribunal relied on the ruling of the Bombay HC in the case of CIT vs The Stock & Bond Trading Company (ITA No 4117 of 2010) and held that payment of penalty to the Stock Exchange is a regular business expenditure and since the assessee committed no offence prohibited by law as per the provisions of Section 37 of the Act, the penalty had been rightly deleted by the CIT(A). Thus, the Tribunal ruled in favour of the assessee

***ACIT & ANR. vs. ARIHANT CAPITAL MARKETS LTD. & ANR. (INDORE TRIBUNAL) (ITA No. 370/Ind/2017 (C.O. No. 17/Ind/2018)) dated May 31, 2018 (53 CCH 0100)***

**606.** The Tribunal held that prior to the insertion of explanation to Section 37(1) w.e.f 1.04.2015, claim of deduction on account of CSR expenses was not allowable as a deduction under Section 37(1) as it could not be considered to bring direct business benefit to the assessee. It held that the concept of Corporate social responsibility provision had been brought in Companies Act 2013 and consequential amendment was brought to Income Tax Act u/s 37(1) by way of insertion of explanation w.e.f. 01.04.2015 and therefore prior to the said provisions deduction in respect of expenditure incurred under Corporate Social Responsibility was not allowable unless and until expenditure was incurred wholly and exclusively for purpose of business of assessee.

***RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORP. LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 52 CCH 0130 JaipurTrib - ITA No. 311/JP/2014 dated Feb 23, 2018***

**607.** The Tribunal held that where the assessee made payments for offences committed by its employees under Motor Vehicles Act, 1988, which were not compensatory in nature and for which assessee was vicariously liable, deduction in respect of the same was not allowable u/s 37(1) of the Act. Further, where assessee claimed deduction of cash destroyed by fire, the Tribnal held that the Assessing Officer could not disallow said claim without making proper

enquiries from persons from whom cash was alleged to have been received. Accordingly, the Assessing officer was directed to allow deduction claimed by the assessee. Hence, appeal made by the assessee was partly allowed.
***Aparna Agency Ltd. V. Income Tax Officer, Kolkata [2017] 79 taxmann.com 240 (Kolkata-Trib.) (ITA No. 1010 (Kol.) of 2014)***

**608.** Where assessee indulged in bogus purchases by way of accomodation entries which lead to short payment of output tax to MVAT Authorities and paid additional tax and interest u/s 30(2) and 30(4) of the MVAT Act, 2002 to end litigation, the Tribunal allowed assessee's claim for deduction with respect to the aforesaid interest paid u/s 30(2) as it was compensatory in nature being interest levied for delay in payment of additional tax. However, it rejected the claim for deduction of interest u/s 30(4) as it was penalty paid for concealment or incorrect filing of particulars in the return of VAT originally filed and Explanation 1 to section 37 denies deduction of any expenditure incurred for the purpose which is an offence or prohibited by law.
***ACIT vs Gini and Jony Ltd. [2018] 97 taxmann.com 401 (Mum Trib)- IT APPEAL NO. 1892 and 1893 of 2017 dated August 21 2018***

**609.** Where the assessee had committed an irregularity while dealing in foreign earnings or expenditure outgoes and such an action of assessee was compounded by payment of a fine as per Rules and Regulations provided in the RBI Circular, the Tribunal allowed assessee's claim of deduction u/s 37 with respect to the amount paid for compounding offences. The Tribunal held that it was not a case where the assessee committed an offence or the amount had been paid for purpose, which was prohibited in law, hence the provisions of Explanation to section 37(1) of the Act were not attracted.
***SODEXO FOOD SOLUTIONS INDIA PRIVATE LIMITED & ORS. vs. DCIT & ORS [2018] 53 CCH 0432 (MumTrib) - ITA Nos. 304 & 305/Mum/2014 dated August 08 2018***

**610.** The AO disallowed advertisement and publicity expenses incurred by the assessee (engaged in the business of distributing the heart therapy products and related medical equipments manufactured by its group companies) by referring to the CBDT Circular and Medical Council Regulation (which did not allow accepting gifts, travel facilities, hospitality, cash or monetary grants by doctors from pharmaceutical and allied health sector companies) and considering the said expenditure to be incurred for a purpose prohibited by law i.e. the Medical Council Regulation. The Tribunal deleted the disallowance holding that expenses incurred by assessee on doctors attending the medical conferences as faculties were not in violation of provisions of any statute as same were in day to day course of its business and were not prohibited by MCI guidelines. It held that the aforesaid expenses were incurred during the conferences and in relation to sponsorship of conferences and were not incurred for doctors nor did they provide any benefit to doctors. Accordingly, the Tribunal allowed assessee's appeal.
***Edward Life Science (India) Pvt Ltd. vs Dy.CIT [2018] 54 CCH 0243 (Mum- Trib.)- ITA No.1553 /Mum/2016 dated 20.11.2018***

**611.** Tribunal quashed the CIT's order passed u/s 263 wherein the CIT had disallowed the advertisement and publicity expenditure incurred by the assessee, a pharmaceutical company, by invoking the Expln. to section 37(1) and considering the said expenditure to be incurred for

a purpose which is prohibited by law being the Medical Council regulation. Tribunal noted that the Medical Council regulation which limits/curbs/prohibits incurring any development or sales promotion expenses is applicable to medical practitioners, not to Pharma or allied health care companies and that the CBDT Circular No. 5/2012, dated 1-8-2012 under which CBDT had stated that the said regulation is applicable to pharmaceutical company cannot impose a burden on the assessee by enlarging the scope of a different regulation issued under a different Act and in any case cannot be reckoned retrospectively (year under appeal being AY 2011-12). Tribunal also noted that the expenditure was incurred for conferences and seminars of doctors organized with the main object to update them about latest developments in medical research and create awareness about new research, which was beneficial to doctors in treating patients as well as to pharmaceutical companies in promoting sale and brand

***Solvay Pharma India Ltd. v Pr.CIT - (2018) 169 ITD 13 (Mum) - ITA No. 3585 (Mum) of 2016 dated 11.01.2018***

**612.** The Tribunal allowed the assessee deduction u/s. 37 for penalty paid by the assessee to Slum Rehabilitation Authority (SRA) observing that the penalty was paid for regularization of certain construction work within the permissible byelaws of concerned authority and not for infringement or violation of any law. It noted that during the year the assessee had commenced certain construction work before obtaining commencement certificate due to reasons beyond its control as there was an ambiguity in demarcation of the Coastal Regulation Zone, which was later clarified by the Maharashtra Coastal Zone Management Authority from the National Institute of Oceanography and after due survey and demarcation, assessee was granted commencement certificate on payment of necessary fees and accordingly observed that the violation was not an offence under the Act.

***Lokhandwala Shelters (I) Pvt Ltd - TS-119-ITAT-2018(Mum) - I.T.A No.5000/Mum/2015 dated 09-03-2018***

**613.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for deduction u/s 37(1) with respect to certain amount paid to National Pharmaceuticals Pricing Authority (NPPA) being the excess price charged by the assessee on sale of certain medicine/ drug, which was disallowed by the AO considering the same to attract Explanation 1 to section 37(1) i.e. dealing with payment for any purpose which an offence or prohibited by law. The Tribunal relied on its decision in the assessee's own case for an earlier year, wherein after perusal of the relevant provisions of The Essential Commodities Act, 1955, it was held that there are separate provisions for penalty and interest and the amount paid by the assesssee to the NPPA was the refund of excess price and, hence, there was no violation and infringement of any law or Government's order.

***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. JOHNSON & JOHNSON LTD. & ANR. - (2018) 53 CCH 0174 (Mum Trib) - ITA Nos. 1776 & 1777/M/2017 (CO No. 242/M/2017) dated June 18, 2018***

**614.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee' claim for deduction u/s 37(1) with respect to payment made by the assesse, branch of a foreign bank, to Clearing Corporation of India on account of short position on security deal, which was disallowed by the AO considering the same to be in nature of penalty and thus attracting

Explanation 1 to section 37. Noting that the assessee was required to maintain certain limit with CCIL, however, due to shortage in that limit the said payment to made to CCIL, it held that the same appeared to be compensatory in nature. Further, the Tribunal also held that the CIT(A) had rightly observed that the AO had not established on record that the payment was on account of an offence or was prohibited by law.

The Tribunal also dismissed the revenue's appeal against the CIT(A)'s order allowing deduction claim by the assesse on account of revaluation of forward contract, being stock-in-trade for the assesse, following the order in assessee's own case for an earlier year wherein the issue was decided in favour of the assesse following the decision in the case of CIT. Vs. Woodward Governor India Private Limited (312 ITR 224) wherein it was held that adjustment on account of foreign exchange fluctuation could be made on each balance-sheet date in respect of any forward foreign exchange contract pending actual payment and any loss arising there from had to be allowed as an item of expenditure u/s 37(1).

***ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. DBS BANK LIMITED & ORS - (2018) 53 CCH 0167 (Mum Trib) - ITA No. 6865/Mum./2012, 6037/Mum./2014, 4949/Mum./2014, 6038/Mum./2014, 4948/Mum./2014 (C.O. No.8/Mum./2014) dated June 15, 2018***

**615.** The Tribunal allowing the deduction under section 37 to the assessee (Pharma Company) in respect of freebies given to doctors held that since the MCI Regulation 2002 provides limitation/curb/prohibition only for medical practitioners and not for pharmaceutical companies, the payments were not made in violation of MCI regulations. Nowhere the regulation or the notification mentions that such a regulation or code of conduct will cover pharmaceutical companies or health care sector in any manner.

***PHL Pharma P ltd [TS-12-ITAT-2017(Mum)]***

**616.** The Tribunal allowed the appeal of assessee, a pharmaceutical company eligible for deduction u/s 80-IB(4), against the disallowance of Sales Promotion expenses made by the AO on the ground that the CBDT Circular dated 01.08.2012 states that the said expenses (which represent gift or freebies to doctors & medical professional)s were prohibited by the Notification issued by Medical Council of India (MCI) and thus, not eligible for deduction u/s 37(1) being expense prohibited by law, relying on the decision in the case of DCIT v PHL Pharma Pvt. Ltd. (49 CCH 124) and Solvay Pharma India Ltd. v CIT [ITA No.3585/ Mum/2016] wherein it held that the circular issued by the CBDT enlarging the scope of disallowance to the pharmaceutical companies was without any enabling notification or circular of the MCI and, thus, the pharmaceutical company like the assessee were outside the scope of the circulars by the MCI or the CBDT.

***EMCURE PHARMACEUTICALS LTD. v DCIT – (2018) 62 ITR (Trib) 0744 (Pune) – ITA No.1532/PUN/2015 dated 29.01.2018***

**617.** The Tribunal held that compounding fees paid by the assessee to the RBI for regularizing ECBs from unrecognized overseas lender was not hit by section 37(1) and therefore deductible since it was a compensatory payment and not by way of penalty levied under FEMA. It noted that the assessee had not committed any offence and the compounding fee was not paid for any contravention of law.

Go to Index

***EON Hadaspar Infrastructure Pvt Ltd v ACIT – TS-268-ITAT-2016 (Pun)***

» *Capital or Revenue in nature*

**618.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that construction made on a leased-out property cannot be treated as capital expenditure in hands of lessee.
***Dy. CIT v. Indus Motors Co. (P.) Ltd. [2018] 257 Taxman 559 (SC)/ [2018] 257 Taxman 259 (SC) - Special Leave Petition (Civil) Diary No. 22636 of 2018 dated July 23, 2018***

**619.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that expenses incurred by assessee on showroom/service stations which were written off/discarded since business had not commenced could not be treated as capital loss. It further held that if business was commenced, expenses would have to be treated as revenue expenditure; merely because assessee could not commence business it could not be treated as capital loss.
***Dy. CIT v. Indus Motors Co. (P.) Ltd. [2018] 257 Taxman 559 (SC)/ [2018] 257 Taxman 259 (SC) - Special Leave Petition (Civil) Diary No. 22636 of 2018 dated July 23, 2018***

**620.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that expenditure on mere improvisation in process and technology in some areas supplemental to existing business, there being no new or fresh ventures, is revenue in nature and whereunder an agreement, the assessee company had obtained a technology which would enable the assessee to update and improve its current process of manufacturing laminates, payment made towards acquisition of said technology was to be allowed as revenue expenditure.
***Pr.CIT v. Bombay Burmah Trading Corpn. Ltd. [2018] 95 taxmann.com 141/256 Taxman 393 (SC). Special Leave Petition (Civil) Diary Nos. 18622 of 2018 dated July 3, 2018***

**621.** The Apex Court dismissed the Revenue's Special SLP against Karnataka HC ruling wherein it was held that payments for domestic customer database and transfer of human skills amounted to revenue expenditure as the payment was made for the use and not for acquisition of the database.
***CIT vs. IBM Global Services India Private Ltd. TS-49-SC-2017 SLP 19012/2014 dated 10.02.2017***

**622.** The Apex Court dismissed the SLP filed by the Revenue and upheld the decision of the High Court wherein it was held that expenses incurred for buy back for shares were to be treated as revenue expenses and thus allowable, as the consequence of buy back of shares is that the capital base of the company is reduced and the capital structure goes down which is not of any enduring benefit so as to bring the expenditure incurred as a capital expenditure. It held that where there was no flow of fund or increase in the capital employed, the expenditure incurred would be revenue expenditure. Accordingly, the reliance placed by the Revenue on Brooke Bond India Ltd v CIT (TS-15-SC-1997) was dismissed.

Go to Index

***CIT v Motor Industries – TS-671-SC-2015***

**623.** The Apex Court granted SLP to the Revenue against the High Court order wherein the High Court had held that (i) expenditure incurred for refurbishing, repairing and making improvements of a leasehold building for purpose of carrying on day-to-day business was revenue expenditure (ii) construction made on a leased out property could not be treated as capital expenditure in hands of lessee (iii) expenses incurred by assessee on showroom/service stations which were written off/discarded since business had not commenced could not be treated as capital loss.
***DCIT v Indus Motor Co. (P.) Ltd [2018] 96 taxmann.com 494 (SC) - SLP (CIVIL) DIARY NO.(S) 22636 OF 2018 dated July 23, 2018***

**624.** The Court held that whether a particular payment made towards technical know-how fee or royalty to a foreign company in lieu of an agreement would be capital expenditure or revenue expenditure would depend on facts of individual case, and in particular, various terms of agreement involved therein. Accordingly, it held that where on termination of agreement, which was for a period of 5 years, assessee was to return all relevant material related to know-how acquired through the agreement, in such a case, payment towards royalty would be revenue expenditure and not capital.
***UPCOM Cables Ltd [(2017) 98 CCH 0024 AllahabadHC***

**625.** Where the assessee had issued additional shares to the Indian public for reducing the percentage of foreign shareholding in compliance with the directions of the Government to avoid discontinuation of its expansion plan and incurred expenses in relation to such issue of additional shares, the same was capital in nature and was not allowable as deduction under section 37(1) of the Act.
***Hindustan Lever Ltd v CIT – TS-516-HC-2016 (Bom)- Income Tax Reference No.185 of 1999***

**626.** The assessee was engaged in the business of providing various expert advisory and other security related services across the globe. It claimed as revenue expenditure the amount paid to its associate company (G4S) for providing various expert advisory and other security related services and knowhow including use of trademarks as evidenced by agreement. The AO disallowed the assessee's claim treated the amounts paid to G4S as amounts paid for usage of trade name, thus as capital expenditure. The CIT(A) held that the expenditure could neither be considered as revenue or capital as assessee had failed to explain as to how the technical knowhow, operational process, finance manuals and, risk management which had been acquired from G4S, had been used in its business. The Tribunal held that as the assessee had failed to explain how the agreement entered into by it with G4S had facilitated its business, the expenses could not be allowed as business expenditure not being expended wholly and exclusively for business purposes. The Court concurred with the findings of lower authorities and held that mere entering into an agreement without being actually put to use cannot lead to the conclusion that the payment made under the Agreement was for knowledge to be used in its business. Thus, it dismissed the assessee's appeal.
***Monitron Security (P.) Ltd. v CIT [2018] 96 taxmann.com 276 (BombayHC) – ITA Nos. 72 AND 76 OF 2016 dated July 24, 2018***

Go to Index

**627.** The Court upheld the order of the Tribunal allowing software expenses incurred by assessee to upgrade computer software which brought greater efficiency in functioning of assessee's business as Revenue in nature considering that in view of fast changing technology, software had to be regularly updated so as to keep pace with the changing technology. Further, the Court upheld the order of the Tribunal allowing expenditure incurred by assessee in respect of health and safety measures for benefit of its employees to foster a safe working environment as Revenue expenditure. It held that the test of one-time payment was not the sole test to determine the nature of expenditure. Further, the test of enduring benefit in this case would not apply for the reason that the expenses assisted in providing a hassle free environment for smooth running of business. The expense did not add to or expand the profit making apparatus of the assessee.

***PCIT v. Holcim Services (South Asia) Ltd. – [2018] 93 taxmann.com 270 (BombayHC) – IT Appeal No. 73 of 2016 dated April 25, 2018***

**628.** The assessee-company was a sub-lessee of a business premises, which was further sub-let to 'S'. Subsequently, the assessee decided to use said premises for its own business purpose and filed a suit for eviction of 'S'. During pendency of said proceedings parties arrived at settlement in terms of which assessee agreed to pay certain lump sum amount to 'S' in order to obtain vacant and peaceful possession of property. In course of assessment, the assessee claimed deduction of payment made to 'S' as business expenditure. The Revenue authorities rejected assessee's claim taking a view that payment in question was capital expenditure. Tribunal confirmed order passed by authorities. The Court held that it was just not established how the business of the assessee was perceived to grow out of the property acquired by them by negotiating the eviction of the said occupants, in fact, through the negotiation the assessee had acquired some kind of enduring right of possession over the occupied area of premises surrendered to them by occupant which had the incidents of permanence. Thus, it held that the Revenue had rightly concluded that the expenditure was capital in nature and accordingly it dismissed the assessee's appeal.

***United Spirits Ltd. v CIT [2018] 96 taxmann.com 259 (CalcuttaHC) - IT APPEAL NO. 12 OF 2006 dated July 20, 2018***

**629.** Where revenue challenged order passed by Tribunal allowing assessee's claim of sales commission paid to 'M', an agent in Iraq, on ground that his name figured in Volker Commission Report and payment of commission was not authorised by U.N., the Court held that since question as to whether particular person was or was not an agent and as to whether he was paid commission was a pure question of fact, impugned order passed by Tribunal did not require any interference.Further, held that even though computer software is treated as a capital asset and is amendable to depreciation, yet consultancy charges on account of drawings and designs prepared by a particular agency in respect of computer software cannot be treated as capital expense

***PCIT v TIL Ltd. [2018] 93 taxmann.com 394 (CalcuttaHC) – ITA NO 504 OF 2007 dated 03.05.2018***

Go to Index

**630.** The assessee-company had several units engaged in different business and stated that its income/expenses were not furnished on unit-wise basis since all the units together carried on business. In the AY under consideration, assessee incurred expenses on restructuring its business & claimed deduction regarding the said expenditure as revenue expenditure. The Tribunal allowed assessee's claim, after considering the facts and relying on a Punjab & Haryana High Court decision (details of which were not given by the Tribunal in its own judgement).The Court held that since the issue whether the restructuring of expenses could, in the circumstances, be treated as a revenue expenditure/capital expenditure was a question of 'fact' and the Tribunal had taken relevant facts into considerations and noticed the law applicable, the impugned order did not call for any reconsideration. Accordingly, it dismissed the revenue's appeal.
***PCIT v Akzo Noble India Ltd. [2018] 94 taxmann.com 38 (CalcuttaHC) – ITAT NO. 414 OF 2016 dated 15.05.2018***

**631.** Where lease compensation charges claimed by the assessee u/s 37(1) were treated as capital expenditure by the AO, the Court held that while a new asset was acquired, it was for the purpose of the expansion of the existing business of the assessee and not for the development of a new line of business and thus the charges paid were consequently allowable u/s 37 of the Act being wholly revenue in nature. The Court, accordingly, upheld the order of Tribunal in favour of the assessee.
***Commissioner of Income Tax v. Alankar Business Corporation Ltd - (2017) 98 CCH 0160 ChenHC (TCA No. 2695 of 2016)***

**632.** The Court held that non capital expenditure incurred after the expiry of life span of a machinery to the extent it was on account of current repairs was allowable u/s 31 and the balance to the extent it was not covered u/s 30-36 of the Act was allowable u/s 37 so long as the machinery was not replaced and the expenditure was only to preserve and maintain existing assets.
***CIT vs. Neyveli Lignite Corporation Ltd - [2016] 95 CCH 122 (ChennaiHC).***

**633.** The Court upheld the Tribunal Order holding that where pursuant to agreement entered into with DTC for developing maintaining and operating of Bus-Q-Shelters, assessee furnished bank guarantee as performance security, in view of fact that due to assessee's failure to performs its part concessionaire agreement, DTC encashed bank guarantee, amount so paid was to be regarded as revenue in nature allowable under section 37(1).
***Principal CIT v. Green Delhi BQS Ltd. [2018] 99 taxmann.com 38/259 taxmann 153 (DelhiHC)-ITA No. 1067 of 2018-October 5, 2018***

**634.** The Court held that where under a licence agreement between assessee and HRL, assessee was granted exclusive right to use trademark 'Hilton' for 10 years against running royalty on sale as well as one time royalty of Rs. 1 crore, since mark 'Hilton' did not belong to assessee and benefit of use of trade mark had inured to licensor, payment of Rs. 1 crore ought to be treated as revenue expenditure.
***Hilton Roulunds Ltd. v Cit [2018] 92 taxmann.com 268 (Delhi) – ITA NO 325 OF 2005 dated 20.04.2018***

Go to Index

**635.** The Court held that the amount of Rs. 5 lakhs paid to National Stock Exchange (NSE) by the assessee-company(engaged in share trading, merchant banking) was 'capital' in nature' as it represented procurement of a permanent right in the form of a license to carry on trade which enabled assessee to do business in future. The assessee had paid the aforementioned amount to NSE as a non-adjustable deposit for acquisition of membership and treated the same as revenue expenditure but the AO held that the payment was non-recurring in nature giving rise to an enduring benefit and therefore would qualify as capital expenditure. Relying on the SC ruling in Techno Shares and Stocks Limited wherein it was held that membership card enabled an assessee to trade as a stock-broker and hence, such a membership was a business or a commercial right in the nature of license u/s 32(1)(ii), it held that there could not be any doubt that one-time and lump-sum payment made to acquire membership right by a company or person engaged in business of trading in stocks, brings into existence an asset or an advantage of enduring nature and therefore held that the payment was capital in nature.
***Abhipra Capital Ltd [TS-80-HC-2018(DEL)] - ITA 676/2005 - 15th February, 2018***

**636.** The assessee bank incurred expenditure towards acquiring various categories of software and claimed deduction u/s 37(1) on the ground that the expenditure was revenue in nature. The AO denied the deduction claimed by the assessee on the ground that the expenditure was capital in nature as it conferred enduring right upon the assessee. The order of the AO was affirmed by the CIT (A) and the Tribunal. The assessee preferred an appeal before the High Court. The Court noted that the nature of articles acquired were licenses to use software and the same could not confer an enduring right on assessee. The Court held that the objective of the assessee was not to carry on software business, rather to use it as a tool to maximize the performance and to streamline the efficiency. Accordingly, the claim of the assessee for deduction of software expenses u/s 37(1) was allowed.
***Oriental Bank of Commerce v. ACIT - [2018] 93 taxmann.com 432 (DelhiHC) - IT APPEAL NOS. 414, 415 OF 2017, 56 & 129 OF 2018 dated APRIL 17, 2018***

**637.** During reassessment proceeding, AO noted that assessee had paid an amount to M/s E for using their brand name on oil-filters.Payment was also made to T and M&M for using their trademarks and names on oil-filters.Without any discussion on nature and character of royalty payments, AO held same to be as capital expenditure on which depreciation @25% should be allowed.Accordingly addition was made by AO.CIT(A) deleted such addition on ground that assessee had not acquired any exclusive rights to manufacture or sell products for which royalty was paid.Royalty was paid for use of trademarks and names belonging to a third party which had directly increased turnover, business and profits. The Tribunal confirmed findings of CIT(A). The Court held that Revenue cannot prefer an appeal in absence of any discussion and factual findings recorded by AO who had merely referred to case law. Accordingly, Revenue's ground was dismissed.
***Pr. CIT vs. ELOFIC INDUATRIES LTD. (2018) 103 CCH 0322 DelHC ITA 1472/2018 dated 19.12.2018***

**638.** The Court held that where for a period of 10 years assessee paid royalty to a foreign company for acquiring technical know-how in respect of construction management services, since in

terms of agreement, assessee did not become owner of said technical know-how, amount in question was to be allowed as revenue expenditure.
***CIT-III v. SMCC Construction India Ltd., [2015] 61 taxmann.com 202(DelhiHC), ITA Nos. 439, 511, & 526 of 2014, dated July 3, 2015***

**639.** The Court held that Development charges incurred on research and testing of components should be allowed as revenue expenditure.
***CIT v. JCB India Ltd. [2016] 71 taxmann.com 30(DelhiHC), ITA Nos.195 & 202 of 2014 dated July 16, 2015***

**640.** The Court denied the assessee deduction of payment of non-compete fee to one of its competitors viz. SML, pursuant to acquisition of one of its units, holding it to be capital in nature. On examination of the agreement, it further held that the amount paid by the assessee was not merely payment towards non-compete but also towards various obligation and covenants imposed upon SML, thus ensuring smooth process of acquisition. Further, it held that since SML had not even commenced manufacturing, there was no need to pay the non-compete fee and accordingly held that the non-compete obligations were illusory in nature.
***GKN Driveline India Ltd – TS-553-HC-2017 (Del) ITA 542/2005 dated 27.11.2017***

**641.** The Court held that where assessee incurred expenditure on product development and claimed deduction for same under section 37(1), in view of fact that expenditure so incurred did not involve development of a new product or even a new technique or technology to manufacture existing product more efficiently rather it was aimed at improving quality of existing product of assessee, assessee's claim for deduction was to be allowed.
***CIT v Arvind Products Ltd. [2018] 93 taxmann.com 454 (GujaratHC) – TAX APPEAL NO. 1389 OF 2007 dated 02.05.2018***

**642.** The Court held that expenditure incurred on renovation of hotel rooms, conference halls etc were to be considered as revenue expenditure and therefore allowed the assessee the deduction. Relying on the decision of the Apex Court in Empire Jute Ltd (124 ITR 1)(SC), it held that expenditure incurred for obtaining an advantage of enduring benefit could be considered as revenue if the nature of the advantage merely facilitated the trading operation of the assessee or enabled more efficient conduct of business.
***CIT v Cama Hotels Ltd – (2015) 235 TAXMAN 0206 (GujaratHC)***

**643.** The Court held that expenditure incurred by the assessee on software development services which were in nature of maintenance and support services providing essential backup to the assessee, who had procured software for its business purpose, was to be allowed as deduction under Section 37(1) and could not be considered as a capital expenditure.
***Pr CIT v Kitchen Express Overseas Ltd - [2018] 89 taxmann.com 407 (GujaratHC) - TAX APPEAL NO. 966 of 2017 dated 06.12.2017***

**644.** The Court held that where the expenditure was incurred by assessee (in the business of mining iron by taking lands on lease from the SG) towards legal fee and other litigation charges to protect its business interests in relation to mining lease and not to acquire mining lease or to

get rid of a defect in title, the same did not create any capital asset and expenditure was allowable as revenue expenditure. The Court noted that the the grant of the lease was challenged in writ petitions before the Court and the Assessee was made a respondent and in order to sustain the lease and protect its mining rights the Assessee had to incur legal fees and other allied expenditure.

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

**645.** The Court upheld Tribunal's order holding that the expenditure incurred towards purchase of software used in the assessee's business of banking was allowable u/s 37(1) as revenue expenditure, relying on the Apex Court ruling of Empire Jute Co. Ltd. v. CIT [1980] 124 ITR 1 (SC) wherein it was held that not every advantage of enduring nature is capital in nature and if advantage consists merely in facilitating assessee's trading operations or enabling management and conduct of assessee's business to be carried on more efficiently or more profitably while leaving fixed capital untouched, expenditure would be on revenue account, even though advantage may endure for an indefinite future. The Court also accepted the assessee's submission that in view of the advanced technology software become obsolete within short intervals and thus, held that the expenditure incurred by assessee towards software expenses was to be treated as a revenue expenditure and not as capital expenditure.

***CIT v Lakshmi Vilas Bank Ltd - [2018] 97 taxmann.com 105 (MadrasHC) - TAX CASE (APPEAL) NOS. 210 AND 211 OF 2018; C.M.P. NOS. 3371 AND 3372 OF 2018 dated July 24, 2018***

**646.** The Court allowed the assessee's appeal for deduction u/s 37(1) with respect to amount paid by the assessee-company (a television broadcasting co.) as non-compete fees to one of its directors for not competing with the assessee's business for 5 years, rejecting the revenue's plea that the said payment was a capital expenditure. It held that the assessee had not acquired any new business, profit making apparatus had remained the same, the assets used to run the business remained the same and there was no new business or no new source of income, which accrued to the assessee on account of the said payment. With respect to Revenue's contention that the assessee itself had amortised the payment and treated it as capital expenditure in the books, the Court held that the entries in the books were not relevant and, moreover the assessee had treated it as 'deferred revenue expenditure'.

***M/s.Asianet Communications Ltd. v CIT - [TS-429-HC-2018(MAD)] - Tax Case (Appeal) No.174 of 2005 dated June 26, 2018***

**647.** An Appeal was filed before the Court by the assessee against the order of the Tribunal for disallowing the expenditure incurred in connection with the share issue by the assessee without considering the nature of expenditure. The Court upholding the decision of the Tribunal held that the expenditure incurred by assessee in connection with share issue was capital in nature as the assessee had not furnished the breakup details of such expenditure before the Court or the Tribunal.

***Sterling Holiday Financial Services Ltd. v. ACIT - [2018] 93 taxmann.com 60 (Madras) - Tax Case (APPEAL) No. 564 of 2008 dated April 3, 2018***

Go to Index

**648.** The Court held that expenditure incurred by assessee-corporation to maintain Thiruvalluvar statue at kanya kumari, was revenue expenditure allowable under section 37(1) since the said statute was neither on the asset side of the assessee-corporation now owned by it. Also the expenses incurred in maintaining of the statue, was an expense incurred in consonance with the activities of the business of assessee ,conducting tours, operation of hotels and exhibition, etc corporation and such activity could not at any stretch of imagination be termed as capital expenditure.
***CIT v. Tamil Nadu Tourism Development Corporation Ltd – (2016) 71 taxmann.com 333 (MadrasHC) - TC APPEAL NOS. 321 & 322 OF 2016***

**649.** Where assessee-company had entered into an agreement to take over business of a proprietory concern and in terms of the agreement only a license to use copyright was granted to assessee, the Court held that since the assessee had not acquired copyright itself, the license fee paid by assessee was allowed to be deducted as revenue expenditure.
***Pr.CIT v Mobisoft Tele Solutions (P.) Ltd. – (2018) 90 taxmann.com 383 (P&H HC) – ITA No. 434 of 2015 dated 22.02.2018***

**650.** Where the assessee made payment on account of royalty for use of brand name, the Court noting that only license to use copyright was granted to assessee company and that the assessee company had not acquired copyright, held that license fee paid was revenue expenditure. It held that the assessee did not own any copyright and was only granted license to use the same.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. MOBISOFT TELE SOLUTIONS (P) LTD. - 2018) 101 CCH 0157 PHHC-HC - I.T.A. No. 434 of 2015 (O&M) dated Feb 22, 2018***

**651.** AO made addition- on consumption of spares to machinery holding by treating same as capital expenditure which was deleted by the CIT(A) who held that consumption of machinery spares was allowable as revenue expenditure as there was no creation of any new asset which was capable of working independently and that no enduring benefit had been derived by assessee by such expenditure. The Tribunal upheld the order of the CIT(A) allowing the said expenditure by holding that where expenditure is incurred to preserve and to maintain an already existing asset then expenditure incurred by assessee are in nature of current repair allowable as revenue expenditure.
***BANCO ALUMINIUM LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR - ITA No. 276/Ahd/2015, 282/Ahd/2015 dated 29.09.2017***

**652.** The Tribunal held that where assessee-real estate developer engaged services of a company for purpose of corporate brand identity exercise, logo design and collateral design, since said service was not attributable to any particular project, payment for said service to be allowed as revenue expenditure.
***Indiabuild Villas Development (P.) Ltd. v. Dy. CIT, Circle 3(1)(1), (Bang)-ITA No.2242(Bang) of 2018-dated October 3,2018***

Go to Index

**653.** The Tribunal held that where assessee had engaged professionals for carrying out Liaoning work in relation to a particular project, these expenses had to be capitalised to concerned project.
***Indiabuild Villas Development (P.) Ltd. v. Dy.CIT, Circle 3(1)(1), (Bang)-ITA No.2242(Bang) of 2018- dated October 3, 2018.***

**654.** The Tribunal allowed the assessee's claim for deduction u/s 37(1) with respect certain expenses written off by the assesse (involved in the business of establishing, running and managing hospitals) which were in the nature of preoperational and infrastructural expense, incurred for expansion of an existing hospital with respect to which it had entered into a collaboration with another company, rejecting Revenue's contention that the said expenses were capital in nature. It held that carrying out expansion of existing hospital property of the trust for the purpose of running and operating of the same on a revenue share basis was part of the routine business activity of the assesse. The Tribunal thus held that the expenditure incurred was on account of the project which was finally abandoned without acquiring any new asset for enduring benefit and, therefore, the entire claim was allowable as revenue expenditure. However, noting that the CIT(A) had spread over the entire claim for 5 years and allowed 1/5th of the claim in the impugned assessment year and these findings were not challenged by the assesse, it confirmed the CIT(A)'s order.
***MANIPAL HEALTH SYSTEMS PVT. LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0263 BangTrib - ITA Nos. 1551/Bang/2016, 1552/Bang/2016, 1667/Bang/2016, 1668/Bang/2016, 1557/Bang/2016, 1558/Bang/2016, 1076/Bang/2017, 1208/Bang/2017, 1209/Bang/2017 dated June 27, 2018***

**655.** The assessee engaged in the business of wholesale trade acquired goods from various people and sold the same to retail sellers who subsequently sold the goods on 'Flipkart.com'. The goods sold to the retailers by the assessee was at a price less than the cost price and the AO was of the view that the action of the assessee was not a normal business activity thereby calling upon calling upon the assessee to explain the purpose of selling the goods at a price less than the cost. The plea of the assessee was that the sale at a discounted price was to increase the volume of sales but the same was not accepted by the AO who opined that the strategy of selling goods at a lower price was done to establish goodwill and reap the benefits in the later years. In view of the same, the AO regarded the predatory pricing as capital expenditure and disallowed the deduction. The Tribunal reversing the decision of the AO and the CIT (A) held that the taxing authorities could not take into account the market price of the goods to ascertain profit from the transaction in cases where the trader transfers his goods at a price less than the market price, if the transaction was a bona fide one. The Tribunal further held that the assessee had not incurred any expenditure to acquire marketing intangibles or for creation of goodwill thereby setting aside the order passed by the AO.
***Flipkart India (P.) Ltd. v. ACIT - [2018] 92 taxmann.com 387 (Bangalore - Trib.) - IT APPEAL NOS. 202 & 693 (BANG.) OF 2018 dated APRIL 25, 2018***

**656.** The Tribunal held that the expenditure incurred by the assessee from the capital grant received by the government could not be treated as revenue in nature as it was for the development of technologies or design for manufacture which amounted to a capital asset and therefore the

claim of the assessee for deduction of these expenses was inadmissible. However, it held that the assessee's alternate claim of deduction under section 35(1)(iv) (towards capital expenditure on scientific research related to the business of the assessee) could not be denied merely because such claim was not made in the return of income and accordingly remitted this issue to the file of the AO.

***Hindustan Aeronauticals Ltd v ACIT – TS-240-ITAT-2016 (Bang)***

**657.** Where the assessee made a lumpsum payment to the Government for the acquisition of mining rights and debited the proportionate expense to the Profit and loss account claiming it to be a revenue expenditure, the Tribunal relying on the decision of the Apex Court in Aditya Minerals Pvt. Ltd. v. CIT [1999] 239 ITR 817/103 Taxman 464, held that the payment was made for acquiring right to excavate the minerals and not for acquiring minerals and therefore was capital in nature. Accordingly, it upheld the order of the AO disallowing the said expense. Further, it held that since the payment was capital in nature, expenditure could not be allowed on staggered basis either.

***ACIT v K.R. Kaviraj - [2018] 89 taxmann.com 133 (Bengaluru – Trib) - IT APPEAL NOS. 362 to 366 (BANG) OF 2016 dated 26.12.2017***

**658.** The Tribunal dismissed assessee's appeal and upheld the DRP's treatment of foreign exchange loss incurred in respect of advances received as capital as there was no material or evidence placed before it to demonstrate whether advances were in nature of revenue.It also noted that though the DRP had agreed in principle that if the losses pertained to trading item, revenue account or trading account or circulating capital of business would be revenue in nature in light of the Apex Court ruling in CIT v Woodword Governor India Pvt. Ltd but the DRP treated the same on capital account and disallowed the amount in the absence of details.

***EIT Services India Pvt. Ltd v ACIT EIT Services India Pvt. Ltd. (formerly known as Hewlett Packard Global Soft Pvt. Ltd. [TS-612-ITAT-2018(Bang)-TP] IT(TP)A No.1394/Bang/2012,ITA No.1332/Bang/2010 and IT(TP) A No.163/Bang/2012 dated 28.06.2018***

**659.** The Tribunal allowed the assessee deduction u/s. 37(1) for advertisement expenditure incurred for brand building of "Jansons" and held that it was revenue in nature. It rejected Revenue's stand that expenditure for building brand name would definitely increase the value of brand and thus, being an intangible asset, was capital in nature and remarked that even though there was incidental increase in brand value by way of advertisement, the real benefit was only to carry out the business in an effective and profitable manner. Following the decision of the Apex Court ruling in Empire Jute Co. Ltd, it held that a mere incidental benefit or enduring benefit or commercial advantage could not result in disallowing the claim of the assessee. It concluded that the impugned expenditure incurred by the assessee was in the course of earning of profit without touching the capital asset and accordingly allowed the assessee's claim.

***Jansons Industries Ltd. vs. ACIT - TS-79-ITAT-2018(CHNY) - ITA Nos.613, 614 & 615/Mds/2017 dated 08.02.2018***

**660.** The Tribunal dismissed assessee's appeal field against the CIT(A)'s order upholding the disallowance made by the AO by treating the amount paid by the assesse towards part

expenses and as part damages for non-performance of contract / MOU (which the assesse had entered into with another entity for purpose of creation of joint venture for putting up constructions on properties owned by assesse) as capital expenditure not allowable as deduction. It was held that since the MOU had been entered into by assessee for the purpose of creation of joint venture vehicle for putting up constructions on properties to be taken on lease from assesee, it was a new business line and thus the amount payable by assessee on account of violation of conditions of MOU (which also led to cancellation of the same) was nothing, but loss of capital and not revenue expenditure.

***EXPRESS NEWSPAPERS PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0144 (Chen Trib) - ITA NO. 1417/CHNY/2017 dated Jun 12, 2018***

**661.** The Tribunal dimissed Revenue's appeal against CIT(A)'s order allowing deduction of expenditure incurred towards purchase of music rights, rejecting AO's action of treating it as copyright in the nature of capital asset. It noted that the assessee had made a single lump-sum payment and the expenditure had short shelf-life and would generate insignificant revenue streams in the future period. The Tribunal relied on co-ordinate bench ruling in ACIT v. Sun TV Network Ltd (I.T.A Nos 1515 to 1520/MDS/2013) wherein expenses for cost of movie & serial rights, programme production expenses were held to be revenue in nature and thus allowable.

***ASSISTANT COMMISSIONER OF INCOME TAX v SPI MUSIC PVT. LTD [TS-685-ITAT-2018(CHNY)] - ITA No. 1883,1884,1885,1886/CHNY/2018 dated 20.11.2018***

**662.** The AO had disallowed the research and development expenditure on the ground that it was capital in nature. However, as the assessee's contention was that it had rendered research and development services against which it had earned revenue income, the Tribunal restored the issue to the AO to examine the same afresh.

***Bloom Energy India Pvt. Ltd v DCIT [TS-626-ITAT-2018(CHNY)-TP] ITA No.2857/Chny/2017 dated 20.06.2018***

**663.** Assessee paid royalty amounting to Rs. 6,791,180,556/- to Suzuki Motor Corporation, Japan ('SMC') for use of licensed information for engineering, design and development, manufacture, testing, quality control, sale and after sales service of products and parts. Such payment was claimed as revenue expenditure. Though in original return, assessee had claimed running royalty as revenue expenditure and lump sum royalty as capital expenditure, lump sum royalty was claimed as a revenue expenditure through revised return of income. However, AO held that royalty paid by assessee was capital in nature and consequently, held that entire royalty was disallowable. DRP upheld decision of AO. The Tribunal relying on its decision in earlier year held, that amount of royalty considered by AO as capital expenditure should be allowed as a revenue expenditure, and at same time, depreciation allowed by AO on that amount should be taken back. In the earlier year it was held that after going through the relevant clauses of the Agreement, it was concluded that royalty paid by the assessee was for use of licensed information and no part of the same was towards its acquisition as an owner. Thus, it was absolutely clear that the view canvassed by the AO in treating this amount as capital expenditure, was not sustainable.

***Maruti Suzuki India Ltd vs Addnl CIT- (2018) 54 CCH 0095 DelTrib- ITA No 467/Del/2014 dated 17.10.2018***

Go to Index

**664.** Assessee had incurred expenditure on account of software development expenditure. AO held that it had given benefit of enduring nature to assessee therefore same would be capital expenditure. CIT(A) upheld same. The Tribunal held that, expenditure of assessee was product development expenditure and not software development expenditure. Expenditure had been paid as professional fee towards development of new product in unit I related to equipment required by rigs in oil industry. It was not new line of business, but was merely expenditure in development of existing line of business. Assessee was engaged in business of manufacturing of machineries and equipments and development was for same product. Hence, such expenditure could not be held to be capital expenditure, but it was revenue expenditure.
***Nov Sara India Pvt.Ltd. & ANR vs. Addl. CIT & ANR-(2018) 53 CCH 0330 DelTrib. -ITA No.6920(Del) of 2014, 825(Del) of 2015-dated Jul 12, 2018.***

**665.** Assessee made expenditure on construction of external road to factory premises. Ownership of road remained with Government.Assessee claimed for deduction u/s 37(1).AO disallowed same.CIT(A) set aside AO's order. The Tribunal held that, external road to factory premises was constructed/repaired by Assessee for which ownership remains with government.CIT(A) distinguished Travencore Cochin chemical Ltd., 106 ITR case relying upon which AO made disallowance by stating that in this case issue was related to construction of new roads and not repairs of existing roads.CIT(A) further held that road were only being strengthened through RCC, observations of AO were not based on findings regarding ownership of road with assessee or whether new roads had been laid out from scratch Thus Revenue's ground was dismissed.
***DCIT vs Ultra International Ltd – (2018) 54 CCH 0066 DelTrib- ITA No 2609/Del/2015 dated 04.10.2018***

**666.** The assessee company was a joint venture non-banking finance company engaged in issuance, sales and marketing of credit cards and the AO made disallowance on account of card acquisition expenses which was further upheld by the CIT(A). The Tribunal observed that disallowance of card acquisition expenses was squarely covered in favour of assessee in its own case by judgment of High Court for previous AY wherein the High Court held that assessee was entitled to treat the card acquisition expenses as revenue expenditure in view of section 37(1). As the Revenue could not point any difference in facts with the current year, the Tribunal directed to allow entire card acquisition expenses as revenue expenditure.
***SBI cards payment services pvt ltd vs ACIT- (2018) 54 CCH 0109 Del Trib- ITA No 5879/Del/2013 dated 23.10.2018***

**667.** In case of an assessee company engaged in manufacture of footwear, the AO during assessment proceedings examined legal and professional fees paid and it was found that assessee paid sum of Rs. 1660000 as architect fees for construction of building and held that it was part of total capital cost. Thus, architect fees were treated as capital expenditure and addition of same amount was made which was further upheld by CIT(A). The Tribunal on appeal held that they did not find any infirmity in order of CIT (A) who held that legal and professional expenditure incurred by assessee were incurred in relation to construction of building and was capital expenditure, which was not used for purpose of business during year under

consideration. Further, the assessee during appellate proceedings claimed depreciation on above amount therefore it was apparent that expenditure incurred by assessee in form of legal and professional fees paid to an architect was for purpose of construction of building and was capital in nature.

***ACIT vs Lakhani India Ltd. – (2018) 53 CCH 0535 Del Trib- ITA No 3984, 3736/Del/2014 dated 10.09.2018***

**668.** Where the AO had disallowed the payment made by the assessee-employer towards insurance premium for family members of the employees, the Tribunal struck down the action of AO holding that insurance premiums of the employees' family members had been paid in terms of employment Rules framed by the assessee and, therefore, it could not be said that the said expenditure were not incurred wholly and exclusively for the purpose of business. Thus, it allowed assessee's claim of deduction u/s 37(1).

***Loesche India Pvt. Ltd. v. Add.CIT [2018] 53 CCH 0441 (DelTrib) - ITA Nos. 295/Del/2016 dated August 13 2018***

**669.** The Tribunal held the royalty payment to be revenue expenditure and not capital expenditure following the co-ordinate bench decision for earlier year in the assessee's own case on identical issue wherein it was held that the factors which pointed towards revenue expenditure (viz. the license was given on non-transferable basis; there was a confidentiality clause prohibiting the assessee from divulging the relevant information during continuation of the agreement or any time thereafter; on the termination of the agreement, respective rights or obligations under the agreement shall cease; and there was no power with the assessee to sub-license) predominantly overshadowed the factors which pointed against revenue expenditure (viz. license was exclusively granted to the assessee and the license was not for a limited period but perpetual). The co-ordiante bench had thus concluded that it was a case of royalty payment in lieu of the 'use of' license devoid of conferring any ownership rights.

***LG ELECTRONICS INDIA (P) LTD. vs. ACIT (2018) 53 CCH 0375 DelTrib – ITA Nos. 3612 & 3613/Del/2017 dated 18th July, 2018***

**670.** The Tribunal dismissed the department's appeal filed against the CIT(A)'s order deleting the disallowance made by the AO with respect to one time "Conversion Charges" paid by assesse to Municipal Corporation for conversion of use of premises from "Industrial Activities" to "Commercial Activity" which was treated by AO to be capital in nature on the ground that such expense would confer enduring benefit to the assesse. It relied on the so-ordinate bench decision in the case of DCIT vs. Haldiram Products Pvt. Ltd. [ITA No. 5158/Del/12] on identical issue wherein also the assessee had paid charges to Munical Corporation for conversion of its outlet from industrial unit to commercial unit outlet in order to save its business and it was held that when the expenditure have been incurred by the assessee at the stage of setting of his business, the same was necessarily capital expenditure, however since the said expenditure had been incurred by making payment to the Municipal Corporation, it could not be of any enduring benefit to the assessee rather it was for regularization of his existing business.

***DCIT v ORIENT FASHION EXPORTS INDIA PVT. LTD. - (2018) 53 CCH 154 (Del Trib) - ITA No. 3813 /Del/2015 dated Jun 14, 2018***

Go to Index

**671.** The assessee, engaged in the business of constructing, operating and running bus shelter, provided bank guarantee as performance security for construction of such shelters. However, the same was encashed due to non-performance and the assessee incurred certain expenditure for restraining such encashment. The assessee also incurred certain expenditure on account of liability towards cancellation of contracts and claimed the same as revenue expenditure. The AO disallowed such expenditure by holding that the same was not recurring and hence should be treated as capital in nature. Relying on the ruling of the Gujarat High Court in Neo Constructo construction Ltd (218 taxman 24), the Tribunal held that such encashment of bank guarantee which was furnished as a performance guarantee due to non-fulfilment of contract by the assessee could be said to be compensatory in nature and same was allowable as business expenditure under Section 37(1) of the Act.
***Green Delhi BQS Limited vs. ACIT – [2018] 53 CCH 0008 (Delhi ITAT) – ITA No 6375/Mum/2016, 6274/Mum/2016 dated May 7, 2018***

**672.** The Tribunal allowed deduction under section 37(1) of the Act for license fees paid by the assessee to a US company for use of software as the assessee was vested with limited rights to use the program and was restricted from making copies of the software and therefore the said payment did not have effect of enduring benefit.
***GE Capital Business Process v ACIT (ITA No 2806 / Del / 2011 and ITA No 2124 / Del / 2013) – TS-598-ITAT-2015 (Del)***

**673.** Where the assessee, a reseller of software developed by its overseas AE, paid its AE 45 percent of the value of sales of the software sold to independent domestic parties as a license fee, the Tribunal relying on its earlier years order in the case of the assessee, held that the AO was unjustified in charaterising the payment as a capital payment for acquisition of intangible asset and denying the assessee a deduction under Section 37. It held that the payment could be considered as cost of goods transferred by the AE to the assessee and therefore would necessarily be a revenue expenditure.
***AIRCOM INTERNATIONAL (INDIA) PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0311 DelTrib - ITA No. 6617/Del/2013 dated Mar 28, 2018***

**674.** The AO disallowed the business expenditure pertaining to the professional charges paid for feasibility study. Aggrieved, the assessee filed an appeal. The Tribunal held that the said issue was decided before in the favour of assessee wherein it was held that expenditure on feasibility study pertained to expansion of business by way of acquisition and thus was allowable as revenue expenditure. It was also observed that no new asset had come into existence.Thus, the Tribunal allowed assessee's appeal thereby allowing the claim of expenditure.
***Minda Industries Ltd & Anr v DCIT & Anr (2018) 52 CCH 0404 DelTrib - ITA No. 4297/Del /2015, 4298/Del /2015, 4299/Del /2015, 4300/Del /2015, 4455/Del /2015, 4456/Del /2015 dated 27.04.18***

**675.** The Tribunal held that the payment of upfront fee by the assessee to the Airport Authority of India for a 30 year period was allowable as a deduction under Section 37(1) of the Act as it was a onetime payment of lease for the entire lease period. It rejected the Revenue's stand that since the assessee got operating charge of the airport under the agreement, the payment was

capital in nature as it was made for acquisition of business resulting in enduring benefit of 30 years. Noting that the lease rent was a nominal Rs.100 per annum, it held that the payment of Rs.150 crore was a one time payment so that the annual lease rent was chargeable at a very nominal rate and held that once a recurring payment towards lease rent was classified as revenue, then even the lumpsum payment for the same purpose had to be given the same treatment as it partook the same character.

***ACIT v Delhi International Airport P Ltd – (2018) 89 taxmann.com 326 (Delhi - Trib.) - IT APPEAL NOS. 2720 (DELHI) OF 2011 & 4202 (DELHI) OF 2013 dated 14.12.2017***

**676.** The Assessee had entered into a trademark and license agreement with its holding company the consideration for which (i) one time initial consolidated fees and (ii) annual recurring license fee payable on basis of net annual turnover. Both the aforesaid payments were disallowed by the AO. The Tribunal rejected the assessee's claim for deduction u/s 37(1) with respect to one time initial consolidated fees paid for use of the trademark in the business, holding the said payment to be in nature of capital expenditure. It was noted that by acquiring the said business right/ license, the assessee could incidentally boost its revenue and that the same had an enduring benefit which would be applicable till the assessee ceased to be subsidiary of its holding company. The Tribunal, however, accepted the assessee's alternative claim for depreciation u/s 32(1)(ii) for such capital expenditure. With respect to annual recurring license fees, it was noted that the said fees was payable on the basis of certain percentage on the net annual turnover and the AO had allowed the same in later two assessment years. Accordingly, the Tribunal held the annual recurring fees to be revenue expenditure allowable u/s 37(1).

***GMR Airport Developers Ltd. v ITO - [2018] 95 taxmann.com 283 (Hyderabad - Trib.) - IT APPEAL NO. 806 (HYD.) OF 2017 dated June 29, 2018***

**677.** Assessee, a private limited company engaged in manufacturing of synthetic yarn, claimed expenditure under the head Repairs & Maintenance. The AO during assessment considered such expenditure to be capital in nature and merely allowed depreciation. The CIT(A) sustained disallowance to the extent of Rs.30,00,000 on grounds that most of expenditure were of revenue in nature except one incurred towards repair of DG sets considering the quantum of amount. The Tribunal held that from details of expenditure filed by assessee it was evident that such expenditure could not be treated as capital expenditure and books of accounts were found to be audited and secondly the assessee company had suffered huge losses year after year hence, there could not be any motive to debit capital expenditure in profit and loss account. Further, it held that repairs of road inside factory after period of ten years could not be treated as capital expenditure and considering quantum of expenditure incurred towards repairs to DG sets, it might be partially capital in nature, hence in interest of justice, sum of Rs.30 lacs was treated as capital expenditure and the file was remitted back to the AO to recalculate depreciation.

***Ritspin Synthetics vs ACIT- (2018) 54 CCH 0024 Indore Trib- ITA 01,89/2016 dated 19.09.2018***

**678.** The AO during the course of assessment proceedings noted that assesse had claimed an amount as financial expense on account of interest on term loan for purchase of land and the

same was disallowed by AO by treating it as capital in nature and the same view was upheld by the CIT(A).

The Tribunal observed that revenue had not disputed that for previous AYs, assessee's claim was accepted u/s 143(1) and therefore, the fact of showing land in question as stock in trade was not in dispute. Further, the Tribunal held that, even if there was no sale transaction after purchasing of land in question, but when the land was shown as stock-in-trade in books of account then, whenever assessee sold the land or any part of the land, same would be business income of assessee and expenditure which was incurred for taking loan for purchase of land could not be disallowed on the ground that after purchasing land, assessee had not carried out any business activity, thus financial expense was an allowable expenditure.

***Model Properties P Ltd vs ACIT- (2018) 54 CCH 0140 Jaipur Trib- ITA Nos 957 & 958/JP/2015 dated 31.10.2018***

**679.** The Tribunal allowed assessee's claim for deduction of value of investment made in subsidiaries written-off on account of non-realisation of value. It held that the said investments were stock in trade since they were made in consonance with main objects stated in memorandum of association of the assessee-company i.e. to promote electronic industry, though they were shown as investment in balance sheet. It also held that objects of the assessee-company also included financing and financing could be by way of lending to parties by way of loans or by way of investing in shares of those companies.

***West Bengal Electronics Industry Development Corp. Ltd vs Dy.CIT & Anr [2018] 53 CCH 0475 (Kol Trib) - ITA NOS. 1981 /KOL /2013 DATED AUGUST 24, 2018***

**680.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing deduction of expenses incurred towards training of man power in BPO-cum-Call Centre activities (being the first year of operation), though they were accounted as deferred revenue expenses as per Company Law. It rejected AO's contention that the expenses were capital in nature, noting that the expenses were mainly incurred for salary, food, transportation, internet charges, etc. and thus revenue in nature. Further, it held that nature of expenses would not change just because assessee had categorized the same in a particular way and accordingly, the said revenue expenses were allowable in the year in which they were incurred.

***ACIT v Citation Infowares Limited [TS-712-ITAT-2018(Kol)] - ITA No.2004/Kol/2017 dated 07.12.2018***

**681.** The Tribunal dismissed the revenue's appeal against the CIT(A)'s order allowing deduction u/s 37(1) with respect expenses incurred by the assesse, running hotel business, for repair and renovation of hotel rooms, which was disallowed by the AO treating the said expense to be capital expenditure considering the fact that the assessee in earlier year had not incurred repair and renovation expense more than 30% of such expenditure. It was noted that the expenses were incurred on rented premises and no new fixed asset came into existence. The Tribunal relied on the decision in the case of New Shorrock Spinning & Manufacturing Co. Ltd. [30 ITR 338 (Bom)] wherein it was held that, "*The simple test that must be constantly borne in mind is that as a result of the expenditure which is claimed as an expenditure for repairs what is really being done is to preserve and maintain an already existing asset. The object of the expenditure is not to bring a new asset into existence, nor is its object the obtaining of a new or fresh*

*advantage. This can be the only definition of 'repairs' because it only by reason of this definition of repairs that the expenditure is a revenue expenditure.*"
***ASSISTANT COMMISSIONER OF INCOME TAX vs. PEERLESS HOTELS LTD. - (2018) 53 CCH 0161 KolTrib - ITA No.1869/Kol/2016 dated June 14, 2018***

**682.** The Tribunal upheld CIT(A)'s order deleting the disallowance made of the AO on account of nursery expenditure incurred by the assessee-company, engaged in growing, manufacturing and selling tea, in relation to initial budding of tea. The AO had held the said expense to be capital expenditure opining that it gave enduring advantage to the assessee for number of years. The CIT(A) noted that the same was for the cost of maintainence and upkeep of immature plants used for replanting and accordingly, he followed the decision in the case of CIT vs.Tasati Tea Ltd (2003) 263 ITR 388 (Cal) wherein similar expenditure was held to be revenue in nature on ground that the maintenance of an area already under cultivation could not be treated to be an expansion of the plantation nor could it be treated as an investment or expansion adding to the capital already invested.
***ACIT vs. GOODRICK GROUP LTD. [2018] 53 CCH 455 (Kol Trib) - ITA No.2086-2088/Kol/ 2016 dated August 17 2018***

**683.** The assessee, engaged in business of cultivation and manufacturing tea, filed it returns claiming deduction of expenditure incurred for acquiring Pollution Control Certificate valid for 3 years. The AO rejected the claim of deduction holding that the certificate being valid for 3 years, it was to be regarded as capital expenditure having enduring benefits and thus disallowed the claim. The CIT(A) confirmed the said disallowance. On further appeal, the Tribunal allowed the assessee's claim holding that even though expenditure in question incurred by assessee for getting pollution control certificate for three years had enduring benefit, same by its very nature was revenue, and thus allowable as deduction.
***Manipur Tea Co. Pvt. Ltd. v ACIT (2018) 52 CCH 0285 KolTrib - ITA No. 1749/Kol/2017 dated 06.04.2018***

**684.** The assessee had claimed deduction for amount paid towards purchase of sales tax exemption certificates. The AO observed that the assessee had not credited the amount of sales tax exemption availed in its P&L A/c and had debited the amount incurred for purchase of the sales tax exemption certificates. Relying on the Mumbai Tribunal's decision in the case of Reliance Industries Ltd reported in 273 ITR 16(Trib) wherein it was held that subsidy from government for setting up industrial unit in backward area was treated as capital receipt. Accordingly, he treated the amount as capital expenditure and as such added the same to the total income of the assessee. The CIT(A) observed that the assessee had shown sales at the gross value including the exemption availed and had claimed the expenditure incurred for the purchase of certificates.
Further, he observed that decision of Reliance Industries was not applicable to the facts of the assessee as in that case the assessee had received subsidy from government for setting up new industrial unit in the specified backward area whereas in the instant case the assessee did not get sales tax exemption due to setting up of any industrial unit or any investment etc and rather, it was a purely commercial transaction. Accordingly, he held that the expenditure was

Go to Index

not a capital expenditure and allowed the claim of the assessee. The Tribunal upheld the order of the CIT(A).
***DCIT vs. ORIENT PAPER & INDUSTRIES LTD. (2017) 50 CCH 0140 KolTrib ITA Nos. 1936 & 1937/Kol/2014***

**685.** Tribunal allowed assessee-bank's claim for deduction u/s 37(1) for amortisation of premium paid for purchase of securities following the Tribunal's order in the assessee's own case for earlier year.
***Allahabad Bank v DCIT – (2018) 169 ITD 189 (Kol Trib) – ITA Nos. 127 of 2011 & 649 (Kol.) of 2013 dated 07.02.2018***

**686.** The Tribunal held that RoC fees paid for increase in authorised capital for issuance of bonus shares was revenue expenditure allowable under section 37(1).
***Olive Bar & Kitchen (P.) Ltd. v. Dy. CIT, 13(1)(1), Mum. - [2019] 102 taxmann.com 98 (Mumbai - Trib.)-IT Appeal Nos. 5097, 5098, 5164 & 5165 (Mum.) of 2017 dated December 5, 2018.***

**687.** The Tribunal held that the expenditure incurred on refurbishing and renovation of space in premises belonging to various entities, to whom the assesee-company provided catering / canteen services, was neither capital expenditure as claimed by the AO nor deferred expenditure as claimed by the assessee. It held that the expenditure incurred by assessee primarily pertained to civil structure needed to facilitate carrying out of catering / canteen services at the leased premises and the same formed part and parcel of assessee's business and that no new asset on capital account came into existence and there was no enlargement of profit making apparatus. The Tribunal also rejected assessee's treatment of deferred expenditure noting that there was no concept of deferred revenue expenditure under the statute and therefore, once the expense was found to be revenue in nature and the genuineness of the same was not doubted, it was to be allowed in the year of incurrence thereof.
***SODEXO FOOD SOLUTIONS INDIA PRIVATE LIMITED & ORS. vs. DCIT & ORS [2018] 53 CCH 0432 (MumTrib) - ITA Nos. 304 & 305/Mum/2014 dated August 08 2018***

**688.** As against the revenue's contention of treating the annual franchise fee paid to BCCI-IPL for Season 1 as capital expenditure, Tribunal allowed deduction of the same as revenue expenditure under section 37(1) after observing that as per the Franchise agreement the payment of the franchise fee for a year vested assessee with a right to participate in the tournament for that year without guarantee that in the future years it would be eligible to participate in the tournament and thus such recurring annual payment neither vested of any right of participation in the subsequent years, nor lead to creation/ownership of an asset or generation of a benefit of an enduring nature in the hands of the assessee. Tribunal, however, after noting that as per the Franchise agreement, the franchise fee was to be paid on the date on which the first match of the league was played, disallowed the deduction of annual franchise fee for Season 2 charged to the financial of relevant previous year on the ground that the same was to crystallize into an expenditure only on such payment date. Tribunal allowed deduction of amount paid to Police Welfare Fund as per the directions of Cricket Association with respect to

Go to Index

security during matches. Tribunal also deleted the disallowance with respect to amount paid for coaching services and other adhoc disallowances.
***Knight Riders Sports Private Limited v ACIT - TS-609-ITAT-2017(Mum) – ITA No. 1307/Mum/2013 dated 29.12.2017***

**689.** The assessee claimed deduction of retrenchment compensation paid to the two outgoing key employees/ directors at the time of severance of their employment relationship with the assessee-company. The same was disallowed by the AO on two ground viz. (i) the payment was capital in nature since it was one-time settlement payment and (ii) on settlement the director's shares were reduced and the shareholding of the holding company of assessee-company had increased. The Tribunal allowed the assessee's claim and held that the compensation was paid in the capacity of employee-employer relationship, which is evident from the appointment letters, being routine business expenditure and could not be termed as capital. Further, it was noted that the holding company had separately purchased the shares from the directors and there was no arrangement as suggested by the AO.
***ACIT v BDS Projects India Private Limited – ITA No. 3737/ Mum/ 2017 dated December 11, 2018***

**690.** The Tribunal allowed the assessee-travel company's claim for deduction u/s 37(1) towards non-compete fees paid to the director /employee of another travel company for not doing similar business for 5 years and towards license fees for use of its brand name for 5.5 years under an agreement entred into with the said travel company. With respect to non-compete fees payment, the Tribunal held that since the payment was made for elimination of competition for short period and neither the assessee had derived any enduring benefit nor any new asset was added, the payment of non-compete fee was in the nature of restricting the director/ employee in exercising their skill and experience in the similar field, and thus, could not be treated as capital expenditure. With respect to license fees payment, the Tribunal held that the said expenditure incurred by the assessee for use of the brand name to leverage and expand business activities in Middle East market to be a revenue expenditure, inter alia relying on the Apex Court decision in the case of CIT vs. IAEC (Pumps) Ltd. [232 ITR 316 (SC)] wherein it was held that the license fee paid for use of patent and design was on revenue account.
***DCIT v SOTC Travel Services Pvt. Ltd. [TS-143-ITAT-2018(Mum)] – ITA No. 1924 & 2075 /Mum/2007 dated 19.01.2018***

**691.** The assessee acquired media rights from BCCI on payment of US $ 17.5 million, out of which US$ 10 million was adjusted against two matches played and the balance was kept as deposit (to be adjusted against last series). However, owing to a dispute, the contract was terminated and the deposit was forfeited by BCCI during relevant AY 2008-09, which was claimed as a deduction under section 37. The Tribunal allowed the assessee claim with respect to write-off of advance given to BCCI and rejected the Revenue's stand that it represented a capital loss as it was in relation to acquisition of media rights (which is a capital asset). The Tribunal held that the agreement with BCCI for acquiring the media rights was pursuant to assessee's normal business activity (of broadcasting and distribution of TV programmes) and US$ 10 million which was adjusted in earlier year was offered to tax by assessee. It further rejected the Revenue's

submission that the write-off was premature as the assessee did not fully explore the possibility of its recovery. Accordingly, it deleted the addition made by the AO.
***Zee Entertainment Enterprises Ltd – TS-181-ITAT-207 (Mum) - ITA No.3406/Mum/2014 dated 05/05/2017***

**692.** Assessee acquired certain licenses to use SAP software and made payments towards licensing, installation and testing of software, training expense etc. during the year which were incurred to ensure smooth conduct of business and to improve operational efficiency. The AO / CIT(A) concluded that assessee was entitled for full deduction against the annual expenses incurred and 60% depreciation on balance amount as it being capital in nature. The Tribunal held that even if the software expenses incurred by assessee resulted into an enduring benefit to assessee, the same could not be treated as capital expenditure and real intent and purpose of same had to be looked into. On examination of the details of the expenses, it held that the same were for obtaining license, implementation, set-up fees, AMC Charges which were incurred to ensure smooth conduct of business and to improve operational efficiency and therefore they were revenue in nature and fully allowable as a deduction.
***Empire Industries Ltd v Add CIT - (2017) 50 CCH 0036 MumTrib - ITA No. 4065/Mum/2013 dated May 17, 2017***

**693.** The Assessee entered into an IPL Franchise Agreement with BCCI for franchise rights of IPL team as per which the assessee had to pay to BCCI certain franchise fee on annual basis for securing participation of its team in league. The AO disallowed opined that franchise fee paid by assessee generated benefit of enduring nature and therefore denied the assessee's claim for deduction. The Tribunal held that since the payment of franchise fee facilitated participation in league and operating team was restricted only to year to which payment pertained, it could be concluded that by making such payment there was neither a creation of any asset nor generation of a benefit of an enduring nature in hands of assessee and therefore held that the assessee was to be allowed deduction of the franchise fee paid under Section 37(1).
Further, it held that payment of security expenses by the assessee to Kolkata Police Welfare Fund as per directions of Cricket Association of Bengal for providing security in stadium at time of staging of matches, expenditure incurred by assessee on coaching of its IPL team and website design charges were also to be allowed as deduction under section 37(1).
***Knight Riders Sports (P.) Ltd v ACIT - [2018] 89 taxmann.com 32 (Mumbai - Trib.) - IT APPEAL NO. 1307 (MUM.) OF 2013 dated 29.12.2017***

**694.** The Tribunal held that expenses incurred by the assessee on renovation and restoration led to enduring benefit as it led to improvements in its trading operations which would bring enduring benefit to the assessee for a long period of time and therefore was capital in nature despite the fact that the assessee was not the owner of the premises wherein the renovations were carried out. It held that other expenses incurred by the assessee such as breaking old plaster, carting away, plastering POP etc was revenue in nature and could be claimed under section 30 of the Act.
***Aries Exports Pvt Ltd v DCIT – (2016) 48 CCH 0025 (Mum Trib) – ITA No 5841 / Mum / 2012***

Go to Index

**695.** The Tribunal held that once the expenditure is found to be allowable as revenue expenditure as per provisions of the Act, the same is to be allowed as revenue expenditure under the Act while computing income chargeable to tax even if the taxpayer capitalizes such an expenditure in its books of account prepared as per the Companies Act.
***Dewanchand Ramsaran Industries (P) Ltd. v ACIT - [2016] 68 taxmann.com 181 (Mumbai-Tribunal.)***

**696.** The Tribunal held that expenditure incurred by assessee firm on repairs and painting of hoarding structures was to be allowed as business expenditure.
***Asian Advertising v ITO - [2016] 68 taxmann.com 139 (Mumbai-Trib)***

**697.** The Tribunal held that mechanical disallowance by the AO on an adhoc basis without establishing that the expenditure was capital expenditure was not warranted where the assessee had furnished all necessary details and vouchers to substantiate that the expenses were revenue in nature. It further held that the claim of repair and maintenance expenditure made by the assessee was reasonable considering the turnover and large assets owned by it and accordingly allowed the deduction.
***Uttam Galva Steel Ltd v ACIT – (2015) 44 CCH 0567 Mum Trib***

**698.** The Tribunal held that discount on premium of shares issued to employee to compensate them, for their services is a part of remuneration and cannot be held to be a short capital receipt or capital expenditure and therefore the expenses on account of employees stock option scheme was to be treated as employee cost and considered as revenue in nature.
***Tata Consultancy Services Ltd v ACIT – (2015) 45 CCH 0202 Mum Trib***

**699.** The Tribunal held that expenses incurred in connection with issue of bonus shares were to be allowed as revenue expenditure as the issue of bonus shares did not involve an inflow of fresh funds or increase in capital employed and therefore the company had not acquired a benefit or advantage of enduring nature.
***Aditya Birla Nuvo v DCIT – (2015) 45 CCH 0222 Mum Trib***

**700.** The Tribunal held that the travelling expenses incurred for expatriate experts, who came for a contract period of 2 to 3 years and returned thereafter, was business expenditure and not capital expenditure since no enduring benefit had accrued to assessee in capital field and neither there was creation of any capital asset nor it affected fixed capital of assessee. Thus, it held that the said expenses could not be disallowed as capital expenditure.
***Daimler Chrysler India (P.) Ltd. v. Dy.CIT [2018] 98 taxmann.com 53 (Pune - Trib.) - IT APPEAL NOS. 1381 & 1325 (PUN) OF 2003 dated August 08 2018***

**701.** The assessee imported machinery required for setting up of manufacturing activity (for manufacture of vehicles). However, due to uncertainty of demand in market for said car, part machinery which was remained to be installed was discarded and the project was aborted. The assessee wrote off the cost of the said machinery which was forming part of capital work-in-progress and claimed deduction (as business loss) thereon. The AO rejected the contention of the assessee and was of the view that the write off should be considered as capital loss u/s. 45

of the Act eligible to be carried forward for set off in future. The Tribunal remanded the matter in absence of details of said expenditure not being before it, holding that it was relevant to know what were details of break-up of expenditure on one side and genuineness of same on other and since neither AO nor CIT(A) had examined the angle of claim of assessee, AO was directed to examine same.

***Daimler Chrysler India (P.) Ltd.vs Dy. CIT [2018] 98 taxmann.com 53 (Pune - Trib.)- IT APPEAL NOS. 1381 & 1325 (PUN) OF 2003 dated August 08 2018***

**702.** The Tribunal held that foreign exchange fluctuation loss on outstanding foreign currency loan taken for acquiring asset within India had direct nexus to savings in interest costs without brining any new capital asset into existence and therefore was allowable under section 37(1) of the Act. It dismissed the contention of the Revenue that the said loss was notional in nature and held that loss recognized on account of foreign exchange fluctuation as per AS 11 was an accrued and subsisting liability and not merely a contingent or hypothetical liability. Relying on the decision of the Apex Court in the case of Tata Iron and Steel CO Ltd, it held that the cost of an asset and the cost or raising money for purchase of an asset were two independent transactions and that Section 43A of the Act would be applicable only if the assets were purchased from outside India.

***Cooper Corporation Pvt Ltd v DCIT – TS-265-ITAT-2016 (Pun)***

**703.** The Tribunal held that interest paid on share application money received from shareholders pending allotment was allowable as revenue expenditure under section 37(1) of the Act since share application money could not be characterized and equated with share capital. It held in the case of share application money, the obligation to return the money is always implicit in the event of non-allotment of shares and therefore could not be termed as receipt towards share capital before its conversion.

***SR Thorat Milk Products Pvt Ltd v ACIT – TS-304-ITAT-2016 (Pune)***

**704.** The Tribunal held that in the absence of basic details to substantiate the claim of reimbursement of expenses, the amount so claimed was to be added to the income of the assessee.

Further it held that merely because an expenditure has been incurred by the assessee it does not entitle him to the claim without discharging his onus of establishing that the expenditure has been incurred for business purposes.

In relation to expenditure on application software incurred by the assessee, the Tribunal, relying on the decision of the High Court in the case of CIT v Lubrizol India ltd (37 taxmann.com 294 (Bom) and the order of the Tribunal in the case of the assessee for earlier years, held that since the license was for a limited period and had to be renewed from time to time it was to be treated as revenue in nature.

***Sandvik Asia Pvt Ltd v JCIT – (2015) 45 CCH 0311 Pune Trib***

» *Year of deduction*

**705.** The Court held thatprovision made for increase in wages on basis of Wage Board Award which became enforceable on date of publication of award on 20-7-1983 could not be accepted as a

liability having accrued within previous year ended 30-6-1983, though assessee agreed before Arbitrators that award shall come into operation from an earlier date.The Court held thatunder mercantile system of accounting, liability to pay commission to agents arises in previous year in which agent secured order and not when supplies were effected by assessee. The Court held that where assessee claimed deduction towards payment of insurance premium but did not even pay first instalment, of insurance premium, before 30-6-1983, last date of relevant previous year, said deduction could not be allowed to assessee during relevant year.
***CIT v KCP Ltd. - [2018] 94 taxmann.com 46 (Andhra PradeshHC) - Referred Case No. 71 of 1993 dated 01.05.2018***

**706.** The Court dismissed the appeal filed by the Revenue against the Tribunal's order allowing expenditure incurred by the assessee (following completed contract method of accounting) in earlier years during the progress of contract with respect to the contract which was completed in the relevant assessment year and with respect to which income was offered to tax after deduction of expenditure incurred over entire period of the contract. It rejected Revenue's contention that since the assessee was following the mercantile system of accounting, prior years expenditure could not be allowed as deduction.
***Pr.CIT v Nathpa Jhakri Joint Venture – (2018) 92 taxmann.com 303 (BomHC) – ITA No. 808 of 2015 dated 12.02.2018***

**707.** The Court held that expenditure incurred on stamp duty for acquiring leasehold land for 30 years was revenue in nature as the stamp duty was paid for the purposes of carrying on assessee's business. Further, the Court pointed out that the Revenue had accepted CIT(A)'s finding that the expenditure on stamp duty could be considered as deferred revenue expenditure and also relied on the Apex Court ruling in the case of Taparia Tools Ltd (TS-134-SC-2015) wherein it was held that there was no concept of deferred revenue expenditure unless specifically provided for in the Act.
***CIT v Reliance Industrial Infrastructure Ltd (INCOME TAX APPEAL NO. 3611 OF 2010) – TS-704-HC-2015 (Bom)***

**708.** The Court dismissed Revenue's appeal against the Tribunal's order allowing assessee's claim for deduction of provision made for medical benefit of its employees post retirement, treating the said liability as accrued and to be discharged in future. It held that Tribunal's finding was based on standard accounting principles and consequential application of law laid down by Supreme Court in Bharat Earth Movers v. CIT [2000] 245 ITR 428 (SC) wherein it was held that if a business liability arises in an accounting year, the deduction for the same should be allowed although the said liability may have to be quantified and discharged at a future date, hence the same did not warrant any interference.
***CIT vs Everready Industries Ltd [2018] 98 taxmann.com 90 (CalcuttaHC) - IT APPEAL NO. 789 OF 2004 dated August 09 2018***

**709.** In the present case the assessee had incurred expenditure on account of sales incentive paid to several dealers for meeting sales target in period of 15 months i.e. from 1-4-2003 to 30-6-2004 and claimed the said expenditure during relevant assessment year (AY 2005-06) which was disallowed by Revenue on the ground that expenditure related to earlier assessment year,

and hence could not be allowed in relevant assessment year. The Court noted that the assessee had taken period from 1-4-2003 to 30-6-2004 for purpose of computing and paying sales incentive to dealers and the same were payable only after and when dealers had met sales figures in this period. Further, the complete details on account of incentive etc. were furnished, thus the Court held that the expenditure claimed by assessee could not be disallowed on ground that expenditure was related to earlier assessment year.
***PCIT vs Escorts Ltd- (2018) 98 taxmann.com 291(DelHC)- ITA No 961 of 2018 dated 04.09.2018***

**710.** The Court held that where the assessee obtained a license for running a cinema hall from NDMC against a payment of license, enhanced by NDMC at the time of renewal, which was challenged by the assessee by way of a suit as a result of which NDMC was restrained from recovering the enhanced license fee till disposal of suit, the enhanced license fee and interest on arrears of license fee claimed by the assessee in accordance with the mercantile system of accounting was allowable as a deduction under section 37(1) of the Act.
***Aggarwal and Modi Enterprises (Cinema Project) Co Pvt Ltd v CIT – (2016) 67 taxmann.com 63 (DelHC)***

**711.** Assessee entered into an agreement for export of groundnuts with one Alimenta. Subsequently a dispute arose between the parties and an Award was passed in favour of Alimenta wherein the Court held that Alimenta would be entitled to interest from date of award till date of payment. The said interest was claimed as deduction by the assessee while claim of damages and interest thereon was also disputed by the assessee in the court of law, the Court held that a statutory liability is said to be incurred on the mere issuance of a notice of demand and the fact that the assessee may have raised a dispute against such a demand "did not ruin the incurring of liability". Also it could not be said that merely because there was a stay granted by the division bench of the court, order of the single judge imposing payment of interest had been wiped out from existence. Accordingly, order of the Tribunal was set aside and appeal of the assessee was allowed.
***National Agricultural Cooperative Marketing Federation of India Ltd v. Commissioner of Income Tax [(2017) 98 CCH 0154 DelHC] (ITA No. 161/2016)***

**712.** The Court held that deduction for stamp duty expenses incurred by the assessee in relation to contract executed with Maharashtra State Road Transport Corporation in the course of its business was to be allowed in its entirely and did not require to be spread over in view of the matching concept as contended by the Revenue. It distinguished the Revenue's reliance on the Apex Court decision of Madras Industrial Corporation as stamp duty paid was a statutory levy and not for business expediency. Relying on the Apex Court ruling in India Cements Ltd it held that if a statutory expense was required to be paid, it would be allowed as a deduction in the same year of payment.
***Prithvi Associates v ACIT – TS-347-HC-2016 (GujaratHC)***

**713.** The Court reversed order of the Tribunal and held that loss on account of embezzlement by employees was incidental to Assessee's banking business and should be allowed as deduction in the year under consideration in which embezzlement was discovered by Assessee and not

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

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

**714.** The Court held that where the assessee company launched a scheme in terms of which any person who bought a plot of land from the assessee was assured of return of entire land cost upon expiry of five years from the date of completion of sale and claimed deduction of the incentive amount payable as per bank guarantee issued to buyers of the plot and the assessee created a fixed deposit with the bank for the said purpose, since the liability arose on the date of contract and what was postponed was only the payment, the assessee could claim deduction of the entire expense in the year of making the fixed deposit.

***Marco Marvel Projects Ltd v ACIT – (2016) 68 taxmann.com 300 (MadrasHC)***

**715.** Where the assessee made revision in pay scale and where 40% of the revised salaries were payable in the current financial year and remaining 60% of the salaries were payable in the next financial year, the Court upheld the order of Tribunal wherein it was held that the entire liability was incurred in the assessment year in question and had been estimated with reasonable certainty and therefore was not contingent in nature, thereby deleting the disallowance made by the CIT(A) viz. 60% of the salaries on the ground that the liability to that extent did not arise in that year.

***PCIT vs. Haryana Warehousing Corporation (2016) 97 CCH 0090 PHHC-HC (ITA No. 103 of 2016 (O&M))***

**716.** Where the assessee was to receive reimbursement of certain sales promotion expenses incurred by it in respect of its branded products as per a JV Agreement entered in year 2002 with another company but the said company subsequently refused to reimburse the same and the AO disallowed the assessee's claim for deduction u/s 37(1) with respect to write off of the said reimbursement amount holding that expenses in question were in nature of prior period expenses which could not be allowed as deduction against income of relevant assessment year, the Tribunal allowed the said deduction observing that the expenses were incurred for business purposes only and irrecoverability of same leading to loss got crystallised only in relevant year pursuant to refusal by the said company.

***Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (ChenTrib) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018***

**717.** The assessee, engaged in insurance business, claimed deduction with respect to provision made for insurance claims incurred but not reported and for claims incurred but not enough reported. The Revenue contended that assessee created provision in anticipation of settlement

of claims that were not ascertained and thus deduction for the same was not allowable. The Tribunal held that the compensation for making insurance claim arises on the date of loss or damage occurred to the insured property. But, the actual liability to make the payment arises on the date on which the loss or damage was assessed and the amount was determined. Thus, noting that in instant case amount of compensation payable to insured person was not determined during year, it held that the same could not be allowed merely because incident happened during year.

***DCIT v Cholamandalam MS General Insurance Co. Ltd. - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018***

**718.** Where the assessee followed mercantile system of accounting, the AO disallowed prior period expenses claimed by the assessee on actual basis. CIT(A) upheld the order of the AO. The Tribunal held that since the said claim of expenditure was revenue in nature and crystallized during the impugned year itself, the same could not be disallowed. Following the ruling of the co-ordinate bench in the assessee's own case for earlier years, the Tribunal restored the matter to the file of the AO to examine the genuineness and crystallisation of the expenses in the impugned year.

***Orissa Mining Corporation Ltd. & Anr. vs. JCIT – [2018] 53 CCH 0188 (Cuttack ITAT) – ITA Nos. 69 & 183/CTK/2014, 70 & 257/CTK/2014 dated May 17, 2018***

**719.** Assessee company during year under consideration had written off custom duty. AO held that said payments were actually made in AYs concerned (i.e. AY 2006-07 & AY 2007-08) and had crystallized in concerned AYs itself. AO held that since expenditure pertaining to AY 2006-07 and AY 2007-08 had crystallized during AY's concerned, same were prior period expenditure and therefore could not be allowed as deduction in computing total income of subject year. AO made disallowance of Countervailing Duty. CIT(A) upheld order of AO. Held, Company had internal discussions/ deliberations and ultimately written off entire amount of countervailing duty reflected as asset in Balance Sheet to extent it was not eligible for credit against service tax liability. In this regard, the Company had consulted with Tax Consultant and confirmed its understanding that countervailing duty would be creditable only for that portion of countervailing duty paid on goods which were actually used to provide services and not on all goods imported and sold. Though countervailing duty paid in AY 2006-07 and 2007-08 was allowable deduction in respective assessment years, however, Company could not claim same in computing total income for AY 2006-07 and AY 2007-08 under erroneous misconception that same was creditable against other duties / taxes payable. Issue of countervailing duty was allowed by AO with proper direction of DRP. Therefore, there was no need to interfere with same. Assessee's ground was dismissed.

***CPS Cash Processing Solutions Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0285 DelTrib. -ITA-No. 5017/ DEL/2012, 2671/DEL/2013-dated July 3, 2018***

**720.** According to AO, the year under consideration being initial year of company's business, large sum of expenses incurred on advertisement and sales promotion should have been capitalized. AO relied on decision of Supreme Court in Madras Industrial Investment Corporation Limited, wherein at instance of assessee, benefit of spread of expenses over a number of years was

allowed. CIT(A) also upheld disallowance. The assessee contented that In the Supreme Court decision in case of Madras Industrial Investment Corporation Ltd, the spread of the expenses over number of years was allowed at the instance of the assessee. But in the instant case no such claim was made by assessee and therefore ratio of the said decision could not be applied over the facts of the instant case. The Tribunal deleted the disallowance by relying upo its earlier year decision in assessee's case wherein the said disallowance was deleted.
***Biotronik Medical Devices India Pvt Ltd vs ITO- (2018) 54 CCH 0201 DelTrib- ITA No 2427/Del/2015 dated 12.10.2018***

**721.** Payment on account of mesne profits which was settled during year with receipt of order from Appellate Court pertained to a period from from 10.08.1980 to 30.09.2001 was disallowed by AO who treated it as a prior period expenditure and also treated it as penal in nature, which was not allowable under Act.CIT(A) deleted alleged addition. The Tribunal noted that CIT(A) held that payment on account of mesne profits was arising out of contract of rent and was as such not in nature of penalty for infraction of any law and was thus an allowable expenditure u/s 37. It held that liability was crystallized during year as per order of Appellate Court and expenditure was rightly allowed by CIT(A) u/s 37 and thus there was no justification found to interfere with findings reached by CIT(A) on this score. Thus, Revenue's ground dismissed.
***Asst. CIT & ANR. vs. INDIAN SUGAR EXIM CORPORATION LTD. & ANR. (2018) 54 CCH 0438 DelTrib- ITA No. 1420/Del/2015, 1449/Del/2015 dated 31.12.2018***

**722.** The Tribunal allowed assessee's claim for deduction of premium payable under the hedging contract entered with two foreign banks to hedge against the foreign currency fluctuation in Japanese Yen for 5 years on pro rata basis (as the asssessee had taken a loan in Japanese Yen from its foreign group company which was repayable after 5 years). It was noted that the assessee had amortised the premium payable amount over the life of contract i.e. 5 years. The Tribunal relied on the Apex Court decision in the case of Taparia Tools Ltd. vs. JCIT (2015) 372 ITR 605 (SC) wherein it was held that the ordinary rule is that revenue expenditure is to be allowed in a particular year only, unless the assessee himself spreads such expenditure over a period of ensuing years to satisfy the principles of matching concept. Further, it was noted that the AO had allowed the deduction for the amortised amount in earlier 3 years.
***SC Johnson Products Pvt. Ltd v DCIT - TS-584-ITAT-2018(DEL) - ITA Nos.3340 & 3341/Del/2015 dated 10.10.2018***

**723.** The Tribunal accepted assessee's claim that notional foreign exchange gain resulting to the assesse-company on conversion of Foreign Currency Convertible Bonds (FCCBs) issued by it into shares was not exigible to tax since the b**o**nds were issued for acquiring capital assets, noting that the AO had not allowed the assesse's claim for deduction of foreign exchange loss on loan borrowed for acquisition of assets in the next year. It held that there could not be one method if the fluctuations resulted in reduction of liability and a different treatment if the fluctuations result in a higher liability and that the treatment in terms of taxation has to be uniform at all times. The Tribunal also allowed the assesse claim for deduction on account of provision made for premium payable on redemption of FCCBs, relying on the decision in the case of Madras Industrial Investment Corporation Ltd vs. CIT [225 ITR 802 (SC)] wherein it was held that discount given on issue of debentures is an allowable expenditure.

Go to Index

***GATI LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0209 HydTrib - ITA No. 1467 & 1670/Hyd/2017 dated Jun 20, 2018***

**724.** Major part of assessee's turnover was from export of graphite which were transported through ships and took long time to reach to destination and therefore assessee used to carry out hedging transaction of foreign currency and claimed foreign exchange fluctuation expenditure which also included marked to market loss of notional nature by assessee. Both lower authorities allowed claim of foreign exchange fluctuation expenditure except for notional loss for reason that those contracts had not squared up at close of year and impugned amount was merely notional loss. The Tribunal held that the assessee was entitled to claim notional loss arising on account of marked to market loss on valuation of pending forward contract for foreign exchange. It placed reliance on Societe Generale wherein it was held that where forward contract was entered into by the assessee to buy or sell the foreign currency at an agreed price and at a future date falling beyond the last date of the accounting period, the loss incurred by the assessee on account of revaluation of contract on the last date of the relevant accounting period was an allowable deduction.

***Heg Ltd vs ACIT-(2018) 54 CCH 0050 Indore Trib- ITA No 583/Ind/2012 dated 28.09.2018***

**725.** AO noted that assessee took lease hold land to operate its Plant and as per agreement, it made upfront payment. As per said agreement, assessee was liable to pay lease rent per month as license fee on yearly basis which would be adjusted/set off against upfront payment made by assessee. Assessee claimed a sum on yearly basis as amortization of upfront payment of license fee and same should be allowable revenue expenditure over lease period in respect of amortized portion of expenditure. AO found that similar expenditure was debited by assessee in AY 2009-10 was disallowed by his predecessor. Accordingly, such amount was required to be disallowed in year under consideration. CIT(A) deleted disallowance made by AO. The Tribunal held that, same sum of amortization of license fee was allowed by Revenue commencing from AY 1998-99 to 2008-09 without any dispute. Assessee had only debited in its P&L account a sum representing amortization of license fee over lease period. Assessee paid a sum as an upfront payment in AY 1998-99 as per agreement, which was sought to be adjusted/set off with license fee payable by assessee year on year during tenure of lease. Effectively, assessee had claimed a sum as a deduction over lease period. Similar claim of deduction was allowed in all the scrutiny assessments up to AY 2008-09. There was no reason for Revenue to take a divergent stand during year under appeal. Revenue's ground was dismissed.

***Asst. CIT & Anr. vs. Tata Steel Processing & Distribution Ltd. & Anr. - (2018) 54 CCH 0304 KolTrib- ITA No. 2237/Kol/2016 (C.O. No. 96/Kol/2016)- December 5, 2018***

**726.** The Tribunal upheld the CIT(A)'s order allowing the assessee's claim for deduction of commission payable to Managing Director for the earlier year, disallowed by the AO on the ground that since the assessee was following mercantile system of accounting, the said expense pertaining to earlier year was not to be allowed against the income of current year. The Tribunal held that since the commission was payable on the profits and the profits for the earlier year was determined only in the year under consideration after finalizing the account, the

Go to Index

allowability on account of commission was crystallized in the year under consideration and thus, the CIT(A) was fully justified in allowing the same.
***DCIT v ASSOCIATED PIGMENTS LTD. – (2018) 52 CCH 4 (Kol Trib) – ITA No. 2042/Kol/2014 dated 03.01.2018***

**727.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for deduction of premium payable on redemption of FCCB Bonds on pro rata basis spread over the terms of the bond relying on ratio laid down in Apex Court decision in case of Madras Industrial Investment Corpn Ltd vs CIT 225 ITR 802 SC wherein it was held that discount on issue of debentures had to be spread over the period of debentures. The Apex Court had held that although the assessee had incurred the liability to pay the discount in the year of issue of debentures, there was a continuing benefit to the business of the company over the entire period.
***Asst CIT vs Kanoria Chemicals and Industries Ltd. [2018] 54 CCH 0266 (Kol- Trib.)- ITA No.1880,2086 /Kol/2014 dated 16.11.2018***

**728.** The assessee company was non-banking finance company (NBFC) duly registered with RBI and engaged in business of asset financing. At the time of granting of loans, it incurred certain expenses i.e. commission, cost incurred on arranging borrowings and on acquiring loan portfolio, which it amortized over the life of the loan in its books of accounts in accordance with the matching principle. However, for income tax purposes, the assessee claimed the full / upfront amount of expenses (amount amortized in the P&L as well as the balance sheet) incurred claiming that the said expenses accrued during the year. The AO only allowed the amount of expenses claimed in the P&L i.e. the amortized expenses stating that the excess could not be allowed as it violated the matching principle. The CIT(A) confirmed the impugned disallowance of expenses. The Tribunal held that accrual of upfront expenditure could not be disputed as AO himself had allowed part of expenditure that was debited in profit and loss account as a deduction. It observed that the AO had taxed the upfront income earned by the assessee in year of accrual itself thereby contradicting his stand on matching principle. Accordingly, it allowed the claim of the expense by the assessee.
***MAGMA FINCORP LTD. vs. DCIT (2017) 50 CCH 0091 KolTrib ITA No. 514/Kol/2017 dated 07.06.2017***

**729.** CIT(A) held that there being no change in rate of taxes, the amount incurred under the head Prior Period expenses has to be allowed in the AY under consideration as the said expenses were determined and crystallized during the AY under consideration. Accordingly, the disallowance made by the AO under the said head was deleted. The said expenses are allowed for the reason that these expenses were determined and crystallized only during the AY under consideration. Finding no infirmity in the order of CIT(A), the Tribunal dismissed Revenue's appeal.
***Dy. CIT vs. U. P. Forest Corpn-(2018) 54 CCH 0369 LucknowTrib-ITA Nos. 352 to 356/Lkw/2017-Dated Dec 13, 2018***

**730.** The Tribunal allowed assessee's claim for deduction u/s 37(1) for AY 2003-04 towards commission on sale and held that accounting entries could not be decisive factor when

documents contrary to accounting entry were available on record. During the year assessee had claimed expenditure towards commission sale and had filed ledger showing the above amount, whereas certain amount of commission was labelled as OSL 2001-02 on various dates. Thus, the AO treated the same as prior period items and added back to the income. The assessee contended that all the commissions claimed pertained to year under consideration and it was wrongly classified as OSL 2001-02. In support of assessee's claim, it filed copies of confirmations issued by parties and thus the Tribunal held that the expenses claimed by the assessee pertained to year under consideration.
***ACIT vs Overseas trading- (2018) 99 taxmann.com 136 (Rajkot-Trib)- ITA No 211 of 2017- dated 28.09.2018.***

**731.** The Tribunal held that where the assessee, engaged in business of mining, following the mercantile system of accounting and had taken certain land on lease for a period of 20 years which was to be refilled and handed back to the farmers, she was eligible for deduction towards land reclamation and afforestation expenditure on accrual basis whether or not the said expenses were paid during the year.
***Smt K Suryakumari Venu v ACIT – (2016) 70 taxmann.com 310 (Visakhapatnam – Trib)***

» *For business purpose*

**732.** The Apex Court granted SLP to the Revenue against HC's ruling where the AO had disallowed the commission paid to agents on ground that genuiness could not be proved by showing rendering of services by agents and the High Court had held that since agents had made themselves liable to recover price of goods sold by them, commission payment made to the agents was to be allowed as business expenditure.
***CIT vs Landis + GYR Ltd. [2018] 97 taxmann.com 140 (SC)- SPECIAL LEAVE TO APPEAL (C) NO. 9946 OF 2017 dated August 24 2018***

**733.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that expenditure incurred for refurbishing, repairing and making improvements of a leasehold building for purpose of carrying on day-to-day business is revenue expenditure.
***Dy. CIT v. Indus Motors Co. (P.) Ltd. [2018] 257 Taxman 559 (SC)/ [2018] 257 Taxman 259 (SC) - Special Leave Petition (Civil) Diary No. 22636 of 2018 dated July 23, 2018***

**734.** The Apex Court held that legal expenses incurred for defending the business of going concern and for protecting its interest could neither be considered as personal in nature nor could it be considered as unreasonable or mala-fide.
***Mangalore Ganesh Beedi Works v CIT – (2015) 94 CCH 0054 ISCC***

**735.** The Court by following the decision in CIT v Modi Xerox (2012) 344 ITR 407 (All), upheld the order of the Tribunal wherein it was held that lease rental paid by assessee for use of machinery was to be allowed as deduction where such asset was used for the business of the assessee and rejected the contention of the Revenue that the payments were financial arrangements which were given the colour of sale and lease back.

Go to Index

***CIT vs. Mansurpur Sugar Mills Ltd. (2016) 97 CCH 0209 (Allahabad HC) (ITA No. 390 of 2006)***

**736.** The Court held that where Special Auditor as well as Commissioner (Appeals) and Tribunal concurrently found deputation and other costs as reasonable and necessary to run business, same was to be allowed.
***Pr.CIT v. Tulip Hospitality Service Ltd.- [2019] 101 taxmann.com 213(Bom.)-ITA Nos.835 & 836 of 2016-dated December 17, 2018***

**737.** The Court held that the reimbursement of retrenchment compensation by the assessee to its subsidiary in respect of employees of units transferred by the assessee to the subsidiary was allowable as deduction under section 37(1) of the Act. It noted that the transfer of units was meant to reorganize assessee's manufacturing activities under a separate corporate entity and also that the said transfer was done in light of the labour troubles faced by the assessee. It dismissed the contention of the Revenue that the reimbursement could not be considered as incurred for the assessee's own business and held that the assessee was able to carry on its business more efficiently post transfer and also that the fact that somebody other than the assessee was also benefited by the expenditure could not come in the way of such expenditure being allowed by way of deduction under section 37(1) of the Act.
***Wallace Flour Mills Co Ltd – TS-506-HC-2016 (Bom) - Income Tax Reference No.104 Of 1999***

**738.** The Court held that where special Auditor as well as Commissioner (Appeals) and Tribunal concurrently found hotel management and marketing fess as reasonable and necessary to run business, same was to be allowed.
***Pr.CIT v. Tulip Hospitality Service Ltd. - [2019] 101 taxmann.com 213(Bom.)-ITA Nos.835 & 836 of 2016-dated December 17, 2018***

**739.** Assessee was industrial company engaged in manufacturing copper foils. Assessee incurred expenditure under head management training and development expenditure. Expenditure was incurred for higher education and training of son of one of directors of assessee company. In course of assessment, assessee explained that expenditure was incurred for purpose of assessee's business. AO disallowed amount incurred by assessee towards management training and development expenditure. CIT(A) set aside order of AO. Tribunal restored disallowance made by AO. The Court held that, assessee was company manufacturing copper foil. Son of one of directors was sent to USA for completing course in Business Administration which was general in nature and had no direct nexus with business activities of assessee. Assessee did not place better particulars on record like, basic qualification of son of one of directors, subjects in which he did his administration course and nexus of his subjects with business activities of assessee. Though contract was placed on record whereby son of director had agreed to render his services after completing his education and training, but that itself was not sufficient to hold that Assessee proved nexus between expenditure and its business activities. Amount which was claimed by Assessee as deductible allowance was not incurred wholly and exclusively for purpose of business of Assessee. Assessee's appeal was dismissed.

Go to Index

***Indian Galvanics Cyrium Foils Ltd. vs. Dy. CIT & ANR. -(2018) 102 CCH 0116 BomHC-ITA No.199 of 2002-dated July 6, 2018***

**740.** The Court held that where special Auditor as well as Commissioner (Appeals) and Tribunal concurrently found hotel management and marketing fess as reasonable and necessary to run business, same was to be allowed.
***Pr.CIT v. Tulip Hospitality Service Ltd. - [2019] 101 taxmann.com 213(BomHC.)-ITA Nos.835 & 836 of 2016-dated December 17, 2018***

**741.** The assessee-company incurred certain expenses on education of one its director's son, namely, HK. The assessee submitted that an agreement was executed between company and HK whereby HK had committed to serve the assessee for ten years after completing course in 'Business Administration' from USA. Said expenditure, however was disallowed by the Assessing Officer. The Court held that it was noted that the assessee had not been able to bring on record anything like, basic qualification of HK; subjects in which he did his administration course and how such subject had nexus to business activities of the assesee. Since amount which was claimed by the assessee as deductible allowance was not incurred wholly and exclusively for purpose of business of the assessee, same could not be allowed as business expenditure.
***Indian Galvanics Cyrium Foils Ltd. v. Dy. CIT [2018] 95 taxmann.com 259/257 Taxman 32 (BomHC.) -IT Appeal No. 199 of 2002 dated July 6, 2018***

**742.** The Court held that where the assessee had taken on lease a plot of land from Calcutta Port Trust (CPT) and it had encroached some of land belonging to CPT and on being asked, paid certain amount to CPT to compensate loss suffered by CPT, the said payment to CPT was an expenditure incurred wholly and exclusively for purposes of business.
***Mundial Export Import Finance(P)Ltd v CIT - [2016] 67 taxmann.com 31 (CalcuttaHC)***

**743.** The Court held that the where the assessee had taken over Andhra Cements while it was subject to BIFR proceedings and cleared the dues of New Tobacco Company (a group concern of Andhra Cements) to assist Andhra Cements to acquire loans and improve its net worth, (which it was not able to do unless the aforesaid debts of New Tobacco Company were cleared), the amount paid by the assessee was not allowable as a business expenses as the assessee was not a guarantor of New Tobacco Company and therefore the settlement could not be treated as amount expended for its own business purposes. The Court further held that there was nothing on record to prove that Andhra Cements would not be able to receive additional funds and for arguments sake even if such situation were to be considered, the amount paid by the assessee would take the character of cost of acquisition of the shares in Andhra Cement Ltd.
***CIT v Duncan Industries Ltd – (2016) 96 CCH 0022 (CAL-HC)***

**744.** The Court held that since the object in the Memorandum permitted the assessee to carry on the business of letting out property and since 85 percent of the assessee's income was derived from rent and lease rentals, the income constituted business income of the appellant and therefore compensation paid by the assessee to obtain possession from the tenant for the

purpose of earning a higher rental income was to be allowed as a deduction as it was a business necessity.
***Shyam Burlap Company Ltd v CIT – (2015) 61 taxmann.com 121 (CalcuttaHC)***

**745.** The Court allowed assessee's claim of deduction towards repairing expenses incurred for the premises owned by assessee's sister concern. The same was disallowed on the reasoning that the expenditure was not for business purpose. The Court relied on the Apex Court decision in the case of CIT v Madras Auto Service (P) Ltd. reported [233 ITR 46 (SC)] wherein assessee had spent money for creating an asset of an enduring nature and though the asset so created did not belong to the assessee, it was held that such expenditure was for better carrying on of assessee's business and could be allowed as a revenue expenditure. It noted that in the present case also, repairing expenses had augmented assessee's business.
***TM INTERNATIONAL LOGISTICS LIMITED v CIT - ITA 153 of 2008 (Cal HC) dated 25th July, 2018***

**746.** The Court allowed deduction to assessee (engaged in production of aluminium and related products) for expenditure incurred on software development on the ground that software developed by assessee was application software for efficiently carrying out mining activity, which unlike system software had to be constantly updated due to rapid advancements in technology and increasing complexity of the features.
***Indian Aluminium Company Ltd v CIT - TS-185-HC-2016(CAL-HC)***

**747.** The Court held that where assessee, engaged in manufacture and production of aluminium and related products, had developed specific application software programme for geological data processing , mine field surveying, mine excavation planning , etc., which could not be used by others, expenditure incurred could be allowed as revenue expenditure.
***Indian Aluminium Co. Ltd v CIT - [2016] 68 taxmann.com 205 (CalcuttaHC)***

**748.** The Court upheld order of the Tribunal deleting disallowance of expenditure, claimed by the Assessee qua legal fee and Professional Indemnity Insurance, notwithstanding the fact that the legal fee paid was more than the compensation received by the Assessee and the expense incurred towards Provisional Indemnity Insurance was required to be made by the third party. The Court held that the fact that a particular expense does not result in a profit for the Assessee in the immediate proximity cannot form the basis of its disallowance. Business decisions should be best left to the wisdom of those who run and manage the business and hence, as long as an expense is incurred, wholly and exclusively for the purpose of the business carried on by the Assessee, it ought to be, ordinarily, allowed under Section 37 of the Act.
***Principal Commissioner of Income Tax Vs.Managed Information Services Pvt. Ltd. (2017) 98 CCH 0113 ChenHC (T.C.(A) No. 137 of 2017)***

**749.** The Court held that one time consultancy fees paid by assessee (Investment advisory Company) to Mauritian affiliate for "Fund Raising" assistance provided to overseas funds who where clients of the assessee was deductible u/s 37. It was noted that the assessee had entered into agreement with its Mauritian affiliate for providing help in raising funds and due to efforts of

Mauritian affiliate assessee received more advisory fees as the total investment in India by the overseas funds increased substantially. Accordingly, revenue's appeal was dismissed.
***PRINCIPAL COMMISSIONER OF INCOME TAX v LOK ADVISORY SERVICES PVT. LTD.[TS-774-HC-2018 (DEL)]- ITA No. 1094/2018 dated 12.12.2018***

**750.** The Court upheld the Tribunal's order rejecting the assessee's claim for deduction u/s 37(1) with respect to amount paid by the assesseee-lawyer for settlement of dues of a company in which he was the Managing Director (MD) and for which he stood personal guarantor in his capacity as MD on the company's inability to repay substantial advances to financial institutions / banks. It rejected the assessee's argument that if the above amount, which was claimed by him as litigation expenses, was not paid then it would have been impossible for him to carry on his profession as an advocate and therefore, the amount was wholly and exclusively laid out for business. The Court held that the assessee's liability had occurred in his capacity as the guarantor and entrepreneur (i.e. MD) and the same could not be allowed as business expenditure in relation to income generated through legal profession.
***SATINDER KAPUR v ACIT - [TS-295-HC-2018(DEL)] - ITA 656/2018 & CM APPL 23524/2018 dated May 30, 2018***

**751.** The Court held that where the assessee had merged with another company viz. A&M Publications Ltd and had issued commercial papers and non-convertible debentures to purchase the stake held by one common shareholder in both these companies in the year prior to the relevant year and all the aforesaid re-structuring was also completed in the year prior to the relevant year, the AO was incorrect in disallowing the discount on commercial paper and interest on non-convertible debentures in the relevant year on the ground that the funds were used for acquisition of shares, since the re-structuring had already been completed and the funds available at the beginning of the relevant year were used exclusively for business purposes. Accordingly, it allowed the said discount / interest as a deduction.
***CIT v Amar Ujala Publication Ltd – (2016) 96 CCH 0005 (Del-HC)***

**752.** The assesee claimed deduction in respect of business promotion expenses which was disallowed in view of fact that assessee did not produce material and documents to show that said expenditure was incurred for business purpose. The Tribunal held that mere fact that payments were made through credit card would not be sufficient to prove their genuineness and, thus revenue authorities were justified in making disallowance of 50 per cent of expenses claimed as deduction. The Court dismissed assessee's appeal and upheld the order of the Tribunal.
***Sandeep Marwah v. Asst.CIT- [2019] 101 taxmann.com 123 (DelhiHC)-ITA Nos.1249 & 1250 of 2018-dated November 12, 2018***

**753.** During assessment proceeding, AO found that assessee had claimed deduction on account of business expenditure so incurred by it. Assessee submitted that it was established with main object to promote, undertake, carry on, acquire business of setting up/providing operating/running of call centres and infrastructure facilities or services. However, AO noted that assessee was not engaged in any business activity as no business was set up or commenced during AY in question. Further there were no fixed assets, no receipts and

expenses relatable to main objects as per MoA. CIT(A) set aside such disallowance. The Tribunal upheld the order of CIT(A). The Court held that, disallowance of entire business expenditure was set aside by accepting assessee's contention that investments made were in terms of main objects of promoting, undertaking, carrying on, acquiring business specified in objects. Assessee undertook business by making investments in other corporate bodies, as stipulated in Memorandum. It was observed that assessee made investment in subsidiary companies carrying on business specified in its main objects. There was no legal or statutory requirement of direct and first-hand business operations to be conducted by assessee itself and indulgence in business activities through subsidiaries who were in same line of business activities as stipulated in MoA.

***Pr.CIT vs. Bharti Ventures Ltd. (2018) 103 CCH 0294 DelHC-ITA No.611/2018-dated December 13, 2018***

**754.** The Court held that where multi-State co-operative society was undertaking object of carrying out social development for village poor by way of undertaking projects in forestry development, developing water harvesting systems and main objective of assessee was to carry-out social development and welfare activities and assessee had incurred expenditure for rural development, generation of additional employment, women's empowerment and in development and construction of water reservoirs which was clearly incurred to carry out purpose and objectives for which co-operative society was established, said expenditure would qualify for deduction under section 37(1).

***Pr.CIT, Delhi-10 v. Indian Farm Forestry Development – [2019] 101 taxmann.com 169(DelhiHC)-ITA Nos. 215 & 216 of 2017-dated October 31, 2018***

**755.** The Court upheld Tribunal's deletion of interest expense and held that money borrowed by assessee company and advanced to subsidiary for business purpose would qualify for deductions u/s 36(1)(iii). The Court following the Apex Court ruling in case of S.A. Builders noted that once it was established that there was a connection and nexus between interest claimed by assessee as expenditure and the business purpose of such borrowings, which need not necessarily be the business of assessee itself, the revenue could not assume role and occupy the chair of the businessman to decide reasonableness of expenditure .Hence money borrowed even when advanced to subsidiary for some business purpose would qualify for deduction.

***PCIT vs Reebok India Company- (2018) 98 taxmann.com 413 (DelhiHC)- ITA No 1130 of 2017 dated 25.09.2018.***

**756.** Where the commission paid by assessee to various agents in order to secure orders from other countries and to ensure that payments were received in a timely manner, the Court held that commission paid to those agents could reasonably be linked with assessee's business, that the expenses could not be disallowed based on the AO's personal understanding of how business ought to have been conducted.

***Pr.CIT v Mohan Export India (P.) Ltd. - (2018) 90 taxmann.com 168 (Delhi HC) – ITA No. 640 of 2017 dated 04.01.2018***

Go to Index

**757.** Where the Court held that the amount received by the assessee from one 'G' as an advance was not towards procurement of license as claimed by the assessee but deemed dividend attracting provisions of section 2(22)(e), the Court upheld the disallowance made by AO of the deduction claimed with respect to guarantee commission paid to a third entity for guarantee given by that entity to 'G' for the alleged advance received by assessee on the ground that it was intended for purposes other than of business.
***CIT v Prasidh Leasing Ltd. – (2018) 90 taxmann.com 385 (Del HC) – ITA No. 637 of 2004 dated 20.02.2018***

**758.** The Court upheld assessee's claim for deduction of advertisement and promotion expenses incurred towards enhancement of brands owned by its foreign parent-company as business expenditure on the ground that even though all the brands owned by the parent company were not made available in Indian market, the overseas brand owner had not set up any other license (as a rival) at least in the area where the assessee operated. Referring to section 48 of Trademarks Act, it held that as long as the arrangement existed, the assessee who was a licensee of the products, was entitled to claim them as business expenditure though in ultimate analysis they might have enhanced the brand of the overseas owner. It concluded that disallowing a certain proportion on an entirely artificial and notional basis from the expense otherwise deductible, was unjustified.
***Seagram Manufacturing Pvt Ltd [TS-695-HC-2016(DEL)]***

**759.** The Court dismissed Revenue's appeal against Tribunal's order allowing deduction u/s 37(1) with respect to expenditure incurred for renovation of Finance Department of Government of Gujarat, which was disallowed by the AO holding that the same was not for the business purpose. It was noted that (i) the assessee was a 100% Govt. company working under supervision and control of Finance Department of Gujarat Govt. and (ii) the entire business of assessee, i.e. received from investment activity, was due to the Finance Department's directive to all State Govt. Coprporations to park their surplus funds with the assessee.
***Pr.CIT v Gujarat State Financial Services Ltd – Gujarat HC TAX APPEAL No. 1251 & 1254 of 2018 dated 15th October 2018***

**760.** The Court dismissed Revenue's appeal against Tribunal's order for AY 2008-09 wherein though the Tribunal had reversed CIT(A)'s order allowing foreign travel expenses incurred by the assessee-company, the Tribunal had made a disallowance only of 20% of the said expense as against AO's approach of disallowing 100% for some expenses (where he opined the trip was personal) and 50% (where he opined trip was partly business and partly personal). It was noted that for AY 2009-10, the AO himself had disallowed 20% of entire foreign travel expenses and thus the very same procedure was adopted for AY 2008-09.
***CIT v M.M.PUBLICATIONS LTD - ITA.No. 200 of 2014 (Kerala HC) dated October 16, 2018***

**761.** The Court held that travelling expenditure incurred by Senior Executive of a Company including expense of his wife in connection with medical treatment in foreign Country cannot be treated as business expenditure.
***Harrisons Malayam Ltd. vs. CIT-(2018) 103 CCH 0228 KeralaHC-ITR No.1 of 2003-dated December 6, 2018***

Go to Index

**762.** The AO had disallowed the assessee's claim for deduction u/s 37(1) on account of payment of salary to a sweeper for cleaning and maintaining the premises of a Hall, on the ground that the said hall was in the name of the founder of the assessee-company and the hall was not owned by the assessee-company itself. The assessee contended that the claim was to be allowed as keeping the hall clean, enhanced the assessee-company's goodwill. The Court, however, sustained the said the AO's disallowance relying on a binding precedent in the assessee's own case [Malayala Monorama Co. Ltd. v. CIT (2006) 284 ITR 69 (Ker.)] for another assessment year involving similar claim.
***CIT v Malayala Manorama Co. Ltd [2018] 95 taxmann.com 136 (KeralaHC) – ITA NO 26 OF 2010 dated 29.05.2018***

**763.** The Court rejected assessee's claim for deduction u/s 37(1) for certain sum expended towards housing scheme for poor, holding that philanthropic act of building houses for poor and needy, at time of company's centenary celebrations, did not reveal any commercial expediency or a business requirement.
***CIT v Malayala Manorama Co. Ltd. – (2018) 91 taxmann.com 14 (KeralaHC) – ITA No. 1596 of 2009 dated 01.02.2018***

**764.** The Court held that the expenditure incurred by the assessee for refurbishing, repairing and making improvements of a leasehold building for purpose of carrying on day-to-day business was allowable as revenue expenditure under Section 37(1) of the Act. Further, relying on the decision of CIT v. Madras Auto Service (P.) Ltd. [1998] 99 Taxman 575/233 ITR 468 (SC), it held that expenditure incurred on construction made on a leased out property was allowable as revenue expenditure under Section 37(1) of the Act.
***Indus Motor Co P Ltd v DCIT - [2017] 88 taxmann.com 229 (KeralaHC) - IT APPEAL NOS. 4, 14, 15, of 2015 dated 05.12.2017***

**765.** The assessee company was established in the year 1970 and at the time of inception one 'K' had joined as a General Manager who was later promoted to the post of Managing Director. On the death of 'K', the board of the assessee company decided to meet all the educational expenses of the children of Mr. K and also passed a resolution to pay a minimum pension to his widow on account of his services to the company. Assessee company made the said payments and claimed it as business expenditure which was denied by the AO and the CIT (A). On Department's appeal to the High Court, the Court held that the claim by the assessee that the said payments were in the nature of business expenditure was to be accepted since the assessee company had passed a resolution granting monetary benefit to the legal heir of a former employee and such resolution was sufficient even if the company did not have a pension scheme.
***CIT v. India Motor Parts & Accessories Ltd. – [2018] 92 taxmann.com 409 (MadrasHC) – T.C. (Appeal) No. 880 of 2008 dated April 4, 2018***

**766.** The Court held that the payment made for acquiring membership in a social club could not be allowed as a business expenditure, more so, when there was no evidence to prove that membership of social club was acquired for entertaining customers of the assessee.

Go to Index

***L. Jairam Parwani v. DCIT – [2018] 93 taxmann.com 291 (MadrasHC) – T.C. (A) Nos. 857 & 858 of 2008 dated April 9, 2018***

**767.** The assessee during the relevant year made payments to the cane growers in excess of price fixed by the Government subsequent to which the assessee's claim for deduction of excess payment was rejected by the AO on the ground that it was in the nature of an advance recoverable under the terms of the agreement. The CIT (A) reversed the decision of the AO and held that the payment to the cane growers in excess of the administered price was eligible to be treated as an allowable expenditure exclusively and necessarily incurred for the purpose of business which was further confirmed by the Tribunal. The High Court dismissing the appeal of the Revenue held that the assessee could not avoid excess payment in view of business expediency as the entire business of the assessee was dependent on the supply of the sugarcane and the mere use of the word 'advance' in letter of Sugarcane Growers Association, would not change the character of payment especially when the amount paid was an ascertained liability and the assessee was following the mercantile system of Accounting.
***CIT v. Aruna Sunrise Hotels Ltd. – [2018] 93 taxmann.com 361 (MadrasHC) – T.C. (Appeal) No. 271 of 2005 dated April 10, 2018***

**768.** The Court allowed deduction u/s 37(1) of lease rent paid for a shed where the shed was originally taken on lease by assessee for a business venture but the same could not start due to delay in getting electric connection and subsequently part of the said shed was leased to another person. It held that merely because there was some difficulty faced by the assessee in commencing the use of the premises it did not follow that the expenses claimed were not for the purpose of the assessee's business.
***Pr.CIT v SRBS Entertainment - (2018) 90 taxmann.com 410 (P&H HC) – ITA No. 280 of 2016 (O & M) dated 18.01.2018***

**769.** The Court held that expenditure incurred by assessee towards fixing false ceiling, painting, electrical cabling and certain civil works in rented premises was to be allowed as business expenditure.
***CIT v. Nuchem Ltd. [2015] 59 taxmann.com 455(Punj. & Har.HC)***

**770.** The assessee co-operative society was engaged in business of procurement of milk, processing it to prepare its products and sale thereof. The AO disallowed amount being contribution made to 'Sparsh Trust' Pashudhan Kalyan and Utpadakta Sanvardhan Sansthan, trust constituted by assessee to run programme and for providing services to farmers who were selling milk to primary societies from whom assessee procured milk. The Court upheld the Tribunal's deletion of disallowance paid as contribution to the Trusts and held that the same were in the nature of business expenditure. It held that any contribution made by assessee to public welfare fund which was directly connected or related with carrying on of assessee's business or which resulted in benefit to assessee's business had to be regarded as allowable deduction u/s 37(1). Accordingly, it dismissed Revenue's appeal.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. JAIPUR ZILA DUGADH UTPADAK SAHAKARI SANGH LTD. - (2018) 101 CCH 0062 Rajasthan HC - D.B. Income Tax Appeal No. 9/2018 dated Feb 5, 2018***

Go to Index

**771.** The Tribunal deleted the ad-hoc disallowance which was made by the AO out of travel & conveyance expenses claimed by the assessee-company on the ground that the expenses were personal in nature. It followed the decision in the case of Sayaji Iron & Engg. Co. v. CIT [2002] 253 ITR 749 (Guj.) wherein it was held that expenditure incurred by the assessee-company on maintenance of vehicles which were available to the directors for their personal use would fall within the meaning of "remuneration" as defined in the Explanation to section 198 of the Companies Act and even if there was any personal use by the directors, the same was as per the terms and conditions of service and in so far as the assessee-company was concerned it was a business expenditure and not disallowable as such.
***Seal For Life India (P.) Ltd. v DCIT [2018] 96 taxmann.com 645 (Ahmedabad - Trib.) – ITA No 1236 (AHD.) OF 2017 dated August 2, 2018***

**772.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by AO of commission expenses debited in P&L a/c on the ground that genuineness of commission paid/reimbursement of expenses was not proved beyond doubt that same were incurred wholly and exclusively for business purpose by noting that the services were rendered for assessee's business by commission agents and the assessee had discharged its onus by filing all possible details including confirmations and TDS and successfully established that genuine expenditure was expended for business purposes. It further held that the AO could not gather positive evidence for department and took decision based on presumptions and not on facts on record and it was not the case of the AO that commission was paid to bogus parties which came back indirectly to assessee through cash.
***ACIT v KIWIFX SOLUTIONS – (2018) 52 CCH 32 (Ahd Trib) – ITA No. 1536/Ahd/2013 dated 12.01.2018***

**773.** The Tribunal held that where the assessee paid commission fees to foreign agents and failed to produce evidence of services rendered by commission agent or how the agents helped the assessee to procure orders, disallowance of commission was justified. It observed that the invoices, evidence of payment and agreement with agent (which did not contain any date, complete name of signatory, and was not registered) did not demonstrate how the expenditure was incurred for the purpose of the assessee's business.
However, in respect of commission payments to Indian parties, it upheld CIT(A)'s order allowing the commission on the ground that the books of accounts of assessee were audited, the assessee had provided PAN of agents, tax was deducted on the said payments and the fact of receipt of service from the said agents was also undisputed.
***ACIT vs. Desai Fruits & Vegetables Pvt. Ltd. (2016) 48 CCH 0126 (Ahd Trib.) (ITA No. 1707/Ahd/2012)***

**774.** The Tribunal allowed Revenue's appeal against CIT(A)'s order and disallowed assessee's (part of GMR group co) claim for deduction u/s 37(1) with respect to payment made for sponsoring the Delhi Daredevils team for IPL season-4, rejecting assessee's stand that it had derived benefit of advertisement by way of displaying GMR logo on Delhi Dare Devils outfit. It was noted that the logo common for GMR group was displayed on jersey and nothing was brought on record to show that assessee's name was displayed on the jersey. Further, noting that assessee

was engaged in the business of civil and highway construction, the Tribunal held assessee had failed to demonstrate as to how the above expenditure had resulted in getting more projects in infrastructure industry and further how it was related to the business of assessee.
***ACIT v GMR Projects Pvt. Ltd. [TS-655-ITAT-2018(Banglore)] - ITA No.2216/Bang/2016 dated 26.10.2018***

**775.** The Tribunal held that where fresh loans were only utilized for purpose of repaying old loans which in earlier assessment year had been held to have been utilized only for business purpose, interest on new loans should be allowed as deduction as used only for business purpose.
***Senate v DCIT - [2016] 68 taxmann.com 223 (Bangalore-Trib)***

**776.** Where revenue authorities rejected assessee's claim for deduction of educational expenses incurred on grandson of one of directors of company without taking into consideration plea that said grandson of director of assessee-company had contributed to functioning of assessee's business, impugned order was set aside by the Tribunal and, matter was remanded back for disposal afresh.
***Bansal Alloys & Metals (P.) Ltd. v Asst.CIT, Circle-Mandi Gobindgarh- [2018] 100 taxmann.com 6 (Chandigarh-Trib)-ITA No.526(CHD.) of 2018 -dated October 3, 2018***

**777.** The assessee, part of Renault group, was engaged in rendering engineering and design and sourcing support services & logistic services to Renault SAS, France (RSAS) as per the agreement between them. The AO disallowed assessee's claim for deduction of promotional expenditure which represented expenses incurred in relation to participation in Auto Expo 2010 for promotion of Renault cars. The Tribunal, however, allowed the said claim noting that parties had mutually agreed to include additional services within scope of service agreement and the activities of participating in exhibitions and trade fairs at request of RSAS was specifically covered in the scope of services vide an amendment to the service agreement. It was also noted that expenditure incurred by company towards the exhibitions and trade fairs were invoiced and compensated by RSAS at cost plus a mark-up and the said mark-up was also accepted by the TPO without any adjustment.
***RENAULT INDIA PRIVATE LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0321 ChenTrib - ITA NO. 2814/CHNY/2016 dated April 2, 2018***

**778.** The Tribunal dismissed assessee's appeal against CIT(A)'s order disallowing deduction u/s 37(1) with respect to advertisement/marketing expenses incurred by assessee (Director of Cinema-Autography), noting that though the genuineness of the expenses was not doubted, as per the agreement between the assessee and the film producer, the assessee had to produce the film and ultimately hand it over to the producer, thereby the marketing expenses for the purpose of exhibition of the film were the functions of the producer and not the assessee-director.
***Shri M. Perarasu v ACIT [TS-745-ITAT-2018(CHNY)] - ITA No.1215/Chny/2015 dated 19.12.2018***

**779.** Where the Assessee company shut down its Aurangabad unit and paid retrenchment compensation to its employees on account of closure of the factory, Tribunal upheld the order

of the CIT(A) by holding that retrenchment compensation paid by assessee on account of closure of its unit was allowable as business expenditure under Section 37 and that provisions of Section 35DDA applied by the AO were not applicable as the assessee has not paid any service compensation under any scheme of voluntary retirement.
***ACIT vs Lumax Automotive Systems Ltd. – [2018] 53 CCH 0071 (Cochin ITAT) – IT(TP) Appeal No. 475/Coch/2016, 134/Coch/2016 (SA No. 08/Coch/2018) dated May 23, 2018***

**780.** The Tribunal allowed assessee's claim for deduction under section 37 towards gift of subsidiary company's shares to a key employee for his contribution in setting up a super specialty hospital under another subsidiary company. It rejected revenue's contention that expenditure incurred was not eligible for deduction u/s. 37(1) absent business income earned by the assessee andheld that setting up of subsidiaries wherein assessee has a 100% controlling interest engaged in healthcare business, tantamounts to carrying on business by the assessee company and therefore expenditure incurred in the course of the said business was also business expenditure eligible for deduction u/s. 37(1) of the Act irrespective of the income from such business. It further upheld assessee's claim for treatment of sum received from letting out plant and machinery as business income and not income from other sources on the ground that assessee's arrangement was that of contract manufacturing whereby the basic raw material for manufacture of the tyres was supplied by the lessee of such plant and machinery, and using the same the assessee manufactured tyres for lessee using its labour, fuel etc.
***PTL Enterprises Ltd [TS-580-ITAT-2016(COCH)] (I.TA No.200/Coch/2015)***

**781.** Where the assessee made payment for compensation for land under the head "social facilities expenses" and the AO disallowed the same on the ground that the amount paid related to acquisition of their land, the Tribunal upheld the order of the CIT(A) deleting the addition and observing that amount was incurred in compliance to Orissa Resettlement & Rehabilitation Policy, 2006' and same had been paid for one-time payment in lieu of employment and training for self-employment and therefore held that the same had been paid for the purpose of business operation.
***DCIT v MAHANADI COALFIELDS LTD. & ANR. 2018) 52 CCH 0204 CuttackTrib - ITA No.421/CTK/2013 dated Mar 20, 2018***

**782.** The Assessee—company entered into an agreement with another group company, SSRPL for transfer of development rights in a land owned by assessee for a consideration of certain amount. The assessee contended that right to carry out development work on this designated land was subject to various compliances, regulatory approvals, encumbrances etc. by local development authority. The assessee had received sanction from local development authority for construction of Floor Space Index (FSI) area of certain feet's. The assessee offered consideration received for such sanctioned FSI an income and, further, claimed certain amount as development expenses attributable to sanctioned FSI. The Assessing Officer disallowed same. The Tribunal held that it was noted that the assessee had maintained books of account on same accounting pattern in earlier years as well as and same was accepted by the development expenses on similar basis which was also allowed. No fault was found in accounting system followed by the assessee. Since assessee followed same accounting

system in earlier and subsequent years and same was accepted, there was no reason for the Assessing Officer to deviate from same during relevant assessment year.
***Saamag Developers (P.) Ltd. v. Asstt CIT [2018] 98 taxmann.com 467/173 ITD 350(Delhi-Trib) ITA Nos. 2053 to 2057(DELHI) of 2017- dated October 8, 2018***

**783.** The AO had made the disallowance of expenditure incurred on Intragroup services on the ground that the same were not wholly and exclusively incurred for the purpose of business.The Tribunal deleted the disallowance of expenditure incurred for intragroup services u/s.37(1) made on protective basis noting that on perusing the assessment orders for earlier years and subsequent years, though TP addition for Intragroup services had been made, there was no disallowance made u/s.37(1) on protective basis or otherwise and hence the addition could not be sustained in view of principles of consistency.
***Avery Dennison (I) Pvt Ltd vs ACIT [TS-611-ITAT-2018(DEL)-TP] ITA No.7183/Del/2017 dated 27.06.2018***

**784.** The Tribunal held that the salary, wage, fuel, power, rent and other expenses incurred for removal of 'overburden' at the mining sites did not lead to any right of properties or any enduring benefit and therefore had to be considered as revenue in nature. Additionally, depreciation on the block of assets could not be denied merely because production units were shut since other activities were still carried out.
***DCIT v Cement Corporation of India Ltd - (2015) 44 CCH 0506 Del Trib***

**785.** The AO made ad hoc disallowance of expenses to the extent of 10%, on account of personal nature which included, telephone expenses, conveyance, car maintenance and repair expenses and depreciation on car. The CIT(A) upheld order of AO. The Tribunal observed that the AO neither pointed out any instance of inflation in expenditure claimed by assessee, nor had given any finding regarding expenditure claimed by assessee being capital in nature, for purposes of disallowance and the CIT(A) had just made general observation for sustaining addition made by AO. Thus, the Tribunal held that without sufficient evidence in support, if no element of personal expenses by Directors/Office bearers could be attributed, then addition made by AO on account of ad-hoc disallowance of expenses was to be deleted.
***Galgotia Publications (P) Ltd vs ACIT- (2018) 54 CCH 0028 Del Trib- ITA No 1857, 1862, 1863, 1864, 1865/Del/2015 dated 20.09.2018***

**786.** The Tribunal allowed the assessee deduction of full amount of retention bonus as revenue expenditure since it was to ensure smooth functioning of the business to arrest the attrition rate prevalent in the software industry and accordingly enhance the profitability of the assessee company and would partake the character of salary.
***SAIC India Pvt Ltd v DCIT – TS-349-ITAT-2016 (Del)***

**787.** Where the assessee claimed certain expenses like, conveyance, travelling, foreign travelling, telephone and electricity etc. as business expenses, the AO disallowed such expenses considering the same as excessive. Tribunal upheld the order of the CIT(A) and held that since the AO disallowed such expenses on ad-hoc basis without pointing out any defects in the books of account or vouchers of those expenses, the disallowance was deleted.

Go to Index

***ACIT vs. vs. Modi Rubber Limited – [2018] 53 CCH 0044 (Del Tribunal) – ITA No 1952 of 2014 dated May 15, 2018***

**788.** During assessment proceeding, AO observed that assessee debited travelling expenses, majority of which was on account of foreign travelling.AO noted that there was an increase in travelling expenses as compared to immediately preceding year despite decrease in gross receipts.Assessee submitted that firm provided services worldwide and for that purpose, it was needed to visit various places for client meetings, rendering services outside India, client development.AO held that personal element could not be ruled out in expenses.Assessee failed to establish that travelling expenses were incurred exclusively for purpose of business and accordingly he disallowed 10% of such expenses.CIT(A) held that trip to Beijing was not for official purposes but for personal purposes, and thus not allowable. The Tribunal held that counsel claimed that expenses were incurred for annual day event of firm, but no documentary evidence of any kind was produced which could establish that trip to Beijing was in relation to business activity of assessee.On perusal of bill of M/s T, it was evident that expenses were incurred in relation to extension of stay, cancellation of air ticket, bar party, photographers, smoothies ordered by Mrs G in hard rock.Thus, tour was for entertainment of Counsels and their family members and it had not served any business purpose of assessee firm.Assessee failed to establish that expenses were incurred wholly and exclusively for business purpose and thus same was not allowable u/s 37(1).
***LUTHRA & LUTHRA LAW OFFICES vs. Jt. CIT (2018) 54 CCH 0398 DelTrib- ITA No.802/Del/2015 dated 20.12.2018***

**789.** Where AO disallowed 20% of business promotion expenses on ground that part of the said expenses were personal in nature which was restricted to 5% by CIT(A), the Tribunal allowed Revenue's appeal directing AO to disallow 10% of business promotion expenses claimed by assessee, noting that there was a steep increase in the current year's business promotion expenses to the tune of 67.52% whereas increase in the gross receipt during the year under assessment was merely 25.97% and, thus, it opined that that personal element in the business promotion expenses to the extent of 10% of the total expenses could not be ruled out.
***Asst.CIT vs Rohit Kochar [2019] 54 CCH 0418 (Del- Trib.)- ITA No.3872/Del/2015 dated 28.11.2018***

**790.** The Tribunal held that the expenditure incurred by the assessee on Employee Stock Option Plans (ESOP) provided to its employees were to be allowed as deduction under Section 37(1). It dismissed the AO's contention that ESOP expenses were nothing but notional loss and under mercantile system of accounting, notional loss could not be allowed as deduction and held that the Legislature itself contemplated discount on premium under ESOP as benefit provided by employer to its employees during course of service and therefore held that the same was allowable deduction in computing income under head 'Profit and gains of business or profession". It noted that the liability to pay discounted premium was incurred during vesting period and amount of such deduction was to be found out as per terms of ESOP scheme by considering period and percentage of vesting during such period and accordingly set aside the order of the lower authorities.

Go to Index

***OXIGEN SERVICES (I) PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0190 DelTrib - ITA No. 3318 to 3320/DEL/2016 dated Mar 16, 2018***

**791.** The Tribunal held that when assessee was publicizing its product at the prominent places by maintaining them such as parks through CSR expenditure, which had direct impact on sale promotion had to be allowed. What was important for purpose of allowability of deduction u/s 37(1) was that expenditure must be incurred for purpose of business. Words, "for purpose of business" should not be limited to meaning of "earning profit alone". Certain expenditure might not reap profits immediately, but might be advantageous in long run, by creating goodwill and brand image. Explanation 2 which had been inserted in s. 37 by Finance (No. 2) Act, 2014 w.e.f. 1.04.2015 to provide that CSR expenses referred in s. 135 of Companies Act, 2013 should not be deemed to be incurred for purpose of business would not be applicable for the captioned AY (i.e AY 2009-10)

***Maruti Suzuki India Ltd vs Addnl CIT- (2018) 54 CCH 0095 DelTrib- ITA No 467/Del/2014 dated 17.10.2018***

**792.** The Tribunal allowed assessee's claim of deduction w.r.t. expenses incurred for running school situated on land purchased by assessee company and in which the children of the assessee's employees studied. The same was disallowed by the AO on the ground that the same related to welfare/charity purposes. It held that the school running expenses included care and concern for society at large, particularly for people of locality where business was located. Thus, the said expenses were integrally related to business activities of assesse and had been incurred wholly and exclusively for purpose of business. It also noted that the AO had not disputed genuineness of expenses nor it was case of AO that expenses used by assessee were for its personal purposes.

***DLF HOME DEVELOPERS LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 53 CCH 0182 (Del Trib) - ITA No. 2209/Del/2016, 2567/Del/2016 dated Jun 19, 2018***

**793.** The AO disallowed the assessee's claim of business expenditure on CSR activity stating that such expenses should be incurred from surplus profit after tax and it need not claim these expenses in books of account as expenditure for determining taxable profit. However, the CIT(A) deleted the disallowance after following CIT & Anr. Vs. Infosys Technologies Ltd wherein court allowed expenditure incurred on account of CSR by installing traffic signal near establishment to ease traffic congestion u/s 37(1) by holding that such expenses could be held to be expended wholly and exclusively for purpose of business u/s 37(1). Thus, the Tribunal, on concurring with CIT(A), held that CSR expenditure is an allowable expenditure u/s 37(1).

The AO had also made addition to assessee's income of expenses on account of sales-tax claim off u/s 37(1) opining that transfer of goods by assessee from UP to Haryana was in violation of Sales-tax Act [It is to be noted that Explanation 1 to section 37(1) provides that deduction shall not be allowed for any expenditure incurred for any purpose which is an office or prohibited by law]. The CIT(A) deleted the addition following the decision rendered by the Sales-tax Tribunal as well as Hon'ble Allahabad High Court in assessee's own case holding that the said transfer of goods from UP to Haryana was in the nature of central sale thus liable to Central Tax Act and was not a penalty for violation of sales tax act as held by the AO. The

Tribunal held that there was no illegality or perversity in the CIT(A)'s order and thus dismissed the revenue's appeal.
***DCIT v Hindustan Tin Works Ltd. (2018) 52 CCH 0402 DelTrib - ITA No. 3531/Del./2016 dated 27.04.2018***

**794.** The Tribunal allowed the assessee's claim for deduction of expenses against the income income from fixed deposits earned (being the only income) which was disallowed by the AO on the ground that fixed deposit was for the purpose of obtaining Stand-By letter of Credit (SBLC) for group concerns and not for the business activity of assessee. The Tribunal noted that the assessee-company had restricted its business by floating the two subsidiaries/group companies which had used the fixed deposits for obtaining SBLC and thus held that expenditure incurred against interest on deposits was in course / furtherance of business activity of the assessee. It held that promoting business of subsidiaries/group companies in itself is business activity.
***HighTechMarines Pvt Ltd. vs ITO [2018] 54 CCH 0233 (Del Trib)- ITA No.6924 /Del/2017 dated 14.11.2018***

**795.** Where the assessee, engaged in the business of selling mobile handsets and other electronic items and accessories and operating in highly competitive market wherein specific brand was necessarily to be advertised and made known to public at large, had incurred expenditure on sales promotion schemes for advertisement of its products in newspapers, electronics media, neon signs and banners etc, the Tribunal held that the expenses were incurred wholly and exclusively for business of assessee and were neither capital in nature nor incurred for personal purposes and therefore the AO was incorrect in disallowing 25 percent of such expenses without any reasoning.
***DCIT v Spice Distribution Ltd – (2016) 47 CCH 0364 (Del – Trib) - ITA No. 4281/Del/2013***

**796.** The AO made adhoc disallowance in respect of sales promotion expenses and travelling expenses incurred by the assessee on the ground that such expenses were not related to the business of the assessee. The Tribunal upheld the order of CIT(A) deleting the disallowance of the expenses on the ground that no specific instance or any evidence was brought by the AO on record to support the disallowances.
***ITO vs. Vishal Khosla (2017) 50 CCH 0060 DelTrib ITA No. 881/DEL/2013***

**797.** The Tribunal allowed the appeal of the Assessee and held that the AO erred in disallowing 25% of the total expenditure incurred towards running the hospital alleging that since the Assessee had engaged a specialist to run the hospital there was no need to incur the aforesaid expenditure more so since copies of agreement in respect of lease rents, management fee and also other expenditure were filed during the course of the assessment proceedings.It noted that the aforesaid expenditures were necessary for the purpose of running the hospital and the liability of the specialist did not extend to meeting the aforesaid expenditure.
***Add. Director of Income tax vs. Flt. Lt. Ranjan Dhall Chaitrable Trust & Ors. (2017) 50 CCH 0262 Del Trib (ITA No. 3073/Del/2012 dated August 21, 2017)***

**798.** The Tribunal upheld the CIT(A)'s order allowing assessee's claim for deduction of business promotion expenses which were disllaowed by the AO on the ground that the same were

incurred in cash or through credit card of directors and the element of personal expenses could not be ruled. It was noted that assessee had filed entire details of expenses along with relevant vouchers and audited books of accounts and had also informed mode and manner of payment of such expenses. Thus, the Tribunal held that without pointing out any specific defect in nature of expenses or specifying that such expenses were either for non-business purpose or for personal use, no adhoc disallowance could be made or sustained.
***ACIT v MEROFORM INDIA PVT. LTD. & ANR. (2018) 66 ITR (Trib) 0306 (Delhi) - ITA Nos. 4630 – 4635 & 4494/Del/2014 dated July 31, 2018***

**799.** AO disallowed expenditure claimed by assessee towards Corporate Social Responsibility on ground that it was in the nature of donations and was not allowable as business expenditure u/s 37(1). CIT(A) upheld order of AO. The Tribunal held that direction of Tribunal in earlier AY's holds good for relevant AY's under consideration. AO was directed to recalculate expenses allowable under CSR after disallowing sum of capital expenses.
***NMDC Ltd vs ACIT-(2018) 54 CCH 0094 HydTrib- ITA No 1823,1824/Hyd/2017 dated 17.10.2018***

**800.** The Tribunal allowed the assessee-company's claim for deduction u/s 37(1) for entire amount paid to SRSR as service charges for various services rendered which was partly disallowed by the AO opining the same to be excessive merely in view of the fact that the directors of assessee were related to the directors of SRSR. The Tribunal held that it was undisputed that the amount was paid for the purpose of business since the AO himself had allowed the amount partly and further since the provisions of section 37(1) does not have any restriction to allow the amount partly, the said amount had to be allowed in entirety. [Provisions of section 40A(2) could not be invoked in absence of common directors between the asssessee-company and SRSR]
***Fincity Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 616 (Hyd Trib)- IT APPEAL NOS. 591 & 732 HYD. OF 2006, 616 HYD. OF 2008 AND 119 (HYD.) OF 2010 dated August 03 2018***
***Veeyes Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 545 (Hyd- Trib) IT APPEAL NO. 588 (HYD.) OF 2006 dated August 03 2018***
***Elem Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 272 (Hyderabad - Trib.) IT APPEAL NOS. 589, 731 (HYD.) OF 2006, 617 (HYD.) OF 2008, 121 (HYD.) OF 2010 dated August 03 2018***

**801.** The Assessee was a director of a company and was provided a credit card to meet out company's expenses. The AO disallowed such expenses on ground that expenses were for his personal use and not for business purposes and the same was upheld by the CIT(A). The Tribunal held that it was incumbent upon assessee to prove nature of expenditure and purpose of expenditure and correlate with business of company and the ledger account belonging to company so submitted mentioned of cash credit which required verification by AO. Thus, the Tribunal remitted the issue back to AO for limited purpose to verify the link between the expenses and the business of the company where the assessee was the Director and further directed that in the event if the AO found that there is some relation with the business of the company and expenditure incurred by the assessee, the AO would allow such expenses and delete the addition to that extent.

Go to Index

***Manish Kumar Lath vs CIT- (2018) 54 CCH 0129 Indore Trib- ITA No 616/Ind/2017 dated 26.10.2018***

**802.** The Tribunal held that if assessee provides credit facilities to District Central Cooperative Banks which in turn provide funds to primary agriculture credit societies which is business structure of activities of assessee and its societies,then,sharing of salary of staff in manner as provided in Government instructions can be said to be well related to business of assessee and same is allowable as per provisions of section 37.
***District Central Co-op Bank Ltd vs ACIT- (2018) 54 CCH 0040 Indore Trib- ITA 47/2014 dated 26.09.2018***

**803.** The Tribunal allowed deduction u/s 37(1) with respect to ex-gratia /anugrah rashi payments made by assessee (mining corporation), pursuant to a Govt. order, to labourers who were not employed by assessee but were employed by the truck owners entering mining area for excavation and loading of sand in trucks, noting that the ex-gratia payment even though not directly linked to revenue earned by company was very much directly linked with the royalty paid by truck owners to the assessee-corporation, which was calculated on basis of sand excavated from mines.
***M.P. State Mining Corpn. Ltd. v ACIT– (2018) 91 taxmann.com 430 (Indore Trib) – ITA Nos. 592 of 2013, 371 of 2014 & 20 of 2015 dated 09.02.2018***

**804.** AO treated the expenditure shown by the assessee, a registered share broker, in the Error & Omission account of the P&L A/c (being the loss borne by the assesse on account of settlement with one of its client, whose outstanding trades were squared off by the assesse as the client had not provided the requisite margin to the assessee) as speculative loss and disallowed the said loss to the extent it was not set off against the speculative income offered to tax by the assessee. On appeal, CIT(A) upheld the AO's order and held that the said loss was not revenue in nature. Tribunal allowed assessee's appeal holding that the assesse had agreed to bear the loss to settle the matter and maintain trade relationships. It was noted that the trade with the said client were resumed from the month in which the settlement was made and that in the immediately next year the assesse had earned brokerage of an amount more than the loss borne by the assesse from the said client. Thus, the Tribunal held that the said loss was a business loss and commercial expediency of making the settlement with the client and agreeing to bear the said loss was very well established on records.
***ARIHANT FINCAP LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0271 (Indore Trib) - ITA No. 415/Ind/2016 dated Jun 29, 2018***

**805.** AO completed assessment after making additions on account of contribution to State Renewal Fund. CIT(A) deleted addition made by AO. The Tribunal held that, Coordinate Bench in assessee's own case for AY 2011-12 held that State Renewal Fund was set up to provide safety to employees working under state owned entities in case of restructuring/wind-up/closure of undertaking. Based on study done by State Government, assessee was provided an amount for welfare and benefit of employees. CIT(A) had rightly deleted disallowance made by AO towards contribution to State Renewal Fund.

Go to Index

***Dy.CIT & ANR. Vs. Rajasthan Renewable Energy Corpn Ltd. & ANR-(2018) 54 CCH 0368 JaipurTrib. - dated December 10, 2018***

**806.** AO noted that assessee contributed a sum to State Energy Conservation Fund to be spent on conservation of energy as and when required. AO held that contribution so made was not wholly & exclusively for assessee business of generating renewable energy. AO completed assessment after making disallowance. CIT(A) deleted such disallowance. The Tribunal held that, Coordinate Bench in ITA No. 88/JP/2016 had held that amount paid towards energy conversation contribution fund was statutory liability as per provisions of Energy Conservation Act, 2001. Contribution to fund set up for products which was also assessee's business had direct nexus to the advancement of assessee's business. CIT(A) had rightly deleted such disallowance.

***Dy. CIT & ANR. vs. Rajasthan Renewable Energy Corporation Ltd. & ANR. - (2018) 54 CCH 0368 JaipurTrib-ITA No. 772/JP/2018, 817/JP/2018-December 10, 2018***

**807.** AO noted that assessee contributed an amount to Government of Rajasthan towards construction of 'Rajasthan Bhawan' wherein, employees of Rajasthan Government and its companies could stay during their visit for government work in view of resolution passed by Board of Directors in its 65th Board meeting where it was decided to contribute an amount for construction of Rajasthan Bhawan. Assessee claimed same as expenditure u/s 37(1). AO completed assessment after making disallowance by holding that expenditure so incurred by way of contribution to Rajasthan Bhawan was not wholly and exclusively for assessee's business of generating renewable energy and it was a clear-cut case of application of income.CIT(A) granted partial relief to assessee. The Tribunal held that, assessee got rebate of 75% as well as right to use accommodation by its officers/employees visiting Mumbai. Accordingly, in view of fact that assessee had received benefit in shape of accommodation against said expenditure for construction of Rajasthan house, assessee's claim was an allowable expenditure u/s 37(1) and AO was directed to allow same.

***Dy. CIT & ANR. vs. Rajasthan Renewable Energy Corporation Ltd. & ANR. - (2018) 54 CCH 0368 JaipurTrib-ITA No. 772/JP/2018, 817/JP/2018-December 10, 2018***

**808.** The Tribunal held that expenditure incurred by assessee in the form of ROC fee at time of increase of authorised share capital being in nature of capital expenditure, could not be allowed as deduction u/s 37(1). Further, the Tribunal upheld the denial of deduction u/s 37(1) on account of foreign travel expenditure incurred by executive manager of company, noting that assessee was not having any business outside India neither, assessee was exporting any goods or articles nor importing and, thus, in absence of specific purpose of foreign trip of executive manager, expenditure incurred on said trip could not be considered as an expenditure incurred wholly and exclusively for business of assessee.

***ACCME (Urvashi Pumps) Eng. (P.) Ltd. v JCIT – (2018) 90 taxmann.com 189 (Jaipur) – ITA Nos. 561 (JP) of 2014 and 1111 & 1112 (JP) of 2016 dated 23.01.2018***

**809.** Assessee had debited sum as insurance professional indemnity. Insurance taken was of nature of general insurance. Premium was paid annually. Expenditure incurred was wholly and exclusively for purposes of profession. AO noted that this expenditure could not be allowed u/s

37 of I.T. Act and disallowed insurance payment and made addition to Assessee's income. CIT(A) set aside AO's order. The Tribunal held that, in case of M/s. A.F. Ferguson Associates vs. ACIT in ITA, it was held that since firm was providing professional services and as such professional indemnity insurance premium thus was related to professional activity of partners of firm and was for indemnification of any loss arising out of any claim of damages or compensation payable by assessee firm or its partners in relation to professional services provided by them to their clients. Under such circumstances observation of lower authorities that said expenditure was in relation to personal expenditure was wrong and accordingly addition made under this head was set aside. Expenditure on professional indemnity insurance had been incurred wholly and exclusively for purpose of business and was admissible deduction.

***Dy.CIT vs. Deloitte Haskins & Sells-(2018) 53 CCH 0331 KolTrib-ITA Nos. 587 & 588/Kol/2016-dated July 11, 2018***

**810.** Assessee claimed net freight expenses incurred in connection with domestic, export of goods and freight on stock transfer. Assessee also recovered part of freight charges from customers incurred in connection with sales. AO observed that expenses incurred on freight was more than recovery made by assessee from customers. AO disallowed claim of assessee for freight charges and added to income of assessee. CIT(A) deleted addition made by AO. The Tribunal held that, the Tribunal in assessee's own case for A.Y.2005-06 held that AO had not disputed quantum of expenses incurred by assessee on freight. Out of total disallowance made by AO towards freight expenses, certain sum was incurred on stock transfer by assessee from factory to depots. Question of disallowance of freight expenses in connection with stock transfer did not arise. Freight expense had direct connection with business of assessee. There was no doubt that assessee had made short recovery from customers but reasons for same were duly explained by assessee. Order of CIT(A) was sustained and Revenue's ground dismissed.

***Haldia Petrochemicals Ltd. & ANR. vs. Asst. CIT & ANR. - (2018) 53 CCH 0294 KolTrib-ITA No. 1533/Kol/2015,168/Kol/2016-Dated Jul 6, 2018***

**811.** The Tribunal deleted the disallowance made by the AO on account of interest paid to supplier who supplied stores to assessee's tea garden for delay in making payment for supplies made since it pertained to the earlier year, noting that it was the assessee's claim that liability to pay interest itself accrued only pursuant to bill raised by supplier and since the bill was received from supplier after the date of annual general meeting, the same could not have been anticipated by the assessee in order to make a provision for interest on accrual basis in earlier year. It further held that there was no loss that could be attributed to exchequer because of this claim of expenditure by assessee as business expediency of said expenditure and its genuineness had not been doubted by revenue at any point of time.

***RYDAK SYNDICATE LTD. v DCIT – (2018) 52 CCH 18 (Kol Trib) – ITA Nos. 301-302 & 304-305/Kol/2016 dated 05.01.2018***

**812.** The Tribunal, in the interest of justice & fair play, restricted the disallowance made by AO with respect to expenses claimed to be incurred by assesseee to maintain the status of the company active under the head 'business expenditure' to the extent of 10% of such expenses where the assessee had not shown any income from the business activity during the year but had offered

to tax rental income derived under head 'Income from house property' and the assessee had not brought any material on record suggesting that the expenses claimed under the head of business were incurred exclusively for business purpose and no part of it was incurred in connection with the rental income.
***Mangilall Estates (P.) Ltd. v DCIT – (2018) 91 taxmann.com 266 (Kolkata Trib) – ITA No. 156 (kol.) of 2015 dated 21.02.2018***

**813.** The assessee, a private limited company, engaged in business of trading in stainless steel and allied products claimed expense for celebrating French National Day under the head of advertisement expenses. The AO observing that the assessee had no export business to France, disallowed its claim on the ground that it had not been incurred in connection its business activity. The Tribunal held that the reason given by AO that no business activity was carried on by assessee with France was not tenable in view of fact that allowability of expenditure did not depend upon outcome of expenditure. It observed that the expenditure was incurred and claimed by assessee under head "advertisement" which was not disputed by Revenue and therefore held that any expenses incurred by way of advertisement must be considered from point of view of assessee and not from any other angle. Accordingly, it held that once it was found that expenditure was incurred by assessee for publicity or advertisement, it was not for department to consider whether commercial expediency justified expenditure. Therefore, it allowed the claim of deduction under Section 37(1) of the Act.
***MKJ TRADEX LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0119 KolTrib - ITA No. 1044/Kol/2016 dated Feb 14, 2018***

**814.** The assessee bank claimed as expenditure payment made to its employees as expenditure under the head provision made for unfunded pension, the same was disallowed by AO and the DRP had upheld AO's order. The Tribunal observed that though assessee had nomenclatured subject mentioned payments as 'unfunded pension', it was effectively paid to employees of assessee bank and no contribution was made whatsoever to any funds.It was more of exgratia or extra payment of salary made to employees of bank based on some criterion, which had been duly subjected to deduction of tax at source.The Tribunal also observed from the approval letter of competent authority of assessee bank, that these payments were made only to meet increased cost of living of employees and hence it was effectively made as a welfare measure. Thus, the Tribunal held that provisions of section 40A(9) as heavily relied upon by Revenue was not at all applicable to facts of instant case and directed the AO to grant deduction of the above mentioned payments.
***DCIT (Intl Taxation) vs Royal Bank of Scotland- (2018) 53 CCH 0537 Kol Trib- ITA No 503,505/Kol/2016 dated 05.09.2018***

**815.** The Tribunal held that professional fees paid to retired employees of assessee who were expert in this field fell under business within section 37(1) Further, it held that foreign tour expenses allowable where due to foreign tours of manager export and import increased.
***DCIT v Laboratories Griffon (P.) Ltd. [2018] 93 taxmann.com 29 (Kolkata – Trib.) – ITA NO 133 OF 2016 dated 11.04.2018***

Go to Index

**816.** The Tribunal dismissed Revenue's appeal against the order of CIT(A) allowing assessee's claim for deduction of expenses incurred towards club subscription fee/ renewal of club membership fees on the ground that the same were revenue expenditure and not capital expenditure since no capital assets came into existence out of the said expenditure. It held that the main purpose for incurring the said expenses which were in nature of entrance fees, annual fees, life membership fees and reimbursement of actual expenses etc was to induce its officers to attend such places for maintaining and making contacts for benefit of business and even if some personal advantage was obtained by officers, it would be in nature of maintaining good relations with officers and in nature of staff welfare expenses. The Tribunal thus held that the expenses were incurred wholly and exclusively for purpose of business.

Further, the Tribunal upheld the CIT(A)'s order allowing the assessee's claim for deduction with respect to provision made for Performance Related Pay (PRP) to executives, shown under the head "Employees Benefit Expense", being amount payable based on the performance of the assessee-company in a particular year. The AO had disallowed the said expense considering the same to be unascertained liability and thus not been incurred during the relevant previous year. The Tribunal noted that the PRP was quantified by the assessee (a Govt. Co.) in pursuance to the formula provided by the Department of Public Enterprise, Govt. of India and the same was allowed on year to year basis. It thus held that the said provision was not an unascertained liability rather the said liability had crystallised during the relevant previous year only. It relied on the Apex Court decision in the case of Bharat Earth Movers vs. CIT (2000) 245 ITR 428 (SC) wherein it was held that if a business liability arises in an accounting year, the deduction for the same should be allowed although the said liability may have to be quantified and discharged at a future date.

***ASSISTANT COMMISSIONER OF INCOME TAX vs. HINDUSTAN COPPER LTD. - (2018) 52 CCH 0475 KolTrib - ITA No. 1616/Kol/2016 dated April 4, 2018***

**817.** The Tribunal held that the cost incurred by assessee for repairs of goods returned by its customers on account of low quality was directly connected with business activities of assessee, eligible to be allowed u/s 37(1) and the same could not be disallowed merely because assessee had not produced details of sales which were returned back to it by its customers.

***EPCOS India (P.) Ltd. v ITO – (2018) 169 ITD 541 (Kol Trib) – ITA Nos. 2553, 2758 (Kol.) of 2013 & 688, 1325, 1718 & 1895 (Kol.) of 2014 dated 02.02.2018***

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

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

**819.** Where the assessee company paid commission in respect of personal guarantee given by its directors as collateral security for securing bank loan, the AO disallowed such guarantee

Go to Index

commission. The CIT(A) deleted the disallowance and the Tribunal upheld the deletion of the said disallowance. The Tribunal observed that the directors provided personal guarantee by undertaking risk and the same was beyond scope of their services as employees of assessee-company. The Tribunal held that since it was established that the transactions were real and commission was paid to the Directors for providing personal guarantee, the assessee had the right to decide the guarantee commission to be given to the directors as part of business expediency and in the normal course of business and that the AO should not step into the assessee's shoes and dictate how business had to be carried out.
***DCIT vs. U.P. Asbestos Ltd. – [2018] 53 CCH 0180 (Lucknow ITAT) – ITA No 378 & 379/LKW/2016 dated May 18, 2018***

**820.** The Tribunal held that discount under the ESOP scheme was in the nature of employees cost and therefore deductible during the vesting period with respect to the market price of the options at the time of exercise and therefore allowable as deduction in computing profits from business.
***ACIT v People Interactive India Pvt LTd – (2015) 45 CCH 0136 Mum Trib***

**821.** The Tribunal held that assessee had claimed several expenses on account of travelling conveyance and vehicle expenses, office and other expenses, printing and stationary expenses, etc., but had failed to maintain any log book/record which could rule out incurring of any part of aforementioned expenses for non-business purposes and, further, assessee had merely tried to support its claim of such cash expenses on basis of self made vouchers, Assessing Officer was justified in making disallowance of 10 per cent of aforesaid expenses
***Parsoli Corporation Ltd. v. Asst. CIT, 4(2), Mumbai-[2019] 101 taxmann.com 121 (Mumbai-Trib.)-ITA No(s). 149 & 150 (MUM.) of 2016-dated November 16, 2018***

**822.** The Tribunal held that expenses on ESOPs granted to the employees of the assessee company being the difference between the market price and allotment price of the ESOPs was to be allowed as a deduction under section 37(1) of the Act.
***Korn Ferry International Pvt Ltd – TS-439-ITAT-2016 (Mum) - I.T.A. No. 7367/Mum/2014, I.T.A. No. 7139/Mum/2014***

**823.** The Tribunal held that expenditure towards legal and professional fees incurred by assessee-company in respect of an ongoing suit against it in Securities Appellate Tribunal and High Court for purpose of exonerating itself from an infraction of law was allowable as deduction under section 37(1).
***Parsoli Corporation Ltd. v. Asst. CIT, 4(2), Mumbai-[2019] 101 taxmann.com 121 (Mumbai – Trib.)-ITA No(s). 149 & 150 (MUM.) of 2016-dated November 16, 2018***

**824.** The Tribunal held that interest paid on delayed payment of TDS is allowable under section 37(1).
***Mukand Ltd. v. ITO, 3(2)(2), Mumbai-[2019] 101 taxmann.com 214 (Mumbai - Trib.)-IT Appeal No. 679 (Mum.) of 2011- dated December 5, 2018***

**825.** The Tribunal held that the disallowance of a fraction of expenses, in the absence of irrefutable documentary evidence proving that they were not incurred wholly and exclusively for the purpose of the business of the assessee company is not sustainable.

Go to Index

***Mishka Gold Jewellery Ltd & ANR. Vs. Addl.CIT & ANR-(2018) 54 CCH 0311 MumTrib-ITA No(s).5972/Mum/2017, 5438/Mum/2017-Dated December 7, 2018.***

**826.** Assessee had debited a sum towards sales promotion expenses in its warehousing business.AO noted that expenditure pertaining to purchase of Gold and Silver which were given to various customers for promoting its business.AO held that said sum incurred towards sales promotion as representing purchase of Gold and Silvers got nothing to do with warehousing activity of assessee accordingly, disallowed same.CIT(A) dismissed assessee's appeal. The Tribunal held that assessee had reflected interest income on fixed deposits and liabilities no longer required written back by way of credit to P&L account.No details were furnished to ascertain whether similar items of expenditure in form of purchase of Gold and Silver were incurred in past and whether same were allowed as revenue expenditure by Department for earlier AY. It was not in dispute that assessee had duly produced bills for incurrence of purchase of Gold and Silver. But assessee had not established nexus between incurrence of said expenditure vis-a-vis warehousing revenue derived by it.Hence, lower authorities were justified in disallowing claim towards sales promotion expenses.
***GRAND WOOD WORK & SAW MILLS AND ANR. vs. ITO & ANR (2018) 54 CCH 0509 MumTrib ITA No. 380/Mum/2017 & ITA No.7556/Mum/2016 dated 19.12.2018***

**827.** During assessment proceedings, AO found that assessee had made a payment to its ultimate holdings company M/s J and claimed the same under head 'Employee Benefit Expenses'. Assessee submitted that M/s. J had formulated ESOP scheme for grant of stock option and in return granted stock option to assessee's employees. Assessee had paid/reimbursed differential amount of issue price vs. market price of said option shares to M/s. J. AO held that shares of parent holding company were been allotted to employees of assessee. Parent company also had an interest in retaining employees of its subsidiary and hence notional loss was related to parent company. Assessee's contribution to parent company in this regard was having no direct nexus with respect to ESOP expenses. CIT(A) rejected assessee's claim. The Tribunal held that, expenditure in question was wholly and exclusively for assessee's business purpose and the fact that the parent company was also benefited by reason of a motivated work force would be no ground to deny claim of the assessee for deduction, which otherwise satisfied all conditions referred to in s. 37(1). AO was directed to verify same and allow claim of the assessee keeping in view that deduction would be available to assessee only to extent of shares which were ultimately allotted by issuer to assessee's employees and no deduction would be available against cancelled/ un-allotted shares.
***ACIT vs JM Financial Institution Securities Ltd- (2018) 54 CCH 0171 MumTrib- ITA No 6479, 6891/Mum/2016 dated 03.10.2018***

**828.** Assessee paid professional fees to some individual which was payable in 4 quarterly installments. That individual was owner director of entity which was taken over by assessee company and therefore, payment was necessary for continued patronage of earlier customer base and employees in transition period. AO reached conclusion that payment was more in nature of non-compete fees for agreeing not to compete in similar line of business and same was primarily related to acquisition process and hence, capital in nature. The Tribunal held that, payment made by assessee should breach threshold conditions of Sec 37(1) that expenditure

was incurred wholly and exclusively for business purposes of assessee before becoming eligible to be claimed as deduction. Therefore, reversing stand of CIT(A), matter stood remitted back to file of AO for re-adjudication in light of acquisition agreement. It held that complete onus to demonstrate that impugned expenditure qualify for deduction as per law rest with assessee and that it was also pertinent to note terms of correspondence, provided for rendering of services for group of entities which were referred to as Combined Entities and services were not restricted exclusively to assessee only. But to the other entities which had separate legal existence. Therefore, if said expenditure was, at all, found admissible, deduction to assessee could be allowed only to extent of services being rendered by stated individual for benefit of assessee only and not for other entities.

***ACIT vs Sodexo Food Solutions India Pvt Ltd – (2018) 54 CCH 0056 MumTrib- ITA No 5781,5707/Mum/2016 dated 03.10.2018***

**829.** The Assessee was engaged in the development of computer software and providing technical support. During assessment, the assessee was asked to furnish complete details of travelling expenses claimed by it. The assessee contended that it had entered into business relationship with HCL Technologies which required software to be installed and training to be given and thus was required to incur travel expenditure for engineers. The AO was not satisfied with replies submitted by assessee and observed that part of travelling expenses included foreign travelling and further some expenses were also incurred for training of its staff and thus disallowed expenses to the tune of 50% and the same was upheld by the CIT(A). The Tribunal held that it was not the case of revenue that no expenses were incurred and assessee had claimed bogus or fraudulent expenses and further lower authorities could not point out any specific defect in expenditure claimed by assessee. The Tribunal noted that the assessee had discharged its burden by placing all material on record with respect to travelling expenses and revenue could not specifically point out which of those travel expenses were incurred for non-business or personal purposes of employees. Thus, the Tribunal concluded that nothing incriminating was there on record to validate disallowance of 50% of travel expenses and thus no addition was warranted towards disallowance of travelling expenses.

***Ebaotech India P Ltd vs DCIT- (2018) 54 CCH 0222 MumTrib- ITA No 549/Mum/2016 dated 22.10.2018***

**830.** The Tribunal dismissed assessee's appeal and confirmed the disallowance of travelling expenses pertaining to the wife of director fo assessee-company, following coordinate bench ruling in assessee's own case for an earlier year wherein it was held that as no evidence was furnished to demonstrate and establish that travel by Director's wife was "wholly and exclusively" for the purposes of business of the assessee and, accordingly, the same had to be disallowed.

***Stock Traders Pvt Ltd vs ITO [2018] 54 CCH 0246 (MumTrib ITA NOS. 2108/MUM/2006, 4403 & 687/MUM/2011 dated 19.11.2018***

**831.** The Tribunal held that advertisement expenses incurred by the assessee cannot be disallowed merely because the parent company of the assessee derives certain benefit out of it indirectly, when there is necessary evidence to prove that the same has been incurred wholly and exclusively for the purpose of business of the assessee. In this regard, it was also noted that the parent company had reimbursed the advertisement expenses attributable to it and only net

amount claimed for deduction. However, noting that the AO had given a finding that the assessee had failed to file evidence to justify such expenditure, the matter was set aside to the file of AO to consider assessee's explanation and evidences.
***Abbott India Ltd v ACIT – ITA No.6606, 5625, 7824, 5099, 5922, 3362, 6192, 6150, 8130, 4367,5154,5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018***

**832.** The Tribunal allowed assessee's appeal against CIT(A)'s order and held that the assessee (a film actor by profession) was eligible for deduction of expenditure incurred (depreciation, insurance expenses) with respect to speed boat owned by him, rejecting Revenue's contention that the entire speed boat expenses were personal in nature. It noted that the assessee had suo-moto disallowed 25% of the expenditure on estimated basis to account for personal element / usage. The Tribunal also noted that assessee was utilizing the speed boat for commuting from his house in Mumbai to his farm house in Alibaug, where professional activities such as reading, evaluating stories and scripts, acting practice, speech improvements, story sessions etc. were being carried out. Accordingly, it equated the speed boat with a business asset, being utilized by assessee for commutation for professional work and allowed the expenditure thereto like any other travelling mode such as motor-car, etc.
***Akshaye Khanna v ACIT [TS-707-ITAT-2018(Mum)] - ITA No.5276/Mum/2017 dated 05.12.2018***

**833.** Where the assessee, earlier engaged in the business of manufacturing tiles, had received only rental income from letting out three properties during relevant year which it had treated as business income and the AO opined that rental income was assessable under head 'Income from house property', the Tribunal held that since main activity of assessee was letting out properties and the rental income was derived without carrying on any other business activity, the said rental income had to be assessed under head 'Income from business or profession'. Further, since the rental income earned by assessee was assessed as 'business income' and the assessee had furnished evidences for payment of remuneration for services rendered by directors to company, it allowed deduction u/s 37(1) with respect to remuneration paid to directors for rendering services in order to earn the said rental income.
***Bharat Tiles & Marble (P.) Ltd. v DCIT – (2018) 92 taxmann.com 7 (Mum) – ITA No. 438 (Mum.) of 2015 dated 14.02.2018***

**834.** Tribunal allowed deduction u/s 37(1) of royalty paid by the assessee, partnership firm of advocates, to its founder partner for use of brand name, logo or trademark owned by him, irrespective of the Revenue's contention that there was no provision in partnership deed for payment of royalty to founder partner. Tribunal had noted that from partnership deed that name, logo or trademark of firm and other intellectual property rights exclusively belonged to founder partner and that there was a 'Name Licence' agreement in terms of which payment had to be made even to legal heirs of founder partner after his death.
***ARA Law v ACIT – (2018) 90 taxmann.com 395 (Mum) – ITA No. 1889 (Mum) of 2017 dated 05.01.2018***

**835.** The Tribunal partly deleted the disallowance made by the AO and sustained by the CIT(A) w.r.t. payment of service charges made by the assessee for service rendered by the supplier of goods

in relation to purchase of spilt palm kernel fatty acid, due to lack of conclusive evidence to prove that such service was necessary and was actually provided to the assessee. Noting that the services providers had to undertake varied activities as per the service contracts, the confirmation was received from such service providers, the purchases (with respect to which such services were provided) had been accepted as genuine and that such charges were paid by other manufacturers also, it held that the AO and the CIT(A) did not comment on the documentary evidences produced by the assessee and that the AO could not step into the shoes of the businessman to decide whether such expenditure was for the purpose of business or not. The Tribunal, however, upheld the disallowance of the payments made to the intermediaries (not being the supplier) for the same service which were to be provided by the service provider (supplier), holding that in case of direct supply of goods, the payment of service charges to other parties acting as intermediaries was not in the business interest of the assessee.

***Hindustan Unilever Ltd. v DCIT – ITA No. 4179/Mum./2013 dated 26.02.2018***

**836.** Noting that the assessee's group concern bid and won a contract which it transferred to the assessee and also provided the assessee assistance in the execution of the contract, the Tribunal allowed the assessee's claim of commission paid to the group concern as a valid deduction and held that the AO and CIT(A) erred in denying the said payment as a deduction on the basis that the assessee allegedly failed to provide evidence that the payment was towards its business.

***DRISHTI MARINE SOLUTIONS PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0195 MumTrib- ITA No. 2803/Mum/2014 dated Mar 20, 2018***

**837.** Where the AO rejected assessee's claim for deduction of administrative expenses on ground that it had discontinued its business operations, the Tribunal held that so long as assessee was in operation and its name was not struck off from register of Registrar of Companies, it had to maintain its status as a company and for said purpose it was necessary to maintain clerical staff and secretary or accountant and incur incidental expenses. It, therefore, held that the AO was not justified in rejecting assessee's claim for deduction of administrative and office expenses.

***Sai Fragrance & Flavours (P.) Ltd. v ACIT – (2018) 90 taxmann.com 307 (MumTrib) – ITA Nos. 7012 (Mum.) of 2011 & 6085 (Mum.) of 2013 dated 31.01.2018***

**838.** Where the assessee company had claimed deduction on account of the premium paid towards keyman insurance policies that were in the name of the two directors of the company and the same was disallowed on ground that policies were infact life insurance policies, the Tribunal held that the same was allowable u/s 37(1) since according to the terms and conditions of the policy, the assured sum would return to the assessee company on the death of the policy holders.

***Arcadia Share and Stock Brokers (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 188 (Mumbai – Trib.) – IT Appeal Nos. 5854 & 5855 (MUM.) of 2016 dated April 25, 2018***

**839.** The Tribunal held that the manufacturing, selling and administrative expenses claimed by the assessee could not be allowed as business expenses as they were not incurred wholly and exclusively for purpose of business of assessee as there was no business carried on

by assessee during previous year and there was also no possibility of carrying on business by assessee in near distant visible future keeping in view the severe and serious disability imposed by actions of secured lenders under SARFESI Act. Depreciation claimed by assessee was also not allowable as entire block of asset was not put to use by assessee. However, expenses like auditor fees, ROC fee etc. incurred by the assessee company were to be allowed as the said expenses were incurred for meeting with statutory compliances and obligations as imposed by law. Accordingly, order of the CIT(A) was set aside and the assessment order of the A.O. was confirmed subject to allowability of audit fee, ROC fee and other expenses incurred for undertaking and meeting statutory compliances.
***Deputy Commissioner of Income Tax v. Ashik Wollen Mills Ltd - (2017) 49 CCH 0151 MumTrib (ITA No. 03/Mum/2014)***

**840.** The Tribunal held that where the assessee had incurred expenses on foreign travel of its directors and related persons on which fringe benefit tax had been paid, the AO erred in making an ad hoc disallowance of 50 percent of such foreign travel expenses more so when the assessee earned handsome commission from export.
***Empire Industries Ltd v Add CIT - (2017) 50 CCH 0036 MumTrib - ITA No. 4065/Mum/2013 dated May 17, 2017***

**841.** Where the assessee company incurred expenditure on education of its director at abroad, the Tribunal held that in the absence of commitment/bond executed by said Director to serve assessee company post his education so that assessee could reap benefits of his education for com business, expenditure was not allowable as business expenditure under Section 37(1) of the Act.
***Hunumesh Realtors (P.) Ltd v Pr CIT - [2017] 88 taxmann.com 185 (Mumbai - Trib.) - IT APPEAL NO. 3475 (MUM.) OF 2017 dated 04.12.2017***

**842.** The Tribunal held that expenses incurred by the assessee a pharmaceutical company, on overseas tours of doctors and their spouses was not an allowable expenditure as overseas trip was directed towards leisure and entertainment rather than being directed towards seminar and knowledge enhancement as no details of seminar were brought on record by assessee. Accordingly, it held that the said expenses could not be considered to have been incurred wholly and exclusively for the purpose of the business and that the same were incurred to create good relations with doctors in lieu of expected favours from them for recommending the pharmaceutical products of the assessee company to patients.
***ACIT v. Liva Healthcare Ltd. - (2016) 73 taxmann.com 171 (Mumbai-Trib.)- IT APPEAL NOS.904 & 945 (MUM.) OF 2013***

**843.** The Tribunal held that expenditure incurred by a director in engaging lawyers to defend himself against cases filed for violation of the law by the Company of which he was a director was not personal expenditure but is allowable as business expenditure.
***Nimesh N.Kampani vs. ACIT (Mumbai-Trib)- I.T.A. No. 3316/Mum/2013***

**844.** The Tribunal allowed deduction u/s 37(1) for advertisement expenses incurred by assessee (engaged in portfolio management and advisory services) in capacity as a 'sponsor' of Quantum

Mutual Fund ('QMF') for promoting various mutual-fund schemes and rejected the Revenue's stand that deduction should be denied as advertisement expenses were incurred for the benefit of third party (i.e QMF) and that there was no nexus between expenses incurred with the advisory business undertaken by assessee. It observed that assessee-company besides being a sponsor, was also holding entire 100% shareholding in QMF's asset management company ('QAMC') through which assessee was earning management fees and held that the purport of the expenditure was to increase assessee's own earnings in as much as the Management fee which the assessee was entitled to earn from QAMC was also dependent on the level of average assets of the Fund managed by QAMC.
***Quantum Advisors Pvt Ltd - TS 389 ITAT 2016 (Mum) - ITA No. 3418/MUM/2015***

**845.** The Tribunal held that as there was no evidence that travel by director's wife was wholly and exclusively for purposes of business, travelling expenses was not allowable.
***Stock Traders (P) Ltd v ACIT - [2016] 68 taxmann.com 339 (Mumbai – Tribunal)***

**846.** The Tribunal allowed deduction under section 37(1) for expenditure towards contribution made by assessee (CA Firm) to Pune branch of ICAI towards construction of administrative building of said branch, observing that by donating the amount to ICAI for better infrastructural facilities, the assessee was also able to attract good articled clerks and other professional persons who were the backbone of its professional practice and accordingly, the said payment satisfied the commercial expediency test as the contribution had a direct nexus with the carrying on of the profession. It further rejected revenue's argument that the payment was in the nature of donation, specific provision under section 80G will be applicable over general provision under section 37(1) and held that if the claim is allowable under section 37(1) itself there is no case for proceeding to Chapter VIA which applies to all assessees whether or not they are carrying on business or profession.
***B. K. Khare And Company [TS-616-ITAT-2016(Mum)] (ITA No.4500/Mum/2014)***

**847.** The Tribunal held that where assessee created provision for lease transfer fee, levy of which was already subject matter of dispute in High Court, disallowance for said provision was justified.
***Vasant J Khetani v JCIT- [2016] 67 taxmann.com 249 (Mumbai-Trib)***

**848.** The Tribunal held that expenditure incurred by assessee on club membership fees for employees was admissible business expenditure and disallowance made in that respect was deleted.
***Foods and Inns Ltd v ACIT - (2016) 47 CCH 0187 Mum Trib***

**849.** The Tribunal opined that religious expenditure could not be considered at par with expenditure on a social cause and in view of the contrary view in the case of Prime Mineral Exports Pvt Ltd recommended the constitution of a special bench to decide on whether expenditure incurred on renovation of a temple could be considered as expenditure incurred towards corporate social responsibility allowable under section 37(1) of the Act
***Bandekar Brothers (ITA Nos. 81 & 82/PNJ/2014) – TS -525-ITAT-2015 (PANAJI TRIB)***

Go to Index

**850.** The Tribunal held that in the case of temporary suspension of business, where there was nothing to show that the business had been permanently abandoned and the expenditure was incurred to revive the business and keep it alive, the said business expenditure was allowable under section 37(1) of the Act.
***DCIT v Dempo Industries Pvt Ltd – (2015) 45 CCH 0105 Panaji Trib***

**851.** The Tribunal held that where in terms of tripartite agreement entered into between assessee, a Russian company and Indian Air Force, assessee had to supply engines of aircrafts to Indian Air Force manufactured by Russian company, in view of fact that warranty in respect of engines so supplied was responsibility of assessee for a specified period, assessee's claim for deduction of warranty expenses was to be allowed.
***Indo Russian Aviation Ltd. v Asst. CIT, Circle-1, Nashik- [2018] 100 taxmann.com 76(Pune – Trib.)-ITA No.171 (Pun) of 2015-dated October 17, 2018***

**852.** The Tribunal allowed deduction u/s 37(1) with relation to temporary discontinuance of business for an assessee-society who was engaged in business of electricity distribution under license issued by State Government. The license granted to assessee had expired and the same was not renewed and was instead licensed to MSEDCL for distribution of electricity. The assessee was further ordered to hand over infrastructure and database of clientele etc. to MSEDCL. The assessee filed its return and claimed certain business expenditure as allowable however, AO contended that the business of assessee had closed due to non-renewal of license, thus, claim of deduction of expenditure was disallowed. However, the assessee contended that handing over business to MSEDCL by MERC was a temporary phenomenon and they would resume business soon after license was renewed. It was further noted that the assessee had submitted the assets to MSEDCL and were not given in sale or lease to MSEDCL. Further, the ongoing litigation for grant of license ever since 2011 till 2018 demonstrated assessee's strong intention to continue business and moreover, decision of assessee of giving VRS to 1522 employees was a prudent commercial decision and same could not be interpreted against assessee as lack of intention to resume business. Further, assessee had also opposed takeover bid of MERC for MSEDCL with or without consideration. Assessee did not resort to liquidation or insolvency. Assessee received compensation of Rs. 1 crore every month from MSEDCL and reported same to income tax office every year. Thus, on facts, it could be said that assessee had intention to resume its business, hence, expenditure claimed by assessee was allowable.
***Mula Pravara Electric Co-opSociety vs DCIT- (2018) 98 taxmann.com 419 (Pune- Trib)-ITA no 1776 of 2018 dated 28.09.2018***

**853.** The Tribunal held that (i) membership fees paid to 'Senior Officials Club' in regard to sports and recreation facilities availed by German expatiate employees working for the assessee was expenditure incurred for staff welfare and, thus, allowable (ii) expense for membership of Chambers with a hotel in order to avail facilities of hotel for business assistance and meetings was incurred for purpose of business and, hence, allowable (iii) annual subscription to Golf Course being clearly personal expenses of employees and having no connection with business of assessee was to be disallowed.
***Daimler Chrysler India (P.) Ltd.vs Dy. CIT [2018] 98 taxmann.com 53 (Pune - Trib.)- IT APPEAL NOS. 1381 & 1325 (PUN) OF 2003 dated August 08 2018***

Go to Index

**854.** The Tribunal deleted the disallowance made by AO u/s 37(1) with respect to advertisement expenditure merely for reason that advertisement hoardings were put up in Surat and Thane where assessee was not having any of its business outlets. The Tribunal held that the assessee had incurred expenditure on advertisement for promoting its business which was in principle allowable and the AO had not disputed genuineness of expenditure.
***Rajmal Lakhichand v JCIT – (2018) 92 taxmann.com 94 (Pune) – ITA Nos. 670 & 832 (PUN.) of 2015 dated 28.02.2018***

**855.** The Tribunal held that expenses incurred on the occasion of any Pooja and festival are in the nature of business expenditure and thus, allowable as deduction.
***DCIT vs Godawari Power & ISPAT Ltd- (2018) 54 CCH 0360 RaipurTrib- ITA No 365/RPR/2014 & C.O. No 12/RPR/2018 dated 01.10.2018***

**856.** The Tribunal held that the expenditure incurred by the assessee on corporate social responsibility such as construction of school building, temple, draining etc was to be allowed as expenditure under section 37(1) and could not be disallowed on the ground that it was voluntarily incurred by the assessee. It held that even if the expense was voluntarily incurred it could still be construed as wholly and exclusively for business purpose. Further, it held that Explanation 2 to section 37(1) providing that expenditure on corporate social responsibility would not be considered as for the purpose of business or profession was applicable only from April 1, 2015 and could not have retrospective application.
***ACIT v Jindal Power Ltd – (2016) 70 taxmann.com 389 (Raipur- Trib)***

» *Setting up or commencement of new business / Expansion of existing business*

**857.** The Apex Court dismissed the SLP filed by the Revenue against the order of the High Court, wherein the High Court allowed the assessee's claim for expense deduction while computing 'income from business', despite entire project for construction of dam, canal not being complete during relevant years and rejected Revenue's stand that only on completion of work of entire canal, assessee's business can be said to have been set-up and only thereafter assessee qualified for deduction. The Court also held that in a project like the Sardar Sarovar, there were bound to be different stages where different activities which were integral part of the business took place and where the project was phase-wise, the assessee could not be deprived of the benefits of fiscal legislation in disregard of the well settled principles on the issue.
***Joint Commissioner Of Income Tax vs. Sardar Saravor Narmada Nigam Limited TS-69-SC-2017 SLP No. 3018/2017 dated 10.02.2017***

**858.** The Court held that where asseessee, engaged in business of providing consultancy services in private placement of shares with Foreign Institutional Investors, claimed deduction of foreign travel expenses incurred on its representatives, in view of fact that expenditure was for expansion of existing business and not for setting up a new business, assessee's claim deserved to be allowed.

Go to Index

***Pr.CIT-12 v. Business Match Serivces (I) (P.) Ltd.- [2018]100 taxmann.com 411(BomHC)-ITA No.699 of 2016-dated November 27, 2018***

**859.** The Court held that where a study undertaken by UK company was in connection with working of assessee's existing mines and optimization of assessee's existing product and it did not relate in any way to proposed new plants, same would be revenue expenditure. Additionally, it held that where the assessee employer was put under obligation to provide residence to employees and assessee employer leased out certain lands to Central Government which constructed houses and assessee had been treated as lessee, house rent paid by assessee would be revenue expenditure.
***CIT v Manganese Ore India Ltd - [2016] 67 taxmann.com 268 (BombayHC)***

**860.** The Court held that assessee was entitled to claim revenue expenditure on payment of interest on borrowings made in relation to hotel projects for expansion of business.
***CIT v. Bharat Hotels Ltd. [2015]64 taxmann.com 14 (DelhiHC), ITA No.62 of 2007, dated July 31, 2015***

**861.** The Court held that the assessee, engaged in the construction of a dams / canals, was entitled to claim deductions when the business was set up and not when it completed the entire project as contemplated by the Revenue. It held that the nature of the assesee's work contemplated different stages of completion and therefore it was incorrect for the Revenue to contend that the business was set up only once the entire construction was completed.
***Sardar Sarovar Narmada Nigam Ltd v Add CIT – (2016) 96 CCH 0030 (GujHC)***

**862.** The assessee (engaged in the business of manufacture of PVC and caustic soda and also in business of shipping) intended to start a textile project which was abandoned subsequently. It claimed expenditure incurred in connection with the project as revenue which was rejected by the AO. The Tribunal affirmed the disallowance made by the AO on the ground that assessee, incurred expenditure for a new project that was a different line of business, and pre-operative expenditure incurred on said business was to be treated as a capital expenditure and not a revenue expenditure. The Court allowed assessee's appeal and held that since the new project was managed from common funds, control over all business units was in hands of assessee and there was unity of control, it could not be said that pre-operative expenditure incurred by assessee was on a new line of business and, thus, same was to be allowed as revenue expenditure.
***Chemplast Sanmar Ltd. vs ACIT [2018] 97 taxmann.com 347 (Madras HC) - TAX CASE (APPEAL) NO. 859 OF 2008 dated August 07 2018***

**863.** The Court allowed the assessee's claim for deduction u/s 37(1) with respect to expenditure incurred for implementation of project of setting up Chemical Benefication Plant for production of high quality sintered magnesia, which was one of products of the assessee, where the State Government had ordered closure of the said project. It was held that since the project undertaken by the assessee was in same line of business already being carried on by the assessee and no new business was set up, and there was no creation of new asset of enduring nature. It thus held that the impugned expenditure was to be allowed as revenue expenditure.

Go to Index

***Tamilnadu Magnesite Ltd. v ACIT - [2018] 95 taxmann.com 239 (MadrasHC) - T.C. (APPEAL) NOS. 907 & 908 OF 2007 dated June 5, 2018***

**864.** AO observed that assessee was incorporated on 12/6/2008 as a wholly owned subsidiary at Mauritius for development and construction of real estate projects in India.Assessee entered into a MoU with S for building a project. Assessee was developing master-planned corporate community called SCP which contained two identical commercial building of nine floors. AO held that as , , , , , sessee's only business was building of one park, and, therefore, all expenses direct or in direct should be accounted for as capital work in progress. AO completed assessment after disallowed an amount as revenue expenses u/s 37(1).CIT(A) held that stand of AO that in absence of any business income, project being incomplete, general expense were disallowable was contrary to well settled legal principles.It was setting up of business which was relevant for allowing expenses and not actual commencement of business.Assessee's business was to earn rental income from commercial mall and construction of mall was essential for that.Construction was in full swing which was evident by fact that capital work in progress.A marketing centre was set up to display projects completed by group outside India, to market its product though audio visual media and other such activities. The Tribunal held that once business was set up, expenditure was allowable as business expenditure.Assessee's business was set up and year under assessment falls in interval between setting up of business and commencement of business and AO's order disallowing expenditure claimed as revenue expenditure and capitalizing same to CWIP was not justified.Said expenditure was held to be allowable as business expenditure u/s 37 and accordingly, addition was deleted. It held that when an assessee whose business was to develop real estates, was in a position to perform certain acts towards acquisition of land, that would clearly show that it was ready to commence business and, as a corollary that it had already been set up.Actual acquisition of land was result of such efforts put in by assessee; once land was acquired assessee might be said to had actually commenced its business which was that of development of real estate.Actual acquisition of land might be a first step in commencement of business but s. 3 does not speak of commencement of business, it speaks only of setting up of business. There was no need to interfere with findings of CIT(A) and Revenue's appeal was dismissed

***Dy.CIT vs. HMS Real Estate Pvt Ltd (2018) 54 CCH 0427 DelTrib- ITA No.3289/Del/2018 dated 27.12.2018***

**865.** Assessee company was engaged in business of manufacturing and sale of Polymers and other Petrochemical Products. In Profit & Loss Account filed along with return, certain sum was debited by assessee on account of amortization of miscellaneous expenditure. In support of its claim for deduction, assessee explained that indirect expenditure was incurred by it before commencement of commercial production and same was written off over period of five years beginning from assessment year 2002-03. Assessee claimed that the expenditure so incurred was in nature of revenue and same was allowable as deduction being deferred revenue expenditure. AO disallowed deduction claimed by assessee on account of deferred revenue expenditure holding that there was no provision in the Act for allowing such deduction. CIT(A) upheld order of AO. The Tribunal held that, in assessee's own case for A.Y. 2005-06. The Tribunal held that assessee had incurred expenses prior to commencement of business and classified as deferred revenue expenditure. Assessee started claiming those expenses after

commencement of business 1/5th over the period of 5 years. AO was not skeptical about genuineness of expenses incurred. Whole amount had been incurred in connection of business prior to commencement of commercial production. Any expense incurred in connection to business was an allowable expenditure. It held that all expenses incurred prior to commencement of production should be capitalized with fixed assets of assessee and deduction as well as depreciation should be allowed to assessee

***Haldia Petrochemicals Ltd. & ANR. vs. Asst. CIT & ANR. - (2018) 53 CCH 0294 KolTrib-ITA No. 1533/Kol/ 2015,168/Kol/2016-Dated Jul 6, 2018***

**866.** The Tribunal held that where assessee, an asset management company, upon its incorporation had taken various steps for commencing its business such as hiring of people, application to SEBI, organizing for space etc. same amounted to setting up of business, therefore, expenditure incurred by assessee were to be allowed.

***Pinebridge India (P.) Ltd. v. Asst.CIT, Circle-6(1), Mumbai- [2018] 99 taxmann.com 58 (Mumbai – Trib) ITA No.2470(MUM) of 2011- dated October 10, 2018***

**867.** The Tribunal held that Ice cream and Mawa fall in the genus of dairy / milk products and thus were covered by the nature of dairy business carried on by the assessee and not a new project, therefore the expenditure incurred in connection therewith was allowable as revenu e expenditure.

***ACIT v Gravis Foods Pvt Ltd - (2015) 44 CCH 0560 Mum Trib***

**868.** The Tribunal held that foreign travel expenses incurred for prospective increase in customer base did not tantamount to a new business venture and therefore was to be treated as revenue.

***Business Match Services India Pvt Ltd v DCIT - (2015) 44 CCH 0507 Mum Trib***

**869.** Where the assessee claimed carry forward of business loss in respect of expenditure on school fares of director's children, rent paid for director's residence and commission paid to broker for rental premises, which was disallowed on ground that no business was set up in previous year relevant to subject assessment year, the Court upheld the order of the Tribunal wherein it was held that since the assessee failed to produce necessary evidence in support of its claim that business was set up and it was ready to commence, expenditure incurred by assessee prior to setting up of business could not be allowed.

***ALD Automotive (P.) Ltd. v DCIT - [2018] 91 taxmann.com 475 (BombayHC) - [2018] 91 taxmann.com 475 (Bombay) - IT APPEAL NO. 1149 OF 2015 dated March 5, 2018***

» *Provision / Contingent Liability*

**870.** Court allowed assessee-bank's claim for deduction u/s 37(1) on account of provision for interest on overdue deposits stating that the liability was ascertained and not unascertained. It held that since assessee was aware of its liability and was able to crystallize it and set it out expeditiously in its returns, possibility of likelihood of depositor renewing overdue deposits or for that matter, payment being made later, would in no way, deflect from the reality that assessee was able to identify its liability when it filed its returns.

Go to Index

***Oriental Bank of Commerce v ACIT – (2018) 401 ITR 65 (Del HC) – ITA No. 57 of 2018; CM Appl. 1856 of 2018 dated 17.01.2018***

**871.** The Court held that provision made for transit breakage by the assessee, engaged in business of manufacture and sale of India Made Foreign Liquor (IMFL), was to be regarded as liability of contingent nature and therefore not deductible under section 37(1)
***Seagram Distilleries Pvt Ltd v CIT – [2015] 62 taxmann.com 100 (DelHC)***

**872.** Assessee was engaged in business of manufacturing, assembling and marketing of pumps and components and was issuing a warranty letter in terms of which it got an obligation to replace/repair products sold free of cost during warranty period. During the year assessee filed its return claiming deduction of provision for warranty. The AO rejected assessee's claim holding that it was a case of contingent liability which could not be allowed as business expenditure. The Tribunal upheld order passed by AO. The Court on appeal held that assessee worked out provision for warranty on past experience and not on ad hoc basis and it was also found that provision was based on turnover of last three years and it was based on provision for expenses on repairs during warranty period as contemplated in sale agreements. Thus, the Court concluded that order passed by Tribunal was to be set aside and, assessee's claim for deduction was to be allowed.
***Grundfos Pumpas India Ltd vs DCIT- (2018) 98 taxmann.com 396 (MadrasHC)- TC No 1003 of 2008 dated 03.09.2018***

**873.** The assessee, a manufacturer of air conditioner (AC), had been making provision for five years warranty provided with respect to certain models of the AC sold by it and the computation of the said provision was based on the number of units sold and per unit rate of provision. It was noted that the assessee had been following consistent method in creating such warranty provision in other assessment years as well and no disallowance was made at revenue's behest. The Tribunal thus held that the assessee's claim of warranty provision being computed on scientific basis, was to be accepted. Further, the Tribunal held that where stores and spares expenses pertained to normal repairs and maintenance of manufacturing facility and salary, wages and staff welfare were related to normal business expenditure, no ad hoc disallowance could be made.
***Hitachi Home & Life Solutions (I) Ltd. v ACIT (OSD) - [2018] 93 taxmann.com 282 (Ahmedabad - Trib.) - IT APPEAL NOS. 2303, 2304, 2420 AND 2421 (AHD.) OF 2015 dated 18.04.2018***

**874.** The Tribunal upheld the CIT(A)'s order restricting the amount of allowable provision for warranty (created by adopting certain percentage of sales) at 2.14 per cent of sale as adopted in earlier years, noting that (i) the year-end provision was getting accumulated disproportionate to increase in turnover, (ii) there was nothing to show that there was any system of re-assessment or evaluation of provision for warranty at the year end or any reversal of pro rata based on actual expenditure incurred in respect of period for which warranty had expired (iii) there was huge difference in the amount of provision made and actual utilization (iv) the assessee did not furnish working of the provision to demonstrate that the amount of provision worked out was in accordance with the global policy and the same was in line with decision of Apex Court in case

of Rotork Controls India (P.) Ltd. v. CIT [2009] 314 ITR 62 (SC). It held that since the assessee used to derive advantage by deferring its income to extent of excess warranty provision to subsequent years, such excess provision could not be allowed as a deduction.

***Apple India (P.) Ltd. v. Dy.CIT [2018] 97 taxmann.com 576(Bengaluru Trib) - ITA NOS. 422 AND 423/BANG/2018 DATED AUGUST 2, 2018***

**875.** Assessee was engaged in business of Trading and Servicing of Automatic Bank Note Sorting Machines. E-return of income was filed. As per purchase orders and agreements for sale of cash sorting and counting machines, assessee Company was under obligation to provide warranty on sale of machines which varied from one to three years. Assessee Company made provision for warranty. AO made disallowance of provisions for warranty expenses. CIT(A) partly allowed assessee's claim. The Tribunal held that, provisions for warranty was business necessity and such provision was allowable expense. Merely because assessee had returned back provisions in subsequent year could not be basis for disallowing assessee's claim in current year, particularly when assessee had given specific basis for making warranty provisions.

***CPS Cash Processing Solutions Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0285 DelTrib. -ITA No. 5017/ DEL/ 2012, 2671/DEL/2013-July 3, 2018***

**876.** Assessee Company had debited liquidated damages in its P&L A/c for delay in supply of machines to banks. AO disallowed liquidated damages on account of delay and supply of machines. CIT(A) upheld AO's order. The Tribunal held that, AO as well as CIT(A) had not taken correct cognizance as to liquidated damages incurred by company and accordingly deducted by customers from payment of sale proceeds was as per agreed terms and contract. All these factors had not been properly assessed by AO as well as CIT(A). These provisions were to be set off in next Assessment Year and same had to be verified at level of AO. Hence, AO was directed to verify all these documents along with claim of set off of this claim

***CPS Cash Processing Solutions Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0285 DelTrib. -ITA-No. 5017/ DEL/ 2012, 2671/DEL/2013 dated July 3, 2018***

**877.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for deduction of provision made for retrospective reduction in price charged for set top boxes sold by the assessee during the relevant year i.e. AY 2007-08, noting that the aforeisad reduction was a result of reduction in duties announced by Union Budget w.e.f. March 1, 2007 and though the exact price reduction happended post 31st March, 2007 (but before finalization of accounts), the same was in principle agreed before 31st March, 2007. It relied on AS-4 dealing with 'Contingencies & Events occurring after Balance Sheet date' and mercantile system of accounting and held that costs directly associated with the revenue recognised durng the relevant period have to be considered, irrespective of whether money is paid or not. Accordingly, the Tribunal held that since the provision was bsed on actual quantification of amount of liability rather than based on some estimate basis or contingent value, the said provision for reduction in price was allowable.

***ACIT v Thomson Holdings India Ltd - TS-545-ITAT-2018(DEL) - ITA No. 841 & 1093/DEL/2013 dated 07.09.2018***

Go to Index

**878.** The Tribunal allowed the assessee's appeal against the disallowance made by the AO on account of deduction claimed by the assesse with respect to provision for increase in price of material supplied by the vendors (which were purchased with express understanding that rates would be revised, if there was substantial increase/decrease in cost of materials, at agreed interval). It held that it was common trade practice for payment of arrears in event of substantial increase/ decrease in cost, in order to maintain continuous supply of raw materials without being affected by market fluctuations, especially in light of volume of purchases made by the assesse and in absence of such understanding/ contract with vendors, the assessee would not be able to operate and continue manufacturing operations without disruption. It noted that the same process was followed when there was reduction in cost elements of component prices. The Tribunal held that such price revisions, being an accrued liability at time of purchase of raw materials, were recorded in books of accounts by assesse and at year end, the assesse estimated additional liability on account of price revision under negotiation and made upward/downward provision, as the case may be, until end of relevant year.
***HERO MOTO CORP LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0200 (Del Trib) - ITA No. 6990/DEL/2017 dated Jun 20, 2018***

**879.** The Tribunal relied on the co-ordinate bench ruling of the assessee in earlier year and allowed the assessee's claim of provision for warranty which was certified by the actuary. It relied on the ratio laid down in Apex Court ruling in Rotork Controls Ltd. wherein it was held that warranty services are normal business expenditure and not contingent liability if the provision for the same could be measured by using substantial degree of estimation.
***Toshiba India Private Limited vs ACIT [TS-609-ITAT-2018(DEL)-TP] ITA No. 1438/Del/2018 dated 18.06.2018***

**880.** The Tribunal allowed deduction on provision regarding year-end circuit accruals (i.e. infrastructure cost and last mile charges paid to other operators for provision of telecom connectivity services). Taking note of the assessee's accounting procedure under which the assessee accrued expenses incurred in relation to services rendered during the relevant year, it held that the provision was made on scientific basis and in compliance with accounting standards. Further, it held that Revenue's action of disallowing the claim of circuit accrual in the year of creation and allowing it in the next year when such reversals were made was nothing but timing difference. Accordingly, it held that provision should be allowed in the year of creation itself in view of the mercantile system of accounting.
***AT& T Global Network Services (India) Pvt Ltd vs. DCIT-TS-407-ITAT-2017(DEL)-ITA No. 2538/Del/2014 dated 18.09.2017***

**881.** The Tribunal held that the notional loss suffered on account of revaluation of securities held by the assessee as stock-in-trade in compliance with the Banking Regulation Act, at the end of the year was allowable as deduction in the computation of profits of the appellant.
***Deccan Grameena Bank v DCIT – (2016) 47 CCH 0547 (HydTrib)- ITA No. 936/Hyd/2015, 889/Hyd/2015***

**882.** The Tribunal allowed assessee's claim for deduction u/s 37(1) with respect to provision made for ULC charges [i.e. charges under the Urban Land (Ceiling and Regulation) Act, 1976] payable

to State Govt since the liability had arisen because of order passed by Additional Collector in financial year relevant to the assessment year under consideration, irrespective of the fact that the assessee had disputed the said liability before High Court. It held that as soon as competent authority passed an order for payment of ULC charges, said liability could not be considered as contingent liability as same had been ascertained and crystallised. Further, the Tribunal held that since the assessee was following percentage completion method for recognition of revenue for a project and such project had been completed during relevant year, the provision made for ULC charges in its books was in accordance with law.
***Punit Construction Co. v JCIT – (2018) 92 taxmann.com 28 (Mum) – ITA Nos. 6337 and 6980 (Mum) of 2014 dated 21.02.2018***

**883.** The assessee had claimed expense on account of provision for doubtful debts u/s 36(1)(vii), which was denied by the AO on the ground that it was mere provision for doubtful advances and the amounts were not actually written off. The CIT(A) confirmed disallowance by the AO. Noting that the assessee had claimed the said expenditure under the head 'Provision for doubtful advances' and this provisions had been reduced from the figures of Advances recoverable in cash or in kind or for value to be received under the head Other current Assets, Loans & Advances in the Balance Sheet for impugned AY, the Tribunal held that the issue under dispute was not at all covered by the provisions of Section 36(i)(vii) as the section dealt with 'bad debts written off' by the assessee qua sundry debtors, which is not the case here as no write off had taken place. Therefore, it held that the admissibility of impugned expenditure was to be examined under the provisions of section 37(1) and further held that the prime condition to claim expenses u/s 37(1) was that the expenditure must have crystallized during impugned AY. Noting that the assessee had not produced any evidence to show that the parties refused to pay outstanding amount or denied their liability in any manner, it concluded that the liability had not crystallized during year and accordingly held that the impugned expenditure was a mere provision, not allowable as a deduction u/s 37(1) of the Act..
***ELITE INTERNAIONAL PVT. LTD. vs. ACIT (2017) 50 CCH 0089 MumTrib ITA No.3079/Mum/2014 dated 07.06.2017***

**884.** The Tribunal held that where assessee, carrying on trading activities in stock and commodities, held derivatives as stock-in-trade, its claim for loss at end of year on mark to market basis could not be disallowed on the ground that same was contingent in nature.
***Edel Commodities Ltd. v DCIT [2018] 92 taxmann.com 133 (Mumbai – Trib.) – ITA NOS 3426 AND 3576 (MUM.)OF 2016 dated 06.04.2018***

» *Genuineness / documentary evidence*

**885.** The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had allowed the assessee's claim for deduction of donation made to various institutions to support their educational and social activities, which was claimed by the assessee as publicity expenses. The High Court had rejected Revenue's contention that the assessee had not produced any evidence to show the expenses were incurred for business purpose,

holding that since the payment was made by Account payee cheque and the audit report had confirmed it, there was no question of verifying documents.
***Pr.CIT v Lord Chloro Alkali Ltd - [2018] 97 taxmann.com 514 (SC) - SLP (Civil) Diary No.(S). 24997 OF 2018 dated July 30, 2018***

**886.** In course of assessment, the assessee claimed deduction of expenses towards bricks, machinery repair, cartage, labour expenses etc. The assessing Officer disallowed 10 per cent of said expenses on ground that insufficient evidence was adduced. The Tribunal set aside said ad hoc disallowance on two grounds, firstly, the assessee's books of account were not rejected and secondly, such expenses were allowed consistently in past in scrutiny assessments. The High Court held that no substantial question of law arose out of impugned order. The Apex Court also dismissed the SLP.
***Principal CIT v. R.G. Buildwell Engineers Ltd. [2018] 99 taxmann.com 284/259 Taxmann 370 (SC). SLP (CIVIL) Diary No. 34335 of 2018 dated October 1, 2018***

**887.** The Apex court dismissed the assessee's SLP against Karnataka HC ruling denying deduction under section 37 for guarantee commission paid by the assessee to its Chairman cum Managing Director ('MD') Vijay Mallya on the ground that Mr. Mallya's net worth was much lower than the amount of guarantee and the bankers did not obtain details of assets and liabilities of MD in India and outside India. The Court remarked that it was a ploy to divert the income of the companies under his management as a means to pay remuneration to the MD for which he was otherwise not entitled and to overcome the RBI directions and statutory provisions under section 309 of Companies Act which was unlawful.
***United Breweries Ltd. [TS-9-SC-2017]***

**888.** Where the Tribunal upheld disallowance of commission expenditure u/s 37(1) incurred by the assessee, without considering the entire material / facts of the case but merely proceeded on the basis of the fact that the agent receiving the said commission did not appear before the AO in the first instance and that he did not produce documentary evidence to establish nature and value of services rendered to the assessee when he appeared before the AO during remand proceedings, the Court remitted the issue back to the file of the Tribunal noting that the Tribunal decided the issue, as if it were examining the case of that Agent and not of the assessee , since it failed to examine the material evidences in shape of agreements for sale, and failed to appreciate the fact that the payments were made through banking channel, on which TDS was deducted.
***Brijbasi Hi-Tech Udyog Ltd Vs. Commissioner of Income Tax- (2017) 98 CCH 0101 Allahabad HC (ITA No. 186 of 2013)***

**889.** The Court held that where assessee had claimed sub-brokerage expenses and revenue claimed that there should be 20 per cent disallowance of these expenses on basis of similar disallowance made in a subsequent assessment year, in view of fact that volume of business in subsequent assessment year was not comparable to volume of business in assessment years, under consideration, and further, there was no dispute regarding genuineness of expenses, Tribunal was justified in restricting disallowance to 10 per cent.

Go to Index

***Pr.CIT v. Paramount Financial Services- [2019] 101 taxmann.com 246 (BomHC)-ITA Nos. 506 & 562 of 2016-dated December 17, 2018***

**890.** The assessee, in pursuance of an agreement, with Red Chillies Entertainment Pvt. Ltd. (RCEPL) made payment of 50% of the profits earned from the film 'Kaal' to RCEPL towards (i) grant of unlimited use of cinematographic equipments possessed by RCEPL (ii) creative, technical and marketing inputs provided by RCEPL (iii) RCEPL's contribution in the field of concept, characterization, dialogue, music, theme etc. and also for (iv) the performance by Shahrukh Khan in a song of the film and marketing assistance rendered by him. The AO contended that the assessee did not provide any evidence to substantiate its claim that any of the stated services were provided by RCEPL. Thus, it held that RCEPL had no role to play in the making of the film `Kaal' and payments made to RCEPL were not for business purposes and accordingly, disallowed the same u/s 37(1). The AO further contended that the services were rendered by Mr.Shahrukh Khan and not by RCEPL. The CIT(A) upheld the AO's order. Noting that there was an agreement between the assessee and RCEPL pursuant to which the payment was made and that the existence of the agreement had not be doubted / disputed by the lower authorities, the Tribunal observed that the assessee had duly established that the payment was made as per agreement between the parties and for services provided by RCEPL and therefore held that it was allowable under Section 37(1) of the Act. Further, vis-à-vis the AO's allegation that services were provided by Mr. Shahrukh Khan and not RCEPL, the Tribunal noted that some of the services were creative in nature and demanded personal expertise and talent and therefore held that such services could be rendered by somebody on behalf of the company. It also noted that no separate payment was made or alleged to have been made to Mr.Shahrukh Khan for the services rendered. The Court upheld the Tribunal's order deleting the addition made by AO u/s 37(1) and held that it had been duly established that the payment made by the assessee was made as per agreement between the parties and against the services provided by RCEPL and hence held that the same was allowable u/s 37(1) of the Act.
***CIT vs. DHARMA PRODUCTIONS PVT. LTD. (2017) 99 CCH 0051 BomHC ITA NO. 1140 OF 2014 WITH 1144 OF 2014 dated 05.06.2017***

**891.** The Court held that where the assessee claimed a deduction of secret commission paid to employees of different companies who had given business to the assessee but failed to keep any books of accounts as to where and to whom such commission was paid, the Tribunal was justified in restricting the allowance of such commission at 1 percent of the sales.
***Patel Brothers v DCIT – (2016) 67 taxmann.com 257 (GujaratHC)***

**892.** The Court held that where assessee company as well as assessee's parent company, both were assessed to tax at maximum marginal rate, it could not be said that service charge was paid by assessee-company to parent company at unreasonable rate to evade tax.
***Pr.CIT v. Gujarat Gas Financial Services Ltd.[2015] 60 taxmann.com 483/233 Taxmann 532(Guj.HC)***

**893.** The Tribunal held that the AO was incorrect in disallowing foreign travel expenses on an ad hoc basis, presuming that they were incurred towards the Director's personal benefit, without

bringing anything on record to prove the same. It held that disallowance of expenses based on surmises and presumptions was not possible.
***ACIT v Farida Shoes Pvt Ltd – (2016) 46 CCH 0029 (Chen)***

**894.** The Tribunal denied the assessee deduction of ESOP expenses incurred by it for buying back equity shares from its employees through its ESOP trust as there was no evidence that the shares were allotted to the employees in the first place. Accordingly, it doubted the buy-back of the shares and disallowed the expense claimed by the assessee.
***Shriram Insight Share Brokers Ltd v DCIT – TS-264-ITAT-2016 (CHNY)***

**895.** During scrutiny assessment, the assessee was asked to furnish nature of labour expenses and proof regarding same. However, in reply, the assessee submitted that payments were made to casual workers for works done by them on various days and the same was settled then and there. However, assessee failed to produce any documentary evidence to support its contentions. Thus, the AO held that labour charges were disallowed and added back to assessee's income which was later confirmed by the CIT(A). The Tribunal held that the assessee had not produced any details regarding the said labour charges expended by it, thus the AO had correctly disallowed said expenditure and added back to assessee's income.
***Ilahia Trust vs ACIT (exemption)- (2018) 54 CCH 0131 Cochin Trib- ITA No 313/Coch/2018 dated 29.10.2018***

**896.** The Tribunal held that where there was no authorization in trust deed to pay remuneration by assessee trust to its employees, remuneration paid by assessee trust to its employees was to be disallowed. Further, the Tribunal partially upheld the disallowance of several expenditure claimed by assessee on grounds that payments for such expenses were supported by self made vouchers only. It held that since in a normal trade practice, it was not possible to prove 100 percent bills and eceipts from recepients and there was every chance of making payments by way of self made vouchers. However, as there was every chance of inflating expenditure by way of self made vouchers, the Tribunal upheld the disallowance only to the extent 20 percent of the total amount towards self made vouchers.
***Shalom Charitable Ministries of India v ACIT [2018] 94 taxmann.com 266 (Cochin – Trib.) – ITA NOS. 79 & 80 (COCH) of 2017 dated 25.04.2018***

**897.** The Court dismissed assessee's appeal against the Tribunal's order disallowing assessee(agent)'s claim for deduction of high commission paid to its sub-agent, noting Tribunal's finding that there was no evidence to show that the sub-agent had the experts, who had helped the assessee (who was agent of a Korean company wherein the assessee provided services of coordination and follow up in connection with supply of transformer by the Korean company to an Indian company) in the bidding process or had interacted with the Indian company and that no letter or communication from the Korean company or the Indian company to the sub-agent was filed. The Court held that it could not be said that Tribunal's conclusion was not based no evidence or was rationally not possible or entirely unreasonable.
***ALPASSO INDUSTRIES PVT. LTD. vs. ITO - (2019) 410 ITR 0212 (DelhiHC) – ITA No 395/2018 dated July 23, 2018***

Go to Index

**898.** The Court held that where the assessee had reasonably established that the expenses incurred by it were for running its real estate business and that in the absence of such expenditure, the establishment could not be run, in the absence of any finding by the AO that the expenses were non-genuine and the fact that the books of accounts of the assessee had not been rejected, 50 percent of the expenses could not be disallowed on an arbitrary basis.
***CIT v DLF Hilton Hotels – (2016) 69 taxmann.com 300 (DelHC)***

**899.** The Court upheld Tribunal's order allowing repair and maintenance charges claimed by assessee as business expenditure. The assessee company was running a hotel and had claimed repair and maintenance charges paid to parties. The AO had allowed part claim of charges w.r.t to parties which had appeared before AO and balance were disallowed to extent of 50% citing absence of documents. The CIT(A) observed that assessee had filed partywise details with names, PAN and copies of bill and confirmations, except one party, on which the CIT(A) made disalownace to the tune of 5%. The Tribunal held that the assessee had submitted all the requisite documents and CIT(A)'s disallowance of 5% was mere suspicion. The Court upheld the Tribunal's order and allowed complete claim of repair and maintenance expenditure u/s 37(1).
***PCIT vs Rambagh Palace Hotels (P) Ltd- (2018) 98 taxmann.com 167 (DelHC)- ITA No 1014 of 2018 dated 17.09.2018***

**900.** The Tribunal held that the basis adopted by the AO for disallowing expenses incurred by the assessee by deeming them to be capital in nature viz. increase in capital work in progress and a higher capital work in progress as compared to revenue, were not sustainable since the assessee had shown bifurcation of each type of expenditure along with minute details as to the application of expenditure and that no specific defect in the books of accounts had been pointed out by the AO. However, considering the size of the assessee's business as well as the impossibility of bifurcating each and every expense and the increase in capital work in progress, the Tribunal sustained disallowance at 1 percent of total employee cost and 1 percent of administrative and other expenses.
***Gujarat State Petronet Ltd v ACIT – (2015) 45 CCH 0301 Ahd Trib***

**901.** The Tribunal held that the assessee was not justified in claiming expenses towards earning referral commission income noting that the income was derived from mere reference which did not involve any provision of service or value addition and therefore, in the absence of any further substantiation, it held that the assessee was not justified in claiming expenses towards earning of such income.
***RAGA MOTORS PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0103 Amritsar Trib - ITA No. 11/(Asr)/2017 dated Feb 16, 2018***

**902.** Assessee made provision for service tax on rent pertaining to Gurgaon premises and Bangalore premises. Landlord of Gurgaon premises raised a consolidated invoice for recovery of service tax during year 2012 and in respect of Bangalore premises amount had not been paid by assessee as same was not claimed by landlords. AO treated entire amount as an unascertained liability and disallowed it. AO made addition in respect of Provision for service tax on rent expenses. Held, liability to collect and deposit service tax on rent income was on landlord.

Go to Index

Assessee had made payment as per invoice raised by landlord in Assessment Year under consideration for Gurgaon premises whereas insofar as Bangalore premises were concerned no payment was made as invoice was not released. The Tribunal directed the AO to verify if service tax liability towards Bangalore premises had been made by assessee as subsequently law was absolutely clear and burden was cast upon landlord to mandatorily collect service tax, to be deposited with Government. Accordingly, the matter was remitted.

***Viavi Solutions India Pvt. Ltd. & Ors. vs. Dy. CIT & Ors. - (2018) 53 CCH 0319 DelTrib-ITA No.1483/Del/2016, 1478/Del/2016, 231/Del/2017-Jul 11, 2018***

**903.** The assessee company was a joint venture non-banking finance company engaged in issuance, sales and marketing of credit cards and the AO made disallowance on account of advertisement expenses and the CIT(A) partly sustained disallowance. The Tribunal observed that while sustaining disallowance, the CIT(A) had noted that assessee was not in position to provide proper details and documents of various items which were distributed and noted that expenses shown under head 'Gifts and Others' were not fully supported by adequate documentary evidences and details. The Tribunal noted that the CIT(A) made ad hoc disallowance without pointing out any specific instance where vouchers were not available, and the AR had also drawn attention to various documentary evidences filed in support of these expenses as available on paper book filed by assesse.Thus,the Tribunal concuded that it would be in fitness of things that issue be re-examined by AO and be restored to file of AO to be adjudicated afresh after duly considering evidences which assessee sought to rely upon.

***SBI cards payment services pvt ltd vs ACIT- (2018) 54 CCH 0109 Del Trib- ITA No 5879/Del/2013 dated 23.10.2018***

**904.** The AO disallowed 30 percent of the operating expenses incurred by the assessee as being unverified, unreasonable and excessive as the assessee failed to furnish its books of accounts On appeal the CIT(A) restricted the disallowance to 10% as a result of which both the assessee and the Revenue filed an appeal before the Tribunal. The Tribunal noted that the Revenue was deprived of the opportunity to verify the books of accounts because of the failure of the assessee to produce the same and observed that the assessee failed to furnish the books of accounts even before the CIT(A) or the Tribunal as an additional evidence. Accordingly, it set aside the order of the CIT(A) and restored the matter to the file of the AO for making denovo assessment as per law and directed the AO to provide the opportunity to the assessee to produce books of accounts and comply with the statutory requirements and make further verification/inquiry/investigation, etc. in accordance with law.

***Aradhana Foods & Juices Pvt. Ltd. & Ors. vs. ITO & Ors. (2017) 50 CCH 0080 DelTrib ITA No. 2427/Del/2011, 2340/Del/2011, 3921/Del/2013, 3590/Del/2013, 3923/Del/2013, 4472/Del/2013, 4706/Del/2013, 3922/Del/2013, 3588/Del/2013 dated 05.06.2017***

**905.** The Tribunal allowed the assessee, a partnership firm, deduction under section 37 for license fee paid by it to Remfry& Sagar Consultants Pvt. Ltd (RSCPL) for use of goodwill of Dr. V. Sagar and dismissed the contention of the Revenue that the transaction was a sham transaction adopted to transfer profits of the assessee law firm to the children / family members of Dr. V. Sagar who held majority shares in RSCPL. It noted that the assessee was formed to continue the practice of Dr.V Sagar and in order to institutionalize the goodwill in the firm built over 175

years, the same was gifted to RSCPL, pursuant to which the assessee paid a license fee to RSCPL to use the said goodwill. It held that Dr. V. Sagar had arranged his affairs in such a way that the goodwill earned by him over the years was enjoyed by his legal heirs and such a well-considered and thought out arrangement could not be said to be a colourful device. It further rejected revenue's contention that goodwill was attached to the persona of Dr. V. Sagar and in view of Advocates Act, goodwill in profession could not be sold to a company which did not have a right to carry on practice and clarified that it had no power or authority to adjudicate on whether the gift of goodwill by Dr.V.Sagar of his profession of law to a company was in violation of the Advocates Act, 1961 or the Bar Council Rules.

***Remfry& Sagar [TS-563-ITAT-2016(DEL)] (I.T.A .No.-1561/Del/2011)***

**906.** The assessee had paid commission to the directors for guarantee given by them for working capital loan obtained by the assessee. The AO disallowed the claim of the assessee on the ground that the assessee failed to submit any loan sanction documents of the Bank in support of its claim of personal guarantee given by the directors. The CIT(A) observed that the bank had insisted upon the personal guarantee of the directors. Accordingly, he allowed the claim of the assessee. The Tribunal however, observed that the CIT(A) had considered the only aspect that the personal guarantee of the directors was given by the assessee company on the instance of the Bank and had not addressed the core issue whether the commission paid to the directors in lieu of their personal guarantee was legally justified or not to qualify for deduction. It observed that as per the RBI Circular, no commission or remuneration was to be paid to the directors for the guarantee given except i) where the company is not performing well ii) where the guarantors are not connected with the management iii) where the personal guarantee of the guarantors is essential to continue iv) where the new management's guarantee is not available. It further observed that the assessee had not been able to provide the original documents of the loan obtained to verify whether the terms and conditions of the loan were in consonance with the guidelines of RBI. Accordingly, it restored the issue to the file of the AO to examine the original bank documentations to ascertain whether the requirement of non-payment of commission to the guarantors was incorporated in the terms and conditions of bank for sanctioning of credit limit in terms of RBI guidelines noted above.

***EASTMAN INDUSTRIES LTD. & ANR. vs. ACIT & ANR. (2017) 50 CCH 0122 DelTrib ITA No.286/Del./2013, 45/Del./2013 ITA No. 286/Del./2013, 45/Del./2013 dated 09.06.2017***

**907.** The Tribunal held that where assessee had paid commission to its agents out of which 3 had denied rendering service to the assessee, the commission paid to the remaining 12 agents could not be disallowed and the disallowance was sustainable only to the extent of commission claimed to have been paid to the said 3 agents.

***Sarika Ranasaria v ACIT - (2016) 47 CCH 0202 (Hyd Trib)***

**908.** Even though the basis for incurring expenditure on commission was proved and payment was made through banking channels on which TDS was also deducted, the Tribunal disallowed commission paid by assessee to an individual for procuring business for assessee on the ground that it failed to prove genuineness of existence of the party.

***Transport Corporation of India Ltd. [TS-542-ITAT-2016 (HYD)] (ITA No. 117/Hyd/2016)***

Go to Index

**909.** During assessment proceeding, AO also made ad-hoc disallowance of a certain amount out of various expenses incurred towards miscellaneous expenses, repair and maintenance, stationery and printing, travelling, administrative expenses for want of necessary verification merely on basis that some of expenditure incurred in cash and vouchers were self prepared.CIT(A) granted relief to assessee. The Tribunal held that CIT(A) deleted disallowance by holding that books of accounts of assessee were audited and were duly produced before AO.Assessee's books results were not rejected by AO. No major discrepancies were noticed.Disallowance was merely made on observation that some of expenditure were incurred in cash and some vouchers were self made and surprisingly there was no specific observation by AO which could prove that assessee had claimed expenses with a motive to evade tax nor any observation was made by AO for challenging genuineness of particular expenditure. Merely making a ad-hoc disallowance and completely disregarding audited financial statements was certainly not justified on part of AO. No infirmity was found in finding of CIT(A) while deleting disallowance and Revenue's ground was dismissed.
***Dy. CIT vs. BRILLIANT ESTATE PVT. LTD. (2018) 54 CCH 0345 IndoreTrib ITA No. 349/Ind/2017 dated 13.12.2018***

**910.** Assessee was a company engaged in activity of civil construction, purchase and sale of immoveable property. The AO during assessment proceedings observed that assessee had claimed expenditure as compensation given to Mr. D as award given in lieu of settlement deed between them. The AO issued notice u/s. 131(1) to Mr. D, who gave statement in return accepting that he had been paid certain amount for various works done by him for 5 years. The AO further raised doubt on genuineness of documents as they were not executed on legal paper and held that there was no business expediency to pay compensation nor any perpetual damage or loss were caused to Mr. D and disallowed expenditure claimed under head compensation for land.The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order by observing that , there was plot of agriculture land owned by assessee, who contacted with Mr. D for further work to be undertaken as per letter of remembrance. Further, due to slump in real estate market upcoming project was stopped and Mr. D demanded for compensation of certain amount which was finally settled. The Tribunal observed that the above proved that aforesaid expenditure was incurred on ground of commercial expediency and payment of compensation made by assessee to Mr. D was for business and it could not be categorized as colourable transaction. The Tribunal concluded that the payment had been made within four corners of law and could not be said to be an after thought planning and thus an allowable expenditure.
***ACIT vs MDK Realty – (2018) 54 CCH 0013 Indore Trib- ITA No 384/Ind/2017 dated 12.09.2018***

**911.** AO made addition on account of construction of community centre. The Tribunal held that section 37 allowed certain expenditure i.e. any expenditure (not being expenditure of nature described in sections 30 to 36 and not being in nature of capital expenditure or personal expenses of assessee), laid out or expended wholly and exclusively for purposes of business or profession should be allowed as computing income chargeable under head Profits and gains of business or profession. Assessee was required to demonstrate that expenditure had been incurred exclusively for business of assessee. As no evidence in this regard was furnished by

assessee corporation, therefore there was no infirmity in order of AO and Assessee's ground was dismissed.

***M.P Police Housing Corporation Ltd vs ACIT- (2018) 54 CCH 0076 IndoreTrib- ITA No 383/Ind/2013, ITA No 259& 260/Ind/2015, ITA No 269,449/Ind/2016 and ITA No 125/Ind/2017 dated 10.10.2018***

**912.** The Tribunal dismissed asseseee's appeal and upheld CIT(A)'s order confirming the disallowance of business promotion expenses and office expenses to the extent of 10%, noting that there was no denial of the fact that the assessee had failed to produce complete details and evidence to substantiate the claim of expenditure as some of the vouchers were self-made.
***Fortune Infonet vs ITO [2018] 54 CCH 0256 (Jaipur -Trib)-ITA No.866/JP/2018 dated 20.11.2018***

**913.** Where the AO had made an ad hoc disallowance of travelling expenditure for want of complete details of bills and vouchers and also since some of the vouchers were self-made, the Tribunal held that the AO could not make ad hoc disallowance in absence of any specific defect in assessee's claim, except the self-made vouchers for petty expenses. It noted that the AO had accepted the fact that the self-made vouchers were produced by the assessee in respect of the petty expenses only and therefore, major expenditure were supported by the assessee with proper vouchers. Further, the Tribunal noted that the AO had neither conducted proper enquiry nor had given a finding that the assessee's claim was excessive or bogus. Accordingly, it allowed assessee's appeal.
***Fortune Infonet vs ITO [2018] 54 CCH 0256 (Jaipur -Trib)-ITA No.866/JP/2018 dated 20.11.2018***

**914.** The Court upheld the order of the Tribunal and deleted the AO/CIT(A)'s disallowance of commission paid by the assessee to its agent @ 5% of invoice price noting that the assessee had only received 95% of the invoice price and therefore, could not be taxed for income which it had not received. Accordingly, it dismissed the contention of the Revenue that the existence of the agent was doubtful.
***CIT vs. Olam Exports (India) Ltd. (2017) 99 CCH 0170 KerHC ITA.No. 1623 of 2009 dated 03/08/2017***

**915.** Assessee, a LIC agent had claimed certain sum on account of sales promotion expenses and the AO found certain infirmities in claim of assessee of having distributed silver coins amongst his clients and further noted that as per IRDS Rules, it was not permissible for any LIC agent to give any gift to the person who has taken a policy through them and thus expenditure claimed to be incurred by assessee on business promotion expenses was disallowed. The CIT(A) restricted disallowance made by AO and allowed partial relief to the assessee. The Tribunal noted that, as revealed from enquiry made by AO from VAT authority, supplier of above coins was involved in issuing fake bills and further the assessee could only submit a list of 90 policy holders as against 246 policy holders to whom silver coins were claimed to be given as part of business promotion. The Tribunal further noted that in spite of all these adverse findings, CIT(A) allowed partial claim of assessee and said relief was given by him under wrong impression that AO himself had allowed relief to assessee to that extent. Thus, the Tribunal held that assessee

Go to Index

had already got reasonable relief from CIT(A) on this issue and there was no case for allowing any further relief to assessee and thus dismissed assesse's appeal.
***Binod Kumar Kheria vs ACIT- (2018) 51 CCH 0001 Kol Trib- ITA No 532/Kol/2018 dated 05.09.2018***

**916.** The AO partially disallowed provision of marketing services and the same was upheld by CIT(A). The Tribunal had observed that provision made by assessee-company for marketing expenses was allowed by AO to some extent and the point of dispute by the AO was that, the provision so made was excess as against the amount required by assesse to subsequently settle obligation and thus AO accordingly made disallowance to some extent on such excess provision.
The Tribunal noted that out of the total provision made by assessee for marketing expenses, certain sum was required to settle obligation and only balance amount, which was less than 10% of total provision made by assessee remained excess. Further, such excess provision was subsequently reversed by assessee and offered to tax. Thus, the Tribunal held Provision for marketing expenses was rightly recognized and made by assessee being its liability for expenses of its business and disallowance made by AO and confirmed by CIT(A) merely on basis that such provision was found to be finally excessive were not sustainable.
***DCIT vs Reckitt Benckiser (India) Ltd- (2018) 54 CCH 0033 Kol Trib- ITA No 2113,2150, 2114, 2151, /Kol/2013, 760 & 762/Kol/2014 dated 14.09.2018***

**917.** The Tribunal upheld CIT(A)'s deletion of disallowance made u/s 37(1) of 1/4$^{th}$ of repairing expenses on ad hoc basis on ground that no details in respect of same was furnished, noting that necessary details were duly filed by assessee at time of assessment proceedings but AO was not satisfied with same and holding that if AO was not satisfied with claim of assessee then he had to make disallowance after making specific reference to documents/vouchers produced on record whereas in the present case AO had made disallowance on ad hoc basis without pointing out any defect/error in evidence produced by assessee.
***DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018***

**918.** The Tribunal held that where the assessee furnished details such as the income-tax returns, bill wise details of payments, addresses and PAN copies of the commission agents to which it had made payment of commission during the relevant AY viz. AY 2010-11, the AO was incorrect in disregarding all the aforesaid evidences and in concluding that the payment of commission was non genuine merely on the basis of the date on appointment letters entered into with the commission agents viz. April, 2010, which could have been on account of a typographical error. It held that where the assessee had discharged the onus which lay on it to prove that the commission was paid to the commission agents, the AO ought to have considered the same before fastening liability on the assessee based on the date of appointment letters as his action was not in consonance with the discharge of its quasi-judicial function.
***Sytans & Colloids v DCIT – (2016) 47 CCH 0730 (Lucknow Trib) – MA No 110 / LKW/ 2015***

**919.** The AO made addition in case of the assessee on grounds that sales return claimed by assessee and consequent loss on such sales return was not explained to satisfaction of AO. In

respect of those parties, who did not appear before AO, the CIT(A) confirmed addition made by AO and in respect of parties who appeared before AO and confirmed transactions, CIT(A) deleted addition. The Tribunal held, that in spite of various opportunities, assessee failed to submit relevant details to satisfaction of AO, including confirmation from parties, details of transportation of goods, necessary correspondence made between parties to follow up payment in respect of sales made in earlier year, justification for downward valuation of sales. Further, the assessee had not followed general system of control regarding movement of goods at factory. Since number of opportunities were given by AO in assessment proceedings and in remand proceedings and assessee failed to prove genuineness of transaction with these parties even during appellate proceeding, the Tribunal upheld the CIT(A)'s order.

***Eskay Knit (I) Ltd vs ACIT- (2018) 54 CCH 0049 Mum Trib- ITA No 6816/Mum/2011 dated 28.09.2018***

**920.** AO noted that assessee had incurred traveling expenses in respect of travelling by its directors namely, Mr. M and Mr. N. AO directed assessee to submit corresponding bills/vouchers and nature of travelling expenses, which, assessee failed to comply with. AO completed assessment after making 50% disallowance of said expenses and made consequential additions. CIT(A) reduced disallowance to 25%. The Tribunal held that, disallowance of a fraction of expenses by AO and CIT(A) was made only on an estimate basis and not on basis of any concrete facts disproving authenticity of assessee's claim. CIT(A) adopted a liberal approach and in order to meet ends of justice had restricted disallowance to extent of 25% of total expenses. Lower authorities were fairly justified in disallowing a part of said expenses. However, at same time, it could not be said that disallowance of 25% of said expenses were highly exorbitant in backdrop of scale of business of assessee. Keeping in view substantial turnover of assessee for year under consideration, incurring of travelling expense could safely be held to be a miniscule amount. Thus, disallowance of travelling expense was restricted to 10% and thus, order of CIT(A) was modified. Assessee's ground was partly allowed.

***Mishka Gold Jewellery Ltd & ANR. Vs. Addl.CIT & ANR - (2018) 54 CCH 0311 MumTrib – ITA No(s).5972/Mum/2017, 5438/Mum/2017-Dated December 7, 2018.***

**921.** During assessment, the AO observed that assessee had debited salary expenses to tune of Rs. 1,23,52,891/- during year under consideration as against an amount of Rs. 54,16,001/- debited to salary expenses in immediately preceding year. As per AO, salary expenses were excessive and thus disallowed 20% of the claimed amount and the same was upheld by the CIT(A).The Tribunal observed that assessee had given complete details of its employees salary and bonuses paid to them and further in consecutive AY's salaries were paid which were infact higher than salaries paid in current year and no additions were made by Revenue for those years. The Tribunal noted that Revenue had no right to stipulate manner in which assessee should conduct its business and genuineness of salary was not doubted by Revenue except that it was only considered excessive and the Revenue had not brought on record comparative analysis of other independent entities to bring on record cogent material to prove that salaries paid to those employees were excessive. Thus, the Tribunal concluded that no disallowance of 20% of salary expenses was warranted and Assessee's ground was allowed.

***Ebaotech India P Ltd vs DCIT- (2018) 54 CCH 0222 MumTrib- ITA No 549/Mum/2016 dated 22.10.2018***

Go to Index

**922.** Where the assessee paid marketing and distribution expenses to HDFC AMC, 5 percent of which was disallowed by the AO on the premise that the payment was designed in such a way that it would lead to losses in the assessee's hand, the Tribunal held that since the AO did not otherwise doubt the genuineness of the transaction, no ad hoc disallowance could be made. Further, it noted that both the assessee and the payee were corporate assessee's and therefore there was no motive for evasion of taxes.

***INCOME TAX OFFICER & ANR. vs. HDFC TRUSTEE COMPANY LTD. & ANR. - (2018) 52 CCH 0113 MumTrib - ITA Nos. 5669 & 5670/Mum/2015, 5444/Mum/2015 dated Feb 21, 2018***

**923.** The Tribunal dismissed assessee's appeal and confirmed the disallowance made by the AO with respect to strategies consultancy fees paid by assessee to a company 'PAG', following the coordinate bench ruling in assessee's own case for an earlier year wherein a similar disallowance was upheld noting that majority of shareholding of PAG was held by SKP who was also a director and shareholder in assessee's company and there was nothing on record to show that consultancy or advisory work was done by other than SKP. It was noted that though SKP travelled in the capacity of the director of assessee-company to attend business meetings, yet he claimed that he actually met the potential business partner in a different capacity, i.e. as a representative of PAG, and assessee was claiming a deduction for fees paid to PAG in respect of the same. Further, the Tribunal had held that merely because an income was taxed in hands of PAG, it could not mean that it was a deductible expenditure in hands of person making payment i.e. assessee-company.

***Stock Traders Pvt Ltd vs ITO [2018] 54 CCH 0246 (MumTrib ITA NOS. 2108/MUM/2006, 4403 & 687/MUM/2011 dated 19.11.2018***

**924.** During the assessment proceedings, the assessee claimed reduction of Rs.29,42,23,853 from its returned income on account of reversal of provision for foreign exchange loss which was disallowed in the preceding year i.e. AY 2009-10. The AO did not allow the same observing that the such a reduction would reduce the returned income. The CIT(A) allowed the assessee's claim appreciating the facts of the case. However, noting that in the assessment order of the preceding year, the disallowance was only Rs.21,46,28,951/-, the Tribunal held that there was some discrepancy in the claim made and the amount disallowed in the preceding year and accordingly, it remitted the issue to the file of AO for examining the issue with reference to the books of account.

***ACIT v Kiran Gems Pvt. Ltd. (2018) 52 CCH 0586 MumTrib - I.T.A. No.1108/Mum/2016 dated 09.04.2018***

**925.** Where the assessee and two of its joint venture partners were allotted land by MIDC and the JV partners agreed to surrender their interest in favour of the assessee upon payment of Rs.100.80 crore, the Tribunal dismissing the Revenue's contention that the transaction was sham, held that the purchase of interest in land by the assessee from its Joint Venture partners was allowable as a deduction under Section 37(1) of the Act. It observed that i). the decision to purchase the land was a business decision of the assessee ii) all the parties were unrelated and iii) there was involvement of multiple agencies including Government authorities and escrow

agents and therefore held that the transaction could not be treated as sham merely because the Revenue alleged that the other partners did not bring any expertise or funds to the JV.
***Gigaplex Estate Pvt Ltd – TS-518-ITAT-2017 (Mum) ITA NO.1132, 1133/Mum/2016 And ITA No.1137/Mum/2016 dated 10.11.2017***

**926.** With regards to disallowance of commission expenses, the Tribunal remanded the matter back to the file of the AO to examine the details/ correspondence/ agreements regarding fixation of commission as in the present case, it could not be established that the rate of commission was as per the contract. While doing so, Tribunal held that if the payment of commission was done without reference to any document relating to consent of parties, it could not be considered as genuine.
***Daga Global Chemicals P. Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0007 (Mumbai ITAT) – ITA No. 5296 & 5889/Mum/2017 dated May 2, 2018***

**927.** The Tribunal held that where assessee-company paid certain amount to a Switzerland based company, namely, 'P' as professional fees and claimed deduction of same, since there were no independent services rendered by 'P' and de facto services had been rendered by one 'S', who was a director in assessee-company as well as in 'P', wearing hat of 'P', impugned payment was not allowable expenditure under section 37(1).
***Stock Traders (P) Ltd v ACIT - TS-190-ITAT-2016(MUM)***

**928.** The Tribunal held that the commission paid by the assessee to its directors could not be disallowed on the ground that it was dividend paid in the garb of commission considering that the commission was only paid to 3 out of 6 directors and the sub-contracts executed by the assessee could not have been carried out without the efforts of the directors. The payment could not be presumed to be a mode of tax avoidance.
***Arihantam Infraprojects Pvt Ltd v JCIT (ITA No.2201/PN/2012) – TS-685-ITAT-2015 (Pun)***

**929.** The Tribunal also allowed assessee's claim for deduction u/s 37(1) towards sales promotion expenses in nature of gifts given to customers on Diwali. The AO had disallowed the same due to lack of documentary evidence, however the assessee before the CIT(A) submitted the requisite documents and were remanded back to the AO. However, the AO during the remand proceedings pointed out defects and disbelieved certain bills. The Tribunal noted that the assessee had provided the address of all parties with the relevant bills. However, the AO did not take confirmations from the parties and thus the AO failed to verify the veracity of expenditure claimed by the assessee and hence the expenditure was allowable.
***ACIT vs Overseas trading- (2018) 99 taxmann.com 136 (Rajkot-Trib)- ITA No 211 of 2017- dated 28.09.2018.***

» *Others*

**930.** The Court held that whether an assessee was entitled to particular deduction or not would depend on the related provision of law and not on the existence or absence of entries in the books of account (relying on the decision of Kedarnath Jute Manufacturing Co.Ltd. v. CIT (SC)).

Go to Index

It further held that the contributions made by the assessee to the molasses reserve fund were made under the Molasses Control (Regulation of Fund For Erection of Storage Facilities) Order, 1976 and, therefore, such amount being a statutory charge, was allowable as a deduction.
***CIT vs. Mansurpur Sugar Mills Ltd. (2016) 97 CCH 0209 (Allahabad HC) (ITA No. 390 of 2006)***

**931.** The Court held that where expenses were incurred by the assessee on lease of aircraft which satisfied the conditions precedent of section 37(1), the expenses could not be disallowed merely because they were claimed in the revised return.
***CIT v Jet Airways (India) Ltd – (2016) 66 taxmann.com 166 (BomHC)***

**932.** The Court dismissed the Revenue's appeal field against the Tribunal's order deleting the disallowance made by AO on account of foreign exchange loss claimed u/s 37(1), noting that in past years, in prior and subsequent years, assessee had accorded similar treatment for foreign exchange gains and paid required tax. It held that having regard to consistent approach adopted by assessee, conclusion arrived at by the Tribunal being a concurrent finding with the CIT(A), could not be said to involve any substantial question of law.
***PR.CIT v SAMWON PRECISION MOULD MFG. INDIA PVT. LTD. – (2018) 401 ITR 486 (Del HC) – ITA 72/2018 dated 23.01.2018***

**933.** Where the AO had disallowed commission paid by assessee-company to agent-firms on the ground that parties related to director of assessee-company were partner in such firms and hence such commission was paid only to avoid tax and the Tribunal deleted such disallowance noting that assessee had been paying commission to the agents regularly year after year and in some of the years it was not doubted by the Revenue and was accepted and also the receipt of payment of commission was duly reflected in the books of account of the agents and offered to tax, which was also accepted by the Revenue, the Court held that the Tribunal's order could not be treated as perverse.
***CIT v Hind Nihon Proteins (P.) Ltd. – (2018) 91 taxmann.com 43 (Del HC) – ITA Nos. 574, 655 & 684 of 2005 dated 10.01.2018***

**934.** The Court held that the disallowance of payment of privilege fee under the Karnataka Excise Act 1956, paid by the assessee to the State Government, by the Assessing Officer was without jurisdiction and also ultravires to his powers under the Act. The Assessing officer had no authority or competence to hold that the privilege fee was not having character of statutory fee or that the State legislature in exercise of its power could not decide the quantum of fee or percentage of revenue on the income earned from the business.
***CIT Bang. Vs. Karnataka State Beverages Corporation Ltd. [2017] 79 taxmann.com 125 (KarnatakaHC) dated 03/03/2017.***

**935.** The Court dismissed assessee's appeal against the Tribunal's order rejecting the assessee's claim for deduction of expenditure incurred on acquisition of distribution rights of three films, noting that since there was no exhibition of the films on commercial basis, there was no amount realised on exhibition of films and as per Rule 9B(5) which is a non-obstante clause, the said deduction was not allowable under Rule 9 unless the distributor credited in the P&L A/c the

amounts realised on exhibition of film on commercial basis. [Rule 9B provides for manner in which the deduction in respect of the cost of acquisition of a feature film is to be allowed while computing the profits and gains of the business of distribution of feature films.]
***Malayala Manorama Co Ltd v ACIT [TS-362-HC-2018(KER)] - ITA.No. 80 of 2010 dated June 26, 2018***

**936.** The AO had disallowed the assessee's claim for deduction u/s 37(1) with respect to expenses claimed against the professional income earned by the assessee company (engaged in the business of equity research, investment advisory services and running portfolio management services) by allocating the entire expenses between the professional income and capital gains earned by the assesse. The Tribunal had allowed the assessee's appeal against such disallowance noting that the Revenue had consistently over the years i.e. for the 10 years prior to years under appeal and for 4 subsequent years, accepted the principle that all expenses incurred were attributable entirely to earning professional income and the Revenue was not able to point out any distinguishing features, which would warrant a different view in the subject assessment year from that taken in the earlier and subsequent assessment years. The Court upheld the Tribunal's order following the Apex Court decision in the case of Bharat Sanchar Nigam Ltd. Vs. Union of India [282 ITR 273 (SC)] wherein it was held that where facts and law in a subsequent assessment year are the same, no authority whether quasi-judicial or judicial can generally be permitted to take a different view.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. QUEST INVESTMNET ADVISORS PVT. LTD - (2018) 102 CCH 0111 (MumHC) - ITA No. 280 OF 2016 dated Jun 28, 2018***

**937.** Where the assessee advanced the sum in question to two companies through banking channel in its ordinary course of business in lieu of charging interest and on non-recovery thereof for almost three years wrote them off as sundry balances and claimed the same as revenue loss, the Tribunal held that such claim was to be allowed as a deduction under Section 37(1) of the Act.
***GENERAL CAPITAL AND HOLDING COMPANY PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0097 AhdTrib - ITA No. 538/Ahd/2016 dated Feb 12, 2018***

**938.** The Tribunal deleted disallowance of technical fees paid by the assessee to it associated enterprise in Japan ('AE') u/s 37(1) as the subject payment was held to be at arm's length price ('ALP') by the Transfer Pricing Officer ('TPO') on the ground that AO cannot disregard ALP determined by the TPO in view of Sec. 92CA(4) which provides that on receipt of order u/s 92CA(3) the AO shall compute assessee's total income having regard to ALP determined by the TPO. It rejected the Revenue's contention that payment of technical fees ought to be disallowed on the ground that services were not rendered by holding that it cannot be open for the AO to say that even though transaction value is held to be an at ALP by the TPO, the ALP can be reduced on account of actual rendition, or non-rendition, of services.
***YKK India Pvt Ltd - TS-404-ITAT-2016(DEL) - I.T.A. No.238/Del/16***

**939.** The Tribunal held that where the assessee issued debentures which would earn interest depending upon the performance of Nifty Index, the loss provided by the assessee on the date

of the balance sheet due to the increase in level of the Nifty Index vis-à-vis the level existing at the time of allotment of debentures, was deductible expenditure under section 37(1) of the Act.
***JP Morgan Securities India Pvt Ltd v ACIT – (2015) 61 taxmann.com 250 (Mumbai – Trib)***

**940.** Where the assessee, vide an assignment agreement acquired the sales tax deferral liability of the assignee and accounted for the same at NPV and debited the difference in NPV at the end of the relevant previous year vis-à-vis the NPV determined in the year before that, as finance charges in its P&L account, the same was to be allowed as a deduction since it represented incremental increase in the liability with the efflux of time.
***Knox Investments P Ltd v ITO – (2016) 73 taxmann.com 1 (Pune – Trib) – ITA No 1372 / Pune / 2014***

*Section 40*

**941.** The Apex Court disposed of the SLP filed by Revenue against the High Court's order wherein the High Court had held that deduction u/s 10A was to be allowed on profit increased by amount of disallowance u/s 40(a)(v) [being tax borne by employer which was claimed as exempt by employee u/s 10(10CC)], with the direction to follow the Apex Court ruling in the case of CIT v HCL Technologies Ltd. [2018] 93 taxmann.com 33 (SC). In the said case, the Apex Court had held that when object of formula in section 10A for computation of deduction is to arrive at profit from export business, expenses excluded from export turnover have to be excluded from total turnover also, otherwise, any other interpretation makes formula unworkable and absurd and hence, such deduction shall be allowed from total turnover in same proportion as well.
***Pr.CIT v Lionbridge Technologies (P.) Ltd - [2018] 96 taxmann.com 495 (SC) - SLP (Civil) Diary No.(S). 7309 OF 2018; IR & IA NOS. 32533 & 32534 OF 2018 dated July 30, 2018***

**942.** The Court held that insertion of sub-clause (iib) of section 40(a) vide Finance Act, 2013 would be applicable with effect from April 1, 2014 and not with retrospective effect, since the provision does not provide for its retrospective applicability. Accordingly, the privilege fee paid by the assessee to the State Government during AYs 2004-05 to 2006-07 were not subject to section 40(a)(iib) of the Act.
***Karnataka Stata Beverages Corpn Ltd v CIT – (2016) 67 taxmann.com 316 (Karnataka HC)***

**943.** The Court upheld Sec.40(a)(ia) disallowance for TDS default on rent, professional charges and contractual payments to transporters made by assessee ( a cooperative sugar factory) and set aside the Tribunal's order where it had relied on Allahabad HC ruling in Vector Shipping and remitted the matter back to examine whether any amounts were remaining payable at the year end. It further held that the Tribunal was not correct in interpreting the language of Sec.40(a)(ia) to mean that consequence of disallowance was attracted only in respect of amounts remaining payable at year end by relying on Calcutta HC ruling in Crescent Export Syndicate, Gujarat HC ruling in Sikandarkhan N. Tunvar and Kerala HC ruling in Thomas George Muthoot.
***Ryatar Sahakari Sakkare Karkhane Niyamit vs ACIT - TS-132-HC-2016(KAR)***

**944.** The Tribunal held that, payments made by assessee to foreign commission agents did not involve element of income assessable in India, and therefore, there was no obligation upon

assessee to deduct TDS. Revenue's appeal was dismissed and CIT(A)'s order deleting disallowance u/s 40(a)(ia) was upheld.
***Dy.CIT vs. The Panchmahal Steel Ltd. (2018) 53 CCH 0305 Ahd Trib.-ITA No.634/Ahd/2017-dated July 9, 2018***

**945.** The Tribunal upheld disallowance under section 40(a)(ia) on year end provisions of commission expenses as tax was not deducted by assessee-individual and held that in case of mercantile liability, Section 40(a)(ia) clearly mandates that the expenditure cannot be allowed in the absence of corresponding TDS payment in Government treasury. It rejected assessee's stand that since the practice followed by him was accepted by Department in past year, making a provision on estimate basis was an allowable business expenditure and that he was not in a position to pay TDS as the exact names, amount of commission and TDS payable to each party was not known.
***Hardik Jignishbhai Desai [TS-603-ITAT-2016(Ahd)] (ITA No 1084/Ahd/2013)***

**946.** The Tribunal held that no disallowance u/s.40(a)(ia) of Act can be made where the recipient had included receipts paid by assessee in its returns of income and also paid taxes on same.
***Asst. CIT vs. Karle International Pvt.Ltd.-(2018) 53 CCH 0291 Bang Trib.-ITA No.399/Bang/2018-dated July 6, 2018***

**947.** The Tribunal held that the Section 40(a)(ia) disallowance were not only applicable to amounts show as payable on the last date of the balance sheet and would also apply to expenditure which becomes payable at any time during the relevant previous year. Therefore it confirmed the order of the CIT(A) disallowing the expenses incurred by the assessee in relation to hiring of trucks since the assessee failed to deduct tax on the said payment.
***Ayub Abdul Khandar Tamatgar v JCIT – (2016) 47 CCH 0520 (Bang Trib) - ITA No.854 /Bang/2015***

**948.** The Tribunal deleted the disallowance made u/s 40(a)(ia) on account of certain amount debited by the assessee, an authorized dealer of BSNL, in its Trading-cum-Profit & Loss Account under head 'commission to parties' with respect to which TDS was not deducted u/s 194H. The assessee claimed that the said amount represented incentives given to retailers/shopkeepers and there was no relation of 'principal and agent' so as to consider the payment to be in nature of commission. The Tribunal held the transaction between assessee and its retailers to be on principal to principal basis, noting that (i) as per an agreement entered by assesse and BSNL, all functions of marketing telecom products of BSNL was to be done by assessee through sub franchisees and retailers only and not by appointing any agents; (ii) once products were sold for cash to retailers, assessee lost all control over products and (iii) only discount was passed on to retailers and nothing was brought on record to show any payment made by assessee to retailers by way of incentive.
***ANIL DHAWAN vs. DCIT (2018) 195 TTJ 0042 (Chandigharh) (UO) – ITA No. 1298/Chd/2016 dated 17th July, 2018***

**949.** AO made disallowance u/s. 40(a)(i) on logistic service charges paid without deduction of of tax there from by assessee to one company, Germany. CIT(A) deleted disallowance made by AO.

Tribunal held that services rendered by non-resident did not fall under category of technical or managerial services. Further, services were rendered outside India and there was no permanent establishment or business connection to non-resident in India. This fact had not been disputed by Revenue. Profits of services rendered outside India could not be taxed in India unless non-resident had permanent establishment/or business connection in India as envisaged in s 9(1). There was no infirmity in order of CIT(A) and same was upheld.
***Turbo Energy Private Ltd vs DCIT- (2018) 54 CCH 0059 ChenTrib- ITA No 2493,2494/Chny/2016 dated 01.10.2018***

**950.** The Tribunal deleted the disallowance made u/s 40(b) by the AO with respect to remuneration paid to partners, noting that the remuneration was paid as per the partnership deed and the remuneration received had already been subject to tax in the individual hands of the partners. It relied on the decision in the case of ACIT Vs. Associated Engineers & Allied Products [ITA No.680/JP/2014] wherein it was held that since the remuneration paid as per section 40(b) was taxable in the hands of the partners, if the same was disallowed in the hands of assessee-firm then it would be result in double taxation.
***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. CLASSIC SUPPER CONSTRUCTION & ANR. - (2018) 52 CCH 0483 CuttackTrib - ITA NO. 57/CTK/2015, 180/CTK/2017 dated Apr 11, 2018***

**951.** Assessee was Chartered Accountant Firm by profession and derived income from business or profession. Assessee was asked by AO to submit partnership deed along with note on why remuneration paid to partners might not be disallowed as per provisions on s 40(b) of Act. AO disallowed remuneration paid to partners on ground that partnership deed in present case did not defined quantum of remuneration nor method of computation of remuneration paid to partners for previous year relevant to Assessment Year. CIT(A) upheld AO's order. The Tribunal held that, in case of CIT Vs. Vaish Associates it was held that when remuneration was quantified through method of prescribed under Provisions of s 40(b) (v) then remuneration had to be allowed by AO. Therefore, in light of this CIT(A) as well as AO had not taken proper cognizance of Clauses given under partnership deed in consonance with provisions of s 40(b) (v) of Act. Assessee's appeal was allowed.
***JRA & Associates vs. Asst. CIT-(2018) 53 CCH 0345 DelTrib.ITA No.5571/DEL/2015-Dated July 11, 2018***

**952.** The Tribunal held that no disallowance u/s 40a(ia) is required to be made in the hands of assessee where the assessee has deducted tax at source, however, such tax could not be deposited before the close of the financial year but was deposited on or before due date of filing of the return of income.
***SRS Buildcon P.Ltd. vs. ITO-(2018) 54 CCH 0307 DelTrib-ITA No.4537/Del/2014-dated December 6, 2018***

**953.** The Tribunal held that provisions of section 40(a)(ia) were inapplicable to assessee-trust not engaged in any business activity and having exempt receipts where assessee-trust was constituted as an owners' association of a commercial building to maintain the building and to utilise its common facilities. It further held that even if assessee's income is considered as

income from other sources, section 40(a)(ia) cannot be invoked. It restored the matter to the file of the AO with the direction to give findings whether assessee's income was covered by concept of mutuality.
***Astral Height Owners Association [TS-604-ITAT-2016(HYD)] (I.T.A. No. 08/HYD/2016)***

**954.** The Tribunal held that the provisions of section 40(a)(ia) of the Act would not apply where the payee offered the amount for tax purpose and had paid or is deemed to have paid taxes on such income. It was also clarified that the second proviso to section 40(a)(ia) of the Act being declaratory and curative in nature had retrospective effect from April 1, 2005.
***ACIT v Dwarakanath Reddy – (2015) 45 CCH 0046 Hyd Trib***

**955.** The Tribunal deleted the addition made by invoking provisions of section 40(a)(ia) for non-deduction of TDS on security charges, in view of the fact that the said amount was duly declared by payee in its return of income and, accordingly, offered to tax.
***PATIDAR HOSPITAL & RESEARCH CENTRE v. ITO [2018] 53 CCH 0588 IndoreTrib- ITA No.1007, 1008 and 1541/Ind/2016 dated August 21 2018***

**956.** The Tribunal held that amendment brought into the provisions of s. 40(a)(ia) by the Finance Act, 2015 has been held as remedial in nature and retrospective in applicability.
***ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT & ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018***

**957.** The Tribunal deleted the disallowance made u/s 40(a)(ia) on account fo non-deduction of TDS while making payment of interest on loan paid to NBFCs, noting that the NBFCs had considered the amount of interest in question in their income and filed return of income and accordingly, no disallowance was called for u/s 40(a)(ia) as per second proviso to the said section.
***Fortune Infonet vs ITO [2018] 54 CCH 0256 (Jaipur -Trib)-ITA No.866/JP/2018 dated 20.11.2018***

**958.** Where the assessee was following percentage completion method and made provision for expenditure in respect of ancillary unfinished work to compute true net profit and payee was unknown, deduction of TDS is not attracted. Thus, disallowance u/s.40(a)(ia) was not warranted.
***Bengal Peerless Devt. Co. Ltd vs. Dy. CIT (2018) 54 CCH 0444 KolTrib- ITA No.2414/Kol/2017,2549/Kol/2017 dated 31.12.2018***

**959.** Assessee was Chartered Accountant's Firm. It was noticed by AO that under head "subscription fees" assessee had debited sum as DTT subscription fees. Assessee was asked to disclose basis / method of calculation of total subscription by DTT and DHS Mumbai and whether tax had been deducted—AO, after going through verein, (association) document and submissions of assessee noted that subscription fees were not allowable expenses under Act. In view of provisions of s 40(a)(ia) of Act, payment made by assessee was disallowed and added to total income. CIT(A) set aside AO's order. The Tribunal held that, it was not case of AO that expenses were not genuine. It was also not case of AO that expenses were not incurred wholly and exclusively for purposes of business or profession. Assessee had claimed expenses in accordance with its cash system of accounting and AO had not disputed system of accounting.

Go to Index

Assessee had also furnished evidence to prove that assessee was member of global network of DTT, enjoyed certain advantages as result of membership and had paid its contribution of subscription to membership of global network. Said amount towards reimbursement of expenses, which was in fact incurred on behalf of assessee and there was no profit element. Revenue's appeal was dismissed.
***Dy.CIT vs. Deloitte Haskins & Sells-(2018) 53 CCH 0331 KolTrib-ITA Nos. 587 & 588/Kol/2016-dated July 11, 2018***

**960.** Assessee was running hospital and providing treatment to patients. Assessee filed its return declaring nil income. In same hospital building, NNC also runs Neuro related clinic. Both these organizations were sharing space in same hospital building owned by assessee. NNC was charitable trust registered u/s. 12AA. Assessee admitted patients for general ailments in its hospital but occasionally if they required services of Neuro doctors/ surgeons, they were referred to NNC and NNC raised bill on assessee and patients of NNC were also admitted in assessee hospital and as and when these patients required diagnostic investigation or general ailment treatment, they were referred to doctors of assessee hospital. Bills raised were adjusted and net amount was paid / payable to creditor. Certain amount was payable by NNC to assessee. AO noted that assessee had made such payment to NNC on account of service / consultancy charges on which tax was not deducted and made disallowance u/s. 40(a)(ia). CIT(A) upheld order of AO. The Tribunal held that, in Haldia Petrochemicals Ltd vs DCIT, it was held that assessee could be treated as 'assessee in default' only when there was some tax due to be paid to exchequer on account of subject mentioned transaction. Interest charged in terms of section 201(1A) was only compensatory in nature and was collected from payer by treating payer assessee as 'assessee in default' for depriving Government of its legitimate dues. Interest was to be calculated from due date of deduction/payment of expenses warranting TDS till date of deduction/ payment, as case may be, at respective interest rates. Payee had duly shown amounts received from payer assessee as its income in its returns. Certain payments definitely fall within ambit of eligible payments warranting deduction of tax at source but same had not been fully complied by payer. Assessee had deducted tax at source and remitted same to Central Government for part of period and for part of amounts as stated in assessment order. Assessee could be treated as 'assessee in default' only when there was some tax that was legitimately due to Government which department was not able to recover from payee, and then payer could be proceeded with for remitting said tax by treating him as 'assessee in default'. No disallowance u/s. 40(a)(ia) was warranted. Assessee had brought evidence on record to prove that NNC had also duly reflected subject mentioned transaction in its returns and had claimed exemption u/s. 11. No disallowance u/s. 40(a)(ia) could be inflicted in hands of assessee payer.
***Peerless Hospitex Hospital & Research Centre Ltd. vs. ITO-(2018) 53 CCH 0351 KolTrib-ITA No.1107/Kol/2014-dated July 11, 2018***

**961.** Assessee made payment of lease rent against leased vehicles in relevant AY. The AO disallowed lease rent u/s 40(a)(ia) as the assessee did not furnish details of tax deducted at source on such payments. The Tribunal noted that assessee had furnished certificate from chartered accountant in prescribed form as mandated in first proviso to section 201(1) to prove that payee had included subject mentioned receipt as its income and had paid taxes thereon. The Tribunal relied on the case of Principal CIT vs Tirupati Construction, wherein it was held

that application of second proviso to section 40(a)(ia) and 201(1), had been held to be retrospective in operation. Thus, the Tribunal concluded that if application of second proviso to section 40(a)(ia) and 201(1) is held to be retrospective then no disallowance u/s 40(a)(ia) could be made in the hands of assessee.

***DCIT (Intl Taxation) vs Royal Bank of Scotland- (2018) 53 CCH 0537 Kol Trib- ITA No.503, 505/Kol/2016 dated 05.09.2018***

**962.** The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order deleting disallowance made u/s 40(a)(ia) for short deduction of TDS against contractual / professional / rental payments made by the assessee, relying on the ratio laid down in the case of CIT vs SK Tekriwal [2014] 361 ITR 432 (Cal HC) wherein it was held that if there was any shortfall due to any difference of opinion as to taxability of any item or nature of payments falling under various TDS provisions, assessee could be declared to be assessee in default u/s 201 but no disallowance could be made by invoking provisions of section 40(a)(ia).

***Dy.CIT vs SODEXO FOOD SOLUTIONS INDIA PRIVATE LIMITED & ORS. [2018] 53 CCH 0432 (Mum Trib) - ITA No. 6864/Mum/2012 dated August 8 2018***

**963.** The Tribunal deleted the disallowance made by the AO u/s 40(ba) in the case of the assessee, an AOP, with respect to payment of salary and related expenses to employees of one of its member. The AO opined that since the assessee-AOP had made payment to its member, the provisions of section 40(ba) [which provides for disallowance of any payment of interest, salary, bonus, commission or remuneration, by whatever name called, made by an AOP to its member] were attracted. The Tribunal accepted the assessee's contention that the section 40(ba) is to be read along with section 67A (which provides methodology of computation of share income of a member of AOP) and the combined reading of both the section make it clear that the payments contemplated in section 40(ba) should constitute "Share income from AOP" in the hands of the recipient member i.e. it should form part of the member's income. Accordingly, it held that since the said payments were not received by the member on its own account as contemplated in section 67A r.w.s. 40(ba), rather was towards reimbursement of expenses incurred by the member on its employees on behalf of the assessee, section 40(ba) was not attacted in the present case.

***ITD Cem India JV v ACIT - [2018] 97 taxmann.com 45 (Mumbai - Trib.) – ITA No. 4225 (MUM.) OF 2012 dated July 30, 2018***

**964.** The Tribunal held that on harmonious interpretation of provisions of section 40(b)(v) as well as clauses of partnership deed, claim of remuneration paid to partners despite 'quantum' not specified in partnership deed was to be allowed. Section 40(b)(v) does not lay down any condition of fixing remuneration or method of remuneration in partnership deed. Whether all that section 40(b)(v) provides is that in case payment of remuneration made to any working partner is in accordance with terms of partnership deed and does not exceed aggregate amount as laid down in subsequent portion of section, deduction is permissible. Since Partnership Deed specifically provided that salary/remuneration was to be computed as per section 40(b)(v); thus, harmoniously interpreting provisions of section 40(b)(v) as well as clauses of partnership deed, claim of remuneration paid to partners was to be allowed.

Go to Index

***Unitec Marketing Services v. Asst. CIT, Circle-17(3) Mumbai-[2019] 101 taxmann.com 397 (Mumbai - Trib.)-IT Appeal No. 822 (MUM.) of 2018- dated December 5, 2018***

**965.** The Tribunal held that once assessee admittedly made payments of TDS in next financial year but before due date for filing return of income u/s 139(1), disallowance made u/s 40(a)(ia) was to be deleted.
***Foods and Inns Ltd v ACIT - (2016) 47 CCH 0187 Mum Trib***

**966.** The Tribunal deleted the disallowance made under section 40(a)(ia) on account of non deduction of tax on provision made for expenses. Relying on the earlier years order in the case of the assessee it held that deduction of tax at source could only be effected when the payee was known and therefore in the absence of the ascertainment of the payee no tax could be deducted at source.
***Aditya Birla Nuvo v DCIT – (2015) 45 CCH 0222 Mum Trib***

**967.** The Tribunal held that trade discount given by the assessee to its advertisement agents or distributors could not be classified as commission and therefore section 194H of the Act was not applicable. Accordingly, it deleted the disallowance made under section 40(a)(ia) of the Act.
***DCIT v Dempo Industries Pvt Ltd – (2015) 45 CCH 0105 Panaji Trib***

**968.** The Tribunal allowed assessee's appeal against the CIT(A)'s upholding the AO's order disallowing the assessee's claim for deduction u/s 40(b) with respect to remuneration to partners against the additional income offered to tax by the assessee on account of discrepancies found in stock of gold and silver during survey action u/s 133A. The Tribunal relied on decision in the case of M/s. Surekh Jewellers Vs. DCIT [ITA No.18/PN/2016], wherein it was held that the additional income disclosed by the assessee in the survey action u/s 133A partakes the character of business and therefore, the assessee was entitled to the benefits of excess remuneration qua the additional income as per the provisions of section 40(b) of the Act. Thus, following the said decision, the Tribunal held that in the instant case, the excess stock linked additional income partook not only the character of business profit but the same was also eligible for quantifying the remuneration u/s 40(b) of the Act.
***SILVER PLACE vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0300 (Pune Trib) - ITA No. 893/PUN/2016 dated June 29, 2018***

**969.** The Tribunal deleted the disallowance of expense under section 40(a)(ia) of the Act for AY 2010-11 allowing the retrospective benefit of the second proviso to section 40(a)(ia) inserted vide Finance Act, 2012, which provides that the disallowance would not be attracted where the payee had paid tax on the said amount. Relying on the decision of the Apex Court in Vegetable Products Ltd, it held that where there were two views of two non-jurisdictional High Courts, in the absence of the decision of the jurisdictional High Court, the view favourable to the assessee was to be followed.
***RKP Company – TS-357 –ITAT-2016 (Raipur) - I.T.A. No.: 106/RPR/2016***

Go to Index

**970.** The Court reversed the Tribunal's order and held that the education cess is a disallowable expenditure u/s 40(a)(ii) of the Act. It agreed with the reliance placed by the assessee on (i) the CBDT Circular F. No. 91/58/66-ITJ(19) dated 18th May, 1967 clarifiying that the word 'cess' was specifically omitted from section 40(a)(ia) while finalizing the provisions of the Act and (ii) the Apex Court decision in the case of Jaipuria Samla Amalgamated Collieries Ltd. v. CIT (1971) 82 ITR 580 (SC) holding that 'cess' is not tax.
***CHAMBAL FERTILISERS AND CHEMICALS LTD. & ANR v JCIT (2018) 102 CCH 0202 RajHC - D.B. Income Tax Appeal No. 52/2018, 68/2018 dated July 31, 2018***

*Section 40A*

**971.** The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had upheld the Tribunal's order deleting the disallowance made u/s 40A(3) with respect to freight and cartage paid to drivers in cash in excess of limits prescribed u/s 40A(3), noting that the auditors had given their remarks stating that factory was situated in backward area and payments to transporters had to be made in cash because such persons were not having banking facility around factory area.
***Pr.CIT v Lord Chloro Alkali Ltd - [2018] 97 taxmann.com 514 (SC) - SLP (Civil) Diary No.(S). 24997 OF 2018 dated July 30, 2018***

**972.** The assessee-company purchased paddy from farmers in cash exceeding Rs.20,000. It claimed deduction in respect of those transactions. The Assessing Officer disallowed same under section 40A(3). The High Court had held that section 40A(3) being a deeming provision, rule 6DD clearly exempts agricultural produce i.e. 'paddy', from rigours of section 40A(3); thus disallowance of cash payments to farmers made under section 40A(3) was unjustified. SLP filed by Revenue against the High Court order is dismissed by Supreme Court.
***Pr.CIT v. Keerthi Agro Mills (P.) Ltd. [2018] 95 taxmann.com 282/257 Taxman 1(SC). Special Leave Petition (Civil) Diary No(S). 18397 of 2018 dated July 3, 2018***

**973.** Where assessee, engaged in exporting buffalo meat, made purchases of meat in cash in excess of Rs. twenty thousand and, Assessing Officer denied benefit of proviso to section 40A(3) and rule 6DD(e) on ground of non-satisfaction of condition provided in CBDT Circular No.8 of 2006 relating to non-furnishing of a certificate from a Veterinary Doctor, impugned order passed by High Court holding that CBDT circular could not put in new condition for grant of benefit under rule 6DD which were not provided either in Act or in rules framed thereunder was justified and thus the Apex court dismissed the SLP filed against said order.
***Pr.CIT v. GEE Square Exports- [2018] 100 taxmann.com 462(SC)-SLP(CIVIL) Diary No.(s) 38352 of 2018 dated November 13, 2018***

**974.** The Court upheld the view of Tribunal wherein it was held that it was for the businessmen to decide what expenses are essential in the conduct of their business and the AO could not enter into the shoes of a businessman and decide what expenses he should or should not incur for the purpose of business. Further, where the AO had not brought any material on record to prove how the management services charges incurred by assessee were excessive or unreasonable, disallowance under section 40A(2) was unjustified.

Go to Index

***CIT vs. Mansurpur Sugar Mills Ltd. (2016) 97 CCH 0209 (Allahabad HC) (ITA No. 390 of 2006)***

**975.** The Court held that where assessee engaged in business of sale of Kerosene, purchased it from notified dealer by making payment in cash on ground that said payment was made as per guidance of District Civil Supply Officer, in view of fact that District Supply Officer's order did not mandate any mode of payment either in cash or by cheque, and, moreover, there were banking channels available even when supplies had been effected, impugned disallowance was rightly made by authorities below under section 40A(3).
***Madhav Govind Dhulshete v. ITO [2018]99 taxmann.com 56/259 Taxmann 149(Bom)- IT Appeal (L) No. 2128 of 2018 dated October 8, 2018***

**976.** The assessee made a total payment of Rs.1.08 Cr in cash as Truck Loading Charges. The AO opined that though the transaction was genuine, since the payment was made to a single person in violation of S.40A(3) ,he disallowed the said amount. The CIT(A) confirmed the disallowance. On appeal, the Tribunal deleted the said disallowance by giving benefit of clause (g) of Rule 6DD[exemption to S.40A(3) applicable in a case where the payment is made to a person in village/town, who on date of payment, was not served by bank].However, the Court held that as no evidence was produced by the assessee to the AO or the CIT(A), the Tribunal erred in presuming that the all the payment and the truck loading was made in the village which was not served by the bank and thus remanded the matter back to the CIT(A) for fresh disposal.
***CIT V Lal Traders & Agencies (P.) Ltd. [2018] 93 taxmann.com 491 (CalcuttaHC) – ITA NO 45 OF 2018 dated 11.05.2018***

**977.** The Court held that where the assessee, engaged in the business of real estate and construction had made cash payments towards the purchase of land in the course of its business to sellers under registered deeds, the identities of whom were undisputed, since the sellers were villagers having no bank account, the same could not be disallowed under section 40A(3) of the Act since the cash payments were out of business compulsion and not optional.
***ACIT v RP Real Estate Pvt Ltd – (2016) 95 CCH 0086 (Chattisgarh)***

**978.** The AO made an addition u/s 40A(2)(b) opining that the cost of goods purchased from related parties for re- sale/ trading was higher per case, i.e., 355% vis-à-vis manufacturing cost. He also disallowed 30% of operating expenses on the ground that books of accounts were not produced before him. The Tribunal had remanded both the issue to the AO for fresh adjudication. The assessee filed appeal before the Court against the remand direction for addition u/s 40A(2)(b). The Court upheld the Tribunal's remand directions noting that the assessee was not disputing the remand for disallowance of operating expenses and operating expenses was directly connected and had a nexus with the addition u/s 40A(2)(b) as the indirect cost incurred in manufacturing would be included in operating expenses.
***ARADHANA FOODS AND JUICES PVT. LTD. v. CIT [2018] 102 CCH 0247 (Del HC) - ITA No. 701 & 702/2017 and CM No.30647 & 30648/2017 dated August 21, 2018***

**979.** The Court reversing the Tribunal's order, deleted disallowance u/s 40A(2) with respect to professional remuneration paid by assessee-company to its Vice President (Marketing) who

was a related party u/s 40A(2)(b) of the Act. The Court held that Tribunal failed to consider the reasonableness of the expenditure in relation to the prudent business practice from a fair and reasonable point of view. The Revenue without benchmarking VPs expertise with any other consultant proceeded on the assumption that the VP could not have performed multiple tasks for more than one concern. Such a stereotyped notion could not be justified in today's business world where consultants perform different tasks for several business entities.
***Sigma Corporation India Ltd [TS-145-HC-2017(DEL)] (ITA No. 795/2016)***

**980.** During search, two bills for Rs.60 lakhs and Rs.32 lakhs each raised by one. TEL against assessee for commission payble to it by the assessee for facilitating sale of building were seized. The Assessing Officer held that expenditure could not be allowed under section 40A(2). The court held that it was not noted that consideration paid for sale of plot was Rs.23 crores and that Rs.92 lakhs was commission commensurate with fair market value service rendered by TEL. Further, commission payable by the assessee to TEL was reflected duly in documents and books of the assessee filed along with its returns and same was subjected to normal assessment at time when they were reported. On facts, additions made by Assessing Officer was to be deleted.
***CIT v. Ansal Properties & Industries [2018] 98 taxmann.com 398/259 Taxman 103 (DelhiHC)- IT Appeal No. 599 of 2004 dated September 18, 2018***

**981.** The assessee, a commission agent for purchase / sale of food grain/agricultural produce, had purchased said goods from various farmers. Those transaction were in cash exceeding Rs.20,000. The Assessing Officer disallowed same under section 40A(3). The Court held that the cash of the assessee was clearly covered by exemption provided under rule 6DD (e)(i), therefore, disallowance made under section 40A(3) was to be deleted.
***Principal CIT v. Keshvala Mangaldas [2018] 96 taxmann.com 83/257 Taxman 133(Guj.HC)-R/Tax Appeal No. 725 of 2018 dated July 2, 2018***

**982.** The Court held where interest @ 15% paid by assessee company to persons covered under section 40A(2)(b) was commensurate with interest rate prevailing in open market, said payment was to be allowed and could not be restricted to 12%.
***Pr CIT v Cama Hotels Ltd - [2016] 68 taxmann.com 153 (Gujarat)***

**983.** The Court upheld the order of the CIT(A) / Tribunal wherein it was held that where assessee inflated purchase expenditure by raising bogus claim of cash purchases exceeding Rs. 20,000, profit element embedded therein should be brought to tax and entires amount was not to be disallowed u/s 40A(3).
***PCIT v Juned B. Memom [2018] 95 taxmann.com 20 (GujratHC) – R/TAX APPEAL NO. 379 OF 2018 dated 25.04.2018***

**984.** The Court reversed Tribunal's order and deleted disallowance u/s 40A(3) for payments made by assessee (a manufacturing company) to vendors by non-crossed bank drafts. Revenue had disallowed the expenses only on the grounds that the drafts were not crossed as mandated by section 40A(3) r.w. Rule 6DD, but it had not disbelieved the genuineness of purchases. It was noted that the documents such as registered dealer invoices, transit documents, freight charges

paid, vendors' sales tax returns, letters from bank indicated that the purchases were genuine and payments made to vendors were credited to their respective bank accounts. Acccordingly, relying on judgment in Attar Singh Gurmukh Singh v ITO 191 ITR 667 (SC) (1991) wherein it was held that the main objective of crossing a demand draft is to ensure that the payment is deposited in whose favour the draft is drawn (i.e. the payee receives the payment) and it is routed through banking channels, the Court held that both the conditions were met in the present case and thus, the spirit for which section 40A(3) was promulgated was satisfied. Therefore assessee's appeal was allowed.

***M.K. Agrotech Private Limited – Income Tax Appeal No. 83 of 2010-[TS-728-HC-2018(KAR)] – dated 29.11.2018***

**985.** Where the assessee created a fund for providing gratuity to its employees and had made required application to the Commissioner on 2.3.2010 (prior to the end of the relevant assessment year) and made a provision towards such gratuity on 31.03.2010 but the Commissioner approved the fund only on 12.11.2010, the Court held that the AO was not justified in denying the assessee deduction under Section 40A(7) [on the ground that the fund was not approved as on the last date of the relevant year] as the delay took place at the end of the Commissioner for which the assessee could not be denied deduction. Further, it noted that the fund satisfied all the pre-conditions as it had been subsequently approved by the Commissioner.

***Pr CIT v English Indian Clays Ltd - [2018] 89 taxmann.com 134 (KeralaHC) - IT APPEAL NO. 271 OF 2015 dated 12.12.2017***

**986.** The AO held that commission paid by assessee company to its director was excessive or unreasonable. The CIT(A) held that before invoking the provisions of S.40A(2) the AO was required to consider the fair market value of the services rendered, the benefit accrued to the assessee and the legitimate needs of business of the assessee from the standpoint of a prudent businessman. He found that the AO could not have decided what the assessee should do and pay. Disallowance could be made under section 40A(2) only when warranted and when the conditions of the said section were satisfied.The CIT(A) noted that the director was assessed to tax in the highest tax bracket and therefore, there was no loss of revenue with regard to the expenditure incurred on account of profit commission paid by the assessee.Accordingly, the CIT(A) deleted the disallowance for profit commission. The Tribunal also concurred with the finding of the CIT(A). Based on such findings, the Court held that since this was a subjective decision having regard to facts of case, there was no substantial question of law involved in appeal.

***PCIT v Madras Engineering Industries (P.) Ltd. [2018] 94 taxmann.com 93 (MadrasHC)–T.C.A NOS. 129 TO 131 OF 2018 dated 10.04.2018***

**987.** The AO disallowed certain cash payments made by assessee by invoking provisions of section 40A(3). However, the Tribunal allowed assessee's appeal solely on the ground that expenditure were negligible considering total turnover of assessee. The Court observed that the Tribunal had failed to note that assessee themselves stated that they had incurred expenses towards consumables, repairs and maintenance, for which bills and vouchers were available and thus the Tribunal should have remanded the matter for fresh consideration to examine documents

available with assessee towards expenditures and ought not to have straightaway deleted the disallowance by referring to the turnover for relevant assessment year. Thus, the Court held that the order was to be set aside and, matter was to be remanded back to the AO for disposal afresh.

***CIT Corporate Circle vs Vasantha Subramaniam Hospitals- (2018) 98 taxmann.com 292 (MadrasHC)- TC no 885 of 2016 dated 04.09.2018***

**988.** The Tribunal dismissed assessee's appeal against CIT(A)'s order confirming addition made u/s 40A(3) on account of cash payments exceeding Rs.20,000/- noting that vouchers and confirmations letters filed by assessee claiming that the said payemnts did not exceeding Rs. 20,000 were disbelieved by the CIT(A) in face of entries in cash book (as per which the payments exceeded Rs.20,000) and since the addresses of payees, as furnished by assessee were incomplete and, so veracity of the payees was not confirmable. Further, it held that the complete addresses of payees were neither provided before the AO and the CIT(A) nor were filed before the Tribunal.

***Neeta Sharma vs Dy.CIT [2018] 53 CCH 0513 Agra Trib-ITA No.90/Agra/2017 dated August 30 2018***

**989.** The Tribunal deleted addition made u/s 40A(3) on account of cash payments exceeding Rs.20,000 made by assessee to the truck drivers who were agents of the payee by holding that though the case of assessee was not falling under any of the clauses of Rule 6DD of IT Rules, invoking of provision of section 40A(3) could be dispensed as expediency for making the payments also stood established in view of the facts that (i) as per the business practice of transporters, the consignee was required to pay the freight to the truck drivers when they deliver the goods to the consignee (ii) the truck drivers were illiterate and had no bank accounts at the place of the assessee and they delivered the goods to the assessee odd hours, mostly at mid-night. It relied on ratio laid down Dhuri Wine v. DCIT 48 ITR (Trib) 289 (Chnd), wherein it was held that even if the case of the assessee did not fall in any of the clauses of Rule 6DD of the Rules, invoking the provisions of section 40A(3) could be dispensed with if the assessee was able to prove the business expediency because of which it had to make the cash payment and if the genuineness of the transaction was verified.

***Neeta Sharma vs Dy.CIT [2018] 53 CCH 0513 Agra Trib-ITA No.90/Agra/2017 dated August 30 2018***

**990.** Where the assessee paid rent on machineries to its HUF and the AO disallowed the same under Section 40A(2) alleging that the rent paid was excessive, the Tribunal held that since the AO neither placed anything on record material showing fair market value of goods nor did he conduct any inquiry or verification into reasonableness of expenditure with reference to fair market charges payable under similar conditions, in light of the decisions in the case of ACIT vs. Bombay Real Estate Development Company (P) Ltd.', 64 DTR 137 and 'Jagdamba Rollers Flour Mill Ltd. Vs. ACIT', 117 ITD 260, (Nagpur ) (TM), it held that no disallowance u/s 40A(2) could be made. It held that unless the payment was found to be excessive or unreasonable having regard to market value of goods, services or facilities for which payment was made and that in absence of inquiry by AO, as contemplated by provisions of section 40A(2)(a), no disallowance could be made.

Go to Index

***ANURAG AGARWAL vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0332 AgraTrib - ITA No. 497/Agra/2015 dated Mar 28, 2018***

**991.** The Tribunal held that if payment is being made for the purchase of agricultural or forest produces, the disallowance under section 40A (3) would not be made. Benefit of clause (e) and (k) of Rule 6DD would be given to assessee if S company acted as agent of assessee and made direct payment to farmers after receiving from assessee. As no such circumstances had been discussed by CIT(A), matter remanded to file of AO.
***Asst.CIT vs. Vadodara District Co-Op. Sugarcane Growers Union Ltd.-(2018) 53 CCH 0328 AhdTrib-ITA No.1021/Ahd/2015 & 2215/Adh/2016-dated July 12, 2018***

**992.** The Tribunal held that payment made to Adani Power Ltd. was on account of re-imbursement of actual expenses.In the absence of any income element in the payment made, the obligation to deduct tax at source on such payment did not arise and consequently, provisions of Section 40(a)(ia) of the Act did not come into play in view of the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Gujarat Narmada Valley Fertilizers Co. Ltd. (2013) 35 taxmann.com 638 (Guj). The law that a mere reimbursement does not require to deduction was also followed in CIT vs. ITD Cem India JV (2018) 405 ITR 533 (Bom) in respect of reimbursement of administrative expenses to a joint venture partner.
***DCIT vs Adani Gas Ltd- (2018) 54 CCH 0090 Ahd Trib- ITA No 775/Ahd/2014, 2346, 2797/Ahd/2015, 2775,2776/Ahd/2016 dated 17.10.2018***

**993.** The assessee who was engaged in running a clinic paid 84 percent of the total professional receipt to four doctors who were also the promoter directors and the remaining percentage was paid to seven doctors. Noting that 84 percent of the receipts were paid to 4 doctors whereas only the balance of 16 percent was paid to 7 doctors, the AO concluded that the payments made to the 4 doctors, who were incidentally promoters, was unreasonable and accordingly disallowed 15 percent of said payments under section 40A(2) on the grounds that such payments were excessive and unreasonable. The Tribunal deleting the disallowance made by the AO held that payment of higher salaries to doctors who were reputed professionals in their fields could not be regarded as excessive and unreasonable. The Tribunal further stated that there was an inherent fallacy in the approach of the AO as the remuneration depends on the market worth and the determination of the market worth was uninfluenced by what other professionals in that area earn.
***ITO v. Hemato Oncology Clinic (Ahmedabad) (P.) Ltd. – [2018] 93 taxmann.com 272 (Ahmedabad – Trib.) – IT Appeal No. 3411 (AHD.) of 2015 dated April 24, 2018***

**994.** The Tribunal deleted the addition made by the AO u/s 40A(2) on account of fess (being 0.5% of the total turnover) paid by the assesse-company to its holding company for various services rendered as per the service agreement entered between both the companies. The AO opined that the assesse-company was unduly benefitting holding company and diverting legitimate profit of company through colourable device termed as service agreement. The Tribunal, however, observed that the AO had not brought any comparable case to demonstrate that payment made by assessee was in excessive and hence held that without bringing any cogent material on record to demonstrate that payment made by assessee was excessive no

disallowance could be made since the provisions of section 40A(2) were not automatic and could be called into play only if AO established that expenditure incurred was in excess of fair market value.

***MANIPAL HEALTH SYSTEMS PVT. LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0263 BangTrib - ITA Nos. 1551/Bang/2016, 1552/Bang/2016, 1667/Bang/2016, 1668/Bang/2016, 1557/Bang/2016, 1558/Bang/2016, 1076/Bang/2017, 1208/Bang/2017, 1209/Bang/2017 dated June 27, 2018***

**995.** The Tribunal held that where assessee trust had not claimed capital expenditure incurred for purchase of land, section 40A(3) could not be invoked to disallow cash payments made by assessee for said purchase of land.

***Shalom Charitable Ministries of India v ACIT [2018] 94 taxmann.com 266 (Cochin – Trib.) – ITA NOS. 79 & 80 (COCH) OF 2017 dated 25.04.2018***

**996.** The Tribunal deleted the disallowance made u/s 40A(3) with respect to cash payments made by the assessee-company, a clearing and forward agent, to various airlines in excess of Rs. 20,000, noting that the authorities below had not doubted identity of payees, being reputed airlines having PAN, and genuineness of the transactions. Further, it noted that for business expediency in the line of business of assessee-company, some times cash payments are made to complete the work on behalf of Principal and accordindly held that the assessee fell in the exception provided in section 40A(3) i.e. consideration of business expediency.

***KGL Network (P.) Ltd. v ACIT [2018] 97 taxmann.com 400 (Delhi - Trib.) – ITA No 301 (Delhi) OF 2018 dated July 2, 2018***

**997.** Assessee was engaged in trading of electronic goods. Assessee filed its return of income. Assessment u/s 143(3) of Act was passed determining total income. AO made disallowances u/ss 40A(2)(b) and 14A of Act. CIT(A) set aside AO's order of addition but confirmed disallowance u/s 14A. The Tribunal held that in case of CIT Vs. M/s Gautam Motor, it was held that there was no case made out by Department that any tax avoidance has been attempted by these arrangements. Therefore, no justification was there to hold additions made by AO and sustained by CIT(A), same was to be deleted. AO could not show that expenditure incurred by assessee was excessive or unreasonable providing market comparative price with respect to fair market value of goods. AO could not show that without offering discount goods were saleable and not in accordance with legitimate needs of business of assessee. In absence of these AO could not have applied provisions of section 40A(2)(b) of Act. Revenue's appeal was dismissed.

***ITO vs. Media Satelite & Telecom Ltd.- (2018) CCH 0308 DelTrib-ITA No.415/Del/2015- dated Jul.10, 2018***

**998.** The Tribunal held that where in course of business, assessee made payments to various airlines in excess of Rs.20,000 by cash, in view of fact that payees were reputed airlines having PAN and, moreover, genuineness of payments had not been doubted by revenue authorities, no disallowance could be made under section 40A(3).

***KGL Network (P.) Ltd. v. ACIT [2018] 97 taxmann.com 400(Delhi-Trib.)- ITA No. 301 (Delhi) of 2018 [Assessment Year 2014-15] dated July 2, 2018***

Go to Index

**999.** On basis of completed assessment u/s 143(3) by making addition on account of disallowance u/s 40A(3) and on account of excess depreciation claim, respectively, penalty proceedings u/s 271(1)(c) were initiated against assessee. AO treated mistake of claiming excess depreciation as furnishing of 'inaccurate particulars of income and thereby levied a penalty u/s. 271(1)(c). CIT(A) upheld order of AO. Held, bare perusal of penalty order, apparently went to prove, that there was no finding whatsoever on part of Revenue authorities below that any detail supplied by assessee in his return of income was found to be incorrect and erroneous or false. In case, assessee claimed excess depreciation, it was for tax authority to examine if same was allowable or not. Perusal of notice issued by AO to assessee u/s 274 proved that even at time of issuance of notice as well as at time of passing penalty order, AO was not clear, as to penalty proceedings were being initiated for 'concealment of particulars of income or furnishing inaccurate particulars of income', rather assessee had been charged for having 'concealed particulars of income as well as furnishing inaccurate particulars of such income. AO failed to make out case of 'concealment of income or furnishing of inaccurate particulars of such income' by assessee, so as to attract provisions contained u/s 271(1)(c), hence penalty levied by AO and confirmed by CIT(A) was ordered to be deleted by the Tribunal.
***Replika Press Pvt.Ltd. vs. Dy. CIT-(2018) 53 CCH 0315 DelTrib-ITA No.120/Del/2016-dated July 10, 2018***

**1000.** Where the assessee made provision of gratuity, the payment of which was not made before the close of the year, the Tribunal deleted the disallowance made by the AO under Section 40A(7) and upheld the order of the CIT(A) wherein the CIT(A) held that since the provision made by the assessee was an approved gratuity fund no disallowance under Section 40A(7) could be made. Further, the CIT(A) also held that that since the payment was made before the due date for filing return of income, no disallowance under Section 43B could be made.
***DELHI TOURISM AND TRANSPORT DEVELOPMENT CORPORATION LTD. & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. - (2018) 52 CCH 0258 DelTrib - ITA No. 3457/Del/2007, 1505/Del/2009***

**1001.** Tribunal deleted addition made u/s 40A(3) of cash payments made by assessee to its group concerns for repayment of debt and not for any expenditure incurred and which had not been debited in P&L, observing that the provision of said section is applicable only when an expenditure has been incurred and claimed by way of debiting to P&L account.
***Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018***

**1002.** The Tribunal confirmed CIT(A)'s deletion of section 40A(2) disallowance in respect of liasoning charges paid for procuring diesel as assessing officer had not recorded any findings to hold such expenditure as excessive or unreasonable.
***Xansa India Ltd - TS-774-ITAT-2016(DEL)-TP-ITA No.2283/Del/2011***

**1003.** The Tribunal deleted the disallowance made u/s 40A(2)(a) on account of trade discount allowed by assessee to its related parties where no such discount was offered to other parties, as the trade discount is not a payment and therefore, does not fall in the ambit of said section. Tribunal held that there was no actual out go from the assessee as discount was allowed on sale made

and in absence of any prohibitory provisions u/s 40A(2)(a) or u/s 37, same could not be disallowed.

***ACCME (Urvashi Pumps) Eng. (P.) Ltd. v JCIT – (2018) 90 taxmann.com 189 (Jaipur) – ITA Nos. 561 (JP) of 2014 and 1111 & 1112 (JP) of 2016 dated 23.01.2018***

**1004.** The assessee firm purchased certain plots of land from various persons & the payment was made partly in cash. The AO disallowed the amount pertaining to payment by cash by invoking S.40A(3) of the Act. The CIT(A) upheld the said order. The assessee claimed that the part payment was made in cash since the sellers being new to assessee, refused to accept payment through banks and due to mode of payment it could have lost the land. The assessee had even submitted copies of sale deed & other vital details for proving genuineness of the transaction. Thus, based on the above facts and further noting that the cash payments were made from disclosed sources (amount withdrawn from bank), the Tribunal held that since even the business expediency was met, no disallowance was called for.

***A Daga Royal Arts v ITO [2018]94 taxmann.com 401 (Jaipur – Trib.)- ITA NO. 1065 OF 2016 dated 15.05.2018***

**1005.** The Tribunal held that where assessee made payment in excess of Rs. 20,000/- towards purchase of jaggery from farmers, in view of fact that those farmers were mostly uneducated and did not know how to operate bank accounts, assessee's case would fall under Rule 6DD and, thus, impugned disallowance made under section 40A (3) was to be deleted.

***Tum Nath Shaw v. Asst. CIT, Circle-2, Burdwan- [2019] 102 taxmann.com 56 (Kolkata - Trib.)-IT Appeal Nos. 2043 to 2047 (KOL) of 2017 dated December 31, 2018***

**1006.** The Tribunal held that registration fee paid in cash for registration of land and building could not be disallowed u/s 40A(3) since major part of it pertained to stamp duty cost paid to the Government.

***Shelter Projects Ltd vs CIT- (2018) 54 CCH 0103 KolTrib- ITA No 737/Kol/2014 dated 17.10.2018***

**1007.** Where the AO made an addition u/s 40A(3) for reason that assessee made cash payments for hiring trucks beyond limits prescribed, the Tribunal held that no addition could be made invoking provision of sec 40A(3) as the AO had not doubted business expediency or genuineness of transactions and copies of bills produced evidenced that payments were made though agents and accordingly, deleted the said disallowance. It relied on the ratio laid down in A Daga Royal Arts v. ITO [ITA No. 1065/JP/2016] wherein it was held that section 40A(3) must not be read in isolation or to the exclusion of rule 6DD. If read together, it would be clear that the provisions were not intended to restrict the business activities and accordingly, genuine and bona fide transactions were to be taken out of the sweep of the said section.

***Krishna Prasad Poturi vs. ITO [2018] 53 CCH 0435 KolTrib - ITA No. 450/Kol/2018 dated August 03, 2018***

**1008.** The Tribunal deleted the disallowance made u/s 40A on account of cash payments exceeding Rs.20,000 by the assessee-firm, engaged in business of trading in country spirit, to wholesale licensee appointed by State Government for lifting country spirit. It held that the relationship

between retail vendor (assessee) and Government acting under West Bengal Excise Rules through its Authorised Wholesaler Licensee (agent) both defacto and dejure, was one of 'Principal' and 'Agent' therefore, the payment made by the retail vendor to the said agent would fall under exception provided in Rule 6DD(k) which excludes "payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person" from the applicability of section 40A.
***TOPSI KENDA C.S. SHOP vs. ITO (2018) 53 CCH 0339 KolTrib – ITA No. 1264/Kol/2016 dated 13th July, 2018***

**1009.** The AO disallowed the expense claimed by the assessee on directors' remuneration / salary paid to four lady directors out of total eight directors u/s 40A(2) considering the same to be bogus expenditure and rejected assessee's explanation that four male directors remained involved in supervising production, marketing, etc. in the production units and the four female directors were engaged for adequate surveillance and supervising of official works including for duly timely compliance with statutory obligations in running the business. CIT(A) upheld order of AO. The Tribunal directed the AO to allow 30% of remuneration given to these lady directors, noting that even if lady directors were not involved in pure managerial or supervising work of assessee company, the AO as well as the CIT(A) indirectly accepted that to certain extent women directors are rendering services to benefit of assessee company.
***BETTERMAN ENGINEERS PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0115 (Kol Trib) - ITA No. 2001/Kol/2014 dated Jun 6, 2018***

**1010.** The Tribunal held that where the assessee, a retail vendor of Country Liquor had made part payment of cost of stock purchased, excise duty and bottling charges to a whole sale licensee appointed by the Government of India by depositing cash in excess of Rs.20,000 into the bank account of the impugned wholesale licensee, disallowance under section 40A(3) of the Act could not be made since the payment was made to an agent of the State Government and therefore fell under the exception provided in Rule 6DD(k) of the Income-tax Rules.
***RamnagarPachwai& CS Shop v ITO – (2016) 47 CCH 0576 (KolTrib) - ITA No. 148/Kol/2015, 185/Kol/2014, 186/Kol/2014***

**1011.** Where assessee after detailed enquiry and applying his mind disallowed claim of assessee u/s. 40A(2) in respect of performance bonus paid by it to its director, merely because said director was holding 36% sharecapital in company, Principal Commissioner could not assume jurisdiction u/s.263 on grounds that disallowance was to be made u/s.36(1)(ii) as payment of bonus was colorable device to evade dividend distribution tax. The Tribunal held that since assessee had filed various details to prove that such performance bonus was directly linked to duties performed by director, merely because director was holding 36% share capital in company, it could not be concluded that payment of performance bonus was a colourable device for evading payment of dividend distribution tax.
***Color Publications (P.) Ltd vs Pr.CIT. [2018] 97 taxmann.com 116 (Mum Trib)- IT APPEAL NO. 4023 (Mum) of 2017 dated August 14 2018***

**1012.** The assessee had raised sale invoice in favour of 'C' for goods sold by assessee to the said concern and instead of making payments to assessee against the said invoice, 'C' made

payments through banking channel to 'F' on behalf of assesse (i.e. to assessee's creditor). The assessee adjusted the said payments made by it's debtor ('C') directly to its creditor ('F') through journal voucher adjustments in its books of account. The AO made addition u/s 40A(3) considering the said payments made to party ('F') from whom purchases were made by the assessee to be otherwise than through account payee cheque or account payee bank draft and thus in violation of the said section. The Tribunal held that the said payment made directly by assessee's debtor to assessee's creditor through approved banking mode as prescribed in section 40A(3) in settlement of inter-se transaction between debtor and creditor would not trigger provisions of the said section and hence deleted the addition. It noted that the cardinal rational and objective of the said provisions was to plug evasion of taxes so as to ensure that unaccounted money of the tax-payer does not get recycled in the form of cash payments towards ghost expenditures or ghost payees which are out of ambit of tax net.
***LION MERCANTILE P. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0248 (MumTrib) - ITA No. 5998/Mum/2014 dated June 27, 2018***

**1013.** The Tribunal upheld disallowance under section 40A(3) where assessee made cash payments in excess of prescribed limit of Rs.20,000 and rejected assessee's submission that (i) due to business exigencies, the monetary limit had exceeded and (ii) if genuineness of purchases was established, the disallowance was not warranted.
***International Ships Stores Suppliers [TS-607-ITAT-2016(Mum)] (ITA No. 2502/MUM/2013)***

**1014.** The Tribunal deleted the addition made by the AO u/s 40A(2) on an ad hoc basis viz. 30 per cent of the payments made to the related parties with respect to commission / legal and professional charges, noting that the said disallowance was made without placing on record any material which could prove that payments were excessive or unreasonable, having regard to fair market value of the services for which same were made or keeping in view legitimate needs of business of assessee or benefit derived by or accruing to assessee therefrom. It thus held that in the absence of satisfaction of the basic condition for invoking of section 40A(2)(a), the said disallowance could not be sustained.
***Nat Steel Equipment (P.) Ltd. v DCIT - [2018] 95 taxmann.com 159 (Mumbai - Trib.) - IT APPEAL NOS. 4011, 4681, 5070 & 5270 (MUM.) OF 2013 dated June 13, 2018***

**1015.** The Tribunal held that Provisions of section 40A(2) are not application to co-operative society and therefore, disallowance on account of alleged excess payment made in assessee-co-operative society's case would not be justified.
***Dy.CIT, Bharuch v. Ganesh Khand Udyog Sahakari Mandali Ltd.- [2018] 100 taxmann.com 229(Surat-Trib.)-ITA No.3030(AHD) of 2013-dated November 13, 2018.***

**1016.** The Tribunal held that where assessee purchased land from farmers and on their insistence, made payments in excess of Rs.20 thousand in cash, in view of fact that said payments were genuine, duly accounted in books of account and recipients were identifiable, impugned disallowance made by Assessing Officer under section 40A (3) was not sustainable.
***K. Phani Kumar v. Asst. CIT, Central Circle, Vijaywada-ITA No.300(viz.) of 2015-dated November 30, 2018***

Go to Index

**1017.** The Tribunal held that the AO was justified in invoking Section 40A(2) vis-à-vis the purchase of land (forming part of its stock in trade) by the assessee partnership firm from its partners and dismissed the contention of the assessee that the provisions of Section 45(3) of the Act (which states that the amount credited in the books of partner transferring capital asset to the firm would be the full value of consideration of the property) would apply. It held that Section 45(3) would apply only in the hands of the partners and would not apply to the case of the assessee firm. It further held that the asset was converted into a trading asset by the firm and therefore held that Section 45(3) would not override Section 40A(2). However, it noted that the AO had taken the value of property pursuant to inquiries from the Sub-register's office to determine the FMV of the property without appreciating the assessee's submission that the said value did not take into account various other considerations such as geographical location and other locational advantages. Accordingly, it remitted the matter to the file of the AO to re-determine the fair market value adopted by him.

***ACIT v Karuna Estates & Developers - [2018] 92 taxmann.com 282 (Visakhapatnam - Trib.) - IT APPEAL NOS. 282, 367, 368 (VIZ) OF 2012 dated MARCH 23, 2018***

*Section 43*

**1018.** The Court held that (i) while computing written down value (WDV) u/s 43(6) for claiming depreciation, depreciation allowed under State Enactment (Kerala Agricultural Income-tax Act, 1991) could not be reduced (ii) since as per Rule 7A only 35% of assessee's income from manufacture of rubber was deemed to be taxable, only 35% of the cost of total assets was to be taken as WDV.

***Rehabilitation Plantations Ltd. v CIT – (2018) 90 taxmann.com 420 (KerHC) – ITA No. 29 of 2008 dated 29.01.2018***

**1019.** The assessee had claimed deduction on account of purchase of 'assets' for its in-house R&D facility. The said expenditure was disallowed on ground that expenditure resulted in acquisition of rights in or arising out of scientific research such as patents and it would come under an exclusion under section 43(4)(ii). The Tribunal held that if interpretation sought to be urged by revenue was to be accepted, then benefit sought to be conferred by provisions of section 35(1)(iv) would virtually be denied in all cases by invoking exclusion clause in section 43(4)(ii) and, therefore, AO should allow deduction claimed by assessee under section 35(1)(iv). Objective behind exclusion clause in section 43(4)(ii) appear to be that expenditure on scientific research should be incurred on research actually carried out by assessee in-house and assessee should not spend money in acquiring rights in or arising out of scientific research carried on by some other person.

***Tata Hitachi Construction Machinery Company Ltd. v DCIT [2018] 93 taxmann.com 339 (Bangalore – Trib.) – ITA NO. 877 OF 2014 dated 20.04.2018***

*Section 43A*

**1020.** The Court upheld the order of the Tribunal wherein it was held that where assessee constructed a residential house and rental income earned therefrom was offered to tax as income from

house property and not as business income and the assessee had not claimed any deduction or depreciation on account of lift, provisions of section 43A would not apply to apparent gain made by assessee as a consequence of foreign exchange fluctuation in respect of lift imported from abroad.
***CIT v Bengal Intelligent Parks (P.) Ltd. [2018] 94 taxmann.com 399 (Calcutta) – ITAT NO. 290 OF 2016 dated 10.05.2018***

**1021.** The Tribunal held that provisions of section 43A were not applicable in respect of foreign exchange fluctuation on FCCBs utilized by assessee for acquisition of fixed assets within the country as the said provisions are applicable in case of acquisition of assets outside India. Accordingly, loss arising due to such fluctuation was on capital account for which deduction could not be claimed.
***Kanoria Chemicals and Industries Ltd. vs Asst CIT[2018] 54 CCH 0266 (Kol- Trib.)- ITA No.1880, 2086 /Kol/2014 dated 16.11.2018***

*Section 43B*

**1022.** The Apex Court dismissed Revenue's appeal and held that the assessee was entitled to claim deduction u/s 43B in respect of the excise duty paid in advance in the Personal Ledger Account (PLA). Rejecting the Revenue's stand that since actual payment of excise duty was at the stage of removal of goods, the amount of advance deposit in PLA did not represent the actual payment of duty so as to qualify for deduction u/s 43B, the Apex Court referring to the Central Excise rules, held that deposit of Central Excise Duty in the PLA is a statutory requirement. It further noted that upon deposit in the PLA, the amount stands credited to the Revenue with assessee having no domain over the amount(s) deposited. Considering the object behind the enactment of section 43B, it held that legislative intent would be achieved by giving benefit of deduction to an assessee upon advance deposit of central excise duty notwithstanding the fact that adjustments from such deposit were made on subsequent clearances/removal effected from time to time and concluded that the advance deposit of central excise duty constituted actual payment of duty within the meaning of section 43B and the assessee was entitled to the benefit of deduction.
***Modipon Ltd vs CIT-TS-548-SC-2017 CIVIL APPEAL NO.19763 OF 2017 dated 24.11.2017***

**1023.** The Apex Court granted SLP to assessee against the High Court ruling wherein it was held that in view of provisions of section 43B, the assessee could not be allowed to claim deduction for MODVAT credit of excise duty paid by the assessee at the time of purchase of goods which remained unutilized.
***Maruti Suzuki India Ltd. vs CIT [2018] 103 CCH 0287 (ISCC)- Special Leave to Appeal (C) No(s). 9074/2018 dated 30.11.2018***

**1024.** The Court held that if employee and employer's contribution is paid after the due date under the Provident Fund Act but before the due date of filing return of income, the same shall be allowed.
***CIT & Another vs. Dhampur Sugar Mills Ltd. (2016) 97 CCH 0098 AllahabadHC (ITA No.564 of 2007)***

Go to Index

**1025.** The assessee during the year had provided detection and security services to its clients and did not receive any amount from its clients, on which services tax was payable and claimed unpaid services tax as its liability. However, AO was of a view that by virtue of section 43B, service tax could be allowed only when paid, thus, amount was not liable for deduction. The Court held that section 43B does not contemplate liability to pay services tax before actual receipt of funds in account of assessee and since services were rendered, liability to pay service tax in respect of consideration would arise only upon assessee receiving funds and not otherwise. Thus, liability claimed by assessee could not be disallowed under section 43B.
***PCIT vs Tops Security Ltd- (2018) 97 taxmann.com 525 (BomHC)- ITA No 733 of 2016 dated 10.09.2018***

**1026.** The Court held that the provisions of section 145A are not applicable to service tax billed on services rendered by the assessee and rejected the contention of the revenue that service tax was similar to excise duty, sales tax etc which were to be collected and paid over to the government. It held that the Revenue was incorrect in treating service tax as a trading receipt under section 145A(a)(i) and consequently disallowing the deduction invoking provisions of Section 43B on the ground that service tax was not paid to the Government before the due date for filing return since a). theassessee had not claimed any deduction of service tax in its computation of income and b). section 145A specifically dealt with taxes, cess duty or fee paid or incurred to bring goods to the place of location and condition as on the date of valuation of inventory.
***CIT v Knight Frank (India) Pvt Ltd – TS-469-HC-2016 (Bom) - INCOME TAX APPEAL NO. 247 OF 2014, INCOME TAX APPEAL NO. 255 OF 2014***

**1027.** The Court allowed deduction (for period prior to enactment of Sec. 43B) towards excess of sales price collected by assessee (a drug manufacturer) over the price fixed by the Drug Price Control Order, 1979 ('DPCO') on the ground that as per Drug Price Control Order assessee was required to deposit the excess amount so collected with the Government.
***Hoechst India Limited - TS 391 HC 2016 (BOM) - Income tax reference No 364 of 1997***

**1028.** The Court dismissed Revenue's appeal filed against the Tribunal's order deleting the disallowance made u/s 36(i)(va) r.w.s. 2(24)(x) of the Act on account of Employees' Contributions to ESIC paid by the assessee-company beyond the due dates under the ESIC Act, noting that the said issue had already been decided in favour of the assessee in the case of CIT v Ghatge Patil Transports Ltd. 368 ITR 749 (Bom) wherein it was held that as per section 43B the assesse would be eligible for the said deduction if the payment was made before the due of filing of return u/s 139(1).
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. STARFLEX SEALING INDIA PVT. LTD. - (2018) 102 CCH 0158 (Bom HC) – ITA No. 130 & 151 of 2016 dated June 27, 2018***

**1029.** The Court held that where for relevant assessment year assessee paid its provident fund contribution beyond due date prescribed under the relevant law governing contribution to provident fund but before date of filing return under section 139(1), amount so paid could not be disallowed by invoking provisions of section 43B.

Go to Index

***Peerless General Finance & Investment Co. vs CIT [2018] 100 taxmann.com 41 (CalcuttaHC)- IT APPEAL NOs. 600,601 of 2004 and 246 & 248 of 2005 dated August 8 2018***

**1030.** The assessee collected the VAT from the customers but did not deposit the same before the due date of filing ROI. The AO made addition u/s 43B despite the fact that VAT was not routed through P&L account and no deduction had been claimed by the assessee. The CIT(A) and the Tribunal deleted the addition made by the AO since the same was not claimed as deduction in the books of accounts. The Court upheld the Tribunal's order and deleted addition made u/s 43B since the VAT was not routed through P&L A/c and therefore, not claimed by the assessee.
***Ganapati Motors [TS-254-HC-2017(Chattisgarh)] ITA No. 30/2016 dated 25.04.2017***

**1031.** The Court upheld the Tribunal's order and deleted Sec. 43B addition with regards to unpaid VAT, not claimed as deduction in the books of accounts. The Court noted that while the VAT component collected was not paid before the return filing due-date u/s. 139(1), such VAT was also not charged to the Profit and Loss account and was accounted for separately in the Books of Accounts.
***ACIT vs. M/s Ganapati Motors TS-254-HC-2017(Chattisgarh HC) (Tax Case (ITA) No. 30 of 2016 dated April 25, 2017)***

**1032.** Where interest was paid to financial institutions during assessment year in question by issuing non-convertible debentures to such institutions and assessee claimed deduction under section 43B in its computation of income, the Court held that the Issue of debentures to fund the interest liability does not amount to "actual payment" of the interest so as to qualify for deduction under Explanation 3C to Section 43-B.
***CIT v MM Aqua Technologies Ltd – (2016) 96 CCH 0081 (DelHC) - REV. PET.308/2015 IN ITA 110/2005***

**1033.** The Court held that conversion of a portion of interest into equity shares should be regarded as actual payment and therefore no disallowance could be made under section 43B of the Act.
***CIT vs. Rathi Graphics Technologies Ltd [ITA Nos 780 and 785 of 2014 (Del)] - TS-451-HC-2015(DEL)***

**1034.** The Court refused to grant the assessee deduction u/s 43B for unutilized MODVAT credit as at the end of year representing excise duty paid on raw material/input. Referring to Accounting Standard 2 it noted that MODVAT Credit is to be treated as a separate account and appropriate accounting entries would have to be made to adjust the excise duty paid out of the said account and the debit balance in MODVAT/CENVAT Credit Receivable (Inputs) has to be shown on the assets side of Balance Sheet under the head 'advances'. It relied on Delhi HC decision in Oswal Agro Mills wherein it was held that provisions of Sec. 43B are applicable only to 'statutory liability' and observed that primary liability of pay excise duty is essentially on the manufacturers of the raw materials and inputs and the liability of assessee to pay the same is only contractual. However, it agreed with the ITAT's acceptance of the Assessee's alternate contention that unutilized MODVAT credit of the earlier year adjusted in the current year was allowable as a deduction to the extent of such adjustment / write off.

Go to Index

***Maruti Udyog v CIT - TS-577-HC-2017(DEL) - ITA No.31/2005 dated 07.12.2017***

**1035.** The Court held that section 43B speaks of certain deductions only on actual payment and sub-clause(f) is with respect to any sum payable by assessee as an employee in lieu of any leave at credit of his employee; thus, deduction for same was allowable only on actual payment. Though Calcutta High Court had struck down said provision, a Special Leave Petition was filed before Supreme Court, and stay was granted. Therefore, said provision would be applicable.
***Dhanalakshmi Bank Ltd. v.CIT, Cochin-[2019] 102 taxmann.com 442 (KeralaHC)-IT Appeal Nos. 456, 498, 635, 643, 651, 712, 717, 1108, 1318 & 1691 of 2009 & ORS.-dated December 11, 2018***

**1036.** The Tribunal upheld section 43B disallowance on unpaid service tax and rejected assessee's contention since service tax payable was not reflected in the profit and loss account and was only shown as liability in the balance sheet for tracking the tax payable and that since it was acting as mere collection agent, section 43B disallowance was not applicable. It clarified that section 43B in the nature of check by the statute to ensure that the assessee makes payment of the tax collected to the concerned department and if he is unable to do so the amount is added to its income.
***Madhya Gujarat Viz. Co. Ltd. [TS-615-ITAT-2016(Ahd)] (ITA No. 2583/Ahd/2010)***

**1037.** The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the disallowance made u/s 36(i)(va) r.w.s. 2(24)(x) of the Act on account of depositing employees' contributions towards Provident Fund and ESIC beyond the due dates under the Provident Fund Act and the ESIC Act but before filing of return of income, following the Jurisdictional High Court decision in the case of CIT v M/s Hemla Embroidery Mills (P) Ltd [ITA no. 16 of 2009 (P&H)] wherein it was held that as per section 43B, the assessee was entitled to deduction in respect of employer and employee's contribution to ESI and Provident Fund when the same had been deposited prior to the due date of filing of the return u/s 139(1).
***ASSISTANT COMMISSIONER OF INCOME TAX vs. KHYBER INDUSTRIES PVT. LTD. - (2018) 53 CCH 0266 (Amritsar Trib) - ITA No.395(Asr)/2017 dated June 21, 2018***

**1038.** The Tribunal held that since the assessee deposited the funds in the Employers and Employees Provident Fund account prior to the date of filing return as stipulated under the proviso to section 43B of the Act no addition could be made even though the same was deposited post the due dates in the respective Acts.
***ACIT v Jamkash Vehicleades Pvt Ltd – (2015) 45 CCH 0322 Amritsar Trib***

**1039.** Section 43B could not be invoked for making assessment of liability of assessee State Electricity Board with regard to amount of electricity duty and surcharge collected by it as an agent of State of Kerala in view of decision in assessee's own case of Kerala State Electricity Board v. Dy. CIT [2010] 8 taxmann.com 118/196 Taxman 1/329 ITR 91(Ker.)
***Asst.Com.IT, Circle-1(1), Trivendrum v. Kerala State Electricity Boar-[2018] 100 taxmann.com 132 (Cochin – Trib) – ITA Nos.29 & 30 (Coch) of 2018-dated November 1, 2018***

Go to Index

**1040.** The Tribunal held that tax, duty, cess or fee payable under any law for time being in force referred to in section 43B did not cover VAT included in the purchase price of raw materials paid by the assessee, since the liability to pay VAT to the Government was on the seller and the buyer is not hit by section 43B of the Act.
***ACIT v Plant Lipids Pvt Ltd – (2016) 67 taxmann.com 107 (Cochin)***

**1041.** The Tribunal deleted the disallowance u/s. 43B or 2(24)(x) r.w.s. 36(1)(v)(a) since the contribution to employee's PF was deposited before the due date of filing of return of income.
***Granite Services International India Private Limited vs DCIT [TS-628-ITAT-2018(DEL)-TP]***

**1042.** During assessment proceeding, AO noted that assessee made employer's contribution to provident fund trust. Assessee's provident fund trust had not invested funds as per prescribed Rules during AY 2003-04, therefore, it was not considered as a Recognized Provident Fund Trust.AO disallowed entire contribution and made an addition u/s 43B.CIT(A) deleted impugned addition. The Tribunal noted that that CIT(A) held that since assessee's PF Trust was approved as registered Trust by competent authority, i.e. CIT, who had not revoked decision, AO could not have usurped jurisdiction of the CIT to hold that Trust was not registered. Further, matter was decided in assessee's favour by ITAT for AYs 2003-04 to 2007-08, and Revenue's appeal against same was dismissed by Delhi High Court for AY 2003-04. As there was no change in facts, disallowance could not be sustained moreso since no contrary material was brought on record on behalf of Revenue to take a different view.PF Trust registration was continuing till date. It could not be said that it was an un-recognized PF Trust as per Act.
***Asst. CIT & ANR. vs. INDIAN SUGAR EXIM CORPORATION LTD. & ANR. (2018) 54 CCH 0438 DelTrib- ITA No. 1420/Del/2015, 1449/Del/2015 dated 31.12.2018***

**1043.** The Tribunal confirmed disallowance under Section 43B on account of service tax received from the service recipients, but not deposited within the return filing due-date [as contemplated u/s. 43B(a)] and rejected assessee's stand that since it had not debited the expenditure as service tax to the profit and loss account, no disallowance could be made. Noting that it was liable to pay service tax as the liability had arisen under the Point of Taxation Rules, it held that the assessee was legally obliged to declare its turnover inclusive of service tax received (which was not done by assessee) and held that the assessee could not be exonerated from its liability by saying that he accounted for the service tax received separately. It observed that the assessee did not produce any invoice before it despite the fact that the issue of invoice was mandatory under service tax rules.
***Hemkunt Infratech (P) Ltd. - TS-181-ITAT-2018(DEL) - ITA No. 6683/Del./2017 dated 23.03.2018***

**1044.** The Tribunal held that employee's as well as employer's contribution to provident fund were allowable as deduction under section 36(1) (va) provided the assessee makes the payment before due date of filing of return of income.
***Teck Bond Laboratories Pvt. Ltd.vs.DCIT(2016) 48 CCH 0105 (HydTrib) (ITA No. 1558/Hyd/2014)***

Go to Index

**1045.** The assessee had claimed deduction of interest payable on government loans which were granted for payment to employees who opted to retire under VRS. The AO observed that the assessee had debited interest as payable to government loans, but had not paid the interest to the govt. account. Accordingly, he disallowed the same u/s 43B . The CIT (A) observed that interest payable to govt. was not covered under section 43B and accordingly, deleted the disallowance. The Tribunal upheld the order of the CIT(A).

***A.P. DAIRY DEVELOPMENT COOPERATIVE FEDERATION LTD. & ANR. vs. DCIT & ANR. (2017) 50 CCH 0120 HydTrib ITA No. 741 to 744/Hyd/2015, 1296 to 1298/Hyd/2015***

**1046.** During the assessment proceedings, the AO perused the audit report filed by the assessee wherein a sum of gratuity was shown as payable. The AO contended that only the sums which are actually paid by the assessee were allowable u/s 43B of the Act and since the gratuity was not paid, he disallowed the same. The assessee contended that provision for gratuity had not accrued during the relevant previous year and was opening balance brought forward and therefore, no disallowance could be made. However, the AO rejected the assessee's contention. The CIT(A) confirmed the AO's addition. The Tribunal held that if there was no claim of gratuity for the relevant A.Y, then the disallowance could not have been made. Accordingly, it remitted the matter to the AO to verify whether there was any claim of deduction for the relevant previous year.

***VICEROY HOTELS LTD. vs. DCIT (2017) 50 CCH 0095 HydTrib ITA No. 292/Hyd/2016 dated 09.06.2017***

**1047.** Assessment was reopened by revenue and order u/s 143(3) r.w.s 147 was framed. AO made addition on account of disallowance of provision for gratuity. CIT(A) deleted addition made by AO. The Tribunal noted that CIT(A) held that assessee had submitted that this provision of gratuity amount had been made on the basis of valuation done by LIC which was approved agency maintaining approved gratuity fund on behalf of assessee coporation. LIC had given valuation of gratuity fund and had shown shortfall of value in respect of gratuity liability during year under consideration. Asseessee had made provision at year end and had made payment to LIC dated 29.9.2008. During course of reassessment proceedings, assessee had filed letter to AO in which it had been clarly mentioned thatamount was paid to LIC on account of gratuity before due date of filing return. It was seen that assessee corporation had made payment of certain to LIC India before due date of filing return. Therefore, as per provisions of section 43B, this deduction was not disallowable. Hence, this fact was not controverted by revenue, therefore, there was no reason to interfere with finding of CIT(A).

***M.P Police Housing Corporation Ltd vs ACIT- (2018) 54 CCH 0076 IndoreTrib- ITA No 383/Ind/2013, ITA No 259& 260/Ind/2015, ITA No 269,449/Ind/2016 and ITA No 125/Ind/2017 dated 10.10.2018***

**1048.** Assessee claimed expenditure on account of service tax demand.AO found that out of total demand, a sum was service tax payable as on 31/1/2013 and assessee paid said amount during FY 2012-13 but failed to show it in P&L account.AO noted that demand arising due to an order of Commissioner of Central Excise, which was relevant for AY 2012-13 and therefore, claim of expenditure in respect of service tax demand was not admissible. CIT(A) sustained said disallowance on ground that said liability pertained to AY 2012-13. The Tribunal held

that payment of tax was to be allowed only on actual payment as per s. 43B and not on basis of accrual of liability.When both years were before CIT(A) and decided by composite order then if claim of assessee regarding actual liability of service tax was allowable in AY 2012-13 then instead of sustaining disallowance for AY 2013-14, CIT(A) ought to have allowed claim of assessee in terms of provisions of s. 43B or at best for AY 2012-13.AO was directed to allow claim of assessee for AY 2012-13.Assessee's ground was allowed.
***ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT & ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018***

**1049.** Assessee in the relevant AY claimed deduction on account of write off of un-availed service tax credit, which was completely disregarded by the AO as the assessee could not show any concrete reason for such immediate write off and the same view was upheld by the DRP. The Tribunal noted that, when there was reasonable certainty that CENVAT credit was not likely to be utilized in normal course of business within reasonable time, and it was a conscious business call taken by assessee, such decision taken on account of commercial expediency could not be questioned by Revenue, It also observed that there was no point in retaining said unutilized CENVAT credit in its books and hence writing off of same in books and claiming the same as deduction was in order and could not be questioned by Revenue, thus deduction was allowed.
***DCIT (Intl Taxation) vs Royal Bank of Scotland- (2018) 53 CCH 0537 Kol Trib- ITA No.503, 505/ Kol/2016 dated 05.09.2018***

**1050.** The Tribunal, allowed the assessee deduction under Section 43B on employees' contribution to Provident Fund (PF) deposited after due date under PF Act, but before last date for filing income- tax return u/s 139(1), noting that as per Provident Fund Act there is no distinction between employees' and employer contribution to PF and held that if the total contribution was deposited on or before the due date of furnishing return of income u/s 139(1) of the Act, then no disallowance could be made towards employees' contribution to provident fund.
***Teesta Valley Tea Co. [TS-452-ITAT-2017(Kol)] - ITA No.318/Kol/2015 dated 01-09-2017***

**1051.** The Tribunal, relying on the decision of the Court in CIT vs Vijayshree Ltd., GA No.2607 of 2011, held that employees contribution deposited beyond the due date prescribed under the relevant law governing contribution to provident fund would be allowable as a deduction under Section 43B of the Act as long as it is paid before the due date of filing return of income.
***ASSISTANT COMMISSIONER OF INCOME TAX vs. GILLANDERS ARBUTHNOT & CO. LTD. - (2018) 52 CCH 0155 KolTrib - ITA No. 2090/Kol/2016 dated Mar 1, 2018***

**1052.** The Tribunal upheld the CIT(A)'s deletion of disallowance made u/s 43B where the assessee had not deposited employees' contribution towards provident fund on due date as prescribed under relevant statute, but had deposited same before due date of filing of return.
***DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018***

**1053.** The Tribunal held that where assessee made payments of PF and ESI contributions before due date of filing return under section 139(1), Assessing Officer was not justified in disallowing the

same by invoking provisions of section 43B merely because there was a small delay in the payment of the same under the relevant Acts.
***DCIT v Xpro India Ltd - [2016] 68 taxmann.com 249 (Kolkata-Trib)***

**1054.** The Tribunal held that where assessee deposited amount towards employees' contribution to Provident Fund, beyond stipulated date contemplated under Provident Fund Act but before 'due date' applicable in its case for furnishing 'return of income' under sub-section (1) of section 139, in view of amended provisions of section 43B, amount so deposited could not be disallowed by invoking provisions of section 36(1)(va), read with section 2(24)(x).
***High Volt Electricals vs ACIT- (2018) 98 taxmann.com 471 (Mum- Trib)- ITA No 3813 of 2017 dated 26.09.2018***

**1055.** The assessee, an NBFC engaged in business of financing vehicles, claimed Direct Marketing Agent's commission (DMA) which was partly allowed by the AO. The Tribunal held that when assessee finalized vehicle financing proposal received by it from customer through Direct Marketing Agent (DMA), it provided and paid to DMA, commission due to him for introducing customer to assessee. For accounting purposes, the assessee amortized such commission over period of financing agreement and for tax purposes, entire commission incurred and paid by assessee was claimed in the year in which financing agreement was signed. The Tribunal relying on the case of Taparia Tools held that notwithstanding accounting treatment followed by assessee, expenditure incurred during year had to be allowed in full irrespective of action of assessee of amortizing it for accounting purposes. It thus, upheld CIT(A)'s order allowing deduction of Direct Marketing Agent's commission and dismissed the Revenue's appeal.
***DCIT vs Tata Motor Finance Ltd- (2018) 54 CCH 0031- Mum Trib- ITA No.3476,4353,1226,3119 & 4860/Mum/2013 dated 19.09.2018***

**1056.** The AO had disallowed the deduction of provision created towards leave encashment by assessee in view of the provisions of section 43B(f), rejecting assessee's contention that provision for leave encashment was not a statutory liability and hence it was not liable to be disallowed u/s 43B, placing reliance on the decision of the Supreme Court to stay the operation of the decision in the case of Exide Industries Ltd. v. Union of India (2007) 164 Taxman 9 (Cal) wherein it was held that provisions of section 43B(f) is unconstitutional. The Tribunal upheld the disallowance further noting that the Supreme Court while deciding to stay the operation of the said decision had also held that the assessee should pay tax on disallowance of provision for leave encashment as if section 43B(f) is on statute book.
***Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018***

**1057.** The Tribunal upheld CIT(A)'s order allowing the assessee's claim for deduction with respect to delayed payment of employees' contribution to ESI and PF u/s 43B, relying on the Jurisdictional High Court decision in the case of CIT v. Magus Customers Dialog P. Ltd (2015) 57 taxmann.com 94 (Kar) and not considering the decision of Gujarat High Court in the case of CIT v. Gujarat State Road Transport Corporation (2014) 41 taxmann.com 100 (Guj) [wherein the issue was decided against the assesse]. In the former decision, it was held that the word "contribution" used in clause(b) of section 43B meant the contribution of the employer and the

employee and that being so, if the contribution was made on or before the due date for furnishing the return of income u/s 139(1), the employer was entitled for deduction.
***DEPUTY COMMISSIONER OF INCOME TAX vs. ALLEGIS SERVICES INDIA LTD. - (2018) 53 CCH 0143 (Mum Trib) - ITA No. 325/Bang/2018 dated June 13, 2018***

**1058.** The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the disallowance made by the AO u/s 43B with respect to unpaid service tax amount. It was noted that the amount of service tax collected by the assessee-builder from the customers on sale of flats under construction was not paid to Government account for reason that levy of service tax on builders was challenged before High Court and High Court had granted interim stay from collection of tax till the matter was decided. It was also noted that the assessee had treated the service tax collected from customers as current liability without claiming it as expenditure during relevant assessment year and the same was paid in subsequent financial year as soon as the High Court had passed decision on the same.
***Wadhwa Residency (P.) Ltd. v ACIT - [2018] 95 taxmann.com 294 (Mumbai - Trib.) - IT APPEAL NO. 5413 (MUM.) OF 2015 dated Jun 20, 2018***

**1059.** The assessee entered into an agreement with its subsidiary to transfer its packaging division and claimed that the liability towards gratuity and leave wages of employees pertaining to the said division was also transferred and was no longer assessee's liability. Accordingly, the assessee claimed that the said liability was to be considered as paid/discharged for the purpose of Section 43B.The AO however disallowed the assessee's said claim. The Tribunal held that the basic question of treatment given by transferee in its books of account was not considered by both lower authorities and also since there was nothing on record to show as to what was decided by the buyer and seller on the question of gratuity and leave wages, it needed further verification and thus the matter was remanded back to AO for fresh adjudication.
***Oricon Enterprises Ltd v ACIT [2018] 94 taxmann.com 250 (Mumbai – Trib.) ITA NO 2913 OF 2015 dated 16.05.2018***

**1060.** The Tribunal held that electricity duty collected and paid was not covered by section 43B of the Act as it was not a primary liability by way of tax, duty, cess or fee more since the assessee did not account for the amount in its profit and loss account.
***ACIT v Maharasthra State Electricity - (2015) 44 CCH 0513 Mum Trib***

**1061.** Relying on the decisions Bharat Earth Movers (254 ITR 428) and Metal Box (73 ITR 53), the Tribunal deleted the disallowance made under section 43B of the Act on provision for pension liability made by the assessee on the basis of the observations made in the judgments i.e. the incurrence of liability should be certain irrespective of the fact that it may be discharged on a future uncertain date. Since the pension liability of the assessee was crystalized the Tribunal ruled in its favour.
***Aditya Birla Nuvo v DCIT – (2015) 45 CCH 0222 Mum Trib***

**1062.** The Tribunal held that since the assessee paid the entire amount of excise duty provided for prior to the due date of filing return of income, a portion of excise duty paid could not be disallowed on the ground that it pertained to obsolete stock which was scrapped in a future

assessment year. It held that as per section 43B the deduction was to be allowed in the year of payment.

***Sandvik Asia Pvt Ltd v JCIT – (2015) 45 CCH 0311 Pune Trib***

**1063.** The Court held that although the technical reading of section 43B and the provisions of sub-section (2) of section 24(x) read with section 36(1)(va) creates the impression that the employees contribution and employers contribution were to be treated differently but on a broader reading of the amendments made to section 43B and the intention of the Parliament, there appeared to be sufficient justification for taking the view that the employees and employers contribution ought to be treated in the same manner and therefore the benefit of section 43B was to be allowed to the employees contribution as well.

***Bihar State Warehousing Corporation Ltd v CIT – (2016) 71 taxmann.com 247 (Patna) - MISC. APPEAL NO. 302 OF 2008***

*Section 43CA*

**1064.** The Tribunal set aside the addition made by the AO u/s 43CA by considering the difference between the stamp duty value of flats as on the date of registration of sale deed, i.e. 09/12/2013, and the sale consideration mentioned in the agreement to sell which was entered into by the assessee-builder on 09/04/2007. The AO had rejected the benefit of sub-section (3) of section 43CA (which provides that where the date of agreement fixing value of consideration for transfer of the assets and date of registration are not the same, the value as on the date of agreement would be considered, provided the amount of consideration or part thereof has been received by any mode other than cash on or before the date of agreement for transfer of the assets) since the assessee had received the part consideration on date of agreement in cash. The Tribunal held that since section 43CA was inserted vide the Finance Act, 2013 w.e.f. 01/04/2014, the assessee could not have foreseen these provisions at the time of entering into the agreement to sell that it had to receive the consideration only by any mode other than cash. Accordingly, it remanded the matter to the CIT(A) to determine the valuation of the flats as on the date of agreement to sell i.e. 09/04/2007 in view of section 43CA(3).

***Indexone Tradecone (P.) Ltd. v DCIT [2018] 97 taxmann.com 174 (Jaipur - Trib.) – ITA No. 470 (JP.) of 2018 dated July 16, 2018***

*Section 43D*

**1065.** The Court held that since provisions of section 45Q of Researve Bank of India Act, 1934 have an overriding effect vis-a vis income recognition principles in Companies Act, Assessing Officer is bound to follow the RBI Directions so far as income recognition is concerned and, thus, interest on principal loan amount which has been classified as NPA cannot be held to have 'accrued' so as to tax them under Act.

***Principal CIT v. Ludhiana Central Co-op Bank Ltd. [2018] 99 taxmann.com 81 (Punj. & Har.) -IT Appeal No. 349 OF 2017 dated September 24, 2018***

Go to Index

*Section 44AD / 44AF*

**1066.** The Tribunal held that where the assessee, a retail trader, has undisclosed turnover by way of cash deposits in the bank account and is not required to maintain books of accounts as per provisions of section 44AF, the income of the assessee may be computed on estimated basis.
***Chittar Singh Gurjar vs. ITO (2016) 48 CCH 0083 (Jaipur Trib)-ITA No.594/JP/2016***

**1067.** The Tribunal dismissed assessee's appeal against CIT(A)'s order upholding AO's action in invoking section 44AD (which provides for taxation of eligible businesses on presumptive basis) in case of assessee-individual (engaged in the business of trading in cloth), noting that the turnover of the assessee was less than the prescribed threshold of Rs. 40 lakh. It also rejected assessee's contention that the said section was not applicable since it maintained regular books of account, noting that (i) assessee did not produce the books of accounts despite several opportunities (ii) he never claimed before the CIT(A) that he maintained books of account. Accordingly, the Tribunal upheld AO's action of taking guidance from section 44AD and estimating income @ 8% of total turnover.
***Kanhiyalal Tiwari v ITO [TS-498-ITAT-2018(Kol)] - I.T.A. No. 699/Kol/2016 dated 24.08.2018***

*Section 44BB / 44BBB*

**1068.** The Court held that the Assessing officer could not reject the assesse's claim and assess it at presumptive rate of 10% on the grounds that it had accounted projects as per Accounting Standard 7, where the foreign company engaged in erection, testing and commissioning of turnkey projects having project office in India prepared accounts and got them audited in accordance with Companies Act and section 44AB and claimed its profits to be lower than the 10% presumptive rate under section 44BBB(1). In terms of Companies Act, AS-7 will apply to a foreign company having project office in India.
***Shandong Tiejun Electric Power Engineering Co. Ltd. [2017] 77 taxmann.com 266 (AHD Tri.)***

**1069.** The Tribunal held that the assessee engaged in providing consultancy services could not be covered under section 44BBB of the Income Tax Act,1961, since the said provisions mainly dealt with turnkey projects.
***SMEC International (P.) Ltd 2017] 77 taxmann.com 4 (Delhi - Trib.)***

**1070.** The Tribunal held that income from hiring of vessels (i.e tug boat) earned by assessee (a UAE company) is eligible for taxation on presumptive basis under section 44BB (special provision for computing profits and gains in connection with the business of exploration, etc., of mineral oils) on the ground that assessee was engaged in the business of providing facilities and/or services in connection with prospecting for or extraction or production of mineral oils and thus hiring of barge was in its course of business. Further,it observed that, the phraseology of Sec. 44BB does not envisage only direct use of the plant and machinery in the prospecting for or extraction or production of mineral oils, thus the factum of the vessel being used for the business of operation of prospecting for or extraction or production of mineral oils was enough to cover it within the scope of Sec. 44BB.

Go to Index

***Valentine Maritime (Gulf) LLC [TS-29-ITAT-2017(Mum)]***

*Section 44C*

**1071.** Following the Tribunal's decision in the assessee's own case on identical issue for earlier years, the Tribunal allowed the assessee's appeal against the disallowance of management charges paid by the assesse, an Indian branch of a UK based company, to its head office under a management services agreement, where the AO had treated the management charges as Head Office expenses and had restricted the claim of the assessee to 5% of the total adjusted income in terms of section 44C of the Act and the CIT(A) had restricted the said disallowance to 50% of the amount paid. In the earlier year, it had deleted the disallowance on account of the management charges holding that the said charges paid to did not come within the purview of section 44C of the Act.
***LLOYDs REGISTER QUALITY ASSURANCE LTD. & ORS. v DCIT - (2018) 53 CCH 156 (Mum) - ITA No. 2856/Mum/2015, 2857/Mum/2015, 3920/Mum/2015 dated Jun 15, 2018***

*Section 14A*

» *No exempt income earned*

**1072.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year.
***CIT V. Chettinad Logistics (P.) Ltd. [2018] 257 Taxman 2 (SC) - Special Leave Petition (CIVIL) Diary No. 15631 of 2018 dated July 2, 2018***

**1073.** The court held that where Tribunal deleted disallowance made by Assessing Officer under section 14A on ground that assessee had not earned any exempt income during relevant assessment year, no substantial question of law arose from Tribunal's order.
***Pr.CIT, New Delhi v. McDonald's India (P.) Ltd.- [2019] 101 taxmann.com 86 (DelhiHC)-ITA No.725 of 2018-dated October 22, 2018***

**1074.** The Court held that the expression 'does not form part of the total income' in section 14A of the Act implies that there should be an actual receipt of income which is not includible in total income during the previous year for the purpose of disallowing expenditure under section 14A of the Act and therefore that section 14A of the Act would not apply if no exempt income was received or was receivable during the relevant previous year.
***Cheminvest Ltd v CIT – (2015) 94 CCH 0002 Del HC***

**1075.** The Court dismissed the appeal of the Revenue and held that no disallowance u/s 14A r.w. Rule 8D could be made in the absence of exempt income. It rejected the Revenue's reliance on CBDT Circular No. 5/2014 (which provides that Section 14A would apply even when exempt

income was not earned in a particular AY) and held that the Circular could not override the provisions of Section 14A.
***Pr CIT vs. IL & FS Energy Development Company Ltd. (2017) 99 CCH 0190 DelHC (ITA No. 520/2017 dated August 16, 2017)***

**1076.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made u/s 14A in view of the fact that the assessee had not claimed any income to be exempt during the subject year.
***DCIT v Mc Fills Enterprise (P.) Ltd [2019] 101 taxmann.com 212 (Ahd - Trib.) – ITA No. 3469 (Ahd.) of 2015 dated December 17, 2018***

**1077.** The Tribunal upheld the disallowance u/s 14A on the ground that assessee firm had negative net worth during relevant year and entire investment was financed by borrowed capital and, administrative expenditure was incurred by assessee. It further held that Section 14A would apply even if no dividend was earned by assessee from investments in shares.
***Lally Motors India (P.) Ltd. v PCIT [2018] 93 taxmann.com 39 (Amritsar – Trib.) – ITA NOS. 218 (ASR.) OF 2017 dated 12.04.2018***

**1078.** The Tribunal held that if there is no exempt income earned during relevant previous year, then there could be no disallowance of expenses u/s 14A.
***Asst. CIT vs. Karle International Pvt.Ltd.-(2018) 53 CCH 0291 BangTrib.-ITA No.399/Bang/2018-dated July 6, 2018***

**1079.** The Tribunal held that in absence of any exempt income received during relevant previous year, no disallowance u/s 14A could be made.
***Delhi International Airport (P.) Ltd. – DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April 19, 2018***

**1080.** The Tribunal remanded the issue with respect to disallowance u/s. 14A of the Act to the AO in light of the DRP not adjudicating on a specific objection raised by the assessee that no dividend/ exempt income was earned from investments and further that it had not incurred any direct or indirect expenditure. The DRP had deleted the disallowance u/s.14A on the basis that the investments made by the assessee were strategic investments driven by commercial expediency and hence beyond the scope of s 14A. The Tribunal accepted the stand of the Revenue that in light of the Apex Court decision of Maxoop Investment, the plea that disallowance u/s. 14A would not be applicable to strategic investment could no longer be accepted. The Tribunal observed that the assessee had raised a specific ground before the DRP that in view of no exempt income being earned qua strategic investment, disallowance u/s. 14A could not be invoked. The Tribunal opined that the decision of the ACIT v/s. Vireet Investment Pvt. Ltd. (2017) taxmann.com 415 Del Tribunal (SB) [wherein it was held that only the investments which yielded exempt income were to be considered for computing average value of investment] could be relied upon for the argument of the assessee during the course of the remand proceedings before the AO.
***ACIT vs Praxair India Private Limited [TS-524-ITAT-2018(Bang)] IT(TP)A No.409 /Bang/2015 dated 04.06.2018***

Go to Index

**1081.** The AO made disallowance under Section 14A read with Rule 8D on the investment made by the assessee in a partnership firm. The Tribunal noting the assessee's contention that the firm in which investment was made belonged to the assessee itself and that no exempt income was earned during the year under review, remitted the matter to the file of the AO since the partnership deed which required to be examined for verifying as to whether the investment was for business purpose or for earning exempt income had not been produced before it or the lower authorities.
***MAIDEEN PITCHAI RAWTHER PEER MOHAMMED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0329 ChenTrib - ITA No.2307/Chny/2017 dated Feb 16, 2018***

**1082.** The Tribunal deleted the disallowance made by AO u/s 14A a) noting that the assessee had incurred only an expenditure of Rs.6,230/- during year, being payment of audit fees etc., which was shown as loss and b) as there was no exempt income earned by assessee. Reliance was placed on the decisions in the case of Cheminvest Ltd. v CIT (2015) 378 ITR 33 (Del) and CIT v Holcim India P. Ltd. (2014) 90 CCH 81 (Del HC).
***ITO v MOONROCK HOSPITALITY P. LTD. – (2018) 61 ITR (Trib) 0667 (Del Trib) – ITA No.6385/Del/2016 & CO No.32/Del/2017 dated 03.01.2018***

**1083.** The Tribunal held that since the assessee had not earned any dividend or other exempt income during the year, no disallowance u/s 14A was called for
***ACIT v Shyam Indus Power Solutions (P.) Ltd. – (2018) 90 taxmann.com 424 (Del) – ITA Nos. 3223 & 3224 of 2016 CO Nos. 249 & 250 (Delhi) of 2016 dated 29.01.2018***

**1084.** The Tribunal deleted the disallowance u/s.14A by holding that assessee had not earned any dividend/exempt income during year under assessment on investment made by it as was apparent from auditor's report placed on file by assessee. It was also not in dispute that AO without recording dissatisfaction as to working out made by assessee that no expenses were incurred nor earned any dividend/exempt income, proceeded to invoke provisions contained u/s 14A r/w Rule 8D in a mechanical manner.
***LODHI PROPERTY COMPANY LTD. (SUCCESSOR TO DLF HOTEL HOLDINGS LTD.) vs. Dy. CIT. (2018) 54 CCH 0524 DelTrib ITA No.3719/Del./2018 dated 14.12.2018***

**1085.** The Tribunal, following the decision of the High Court in Cheminvest 378 ITR 33 (Del) held that where no dividend income was earned, no disallowance under Section 14A could be made.
***DEPUTY COMMISSIONER OF INCOME TAX vs. JUMBO TECHNO SERVICES PVT. LTD - (2018) 52 CCH 0143 DelTrib - ITA No. 6545/Del./2013 dated Feb 16, 2018***

**1086.** The assessee, during relevant AY under consideration, earned no dividend income. Despite of the said fact, the AO proceeded to disallow u/s 14A thereby making addition in the income. The CIT(A) deleted the said disallowance u/s 14A on the ground that assessee had not earned any dividend income during year under consideration The Tribunal dismissed the department's appeal and thereby upheld the order of CIT(A).

Go to Index

***Minda Industries Ltd & Anr v DCIT & Anr (2018) 52 CCH 0404 DelTrib - ITA No. 4297/Del /2015, 4298/Del /2015, 4299/Del /2015, 4300/Del /2015, 4455/Del /2015, 4456/Del /2015 dated 27.04.18***

**1087.** The Tribunal, relying on the decision of the Court in Cheminvest vs CIT (2015) 378 ITR 33 (DEL) held that no disallowance u/s 14A could be made in the absence of any exempt income.
***Cosmos International Ltd vs. Income Tax Officer [I.T.A. No. 6059 (2017) 51 CCH 0015 DelTrib]***

**1088.** The Tribunal held that where assessee had not earned any dividend income forming part of total income during year under assessment, section 14A read with Rule 8D was not attracted.
***ASSISTANT COMMISSIONER OF INCOME TAX vs.FEEDBACK INFRA PVT. LTD. - (2017) 51 CCH 0069 DelTrib - ITA No.5980/Del./2015 dated 18.09.2017***

**1089.** The Tribunal held that in absence of exempt income from investments, provisions of section 14A could not be invoked and thus no disallowance under the said section would survive.
***McDonald's India Pvt Ltd v DCIT [TS-513-ITAT-2018(DEL)-TP] ITA Nos.1665 and 1769/Del/2015 692 and 296/Del/2016***

**1090.** The Tribunal held that in the absence of exempt income, no disallowance could be made under section 14A of the Act.
***Hema Engineering Industries Ltd v ACIT – (2015) 45 CCH 0140 Del Trib***

**1091.** The Tribunal, relying on the decision of the High Court in Cheminvest Ltd., Vs CIT reported in 378 ITR 33 held that where the assessee had not earned any exempt income during the year under review, no disallowance under Section 14A of the Act could be made.
***SURYAJYOTI INFOTECH LIMITED & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 52 CCH 0191 HydTrib - ITA No. 1241/Hyd/2015, 1278/Hyd/2015 dated Mar 16, 2018***

**1092.** The assessee had made investments during year under consideration out of Free Reserves and Non-Interest-Bearing Funds of assessee company and no dividend income which was exempted had been received on investment. The AO, however made disallowance u/s. 14A read with Rule 8D and the same was upheld by the CIT(A). The Tribunal relied on Cheminvest Ltd., wherein it had held that sec. 14A would not apply where no exempt income was received or receivable during relevant assessment year. Thus, in the present case as the assessee had not earned any exempt income during relevant P.Y, the disallowance u/s 14A was deleted.
***Jasper Industries vs DCIT- (2018) 54 CCH 0021 Hyd Trib- ITA No 1344/Hyd/2015 dated 19.09.2018***

**1093.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the disallowance made u/s 14A r.w. Rule 8D, noting that the assessee had not earned any exempt income during the year.
***DCIT v Pioneer Genco Ltd – ITA No. 734/Hyd/2018 dated 14.09.2018***

Go to Index

**1094.** The Tribunal held that no disallowance under section 14A of the Act could be made in the absence of exempt income. It dismissed the contention of the AO that disallowance under section 14A could be made in accordance with CBDT Circular No 5 of 2014 which provides for disallowance even if no exempt income is earned.
***Karvy Stock Broking Ltd v DCIT – (2017) 50 CCH 0017 (Hyd Trib) – ITA No 1397 / Hyd / 2016 dated 09.05.2017***

**1095.** The Tribunal held that where the assessee has not made any claim for any exemption then in such situation the disallowance u/s 14A has no application.
***Dy.CIT vs. BRILLIANT ESTATE PVT. LTD. (2018) 54 CCH 0345 IndoreTrib ITA No. 349/Ind/2017 dated 13.12.2018***

**1096.** The Tribunal held that in the absence of any tax-free income earned by the assessee, disallowance u/s 14A could not be made.
***Asst. CIT vs. ORISSA MANGANESE & MINERALS LTD. (2018) 54 CCH 0399 KolTrib- ITA Nos.2150 to 2154/KOL/2017 dated 20.12.2018***

**1097.** The Tribunal held that there could be no disallowance of expenses under section 14A of the Act where the assesse had not earned any tax free income during the relevant year.
***Raniganj Cooperative Bank Ltd v DCIT – (2016) 73 taxmann.com 90 (Kol Trib) – ITA no 1983 and 1984 (Kol) of 2014***

**1098.** The Tribunal held that if no exempt income has been earned by assessee during impugned AY then no disallowance was called for u/s 14A.
***ACIT vs Sodexo Food Solutions India Pvt Ltd – (2018) 54 CCH 0056 MumTrib- ITA No 5781,5707/Mum/2016 dated 03.10.2018***

**1099.** The Tribunal held that in case no exempt income is received or receivable, no disallowance u/s 14A was warranted.
***Zoetis Pharmaceutical research P Ltd vs ACIT- (2018) 54 CCH 0043 Mum Trib- ITA No 3715/Mum/2018 dated 26.09.2018***

**1100.** The Tribunal upheld CIT(A)'s order deleting the disallowance made u/s 14A r.w. Rule 8D(2)(ii) and (iii), noting that though the assessee had made investment in shares and mutual fund, no exempt income was earned for the subject year. The CIT(A) had relied on the decision in the case of Cheminvest Ltd vs CIT [2015] 61 taxmann.com 118 wherein it was held that in case no exempt income was received by the tax-payer during relevant year under consideration, no disallowance of expenditure u/s 14A was warranted.
***ACIT vs Gini and Jony Ltd. [2018] 97 taxmann.com 401 (Mum Trib) - IT APPEAL NO. 1892 and 1893 of 2017 dated August 21 2018***

**1101.** The Tribunal held that no disallowance u/s 14A was called for in view of the fact that the assessee had not earned any exempt dividend income during the impugned AY and, thus, deleted the said disallowance.

Go to Index

***SODEXO FOOD SOLUTIONS INDIA PRIVATE LIMITED & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS [2018] 53 CCH 0432 (MumTrib)- ITA Nos. 304 & 305/Mum/2014,dated August 08 2018***

**1102.** The Tribunal restored the matter to the file of the AO for de novo determination in a case where the assessee claimed that section 14A was not applicable as it didn't receive any exempt income during the relevant assessment year but it was not discernible from orders of the Revenue as to quantum of exempt income earned by assessee and there was no evidence on record that assessee had not received any exempt dividend income during relevant previous year.
***Pyramid Consulting Engineers (P.) Ltd. v DCIT – (2018) 90 taxmann.com 411 (Mum) – ITA No. 1972/Mum of 2016 dated 23.01.2018***

**1103.** Where there was no exempt income, Tribunal deleted disallowance of expenses incurred in relation to exempt income u/s 14A r.w. Rule 8D(2)(ii) and 8D(2)(iii) relying on Delhi HC rulings in the case of CIT vs Cheminvest Ltd [(2015) 317 ITR 86 (Del HC)] and CIT vs Deloitte Enterprises [ITA No.110 of 2009 (Del HC)]
***DCIT v Amartara Pvt Ltd - TS-612-ITAT-2017(Mum) - ITA Nos. 6050 & 6114/Mum/2016 dated 29.12.2017***

**1104.** The Tribunal deleted the disallowance made u/s 14A r.w. Rule 8D(2)(ii) by the AO with respect to investment made during the year, noting that the investment was only in the shape of Share Application Money pending Allotment of actual shares and these investments per-se were unable to earn any exempt dividend income. It also restricted the disallowance made u/s 14A r.w. Rule 8D(2)(iii) to the amount of exempt income earned, relying inter alia on Cheminvest Ltd. v. CIT [2015] 378 ITR 33 (Del).
***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. MAHINDRA CIE AOTOMOTIVE LIMITED & ANR. - (2018) 52 CCH 0300 MumTrib - ITA No. 6659/Mum/2014 (Cross Objection No. 96/Mum/2016) dated Apr 11, 2018***

**1105.** The Tribunal prelying on the decision of the Court in Cheminvest Ltd. held that since the assessee had not made any claim of exempt income in its return of income i.e. where no exempt income was claimed by the assessee, there was no justification for making disallowance u/s 14A of the Act.
***Bharat Serums and Vaccines Ltd. vs. ACIT TS-72-ITAT-2017(Mum) ITA NO.3091/Mum/2012 dated 15/02/2017***

**1106.** The Tribunal upheld deletion of Sec 14A disallowance in case of assessee (engaged in providing investment research advisory support, consultancy services to group companies). Noting that during relevant AYs assessee made strategic investments in group companies and no exempt income was earned on such investment and investments were made out of owned funds and there was no borrowing by assessee, the Tribunal held that as the assessee did not earn any tax free income, Sec. 14A was not applicable. Further, it noted that no administrative expenses were claimed as deduction in computation of total income and moreover the administrative and support expenses incurred on behalf of the group companies were recovered from them at cost and thus there was no question of any disallowance u/s 14A of the Act. Appeal of the Revenue was, accordingly, dismissed.

Go to Index

***Morgan Stanley India Securities Pvt Ltd [TS-153-ITAT-2017(Mum)] - (ITA No. 114/Mum/2013)***

**1107.** The Tribunal, relying on the decision of the Court in Cheminvest Ltd v CIT (2015) 387 ITR 33 (Del) held that in the absence of exempt income, the provisions of Section 14A would not be attracted. Accordingly, it held that the AO was unjustified in making addition under Section 14A read with Rule 8D(2) and (3).
***DCIT v Cox & Kings I Ltd – (2017) 51 CCH 0161 (Mum Trib) – ITA No 5583 / Mum / 2015 – dated 06.10.2017***

**1108.** The Tribunal following the decision of the Delhi High Court in the case of Cheminvest, held that where the assessee's investment in the shares of its subsidiary companies did not yield income exempt under the Act, no disallowance under Section 14A read with Rule 8D of the Act could be made
***DCIT v RKW DEVELOPERS PVT. LTD - 2017) 51 CCH 0580 MumTrib ITA No. 6267/Mum/2016 dated Dec 19, 2017***

**1109.** Where the assessee earned dividend income on investments made in foreign companies and offered it to tax under the head income from other sources, the Tribunal held that no disallowances of expenses under Section 14A could be made as the impugned income had already suffered tax. Further, since the investments in domestic companies did not yield any income during the year, the Tribunal, relying on the decision of the High Court in Cheminvest v CIT 378 ITR 33 (Del) held that no disallowance could be made under Section 14A in respect of the said investments.
***Essel Propack Ltd v ACIT – (2017) 50 CCH 0033 (Mum – Trib) – ITA No 4116 / Mum / 2013 dated 11.09.2017***

**1110.** The Tribunal held that the expression 'does not form part of total income' in section 14A of the Act envisages that there should be an actual receipt of income, which is not includible in the total income, during the relevant previous year for the purpose of disallowing any expenditure incurred in relation to the said income therefore, section 14A of the Act would not apply if no exempt income was received or was receivable during the relevant previous year.
***Wind World Wind Farms (India) Ltd v DCIT – (2016) 46 CCH 0096 (Mumbai – Trib)***

**1111.** The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order holding that no disallowance could be made u/s 14A in respect of interest expenditure, relating to the investment (in subsidiaries) in respect of which no exempt (dividend) income had been received/ earned during the subject year.
***ITO vs Nath Bio Genes Ltd [2018] 54 CCH 0338 (Pune Trib) ITA No. 642/PUN/2015 dated 02.11.2018***

» *Disallowance not to exceed exempt income*

Go to Index

**1112.** The Apex Court dismissed Revenue's SLP against High Court order upholding Tribunal order wherein the Tribunal had held that disallowance u/s 14A should not be exceed the exempt income.

***Pr.CIT vs Moderate Leasing and Capital Services Pvt Ltd. [2018] 103 CCH 0272 (ISCC)-SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 38584/2018 dated 19.11.2018***

**1113.** The court held that disallowance under section 14A cannot exceed exempt income of relevant year.

***Pr.CIT-2 v Caraf Builders & Constructions (P) Ltd. – [2019] 101 taxmann.com 167(DelhiHC)- ITA No.1260 of 2018-dated November 13, 2018***

**1114.** The Court dismissed Revenue's appeal against Tribunal's order upholding CIT(A)'s order wherein the CIT(A) had reduced the amount of disallowance made u/s 14A r.w. 8D to Rs.75.89 crores vis-à-vis AO's disallowance of Rs.144.52 crores, holding that the question of quantum of deduction was otherwise covered against Revenue. It noted that the assesse had earned exempt income of Rs.19 lakhs and thus relied on Pr.CIT v McDonalds India Pvt. Ltd. [ITA No. 725/2018 (Del HC)] wherein it was held that disallowance u/s 14A cannot exceed the exempt income for the relevant year.

***Pr.CIT v Caraf Builders & Construction Pvt. Ltd. – ITA No. 1260/2018 (Del HC)dated November 13, 2018***

**1115.** The assessee-bank claimed that it had not incurred any expenditure for earning the dividend income of Rs.1.80Cr, which was exempt. The AO, however, computed Rs.2.48Cr as the amount of disallowance u/s 14A r.w rule 8D on account ofexpenditureincurred for earning exempt income. The Tribunal concurred with the AO's finding, without considering the assessee claim's that no expenditure had been incurred and also the alternative claim that the amount of disallowance by way of expenditure on exempt income could not exceed the amount of total exempted income.The Court held that disallowing the expenditure for earning exempt income in excess to actual amount of exempt income was absurd and hypothetical. Thereby, setting aside the finding of all the three lower authorities, it remanded the matter back to the AO for re-computing the disallowance of expenditure u/s14A.

***Pragathi Krishna Gramin Bank v JCIT [2018] 95 taxmann.com 41(Kar HC)– ITA NO100001 & 100002 of 2018 dated 28.05.2018***

**1116.** The Tribunal allowed assessee's appeal and deleted the additional disallowance made by the AO u/s 14A r/w Rule 8D, noting that the suo moto disallowance made by the assessee already exceeded the exempt income. It relied on the ratio laid down in case of Delhi High Court of Joint Investments Pvt Ltd vs CIT wherein it was held that disallowance u/s 14A could not exceed amount of tax exempt income.

***Arvind Brands Ltd and Anr vs Dy.CIT [2018] 54 CCH 0184 (AhdTrib) I.T.A. No. 1509 & 1639/Ahd/2012 dated 02.11.2018***

**1117.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order restricting the disallowance made by the AO u/s 14A r.w. 8D to the extent of exempt dividend income, holding

that the said provisions could not be interpreted so as to mean that entire tax exempt income was to be disallowed and thus the AO was not justified in making excessive disallowance.
***TIDEL PARK LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0428 ChenTrib - ITA Nos. 1700 & 1701/Chny/2017, 1808 & 1809/Chny/2017 dated Apr 4, 2018***

**1118.** The Tribunal held that the disallowance u/s 14A cannot exceed to the exempt income received by the assessee.
***Asst. CIT & ANR. vs. INDIAN SUGAR EXIM CORPORATION LTD. & ANR. (2018) 54 CCH 0438 DelTrib- ITA No. 1420/Del/2015, 1449/Del/2015 dated 31.12.2018***

**1119.** The Tribunal held that disallowance of expenditure u/s 14A should not exceed exempt dividend income.
***Sunshine Capital Ltd vs DCIT- (2018) 54 CCH 0353 DelTrib- ITA No 787/Del/2014 dated 08.10.2018***

**1120.** The Tribunal held that disallowance u/s 14A cannot be more than the exempt income.
***DCIT vs H.T Media Ltd- (2018) 53 CCH 0518 DelTrib- ITA no 6394/Del/2013, 2768/Del/2015, 3532, 2854/Del/2016 dated 05.09.2018***

**1121.** The assessee filed the returns and suo moto made disallowance u/s 14A of the expenses incurred for earning exempt income. The AO, without recording dis-satisfaction and pointing out any defect in the calculation of the assessee, proceeded to invoke s.14(A) r.w Rule 8D and calculated the disallowance mechanically which was not permissible. The Tribunal held that further disallowance, by invoking Sub sections (2) & (3) of S.14A r.w Rule 8D mechanically was not sustainable because the said section was to be invoked only if the AO was dissatisfied with the claim of assessee. Further, on following the decision of CIT vs. Holcim India Pvt. Ltd. - (2014) 90 CCH 081-DEL-HC, it held that the disallowance u/s 14A could not exceed the total amount of exempted income. Accordingly, the disallowance made by the AO was deleted.
***DCIT v Hindustan Tin Works Ltd. (2018) 52 CCH 0402 DelTrib - ITA No. 3531/Del./2016 dated 27.04.2018***

**1122.** Relying on the Co-ordinate Bench decision in the case of Mylan Laboratories Ltd [ITA Nos. 362/Hyd/2017 & 452/Hyd/2017], the Tribunal held that it is established principle that the disallowance u/s 14A should not exceed the income earned and claimed as exemption. It, accordingly, directed the AO to restrict the disallowance to the amount of dividend earned.
***G2 CORPORATE SERVICES LLP vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0130 HydTrib - ITA No. 832/Hyd/16, 833/Hyd/16 dated Jun 8, 2018***

**1123.** Where the assessee had made a suo moto disallowance u/s 14A of Rs.43,632 with respect to dividend (exempt) income of Rs.1,68,082 and the AO had invoked the provisions of Rule 8D to make a disallowance of Rs.12,62,933, the Tribunal directed the AO to restrict the disallowance upto the exempt income earned.
***Sangam Spinfab Ltd - ITA no.807/Mum./2018 dated 12.09.2018***

Go to Index

**1124.** The Tribunal deleted the disallowance made u/s 14A r.w. Rule 8D by the AO over and above the suo-moto disallowance made by the assessee, noting that the exempt income earned was lower than the suo-motu disallowance made by the assessee, following the co-ordinate bench ruling in case of assessee's sister concern.
***DCIT v Morgan Stanley (India) Capital Pvt Ltd [TS-100-ITAT-2018(Mum)] – ITA No. 5289, 5290, 4962 & 4963/Mum/2015 dated 29.01.2018***

**1125.** The Tribunal held that when CIT(A) had not given any proper basis for working out disallowance u/s 14A r.w. Rule 8D; specifically when disallowance was far in excess of exempt dividend income earned in year under consideration than matter needs to be decided afresh.
***Foods and Inns Ltd v ACIT - (2016) 47 CCH 0187 Mum Trib***

» *Recording of satisfaction*

**1126.** The Apex Court upheld the Tribunal Order holding that amount of disallowance under section 14A could be restricted to amount exempt income only.
***SLP dismissed in Principal CIT v. State Bank of Patiala [2018] 99 taxmann.com 286/257 Taxman 509 (SC)- dated November 8, 2018***

**1127.** The Apex court dismissed Revenue's SLP with respect to disallowance u/s 14A r.w.r 8D in case of an asset management company (AMC). The assessee AMC of Reliance mutual fund had invested its own money in its fund as per business policy and then claimed the dividend received from it as exempt and filed its return of income after disallowing certain expenditure in earning said income.The AO however, opined that disallowance u/s 14A was to be worked out by applying provisions of rule 8D(2)(iii) and rejected assesse's stand. The Apex Court relying on High Court' order observed that the AO had not commented upon or made any findings on correctness or otherwise of assessee's working of disallowance of expenditure, thus formula prescribed in rule 8D(2)(iii) could not have been applied to work out disallowance under section 14A in case of the assessee.
***PCIT vs Reliance Capital Asset Management Ltd.- (2018) 98 taxmann.com 361(SC)- SLP No 11379 of 2018 dated 07.09.2018.***

**1128.** The Apex Court held that the phrase "income which does not form part of total income under this Act" appearing in section 14A included within its scope dividend income on shares in respect of which tax was payable under section 115O of the Act and income on units of mutual funds on which tax was payable under section 115R.
Further, it held that Sub-sections (2) and (3) of Section 14A of the Act read with Rule 8D of the Rules merely prescribe a formula for determination of expenditure incurred in relation to income which does not form part of the total income under the Act in a situation where the Assessing Officer is not satisfied with the claim of the assessee. It held that the AO could resort to the computation mechanism in Rule 8D only when he records satisfaction that having regard to the accounts of the assessee, as placed before him, it is not possible to generate the requisite satisfaction with regard to the correctness of the claim of the assessee. Therefore, it held that the AO was unjustified in rejecting the claim of the assessee that no expenses had been incurred

towards the earning of exempt income as the AO failed to disclose any basis establishing a reasonable nexus between the expenditure disallowed and the dividend income received.
***Godrej & Boyce Manufacturing Company Ltd v DCIT - [2017] 81 taxmann.com 111 (SC) - CIVIL APPEAL NO. 7020 OF 2011 dated 08.05.2017***

**1129.** The Court held that AO without examining, commenting and rejecting disallowance made by assessee u/s.14A had applied Rule 8D as compulsory and universally applicable rule where assessee had earned exempt income. Rule 8D could not be invoked and applied unless AO recorded his dissatisfaction regarding correctness of claim made by assessee in relation to expenditure incurred to earn exempt income.This was mandate and pre-condition imposed by s. 14A(2).Rule 8D was in nature of best judgment determination i.e., determination in default and on rejection of assessee's explanation in relation to expenditure incurred to earn exempt income.Rule 8D was not applicable by default but only if and when AO records his satisfaction and rejects assessee's explanation regarding disallowance of expenditure.In present case, assessment order proceeded on a wrong assumption that Rule 8D would apply to all cases and was mandatory.
***Pr. CIT vs. VEDANTA LIMITED. (2018) 103 CCH 0290 DelHC ITA 1467/2018 dated 18.12.2018***

**1130.** The Court held that where Assessing Officer did not record any finding that any expenditure incurred by assessee was attributable to earning exempt income, disallowance under section 14A was to be deleted.
***CIT v. Om Prakash Khaitan [2015] 62 taxmann.com 324/234 Taxman 813/376 ITR 390 (DelhiHC)***

**1131.** The Court held that the condition precedent to invoke section 14A of the Act was that the AO must record proper satisfaction before stating that he was unsatisfied regarding the correctness of expenditure claimed by the assessee. It held that exempt dividend income does not automatically trigger disallowance under section 14A of the Act.
***CIT v LP Support Services India Pvt Ltd (ITA 283 / 2014) – TS-573-HC-2015 (Del)***

**1132.** Where the assessee, an NBFC, had suo-motu offered Rs. 25 lakhs as expenses attributable to exempt income u/s 14A, however, the AO, after carrying out an elaborate analysis of the provisions as well as Rule 8D, disallowed Rs. 3.87 cr u/s 14A without recording an express satisfaction, the Court upheld the disallowance u/s 14A of the Act as computed by AO. It held that the fact that the AO did not expressly record his dissatisfaction with the assessee's working did not mean that he could not make the disallowance where the order passed by him shows due application of mind to all aspects. It further held that Sec 14A read with Rule 8D leaves the AO with no choice, but to follow a particular methodology enacted therein, and thus if AO is confronted with a figure which, prima facie, was not in accord with what should approximately be the figure on a fair working out of the provisions, he was but bound to reject it.
***Indiabulls Financial Services Ltd.vs.DCIT(2016) 97 CCH 0110 DelHC***

**1133.** Where the assessee had suo-motu offered expenses attributable to exempt income under section 14A, but the AO disallowed higher sum applying the provisions of Section 14A read with

Rule 8D, the Court upheld disallowance under section 14A as computed by AO and rejected contention of the assessee that AO must expressly record his dissatisfaction with the assessee's working. It clarified that if the AO is confronted with the figure which, prima facie, is not in accordance with what should approximately be the figure on a fair working out of the provisions, then he is bound to reject it.

***Indiabulls Financial Services Ltd [TS-643-HC-2016(DEL)] (ITA 470/2016)***

**1134.** The Court deleted the disallowance u/s 14A by holding that in order to disallow this expense the AO had to first record, on examining the accounts, that he was not satisfied with the correctness of the assessee's claim of Rs. 3 lakhs being the administrative expenses. This was mandatorily necessitated by section 14A(2) of the Act read with Rule 8D(1)(a) of the Rules. Since there was a failure by the AO to comply with the mandatory requirement of section 14A(2) of the Act read with rule 8D(1)(a) of the Rules and record his satisfaction as required thereunder, the question of applying rule 8D(2)(iii) of the rules did not arise.

***H.T Media Limited vs Pr.CIT published on 18.08.2017-Delhi HC***

**1135.** AO completed assessment after making disallowance u/s 14A r/w Rule 8D.CIT(A) held that AO failed to apply his mind and held that there was no nexus betwee funds borrowed and investments made by assessee in form of shares, securities and mutual funds leading to exempt income.Interest free funds in form of paid-up share capital, Reserves and Surplus were sufficient for making investment.Addition made by AO under clause (ii) of Rule 8D(2) was deleted.CIT (Appeals) upheld addition under clause (iii) of Rule 8D(2) by holding that assessee should incur administrative costs for earning exempt income. The Court held that Rule 8D would apply where AO first recorded his satisfaction that disallowance, if any, made by assessee was not correct and was not in accordance with mandate of s. 14A.In absence of formation of satisfaction, AO could not apply Rule 8D.AO has treated Rule 8D as mandatory which would apply to all cases where exempt income was earned.Order passed by AO was therefore, not in terms of mandate of s. 14A(2).

***Pr. CIT vs. DLF HOME DEVELOPERS LTD. (2018) 103 CCH 0328 DelHC ITA No. 1453/2018 dated 18.12.2018***

**1136.** The Court dismissed Revenue's appeal against the Tribunal's order deleting the disallowance made u/s 14A r.w. Rule 8D in a case where the assessee had made suo moto disallowance against the exempt dividend income earned and the AO had not examined whether the disallowance made by assessee was justified or not before invoking Rule 8D. It relied on the ratio laid down by the Apex Court in case of Godrej Boyce Manufacturing Co Ltd vs Dy.CIT (2017) 7 SCC 421 wherein it was held that Rule 8D could be invoked only when AO was not satisfied with the claim made by assessee. Thus, the Court held that in the instant case, the jurisdictional requirement of the AO not being satisfied with assessee's correctness of claim was absent to invoke Rule 8D and accordingly, no disallowance could be made.

***Pr.CIT vs Jagson International Ltd [2018] 103 CCH 0137 (Del HC) I.T.A. Nos.1234/2018 and 1179/2018 dated 02.11.2018***

**1137.** The Court held that where AO made disallowance under section 14A in respect of a dividend income earned by assessee from mutual fund investments, in view of plea raised by assessee that it had utilised only non-interest bearing funds in making investment in mutual funds and

interest incurred by assessee was specifically towards acquisition of shares in 'G' Ltd. which company subsequently stood amalgamated with assessee, impugned disallowance was to be deleted and, matter was to be remanded back to Assessing Officer for disposal afresh.
***Roca Bathroom Products (P.) Ltd. v. Pr. CIT, Chennai-[2019] 101 taxmann.com 395 (MadrasHC)-Tax Case Appeal Nos. 775 of 2018-dated December 4, 2018***

**1138.** The Court rejecting the claim of the Assessee that no expense has been incurred for the purpose of earning exempt income upheld the disallowance made u/s 14A and held that the AO had recorded sufficient satisfaction (that it would be reasonable to presume that huge investment portfolio would require the deployment of the Assessee's intellectual, physical and financial resources) before invoking Rule 8D for ascertaining disallowance u/s 14A.
***Punjab Tractors Ltd. vs. CIT (2017) 78 taxmann.com 65 (P&H) (ITA No. 458 of 2015 dated 03.02.2017)***

**1139.** The Tribunal held that for an AO to invoke Rule 8D, he must place on record that he is not satisfied with the correctness of claim of expenditure made by the assessee. Further, it held that since there was no exempt income earned during the year, the disallowance under section 14A was not sustainable.
***Gujarat State Petronet Ltd v ACIT – (2015) 45 CCH 0301 Ahd Trib***

**1140.** The Tribunal held that if AO after examination of accounts of the assessee is not satisfied with correctness of claim of the assessee in respect of expenditure in relation to exempt income, only then can he determine amount of expenditure which should be disallowed under section 14A of the Act in accordance with method prescribed.
***Ramtech Software Solutions Pvt Ltd v ACIT - (2015) 44 CCH 0502 Chd Trib***

**1141.** The Tribunal applying the provisions of section 14A read with rule 8D upheld the disallowance under section 14A despite non-recording of requisite satisfaction by Assessing officer, since, section 14A read with Rule 8D(i) mandated a particular methodology and hence should be followed. However, the interest disallowance under section 14A was restricted to calculations submitted by assessee in appeal.
***Delhi Towers Ltd. [TS-14-ITAT-2017(Del)]***

**1142.** The AO during assessment observed that cash flow statement of assessee company indicated out-flow on account of interest paid and income earned from investment as dividend which was claimed as exempt. Thus, by holding that Rule 8D was procedural and had restrosepctive effect, AO made disallowance u/s 14A in respect of dividend income on investments and the same was upheld by the CIT(A). The Tribunal observed that AO had recorded reasons for not accepting assessee's contention that no expenditure was incurred to earn exempt income and further had also examined cash flow statement furnished by assesse. The Tribunal held that the reasons recorded by AO were in sufficient compliance with requirement u/s 14A(2), however, the Tribunal relied on Apex Court in CIT vs. Essar Teleholdings Ltd (2018) 401 ITR 455 (SC) wherein it was held that Rule 8D was prospective and applied only from AY 2008-09 and had no application for current AY (i.e. 2006-07). Thus, the Tribunal concluded that disallowance u/s

14A had to be computed on some reasonable basis without rule 8D and assessment order was set aside and restored back to AO for fresh computation.
***North Delhi Power Ltd vs ACIT- (2018) 54 CCH 0137 Del Trib-ITA Nos 4848/Del/2010 dated 29.10.2018***

**1143.** The Tribunal deleted the disallowance u/s 14A by holding that AO merely observed that there were incidental expenses in relation to earning of exempt income which were incurred by assessee. AO had nowhere recorded any satisfaction about incorrect claim having been lodged by assessee with reference to its accounts. There was no discussion whatsoever about examination of assessee's claim about actual incurring of expenses in relation to exempt income. It could be seen that AO even did not consider correct amount offered by assessee for disallowance at Rs.4,01,209/-. Authorities below had not rejected claim of assessee that it had not borrowed any funds for investment and that it was having sufficient own funds to make investment through Portfolio Managers. Tribunal set aside orders of authorities below and restricted addition to Rs.4,01,209 already offered by assessee for disallowance in return and deleted additions
***Indica Industries vs ACIT- (2018) 53 CCH 0516 Del Trib- ITA No 3584/Del/2015 dated 04.09.2018***

**1144.** Where the assessee earned exempt interest income during AY 2004-05, the AO made disallowance of expenditure under Section 14A. Tribunal upheld the order of the CIT(A) deleting such disallowance by relying on the ruling of the co-ordinate bench in Power Grid Corporation of India Ltd (ITA No. 488/Del/2009 dated 30.10.2011) wherein it was held that since the AO had not identified any administrative expenses incurred by the assessee for earning exempt interest income, the disallowance by the AO u/s 14A based on estimation could not be sustained.
***DCIT vs. NTPC Ltd. – [2018] 53 CCH 0101 (Delhi ITAT) – ITA No 15/Del/2009 dated May 4, 2018***

**1145.** Where the assessee earned exempt dividend income and offered a suo-moto amount u/s 14A towards management fees, custody fees, audit fees and portfolio management fees and the AO invoked provisions of section 14A and computed disallowance in terms of Rule 8D, the Tribunal upheld CIT(A)'s deletion of disallowance and held that sub-section (2) of section 14A clearly stipulated that AO should determine amount of expenditure incurred in relation to exempt income as per Rule 8D if he having regard to accounts of assessee was not satisfied with correctness of claim made by assessee and since the AO had nowhere recorded any satisfaction about incorrect claim having been lodged by assessee with reference to its accounts and there was no discussion whatsoever about examination of assessee's claim about actual incurring of expenses in relation to exempt income, no addition could be made under Section 14A.
***INCOME TAX OFFICER & ANR. vs. INDICA INDUSTRIES PVT. LTD. & ANR. - (2018) 52 CCH 0133 DelTrib - ITA No. 1764/Del/2016, 3836/Del/2015, 1509/Del/2016 dated Feb 28, 2018***

**1146.** Where the assessee claimed that he had not incurred any expenditure to earn exempt income but the AO, without examining the claim of the assessee, invoked Section 14A read with Rule

8D presuming that the assessee had incurred expenditure, the Tribunal, relying on the decision of the Court in Maxopp Investment v CIT 203 Taxman 364 (Del) held that Section 14A could be invoked only where actual expenditure had been incurred towards earning exempt income. Accordingly, it directed the AO to delete the addition made as it was on the basis of mere presumption.
***Justice Mohan Lal Verma v ACIT – (2017) 51 CCH 0049 (Del Trib) – ITA No 6067 / Del / 2015 dated 13.09.2017***

**1147.** Where the assessee earned certain tax-free dividend income and income from mutual funds but claimed that no expenditure had been incurred for purpose of earning of exempt income and therefore no disallowance could not be made under section 14A, the Tribunal held that the AO was unjustified in invoking provisions of Rule 8D(2)(iii) without examining the assessee's claim and had failed to satisfy himself about correctness of assessee's claim. Accordingly, the impugned disallowance was to be deleted.
***Associated Law Advisers v ITO - [2017] 87 taxmann.com 148 (Delhi - Trib.) - IT APPEAL NOS. 5336 & 5846 (DELHI) OF 2014 dated 08.11.2017***

**1148.** The Tribunal held that where the AO had neither expressed satisfaction nor gave cogent reason that the assessee's claim under section 14A was incorrect, then no disallowance under section 14A was warranted.
***DBH International Pvt Ltd v ITO – (2015) 44 CCH 0561 Del Trib***

**1149.** The Tribunal held that where the assessee had not claimed any expenditure for earning exempt income in the Profit and Loss account and the AO had not recorded any satisfaction as to why he was not satisfied with the claim of the assessee that no expenses were incurred for exempt income, no disallowance could be made under section 14A of the Act.
***DLF Southern Towns Pvt Ltd v DCIT – (2015) 45 CCH 0028 Del Trib***

**1150.** The Tribunal deleted the disallowance made under Section 14A of the Act absent recording of satisfaction by AO for disregarding the sup-moto disallowance offered by the assessee by relying on the decision of the jurisdictional High Court in Maxopp Investment.
***Galileo India Pvt Ltd – TS-522-ITAT-2016 (Del) - ITA No. 88/Del./2014***

**1151.** The Tribunal allowed the assessee's appeal and deleted the disallowance by the AO u/s 14A r.w. Rule 8D(2)(ii) & (iii) holding that even if the assessee claimed that no expenditure was incurred by it for purpose of earning exempt income, still it was incumbent on part of the AO to record satisfaction having regard to accounts of assessee in terms of section 14A(2) / 14A(3) as to why claim so made by assessee was incorrect and only after recording such satisfaction, he could resort to computation mechanism provided in Rule 8D(2). The AO had not recorded any such satisfaction. Further, the Tribunal held that the assessee had sufficient own funds as was evident from balance sheet and thus no amount could be disallowed in second limb of Rule 8D(2)(ii).
***West Bengal Electronics Industry Development Corp. Ltd vs Dy.CIT &Anr [2018] 53 CCH 0475 (Kol Trib) - ITA NOS. 1982 /KOL /2013 DATED AUGUST 24, 2018***

Go to Index

**1152.** The Tribunal held that where the AO had made disallowance under section 14A of the Act invoking Rule 8D without recording his satisfaction under Rule 8D(1), the impugned disallowance was not sustainable.
***Damodar Valley Corporation v Add CIT – (2016) 66 taxmann.com 25 (KolTrib.)***

**1153.** The Tribunal allowed the assesee's appeal against the CIT(A)'s order confirming the disallowance made by the AO under rule 8D(2)(iii) with respect to indirect expenditure at the rate of 0. 5% of the average value of investment where the assessee had made a suo moto disallowance of Rs.99,218/- u/s 14A, holding that the provisions of section 14A r. w. r. 8D were introduced to discourage the assessees from claiming double deductions i.e. claiming expenditure against exempt income, but, the first step is incurring of expenses. Noting that the AO had neither given any details of expenses incurred by the assessee for earning exempt income nor any reason as to why the calculation made by the assessee was not acceptable, it held that no automatic disallowance could be made u/s 14A. Further, with respect to the assessee's claim about stock-in-trade, relying on the decision in the case of India Advantage Securities Ltd. (380 ITR 471), it held that the assessee was offering income from business of share trading so all the expenses related to the business had to allowed.
***SIDDHESH CAPITAL MARKET SERVICES & ANR. v DCIT – (2018) 52 CCH 3 (Mum) – ITA No. 6532/Mum/2012, 2489/Mum/2015 dated 01.01.2018***

**1154.** The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed the disallowance made by the AO u/s 14A r.w. Rule 8D in relation to interest expenditure on account of investment in a partnership firm which yielded income exempt u/s 10(2A). It noted that the AO had in cryptic manner only stated that he was not satisfied with the assessee's claim that no expenditure was incurred to earn exempt income. The Tribunal thus held that the AO had failed to record a satisfaction having regard to the accounts of the assessee that the assessee has incurred particular expense in relation to earning exempt income. Further, it also accepted assessee's alternative claim that since the assessee had higher amount of interest free funds than that amount invested in the partnership firm, it was to be presumed that the investment was made out of interest free funds available with assessee and, thus, held that the disallowance u/s 14A r.w. Rule 8D was incorrect.
***Wadhwa Residency (P.) Ltd. v ACIT - [2018] 95 taxmann.com 294 (Mumbai - Trib.) - IT APPEAL NO. 5413 (MUM.) OF 2015 dated Jun 20, 2018***

**1155.** The Tribunal held that disallowance as per rule 8D(2)(iii) read with section 14A could not be made straight away without having regard to accounts of the assesseee for the purpose of determining the direct and indirect expenses. Accordingly, it remitted the matter to the file of the AO to determine the disallowance after considering the claim of the assessee that the interest expenses were incurred for business purposes and that no administrative expenses were incurred in relation to exempt income.
***Lee & Muirhead Pvt.Ltd. vs. DCIT (2016) 48 CCH 0041 (Mumbai Trib)-ITA No.1231/Mum/2014***

**1156.** The Tribunal held that where AO did not record any satisfaction as to why suomoto disallowance made by assessee under section 14A which was worked out by assessee having regards to its

accounts was not a correct working of expenditure in relation to an exempt income having regards to account of assessee, disallowance made by assessee was to be accepted.
***ACIT v Cyrus Investments (P.) Ltd [2018] 93 taxmann.com 493 (Mumbai – Trib.) – ITA NO. 5414 OF 2016 dated 09.05.2018***

**1157.** The Tribunal remanded the matter back to the AO for fresh adjudication w.r.t. disallowance u/s 14A, noting that the AO, without bringing basic fact as to the amount of expenditure actually incurred for the exempt income, calculated the expenditure mechanically with the method prescribed in Rule 8D(ii) and made the disallowance accordingly.
***Oricon Enterprises Ltd v ACIT [2018] 94 taxmann.com 250 (Mumbai – Trib.)- ITA NO 2913 of 2015 dated 16.05.2018***

**1158.** Where during the relevant year, the assessee earned exempt dividend income and long term capital gains and suo moto disallowed Rs. 1.09 crores relating to interest expenditure and Rs. one lakh for dividend collection charges and AO while accepting the interest disallowance made by the assessee, opined that Rs. one lakh, incurred as dividend collection charges were disproportionate to the dividend income of Rs. 14.76 crores and therefore proceeded to make disallowance under rule 8D(2)(iii) of 1962 Rules including disallowance of administrative expenses, the Tribunal held that the application of Rule 8D was not automatic, and it was only when Assessing Officer recorded his satisfaction under sec. 14A(2) that the disallowance offered by assessee was unsatisfactory, could the procedure for computing disallowance under Rule 8D be initiated. It followed the decision of the Tribunal in the assessee's own case for a prior AY where on similar facts it had restricted the disallowance under section 14A of the Act to Rs. 10 lakh and held that the same was to be followed for the relevant year as well.
***Shapoorji Pallonji & Co. Ltd. Vs. Deputy Commissioner of Income Tax- [2017] 79 taxmann.com 39 (Mumbai – Trib.) dated 03/03/2017***

**1159.** Where the assessee had provided detailed reply/explanation so as to justify its stand for not disallowing any expenses u/s 14A but the AO without recording satisfaction with regard to the assessee's books of accounts as to why the assessee's claim was to be rejected, proceeded to invoke rule 8D citing it to be mandatorily applied w.e.f 08-09 onwards, the Tribunal held that such recourse to Rule 8D was not justified. However, it held that a reasonable disallowance of admin and other expenses (Rs. 2.50 lakhs) would be made attributing it to the exempt income and earned (Rs. 4.50 cr)
***Bombay Real Estate Development Co. Pvt. Ltd. vs. Assistant Commissioner of Income Tax [I.T.A. No.6561(2017) 51 CCH 0018 MumTrib]***

**1160.** The Tribunal held that under Section 14A of the Act it is Assessing Officer who has to record his satisfaction with regard to correctness of assessee's claim before proceeding to disallow expenditure under section 14A and satisfaction to be recorded by Assessing Officer under section 14A(2) could not be substituted by satisfaction recorded by first appellate authority, even accepting fact that his power is co-terminus with that of Assessing Officer. Accordingly, it deleted the disallowance made by the AO.
***Arnav Gruh Ltd v DCIT – [2018] 89 taxmann.com 189 (Mumbai - Trib.) – ITA NOS. 3840 & 3841 (MUM.) OF 2015 dated 15.12.2017***

Go to Index

**1161.** The Tribunal allowed the assessee's appeal and held that in absence of AO recording satisfaction under the provisions of section 14(2), section 14A could not be invoked in view of the ratio laid down by the Apex Court in the ruling of Maxoop Investment Ltd. and Godrej. Thus, it deleted the disallowance u/s.14A.

The Tribunal relied upon the co-ordinate bench ruling in assessee's own case for AY 2010-11 and held that though disallowance u/s.14A was deleted for the subject year, in any case while determining the book profits under Section 115JB of the Act, disallowance if any made under section 14A of the Act could not be added to the book profits in the hands of the assessee.

***KPIT Technologies Ltd (earlier known as KPIT Cummins Infosytems Limited.) v DCIT [TS-522-ITAT-2018(PUN)-TP] ITA No.505/ Pun/2016 dated 04.06.2018***

» *Applicability of Rule 8D*

**1162.** The Apex Court held that rule 8D is prospective in operation and cannot be applied to any assessment year prior to assessment year 2008-09, observing that (i) the Explanatory memorandum issued with the Finance Bill, 2006 and the CBDT Circular dated 28-12-2006 clearly indicates that department understood that sub-section (2) & (3) of section 14A were to be implemented w.e.f. AY 2007-08 (ii) Rule 8D has again been amended by the Income-tax (Fourteenth Amendment) Rules, 2016 w.e.f. 2-6-2016, by which sub-rule (2) has been substituted by a new provision and by interpreting the rule 8D retrospective, there will be a conflict in applicability such Amendment Rules which clearly indicates that the Rule has a prospective operation and (iii) the subordinate legislation ordinarily is not retrospective unless there is clear indication to the same and there is no indication in rule 8D to the effect that rule 8D intended to apply retrospectively.

***CIT v Essar Teleholdings Ltd. – (2018) 90 taxmann.com 2 (SC) – Civil Appeal No. 2165 of 2012 dated 31.01.2018***

**1163.** The assessment was completed u/s 143(3) for three assessment years i.e. 2004-05, 2005-06, 2006-07 but the same were reopened in terms of section 147 on the ground that the proportionate interest u/s 14A computed under Rule 8D amounting to Rs. 4,16,01,299/- was to be disallowed as Rule 8D was applicable retrospectively but the same had escaped assessment. The CIT (A) allowed the appeal of the assessee and held that the application of Sec. 14A was misdirected as there was no dividend income earned by the assessee which was further affirmed by the Tribunal. The Court applied the proposition laid down in CIT v. Essar Teleholdings Ltd. [2015] 228 Taxman 309 (Mag.) and held that Rule 8D was prospective in operation and could not be applied to any assessment operation prior to 2008-09 and accordingly dismissed the appeal of the Revenue.

***PCIT v. Jammu Central Coop. Bank Ltd. - [2018] 93 taxmann.com 184 (Jammu & Kashmir HC) – IT Appeal Nos. 4, 14 & 13 of 2016 dated April 18, 2018***

**1164.** Where for AY 2006-07, the assessee had made a suo moto disallowance of expenses incurred for the purpose of earning exempt income at the rate of 1 percent of exempt income under Section 14A of the Act, the Court, considering the fact that Rule 8D introduced with effect from

AY 2008-09 could not apply retrospectively, upheld the order of the Tribunal wherein 1 percent had been accepted as a reasonable disallowance, in accordance with the standard procedure adopted in various similar cases viz. Himtaj Consultants v ITO (ITA No 721/Kol/ 2007), CHNHS Association v ACIT (ITA No 74 / Kol / 2008), ITO v SPS Securities P Ltd (ITA No 12 / Kol / 2010), CIT v National Insurance Company (ITA 77 of 2014) and CIT v Greenfield Hotels and Estates Pvt Ltd (2016) 389 ITR 68 (Bom). Accordingly, it dismissed the appeal of the Revenue.
***Pr CIT v National Insurance Company Ltd - (2017) 98 CCH 0071 Kol HC – GA 3331 of 2016 and ITA 406 of 2016***

**1165.** The Tribunal, relying on the decision of the Bombay High Court in the case of Godrej & Boyce Mfg Co Ltd v CIT, held that Rule 8D notified by the board on March 24, 2009 did not have retrospective application and was to be applied prospectively from AY 2008-09 onwards. Therefore for AY 2006-07, it held that the AO was incorrect in invoking the said rule and directed the AO to limit the disallowance under section 14A of the Act to 1 percent of the exempt income since it was fair and reasonable.
***DCIT v Phillips Carbon Black Ltd – (2016) 47 CCH 0650 (KolTrib) – ITA No 2123 / Kol / 2013***

**1166.** The assessee had debited the expenses relating to share transaction, viz., PMS expenses, DP and other charges and security transaction tax, to his capital account. However, it also held that two expenses, viz. professional fees and bank charges, debited to the Profit & Loss Account were to be considered as common expenses incurred by the assessee towards both exempt income and taxable income. The Tribunal held that the provisions of Rule 8D could not be applied, as major portion of expenses are related to other activities of the assessee and thus confirmed disallowance to the extent of Rs.10,000 out of common expenses of Rs.1.14 lakh as against disallowance of Rs.8.81 lakhs made by the AO by invoking section 14A r.w. Rule 8D(2)(iii).
***Shashikiran J.Shetty v DCIT - TA No.5080/Mum/2017 dated December 4, 2018***

**1167.** The Tribunal held that Rule 8D of the Income-tax Rules, 1962 could not be applied retrospectively to assessment years 2006-07 and 2007-08 as it was applicable from AY 2008-09 only.
***Tata Consultancy Services Ltd v ACIT – (2015) 45 CCH 0202 Mum Trib Aditya Birla Nuvo v DCIT – (2015) 45 CCH 0222 Mum Trib***

» *Rule 8D(2)(ii) - Own / non-interest bearing funds for investment*

**1168.** In a case where the Tribunal upheld the CIT(A)'s order wherein the CIT(A) had restricted the disallowance made by the AO to the extent of expenditure of interest incurred by the assessee under Rule 8D(2)(ii) of the Rules, the Court dismissed the Revenue's appeal noting that the controversy was no longer res Integra and the Division Bench of the Court in two matters had already decided in favour of the assessee that the disallowance under Rule 8D of the Rules r/w section 14A of the Act could not exceed the expenditure directly relatable to earn the exempted income in the form of 'Dividend' as computed in accordance with Rule-8D of the Rules. The said

decisions referred by the Court were (i) CIT Anr. v. Microlabs Ltd. (2016) 383 ITR 490 (Kar) wherein it was held that since the interest free funds were was much more than investments made by the assessee which could yield tax free income, no disallowance of interest expenditure u/s 14A could be made and (ii) M/s.Prergathi Krishna Gramin Bank vs. JCIT [ITA Nos. 100001 & 100002/2018 (Kar)] wherein it was held that where the assessee did not incur any such expenditure during the year in question to earn Dividends, the burden was upon the AO to compute the interest on such borrowed funds which were dedicatedly used for investment in securities to earn such exempted Dividend income.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. ADVAITH MOTORS PVT. LTD. - (2018) 102 CCH 0081 (Kar HC) - ITA No. 342/2016 dated Jun 12, 2018***

**1169.** The Tribunal upheld the CIT(A)'s order to the extent that it deleted the disallowance made u/s 14A r.w. Rule 8D(2)(ii) with regard to interest expenses, in a case where the own funds of the assesse (NBFC) exceeded the amount of investment and also the interest income for the year under consideration exceeded the interest expenses. With respect to the disallowance made u/s 14A r.w. Rule 8D(2)(iii), it restricted the disallowance to the tune of dividend income.
***INCOME TAX OFFICER vs. NIRMA CREDIT & CAPITAL PVT. LTD. - (2018) 53 CCH 0147 (Ahd Trib) - ITA No. 2830/Ahd/2016 dated Jun 8, 2018***

**1170.** Considering that the investments made by the assessee were from common pool of funds but was less than available interest free fund, the Tribunal, relying on the High Court ruling in the case of UTI Bank Ltd and Bombay High Court ruling in Reliance Utilities, on the presumption even though assessee had raised a loan at the same time, investments were made from interest free funds, deleted the disallowance under section 14A read with rule 8D.
***Shreno Limited [TS-696-ITAT-2016 (Ahd)]***

**1171.** Where the assessee earned exempt income during the year under review, considering that its interest free funds were in excess of the investments yielding exempt income and the interest expense incurred by it was paid subsequent to the investments, the Tribunal held no disallowance under Section 14A read with Rule 8D(ii) could be made. Accordingly, it dismissed Revenue's appeal.
***DEPUTY COMMISSIONER OF INCOME TAX vs. DEVARSONS INDUSTRIES PVT. LTD. - (2018) 52 CCH 0269 AhdTrib - ITA No. 1130/Ahd/2015 dated Mar 28, 2018***

**1172.** The assessee claimed that it had not incurred any expenditure to earn exempt dividend income. However, the AO made disallowance u/s 14A. The Tribunal confirmed the disallowance holding that the AO had given a categorical finding that as per balance sheet assessee had actively made certain investment decisions which was not possible without efforts of managerial staff and directors and also assessee had not made any suo moto disallowance u/s 14A r.w.r. 8D. Further, it was noted that assessee had mixed funds and in spite of query, assessee could not establish direct nexus of borrowed funds with taxable income or interest free funds with dividend income. Accordingly, it dismissed the assessee's appeal.
***Deccan Mining Syndicate Pvt Ltd. vs Dy. CIT [2018] 53 CCH 0466 (Bang Trib) - ITA NO. 1261 (BANG) 2016 DATED AUGUST 21, 2018***

Go to Index

**1173.** Where the surplus funds of the assessee far exceeded the investments yielding tax exempt income, the Tribunal held that it should be presumed that the investments are made out of surplus funds of the assessee and therefore the question of disallowance on account of interest does not arise.

***Bicon Research Ltd – v Add CIT - TS-601-ITAT-2017(Bang) - ITA Nos.1229 & 1329/Bang/2016 dated 18/12/2017***

**1174.** The Tribunal held that where assessee had sufficient interest free own funds to cover investments in shares, mutual funds, etc. that generated exempt dividend, no disallowance under section 14 read with rule 8D(2)(ii) was called for.

***Tata Hitachi Construction Machinery Company Ltd. v DCIT [2018] 93 taxmann.com 339 (Bangalore – Trib.) – ITA NO. 977 OF 2014 dated 20.04.2018***

**1175.** The assessee company was eligible for deduction u/s 10A and had earned dividend income exempt from tax u/s 10(34) of the Act. The assessee contended before AO that it had made investment from its own funds and it had not incurred any expenditure for earning the dividend income. The AO not satisfied with the explanation of the assessee, made disallowance of expenditure u/s 14A r.w.Rule 8D(2)(iii) and also denied deduction u/s 10A on the enhanced income after making disallowance u/s 14A. The CIT(A) upheld the order of AO. The Tribunal noted that the assessee could not prove the nexus between the interest free funds and the investment that yielded exempt income. Accordingly, it held that the AO was left with no option but to adopt the methodology provided in Rule 8D r.w.s 14A after recording dissatisfaction regarding the claim of nil expenditure by the assessee. Accordingly, it upheld AO's disallowance of the expenditure u/s 14A r.w.Rule 8D(iii). However, it allowed the assessee's claim of deduction u/s 10A on the enhanced business income due to disallowance u/s 10A.

***G.E. India Exports Pvt. Ltd. [TS-216-ITAT-2017(Bang)] ITA No. 840 and 1042/Bang/2013 dated 28.04.2017***

**1176.** For AY 2000-01, the Tribunal held that there was no justification in the disallowance made u/s 14A as no fresh investment was made during the year and no nexus was proved between the borrowed funds and investment in tax free PSU Bonds. It was noted that while quashing reopening in the earlier year on basis of disallowance of interest expenditure, the High Court had accepted that the assessee had sufficient cash profits and reserves for making investment in PSU Bonds and thus, disallowance u/s 14A was not warranted. Accordingly, it allowed assessee's appeal.

***Oil and Natural Gas Corporations Ltd. vs Addl.CIT & Anr [2018] 53 CCH 0462 (Del Trib) ITA NO. 357DEL/2005 DATED AUGUST 17, 2018***

**1177.** The Tribunal deleted the disallowance made u/s 14A by the AO over and above the suo moto expenses disallowed by the assesse, holding that –

- since the assessee had sufficient interest free own funds (more than the value of investment made), no disallowance could be made under Rule 8D(2)(ii) as assessee had not incurred any expenses on account of payment of interest
- the AO as well as Ld. CIT(A) had not recorded their dissatisfaction that the computation of expenses disallowed by the assessee were not correct nor had pointed out any specific

computation defects and thus, Rule 8D(2)(iii) also could not be invoked on account of administrative expenses in absence of recording of specific dissatisfaction with the claim of the assessee.

***DLF HOME DEVELOPERS LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 53 CCH 0182 (Del Trib) - ITA No. 2209/Del/2016, 2567/Del/2016 dated Jun 19, 2018***

**1178.** The Tribunal deleted the disallowance of interest made by invoking section 14A of the Act on failure of the AO to determine nexus between investments and funds. The assessee's contention was that on perusal of financial statements it was evident that reserves and surplus were more than investments, hence there was no question of borrowing funds to make the investments. The Tribunal relied on the HC decision of HT Media and Reliance Utilities wherein it was held that if assessee's own funds exceed investment, a presumption arises that such investments are made from own funds and not borrowed funds unless revenue establishes the contrary.

***Munjal Showa Ltd vs. DCIT Ltd [TS-729-ITAT-2018(DEL)-TP] ITA No.1579/Del/2015 dated 27.06.2018***

**1179.** The Tribunal rejected the assessee's argument that strategic investments made in domestic companies should be excluding while determining the amount to be disallowed u/s 14A r.w. Rule 8D(2), following the Apex Court decision in the case of Maxopp Investments Ltd vs. CIT (2018) 91 taxman.com 154 (SC) wherein it was held that u/s 14A, dominant purpose for which investment in shares is made by assessee is not relevant. With respect to the assessee's claim of excluding the interest not attributable to earning exempt income while computing disallowable u/r 8D, the Tribunal observed that the financial statements did not have bifurcations of interest in P & L A/c and it was very difficult to bifurcate interest expenditure that was attributable to earning of exempt income. It thus remitted the matter back to the file of AO directing the assessee to file all relevant details in order to establish its claim regarding interest expenditure not to be attributable for purposes of earning dividend income.

***Indian Farmers Fertiliser Cooperative Ltd. v ACIT (2018) 52 CCH 0282 DelTrib - ITA No. 2394/Del/2013 dated 05.04.2018***

**1180.** Where major investments were made in the earlier years from own funds and no borrowed funds were utilized in making such investments, the CIT(A) deleted the disallowance made by the AO under Section 14A of the Act read with Rule 8D of the Rules relying on the ruling of Reliance Utilities And Power Ltd. (2009) 366 ITR 505. The Tribunal upheld the order of the CIT(A) in favour of the Assessee and held that since interest-free funds were sufficient to meet the investments, no presumption could be drawn in the absence of definite material brought on record to show that the interest-bearing funds were utilized for investments earning exempt income.

***ACIT & ANR. vs. ARIHANT CAPITAL MARKETS LTD. & ANR. (INDORE TRIBUNAL) (ITA No. 370/Ind/2017 (C.O. No. 17/Ind/2018)) dated May 31, 2018 (53 CCH 0100)***

**1181.** The Tribunal partly allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the entire disallowance made u/s 14A r.w. Rule 8D relying on the decision in the

case of CIT v Hero Cycle Limited (2010) 323 ITR 518 (P&H). With respect to disallowance u/s 14A r.w.r. 8D(2)(ii), it held that the same should not be made in the case of the assessee under consideration since the assessee had its own funds to invest in shares and securities and some of the investments were made in subsidiary companies for strategies purpose. With respect to disallowance u/s 14A r.w. Rule 8D(2)(iii), the Tribunal held that it was not total investment at beginning of year and at end of year, which had to be considered but it was average of value of investments which had given rise to income which did not form part of total income was to be considered, accordingly, it directed the AO to compute disallowance after taking into consideration investment which had given rise to exempt income.

***ITO v BONANZA TRADING COMPANY PVT. LTD. – (2018) 52 CCH 29 (Kol Trib) – ITA No. 172, 173 & 174/Kol/2016 dated 10.01.2018***

**1182.** The Tribunal held that the application of Rule 8D is not automatic and can be invoked only when no reasonable and proper parameters for making disallowance could be arrived at. It deleted the disallowance made by the AO on account of the fact that the assessee had sufficient own funds

***Allahabad Bank v ACIT – TS-314-ITAT-2016 (Kol)***

**1183.** The Tribunal deleted the disallowance made u/s 14A r.w Rule 8D(2)(ii) [pertaining to interest expense] noting that after netting off interest received by assessee with interest paid and reducing the interest paid to SBI for loan borrowed and used only for purpose of business, there was no positive figure of interest payment. It was also noted that the assessee had sufficient own fund for investments earning exempt dividend income.

***Rawalwasia & Sons Exim Ltd. v ITO (2018) 52 CCH 0297 KolTrib - ITA No. 273/Kol/2016 dated 06.04.2018***

**1184.** Tribunal deleted the disallowance u/s 14A w.r.t. interest expense, noting that assessee had furnished details that its own funds were sufficient to cover investments yielding exempt income and the borrowings of assessee were utilised for other business requirements and not for making said investments.

***Bennett Colman & Co. Ltd. vs. ACIT – (2018) 168 ITD 631 (Mum) – ITA Nos. 3298 & 3537 (Mum.) of 012 dated 08.01.2018***

**1185.** The asssessee claimed that no expenses had been earned towards earning exempt income, but had in any case offered a suo-moto disallowance in its COI. However, the AO rejected the assessee's contention / suo moto claim and made addition under Section 8D(ii). The Tribunal upheld the order of the CIT(A) wherein the CIT(A) relying on the case of the High Court in Commissioner of Income Tax v/s Reliance Utilities and Power Ltd., (2009) 313 ITR 340 (Bom) held that if there were interest-free funds available to assessee sufficient to meet its investments and at same time assessee had raised a loan it could be presumed that investments were from interest free funds available and accordingly no disallowance could be made under Section 14(A) rw Rule 8D(2)(ii).

Further, the Tribunal held that for the purpose of computing disallowance under Rule 8D(2)(iii), it held that only those investments yielding exempt income were to be included in the formula provided under Rule 8D.

Go to Index

***ASSISTANT COMMISSIONER OF INCOME TAX vs. L & T INFRASTRUCTURE FINANCE CO. LTD. - (2018) 52 CCH 0099 MumTrib - ITA Nos. 4331/Mum/2015 dated Feb 14, 2018***

**1186.** The Tribunal held that investments in debentures could not be included in 'investments' for the purpose of calculating disallowance under section 14A of the Act as the assessee had earned taxable interest income from such debentures. Further, it directed the AO to verify the claim of the assessee that no interest bearing funds had been used to invest in the shares which earned exempt income and that the investment made was actually out of advances received by the assessee for booking of flats (normal course of business).
***Capricorn Reality Ltd v DCIT – (2017) 50 CCH 0033 (Mum Trib) – ITA No 6448 / Mum / 2014 dated 17.05.2017***

**1187.** Where the assessee had earned dividend income and claimed the same as exempt u/s 10(34) of the act, and in the tax audit report filed along with return, the tax auditors had quantified the disallowance u/s 14A which was rejected by the AO who computed the disallowance as per provisions of section 14A of the Act read with rule 8D(ii) and (iii) and the CIT(A) deleted the 8D(ii) on the ground that the own funds of the assessee were more than double the investments [following the decision of the Hon'ble Jurisdictional High Court in the case of CIT V/s Reliance Utilities and Power Ltd reported in 313 ITR 340(Bom)] but sustained disallowance under 8D(iii), observing that some expenses ought to have been disallowed, the Tribunal relying on the coordinate bench's ruling in assessee's own case held that the disallowance at the rate of 2% of the dividend income would be reasonable.
***Rallis India Ltd & ANR vs Additional Commissioner of Income Tax & Anr. (2017) 51 CCH 0303 MumTrib (ITA No. 4234/Mum/2014, 4316/Mum/2014 dated Nov 8, 2017)***

**1188.** The Tribunal held that if investments were made in mutual funds out of non-interest bearing funds then such investments in mutual funds had to be excluded from the total tax free investments as well as total assets for the purpose of calculation of interest disallowable under Rule 8D(2)(ii) of the Rules.
***ACIT v Ashapura Minechem Ltd – (2015) 44 CCH 0576 Mum Trib***

**1189.** The Tribunal held that interest was liable to be disallowed under section 14A of the Act on a proportionate basis even if the assessee's own funds or current account deposits exceeded the amount of its tax free income yielding investments in shares or mutual funds.
***HDFC Bank Ltd v DCIT – (2015) 61 taxmann.com 361 (Mum)***

» *Rule 8D(2)(iii) – investments earning exempt income only to be considered*

**1190.** The Tribunal held that only those investments were to be considered for computing average value of investment which yielded exempt income during year under consideration for working out disallowance u/s 14A r/w Rule 8D(2)(iii).
***J. V. HOLDINGS PVT. LTD. vs. Dy. CIT (2018) 54 CCH 0346 BangTrib ITA No. 1337/Bang/2018 dated 13.12.2018***

Go to Index

**1191.** The Tribunal held that while applying Rule 8D(2)(iii), the disallowance in any case cannot exceed the quantum of exempt income earned by the assessee and while applying Rule 8D(2)(iii), only those investments which have earned dividend income during the year have to be taken into action.
***RAJBIR SINGH WALIA vs. Dy. CIT (2018) 54 CCH 0443 Chandigarh Trib ITA No. 59/CHD/2015 & ITA No. 413/CHD/2018 dated 17.12.2018***

**1192.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order substantially reducing the amount disallowed u/s 14A r.w. Rule 8D. The CIT(A) held that (i) there could be no disallowance with respect to interest expense since the assessee had sufficient funds as paid up capital fairly exceeding the investment earning exempt income and (ii) investment made in US company was to be excluded from the value of average investment to be considered for computing 0.5% of disallowance as per Rule 8D(2)(iii), since income from the said investment is not exempt.
***NOV SARA INDIA PVT. LTD. & ANR. vs. ADD.CIT (2018) 53 CCH 0330 DelTrib – ITA No. 6920 (Del) of 2014, 825 (Del) of 2015 dated 12th July, 2018***

**1193.** The Tribunal held that where the assessee's share capital along with reserve and surplus was many times higher than the amount invested in shares etc. yielding exempt income, no disallowance could be sustained under Rule 8D(2)(ii).
Vis-à-vis the disallowance made by the AO under Rule 8D(2)(iii), the Tribunal, relying on the decision of the Court in ACB India Ltd. vs. ACIT (2015) 374 ITR 108 (Del) held that only the average of those investments which yielded exempt income were to be taken into consideration and not the average of all investments. Accordingly, it directed the AO to carry out the computation of disallowance under 8D(2)(iii) as per its findings. Further, it held that if the disallowance under clause (iii) of Rule 8D(2) exceeded the amount of exempt income, then, the disallowance was to be restricted to such income alone.
***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. DLF COMMERCIAL DEVELOPERS LTD. & ANR. - (2018) 52 CCH 0148 DelTrib - ITA No. 1388/Del/2013 dated Mar 1, 2018***

**1194.** Where the assessee earned exempt dividend income during the year and offered suo-moto disallowance @ 5 percent on the average value of investments yielding the dividend income, the Tribunal held that the AO was unjustified in re-working the disallowance under Section 14A read with Rule 8D(iii) by including all the investments of the assessee without appreciating that the rest of the investments did not yield any exempt income.
***APOLLO INTERNATIONAL LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0203 DelTrib - ITA No. 6834/Del./2015 dated Mar 9, 2018***

**1195.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order excluding the investment made by the assessee in an Oman company for the purposes of computing disallowance u/s 14A r.w. Rule 8D. It noted that the dividend received by the assessee from the said company was chargeable to tax in India under the head 'Income from other sources' and formed part of total income, and, thereafter, a rebate of tax had been allowed to the assessee from the total taxes in terms of section 90(2) r.w. Article 25 of the Indo-Oman DTAA. Further, noting that in preceding year also, the AO had been directed to exclude the said investment while computing

average value of investment under Rule 8D(2)(iii), it was held that there was no infirmity in the observations of the CIT(A).

***ACIT v Indian Farmers Fertiliser Cooperative Ltd - [2018] 95 taxmann.com 114 (Delhi - Trib.) - IT APPEAL NO. 5157 (DELHI) OF 2015 dated June 07, 2018***

**1196.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order restricting the disallowance made by the AO u/s 14A r.w. 8D(2)(iii) to Rs.23,81,828 as against the AO's disallowance of Rs.53,27,283/-, relying on the co-ordinate bench decision in the case of REI Agro Ltd. v. Dy. CIT [2013] 35 taxmann.com 404/144 ITD 141 (Kol.) which was also affirmed by the Hon'ble Calcutta High Court [vide order dated 09.04.2014 in GA No. 3581 of 2013], wherein it was held that the disallowance as per Rule 8D shall be made by taking into consideration only those shares, which have yielded dividend income in the year under consideration.

***ASSISTANT COMMISSIONER OF INCOME TAX vs. HINDUSTAN COPPER LTD - (2018) 52 CCH 0475 KolTrib - ITA No. 1616/Kol/2016 dated Apr 4, 2018***

**1197.** The Tribunal held that only investments that had yielded dividend income are to be considered for the purpose of computing the disallowance u/s 14A under third limb of Rule 8D(2).

***Asst. CIT & Anr. vs. Tata Steel Processing & Distribution Ltd. & Anr.- (2018) 54 CCH 0304 KolTrib- ITA No. 2237/Kol/2016 (C.O. No. 96/Kol/2016)- December 5, 2018***

**1198.** The Tribunal held that (i) For computing disallowance under rule 8D(2)(iii), only those investments which have yielded exempt income during relevant previous year can be considered as part of average value of investment (ii) when an assessee has sufficient interest free fund available, no disallowance under rule 8D(2)(ii) r.w.s. 14A can be made (iii) While computing book profit u/s 115JB, the AO cannot invoke provisions of section 14A r.w. Rule 8D but he has to compute the book profit in consonance with the provisions of section 115JB r/w Explanation-1(f) to the said provision (which mandates add back of expenses relating to income exempt u/s 10, 11 & 12).

***Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018***

**1199.** The Tribunal allowed the assessee's appeal and followed the coordinate bench ruling in assessee's own case for an earlier year wherein it was held that disallowance u/s 14A should be made only in respect of investments which have yielded dividend income during the year under consideration. Accordingly, it held that the disallowance should be restricted to 0.5% of the average value of such investments.

***Stock Traders Pvt Ltd vs ITO [2018] 54 CCH 0246 (MumTrib ITA NOS. 2108/MUM/2006, 4403 & 687/MUM/2011 dated 19.11.2018***

**1200.** The Tribunal held that under section 14A r.w.r 8D(2)(iii) disallowance has to be computed only on the average value of investment giving rise to exempt income and as growth fund do not yield exempt income, they were to be excluded from the average value of investment for computing disallowance under rule 8D(2)(iii).

***Pinebridge Investment Asset Management Company India Pvt. Ltd. [TS-566-ITAT-2016(Mum)] (ITA no.1568/Mum./2014)***

Go to Index

» *Strategic investment / Controling stake in Group companies*

**1201.** The Apex Court held that dominant purpose for which investment into shares is made by assessee may not be relevant as section 14A applies irrespective of whether shares are held to gain control or as stock-in-trade. It held that where shares are held as stock-in-trade, certain dividend income exempt u/s 10(34) is earned incidentally, in such cases, section 14A would be applicable based on the theory of apportionment of expenditure between taxable and non-taxable income as held in CIT v. Walfort Share & Stock Brokers P Ltd. (2010) 326 ITR 1 (SC) and, therefore, to that extent, depending upon the facts of each case, the expenditure incurred in acquiring those shares would have to be apportioned. This, however, is not in the cases where the profits are naturally treated as 'income' under the head 'profits and gains from business and profession'. The Apex Court further held that having regard to the language of section 14A(2) r.w. Rule 8D, before applying the theory of apportionment, the AO needs to record satisfaction that having regard to the kind of the assessee, *suo moto* disallowance u/s 14A was not correct. It also held that the Rule 8D is prospective in nature and could not have been made applicable in respect of AY prior to 2007 when this rule was inserted.
***Maxopp Investment Ltd. v CIT – (2018) 91 taxmann.com 154 (SC) – Civil Appeal Nos. 104-109 of 2015 & Ors dated 12.02.2018***

**1202.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO u/s 14A r.w. 8D, noting that the assessee's investments were confined to strategic investments in its subsidiaries only and it had not earned any tax free income during the year, relying on the decision in the case of Amjay Medi.Max (India) Pvt. Ltd. vs. DCIT [ITA No.1950/Ahd/2012].
***DEPUTY COMMISSIONER OF INCOME TAX vs. ASMAN INVESTMNETS LTD. - (2018) 52 CCH 0445 AhdTrib - ITA No. 3139/Ahd/2015 dated Apr 4, 2018***

**1203.** The assessee, a fashion designer & trader in garments, had taken substantial term loans from a Bank, for acquiring shares of a company engaged in fashion apparels. The assessee contended that the investment was made as a business strategy for the purpose of furthering business as it could facilitate trade through the outlets of the said invested company. The AO disallowed the interest paid on the loans u/s 14A holding that the assessee had earned dividend income on investment in the said company. The CIT(A) upheld AO's order. Before the Tribunal, the Revenue took support of the case decided by Apex Court in M/s. Maxopp Investments Ltd (Civil Appeal No.104 to 109 of 2015) dated 12.02.2018 wherein it was held that deduction of that expenditure which had been incurred by assessee in relation to income which did not form part of total income under Act was not to be allowed and reason why an assessee invested in equity shares of a company was irrelevant for application of section 14A. However, the assessee pointed out from the same judgement that it was clearly mentioned that the AO had to record a satisfaction that the claim of the assessee on expenditure relatable to exempt income was incorrect, before proceeding with a disallowance u/s.14A. The Tribunal held that since the said Apex Court judgement was not available with the AO or CIT(A) while passing orders, the

question regarding disallowance u/s.14A of the Act required to be re-visited and thus set aside the orders of the authorities and remitted back the matter to the file of AO for fresh adjudication.
***Madan Ventures v ITO (2018) 52 CCH 0295 ChenTrib - ITA Nos. 2131 & 2698/CHNY/2017 dated 09/04.2018***

**1204.** The Tribunal held that where the assessee was not into the business of investment and investment was made in subsidiary on account of business expediency, such investments were not to be reckoned for disallowance under section 14A of the Act and were to be excluded while computing the average value of investments under the provisions of Rule 8D.
***Rane Holdings Ltd v ACIT – (2016) 46 CCH 0019 (Chen)***

**1205.** The Tribunal held that where the assessee invested funds in subsidiary companies on account of commercial expediency and not with the intention of earning exempt income, the provisions of section 14A of the Act would not be applicable.
***DCIT v Helios & Matheson Information Technology Ltd – (2016) 46 CCH 0066 (Chen)***

**1206.** The Tribunal upheld section 14A disallowance made in respect of the strategic investments made by assessee company in its subsidiary companies for business purpose on the ground that the holding of the asset/property either as an investment or as stock-in-trade was an irrelevant consideration as the disallowance was independent of the head of income or the nature of the income and that the only thing relevant consideration was if the income was tax-exempt. Accordingly it rejected the assessee's contention that investment in subsidiary companies being held for the purpose of its business would not be subject to Sec 14A. It also rejected the contention of the assessee that no expenditure was increased for making strategic investments and held that since the investments had business implication, it would definitely entail cost.
***Voltech Engineers Pvt.Ltd. vs. DCIT TS-73-ITAT-2017(CHNY)ITA Nos. 1801 & 1765/Mds/2016 dated 20.02.2017***

**1207.** Assessee had made investment in shares of various companies and such investment had been shown as capital investment and further interest was capitalized on such investment. The AO made disallowance @ 0.5% of average investment in terms of rule 8D and the same was upheld by CIT(A).
The Tribunal on appeal observed that, assessee had made investment in several group companies and had stated that provisions of section 14 A did not apply as these were all investment in group companies for purpose of business expediency of assessee. Further, the Tribunal noted that the assessee might have made investment in order to gain control of investee company, however, that did not appear to be relevant factor in determining issue at hand and the fact remained that such dividend income was non-taxable. Further, the Tribunal concluded that if expenditure was incurred on earning dividend income, that much of expenditure, which was attributable to dividend income, had to be disallowed and could not be treated as business expenditure and held that thus the principle of apportionment of expenses came into play, which was engrained in sec 14A. It thus upheld finding of CIT (A) in confirming disallowance u/s 14A r.w.r 8D.

Go to Index

***ACIT vs Lakhani India Ltd. – (2018) 53 CCH 0535 Del Trib- ITA No 3984, 3736/Del/2014 dated 10.09.2018***

**1208.** The Tribunal remanded the issue of computation of disallowance u/s 14A which required determination as to whether strategic investments in subsdiaries should be excluded for said computation, directing the AO to have regard to the decision of Apex Court in the case of Maxxop investments Ltd vs CIT (2018) 91 taxman.com 154 (SC) wherein it was held that dominant purpose for which investment into shares was made by assessee may not be relevant as section 14A would be applied irrespective of whether shares are held to gain control or as stock-in-trade. It also directed the AO to restrict the disallowance to exempt income in case the computation exceeded the exempt income.
***Asst.CIT vs JUBILANT ENPRO P. LTD. & ANR. [2018] 53 CCH 0446 (Del- Trib) ITA No. 3485/Del/2014 (Cross Objection No. 194/Del/2017) dated August 16 2018***

**1209.** Where the assessee made investment in group concern, the AO made disallowance under Section 14A read with Rule 8D and held that expenditure was incurred by assessee for earning exempt income. CIT(A) allowed the assessee's appeal by following the Tribunal order in the assessee's own case for AY 2006-07 and AY 2008-09. Tribunal held that, where primary object of investment was for holding controlling stake in group concerns and not for earning an income out of that investment then provisions of section 14A could not be invoked. The Tribunal directed the AO to recompute disallowance. Thus, the appeals of the Revenue were dismissed.
***ACIT & ANR. vs. SELVEL ADVERTISING PVT. LTD. & ANR. (KOLKATA TRIBUNAL) (IT A No.2196 -2197/Kol/2016 (C.O.No.97/Kol/2016) dated May 4, 2018 (53 CCH 0020)***

**1210.** Where the assessee had made strategic investment in its subsidiary company to control interest in company and not with object to earn dividend income and the dividend income earned on such investments was merely incidental, the Tribunal held that no disallowance could be made against such dividend income if it arose from strategic investment. It held that strategic investments needed to be excluded for purpose of disallowance u/s 14A r.w. rule 8D of Income Tax Rules and that only investments made in non-subsidiary company which had yielded dividend income could only be considered for purpose of disallowance u/s 14A r.w.r. 8D(2)(iii).
***DCIT v DEVELOPMENT CONSTULTANT PVT. LTD - (2017) 51 CCH 0501 KolTrib - ITA No. 213/Kol/2016 dated 06.12.2017***

**1211.** Where the CIT(A) after directing the AO to exclude the strategic investments from the average value of investments while determining disallowance of administrative expenses u/s 14A r.w. Rule 8D(2)(iii), had held that such exclusion would be restricted only to the old investments made in the group companies and not incremental amount invested during the year, the Tribunal held that once the CIT(A) had found that the investments made in the group companies were in the nature of strategic investments then no differentiation could be made between the old investments and the incremental increase made during the year and that there was no rationale behind the CIT(A)'s such differential approach. Accordingly, it directed the AO to verify if the investments claimed by the assessee were strategic investment and if so, to exclude the same from the average value of investment for computing disallowance u/s 14A r.w. rule 8D.

Go to Index

***M. Pallonji & Co. Pvt. Ltd v ACIT – ITA No. 3739, 3523, 3524, 3740, 3741 & 3525/Mum./2015 dated 28.02.2018***

**1212.** Assessee didn't make disallowance u/s 14A of the amount reported in the Tax Audit Report [which included direct as well as indirect expenses disallowable u/r 8D(2)(i) & 8D(2)(iii) respectively], contending that the investment were mainly in shares of unlisted joint venture entities, whose capital gain, when divested would be fully taxable under the head 'Capital Gains' and that the investments made in joint ventures were strategic in nature and had to be excluded while arriving at the disallowance u/s 14A. But the AO disallowed the said amount while computing income under normal provisions as well as u/s 115JB. The Tribunal held that following the catena of judgment in assessee's favour, the adjustment of disallowance u/s 14A was not required to be made in Book Profits for the purpose of section 115JB. With respect to disallowance under normal provisions, the Tribunal held that it was an uncontroverted fact that the gains from sale of investments were taxable under the head 'Capital Gains'. But noting that the assessee had failed to refute findings of Tax Auditor and could not demonstrate that it did not incur any direct expenditure to make investments, it remanded the matter to the AO to re-appreciate the factual matrix along with a direction to the assessee to justify his stand.
***ACIT & ORS v INDUSIND MEDIA & COMMUNICATION LTD. & ANR. – (2018) 52 CCH 46 (Mum) – ITA No. 772/Mum/2016, 1167/Mum/2016 dated 17.01.2018***

**1213.** The Tribunal held that exempt income from investment income made in subsidiary shall be included while computing disallowance under section 14A of the Act as section 14A of the Act does not grant any exemption to the strategic investments yielding exempt income.
***DCIT vs. The Saraswat Co-operative Bank Limited (ITAT Mumbai)***

» *Stock-in-trade*

**1214.** The Court held that section 14A of the Act would not be applicable to investments held in stock in trade. Further, it held that where there was a binding decision of the High Court, the same continued to be binding on all authorities within the State till the said decision is stayed or set aside by the Apex Court or High Court which took different view on identical facts.
***HDFC Bank Ltd v DCIT – (2016) 95 CCH 0061 (Bom)***

**1215.** The Court held that Rule 8D of the Income-tax Rules would not apply to shares that were held as stock in trade and not as investments and accordingly deleted the addition made by the AO under Rule 8D(ii) and 8D(iii). Further, it noted that the AO had assessed the gain on sale of shares as income from business and had accepted the treatment of the shares as stock in trade of the assessee and therefore dismissed the appeal of the Revenue holding that no substantial question of law arose.
***CIT v GKK Capital Markets P Ltd – (2017) 98 CCH 0059 Kol HC – GA No 1150 of 2015 and ITA No 52 of 2015***

**1216.** Where the assessee was dealing in shares and bonds as trader and earned business income from purchase & sale of securities, the Court held that Sec.14A would only apply to shares held

as investments and not as stock-in-trade. Since the assessee did not retain shares with the intention of earning dividend income and the dividend income was incidental to the business of sale of shares it would not be covered u/s 14A. It further clarified that the expenditure incurred in acquiring the shares could not be apportioned to the extent of dividend income and disallowed u/s 14A. Further it held that the word used u/s 14A was investment and not stock in trade and therefore the charging section could not be read to include stock.
***CIT vs. State Bank of Patiala TS-50-HC-2017(P&H) ITA No.244 of 2016(O&M) dated 30.01.2017***

**1217.** The Tribunal held that where exempt income was earned from securities which were held as a part of stock-in-trade, no disallowance under section 14A could have been made.
***Canara Bank vs JCIT - [2016] 68 taxmann.com 128 (Bangalore-Trib)***

**1218.** Where the assessee-company engaged in the business of share trading earned dividend income and offered the same for tax without disallowing expenses u/s 14A of the Act, the Tribunal held that provisions of Sec 14A could be invoked to make a disallowance on account of expenditure incurred in relation to exempt income in form of dividend even on shares held as stock in trade as the dividend earned on shares held as stock in trade was an incidental income of the assessee and was very much exempt from tax u/s 10(34) of the Act. It further observed that it was the duty of the revenue to exclude those items of income from taxable income which are not chargeable to tax in spite of the fact that the assessee had offered the same to tax.
***Kalyani Barter (P.) Ltd v. Income-tax Officer [2017] 79 taaxmann.com 457 (Kolkata – Trib.) (ITA Nos 681 & 824 (Kol.) of 2015)***

**1219.** The Tribunal, held that where the assessee was a dealer in shares / securities and held the same as stock in trade, no disallowance under section 14A of the Act could be made on expenditure incurred since the assessee did not retain the shares with the intention of earning dividend income and the dividend income was merely incidental to the business of sale of shares.
***UCO Bank v DCIT – (2016) 47 CCH 0399 (Kol)- ITA No. 585 & 911/Kol /2013***

**1220.** Where the Assessing Officer had made disallowance u/s 14A read with Rule 8D(iii) by including stock-in-trade, the Tribunal, relying on the decision in the case of State Bank of Patiala (2017) 78 taxmann.com 3 (P&H HC) held that Rule 8D refers only to investment and not stock- in-trade, and therefore could not be included for the purpose of disallowance u/s 14A as the same were held as business assets for trading purpose. Accordingly, it upheld the order of the CIT(A) and dismissed the Revenue's appeal.
***ACIT vs Af-Taab Investment Company Limited & Ors (2017) 51 CCH 0358 MumTrib. – ITA No. 1807 / mum / 2011 and 1812 / mum / 2014 dated 16.11.2017***

» *Others*

**1221.** For AY 1998-99, the Court affirmed Tribunal's order disallowing 1% of business expenditure u/s 14A on account of dividend income earned. It rejected assessee-NBFC's plea that dividend

income earned from shares was business income holding that the share, securities etc. on which dividend income was earned, were purchased compulsorily by the assessee in compliance with the direction of the RBI and were different from those which are bought and sold for the purpose of profit making and thus such dividend yielding assets could not be considered as trading assets.

***Peerless General Finance & Investment Co. vs CIT [2018] 100 taxmann.com 41 (CalcuttaHC)- IT APPEAL NOs. 600,601 of 2004 and 246 &248 of 2005 dated August 8 2018***

**1222.** The Court held that under section 14A of the Act, the AO must examine the accounts closely and determine if at all any expenditure could be ascribed to the tax exempt dividend/interest earned by the assessee. If the tax exempted income was earned without the interference of any employee the question of attributing any expenditure cannot arise at all.

***Pradeep Khanna v ACIT – ITA No 953 / 2015 (DelHC)***

**1223.** The Court upheld the Tribunals order wherein it was held that no disallowance under section 14A of the Act could be made for interest expenditure under Rule 8D(2)(ii) absent common interest expenditure. It held that the intention of Rule 8D(ii) was to allocate common interest expenses and therefore interest directly attributable to tax exempt income as well as interest directly relatable to taxable income was to be excluded. Since no portion of interest survived after excluding the aforesaid interest, the Court held that no disallowance under Rule 8D(ii) could be made.

***Pr CIT v Bharti Overseas Pvt Ltd (ITA 802 / 2015) – TS-729-HC-2015 (Del)***

**1224.** Noting that the AO had not disturbed assessee's declaration that total administrative expenses incurred by assessee for all its activities was Rs. 30 lakhs, the Court held that under no circumstances an AO could not attribute administrative expenses for earning tax free income in excess of total administrative expenditure incurred by assessee and, hence, there was no question of disallowing administrative expenses to tune of Rs. 60 lakhs u/s 14A r.w. Rule 8D(2)(iii). Accordingly, it dismissed the revenue's appeal filed against Tribunal's order wherein the Tribunal had deleted the disallowance u/s 14A r.w. Rule 8D(2)(iii) made by the AO over and above the suo-moto disallowance of Rs. 10 lakhs made by the assessee.

***Pr.CIT v Adani Agro (P.) Ltd. – (2018) 253 Taxman 507 (Gujarat HC) – Tax Appeal No. 963 of 2017 dated 05.02.2018***

**1225.** The Tribunal held that for the purpose of computing disallowance under section 14A, amount of net interest and not the gross interest is to be taken into consideration.

***Aditya Medisales Ltd. vs Addl CIT - [2016] 67 taxmann.com 270 (Ahmedabad-Trib)***

**1226.** The Tribunal confirmed disallowance under section 14A of the Act with respect to indirect expenditure attributed for earning exempt dividend income on the ground that where there was substantial change and movement in the assessee's investment portfolio and a decision to make fresh investment was taken by top management, the assessee was not justified in taking a stand that no expenditure was incurred for earning exempt income.

***Kodagu District Central Co-operative Bank Ltd v ACIT – TS-38-ITAT-2015 (Bang)***

Go to Index

**1227.** The Tribunal taking note of the significant change and movement in the Assessee's portfolio upheld the disallowance under Rule 8D(2)(iii) by holding that decision of making fresh investment or selling the existing investments is taken at a very high level of management and therefore the plea of the assessee that it had not incurred any administrative expenditure for earning dividend income could not be accepted.

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

**1228.** The assessee earned dividend income which was exempt from tax and claimed that he did not incur expenditure to earn exempt dividend income. The AO disallowed part of expenditure u/s 14A applying rule 8D(iii). On appeal, the CIT(A) upheld such addition. The Tribunal rejected the assessee's contention that since no expenditure was incurred to earn exempt income disallowance u/s 14A r.w.Rule 8D(iii) was not warranted. Referring to Sec. 14A read with Rule 8D(iii), it held that even in a case where the assessee claims that no expenditure was incurred, the section provides for the disallowance of the expenditure. Accordingly, it upheld the order of CIT(A).

***Mr. M. A. Alagappan [TS-244-ITAT-2017(CHNY)] /I.T.A.No.3280/Mds./2016 dated 03.04.2017***

**1229.** The Tribunal partly allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had deleted the disallowance made by the AO u/s 14A for AY 2007-08, computed by AO @ 10% of the dividend income. Before the Tribunal, the assessee accepted that since during the year it had sold certains shares and invested the amount received thereon in Mutual Funds, someone had definitely applied mind for the same. Accordingly, the Tribunal rejected the assessee's argument that no administrative or supervisory effort had been undertaken and directed the AO to disallow 5% of the dividend income towards administrative expenses u/s 14A.

***DCIT v INTERNATIONAL TRACTORS LTD. & ORS. - (2018) 67 ITR (Trib) 0538 (Delhi) – ITA Nos 5756/Del/2013 & 6239/Del/2013 (C.O. No.130/Del/2014 & 173/Del/2014) dated July 23, 2018***

**1230.** For AY 2002-03, the assessee-company did not disallow any amount u/s 14A as expenditure incurred for earning dividend income of Rs Rs. 7,09,093/- claimed as exempt u/s 10(33). However, the AO worked out Proportionate disallowance Rs. 1,59,845/- on account of the said expenditure. The CIT(A) confirmed the disallowance made by the AO. The Tribunal observed that the entire expense incurred by assessee on salaries, wages and staff welfare was taken into account by AO while computing proportionate disallowance u/s 14A and also some of said expense incurred by assessee such as garden maintenance etc. were not related to earning of dividend income. It held that the disallowance made by AO on proportionate basis was excessive and unreasonable and thus restricted said disallowance to 5% of dividend income earned by assessee.

***Manipur Tea Co. Pvt. Ltd. v ACIT (2018) 52 CCH 0285 KolTrib - ITA No. 1749/Kol/2017 dated 06.04.2018***

Go to Index

**1231.** The Tribunal held that where assessee had made suo moto disallowance of expenses under section 14A read with rule 8D, however, Assessing Officer made further disallowance holding that assessee had only disallowed direct expenses under rule 8D(2)(i) and expenses under provision of section 8D(2)(iii) were not considered, since details of expenses filed by assessee showed that suo-moto disallowance included expenses coming under purview of rule 8D(2)(iii) as well, impugned further disallowance was unjustified.
***Olive Bar & Kitchen (P.) Ltd. v. Dy. CIT, 13(1)(1), Mum. - [2019] 102 taxmann.com 98 (Mumbai - Trib.)-IT Appeal Nos. 5097, 5098, 5164 & 5165 (Mum.) of 2017 dated December 5, 2018.***

**1232.** Where AO had made disallowance after applying Rule 8D(iii) in respect of administrative expenditure for earning a dividend income from investments and the assessee had suo moto accepted the disallowance of Rs.50,000/- (for which it did not furnished any working), the Tribunal did not accept the assessee's argument that it had not incurred any expenditure in relation to exempt income, noting that the assessee had not maintained separate books of account for investment activity and its business transactions. Further, noting that disallowance of Rs.50,000 was not justified for the huge dividend income earned, it directed AO to make addition of 5% of exempt income towards expenditure incurred in relation to earning of exempt income, which according to the Tribunal would meet the ends of justice.
***Libra Techcon Ltd vs Dy.CIT &Anr [2018] 53 CCH 0472 (Mum Trib) ITA NO. 2475/MUM/2013 DATED AUGUST 24, 2018***

**1233.** The Tribunal held that when the assessee company had made disallowance u/s 14A read with Rule 8D(2)(iii) of Income Tax Rules, 1962 and CIT(A) had confirmed same amount in his appellate orders which led to double disallowance of the same amount, the addition was liable to be set aside.
***Silvassa Estates (P) Ltd v ITO - (2016) 47 CCH 0212 (Mum Trib)***

**1234.** The Tribunal rejected the assessee's contention that the disallowance made by the AO u/s 14A r.w. Rule 8D(2)(iii) should be deleted as it had not incurred any expense towards earning exempt income and it had suo moto accepted an adhoc disallowance of Rs.50,000. It noted that the assessee had not furnished any working as to how adhoc disallowance of Rs.50,000 was justified considering huge dividend income of Rs.1,26,05,919. It held that since the the assessee had not maintained separate books of account for investment activity and its business transactions, the possibility of certain expenditure attributable to investment services cannot be ruled out and hence the assessee's claim that that it had not incurred any expenditure in relation to exempt income cannot be accepted. The Tribunal directed the AO to disallow 5% of the exempt income on account of expenditure incurred, holding that the same would meet the end of justice.
***LIBRA TECHCON LTD. & ANR. V DCIT (2018) 195 TTJ 0105 (Mumbai) (URO) – ITA No. 2475/Mum/2013, 4480/Mum/2013 dated August 24, 2018***

**1235.** The Tribunal held that interest paid to partners on capital contribution is not a statutory allowance under section 40(b) but an expenditure under section 36(1)(iii) of the Act and hence

liable for disallowance under section 14A of the Act if incurred in relation to exempt income as envisaged under section 14A of the Act.
***ACIT v Pahilarai Jaikishin - [2016] 66 taxmann.com 30 (Mumbai-Trib)***

**1236.** The Tribunal held that interest on partner's capital would not be liable for disallowance under section 14A of the Act since the same was in the nature of a deduction under section 40(b) and not an expenditure as envisaged under Section 14A of the Act.
***Quality Industries -TS-533-ITAT-2016 (Pune Trib)- ITA No.2000/PN/2014***

**1237.** The Tribunal deleted the disallowance made by the AO u/s 14A with respect to interest income and dividend income received by the assessee-cooperative society engaged in the business of procuring milk, producing milk manufacturing products and distribution of milk which was eligible for deduction u/s 80P(2)(d). It relied on the decision in the case of CIT v. Kribhco [2012] 209 Taxman 252 (Delhi) wherein it was held that provisions of section 14A are applicable in case of exempt income not forming part of total income under Chapter III of Act but the said provisions cannot be applied in respect of deduction claimed u/s 80P governed by Chapter VIA of the Act.
***Asst CIT vs Surat Dist. Co. op. Milk Producers Union Ltd. [2018] 97 taxmann.com 382 (Surat-Trib) IT APPEAL NOS. 1498 AHD OF 2012, 1076 & 1211 (AHD) OF 2015 SRT dated August 3 2018***

*Section 10A/ 10B/ 10AA*

**1238.** The Apex Court dismissed Revenue's SLP against HC ruling wherein it was held that mere processing of iron ore in a plant and machinery located outside customs bonded area would not disentitle assessee from claiming deduction u/s 10B noting that (i) iron ore was excavated from mining area belonging to an export oriented unit and (ii) customs bonding was not a condition precedent to the claim of deduction u/s 10B.
***Pr.CIT vs Lakshminarayana Mining Company [2018] 103 CCH 0267 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 36242/2018 dated 16.11.2018***

**1239.** The Apex Court ruled in favour of the revenue and granted Special Leave Petition against order of the High Court wherein the Court held that where asssesseee-company provided recruitment services to its foreign client using information technology, it would be entitled to benefit under section 10A.
***Commissioner of Income Tax-6, New Delhi v. M.L.Outsourcing Services (P.) Ltd - [2017] 79 taxmann.com 255 (SC)***

**1240.** The Apex Court upheld the order of the High Court wherein it was held that definition of 'total turnover' given under section 80HHC and 80HHE cannot be adopted for purpose of section 10A. Explanations to sections 80HHC and 80HHE which defines total turnover clearly states that the same is for purposes of this section only.Thus, technical meaning of total turnover which does not envisage reduction of any expenses from total amount, is to be taken into consideration for computing deduction under 10A and when meaning is clear, there is no necessity of importing meaning of total turnover from other provisions. It further held that when object of formula in section 10A for computation of deduction is to arrive at profit from export business,

expenses excluded from export turnover have to be excluded from total turnover also, otherwise, any other interpretation makes formula unworkable and absurd and hence, such deduction shall be allowed from total turnover in same proportion as well.
***CIT v HCL Technologies Ltd. [2018] 93 taxmann.com 33 (SC) – CIVIL APPEAL NOS. 8489-8490 OF 2013 dated 24.04.2018***

**1241.** The Apex Court set aside the order of the Andhra Pradesh High Court wherein the Court did not opine on whether the trading activity carried on by the assessee's SEZ unit constituted a 'service; for the purpose of deduction under section 10AA by stating that the issue was a question of fact which was dealt with by the Tribunal by considering the trading activity as a service. The Apex Court held that the issue was actually a question of law and accordingly remanded the matter back to the High Court.
***CIT v Bommidala Enterprises Pvt Ltd – TS-501-SC-2016- SLP (C) No. 13081 of 2014***

**1242.** Assessee set up a unit at Software Development Park (STPI) to develop and export PC Suit Software Chip used in mobile phones and it claimed exemption under section 10A. The AO denied said claim on ground that software was substantially developed at non-eligible unit and thereafter it was placed in hard disk and shifted to eligible unit only with an intent to claim exemption under section 10A. The Tribunal opined that software was developed at eligible unit after receiving basic engine from non-eligible unit and thus assessee was entitled to benefit of exemption under section 10A and the same was upheld by the High Court. The Supreme Court dismissed the Revenue's SLP
***CIT vs Ajay Agarwal (HUF)- (2018) 99 taxmann.com 19 (SC)- SLP Diary No 32263 of 2018 dated 28.09.2018***

**1243.** The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had upheld the Tribunal's order allowing exemption u/s 10AA with respect to freight and insurance excess receipts, where the Revenue contended that the same constituted indirect income not derived from export of goods. The Tribunal had held that the said excess receipts may not have any effect as the freight or insurance charges were to be reduced from the export turnover as well as from the total turnover.
***Pr.CIT v Vedansh Jewels (P.) Ltd - [2018] 97 taxmann.com 521 (SC) - SLP (Civil) Diary No.(S). 24766 of 2018 dated July 30, 2018***

**1244.** The assessee had 31 independent software development units or undertakings set up at distinct locations. In its original return, it claimed deduction under section 10A only in respect of 13 units but in revised return number of units eligible for benefits under section 10A was increased from 13 to 31 and separate Form 56F was filed for each of these 31 units. The High Court, observing that no material was produced to establish that assessee had the 31 units of the assessee were distinct undertakings, disallowed its claim. The Apex Court admitted the assessee's SLP against the order of the High Court.
***HCL Technologies Ltd. v ACIT - [2018] 91 taxmann.com 460 (SC) - SLP (C) NOS. 18864-18865 OF 2016 dated MARCH 13, 2018***

Go to Index

**1245.** The Court held that where in earlier appeal issue of deduction under section 10A was decided by Tribunal in favour of assessee and in subsequent appeal same issue was remanded to Assessing Officer for fresh determination, such order of Tribunal was to be set aside.
***Hinduja Global Solutions Ltd. v. Union of India [2015] 59 taxmann.com 456/235 Taxman 476(Bom.HC)***

**1246.** The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for exemption u/s 10B which was disallowed by the AO on the ground that various activities (such as ironing, packing, affixing barcode labels, emblem graphics, affixing stickers, putting silica gel pouch inside packets, putting heat treated emblem on some of garments) carried out by the assessee did not amount to manufacture or production of any article or thing in course of its business of export of garments. It held that the definition of the term 'manufacture' given in clause 9.32 of rules and regulations relating to EOU framed by the Government of India were in favour of the assessee. It also noted the Tribunal's finding that the assessee performed some functions on the garments received by it though all functions were not performed on all the garments and that the expenses incurred on account of the functions performed by the assessee were reflected in the books of account which were verified by the AO. The Court thus held that the findings on facts by the Tribunal could not be termed perverse and the functions undertaken by the assessee fell within the meaning of the term 'manufacture'.
***Pr.CIT v A. P. Export - [2018] 95 taxmann.com 169 (CalcuttaHC) - ITAT NO. 156 OF 2015 , GA NO. 3673 OF 2015 dated June 27, 2018***

**1247.** The Court dismissed Revenue's appeal and granted deduction under section 10B to the assessee (EOU) on exports made through its sister concern, on the ground that the condition spelt out in section 10B(3), could not be limited or restricted to only actual receipts by the assessee. Further,it dismissed revenue's objection that the sister concern not being a status holder/ an exporter in terms of the Exim Policy, the benefit of deduction under section 10B could not be extended to the assessee.
***Earth Stone Group [TS-692-HC-2016(DEL HC)]***

**1248.** The Court upheld the decision of the Tribunal and allowed relief under section 10A to the assessee-branch (a 100% SEZ unit engaged in software development) on profits arising on transfer of software to its foreign head office ('HO'). It dismissed the contention of the revenue that section 10A benefit was to be denied since there was 'no export' sale by assessee as the computer softwares were merely transmitted to HO and there was no sale to third party. Referring to inter-relationship between Sec 10(A)(7) and Sec 80-IA(8), the Court held that the legal fiction of treating an assessee as a separate entity vis-a-vis sale by it or transfer by it from an eligible business or to an eligible business has been recognized u/s 10-A(7) of the Act. Accordingly, it held that profits arising from the export of goods by the assessee to its HO was to be allowed under section 10A of the Act.
***Virage Logic International [TS-602-HC-2016(DEL)]***

**1249.** The Court upheld the order of the Tribunal allowing Sec. 10A deduction to the assessee, a 100% EOU engaged in rendering ITeS data processing services to Amadeus Spain. It noted that the assessee's sole activity was to provide software connectivity for providing access to Amadeus Computer Reservation System ('CRS') facility to travel agents for which it received

income from Amadeus Spain and rejected Revenue's contention no real export of services took place since the beneficiaries of assessee's activities were located in India. It took note of the Tribunal's categorical finding based on STPI and Export Promotion Council's ('ESC') reports that assessee 'manufactured, produced and exported software' and that it could claim exemption under any of the three provisions viz., Sec. 80HHE / 10A / 10B of the Act.

***PCIT vs. Amadeus India Pvt. Ltd - TS-197-HC-2017(DEL) - ITA 154/2017 dated 22.05.2017***

**1250.** The Court upheld the Tribunal's order wherein it had concurred with the findings of fact recorded by the CIT(A) and allowed the assessee's claim for deduction u/s 10A proportionately with respect to the sales realised within the time stipulated in the Act, where the AO had disallowed the entire deduction claimed by the assessee *inter alia* on the ground that the assessee had failed to submit the auditor's certificate required for claiming deduction as per section 10A(5) as well as certificate regarding establishment in SEZ from competent authorities and that there were certain discrepancies in the sales invoices raised against the Bank Realisation Certificates (BRCs). It was noted that before the CIT(A), assessee had submitted that it could not produce the necessary evidence in support of its claim on account of the ill-health of two of its main persons and, accordingly, had produced few of the BRCs and Form No.56F, being the certificate by CA for claiming deduction u/s 10A before the CIT(A).

***Pr.CIT v SAHJANAND LASER TECHNOLOGY LTD. - (2018) 401 ITR 0487 (Gujarat HC) - TAX APPEAL NO. 1025 of 2017 dated 29.01.2018***

**1251.** The Court held that where Development Commissioner SEZ, Ministry of Commerce and Industry had granted approval to assessee as a 100 per cent EOU and not as a SEZ unit, claim under section 10B deserved to be allowed .

***Zealous Web Technologies. Vs PCIT - [2016] 68 taxmann.com 379 (GujaratHC)***

**1252.** The assessee's claim for exemption u/s 10B was disallowed by the AO on the ground that the assessee had inflated the profit of the unit eligible for exemption, being an EOU unit. The CIT(A) gave partial relief to the assessee after examining individual heads of expenses where the AO had found inflation. The Tribunal in further appeal by the assessee, deleted the entire disallowance, inter alia, observing that the assessee had maintained separate books of accounts for both the units, i.e. eligible and ineligible, and that in the earlier years, the accounting method adopted by the assessee was not disturbed by the AO. The Tribunal further held that the AO ought to have pointed out a particular expenditure incurred for earning income in the EOU and that he could not have artificially apportioned the expenditure merely on the basis of production of the stakes. The Court dismissed the Revenue's appeal, holding that the entire issue was factual in nature and hence, no question of law arose.

***PRINCIPAL COMMISSIONER OF INCOME TAX vs. SYNPOL PRODUCTS PVT LTD - (2018) 102 CCH 0097 (Gujarat HC) - R/TAX APPEAL NO. 526 & 527 of 2018 dated June 11, 2018***

**1253.** The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for deduction u/s 10B which was disallowed by the AO on ground that the aseessee-company, a 100% Export Oriented Unit (EOU), was not entitled to the said deduction in respect of 'Deemed Export' of goods made by it through third party. It was noted that the Revenue was unable to establish that both the assessee and entity through whom such export was made by the assessee had claimed any double or repetitive benefit u/s 10B for same transaction of

export. The Court relied on the decision in the case of Tata Elxsi Ltd. v. Asstt. CIT [2015] 127 DTR 327 (Kar.) wherein it was held that the exports made through a third party or another units located in India within Software Technology Park (STP) only, which as per the Exim Policy were treated 'deemed export', were entitled to the benefit of deduction u/s 10A (which contains similar provisions as section 10B).

***Pr.CIT v International Stones India (P.) Ltd. - [2018] 95 taxmann.com 287 (KarnatakaHC) - IT APPEAL NOS. 258 OF 2010 AND 561 TO 564 OF 2016 dated June 12, 2018***

**1254.** The Court, applying the purposive interpretation of tax holiday provisions held that the incidental activity of parking of surplus funds with the Banks or advancing of staff loans by such special category of assessees covered under Section 10-A or 10-B of the Act was an integral part of their export business activity and a business decision taken in view of the commercial expediency and therefore the interest income earned incidentally could not be de-linked from its profits and gains derived by the Undertaking. Accordingly, it held that the income by way of interest on bank deposits or staff loans earned by 100% export oriented unit was eligible for tax holiday u/s 10A or 10B for AY 2001-02.

***CIT vs Hewlett Packard Global Soft Ltd-TS-482-HC-2017(KAR)- ITA No.812/2007 dated 30.10.2017***

**1255.** The Court allowed the assessee benefit under section 10A on the software development work subcontracted by it to its AE abroad as Section 10A does not provide that onsite work of software development should be carried on by the assessee's own personnel. It further observed that onsite work done under the direct supervision and control of the assessee would be nothing but on behalf of the assessee and therefore dismissed the Revenue's contention.

***CIT v Mphasis Software & Service India Pvt Ltd [ITA No 263 & 264 / 2014] – TS-497-HC-2015 (KARNATAKA)***

**1256.** Where assessee's claim for exemption under section 10B was rejected on ground that its sister concern get merged with it, in view of fact that both firms were doing same business and, moreover, assessee's sister concern was also an EOU, impugned order rejecting assessee's claim was to be set aside by the Tribunal. The Court upheld the said order of the Tribunal.

***Commissioner of Income Tax v. Trident Minerals- [2018] 100 taxmann.com 161 (KarnatakaHC)- ITA No. 100029 of 2014-October* 10, 2018**

**1257.** The assessee was engaged in the business of mining and export of iron ore. It outsourced the work of processing of iron ore to another company which operated plant and machinery installed in the EOU and non-EOU, both belonging to the assessee. The assessee claimed deduction u/s 10B on the profits derived from the production of iron ore which was disallowed by the AO on the grounds that the production of iron ore was outsourced by the EOU to non-EOU. The Tribunal allowing the assessee's appeal held that the customs bonding was not a condition precedent for granting exemption u/s 10B and further concluded by stating that mere processing of the iron ore in a plant and machinery located outside customs bonded area would not disentitle the assessee from deduction u/s 10B where the iron ore was excavated from the mining area belonging to an EOU. The High Court upheld the order of the Tribunal and dismissed the appeal of the Revenue and stated that no substantial question of law arose from the Tribunal's order.

Go to Index

***PCIT v. Lakshminarayana Mining Co. – [2018] 93 taxmann.com 142 (KarnatakaHC) – IT Appeal Nos. 715, 714 & 716 of 2017 dated April 6, 2018***

**1258.** The Court held for the purpose of computing deduction under section 10A of the Act, expenses incurred in foreign currency for providing software development services outside India could not be excluded from the export turnover since it did not fall within the clause of providing technical service outside India in connection with the development or production of computer software, in spite of it being technical in nature, relying on the decisions of the Karnataka High Court in the cases of CIT v Mphasis Ltd and CIT v Motor Industries Co Ltd. Further, relying on the decision of the Karnataka High Court in the case of CIT v Tata Elxsi Ltd it held that exchange fluctuation loss was to be reduced from total turnover for the purpose of computation of deduction under section 10A of the Act.
***CIT v Kshema Technologies Ltd – (2016) 66 taxmann.com 165 (Karnataka HC)***

**1259.** The Court held that the Tribunal was correct in directing the AO to exclude expenses incurred in foreign currency and other expenses that had been excluded from Export turnover, from the total turnover also for computing deduction u/s 10A by relying on ratio laid down in CIT vs HCL Technologies Ltd. [2018] 93 taxmann.com 33(SC) wherein it was held that when the object of the formula was to arrive at the profit from export business, expenses excluded from export turnover had to be excluded from total turnover also since one of the components of Total Turnover was export turnover, otherwise, any other interpretation makes the formula unworkable and absurd.
***Pr.CIT vs CYPRESS SEMICONDUCTORS TECHNOLOGY INDIA PVT. LTD. [2018] 102 CCH 0382 (Kar HC) - ITA NO. 399/2017 DATED AUGUST 16, 2018***

**1260.** The Court held that the process of garbling to make pepper edible does not give rise to a different commodity distinct from raw pepper purchased so as to call such process to be 'manufacture' and thus, assessee, an exporter, engaged in procurement and export of pepper, was not entitled to claim deduction u/s 10B as 100% EOU.
***Nishant Export v ACIT – (2018) 91 taxmann.com 100 (KeralaHC) - ITA Nos. 13 & 499 of 2009 dated 25.01.2018***

**1261.** The Court held that in order to claim benefit of section 10B, there was no requirement that the export-oriented unit should be newly established. It held that the benefit of section 10B would commence only from the certification of a unit as 100 percent export oriented and further clarified that if there was no manufacture at time of certification, the benefit would commence from time of commencement of manufacture. Noting that in the case of the assessee, the eligible manufacturing activity (i.e. development of software products) coincided with its certification, it held that the AO was not justified in denying the assessee deduction under Section 10B merely because it was not a newly established unit.
***CIT v All Koshys All Spices - [2018] 89 taxmann.com 335 (KeralaHC) - IT APPEAL NO. 81 OF 2015 dated 11.12.2017***

Go to Index

**1262.** The Court held that where assessee had not obtained approval from competent authority in connection with claim for deduction under section 10B, reopening of assessment on issue of allowability of exemption under section 10B was proper.
***Sword Global India (P.) Ltd. v Asst. CIT[2015]60 Taxmann.com 73/234 Taxman 187(MadrasHC)***

**1263.** The Court allowed Revenue's appeal and denied under Section 10B benefit to assessee engaged in manufacture of handicrafts. It accepted Revenue's stand that since assessee commenced business long ago in 1950, the vital requirement of Sec. 10B of allowing deduction for 10 years period from the date of commencing production, was not met and rejected assessee's stand that irrespective of the fact that the production was commenced much earlier, it must be treated as entitled to the benefit u/s. 10B with reference to the date on which it became a 100% EOU (i.e. in June, 2007). It held that merely getting the status of a 100% EOU would not result in a change in the date of beginning of production by the said unit.
***M/s Windlass Steel Craft. - TS-108-HC-2018(UTTARAKHAND HC) - Income Tax Appeal No. 2 of 2016 dated 22nd February, 2018***

**1264.** The Tribunal held that as per sec. 10A deductions contemplated therein is qua eligible undertaking to assessee standing on its own and without reference to other eligible or non-eligible units or undertakings of assessee, benefit of deduction is given by Act to individual undertaking.Aggregate of incomes under other heads and provisions for set off and carry forward contained in ss. 70, 72 and 74 would be premature for application. Deductions u/s. 10A therefore would be prior to commencement of exercise to be undertaken under Chapter VI for arriving the total income of assessee from gross total income.
***DCIT vs Ausom Enterprise Ltd- (2018) 54 CCH 0088 AhdTrib- ITA No 1519, 1520/Ahd/2016 and ITA No 857/Ahd/2017 dated 15.10.2018***

**1265.** The Tribunal held that the assessee could not be denied deduction under section 10B of the Act as it was performing BPO services and had acquired approval from the Software Technology Parks of India which comes under the Ministry of Communication & Information Technology and was a competent authority.
***Quality BPO Services Pvt Ltd v ACIT – (2015) 45 CCH 0187 Ahd Trib***

**1266.** The assessee had derived income from 100% EOU (eligible for deduction u/s 10B) as well as from other non-eligible unit. The AO was of the view that availability of interest free funds of large amounts to assessee by directors / shareholders was an arrangement to show more than ordinary profit by assessee so as to enable it to claim deduction on larger profits u/s 10B. Accordingly, he computed notional cost towards the interest on such funds in terms of section 10B(7) r.w.s. 80IA(10) (which provides that where it appears to the AO that, owing to the close connection between the assessee carrying on the eligible business and any other person, or for any other reason, the course of business between them is so arranged that the 'business transacted between them' produces to the assessee more than the ordinary profits which might be expected to arise in such eligible business, the AO shall, in computing the profits and gains of such eligible business for the purposes of the deduction, take the amount of profits as may be reasonably deemed to have been derived therefrom). The Tribunal held that Revenue had

misdirected itself in law as well as on facts in artificially computing non-existent interest costs and thus denying deduction u/s 10B eligible to assessee. It held that the charging of interest or otherwise on funds provided by the Directors/shareholders to the assessee could not fall within the sweep of expression 'business transacted between them' as contemplated u/s 80IA(10). It held that even withdrawal of interest free funds immediately on the completion of eligible period for availing benefit u/s 10B could not be regarded as overwhelming reason for the purposes of grave allegation of arrangement contemplated u/s 80IA(10). Accordingly, the Tribunal deleted the notional cost added by the AO, thereby allowing assessee's claim for deduction u/s 80IA(10).

***Nabros Pharma Ltd vs Asst CIT and Addl CIT [2018] 54 CCH 0153 (Ahd Trib) I.T.A. Nos. 719 & 720/Ahd/2016 & I.T.A. Nos. 788 & 789/Ahd/2016 dated 01.11.2018***

**1267.** The Tribunal relying on CIT vs Motorola India Electronics (P) ltd (2014) 265 CTR 94 (Kar) held that interest income from deposits lying in EEFC account and interest income earned on inter-corporate loans out of funds of undertaking is considered as business income of assessee's undertaking and eligible for deduction u/s 10AA.

***DCIT vs Ausom Enterprise Ltd- (2018) 54 CCH 0088 AhdTrib- ITA No 1519, 1520/Ahd/2016 and ITA No 857/Ahd/2017 dated 15.10.2018***

**1268.** The Tribunal, relying on CBDT Circular No. 37/2016 issued in the context of Sec.40(a)(ia) held that increase in business profits as a result of disallowance u/s 40(a)(i) would be eligible for exemption under Section 10A. It rejected Revenue's stand that the CBDT circular could not extend to a disallowance under Sec.40(a)(i) and would only apply to Section 40(a)(i) disallowances and held that the reference to Section 40(a)(ia) was merely illustrative in nature and what holds good for disallowance u/s. 40(a)(ia) would equally apply in principle to disallowances u/s. 40(a)(i) as well.

***DCIT vs Ascendum Solutions India Pvt Ltd [TS-442-ITAT-2017(Ahd)]- I.T.A. No. 429/ Ahd /14 dated 25.10.2017***

**1269.** The Tribunal held that the AO was incorrect in applying the provisions of section 10AA(9) read with Section 80IA(10) in the case of the assessee, alleging that the assessee had earned extra-ordinary profits by comparing the profits with the profits earned by other companies in the similar business since the NP / GP ratios of other entities were not conclusive evidence of extra-ordinary profits earned by the assessee, especially when the data relied on by the AO in arriving at such conclusions was not provided to the assessee for cross verification. It held that the question of estimating the profit on the basis of comparable cases could only be relied on when the book results of the assessee were not capable of independent verification. It further held that the assessee had not arranged its affairs with its sister concern leading to higher profits, since there was nothing brought on record to prove the same. Accordingly, it deleted the addition made by the AO.

***ITO v Pramukh International – (2016) 47 CCH 0653 (Ahd Trib) - ITA No. 68/Ahd/2011***

**1270.** The Tribunal held that amount eligible for deduction u/s 10B had to be worked out only after reducing (i) shortage & Loss on Foreign Exchange Fluctuation and (ii) Ocean Freight in case of CIF Export Sales (which were already reduced from export turnover by the AO) from Total

turnover also, in view of the judgment in the case of Tata Elxsi Ltd. [349 ITR 98 (Kar)] wherein it was held that the amounts reduced from export turnover shall be reduced from total turnover also because total turnover was sum total of Export Turnover and domestic turnover and therefore, if an amount was reduced from export turnover, then total turnover also gets reduced by the same amount automatically.

***Deccan Mining Syndicate Pvt Ltd. vs Dy. CIT [2018] 53 CCH 0466 (Bang Trib) - ITA NO. 1261 (BANG) 2016 DATED AUGUST 21, 2018***

**1271.** The Tribunal allowed the assessee, (a SEZ unit engaged in research and development of drugs) deduction under Sec. 10AA and rejected Revenue's cryptic reasoning whereby the deduction was denied on the ground that assessee-company had neither provided any service nor produced/manufactured any article or thing. It noted that the assessee had entered into a development and commercialization agreement with Mylan Ltd. (A US based company) and provided R&D services and had made development on platform technologies and had also submitted annual performance report as required under the SEZ Act and therefore held that that the assessee company had in fact rendered services. Vis-à-vis the Revenue's contention that the assessee had acquired platform technology from its parent company, the Tribunal noted that this platform was never used by the assessee earlier in its business and therefore held that condition laid down in Sec. 10AA(4)(iii) (i.e. SEZ units should not be formed by splitting up or reconstruction of the existing business or should not be formed by transfer to a new business of Plant & Machinery previously used for any purpose) was not violated.

***Bicon Research Ltd – v Add CIT - TS-601-ITAT-2017(Bang) - ITA Nos.1229 & 1329/Bang/2016 dated 18/12/2017***

**1272.** Where the assessee had only one undertaking (STPI Unit) engaged in business of export of software and it earned interest income from fixed deposits with Banks made out of export realization and advances received in normal course of its business, the Tribunal relying on the decision of Hewlett Packard Global Soft Ltd. (2017) 87 taxman.com 182 (Kar) (FA) held that all profits and gains of 100% EOU including incidental income by way of interest on bank deposits would be entitled to 100% deduction / exemption u/s.10A / 10B.

***TOSHIBA SOFTWARE (INDIA) PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0170 BangTrib - ITA No. 1717/Bang/2017 dated Mar 2, 2018***

**1273.** While computing deduction u/s.10A of the Act, the AO had deducted the telecommunication and insurance expenses only from export turnover and not from the total turnover.The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order accepting deduction of telecommunication and insurance expenses from export turnover and total turnover in respect of deduction u/s. 10A in view of the jurisdictional HC decision of Tata Elxsi which was approved by the Apex Court in the case of CIT v HCL Technologies Ltd. (404 ITR 719).

***ACIT vs EIT Services India Pvt. Ltd v ACIT EIT Services India Pvt. Ltd. (formerly known as Hewlett Packard Global Soft Pvt. Ltd. [TS-612-ITAT-2018(Bang)-TP] IT(TP) A No.163/Bang/2012 dated 28.06.2018***

**1274.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing deduction u/s 10A(1) to assessee-individual, though she had filed return after the due date mentioned in section

139(1), holding that the proviso below section 10A(1A) which mandates return filing within the said due date was not applicable to assessee's unit located in STPI as a 100% EOU claiming deduction u/s 10A(1) as against 10A(1A). It noted assessee's reference to CBDT Circular No. 3/2006 dated 27.02.2006 which provides mandatory filing of return for units in SEZs which are claiming deduction u/s 10(1A) [and not section 10A(1)]. It held that, on combined reading of section 10A(1), section 10A(1A) and proviso therein along with the CBDT Circular 3/2006, it was clear that requirement to file return before due date was applicable only to those undertakings which are set up in SEZ.

***ITO v Renuka Ramchandani [TS-524-ITAT-2018(Bang)] - ITA No. 109/Bang/2017 & C.O. No. 79/Bang/2017 dated 03.08.2018***

**1275.** The Tribunal extended benefit under section 10B of the Act to the assessee engaged in providing contract research services in the field of molecular biology and synthetic chemistry to non-resident customers. Rejecting the Revenue's contention that the assessee was a pure research company and therefore could not be said to be engaged in manufacturing, it held that the end product of the activities carried on by the assessee were either research documents and that just because these research documents were intermediary, to be used in the later stages of development by the customers, the assessee was not disentitled to benefit under section 10B. It concluded that export of research services amounted to export of articles and things produced by the assesse.

***DCIT v Syngene International Limited (ITA No 1106 & 1107 / Bang / 2012) – TS-571-ITAT-2015 (Bang)***

**1276.** The Tribunal held that if an item of expenditure (expenditure incurred in foreign currency) is excluded from the export turnover, the same should also be reduced from the total turnover to maintain parity between numerator and denominator while calculating deduction u/s 10A.

***DCIT vs. CISCO Systems (India) Pvt. Ltd (2016) 47 CCH 0464 (Bang Trib) - IT.(T.P) A No. 1447/Bang/2013***

**1277.** The Tribunal held that the claim of deduction under 10A should be allowed from year of commencement of manufacture and not from year of incorporation. It held that the benefit of deduction was available from profits and gains derived by undertaking from export of articles or things or computer software for period of ten consecutive assessment years beginning with assessment year relevant to previous year in which undertaking began to manufacture or produce such articles or things or computer software and not from the date of incorporation. Accordingly, it allowed assessee'c claim.

***ASPIRE SYSTEMS (I) P. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0327 ChenTrib - I.T.A. No. 2758/Mds/2016 dated Feb 1, 2018***

**1278.** The Tribunal, relying on the decision of the Madras High Court in Elgi Ultra Industries Limited [TS-658-HC-2012(MAD)] granted the assessee exemption under Section 10A of the Act with respect to software exported by assessee. It rejected Revenue's stand that assessee was not the manufacturer / developer of the software and that it merely exported the software that was purchased from a third party. The Tribunal noted that the assessee engaged a third party for coding or writing program under its instruction, control and supervision of and accepted

the assessee's stand that the mere fact that it outsourced the development of software, would not dis-entitle assessee from claiming Section 10A exemption. It held that the software was developed under the direct supervision of the assessee by investing its own funds and therefore, it could be concluded that the assessee itself was developing the software.
***DCIT vs. Mahati Infotech Pvt. Ltd - TS-188-ITAT-2017(CHNY) - /ITA No. 1943 & 1944/Mds/2016 dated 31.01.2017***

**1279.** The Tribunal held that processing data would amount to providing IT enabled services and therefore allowed the assessee exemption under section 10A of the Act. It noted that CBDT Circular dated September 26, 2000 classified back office operations and data processing as IT enabled services.
***CRISIL Ltd v DCIT – TS-27-ITAT-2016(CHNY)***

**1280.** The Tribunal held that profits derived from export of articles alone are to be considered for claiming deduction under section 10B and not miscellaneous receipts such as sale of scrap.
***C Products Ltd v ACIT - [2016] 68 taxmann.com 282 (Chennai-Trib)***

**1281.** The Tribunal held that words 'pendant' and 'medallion' have same meaning and usage in common parlance and, therefore, merely because product manufactured by assessee was described as medallion, it could not be said that there was any violation of approval granted by Development Commissioner, Special Economic Zone for manufacturing gold pendants and the assessee could not be denied the benefit under section 10AA of the Act.
***Jewels Magnum v ACIT - [2016] 68 taxmann.com 186 (Chennai-Trib)***

**1282.** In the case of the assessee-company which had been claiming deduction u/s 10B/ 10A with respect to its SEZ unit till AY 2011-12 (being the last year for claiming the said deduction on account of sunset clause) and u/s 10AA from AY 2011-12 (being the year from which the EOU Unit was set-up) and the AO had disallowed the assessee's claim for deduction u/s 10AA for the present year i.e. AY 2013-14 on the ground that there is some kind of splitting up or reconstruction of the old business in terms of section 10AA(4)(ii), the Tribunal held that once the claim of deduction u/s 10AA has been accepted in the first year of the operations and also in the second year, then in the third year the same could be withdrawn by examining the factors which were required to be seen in the first year of the claim. Accordingly, on this ground alone, the AO could not deny the claim of deduction u/s 10AA in the impugned year. Further, on merits also it held that the assessee was entitled for claim of deduction u/s 10AA after noting that there was no iota of any material to show that additions to fixed assets had been by way of transfer from EOU units and that it was not a case where old employees of EOU unit had been entirely shifted to SEZ unit (which seemed to be allegation of the AO).
***MACQUARIE GLOBAL SERVICES PVT. LTD. v DCIT – (2018) 62 ITR (Trib) 666 (Del Trib) – ITA No. 6794/Del/2017 dated 23.01.2018***

**1283.** Where the AO disallowed the assessee's claim of deduction under Section 10B but the CIT(A) allowed the assessee' alternate claim of deduction under Section 10A and directed the AO to grant assessee deduction, the Tribunal, noting that the assessee had not given any submission or documents or any revised computation of income claiming alternate deduction u/s 10A in

support of its claim that why deduction if not allowed u/s 10B might be given u/s 10A, held that the CIT(A) wrongly allowed alternate claim of deduction u/s 10A by totally ignoring intention of legislature to create different sections i.e. 10A and 10B for claim of different deductions and further ignoring fact that conditions for claim of deduction under these two sections were distinguishable. It held that the CIT(A) failed to provide any justification for allowing the claim and had ignored objections raised by AO in the remand report which was contrary to provisions of law. Accordingly, it set aside the order of the CIT(A) and remanded the matter to the AO for fresh adjudication on claim under Section 10A and directed the assessee to furnish relevant documents and details.

***INCOME TAX OFFICER & ANR. vs. VIKAS SETHI & ANR. - (2018) 52 CCH 0078 DelTrib - ITA Nos. 6410/DEL/2015 dated Feb 5, 2018***

**1284.** The Tribunal set aside the order of CIT(A) & AO and directed direct the AO to grant deduction u/s 10B to the assessee, 100% EOU, which was denied by the AO *inter alia* on the ground that the assessee undertaking was formed as result of reconstruction of an existing undertaking and transfer of previously used plant and machinery since the assessee had commenced its business by purchasing machinery and also taking some machinery on lease from another company 'USI'. It held that the assessee was able to satisfy conditions of section 10B, noting that —

- the assessee had filed site plan to show that it was independent unit different from USI and nature of business of assessee and USI were totally different
- the assessee had produced sufficient evidence to support its claim that assessee undertaking was not formed as result of reconstruction of existing undertaking
- the assessee also proved that assessee undertaking was not formed as result of transfer of previously used plant and machinery since very negligible amount was spent for repair on plant & machinery and USI had purchased new machinery for leasing them to the assessee

Further, the Tribunal held that the lease of plant and machinery could not be considered as transfer of capital assets and that merely because leased plant and machinery were kept by USI sometime before lease, would not prove that they were used by USI and accordingly, the claim of assessee was denied merely on presumptions.

***INDIAN ARMOUR SYSTEMS PVT. LTD. & ANR. v ITO – (2018) 52 CCH 86 (Del Trib) – ITA Nos. 808/Del/2014, 5647/Del/2014 dated 29.01.2018***

**1285.** The Tribunal allowed the assessee benefit u/s. 10A for AY 2010-11, being the last year of the 10-year tax holiday period. It noted that the assessee (incorporated in AY 2000-01) had issued token invoice in the same year for trial verification, but claimed relief u/s. 10A from AY 2001-02 onwards (i.e. the year when production for global market was commenced) and therefore rejected Revenue's stand that the year in which assessee first issued invoice should be considered as the year of commencement of manufacture or production and that the assessee was eligible for exemption only upto AY 2009-10. It held that when the assessee company itself had not claimed exemption for AY 2000-01, the said year could not be considered as the first year of deduction merely on the basis of token invoice issued for trial verification of its cost.

***North Shore Technologies v ITO - TS-593-ITAT-2017(DEL) – ITA No.5554/Del./2014 dated 07.12.2017***

Go to Index

**1286.** The Tribunal held that the intention of legislature in Section 10B was to provide benefit of deduction to enterprises which are not simply engaged in manufacture or produce any article or thing, but even to those assesses whose end product is any customized electronics data. Therefore, it held that the benefit of deduction u/s 10B of the Act, was also available on rendering of any of the services as notified by the Board like the item (ii) in the notification (supra) wherein even call centers, animation, etc. which are brought in the sweep of any product or services stated in clause (b) of item (i) Explanation 2 to Section 10B". Accordingly, it held that assesse's whose end product was customized electronics data would also be entitled for exemption u/s. 10A.

***ITO v WNS Mortgage Service P Ltd – (2017) 50 CCH 0056 Del Trib - ITA No. 2571/ Del/ 2012, 2716/Del/2012 dated 26.05.2017***

**1287.** The Tribunal allowed deduction under section 10AA to the assessee, a software company, on income generated by its SEZ units from export of data processing services to a Netherlands based company maintaining and operating Computer Reservation System facility for airlines. Noting that the assessee prepared and transmitted locally generated travel related data to accredited travel agents in India through its processing, it rejected the contention of the Revenue that the assessee was merely acting as a distributor for the Netherlands based company and was not doing any data processing work from its SEZ.

***DCIT v Inter Globe Technology Quotient Pvt Ltd – TS-503-ITAT-2016 (Del)***

**1288.** The Tribunal allowed deduction u/s 10B to the assessee in respect of duty drawback receipts forming part of EOU's profits and held that the manner of computing profits u/s 10B(4) did not require direct nexus with the business unlike section 80(IB). On a conjoint reading of section 10B(1) and 10B(4), it held that once an income formed part of business of eligible undertaking, there was no further mandate to exclude it from the quantum of profits eligible for deductions u/s 10B. Rejecting Revenue's reliance on Opera Clothings [TS-63-SC-2009] wherein it was held DEPB and duty drawback benefit was not available as a deduction for the purpose of computing relief u/s 80IB, it held that the condition for deduction u/s 80IB was that profits and gains were to be derived from eligible business and there was no such formula for computing the profit as provided in section 10B.

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

**1289.** Where the AO disallowed the assessee-company's claim u/s 10A with respect to internet charges opining that internet charges might be attributable to delivery of article/thing outside India, disallowable as communication charges in view of Clause (iv) of Explanation 2 to section 10A, the Tribunal relying on the decision in the case of Patni Telecom Solutions (P) Ltd., v ITO [35 taxmann.com 87 (HYD)] held that internet expenses could not be treated as 'communication charges' under Clause-4 of Explanation-2 to Section 10A. However, since the assessee had failed to furnish amount of internet charges or any expenditure under this head, the Tribuanl relying on the decision in the case of CIT v Gem Plus Jewellery India Ltd., [330 ITR 175 (Bom)] and ITO Vs. Sak Soft Ltd. [313 ITR (AT) 353 (Chen)] held that the communication charges etc., attributable to delivery of computer software outside India which were to be reduced from export

turnover should be reduced from total turnover as well, while computing deduction u/s 10A and accordingly, directed the AO to exclude same amount from Total Turnover as well and re-workout disallowance u/s 10A.
***GVK BIOSCIENCES PVT. LTD. & ANR. v DCIT – (2018) 52 CCH 25 (Hyd Trib) – ITA Nos. 705 to 707 & 738 to 740/Hyd/15 dated 10.01.2018***

**1290.** The Tribunal held that assessee, engaged in the software development, was entitled to deduction under section 10A in respect of amounts disallowed under section 40(a)(ia) relying on the coordinate bench ruling in case of Planet Online Pvt.Ltd. wherein section 10B relief was allowed after considering section 43B disallowance.
***Patni Telecom Solutions P. Ltd. [TS-634-ITAT-2016(HYD)] (ITA.No.1988/Hyd/2011)***

**1291.** The Tribunal allowed the claim of the assessee made u/s 10A and held that the AO/CIT(A) erred in denying the benefit on the alleged ground that the assessee did not carry out any manufacturing and was merely engaged in trading. On the basis of documentary evidence submitted by the assessee i.e. purchase & sale invoices, it observed that the assessee purchased unmounted, unpolished jewellery, mounted it in the semiprecious and precious stones in the silver and gold jewellery, polished it, made it marketable and then exported the same from its SEZ unit which amounted to manufacture.
***Kamal Kishore Gupta vs. Ass. CIT (2017) 50 CCH 0233 JaipurTrib (ITA No. 469/JP/2015 dated August 1, 2017)***

**1292.** The Tribunal allowed the assessee's claim for deduction u/s 10AA in respect of profit derived from unit located in SEZ, which was disallowed by the AO on the ground that assessee had set up new unit in SEZ by splitting/reconstruction of already existing unit. It followed the coordinate bench decision in assessee's own case for earlier year wherein similar issue u/s 10AA was considered and it was held that the assessee had established an independent unit in the SEZ to carry out manufacture and export of plain and studded golden and silver jewellery. In the earlier year, the Tribunal had also rejected the AO's argument of split-up / reconstruction holding that from the bills forming part of the paper book, it was clear that the assessee had purchased machinery of substantive value and therefore without any evidence it could not be said that the assessee had used old machinery to establish the new unit.
***Asst CIT vs Sun Jewel International P. Ltd [2018] 53 CCH 0464 (MumTrib)- ITA Nos. 5549 & 5971/Mum/2014 dated August 21 2018***

**1293.** Where the assessee earned interest income from fixed deposits which were kept as security to obtain bank guarantee and the AO had disallowed the assessee's claim of deduction vis a vis the said interest income, the Tribunal upheld the order of the CIT(A) and held that the disallowance of deduction u/s 10A vis a vis interest income was to be restricted to net interest income (after setting off interest cost incurred to earn the income) as opposed to total interest income as done by the AO.
***Balaji Export Co. vs. Assistant Commissioner of Income Tax [ITA NO.7547 6691 (2017) 51 CCH 0017] Mumbai Trib.***

**1294.** The Tribunal granted the assessee, a firm of advocates and solicitors, deduction under section

10B of the Act with respect to legal services rendered to overseas clients using legal electronic database. It rejected the stand of the Revenue that the rendering of legal services by the assessee to foreign clients through Internet / emails could not be termed as export of legal database from India and held that the requirements of Section 10B were fulfilled by the assessee and also observed that the CBDT recognized 'legal database' as one of the eligble information technology enabled services.

***ACIT v Majmudar & Co – TS-454-ITAT-2016 (Mum) - ITA No. 6604/Mum/2012, ITA Nos. 3063 to 3067/Mum/2012***

**1295.** The Tribunal held section 10A of the Act is a deduction provision and not an exemption provision after the amendment (wef AY 2001-02) and therefore losses from a section 10A unit was to be adjusted against the taxable profits of the other units after deduction under section 10A has been allowed in respect of each eligible unit.

***Tata Consultancy Services Ltd v ACIT – (2015) 45 CCH 0202 Mum Trib***

**1296.** The Tribunal held that where the assessee, engaged in manufacture and sale of life saving drugs, export of vaccines, biotech and pharma products, had received a sum from a US company for granting it exclusive marketing rights of its new products in North, Central and South America, it was not eligible to claim deduction under Section 10AA on these receipts since the receipts did not have a direct nexus with the sale of products and the pre-condition stipulated for claiming deduction under section 10AA was that the SEZ should have profits and gains derived from exports.

***Serum Institute of India Ltd. [TS-457-ITAT-2016(PUN)] ITA No. 914/PN/2013***

**1297.** The Tribunal held that the assessee was entitled to claim deduction under section 10B from the AY in which it commences business and not when the plant and machinery is first put to use. Additionally, it held that he assessee was entitled to set off losses of EOU units against the other business income if any assessed in the hands of the assessee and could be carried forward to succeeding years to be adjusted as per the provisions of the Act.

***Sandvik Asia Pvt Ltd v JCIT – (2015) 45 CCH 0311 Pune Trib***

**1298.** The Tribunal held that income enhanced pursuant to disallowance of expenditure under section 40(a)(ia) was to be considered as eligible profits of the undertaking while computing deduction under section 10B of the Act. It noted section 92C(4) which specifically provided that no deduction under section 10A / 10AA / 10B of the Act would be allowed on income enhanced pursuant to a transfer pricing adjustment and held that in the absence of such provision in section 10B, the benefit could not be denied.

It further held that deduction under section 10B was to be allowed before set off of brought forward losses and unabsorbed depreciation relating to earlier years.

***ACIT v Precision Camshafts Limited (ITA No.70/PN/2012)– TS-649-ITAT-2015 (Pun)***

*Chapter VIA*

Go to Index

» *Section 80G*

**1299.** The Apex court dismissed the SLP against High Court ruling that where on examination of special audit report, filed after passing of original assessment order, it was found that claims made by assessee towards placement fees paid to its subsidiaries, advertisement expenses and donations paid to a charitable trust under section 80G were prima facie bogus as assessee could not substantiate their genuineness by providing relevant documents and evidences, reassessment notice on basis of said report was justified.
***Multi Commodity Exchange of India Ltd. v Dy. CIT-[2019] 101 taxmann.com-13(SC) Special Leave to Apeal (C) No(s).320523 of 2018 -dated December 14, 2018***

**1300.** The Apex Court dismissed Department's SLP against order of the High Court wherein it was held that approval under section 80G(5)(vi) could not be denied on ground that educational activity was not included in objects of assessee-trust created for up-keep and maintenance of museum
***CIT v Maharaja Sawai Man Singh [2018] 94 taxmann.com 477 (SC) – SLP (CIVIL) DIARY NO. 13974 OF 2018 dated 04.05.2018***

**1301.** The Supreme Court dismissed Revenue's SLP in case of an assessee being a charitable organization which was granted certificate u/s 80G in 1995 and since then every year the certificate of renewal was granted. The Commissioner in the present year had come up with some fresh questions with regard to the salaries being paid to the doctors who was running the organization. The Court noting the above had held that where assessee was granted and renewed certificate of exemption under section 80G every year since its registration as charitable organization, and with the Tribunal being the last authority for fact finding categorically recording that there were no new circumstances, the CIT was not justified in denying renewal application during relevant assessment year.
***CIT vs Khairabad Eye Hospital- (2018) 98 taxmann.com 266 (SC)- SLP No 29389 of 2018 dated 20.09.2018***

**1302.** The court held that the assessee had fulfilled all the conditions laid down in clauses (i) to (v) of sub 80G and therefore was entitled to exemption under section 11. It observed that there was no violation of provisions contained in section 13, as there was no material change from facts of the earlier years in order to come to the conclusion that the assessee was not carrying out activity of charitable nature. It was clear that the word education utilized in the section stands independently on its own and to suggest that word might be confined either to rich or poor or any other strata of society was not acceptable.
***CIT v Dr. Virendra Swaroop Educational Foundation (2017) 98 CCH 0003 AllahabadHC***

**1303.** Assessee was a charitable trust registered under section 12A-it was also granted recognition under section 80G(5)(vi). During relevant year, assessee filed an application in form 80-G seeking renewal of recognition. Director (Exemption) rejected said application on ground that income of assessee- trust was not being used for charitable purpose. Tribunal confirmed order passed by Director (exemption).The Court held that whether applicability of income of assessee whether it is for charitable purpose or not are all questions of fact and necessarily can be gone

into by assessing authority only at time of assessing income of asessee consequently it held that, impugned order passed by authorities below holding that assessee was not eligible for renewal of approval under section 80G as its income was not used for charitable activities, was unjustified and deserved to be set aside.

***D.R. Ranka Charitable Trust v DIT BGL- [2019] 101 taxmann.com124(KarnatakaHC) ITA No.180 of 2010-dated November 20, 2018***

**1304.** Where the assesse had claimed deduction u/s 37 for amount paid to trust for the purpose of air conditioning of hall not owned by the assessee (but was in the name of the asssessee's founder) and on rejection of the said claim by the AO, alternatively, claimed deduction u/s 80G, the Court held that the AO could entertain the said alternative claim of the assesse though no revised return was filed for the same. However, on merits, noting that the trust had no control over the funds and acted merely as an agent of the assessee in carrying out the air-conditioning of the hall, the Court held that the activity was not applied for charitable purpose as per section 80G(2)(a)(iv) r.w.s. 80G(5). Further, observing that earlier claim was made of business expenditure which was later altered to one of a donation to the trust, it held that the purpose of the activity for which the fund is applied does not change with the change of the provision under which the claim for deduction is raised. It thus denied deduction u/s 80G.

***CIT v Malayala Manorama Co Ltd [TS-375-HC-2018(KER)] - ITA.No. 96 of 2010 dated May 30, 2018***

**1305.** The Assessee filed an application for grant of approval under Section 80G(5). The CIT(E) denied such approval holding that approximately 50% of donations was from trustees themselves and the assessee did not qualify for charitable acts. Tribunal allowed assessee's appeal on the ground that once registration under Section 12AA was in existence, approval under Section 80G of the Act could not be denied unless there was violation of rules specified in that behalf. The Court observed that the CIT(E) had acted on mere suspicion and conjectures to deny approval to assessee-society and that purchase of land and building by itself would not be sufficient to conclude that assessee was involved in non-charitable activities. Thus, the Court dismissed Revenue's appeal and granted approval to the assessee company under Section 80G(5)(vi) of the Act.

***CIT vs. VINOD KUMAR SOMANI CHARITABLE TRUST (HIGH COURT OF PUNJAB AND HARYANA) (ITA No. 47 of 2018) dated May 15, 2018 (102 CCH 0123)***

**1306.** The Court held that where assessee-trust had claimed approval under section 80G(5)(vi), since neither Commissioner (Exemption) had recorded any finding nor revenue had brought to fore, any breach of conditions enumerated in clauses (i) to (v) of section 80G(5) by assessee, approval under section 80G(5)(vi) could not be denied merely because donations made by assessee-trust were of insignificant amount.

***CIT, Exemption, Jaipur v Mata Padmavati Shyamdaya Charitable Trust-[2019] 101 taxmann.com 82(RajasthanHC)-D. B. ITA No. 165 of 2018-dated December 4, 2018***

**1307.** Where assessee-trust had claimed approval under section 80G(5)(vi), the Court held that since neither Commissioner (Exemption) had recorded any finding nor revenue had brought to fore, any breach of conditions enumerated in clauses (i) to (v) of section 80G(5) by assessee,

approval under section 80G(5)(vi) could not be denied merely because donations made by assessee-trust were of insignificant amount.

***CIT, Exemption, Jaipur v. Mata Padmawati Shyamdaya Charitable Trust-[2019] 101 taxmann.com 82 (RajasthanHC)-D.B. IT Appeal No. 165 F 2018 dated December 4, 2018***

**1308.** The Tribunal held that where donation had been paid by division which is demerged from other company and merged with assessee's company, there is no warrant to deny deduction in hands of assessee on the ground that the donation receipt was in the name of company whose division had demerged and now merged with the assessee company.

***DCIT vs Adani Gas Ltd- (2018) 54 CCH 0090 Ahd Trib- ITA No 775/Ahd/2014, 2346, 2797/Ahd/2015, 2775,2776/Ahd/2016 dated 17.10.2018***

**1309.** The Tribunal held that where the assessee had actually transferred money to donee trust through banking channel and its books recognized said amount on asset side till the relevant previous year wherein it decided to forgo its loan right by way of donating amount in question to donee in lieu of corresponding acceptance receipt, then deduction u/s.80G claimed by it could not be disallowed merely on the ground that the payment was not made during the year under review.

***GENERAL CAPITAL AND HOLDING COMPANY PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0097 AhdTrib - ITA No. 538/Ahd/2016 dated Feb 12, 2018***

**1310.** Certain payments were made by the assessee to a newspaper being run by a political party for insertion of some advertisements and the same was claimed as deduction u/s 80GGC. The AO disallowed the said claim on the ground that the payment had been made to a newspaper and not to a political party or electoral trust. The CIT (A) reversed the decision of the AO and allowed the claim of the assessee observing that the receipt issued by the newspaper had acknowledged donation received by Rashtrawadi Congress Party and therefore the payments fell under the purview of Section 80GGC. On further appeal, the Tribunal found that none of the receipts mentioned that the amount was received as a donation and accordingly the Tribunal remanded the matter back for verification. The Tribunal further held that where the assessee had failed to demonstrate that payments had been made for seeking legal opinion in connection with his business, the expenditure could not be allowed merely for the reason that payments had been made through cheques and TDS had been deducted on such payments.

***DCIT v. Smt. Anjali Hardikar – [2018] 92 taxmann.com 430 (Pune – Trib,) – IT Appeal No. 173 (PUN.) of 2016 dated April 6, 2018***

**1311.** The Tribunal held that where Commissioner (Exemption) denied section 80G approval for want of some documentary evidence to justify genuineness of activities of assessee-trust, since requisite for adjournment and compliance thereof were remained unattended, matter needed to be re-examined at end of Commissioner (Exemption) for proper evaluation of facts and genuineness of activities of trust. Accordingly, the matter was remanded.

***Shree Surat Jilla Leuva Patidar Samaj v. CIT, (Exemption), Ahmedabad- [2019] 102 taxmann.com 162 (Surat-Trib.)-IT Appeal No. 529 (SRT.) of 2018 dated December 19, 2018***

Go to Index

» *Section 80HHB*

**1312.** The Court reversed Tribunal's order and held that assessee's project in Abu Dhabi for 'refinery shut down' qualified as 'foreign project' entitled to deduction u/s 80HHB(2).The AO had denied benefit holding that assessee's work had not contributed to construction of any road, building, dam, bridge or other structure nor did it pertain to assembly or installation of any machinery or plant(as required under the said section),after going through agreements & drawings, etc. but it was part of general refinery shut down which was purely repair and maintenance work.The CIT(A) accepted assessee's contentions that the term "shut down" does not denote repairs and maintainance but is only a technical term, which is peculiar to the industry in question and held that assessee's project came within the scope of foreign project u/s 80HHB as assembly or installation of machinery or plant outside India. The Court affirmed the CIT(A)'s finding and allowed assessee's appeal.
***SPIC JEL ENGINEERING vs. ASSISTANT COMMISIONER OF INCOME TAX [TS-627-HC-2018(MAD)] Tax Case Appeal No. 1420 of 2008 dated 09.10.2018***

» *Section 80HHC*

**1313.** The assessee was engaged in the business of manufacture and sale of carpets to IKEA Trading (India) Ltd. as supporting manufacture and had claimed deduction u/s 80HHC which was denied by the AO on the ground that the assessee was receiving export incentives in the form of Duty Draw Back (DDB) and Duty Entitlement Pass Book (DEPB). The CIT (A) allowed the assessee's appeal holding that it was entitled to the deduction of export incentives u/s 80HHC at par with the exporter. The appeal of the Revenue was dismissed by the Tribunal and the High Court, thus an appeal was filed before the Supreme Court where the question for consideration was whether the assessee was entitled for deduction at par with the exporter who also received export incentives in the form of DDB and DEPB. The Apex Court referring the matter to a larger bench stated that the precedents, i.e. CIT v. Baby Marine Exports [2007] 290 ITR 323/160 Taxman 160 (SC) and CIT v. Sushil Kumar Gupta [2012] 25 taxmann.com 368/210 taxmann.com 257 (SC), referred to were not identical and could not be accepted as Explanation (baa) of section 80HHC specifically reduces deduction of 90 per cent of the amount referable to in section 28 (iiia) to (iiie). In the light of substantial question of law, the matter was sent for re-consideration to a larger bench.
***CIT v. Carpet India - [2018] 93 taxmann.com 434 (SC) - CIVIL APPEAL NOS. 4590 TO 4599 & 4601 TO 4603 of 2018 dated APRIL 27, 2018***

**1314.** The Apex Court reversed the order of the Punjab and Haryana High Court and held that 90 percent of the net interest / rent included in the profits of the business of an assessee and not the gross interest / rent, was to be deducted in terms of Explanation (baa) to Section 80HHC of the Act.
***Liberty Footwear Co v CIT – (2016) 67 taxmann.com 55 (SC)***

**1315.** The Apex Court held that sale proceeds generated from sale of scrap would not be included in total turnover for purpose of deduction under section 80HHC

Go to Index

***Jagraon Exports v CIT - TS-109-SC-2016***

**1316.** The Apex Court set aside the HC order and allowed Sec 80HHC deduction on service charges / incentive payments received by assessee (marine products exporter) from export houses for AY 1994-95 by relying on coordinate bench rulings in Baby Marine Exports and Dalbir Singh.
***Southern Sea Foods v JCIT - TS-167-SC-2016***

**1317.** The assessee had earned interest income from fixed deposits kept with bank in order to avail credit facility for export and claimed deduction of 90% of the interest earned on fixed deposits as per explanation (baa) to section (4C) of section 80HHC (which provides that export business profits would be computed after deducting 90% of interest included in such profits and such business profits would be then allowed as deduction u/s 80HHC). The AO disallowed the deduction contending that the interest income was not business income and was income from other sources. The CIT(A) and the Tribunal upheld the order of AO. The Court held that interest earned on deposits with bank which were kept for export business would be in the nature of business income and allowed the deduction under Section 80HHC as claimed by the assessee.
***LAXMINARAIN KHETAN vs. ITO (2017) 99 CCH 0137 Allahabad HC ITA No. 321 of 2007 dated 28/07/2017***

**1318.** Assessee filed writ petition challenging the constitutional validity of the retrospective amendment to sections 28 and 80HHC and the validity of CBDT Circular dated 17.1.2006 (which provides clarification with respect to retrospective applicability of the said amendment). The Court allowed the petition by relying on the judgement pronounced after admission of appeal by the Apex Court in the case of CIT vs. Avani Exports (2015) 58 taxmann.com 100 (SC) wherein the retrospectivity ascribed to the amendments was held to be unconstitutional.
***SARITA HANDA v UNION OF INDIA AND OTHERS – (2018) 400 ITR 0567 (Del HC) – W.P.(C) 3768, 3772/2006 & W.P.(C) 10783/2009 dated 10.01.2018***

**1319.** The Court, relying on the decision of the Madras High Court Madras Motors Ltd 257 ITR 60 (Mad) allowed the appeal of the assessee and held that for the purpose of computing the deduction under section 80HHC of the Act the term 'total turnover' used therein would mean the total turnover arising out of export of goods covered under the section and not on the total turnover of the entire business of the assessee. It held that the term total turnover of the business meant the business relating to the goods to which the section applied. As regards the attribution of indirect costs while computing the profits eligible for deduction under section 80HHC, it held that the term 'indirect costs' used in the section had to be read in conjunction with sub-section 3(c)(ii) of the said section which provides that the profits would be reduced by direct and indirect costs attributable to the export of trading goods and therefore held that the indirect costs had to have nexus with the export turnover of the assessee. Accordingly, it reversed the order of the Tribunal wherein the Tribunal had considered the indirect costs of the entire business of the assessee while computing the profits. Further, where the assesse had written back its liabilities but had not established the nexus between the write back of liabilities and the export income earned by it, the Court held that the Revenue was justified in

excluding the same while computing the income eligible for deduction under section 80HHC of the Act

***Rollatainers Ltd v CIT – (2017) 98 CCH 0062 Del HC – ITA 166 / 2014***

**1320.** The Court dismissed the appeal of the Revenue and held that the Assessee (Supporting Manufacturer) would be eligible for deduction u/s 80HHC(1A) irrespective of the Principal Exporter obtaining Trading House Certificate ("THC") from DGFT. The Court rejected the contention of the Revenue that as the Principal Exporter had not been able to obtain THC from DGFT which was an essential condition for obtaining deduction by the Assessee. It held that mere nongrant of the renewal of the THC by the DGFT to Principal Exporter would not disentitle the Assessee from claiming deduction especially when Principal Exporter had duly made the application and the same was pending at the end of DGT and the Principal Exporter had issued a certificate stating that he had not claimed any deduction u/s 80HHC on the Exports made out of the Purchases form the Assessee.

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

**1321.** The Court held that while determining the profits derived from export, for an assessee doing both export and domestic business, the proportion, which the export turnover bears to the total turnover, has to be applied to the business profits to elicit the exact amount eligible for exemption u/s 80HHC, wherein such business profits include those derived in the domestic market as well as that of high sea sales, the turnover of which has to be included in the total turnover. Thus, even in a case where the assessee suffered loss in export business but earned profit in domestic business, the turnover of export business is to be included in the total turnover and deduction u/s 80HHC is to be allowed applying the ratio of export turnover to total turnover to the business profits derived from domestic as well as export business.

***CIT v Jameela, J.S. Cashew Exporters – (2018) 401 ITR 391 (KeralaHC) – ITA Nos. 55 of 2007 & 89 of 2008 dated 10.01.2018***

**1322.** The Court reversed Tribunal's order and denied the assessee benefit under Section 80HHC on commission deducted by foreign agent from export proceeds and not brought to India in convertible foreign exchange. It noted that the assessee had included commission on sales (paid to an agency outside India) in its export turnover, but such commission was deducted in the sale invoice itself and only the balance consideration was brought into India as convertible foreign exchange and dismissed the Tribunal's finding that there was a live connection between the commission and export sale and that there was no difference in either paying commission directly in foreign exchange to the foreign agency or in bringing it back into the country and then paying it in foreign exchange. It held that since the condition under Section 80HHC(2)(a) of bringing in the sales proceeds in India in convertible foreign exchange was not met, the Court denied benefit on the commission portion of sales consideration not brought into India.

***Parry Agro Industries Ltd - TS-155-HC-2018(Kerala HC) - ITA.No. 1053 of 2009 dated 14.03.2018***

**1323.** The Court allowed assessee's claim for deduction u/s 80HHC which was denied by the AO in view of the retrospective amendment to section 80HHC(3) [which provides for insertion of new

pre-conditions retrospectively in 3rd and 4th proviso to section 80HHC(3) for being eligible to claim the said deduction]. It noted that the said amendment was nullified by the Gujarat High Court and the Apex Court had refused to interfere with the same. It held that once a statutory provision, original or amended, is declared ultra vires the Constitution, the legal fiction i.e. the nullified provision is said to have never existed, comes into play.

***N.SHEELA v ACIT & Anr. - [TS-409-HC-2018(Kerala HC)] - W.P (C) No.21301 of 2018 dated June 27, 2018***

**1324.** The assessee's business of manufacturing and export was eligible for deduction u/s 80HHC.The AO while computing profits from business for purpose of said deduction, excluded profit from machining charges on the ground that assessee was engaged in machining work, undertaking it as a job work (earning income by way of manufacturing products for other manufacturer/individuals using its own plant and machinery) and treated it to be income from other sources. However, the CIT(A) and Tribunal favoured the assessee holding that the assessee was not undertaking any exclusive business activity of doing machining jobs and included the said profit in the total income from eligible business activity. The Court concurred with the appellate authorities and held that the activity of machining done by the assessee, was when the machinery, which was used for manufacturing activities for export, was lying idle and thus, the assessee had used plant and machinery to get income which was to be considered as business only. Thus, it dismissed the Revenue's appeal.

***CIT v Rambal Ltd. (2018) 404 ITR 0307 (Madras HC) - T.C.(Appeal) No.284 of 2007 dated 10.04.2018***

**1325.** The assessee-company was engaged in the business of export of marine food products as supporting manufacturer. During the assessment year in question, the assessee claimed deduction under section 80HHC as well as the export turnover with regard to the goods exported as a supporting manufacturer. The Assessing Officer held that the assessee was not entitled to claim deduction with regard to the exports done as a supporting manufacturer.

The Court held that, the assessee, being a supporting manufacturer, had received the export incentives directly from the Government on the goods exported as per the orders received through the export house and the same had been assessed as income as per the provisions of section 28 of the Income Tax Act. The assessee had also submitted a disclaimer certificate from the export house before the Assessing Officer in terms of section 80HHC(4A). Thus, deduction claimed by the assessee as supporting manufacturer was allowable.

***Commissioner of Income-tax, Chennai v. Devi Marine Food Exports Ltd. [2017] 79 taxmann.com 347 (Madras), Tax Case (Appeal) No.355 of 2006 Dated July 14, 2015***

**1326.** The Court held that filing of an audit report issued by the chartered accountant was a mandatory requirement to claim deduction under section 80HHC (available on export profits) and noted that since the assessee did not file such audit report along with its return of income, it was not eligible for deduction and that the Tribunal was incorrect in allowing the impugned deduction merely on the basis of the computation of income. It rejected the contention of the assessee that where the audit report was not annexed to the return of income, the AO was under a legal

obligation to issue notice under section 139(5) to make good the deficiency and since no notice was served, the disallowance of deduction was in violation of the principles of natural justice.
***CIT v Kamaljeet Singh Aluwalia – TS-512-HC-2016 (Rajasthan HC) - Income Tax Appeal No.62/2000***

» *Section 80HHD*

**1327.** The Court upheld the order of Tribunal that interest income was not eligible for deduction under section 80HHD of the Act and miscellaneous income would also be excluded for the purpose of section 80HHD.
***Benaras Hotels Ltd. Vs. ACIT (2016) 97 CCH 0100 AllahabadHC (Income Tax Appeal Defective No. - 155 of 2008)***

**1328.** The Court upheld the order of the Tribunal and held that while computing 'eligible profit' for allowing deduction u/s 80HHD(1) available to companies running hotels, losses from ineligible units/hotels could not to be deducted. It rejected the Revenue's stand that the expressions 'business profits' and 'total receipts' used in Section 80HHD(3) [prescribing formula for computing 'eligible profits' - (Deduction = Business Profits x Eligible receipts / Total Receipts)], should take into account the gains/losses of ineligible entities as well. Observing that Section 80HHD is a 'beneficial provision', it held that full benefit of the provision was to be extended to an eligible assessee without there being an attempt to whittle down the same. It held that sub-section (3) which provides for the mechanism of computation of deduction was to be read along with sub-section (1) and on a joint reading it was evident that the formula should relate solely to the receipts/profits/income of the eligible unit alone and none other. It also relied on the decision of the Karnataka HC ruling in ITC Hotels Ltd [TS-5737-HC-2009(KARNATAKA)-O], wherein it was held that the deduction was to be granted qua eligible unit/units only.
***Adyar Gate Hotel Ltd – TS-191-HC-2017 (Mad) - TAX CASE (APPEAL) No.770 of 2007 dated 21.04.2017***

» *Section 80HHE*

**1329.** The Apex Court dismissed Revenue's SLP against Delhi HC judgement allowing Sec. 80HHE deduction to New Delhi Television Ltd. ('NDTV', assessee) wherein the High Court held that television news software exported by assessee outside India was 'customized electronic data' [as defined in clause (b) to Sec. 80HHE Explanation]. The Court held that since the expression 'any customized electronic data' was preceded by the disjunctive 'or' it clearly indicated that any customized electronic data would also be considered to be 'computer software' under the inclusive part of the definition and therefore held that the assessee was entitled to claim deduction under Section 80HHE.
***CIT v M/S NEW DELHI TELEVISION LTD - TS-151-SC-2018 - SPECIAL LEAVE PETITION (CIVIL) Diary No. 7356/2018 dated 28-03-2018***

Go to Index

**1330.** The Court allowed the assessee deduction under Section 80HHE (which provides for deduction in respect of profits from export of computer software) holding that television news software exported by assessee was within the definition of 'customized electronic data' occurring in clause (b) of the Explanation to Sec. 80HHE of the Act (defining computer software to mean any computer programme recorded on any disc, tape, perforated media or other information storage device and includes any such programme or any customized electronic data which is transmitted from India to a place outside India by any means). It noted that as per the agreement between the assessee and NTVI, it was agreed that assessee would be responsible for the production of the entire software (programming) for a 24-hour Indian news channel which would be supplied to NTVI who would in turn broadcast the said channel through STAR TV. The Court observed that the assessee was able to demonstrate that the television news software produced by it was indeed 'customized electronic data' which was exported from India and that the entire process of making the programmes was to meet the requirement of STAR TV. It held that in the definition of computer software the term 'any customized electronic data' is preceded by 'or' which clearly indicates that any customized electronic data would also be considered to be 'computer software' under the inclusive part of the definition and held that the expression 'any customized electronic data' was to be construed liberally. It rejected the Revenues contention that 'any customized electronic data' necessarily had to be a computer software.
***New Delhi Television Ltd-TS-365-HC-2017(DEL) ITA No. 40 of 2005 dated August 31, 2017***

**1331.** The Court dismissed the appeal of the Revenue and held that the programme produced by the Assessee (engaged in production of news software television programme) by collecting news by receiving input in audio and video footages, editing / proceesing the same and, thereafter, converting into machine signal fell within description of 'computer software' under clause (b) to Expln. to sec 80HHE (deduction in respect of profits from export of computer software) and the Assessee was eligible toclaim deduction u/s 80HHE in respect of the television news software produced and exported.
***CIT vs. NDTV (2017) 85 taxmann.com 3 (Del HC) (ITA No. 40/2005 dated August 31, 2017)***

» *Section 80-I*

**1332.** The Court held that where assessee dismantled old plant and used same at new industrial unit but old plant constituted less than 20 % of cost of new plant, deduction under section 80-I could not be denied.
***Nalco Chemicals India Ltd v CIT- [2016] 68 taxmann.com 236 (Calcutta)***

**1333.** The Court held that where in original assessment proceedings Assessing Officer allowed claim of assessee under section 80-I, reopening of assessment in absence of recording of reason that income chargeable to tax had escaped assessment was unjustified.
***CIT v. Elgi Tread (India)Ltd [2018] 96 taxman.com 254 (Mad.)- Tax Case (Appeal) Nos. 1313 to 1324, 1326 & 1327 of 2007 dated July 4, 2018***

Go to Index

**1334.** The Court held that where assessee itself failed to make claim for deduction under section 80-I in its return, same was not a mistake which was apparent from record thus, there was no scope for invoking provisions of section 154 so as to grant deduction under section 80-I
***Lakshmi Card Clothing Mfg. Co. (P.) Ltd. v. Dy.CIT [2018] 98 taxmann.com 445(Mad.)- Tax Case (Appeal) No. 944 of 2008 dated September 24, 2018***

» *Section 80-IA*

**1335.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that where assessee-company had development infrastructure facilities and allotted plots to 34 units in assessment year 2010-11 which was more than minimum requirement as per Industrial Park Scheme, 2008, assessee became eligible for benefit under section 80-IA from assessment year 2010-11 itself.
***CIT v. Devraj Infrastructures Ltd. [2018] 96 taxmann.com 329/257 Taxman 336(SC) SLP (Civil) Diary No. 19442 of 2018 dated July 6, 2018***

**1336.** The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had held that an airport is an infrastructure facility as contemplated in sub-section (2) of section 80-IA entitled to benefit of deduction as provided in sub-section (1), provided, it satisfies conditions specified in clauses (a), (b) and (c) of sub-section (4) thereof.
***DCIT v Cochin International Airport Ltd - [2018] 96 taxmann.com 470 (SC) - SLP (Civil) Diary No.(S). 22821 OF 2018 dated July 27, 2018***

**1337.** The Apex Court dismissed Revenue's SLP filed against the High Court order upholding Tribunal's order wherein it was held that Container Freight Station (CFS) run by assessee was eligible for deduction u/s 80-IA as an infrastructure facility.
***Pr.CIT vs JWC Logistic Park Pvt Ltd. [2018] 103 CCH 0273 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 38353/2018 dated 19.11.2018***

**1338.** The Apex Court dismissed Department's SLP against order of the Court wherein it was held thatwhere assessee-company had developed a road construction project and after completion transferred it for purpose of maintenance and operation to third party and received a payment for same, profit element would be relatable to infrastructure development activity of assessee and would qualify for deduction under section 80-IA.
***PCIT v NilaBauart Engineering Ltd. [2018] 95 taxmann.com 45 (SC) – SLP (CIVIL) DIARY NOS. 13945 OF 2018 dated 11.05.2018***

**1339.** The Apex Court dismissed Department's SLP against order of the Court wherein it was held that:

- if rent or interest is a receipt chargeable as profits and gains of business and chargeable to tax u/s 28, and if any quantum of rent or interest of assessee is allowable as an expense in accordance with sections 30 to 44D and is not to be included in profit of business of assessee as computed under head 'Profits and gains of business or profession', ninety per cent of such quantum of receipt of rent or interest will not be deducted under clause (a) of Explanation (baa) to section 80HHC.

- expenses provision written back will not form a part of income since it was written off deposit which was kept in separate account and is not an income eligible for section 80-IA deduction.
- an assessee is entitled to deduction u/s 80-IA in respect of interest on deposits and that deduction u/s 80-IA is allowable in respect of compensation received on machinery breakdown and miscellaneous income being incidental to profits and gains derived from eligible business u/s 80-IA.
- interest earned on short-term deposits of money kept apart for purpose of business has to be treated as income earned on business and cannot be treated as income from other sources and was eligible for section 80-IA deduction

***CIT v Chambal Fertilizers & Chemicals Ltd. [2018] 95 taxmann.com 314 (SC) – SLP (CIVIL) DIARY NO. 13731 OF 2018 dated 01.05.2018***

**1340.** The Apex Court dismissed the Department's SLP against order of the High Court wherein it was held that in terms of proviso to section 80-IA(8), AO has to explain clearly why he is rejecting profit shown by assessee from audited accounts of assessee.
***PCIT v Harpreet Kaur [2018] 94 taxmann.com 247 (SC) – SLP (C) DIARY NOS. 13931 AND 13681 OF 2018 dated 04.05.2018***

**1341.** The Apex Court dismissed Revenue's SLP against Madras HC ruling wherein it had allowed assessee's Sec. 80IA deduction claim on current year's profits for AY 2005-06 without setting off notionally carried forward unabsorbed depreciation or losses of earlier years before the first year of claim and that the initial AY for the purposes of Sec. 80IA could not be the year in which the undertaking commenced its operations, but the year in which assessee chose to claim the deduction u/s 80IA for the first time.
***Velayudhaswamy Spinning Mills P. Ltd. [TS-591-SC-2016] (SLP No.33475/2012)***

**1342.** Where the assessee engaged in business of manufacture of master batches and compounds had claimed deduction u/s 80-IA in respect of two undertakings without claiming depreciation which was rejected by the Assessing Officer who allowed deduction by reducing the eligible income by the amount of depreciation, the Apex Court upheld the order of the High Court which held that depreciation had to be reduced for computing the profits eligible for deduction under section 80-IA, as it was a complete code in itself. It held that if assessee's action of claiming section 80IA deduction without reducing depreciation was accepted, it would lead to inflation of profits linked incentives provided u/s 80IA which could notbe permitted.
***Plastiblends India Ltd vs Additional Commissioner of Income Tax [2017] 86 taxmann.com 137 (SC) [Civil Appeal No 238 and 528 to 551 of 2012, 12755, 12757, 12758, 12762, 12828 AND 12980 OF 2017 dated 09.10.2017***

**1343.** Where the claim of the assessee (engaged in bottling LPG into cylinder) u/s 80HH, 80I and 80-IA was disallowed by the Revenue on the ground that it was not an industrial undertaking as it was not engaged in production/manufacturing as there was no change in the chemical composition of the Gas, the Apex Court held that since the LPG obtained from the refinery underwent a complex technical process in the assessees' plants and was clearly distinguishable from the LPG bottled in cylinders and the process carried out by the assessee made LPG

suitable for domestic use by customers, it was an industrial undertaking eligible to deduction u/s 80HH, 80I and 80-IA. It held that the activity carried out by the assessee amounted to production.

***Hindustan Petroleum Corporation Ltd TS-314-SC-2017(CIVIL APPEAL NO. 9295 OF 2017 dated August 3, 2017)***

**1344.** Where High Court upheld Tribunal's order holding that Container Fright Station (CFS) run by assessee was eligible for deduction under section 80-IA as an infrastructure facility, SLP filed against decision of High Court was dismissed by the Apex Court.

***Pr. CIT, Central-1, Mumbai v. JWC Logistic Park (P.) Ltd – [2018] 100 taxmann.com 356(SC) – SLP(CIVIL) Diary No(s).38353 of 2018-dated November 19, 2018***

**1345.** Assessee was a government company engaged in the business of handling and transportation of containerized cargo whose operating activities were mainly carried out at its Inland Container Depots (ICDs). The assessee claimed deduction under Section 80-IA in respect of profit earned from the ICDs which was denied by the AO/CIT (A)/Tribunal. The Apex Court affirming the decision of the High Court decided in favour of the assessee and held that ICDs are Inland Ports subject to provisions of Section 80-IA and that deduction can be claimed for income earned out of these depots. It held that though 'inland ports' are not defined anywhere but the notification issued by the CBEC holds that the ICDs can be termed as Inland Ports.

***CIT v. Container Corporation of India – [2018] 93 taxamnn.com 31 (SC) – Civil Appeal No. 8900 of 2012 dated April 24, 2018***

**1346.** The assessee's claim for deduction u/s 80 IA(4F) r.w.s. 80 IA(5) and section 80IB(10) in respect of four projects was disallowed by the AO on the ground that development and construction work was commenced prior to 1.10.1998. The Tribunal had allowed the said deduction holding that, as in all projects work orders were issued subsequent to 1.10.1998, there was no reason to assume that development and construction of projects started prior to 1.10.1998. The Court held that even if either development or construction starts before the specified date, benefit under provisions would not be admissible and the assessee had undertaken levelling work so as to develop land to facilitate construction of building over it and, thus, development and construction of housing project had commenced with such levelling of earth. It noted that evidence proved that foundation laying ceremony of projects might have been performed on 30.9.1998 and actual construction might have started later on but levelling of earth in project started much earlier. Thus, it was held that, with levelling of earth, development and construction of project had commenced prior to 01.10.1998 and the assessee was not eligible for deduction u/s 80IA(4F) r.w.s. 80IA(5) and 80IB(10).

***CIT & ORS v SHIPRA ESTATE LTD. & ORS. – (2018) 162 DTR 0332 (AllahabadHC) – ITA No. 284 of 2010, 270 of 2010, 274 of 2010 dated 02.01.2018***

**1347.** The Court held that section 80IA(7) of the Act, which is made applicable to section 80IB vide sub- section (13) provides that for claiming the benefit under the said sections, an audit report was to be filed during the course of assessment proceedings. The Court observed that the said compliance was a directory requirement and the assessee, who filed the audit report prior to the conclusion of the search proceedings could not be denied benefit under section 80IB

merely because it did not file the same along with the its return of income. Further, the Court held that even if a deduction was disallowed under section 40A(3) of the Act, the assessee being an undertaking eligible to deduction under section 80IB would be entitled to the benefit of such amount disallowed.

***Pr CIT v Surya Merchants Ltd – (2016) 96 CCH 0019 (AllahabadHC)***

**1348.** The Court allowed the assessee's claim for deduction u/s 80-IA in respect of interest earned on fixed deposits and compensation received on account of non-supply of spare parts, following its earlier decision in the case of CIT vs. Jagdishprasad M. Joshi [318 ITR 420 (Bom)] wherein it was held that income earned on the fixed deposit from the bank had to be extended deductions u/s 80IA since as per the said section, deduction is allowable with respect to profits and gains derived from 'any business' of an industrial undertakings. It held that same reasoning would apply for the compensation received for non supply of spare parts also.

***TEMA EXCHANGERS MANUFACTURES PVT. LTD. vs. ACIT (2018) 102 CCH 0179 BombayHC – ITA No. 415 of 2004 dated July 18, 2018***

**1349.** Assessee, engaged in business of running Container yard, Container Freight Station (CFS), Bonded Warehouse etc stated in its audit report that assessee's inland container depot was "inland port" and was one of the infrastructure facility for purpose of S.80IA and thus claimed that it was eligible for tax holiday u/s 80IA (4)(i). The AO rejected assessee's claim whereas the CIT (A) held that CFS ran by assessee was eligible for deduction u/s 80IA as infrastructure facility. The Tribunal upheld CIT (A)'s order. The Court concurring with CIT (A) and Tribunal's order, relying on M/s. All Cargo Global Logistics Ltd. vs. DCIT and Continental Warehousing Corporation (Nhava Sheva) Vs. ACIT wherein it was held that considering the facilities extended for loading, unloading, storage and warehousing of the goods, CFS is an infrastructure facility within the precints of the port. Thus, it dismissed the Revenue's appeal.

***PCIT v JWC Logistics Park Pvt. Ltd. (2018) 404 ITR 0310 (Bom) - INCOME TAX APPEAL NO. 613 & 618 OF 2015 dated 11.04.18***

**1350.** The Court allowed assessee's appeal against the Tribunal's order and held that the provisions of section 80IA(9A) introduced by the Finance No.2 Act, 1998, which inter alia provided that deduction u/s 80IA will be available only on profits and gains of units after deducting amount availed of as deduction u/s 80HHC (if any), was explicitly prospective w.e.f. 1st April, 1999 and could not be applied for AY 1997-98. It held that the provision was neither declaratory or clarificatory nor it was in nature of explanation and Supreme Court in DCIT vs. Core Health Ltd [298 ITR 194 (SC)] has held that when provision was introduced with effect from a particular date, then it would not have retrospective effect unless it was expressly stated to be so. Accordingly, the Court held that in absence of specific prohibition, the assessee was eligible for taking benefit of deduction u/s 80HHC as well as u/s 80IA on the same income.

***INDIAN GUM INDUSTRIES LTD. vs. JCIT (2018) 407 ITR 0261 (Bom) – ITA No. 802 OF 2002 dated 13th July, 2018***

**1351.** The Court held that the assessee was entitled to deduction u/s 80-IA (Deduction in respect of profits and gains from industrial undertakings or enterprises engaged in infrastructure development etc) without setting off losses/unabsorbed depreciation pertaining to windmill,

which were set off in earlier year against other business income of assessee. Once losses and other deductions were set off against income of assessee in previous year, it should not be re-opened again, for purpose of computation of current year's income u/s 80-I and 80-IA.
***CIT vs Bannari Amman Sugars Ltd - (2016) 96 CCH 0033 (ChennaiHC)***
***CIT vs Prem Textile International - (2016) 96 CCH 0028 (Chennai)***

**1352.** Assessee filed return of income claiming deduction u/s 80IA(2A).During assessment proceeding, AO noted that profits and gains from revenue earned from sharing of infrastructure facilities in form of cell-sites and fibre cable with other companies or undertakings were engaged in 'telecommunication services'.That would amount to leasing of said assets to third parties and income from leasing would not be income derived from 'telecommunication services'.AO also found that assessee was not engaged in business of leasing of assets.AO completed assessment after denying benefit of deduction u/s 80IA(2A) to assessee.CIT(A) held that revenues received from sharing of cell-sites and cables was income directly and inextricably linked with business income of undertaking engaged in providing telecommunication services.Such amount would be income generated from telecommunication services.The Tribunal confirmed findings of CIT(A) and thereby dismissed Revenue's appeal. It held that finding of AO that income from sharing fibre cables and cell-sites was income by way of leasing and hence not includable in revenue earned for computing profits from 'telecommunication service' was farfetched and misconceived.Assets i.e., cell-sites and fibre cables were not transferred.Third parties wanting to avail spare capacity were only allowed usage of said facilities for consideration.Payments so made by third parties were to avail and use telecom infrastructure.It would qualify as payments received for availing 'telecommunication services' as was case when a mobile phone user paid assessee for availing mobile telecom infrastructure.Income from 'telecommunication services' could be earned in different ways and manner.Assessee's income from third parties who availed telecommunication services, in form of payments received by assessee from third persons for using fibre cables and cell towers network qualified for deduction u/s 80IA.This income or receipts had to be treated as income earned by undertaking from 'telecommunication services'.Assessee had also paid bank charges as cheques issued by some of customers were dishonoured.Cheque bounce charges were also levied to customers but entire amount could not be recovered.AO held that late payment charges or cheque bouncing charges was in nature of penalty and was not income derived from telecommunication business.Expression "income derived from" was missing and was not mandate of legislature in sub-section (2A) to s. 80IA. The Court held that finding of Tribunal that income from sharing of fibre cables and cell-sites qualify for deduction u/s 80IA(2A).
***Pr. CIT vs. VODAFONE MOBILE SERVICES LTD (2019) 103 CCH 0291 DelHC INCOME TAX APPEAL Nos. 782/2017 & 784/2017 dated 03.12.2018***

**1353.** The Court upheld Tribunal's order allowing Sec. 80-IA benefit to assessee-company [which was initially a small scale industrial undertaking ('SSI'), subsequently converted to medium scale undertaking]. The Court held that eligibility condition with respect to investment in plant and machinery ('P&M') was to be fulfilled only in initial AY (i.e AY 1997-98) and not in all ten consecutive AYs eligible for deduction. The Court rejected Revenue's stand that since assessee's investment in P&M exceeded the prescribed limit in relevant AYs, it was no more SSI unit to qualify for Sec. 80-IA deduction. It also further rejected Revenue's stand that the

words ‘previous year’ occurring in Sec. 80-IA(12)(f) in the definition of SSI refers to the previous year of each of the AYs spoken of in Sec. 80-IA(6) by holding that the purpose of introducing Sec. 80-IA was to encourage industrial expansion and to incentivise investment in industries and if the eligibility for deduction under Section 80-IA were to be linked to such changing criteria beyond the initial AY, then the section itself would become non-workable. The Court further remarked that it is not expected that the investment for P&M in the initial AYs would remain static for the next ten years. It cannot be expected that if an industry is successful it would not expand.

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

**1354.** The Court dismissed the Department’s appeal and upheld the Tribunals order wherein the Tribunal had allowed BSNL’s tax holiday claim u/s 80IA(2A) in respect of other income ( income of license fee reimbursement, provisions written back, etc)earned by BSNL, which was denied by the AO on the ground that these receipts were not derived from the eligible business, by concluding that the condition of first degree nexus / 'derived from' (present in subsections 1 and 2 of the impugned section) was not applicable for deduction to telecom business covered by sub- section 2A. The Court stated that section 80-IA (2A) treats a telecommunication service provider as a separate species warranting a separate treatment as is evident from the non-obstante clause with which it begins. It further clarified that even if the undertaking had other eligible business qualifying for deduction u/s 80IA(1), it would not disentitle its claim u/s 80IA(2A).

***Bharat Sanchar Nigam Limited [TS-420-HC-2016(DEL)] ITA Nos. 476/2016, 477/2016, 478/2016, 479/2016, 481/2016, 482/2016, 483/2016 &490/2016***

**1355.** The Court allowed the assessee’s petition against the DIPP’s order withdrawing the approval granted under Industrial Park Scheme, 2002 and under section 80-IA only on the ground that the built up area of property in question was less than area declared by assessee at the time of making application for grant of the said approval. The Court quashed the said order noting that there was no stipulation as to minimum constructed area of industrial park for availing benefit of the said Scheme.

***Finest Promoters (P.) Ltd. v DIPP & Others [2018] 96 taxmann.com 352 (Delhi) - W.P. (C) NO. 3162 OF 2014 dated July 12, 2018***

**1356.** The Court upheld the Tribunal’s order wherein it was held that where assessee entered into an agreement for road development project with Gujarat State Road Development Corporation ('GSRDC'), in view of fact that GSRDC was a Government agency as defined under section 2(e) of Gujarat Infrastructure Development Act, 1999 and, moreover, it was totally controlled by State Government, claim for deduction under sec. 80-IA could not be rejected on ground that assessee failed to fulfill conditions of clause (b) of sec. 80-IA (4).(which requires the assessee to have entered into agreement with the Cent. Govt, State Govt, local authority or any other statutory authority to claim the deduction.

***CIT v Ranjit Projects (P.) Ltd. [2018] 94 taxmann.com 320 (Gujarat) – R/TAX APPEAL NOS. 426,427 433 OF 2018 dated 02.05.2018***

Go to Index

**1357.** The Court, relying on the decision in the case of Ganesh Housing Corporation Ltd [TS-5024-HC-2012(Guj)-O] (wherein it was held that once the minimum number of units, namely 30 have been located, the Park becomes eligible to opt for the benefit under Sec. 80IA), held that the assessee-company (involved in setting up an industrial park) would be entitled to deduction u/s 80-IA once the minimum number of units in accordance with the Industrial Park Scheme, 2008 i.e. 30 units were located in the Industrial Park (i.e. from AY 2010-11 onwards). Noting that Revenue granted deduction to assessee only in AY 2011-12 as the CBDT (vide notification dated December 26, 2016) notified petitioner's undertaking as eligible for the benefit of deduction u/s. 80IA(4)(iii) during that year, the Court held that since the condition under Section 80-IA was fulfilled in AY 2010-11, there was no merit in delaying the grant of deduction on the ground that the CBDT had notified the assessee as eligible in a later year.
***Devraj Infrastructure Ltd vs Chairman/Member (Industrial Park)-TS-503-HC-2017(GUJ)-SCA No. 7098 of 2017 dated 03.11.2017***

**1358.** The Court upheld Tribunal's order allowing section 80IA(4) deduction to the assessee company (entrusted with the road project by Government on BOT basis), despite assessee assigning the task of maintenance and toll collection of the road to third party ('RTIL') after completion of construction work. Referring to the provisions of section 80IA(4), it held that the provision itself envisages that in a given project the developer and the person who maintains and operates the facility may be different. Merely because the person maintaining and operating the infrastructure facility is different from the one who developed it, would not deprive the developer the deduction under the said section on the income arising out of such development. Accordingly, it dismissed Revenue's appeal and held that the proviso to Section 80-IA(4) would not deprive the developer of the benefit of the deduction even after the facility is transferred for the purpose of maintenance and operation but would merely split the profit element into one derived from the development of the infrastructure and that derived from the activity of maintenance and operation thereof.
***Pr.CIT vs Nila Baurat Engineering Ltd – TS-479-HC-2017(Gujarat) Tax appeal No. 807 of 2017 dated 11.10.2017***

**1359.** The Court allowed the claim of assessee (engaged in business of electricity distribution) for deduction u/s 80-IA with respect to the following income/ receipts, considering them to be related to business activities:-

- rebate from power generators granted from time to time as determined by the State Govt. having regard to the cost of collection of the electricity tax incurred by licensee/ assessee
- penalty recovered by assessee in terms of contract due to delay caused by supplier/contractors in execution of work contract
- income derived from deposit parked in bank for opening of LC to Power Grid Corporation Ltd. for business purpose

It denied deduction u/s 80-IA with respect to the following income/ receipts, considering them not to be related to business activities:-

- difference between WDV and books value of released assets, being not derived by an industrial undertaking
- rental income being independent income having no direct nexus towards reimbursement of manufacturing expenses
- commission received by assessee for electricity duty collected from consumers of electricity

Go to Index

Further, since the assessee had not placed any material on record towards amounts recovered from employees on account of certain expenses incurred by assessee, the Court upheld disallowance by lower authority of claim for deduction u/s while computing deduction u/s 80-IA.
***Hubli Electricity Supply Co. v DCIT – (2018) 92 taxmann.com 31 (KarnatakaHC) – ITA Nos. 100025-100028 of 2017 dated 09.02.2018***

**1360.** Where the assessee had taken over the power distribution network set up by Tata tea Ltd and had substantially improved and increased the network by spending huge amounts (more than 50% of the then existing establishment value), the Court held that the assessee was entitled to deduction under Section 80-IA and dismissed the revenues contention that the conditions laid down under Section 80-IA(4)(iv) [i.e. undertaking in India may (a) generate or generate and distribute power at any time between 1.4.1993 and 31.3.2010; (b) transmit and distribute by laying a network of new transmission or distribution lines between the above-mentioned period; (c) substantially renovate or modernize the existing network of transmission or distribution lines between the same period] were cumulative conditions and since all three were not satisfied by the assessee no deduction would be permitted. It held that the sub-clauses (a), (b) and (c) were disjointed as laying down a new network under clause (b) and substantially renovating the same as per clause (c) would lead to incongruity.
***Kanan Devan Hills Plantations Company Pvt Ltd - (2017) 100 CCH 0087 KerHC - ITA No. 48 of 2015 dated 16.11.2017***

**1361.** The Court held that it was not correct to presuppose that the term industrial undertaking in section 80IA of the Act implied a new undertaking. Further, it held that by virtue of setting up of kiln, the assessee's capacity increased resulting in expansion which would not fall under the expression of 'reconstruction' so as to disqualify the assessee from the deduction.
***The Ramco Cements Limited v JCIT [TC(A) Nos 570 of 2004 and 190 of 2005] - TS-492-HC-2015(MAD)***

**1362.** The Court held that in view of the fact that the status of the CFS (Container Freight Station) had been clarified by the Ministry of Commerce and Industry as 'inland ports' and that the Chennai Port Trust has issued a certificate stating that the CFS of the assessee may be considered as extended arm of the Port in accordance with the Central Board of Direct Taxes Circular No.793, dated 23-6-2000, read with Circular No.133 of 1995-Cus., dated 22-12-1995 of the Central Board of Excise and Customs, New Delhi, the assessee was entitled to the benefits under section 80-IA.
***CIT v. Kailash Shipping Services (P) Ltd. [2017] 79 taxmann.com 363 (Madras), T.C.(Appeal) No. 497 of 2015, dated July 23, 2015***

**1363.** The Court held that where the assessee claimed benefit of deduction under section 80-IA for the assessment years in question in view of fact that its losses had been set off already against other income, there was no question of notionally carrying forward loss of the earlier year while allowing deduction under section 80-IA to the assessee.
***Commissioner of Income Tax v. Sangeeth Textiles Ltd. [2017] 80 taxmann.com 243 (Madras), Tax Case (Appeal) No. 302 of 2005, dated July 8, 2015***

Go to Index

**1364.** The Court held that interest on margin money by way of fixed deposit kept with assessee's banker so as to enable bank to open a foreign letter of credit which was essential for purpose of import of critical components for carrying on assessee's business of manufacture of wind mill, was eligible for deduction u/s 80-IA.
***Arul Mariammal Textiles Ltd.vs Asst CIT [2018] 97 taxmann.com 298(Madras) T.C. A NO. 909 OF 2008 dated August 07 2018***

**1365.** The Court held that once initial assessment year had been opted by assessee, which need not be the year in which the business/ manufacturing activity had commenced, he should be entitled to claim deduction u/s 80IA for ten consecutive years beginning from year in respect of which he had exercised such option, subject to fulfilment of conditions prescribed in the section.
***CIT v G.R.T. Jewellwers (India) Pvt. Ltd - [2016] 95 CCH 72 (Madras)***

**1366.** The Court dismissed Revenue's appeal and granted Sec 80IA(4) deduction (available on maintaining an infrastructure facility) to assessee (maintaining a Container Freight station) relying on co-ordinate bench ruling in assessee's own case for AY 2009-10 and Delhi HC ruling in Container Corporation of India Limited. It Rejected Revenue's stand that since the coordinate bench and Delhi HC rulings were under challenge before SC, the present appeal should be entertained and kept pending till the SC passes appropriate orders in the pending matters, clarifies that even in cases where Revenue challenges orders before SC.
***AL Logistics P Ltd - TS 376 HC 2016 (MAD) - Tax Case Appeal No.405 of 2016***

**1367.** The Court held that where assessee-company was not an owner of power generation plant but it did only maintenance work of power plant for which it was given a fee, assessee could not be considered as power generating company and could not be allowed deduction under section 80-IA
***Covanta Samalpatti Operating (P.) Ltd. v ACIT [2018] 93 taxmann.com 38 (Madras) – TAX CASE (APPEAL) NO. 860 OF 2008 dated 04.04.2018***

**1368.** Asseessee, an authorised franchise of BSNL, was running a private telephone exchange on basis of agreement entered into with BSNL. Assessee's claim for deduction under section 80-IA was rejected by Assessing Authority on ground that nature of service done by assessee was that of commission agent of BSNL and assessee were not providing basic telecommunication services. The Court held that since from agreement entered into between assessee and BSNL and certificate issued by BSNL to assessee, it was clear that assessee was providing basic tecommunication services to its customers, assessee was entitled to claim deduction under section 80-IA(4)(ii)
***Sabdhagiri Telecom v. ITO, Ward-1(1) Coimbatore-[2019] 101 taxmann.com-245(Madras)-TCA Nos.362 & 363 of 2009-dated November 14, 2018***

**1369.** The assessee company claimed to be engaged in power generation and claimed deduction under section 80-IA. The AO denied the deduction on the ground that the assessee was not engaged in the generation or distribution of power but it was merely engaged in the maintenance of the power plant owned by SPCL. On appeal, the High Court held that as per section 2(28) of Electricity Act, 2003 'generating company' meant any company which owns or operates a

generating station and as per the terms of the contract between the assessee and SPCL, the assessee was not the owner of the power plant but did only maintenance work for which it was paid a fee. Thus, it upheld the denial of deduction under Section 80-IA.
***Covanta Samalpatti Operating (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 38 (Madras) – Tax Case (Appeal) No. 860 of 2008 dated April 4, 2018***

**1370.** The Tribunal dimissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for deduction u/s 80IA which was disallowed by the AO noting that the assessee was not the owner of infrastructure projects and thus opining that it was merely a contractor. The CIT(A) treated assesse as an infrastructure developer noting that (i) it had incurred expense for purchase of material, (ii) it had executed development of work before handing over possession to Government and (ii) maintainence was still undertaken by assessee for the said infrastructure faclity. It was noted that CBDT Circular dated 18-05-2010 clearly indicated that such activity was eligible for deduction u/s 80IA(4). Further, the CIT(A) had followed orders of his predecessor for earlier years. Accordingly, the Tribunal dismissed Revenue's appeal
***Dy.CIT vs Aquafil Polymers Co. P Ltd [2018] 54 CCH 0175 (Ahd Trib)- ITA No.161/Ahd/2015 dated 01.11.2018***

**1371.** The Tribunal held that Section 80IA inter alia provides for 100% deduction of Income derived from (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any "new infrastructure facility". The tribunal held that the assessee was not entitled to the benefit of Section 80IA w.r.t. annuity received from NHAI in relation to maintainence and operation of an "existing" four lane highway since, it was not incurred for any new infrastructure facility. Further noting that, assessee had received a Combined annuity amount for maintainence and operation of an "existing" four lane highway as well as for laying down and widening of existing two way carriage way to four lane and the latter activity was eligible for deduction u/s 80-IA, the Tribunal remanded the matter back to CIT(A) with the direction to call for records from NHAI for apportionment of annuity for ascertaining the benefit to be allowed under section 80-IA
***GMR Tambaram Tindivanam Expressways Ltd v DEPUTY COMMISSIONER OF INCOME TAX [TS-692-ITAT-2018 9(Bang)]- ITA No. 545&546/Bang/2018, 1130&1131 /Bang/2018 dated 26.11.2018***

**1372.** The Tribunal rejected the assessee's claim for exemption u/s 10(23G) with respect to investments made in the companies which were not generating or producing electricity and were only distributing electricity, whereas the said exemption is allowed with respect to investment in companies engaged in business referred in section 80-IA(4) i.e. carrying on business of developing, operating and maintaining or developing or maintaining infrastructure facility. It thus held that the said investments were not eligible for exemption u/s 10(23G).
***Cholamandalam MS General Insurance Co. Ltd. v. DCIT - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018***

**1373.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for deduction u/s 80IA with respect to rental income from modules/built up space of

Industrial park, noting that in the assessee's own case for an earlier year, following the decision in the case of CIT v. Elnet Technologies Ltd [T.C.A. Nos. 391 & 392 of 2007 (Mad)], the coordinate bench had held that the lease rent income from modules/built up space of the Industrial Park was assessable under the head 'income from business' and thus such income was eligible for deduction u/s 80IA.
***TIDEL PARK LIMITED & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0428 ChenTrib - ITA Nos. 1700 & 1701/Chny/2017, 1808 & 1809/Chny/2017 dated Apr 4, 2018***

**1374.** The Tribunal allowed the assessee (engaged in the telecom business) exemption under section 80IA(2A) on extra-ordinary income of license fee, reimbursement and provisions written back. It dismissed the contention of the revenue that 80IA(2A) stipulated exemption on receipts from eligible business as the condition of 'derived from; was not applicable to the telecom business.
***Bharat Sanchar Nigam Ltd v DCIT (I.T.A .No.-3304/Del/2010 & I.T.A .No.-3386/Del/2010) – TS-737-ITAT-2015 (Del)***

**1375.** The Tribunal deleted the addition made by the AO under section 10A(7) read with 80IA(10) by observing that the profit margin of the assessee was not unreasonable considering factors like limited expenditure, risk involved and the niche nature of work carried on by the assessee. It held that the AO was to establish through positive evidences that the assessee and its related party had arranged their transactions to produce extra-ordinary profits.
***DCIT v Quick MD [ITA No 97 / Hyd / 2015] - TS-485-ITAT-2015(HYD)***

**1376.** The Tribunal dismissed the appeal of the Revenue and held that for the purpose of determination of quantum of profit eligible for deduction u/s 80-IA the absorbed losses or depreciation from eligible business incurred prior to the initial year were not to be considered for determination of eligible profits earned during the year. It observed that the brought forward losses and depreciation being absorbed already could not be notionally brought forward for adjustment again.
***DCIT vs. Sankalp International (2017) 50 CCH 0245 Jaipur Trib (ITA No. 504/JP/2017)***

**1377.** The Tribunal held that plant and machinery installed by city development authority for water supply project would be eligible for 100 per cent deduction under section 80-IA(4)(1).
***Haldia Development Authority v. Asst. CIT, Circle- 27, Haldia-[2019] 102 taxmann.com 235 (Kolkata - Trib.)-IT Appeal Nos. 535 to 537 & 2353-2354 (KOL.) of 2017-dated December 19,2018***

**1378.** The Tribunal held that road developed by city development authority for water supply project would be eligible for 10 per cent deduction under section 80-IA(4)(1). Road developed by assessee would not fall under item (1) of New Appendix, Part-A under Rule 5 because road cannot be used for residential purpose. Further, such road would also not fall under item (3) of New Appendix, Part-A under Rule 5 because no machinery and plant could be installed on road. Thus, it would fall under residual item (2) which provides for 10 per cent depreciation.

Go to Index

***Haldia Development Authority v. Asst. CIT, Circle- 27, Haldia-[2019] 102 taxmann.com 235 (Kolkata - Trib.)-IT Appeal Nos. 535 to 537 & 2353-2354 (KOL.) of 2017-dated December 19,2018***

**1379.** The Tribunal upheld the CIT(A)'s order allowing deduction u/s 80-IA to the assessee with respect to amount generated by displaying advertisement on foot over bridge and toilet blocks developed by assessee for various municipalities/corporations, rejecting Revenue's contentions that foot over bridges could not be considered as development of road for the purpose of allowing deduction u/s 80IA and income from displaying of advertisement boards on toilet blocks and foot bridges could not be regarded as source of first degree so as to allow deduction under the said section, following the Tribunal's order in assessee's own case for earlier year. The CIT(A) had held that since the Central / Local Authority / other statutory body, did not have the funds to compensate the assessee for costs it incurred for developing infrastructure facility, the assessee was given license to collect advertisement revenue by display of advertisement panels.
***DCIT v VANTAGE ADVERTISING PVT. LTD. – (2018) 52 CCH 8 (Kol Trib) – ITA No. 2616/Kol/2013 dated 03.01.2018***

**1380.** Tribunal held that where the assessee was awarded a contract to construct Road by NHAI and it was to procure raw material, make arrangements for power, water, plant machinery etc., and conduct all other activities needed for construction, assessee was a developer and not a mere works contractor and, accordingly, was eligible for deduction under section 80-IA.
***ACIT v Ho Hup Simplex JV - [2018] 92 taxmann.com 106 (Kolkata - Trib.) - IT APPEAL NO. 692 (KOL.) OF 2016 dated MARCH 21, 2018***

**1381.** Assessee, engaged in the business of manufacturing and sale of cement, rayon, fire bricks, cast iron pipes, tyres and tubes & various forms of chemicals, engaged 2 power plants for its cement units and the electricity generated was transferred only to the assessee's manufacturing unit. For Computing eligible deduction u/s 80IA in respect of captive power plants, assessee ascertained the selling price of power by State Electricity Board(SEB) which the other manufacturing units procured from SEB of respective states. AO rejected this claim of assessee determined lower profit on the basis that adoption of sale price by SEB to its customer could not be regarded as open market rate of electricity because the sale price(adopted by assessee) was higher than the price at which SEB was purchasing power from generating companies. (For explanation- AO treating assessee's cement units as third party i.e assessee deemed to be selling power to SEB first). CIT(A) held that, for ascertaining selling price, it should be weighted average of annual consumption of electricity sourced from SEBs but however that such rate be reduced by amount of electricity duty and cess charged by SEB. However, on conjoint reading of provisions of Electricity Act,2003, Karnataka Electricity Regulatory Commission's open access Regulation notified in 2004 and order of KER, it was clear that there was no statutory bar on Captive Power Plants to sell electricity to any 3rd party& that too at rate mutually agreed by and between the parties. The Tribunal followed Tamil Nadu Petro Products Ltd. vs ACIT(SC) and also DCIT vs Birla Corporation Ltd wherein it was held that price charged by SEB was good indication of market value stating that assessee did not commit any error for adopting such price for working out amount eligible for deduction u/s 80IA. Thus, the Tribunal held that the very

foundation on which AO held that assessee had no option but to sell electricity to SEB alone was factually wrong & misplaced and therefore legally untenable in changed factual scenario, thereby dismissing the revenue's appeal.

***Kesoram Industries Limited & Ors v ACIT & Ors (2018) 52 CCH 0398 KolTrib - ITA No. 773/Kol/2013, 1037/Kol/2012, 1722/Kol/2012, 1188/Kol/2016, 1995/Kol/2013, 505/Kol/2017, 505/Kol/201 dated 26.04.18***

**1382.** The Tribunal held that where assessee, engaged in providing telecommunication services, did not claim deduction under section 80-IA in assessment year 2006-07 (previous AY) as its gross total income in said year was nil, mere fact that in audit report filed in Form No. 10CCB, initial year of claim of deduction by inadvertent error was mentioned as assessment year 2006-07, could not be a ground for holding that assessment year 2006-07 was to be regarded as initial assessment year for claim of deduction under section 80-IA(2). (Current AY 08-09).

***BT Global Communications P Ltd vs JCIT- (2018) 98 taxmann.com 475 (Mum-Trib)- ITA No 5354 of 2012 dated 12.09.2018.***

**1383.** The Tribunal allowed the assessee's claim for deduction u/s 80IA from the profits of the eligible business to the extent the same was enhanced on account of disallowances, following the CBDT Circular No. 37/2016 which provides that where the disallowances made u/s 32, 40(a)(ia), 40A{3), 43B, etc. and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, results in enhancement of the profits of the eligible business, the deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance.

***VODAFONE INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0377 MumTrib - ITA No. 4749/Mum/2016 dated Apr 6, 2018***

**1384.** The Tribunal allowed deduction u/s 80-IA to the assessee-firm, engaged in generation of power by setting up windmills, with respect to two windmills set up in earlier years and generating profits without setting of loss incurred in three windmills set up during the year by considering each windmill as a separate unit eligible for deduction, noting that in terms of provisions of sub-section (5) of section 80-IA, the deduction had to be given unit-wise without considering profit or loss of other eligible units.

***Punit Construction Co. v JCIT – (2018) 92 taxmann.com 28 (Mum) – ITA Nos. 6337 and 6980 (Mum) of 2014 dated 21.02.2018***

**1385.** The Tribunal upheld assessee's action of treating the price at which Gujarat Electricity Board ('GEB') supplied electricity to assessee as the 'market price' for transfer by captive unit for the purposes of deduction u/sec. 80IA(8) in respect of its power generation undertaking by following co-ordinate bench ruling in assessee's own case for earlier AY. The Tribunal distinguished Revenue's reliance on Calcutta HC ruling in ITC Ltd. (64 taxman.com 214) to contend that the rate at which electricity was purchased from Electricity Board could not be treated as market price, which assessee's captive generation plant could fetch in the open market. The Tribunal noted that Calcutta HC ruling related to period prior to introduction of the Electricity Act, 2003 and under the said Act there was no regulation in respect of market price when the Captive Generation plant notionally sells electricity to itself. Moreover, the Tribunal noted that except

Calcutta HC in ITC Ltd, there were four judgements of other High Court in assessee's favour and six judgements of Tribunal in assessee favour which have taken a view consistent with a view taken by coordinate bench in assessee's own case for earlier year.

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

**1386.** The assessee was engaged in the business of construction/development of Infrastructure facilities such as roads and providing necessary and crucial components of the Railway System. The claim of the assessee for deduction under section 80-IA(4) in respect of infrastructure project was rejected by the AO on the ground that the assessee was a contractor and not a developer. The decision of the AO was upheld by the CIT (A). The Tribunal held that the distinction between developer and contractor was no longer relevant in the context of changed law that was explained by the Mumbai High Court in the case of CIT v. ABG Heavy Industries [2010] 322 ITR 323 (Bom.). The Tribunal applied the proposition of law in the said case in favour of the assessee and allowed the claim u/s 80-IA(4). It held that in view of provisions of Section 80-IA(4), the term 'contractor' is not essentially contradictory to the term 'developer' and thus by entering into a lawful agreement and thereby becoming a contractor should, in no way, be a bar to one being a developer.

***Bhinmal Contractors Property and Land Developers (P.) Ltd. v. ACIT – [2018] 93 taxamnn.com 296 (Mumbai – Trib.) – IT Appeal Nos. 7207 of 2012, 7082, 7083 (MUM.) of 2013 & 1420 (MUM.) of 2014 dated April 26, 2018***

**1387.** Tribunal rejected assessee's claim of deduction u/s 80IA on sales tax subsidy received from State Govt. as an incentive for electricity generation through windmill upholding revenue's contention that there was no first-degree nexus between sales tax incentive and manufacturing activity of eligible unit. Tribunal also rejects assessee's alternative submission to treat the incentive as non-taxable capital receipt and reliance placed on various cases in this regard *inter alia* including CIT v Meghalaya Steels Ltd. [(2016) 383 ITR 217 (SC)], CIT v Chaphalkar Brothers [(2013) 351 ITR 309 (Bom)] and Garden Silk Mills v CIT & another [(2017) 394 ITR 192 (Guj)]. Tribunal instead relied on the co-ordinate bench ruling in the case of Patankar Wind Farm Pvt. Ltd. v DCIT [ITA Nos. 2225 & 2226/PN/2013].

***DCIT/ ACIT v Indo Enterprises Pvt. Ltd - TS-616-ITAT-2017(PUN) - ITA No. 1362/PUN/2011 & 2389/PUN/2012 dated 22.12.2017***

**1388.** Assessee filed its return of income for relevant AY and claimed deduction u/ 80-IA. However, during assessment, AO held that loss of an eligible industrial unit was required to be set off against profit of other eligible industrial unit since deduction u/s 80-IA(1) was allowed to profit and gains derived from "business" referred to in s. 80-IA and not to undertaking. Therefore, AO disallowed deduction claimed by assessee. On appeal, CIT(A) deleted addition made by AO. Held, it had been held in various decisions that while computing deduction u/s 80-IA, loss of one eligible unit was not to be set off or adjusted against profit of another eligible unit. Since order of CIT(A) was in consonance with law laid down by various High Courts and various Benches of Tribunal, therefore, there was no infirmity in order of CIT(A) and Revenue's appeal was dismissed.

Go to Index

***DCIT vs Godawari Power & ISPAT Ltd- (2018) 54 CCH 0360 RaipurTrib- ITA No 365/RPR/2014 & C.O. No 12/RPR/2018 dated 01.10.2018***

» *Section 80-IB*

**1389.** The Apex Court dismissed the SLP filed by the Revenue against the High Court order wherein it was held that local authorities can approve a project as housing project along with commercial user to extent permitted under DC Rules / Regulations framed by respective local authorities and, once approved, it has to be treated as housing project eligible for deduction u/s 80-IB(10)
***CIT v Suyog Shivalaya - [2018] 96 taxmann.com 273 (SC) - SLP (Civil) Diary No(S). 22783 OF 2018 dated July 20, 2018***

**1390.** The Apex Court dismissed Revenue's SLP against the High Court order wherein it was held that since new industrial unit set-up had separate premises, separate labour force and separate license and electricity connection from the existing units as well as the value of machines transferred from existing unit to the said new unit was within permissible limit of 20%, the new unit would be entitled to claim deduction u/s 80-IB separately
***Asst CIT vs Leo Fastners [2018] 103 CCH 0270 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 3953/2018 dated 16.11.2018***

**1391.** The Apex Court reversed the decision of the High Court and denied the assessee benefit under Section 80IB of the Act as the assessee ceased to be a small scale industrial undertaking during the relevant assessment year as its investment in plant and machinery exceeded Rs.1 crore. It held that the benefit specifically meant for the small scale industries could not be gratned to industrial undertakings which do not continue as SSIs during the period. It further held that the scheme of the Act did not in any manner indicate that the incentive period had to continue for 10 consecutive years irrespective of continuation of eligibility conditions.
***DCIT v ACE Multi Axes Systems Ltd – TS-571-SC-2017 -CIVIL APPEAL NO. 20854 OF 2017 dated 5.12.2017***

**1392.** The Apex court dismissed Revenue's Special Leave Petition against Allahabad High Court ruling wherein the Court allowed Sec 80-IB benefit on additional income declared in return filed u/s 153A pursuant to search, despite assessee's failure to file audit report along with the return. It opined that the requirement of furnishing audit report u/s 80-IA(7) along with the return of income is only directory and since the audit report for the enhanced claim was furnished during the course of assessment proceedings, provisions of Sec. 80-IA(7) stood complied.
***Surya Merchants Ltd [TS-94-SC-2017] (CC No. 4760/2017) dated 10/03/2017***

**1393.** Where the AO had denied deduction u/s 80-IB on the ground that the assessee was not developer but a contractor and the CIT(A) and the Tribunal had allowed the deduction on the ground that the assessee was engaged in development of road and was not a mere contractor as he had deployed his own capital, used his own management and expertise in maintenance and had to bear the risk, the Court upheld the view of the Tribunal.

Go to Index

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

**1394.** Where, as per Section 80IB(7)(c) an Assessee would be eligible for deduction u/s 80IB(7)(a) (50 percent of eligible income) if the Assessee had obtained approval from Director General, Income Tax (Exemptions), who has to act upon with concurrence of Director General in the Directorate of Tourism, Government of India and the Assessee who had set up a hotel after getting approval of project of Hotel from Department of Tourism, had submitted application to claim deduction under section 80-IB(7)(a) before Director, General, Income tax (Exemptions) which was pending before the said authority and during such pendency the Assessee filed a return claiming deduction under section 80-IB, which was rejected by the AO on the ground that the Assessee was not granted approval by Director, General, Income tax (Exemptions) which was affirmed by the CIT(A) who allowed a lower deduction under section 80IB(7)(b) [30 percent of eligible income] [which required approval only from Director General in the Directorate of Tourism, Government of India], the Court held that for lethargy or inaction on the part of an officer of Income-tax Department, a deduction which otherwise may be available to the Assessee, could not be denied since it was not a case where Assessee was disqualified being ineligible for such deduction but only on the ground that approval was pending before Competent Authority.

As regards the contention of the Revenue that no that exemption could have been allowed under section 80IB(7)(b) since the Assessee had claimed deduction under section 80IB(7)(a) in its return of income and that as per Section 80A no claim of deduction could be allowed unless claimed in the return of income, the Court held that deduction under section 80-IB(7) to a hotel was common and a difference in clauses (a) and (b) was with regard to percentage, which is 50 per cent and 30 per cent respectively and therefore it could not be held that the Assessee did not claim deduction under section 80-IB(7). Even otherwise, it held that section 80-IB(7)(a) provided a deduction of higher amount and therefore would cover deduction under clause ( b) as well if existing facts justify that Assessee would be entitled for same. Accordingly, it allowed the appeal of the Assessee and held that if approval was granted, the Assessee would be eligible to deduction under section 80IB(7)(a) and if not, the Assessee would be entitled to the 80Ib(7)(b) deduction provided by the CIT(A).

***Shrikar Hotels Pvt. Ltd & Ors. vs. CIT (2017) 98 CCH 0066 Allahabad HC (ITA No. 20 of 2014 dated 02.02.2017)***

**1395.** Where assessee, engaged in business of production of L-Menthol, which was eligible for deduction under section 80-IB, entered into forward contracts to hedge itself against huge price fluctuations in prices of raw material. The Court held that since assessee entered into such contracts only for purpose of making its business more profitable, said activity was to be regarded as a part of assessee's manufacturing activity and, thus its claim for deduction under section 80-IB in respect of profits derived from hedging contracts, was to be allowed.

***Pr CIT-3 v. Jindal Drugs Ltd. - [2019] 101 taxmann.com 316 (Bombay)-IT Appeal Nos. 1517, 1545 & 1642 of 2016 dated December 17, 2018***

**1396.** The Court held that stilt parking is part and parcel of housing project and thus eligible deduction u/s 80IB(10).

Go to Index

***CIT v. Gundecha Builders (2019) 102 taxmann.com 27( Bom) (HC) - IT APPEAL NO. 347 OF 2016 dated 31.07.2018***

**1397.** The Court dismissed Revenue's appeal against the Tribunal's order allowing assessee's claim for deduction u/s 80-IB(10) which was disallowed by the AO on the ground that the assessee could not produce the completion certificate for the project completed within a period of 4 years (i.e. 05.03.2008) from the date of commencement certificate (i.e. 05.03.2004). The Tribunal had allowed the assessee's appeal following the decision in the case of ITO v Sai Krupa Developers [ITA No. 3661/Mum/2011] wherein it was held that prior to 31.03.2005, there was no requirement of obtaining any completion certificate. Noting that the Revenue's appeal against the said decision in the case of Sai Krupa Developers (supra) was also dismissed by the Court [ITA No. 1540 of 2012 (Bom)], the Court dismissed the present appeal too, holding that deduction u/s 80-IB(10) could not be denied to project approved prior to 31.03.2005 for failure to file completion certificate.
***Pr.CIT v Krish Enterprises – ITA No. 1146 of 2015 (Bom) dated 05.03.2018***

**1398.** The Court dimissed the asessee's appeal against the Tribunal's order and held that the assessee was not entitled to deduction u/s 80IB since the manufacturing activities of electronic computers undertaken by other entities for and on behalf of assessee were not under assessee company's direct supervision and control and accordingly, it could not be said that the assessee was not carrying out manufacturing activity within the meaning of the said section. It was noted that the assessee could not produce particulars like attendance register and qualifications of the employees in spite of being asked to do so by the AO and in fact, it appeared that even the packaging material was supplied to contract manufacturers by the assessee for finished products.
***DAMAN COMPUTERS PVT. LTD vs. ITO [2018] 102 CCH 0203 (Bom HC) ITA No.1 of 2008 DATED AUGUST 10, 2018***

**1399.** The Court held that where assessee failed to file return within period prescribed under section 139(1), its claim for deduction under section 80-IB could not be allowed even though return had been filed at a belated stage in term of section 139(4)
***Suolificio Linea Italia (India) (P.) Ltd. v JCIT [2018] 93 taxmann.com 462 (Calcutta) – ITAT NO. 385 OF 2016 dated 04.05.2018***

**1400.** The Court allowed assessee's claim for deduction u/s 80IB with respect to its business of manufacturing Ayurvedic drugs, which was disallowed by the lower authorities on the ground that the assessee was not engaged in any manufacturing activity and instead, it was only doing trading of mushroom powders in capsules. The Court held that when new distinct commodity commercially accepted as such comes into existence as result of processing, that commodity could be said to have been manufactured and in the present case, the end product was not the same product which was fed into machines at first instance. Noting that the bulk form of the drug (which was imported from a foreign company) could not be nakedly consumed without putting them in an enclosure such as gelatine capsule, it held that what was done by the assessee was manufacture since the product which emerged after process of manufacture was commercially distinct commodity, could be of consumption as such containing requisite amount

of ingredients in appropriate percentage, preserved in proper form as contained in license issued under authorized enactments as well as technical logo shared by foreign company.
***DXN HERBAL MANUFACTURING (INDIA) PVT. LTD. vs. INCOME TAX OFFICER - (2018) 102 CCH 0167 (Chen HC) - T.C.(A) Nos. 341 & 342 of 2007 dated June 21, 2018***

**1401.** The assessee had not made claim for deduction u/s 80IB(10) in its original return. However, during the course of assessment, the assessee filed details of project executed by it, based on which, it claimed deduction u/s 80IB (10). The AO denied the claim made by the assessee since the claim did not form part of original return filed by the assessee company. CIT(A) upheld the AO's order. The Tribunal observed that the relevant material for the claim was placed on record by the assessee during the assessment proceedings and therefore, it remitted the matter to the AO for fresh consideration. The Court held that the power of entertaining a new claim vests with the appellate authorities based on facts and circumstances of case and the failure to advert the claim in the original return or revised return could not denude the appellate authorities of their power to consider a new claim, if, relevant material was available on record and was otherwise tenable in law. Accordingly, it held that the Tribunal was correct in remitting the matter to the AO.
***CIT vs. ABHINITHA FOUNDATION PVT. LTD (2017) 99 CCH 0037 ChenHC T.C. (A) No.811 of 2016 dated 06.06.2017***

**1402.** The assessee-company engaged in manufacturing and sale of packaging material, had three manufacturing units out of which income from Jammu unit was exempted under section 80-IB. During the year it made certain royalty payment for licensing rights regarding improved sachet pouch to be manufactured at Jammu unit. However, it claimed deduction under section 80-IB in respect of Jammu unit, by not treating royalty as payment made by Jammu unit, but as expenditure was incurred by corporate office. The AO held that royalty payment should be taken into consideration for computing deduction under section 80-IB for Jammu unit. The Tribunal held that as assessee due to unforeseen reasons could not use technical know-how at either units, therefore, royalty payment could not be considered for section 80-IB deduction. The Court observed that the AO with reference to nature of sachet pouches manufactured at Jammu unit had held that assessee had manufactured and produced sachet pouches using technical know-how and the Tribunal had reversed said finding without any discussion and explanation and arrived at a completely contrary view. Thus, the Court directed that the matter required reconsideration by Tribunal.
***PCIT vs Montage Enterprises (P) ltd- (2018) 99 taxmann.com 3 (DelhiHC)- ITA No 892 of 895 of 2016 dated 06.09.2018***

**1403.** The Court held that deduction under section 80IB(10) was to be allowed to the assessee, a builder / developer in respect of real estate developments which were complete on a stand-alone basis even though the same formed part of a house project comprising of other housing schemes which were not eligible for deduction and rejected the contention of the Revenue that the said deduction was available only if the project as a whole was compliant with section 80IB(10), since the housing schemes in respect of which deductions were claimed by the assessee were built on clearly demarcated plots of land which were separated from other projects and therefore constituted standalone complete housing projects.

Go to Index

***Pr CIT v Omaxe Buildhome Pvt Ltd – TS-495-HC-2016 (Del) - ITA 327/ 328 / 329 2016,***

**1404.** The Court dismissed Revenues appeal and held that for the purpose of complying with the condition that the housing development project should be commenced on or after 01.10.1998 so as to be eligible to claim deduction u/s 80IB(10), the date of commencement of a project has to be linked with actual date of construction and that mere securing of approval does not lead to any step towards development. It held that rather the foundation for various steps may ultimately lead to obtain finances and starting construction activity and thus the actual date of construction is determinative.

***PCIT vs. PADMINI INFRASTRUCTURE (P) LTD. (HIGH COURT OF DELHI) (ITA 586/2018) dated May 15, 2018 (102 CCH 0128)***

**1405.** The Court held that Section 80IB grants deductions to eligible industries and has nothing to do with export of a product and if industry eligible for deduction u/s 80IB also exports product, DEPB benefits would be seen in addition to and not as having been derived by industry out of its eligible business and consequently the deduction under sec 80 IB would not be available in respect of the same.

***Banpal Oilchem Pvt. Ltd. V ACIT - [2016] 96 CCH 0050 (Guj) - TAX APPEAL NO. 188 of 2011***

**1406.** The Court held that once the prescribed authority grants approval under Rule 18D(2) of the Rules, the AO could not ignore the approval granted and hold that the conditions are not fulfilled by the assessee and consequently deny the assessee deduction under section 80IB(8A) of the Act. It held that once an authority had been invested with statutory functions, the AO should not be allowed to overrule the decision of the said authority. However, it held that the AO was empowered to verify the claim of deduction and could deny deduction for income not arising out of the eligible business.

***BA Research India Ltd – TS-337-HC-2016 (Guj)***

**1407.** The Court upheld the order of the Tribunal wherein it was held that assessee was entitled to deduction under section 80IB (11A) only to the extent of 25 percent of eligible profits and not 100 percent as contended by the assessee. It held that 80IB(11A) introduced with effect from April 1, 2005 provided for a 100 percent deduction for the first 5 years from the initial AY i.e. the year in which the eligible business was commenced and at 25 percent thereafter and therefore it rejected the contention of the assessee that the AY in which the relevant provision became effective ought to be considered as the initial AY. Accordingly, since the assessee had commenced its business in AY 2002-03 and the AY under consideration was AY 2007-08 and AY 2008-09, the period of 5 years from year in which the business was commenced viz. the initial AY had already passed ( 5 years ended by AY 2006-07) and therefore the assessee was incorrect in claiming a 100 percent benefit under the said section.

***Anand Food and Dairy Products v ITO – TS-317-HC-2016 (Guj)***

**1408.** Where the assessee had claimed deduction under section 80IB (10) and disallowance was made on the ground that open space attached to penthouse, could not be included in term 'balcony' , the Court held that builtup area would include inner measurements of a residential unit on the floor level added by thickness of a wall as also projections and balconies but would

exclude the common areas shared with other residential units. The moment a certain area is not shared but is exclusively assigned for the use of a particular residential unit holder, would not mean that such area would automatically be included in the builtup area. It also held that in order to be part of the builtup area, the same must be part of the inner measurements of a residential unit or projection or balcony and the open terrace space on the top floor of a building would not satisfy this description and will also not be covered in the expression balcony.
***CIT vs. Amaltas Associates (2016) 97 CCH 0018 (Guj HC) (TAX APPEAL NO. 1372 of 2011)***

**1409.** The Court denied deduction under section 80IB(10) of the Act to the assessee (a builder) since the project completion certificate was issued by the local authority beyond the cut-off date provided for in the said section vide amendment in Finance Act 2004. It rejected assessee's stand that the amendment was prospective and therefore the time frame was not applicable and held that the compliance required in the provision was not incapable, unreasonable, harsh or absurd.
***CIT v Global Reality (I.T.A.No.40/2012) – TS-692-HC-2015 (MP)***

**1410.** The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for deduction u/s 80-IB(10) which was disallowed by the AO on ground that the said claim was in contravention of clause (f) of section 80-IB(10) by selling two adjacent flats in its housing project on 14-1-2008 and 16-7-2008 to two members of same family, being husband and wife. It was noted that the amendment brought on 1-4-2010 vide clause (f) to section 80-IB(10) barring such sale to related persons is prospective in nature.
***CIT v Elegant Estates - [2018] 95 taxmann.com 157 (Madras) - T.C.A. NOS. 179 & 180 OF 2018 dated June 19, 2018***

**1411.** The Court reversed Tribunal's order and granted deduction u/s 80IB to new unit i.e. Unit II, of a manufacturer assessee. The Court rejected the stand of the Revenue that the new unit was formed by reconstruction or splitting up of existing unit [80IB(2)(ii)] The Court took note of the fact that the assessee made substantial investment in the form of capital and loan, the new unit has separate premises, separate labour force, separate license and electricity connection. The Court observed that that lower authorities ignored the fact that the condition stipulated in Section 80IB (2)(ii) to disentitle the Assessee from claiming a deduction applies, only if the formation of the new business took place via transfer of machinery and/or plant, previously used for any purpose. Therefore, it is not a mere transfer of plant and machinery, which is used previously for some purpose, but the fact that transfer is of such nature that it enables the formation of the undertaking qua which deduction is sought by an Assessee. The Court noted that it was not the Revenue's case that the transferred machinery enabled the formation of Unit II. Substantial expansion of existing business cannot disentitle assessee to claim Sec. 80IB benefit.The Court, also accepted assessee's contention regarding computation of Sec. 80IA deduction that once only losses of years beginning from initial AY can be brought forward for set off and Revenue cannot notionally bring forward losses of earlier years, which were already set off against other income of Assessee.
***ACIT vs. Leo Fasteners TS-284-HC-2017(Madras) (Tax Case (Appeal) 533-538/2010 dated July 10, 2017)***

Go to Index

**1412.** The Court held that the words 'development and construction' contained in section 80IB(10) of the Act was a twin requirement and was to be read in conjunction for the purpose of allowing deduction under section 80IB(10), applicable for projects whose development and construction is commenced on or after October 1, 1998. It held that the Tribunal was incorrect in denying the assessee benefit under section 80IB(10) on the ground that development activities begun prior to October 1, 1998 without appreciating that the section provided for commencement of both development and construction. Accordingly, since the actual date of commencement of construction was October 15, 1998, it held that the assessee could not be denied of benefit under section 80IB(10).
***Ravi Appasamy v ACIT – TS-305-HC-2016 (Mad)***

**1413.** Where the Assessee, engaged in the manufacture of voice and fax encryptions, imported necessary hardware as well as corresponding software and thereafter customised and modified the software before loading it to hardware, the Court dismissing the Revenue's appeal, held that the said activity amounted to "manufacture" of an article or a thing and, thus the Assessee was eligible for deduction u/s 80-IB.
***CIT vs. Shoghi Communication Ltd. (2017) 84 taxmann.com 198 (HP) (IT Appeal No. 5/2007 dated August 3, 2017)***

**1414.** The Court held that an assessee must fulfill each of the conditions stipulated in Section 80-IB in each of the years in which the deduction thereunder is sought and the Assessing Officer would be entitled to ascertain in each of the assessment years whether the conditions of Section 80-IB remained fulfilled. If assessee is found to have fulfilled all the conditions in the initial assessment year and has on account thereof been granted the deduction thereunder, an Assessing Officer would be entitled to ascertain whether in subsequent assessment year the conditions remain fulfilled and if not, deduction can be denied.
***CIT vs. Micro Instruments Company (P&H)-ITA No. 958 of 2008 (O&M)***

**1415.** The Tribunal held that where the assessee was given possession of the land by co-operative society for construction of housing units and was allowed to enroll prospective buyers, collect sale consideration for land as well as super structure, design and develop property, arrange finance and the assessee had complied with all the conditions laid down under section 80IB(10), the deduction could not be denied on the basis that title of the land had not passed on to assessee and that the permission from local authority had been obtained in the name of original owners.
***ITO vs. Shivam Builders (2016) 48 CCH 0086 (Ahmedabad Trib)-ITA No.34/Ahd/2011***

**1416.** The Tribunal held that deduction under section 80IB (10) could be claimed even by those developers who did not own land as the provisions nowhere required that only those developers who themselves owned land could claim deduction under section 80IB(10).
***ITO v Parashar Developers – (2016) 47 CCH 0327 (Ahd Trib)***

**1417.** The assessee made a claim for treating interest subsidy as a capital receipt for the first time before the CIT(A) which was rejected as it was neither made in the return of income, nor was it consistent with the assessee's own stand of interest subsidy being a revenue receipt being

eligible for deduction under Section 80IB of the Act. Tribunal relied on the ruling of *Shree Balaji Alloys v. CIT* [2011] 333 ITR 335 (J&K High Court), and admitting the assessee's additional ground, directed the AO to treat the same as a capital receipt.

***KASHMIT TUBES vs. DCIT (AMRITSAR TRIBUNAL) (ITA Nos. 198 & 199/(Asr)/2014) dated May 31, 2018 (53 CCH 0133)***

**1418.** The Tribunal held that Assessee was entitled to exemption u/s 80IB (10) where it proves that the land held as capital asset was converted into stock-in-trade before entering into Joint Development Agreement and the assessee itself had offered the capital gain accrued on conversion of capital asset into stock-in-trade. It thus held that the assessee was to be allowed exemption under 80IB (10) with respect to the profit earned on sale of its flats. However, during the course of hearing, a doubt was raised as to whether the assessee had converted his capital asset as a part of stock-in-trade before entering into JDA. As this aspect was never verified by the lower authorities though the assessee had placed the documentary evidence in support of his contentions, the Tribunal remitted the matter to the concerned authorities for verification with the direction that, if the assessee succeded in proving that capital asset was converted into stock in trade, before entering into JDA, claim of exemption of deduction u/s 80IB(10) was to be allowed.

***Raja Reddy (HUF) vs ACIT- (2018) 54 CCH 0005 Bang Trib-ITA No 147/Bang/2016 dated 12.09.2018***

**1419.** The Tribunal denied the assessee builder deduction under section 80IB(10) for AY 2011-12 on account of violation of condition under clause (f) i.e. allotment of more than one residential unit to same individuals/family members. It noted that clause (f) was inserted vide Finance (No.2) Act, 2009 with effect from 19/08/2009 and therefore would be applicable to all allotment of residential units occurring after the said date. It held that the object behind insertion of clause (f) was to build affordable housing for low middle income groups and noted that since the assessee could not prove that allotments were made prior to the insertion, the deduction could not be allowed. It also noted that the assessee had violated clause (c) of Section 80IB(10) (which provides a limit on the area of residential units limiting it to 1500 sq ft) by constructing duplex flats exceeding prescribed limit of 1500 sq.ft.

***Shri Syed Aleemullah [TS-187-ITAT-2017(Bang)] - ITA No.389/Bang/2016 dated 04/04/2017***

**1420.** Where the assessee received DEPB benefit, the AO held that they were export incentives and not derived from Industrial undertakings and consequently not eligible for deduction u/s 80IB. CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of Liberty India Ltd (207 CTR 243) (P&H HC), wherein it was held that though object behind DEPB etc. was to neutralize incidence of customs duty payment on import content of export product DEPB credit/duty drawback receipt did not come within first degree source as said incentives flow from Incentive Schemes enacted by Government and hence such incentives were not profits derived from eligible business under Section 80-IB of the Act. Tribunal held that since AS-2 and ICAI Guidance Note specify that duty drawback, DEPB benefits, rebates etc. cannot be credited against cost of manufacture of goods, the DEPB benefit received could not be eligible for deduction under Section 80IB of the Act. Thus, the Assessee's appeal was dismissed

Go to Index

***VARDHMAN TESTILS LTD. & ORS. vs. DCIT & ORS. (CHANDIGARH TRIBUNAL) (ITA No. 681/Chd/2007, 475, 530, 938 & 981/Chd/2008, 528 & 575/Chd/2009) dated May 4, 2018 (53 CCH 0103)***

**1421.** The Tribunal denied the assessee deduction u/s 80IB(10) of Act and held that the assessee was engaged in construction business as a work contractor and not as a developer which was a sine qua non for claiming Sec. 80IB(10) deduction. Noting that the assessee's work as a contractor did not include designing and selling of the project, it held that the role of a developer was much wider than that of a contractor. It held that the assessee was engaged in the construction work of the buildings as a contractor and only included controlling and directing the work of building construction as per plan and design provided by the landlord post which it handed over the constructed flats on behalf of the landlord to the eligible flat owners who had registered undivided rights in the property.
***M/s Arihant Heirloom vs. The Income Tax Officer TS-44-ITAT-2017(CHNY) ITA No.214/Mds/2016 dated 25.01.2017***

**1422.** The Tribunal held that while computing the profits for the purpose of deduction under section 80IB of the Act, the loss incurred by the assessee in any other eligible industrial undertaking could not be set off against the profits of a particular industry that would qualify for deduction.
***DCIT v Bengal Ambuja Housing Development Ltd – (2015) 45 CCH 0232 Kol Trib***

**1423.** The Tribunal held that obtaining occupation certificate is not a mandatory requirement in order to ascertain whether building was completed or not for purpose of deduction under section 80-IB (10).
***Puran Ratilal Mehta v. Asst. CIT, Circle 23(3), Mum. - [2019] 102 taxmann.com 187 (Mumbai - Trib.) IT Appeal Nos. 1274 to 1279, 1320 to 1325 of 2011 & 6646 of 2012 dated December 5, 2018***

**1424.** The assessee had claimed deduction u/s 80IB(9) and during completion of assessment proceeding the AO observed that similar deduction claimed by assessee in the preceding AYs were not allowed and CIT(A)'s decision in allowing assessee's claim was not accepted by Department in previous AYs, thus the AO disallowed assessee's claim of deduction. The Tribunal held that activity of prospecting, exploration and production of mineral oil and natural gas undertaken by assessee, whether satisfied eligibility conditions of s. 80IB(9), stood concluded in assessee's favour on the basis of assessee's previous year orders. Further, an additional ground was filed by assessee, where it had claimed deduction u/s 80IB(9) by treating each oil well as an independent undertaking. The Tribunal noted that the provision of section 80IB(9) was amended by Finance Act, 2009 with retrospective effect from 1st April 2000 by inserting an Explanation which provided that for computing deduction under said provision all blocks licensed under a single contract should be treated as a single undertaking. The Tribunal noted that the AR had relied on the case of Niko Resources Gujarat HC which allowed treating each oil well as independent undertaking and thereby claiming deduction u/s 80IB(9). The Tribunal observed that the SLP against the Gujarat HC had been accepted and it stated that all appeals pertaining to such issue shall be decided after the rulying of the Supreme Court. Thus, the Tribunal held that the issue raised as additional ground relating to 80IB(9) was to be restored

to AO for fresh adjudication and to be decided in line with the ruling to be delivered by the Supreme Court.

***Tata Petrodyne Ltd vs ACIT- (2018) 54 CCH 0285 Mum Trib- ITA No 4887,5571,4914/Mum/2012 dated 28.09.2018***

**1425.** The Tribunal held that deduction u/s 80-IB(10) could not be disallowed for entire housing project where the assessee had violated conditions of section 80-IB(10)(f) by allocating three flats to a single person and, the assessee-developer was entitled to deduction proportionately in respect of flats which fulfilled all conditions of section 80-IB(10). It held that reading the provisions of section 80-IB(10) as a whole and the legislative intent/object behind introducing such provision into the statute reveal that it is a beneficial provision introduced by the legislature to deal with the housing problem and, thus, such provision has to be construed liberally.

***Om Swami Smaran Developers (P.) Ltd. v ITO – (2018) 90 taxmann.com 267 (Mum) – ITA No. 6355 (Mum.) of 2014 dated 31.01.2018***

**1426.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assesee's claim for deduction u/s 80-IB(4) in respect of profits from Unit II of the assesse, where the AO had opined that Unit II is nothing but an extension of Unit I, formed by splitting up of an already existing business and thus in violation of conditions specified u/s 80IB(4) for claiming the deduction for profit derived from unit II, mainly on the premises that both units were functioning from same premise and also both units were having common registration number of all the authorities. It was noted that the above issue was already considered by the co-ordinate bench in the assessee's own case for earlier year wherein after apprising relevant facts, it was concluded that the assessee had maintained separate books of account for both the units and Unit II set up by making investment in new plant & machinery was eligible for deduction u/s 80-IB(4).

***ASSISTANT COMMISSIONER OF INCOME TAX vs. DIAMOND TOOL INDUSTRIES - (2018) 53 CCH 0160 (Mum Trib) - ITA No.6936 to 6938, 6940 & 6941/M/2016 dated Jun 13, 2018***

**1427.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 80IB(10) towards profit derived from development of housing project which was disallowed by the AO observing that the assessee had not fulfilled conditions laid down in clause (a) to section 80IB(10). However, the CIT(A) noted that the project was part of slum redevelopment and same was approved by Slum Rehabilitation Project (SRA) and as per proviso to section 80IB(10), if housing project was approved by SRA, then clause (a) and clause (b) should not apply to such housing project. [Clause (a) provides for the time limits within which the project should be completed and clause (b) provides the that project should be on a plot of land which has minimum area of one acre]

***INCOME TAX OFFICER vs. OMEGA INVESTMENT & PROPERTIES LTD. - (2018) 53 CCH 0198 (Mum Trib) - ITA Nos. 869 & 870/Mum/2016 dated June 20, 2018***

**1428.** The assessee had claimed deduction u/s 80IB(10) in respect of profits derived from development of residential building. During the course of assessment proceedings for subsequent AY, the AO found from the Auditor's report that one construction project of assessee was approved by SRA on 7.10.2002 and the commencement certificate was received on

31.3.2003. However, the final approval for amended plan was granted by SRA on 04.06.2004 and as on 31.03.2009 only 67% of the project was completed. The AO opined from the given facts, that the assessee did not satisfy the conditions necessary for deduction u/s 80IB(10) i.e the project should be approved by local authority after 01.04.2004 and thus reopened the assessment for the year under consideration and disallowed the said deduction. The CIT(A) allowed the deduction.The Tribunal rejected the assessee's contention that the deduction was to be allowed as the final approval was granted on 04.06.2004 holding that since the initial approval and grant of CC was before 01.04.2004, the assessee did not satisfy the required conditions for deduction u/s 80IB(10) and thus disallowed the deduction.
***ITO v Omega Investment & Properties Ltd. (2018) 52 CCH 0294 MumTrib - ITA No. 868/Mum/2016 dated 09.04.2018***

**1429.** The Tribunal held that Section 80A does not restrict the deduction u/s 80-1B to income to under head 'business or profession and hence assessee's claim for deduction u/s 80-IB(10) to extent of availability of gross total income was held to be allowable.
***ACIT v Oberoi Realty Ltd - (2016) 47 CCH 0192 MumTrib***

**1430.** The Tribunal held that profit earned out of squaring off future contracts was on account of hedging against raw material price fluctuations which stemmed from the activity of the Jammu unit of the assessee engaged in manufacturing of Menthol Products and accordingly, the said profits were eligible for deduction under section 80IB of the Act.
***Jindal Drugs Ltd v ACIT (ITA NO 2592/Mum/2008) – TS-705-ITAT-2015 (Mum)***

**1431.** The Tribunal held that where the assessee had submitted adequate evidence to prove that it was engaged in the manufacture of goods (such as an SSI certificate which was given after commencement of production, registration under the Central Excise Act, Sales tax Act etc, books of account which supported claim of manufacture of goods as well as an undertaking of the assessee that it was not split up or reconstructed), the AO / CIT(A) were incorrect in denying deduction under section 80IB of the Act, inferring that the assessee was not engaged in the manufacture of goods on the ground that the supplier from whom the assessee had purchased machinery to carry on manufacture, denied supplying the machinery to the assessee.
***Hemant Kumar Godara v ACIT – (2015) 45 CCH 0233 Mum Trib***

**1432.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee's claim for pro-rata deduction u/s 80-IB(10) with respect to profits earned from development of housing project after excluding the profit earned on sale of two flats with respect to which the assessee had violated the condition stipulated in clause (f) of the said section (prohibiting allotment of more than one flat to an individual or his family members). The CIT(A) had rejected Revenue's contention that entire deduction should be disallowed relying on the decision in the case of CIT v. Arun Excello Foundation Pvt. Ltd. [(2013) 86 DTR 99 (Mad HC)] wherein it was held that where both commercial and residential units are built, proportionate deduction to extent of compliance would be allowed u/s 80-IB(10).
***ACIT v Namrata Developers TS-559-ITAT-2018(PUN) - ITA Nos.1974 to 1976/PUN/2016 dated 25.09.2018***

Go to Index

**1433.** The Tribunal allowed assessee's claim for deduction u/s 80IB(10) which was disallowed by the AO (i) noting that the assessee had earned profits from eligible projects and incurred loss in non-eligible projects, thereby resulting in overall loss under the head `Profits and gains of business or profession' and and (ii) by invoking provisions of section 80AB (which provides that deduction will be allowed only to the extent the gross total income includes income from eligible unit) r.w.s. 80B(5) (which defines "gross total income" to mean `the total income' computed in accordance with the provisions of the Act, before making any deduction under Chapter VI-A). The Tribunal held that, based on conjoint reading of sections 80AB and 80B(5), it is the income of the eligible projects alone which should be considered on standalone basis, rather than the income under the head `Profits and gains of business or profession', for the purposes of granting deduction, albeit with the overall ceiling of the gross total income. Accordingly, since the amount of eligible income, as claimed by the assessee, was less than the amount of gross total income, it held that the provisions of section 80AB did not apply adversely to the assessee's case. Thus, assessee's appeal was allowed.
***V.B Patil v ITO [TS-726-ITAT-2018(PUN)] – ITA No. 1624/PUN/2017 dated 17.12.2018***

**1434.** The Tribunal granted SSI (Small Scale Industry) status linked deduction u/s.80IB(3)(ii) to the assessee despite the fact that the assessee-company ceased to be a SSI undertaking in relevant assessment year. It noted that the assessee was incorporated as an SSI unit in AY 2003-04, but grew beyond the SSI definition in relevant AY and relying on the decision of the Karnataka HC ruling in Ace Multi Axes Systems Ltd. held that if an SSI stabilizes early, makes profits, makes further investments in the business, the said growth would not come in the way of claiming benefit u/s.80IB(3)(ii) for 10 consecutive years from the initial AY.
***Advik Hi-Tech Pvt. Ltd. vs DCIT [TS-467-ITAT-2017(PUN)] - ITA No.83/PUN/2015 dated 22.09.2017***

**1435.** The Tribunal allowed the assessee deduction under section 80IB(10) on the entire housing project for AY 2010-11, despite the assesseeallotting multiple flats in the name of individual persons, violating conditions prescribed under section 80IB(10)(e) / (f) viz. that no deduction was allowable if more than one residential unit was allotted to the same person, since the condition was introduced vide amendment in finance Act 2009 with effect from April 1, 2010 and could not be applied to transactions completed before the insertion of the said amendment.
***DCIT v Sai Drishti Constructions – TS-429-ITAT-2016 (Pun) - ITA No. 991/PN/2014***

**1436.** The Tribunal held that the rental income received by the assessee upon leasing out a portion of a building to Big Bazaar qualified for deduction under section 80IB(7A) of the Act (deduction available on profits and gains derived from the business of building, owning and operating a multiplex theatre) and could not be treated as income from house property as the assessee satisfied the conditions prescribed under the said section viz. it carried on the two activities of cinema theatre and commercial shops simultaneously and therefore could be considered as a multiplex. The Tribunal observed that the assessee had built and constructed an area as per the specifications of the lessee who was to occupy the same for commercial activities and therefore, the Revenue was incorrect in contending that the assessee failed to commercially exploit the said property.
***Sameer Rajendra Shah – TS-266-ITAT-2016 (Pun)***

Go to Index

» *Section 80-IC*

**1437.** The Apex Court allowed Revenue's appeal holding that where the assessee had set up a new industry in Himachal Pradesh and had claimed deduction u/s 80IC at 100% of profits for five years, it could not claim deduction u/s 80IC at 100% again for next five years on the basis it had undertaken substantial expansion for the same industry / unit. It held that once the assessees had started claiming deduction u/s 80-IC and the initial Assessment Year [as referred to in sub-section (3) of the said section] had commenced of the period of 10 years, there could not be another initial Assessment Year thereby allowing 100% deduction after the first 5 years also when sub-section (3), in no uncertain terms, provided for deduction at 25% only for the next 5 years (30% where assessee was a company).
***CIT vs Classic Binding Industries [2018] 96 taxmann.com 405 (SC) - CIVIL APPEAL NOS. 7208 TO 7234, 7236, 7238, 7239 OF 2018 dated August 20 2018***

**1438.** The Apex Court dismissed the SLP filed by the Revenue against the High Court's order wherein the High Court had held that an 'undertaking or an enterprise' which was established after 7-1-2003 and carried out 'substantial expansion' within specified window period, i.e., between 7-1-2003 and 1-4-2012, would be entitled to deduction on profits @ 100% u/s 80-IC post the said expansion, though the first five years starting from the initial assessment year during which it could claim deduction @100% had expired and the undertaking was otherwise eligible for deduction @ 25% for subsequent five years, if it undertakes further 'subtantial expansion' subsequently within the specified window period.
***PR.CIT v vs. MAHABIR INDUSTRIES - (2018) 102 CCH 0376 ISCC - Special Leave to Appeal (C) No(s). 16863/2018 WITH SLP(C) No. 16860/2018 (XIV) dated Jul 24, 2018***

**1439.** The Apex Court dismissed the SLP filed by assessee against the High Court order wherein it was held that the interest earned on FD kept as security was not eligible for deduction u/s 80IC since it had nothing to do with the eligible business undertaking engaged in manufacturing and sale of electric meter.
***Conventional Fastners v CIT [2018] 94 taxmann.com 80 (SC) – SLP (C) NO. 12610 OF 2018 dated 16.05.2018***

**1440.** The AO in the case of the assessee claiming deduction u/s 80-IC observed that the unit (eligible for deduction u/s 80-IC) in Himachal Pradesh which was selling the products to related concerns had earned abnormally higher profits compared to Delhi Unit of the assessee and accordingly, rejected the GP declared by the assessee and adopted a lower GP as per the provisions of section 80-IA(8) r.w.s. 80-IC. The CIT(A) deleted the addition made by the AO on the ground that the AO had without pointing out any mistake in the audited accounts of the assessee and merely on the basis of the comparison with Delhi unit had adopted lower GP which was not justified. The Tribunal upheld the order of CIT(A) and held that AO's invocation of section 80-IA(8) r.w.s 80-IC was not valid since the AO had not brought any valid material on record to show that there was some arrangement between the 2 units of the assessee for inter- unit transfer of goods. The Court observed upheld the order of the Tribunal.
***PCIT & ANR. Vs. HARPREET KAUR & ANR. (2017) 99 CCH 0140 DelHC ITA 141/2017, 142/2017 dated 24/07/2017***

Go to Index

**1441.** Rejecting the contention of the Revenue that for the purpose of claiming deduction under Section 80-IC of the Act, eligible assessee's could only have one 'initial assessment year', the Court reversed the order of the Tribunal and held that the assessee (who had been claiming exemption under Section 80-IC from AY 2006-07 onwards) had claimed a fresh deduction @ 100 percent on account of completion of substantial expansion in AY 2010-11 (treating AY 2010-11 as the initial assessment year qua its expansion) was eligible to do so. It held that the definition of 'initial assessment year' is disjunctive and not conjunctive and that the moment "substantial expansion" was completed as per Sec. 80-IC (8)(ix), the statutory definition of "initial assessment year" [Section 80-IC(8)(v)] comes into play and consequently, Section 80-IC(3)(ii) entitles the unit to 100% deduction commencing from the year in which substantial expansion had been completed.

***Stovecraft India v CIT - (HP HC) ITA Nos.20 to 24, 31 to 37 of 2015; 1,6,7, 9,10,14,15,20,23,24,25,27,35,44,45,50, 61, 62,69, 70 of 2016; and 2,3,5,7,8,17, 19, 20,21,22,25 & 26 of 2017 dated 28.11.2017***

**1442.** The Court upheld Tribunal's order allowing deduction u/s 80IC to the assessee undertaking job work by providing labour employment and factory space for the purpose of manufacture of medicines by various manufacturers. The Tribunal, considering the decision in the case of CIT v. Impel Forge and Forge Allied Industries Limited [(2010) 326 ITR 27 (P&H)] and CIT vs. Sadhu Forging Ltd. [(2011) 336 ITR 444 (Del HC)], held that for claiming deduction under the aforesaid provisions, the assessee was at liberty to manufacture for itself or for others and the same did not make any difference.

***CIT & Anr v AISHWARYA HEALTH CARE & ANR. - (2018) 401 ITR 0398 (Patna) - Miscellaneous Appeal No. 674 & 675 of 2014 dated 29.01.2018***

**1443.** The Court held that once the initial AY commences and an assessee, by virtue of fulfilling the conditions laid down u/s 80IC(2), starts enjoying deduction, there cannot be another "Initial AY" for the purposes of section 80IC within the period of 10 years, on the basis that it had carried substantial expansion in its units and relied on the judgement of Apex Court in case of Classic Binding Industries (Civil Appeal No 7208 of 2018).

***Admac Formulations vs CIT- (2018) 103 CCH 0230 PHHC- ITA No 332 of 2015 dated 06.09.2018***

**1444.** The Court denied the assessee deduction under Section 80IC with respect to interest earned by it on fixed deposits and held that the benefit of Section 80IC is only available on profits and gains derived from carrying on eligible business. It held that the word 'derived' used in the Section was not the same as 'attributable to' as the scope of the word 'attributable' is much wider than 'derived'. It rejected the assessee's contention that the fixed deposit had intrinsic and inseggregable nexus with the work undertaken and held that the FD interest had nothing to do with carrying on the business on manufacture and sale of articles.

***Conventional Fastners – TS-551-HC-2017 (UTTARAKHAND HC)- INCOME TAX APPEAL NO. 24 OF 2015 dated 15.11.2017***

Go to Index

**1445.** The Court held that the assessee was not entitled to benefit under section 80IC of the Act (available on Eco-tourism) merely on the basis of a no objection certificate received from the Pollution Control Board as it was not a sole determinant as to whether the hotel was engaged in Eco tourism. The Court rejected the contention of the assessee that as per the office memorandum issued by the Ministry of Commerce and industry, deduction should be allowed to the assessee irrespective of geographical locations / restrictions and held that the use of the word 'Eco-tourism' was intended to encourage the setting up of hotels / spas close to nature in areas reflecting pristine beauty and since the assessee set up its hotel in a busy city like Dehradun and not in the hilly areas of Uttarakhand, the deduction under section 80IC was not to be granted.
***CIT v Aanchal Hotels Pvt Ltd – TS-430-HC-2016 (Uttarakhand HC)***

**1446.** The Tribunal held that where the assessee had commenced a new business unit by purchasing new land, construction of new building, purchase and installation of new plant and building and manufacturing items it was eligible for deduction u/s 80-IC and the AO was incorrect in denying the same on the ground that the new business was commenced out of the transfer of an old business, especially when there was nothing brought on record to prove so.
***ITO v Bonsai Pharmachem – (2016) 47 CCH 0403 (Ahd – Trib) - ITA No. 19/Ahd/2012***

**1447.** The Tribunal held that where the assessee did not have a separate marketing division and therefore there was no transfer of goods from a eligible manufacturing division to the non-eligible marketing division, the AO was incorrect in reducing the 80IC deduction of profits claimed by the assessee by 35 percent on the ground that 35 percent of the consideration received by the assessee on the sale of goods was attributable to its marketing activities. Further, it held that since the marketing costs debited to the P&L account were more than the gross profit no disallowance of deduction under section 80IC could be sustained.
***DCIT v Astral Polytechnik Ltd – (2016) 47 CCH 0181 (Ahd Trib)***

**1448.** The Tribunal held that profits and losses of all eligible undertakings are not to be netted for purpose of calculating deduction under section 80-IC and are to be taken on a standalone-basis.
***Milestone Gears (P.) Ltd. v. A.C.I.T., Circle Parwanoo-[2019] 101 taxmann.com 314 (Chandigarh - Trib.)-IT Appeal Nos. 883 to 885 (CHD.) of 2017 -dated December 6, 2018***

**1449.** The Tribunal held that where assessee had availed deduction under section 80-IC for a period of 5 years at rate of 100 per cent, he would be entitled to deduction on substantial expansion for remaining 5 assessment years at rate of 30 per cent and not at rate of 100 per cent.
***Milestone Gears (P.) Ltd. v. A.C.I.T., Circle Parwanoo-[2019] 101 taxmann.com 314 (Chandigarh - Trib.)-IT Appeal Nos. 883 to 885 (CHD.) of 2017 -dated December 6, 2018***

**1450.** Where assessee had two manufacturing units both of which were eligible for deduction u/s 80-IC, in view of fact that one of said unit earned profit whereas other unit incurred loss, the Tribunal held that the Revenue authorities were justified in setting of the said (loss) negative income of one eligible unit against (profit) positive income of other eligible unit while computing amount of deduction.

Go to Index

***Elin Appliances (P.) Ltd vs Dy. CIT . [2018] 97 taxmann.com 302(Chandigarh-Trib) IT Appeal Nos. 1505 and 1506 (CHD) of 2017 dated August 07 2018***

**1451.** The Tribunal held that investment in building, furniture, fixture in case of a hotel would qualify to be treated as investment in plant and machinery for purpose of section 80-IC. It relied on the decision of the Apex Court in CIT v. Karnataka Power Corporation' [2000] 112 Taxman 629/[2001] 247 ITR 268 wherein it was held that the question of whether a building could be treated as plant was a question of fact and where it was found as a fact that a building had been so planned and constructed as to serve as assessee's special technical requirements, it would qualify to be treated as a plant for the purpose of investment allowance. Accordingly, it held that the restrictive meaning to the word plant given by the lower authorities was incorrect and accordingly allowed the assessee benefit under Section 80IC.
***Sirmour Hotels (P.) Ltd. v DCIT - [2018] 91 taxmann.com 450 (Chandigarh - Trib.) - IT APPEAL NOS. 374 TO 376 (CHD.) OF 2017 dated MARCH 19, 2018***

**1452.** The assessee-company commenced its operations on 29-3-2010. It claimed deduction u/s 80-IC for first time in AY 2011-12 and same was allowed by Revenue. During AY 2013-14, Commissioner invoked provisions of section 263 and held that it was not a case of setting up of new industrial unit, but that of re-organization of business already in existence and hence the assessee would not be eligible for deduction u/s 80-IC. The Tribunal set aside the CIT's order noting that stage for carrying out investigation for ascertaining if unit was newly set up or reconstructed is in its initial year and in subsequent years, the AO was precluded from examining the same.
***Ganpati Herbal Care (P.) Ltd. vs PCIT [2018] 97 taxmann.com 575(Delhi Trib) - ITA NOS.2056 OF 2018 DATED AUGUST 2, 2018***

**1453.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made u/s 40(a)(ia), holding that since entire profit was deductible u/s 80IC, the disallowance would not make any difference as the assessee would be eligible for deduction on such disallowance amount, which was also clarified by the CBDT Circular No.37/2016.
***ITO v Laxmi Electronics - TA No.1994/Del./2015 dated 10.09.2018***

**1454.** The assessee claimed deduction u/s 80IC in respect of Unit-III Kotdwar which was denied by the AO who held that the eligible unit was formed after splitting up existing unit at Noida and hence no deduction could be granted. The Tribunal upheld the order of the CIT(A) and held that since there was no splitting up of existing unit inasmuch as there was no finding by AO that any machinery earlier used in Noida unit was transferred to Kotdwar-III unit and since the assessee started supplying its products to H and other customers from new undertaking at Kotdwar-III unit which were earlier manufactured at Noida unit, the AO was not justified in disallowing the claim of deduction under Section 80IC of the Act. Further, it noted that other than purchase of raw material from its Noida Unit, there was no reference to any interconnectivity between Kotdwar-III unit and Noida Unit and further observed that it was not case of AO that raw material purchased by assessee from Noida unit was not at arm's length price. Accordingly, it upheld the CIT(A)'s order and dismissed Revenues' appeal.

Go to Index

***INCOME TAX OFFICER & ANR. vs. INDICA INDUSTRIES PVT. LTD. & ANR. - (2018) 52 CCH 0133 DelTrib - ITA No. 1764/Del/2016, 3836/Del/2015, 1509/Del/2016 dated Feb 28, 2018***

**1455.** The Tribunal restored the matter to the file of the AO with respect to the assessee's claim for deduction u/s 80IC which was denied by the AO opining that there was no manufacturing activity done by the assessee-company so as to be eligible for the said deduction. The Tribunal observed that in the earlier years, the CIT(A) had allowed the deduction u/s 80IC and the Revenue's appeal against the CIT(A)'s order was dismissed by the Tribunal, thereby indicating that the assessee-company was doing manufacturing activity. However, for the year under consideration, the AO relied on a report given by the Inspector after survey on the premises of the assessee stating that there were no sign of manufacturing activity and all the machinery were found fully detached from electric supply and the said report was not confronted to the assessee.

***ARON HURLEY KCONCEPTS PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 64 ITR (Trib) 0722 (Delhi) - ITA Nos. 844 & 845/Del./2017 dated April 3, 2018***

**1456.** The Tribunal allowed the assessee deduction on interest on debtors and gain on account of foreign exchange fluctuation under Section 80IC as these incomes were derived by the assessee from the business of the eligible undertaking. However, it rejection assessee's claim of deduction on interest of subsidy and held that the CBDT Circular No 39 / 2016 relied on by the assessee was not applicable as the said circular allowed deduction on subsidies towards reimbursement of cost of production whereas in the instant case, the subsidy received by the assessee was for interest on loan taken for purchase of plant.

***Quadrant EPP Surlon vs ITO – TS-539-ITAT-2017 (Del)- ITA No.442/Del/2014 dated 15.11.2017***

**1457.** The AO denied deduction claimed u/s. 80IB/ 80IC with respect to interest income for the reason that same had not been derived from eligible business and the AO's order was upheld by CIT(A). The Tribunal on appeal held that, crucial expression 'derived from' used in deduction provision, meant relevant income to be having a direct nexus with business activity or profits and gains derived there from. The Tribunal observed that the Court in assessee's own case (reported in 231 Taxman 585(Cal)) had already upheld Revenue's very stand and thus the Tribunal confirmed the denial of deduction u/s 80IB/IC w.r.t interest income.

***DCIT vs Reckitt Benckiser (India) Ltd- (2018) 54 CCH 0033 Kol Trib- ITA No 2113,2150, 2114, 2151, /Kol/2013, 760 & 762/Kol/2014 dated 14.09.2018***

**1458.** Where deduction u/s 80IC of the Act was omitted to be claimed by the assessee in its original/revised income tax return filed electronically and the AO had not brought anything on record showing any infirmity in amount of deduction claimed by assessee by way of filing separate letter during the course of assessment proceedings, relying on the decision in the case of Jute Corporation of India Ltd [187 ITR 688 (SC)], the Court held that the assessee was entitled to deduction u/s 80 IC of the Act.

***DyCIT vs India Glycols Ltd (2017) 51 CCH 0089 KolTrib. ITA No. 1628 / kol / 2014 dated 15.09.2017***

Go to Index

**1459.** The Tribunal allowed the assessee deduction u/s. 80IC and held that that since the assessee claimed Sec.80IC deduction in duly filed revised return u/s 139(5) and filed tax audit report along with prescribed Form no. 10CCB there was a sufficient compliance for claiming deduction. It rejected Revenue's re-opening of the concluded assessment on the ground that Sec.80IC deduction could be claimed only by filing return within the due date provided u/s 139(1) and observed that Sec. 80AC only contemplated that for allowing deduction u/s 80IC, the assessee was required to file return of income u/s 139(1), and it did not lay down condition that deduction u/s 80IC was to be claimed in the return of income filed u/s 139(1). Moreover, noting that AO [while framing assessment u/s. 143(3)] had duly deliberated on Sec. 80IC deduction claim made by assessee in the revised return of income, the Tribunal held that it was a clear case of 'change of opinion' and quashed re-assessment.
***Monarch Innovative Tech [TS-67-ITAT-2018(Mum)] - /I.T.A. No.4815/Mum/2016 dated 12-02-2018***

» *Section 80-IE*

**1460.** The Tribunal held that in terms of section 80-IE(7), 'initial assessment year' would be the year in which substantial expansion was completed by assessee which would enable it to generate revenues and claim deduction thereon and that there was no time limit prescribed in section 80-IE as to when substantial expansion should be completed by assessee. Accordingly, it held that the CIT(A) was not justified in denying deduction on the ground that once substantial expansion was undertaken it had to be completed within same financial year in order to claim deduction under section 80-IE. Accordingly, it allowed the assessee's claim of deduction under Section 80-IE.
***Jay Shree Industries Ltd. v JCIT - [2018] 92 taxmann.com 304 (Kolkata - Trib.) - IT APPEAL NO. 359 (KOL.) OF 2014 dated MARCH 16, 2018***

» *Section 80JJA*

**1461.** The Tribunal denying section 80JJAA deduction to the assessee company (engaged in manufacture & export of computer software) for AY 2001-02 & 2002-03, as the new workmen employed by the assessee failed the regular workmen test as envisaged on the explanation (ii) (c) to section 80JJAA. The assessee had argued that in view of the Memorandum explaining provisions of Finance No.2 Bill 1998, the condition of 300 days of employment during the previous year should be read as 300 days in a year and hence the year must be counted from the date of employment and not in the previous year. The court noted the ambiguity involved in the language used in the explanation and in the memorandum and held that, though the language used in the provision appeared to militate with the intention of the legislature as expressed in the memorandum as well as against the very object and scheme of the provision of providing incentive for generating more employment. However, this may be an omission in the provision which can be supplied only by an act of legislature through proper amendment.
***Texas Instruments (India) P. Ltd [TS-703-ITAT-2016(Bang)]***

Go to Index

» *Section 80-O*

**1462.** The Apex Court dismissed the assessee's appeal against the High Court's order rejecting the assessee's claim for deduction u/s 80-O with respect to gross foreign exchange received from a foreign company for rendering specialized industrial and commercial knowledge (relating to the Indian automobile industry) to the said foreign company under a contract whereby the said company had agreed to pay remuneration being certain percent of the contractual amount between the foreign company and its Indian customers on sale of its products so developed. The Apex Court held that there was no material on record to prove that a) the sales effected by the foreign company to its customers in India were in respect of the product developed with the assistance of the assessee's information b) how the service charges payable to the assessee were computed. It thus held that the services rendered to the foreign company were not technical services within the meaning of section 80-O, since the assessee had failed to prove the same and he had also not produced the relevant documents to prove the basis for the said payment to him.
***B.L. Passi v CIT - [2018] 92 taxmann.com 341 (SC) - CIVIL APPEAL NO. 3892 OF 2007 dated April 24, 2018***

**1463.** The Court held that the method of determination of income received or brought into India in convertible foreign exchange for the purposes of deduction under section 80O of the Act adopted by the assessee – on the basis of average net profit for a period of 10 years was not valid as expenses keep fluctuating on a yearly basis.
***Continental Carriers v CIT – TS-234-HC-2016(DEL)***

» *Section 80P*

**1464.** The Apex Court dismissed assessee's SLP against the High Court order wherein it was held that deduction u/s 80P could not be claimed without filing a return by the assessee co-operative society
***KUTHUPARAMBA RANGE KALLUCHETHU VYAVASAYA THOZHILALI SAHAKARANA SANGHAM LTD vs. CIT [2018] 103 CCH 0279 (ISCC)- SLP (CIVIL) Diary No(s). 41386/2018 dated 26.11.2018***

**1465.** Where the assessee, a co-operative society carried on the business of banking for the public at large i.e. its operation was not confined exclusively to its members but also extended to outsiders as well without adequate approval from the Registrar of Societies, the Apex Court denied the assessee deduction u/s 80P(2)(a)(i) of the Act as the activity of the appellant was in contravention of the Co-operative Societies Act.
***The citizen co-operative society TS-326-SC-2017(CIVIL APPEAL NO. 10245 OF 2017 dated August 8, 2017)***

**1466.** The Apex Court denied the benefit of section 80P to the assessee by holding that an assessee cannot be treated as a cooperative society meant only for its members and providing credit facilities to its members if it has carved out a category called nominal members. These are those

members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in the real sense. Most of the business of the assessee was with this category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found that the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society.

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

**1467.** The assessee, engaged in the sale of fertilisers to its members, deposited a portion of its income derived in Nationalised Banks and treated the same as income attributable to the profits and gains of business, eligible for deduction u/s 80P(2)(a). However, the AO treated the interest income as income from other sources not eligible for deduction. The Court affirmed assessee's contention that the expression "attributable to" contained in the said section was wider in scope than the expression "derived from". It noted that the investments made by the assessee was out of its own monies and noted that if the assessee had invested those amounts in fixed deposits in other Co-operative Societies or in the construction of godowns and warehouses, the respondents would have granted the benefit of deduction under Clause (d) or (e), as the case may be. Therefore, it allowed the assessee deduction under section 80P(2)(a) and further held that the original source of the investments made by the assessee in nationalised Banks was admittedly the income that the petitioners derived from the activities listed in sub Clauses (i) to (vii) of Clause (a) of Section 80P(2) (which lists down the activities eligible for deduction under section 80P) and therefore observed that the character of such income i.e. business income, would not be lost, especially when the statute uses the expression "attributable to" and not anyone of the two expressions, namely, "derived from" or "directly attributable to".

***Vavveru Co-Operative Rural Bank Ltd. [TS-202-HC-2017(Andhra Pradesh)] - W.P.Nos.12727 and 12767 of 2016 & W.P.Nos.2518, 2571, 2576 and 2581 of 2017***

**1468.** The Court allowed assessee's appeal against Tribunal's order wherein the Tribunal had held that the assessee-society would not be eligible to claim deduction u/s 80P(2) on the income from the sale of goods for Public Distribution System as directed by the Government of Tamil Nadu on the ground that a credit society was not authorized to carry on such acticity. The Court followed it own decision in the assessee's case for an earlier year wherein it was held that directives issued by the Government of Tamil Nadu, as communicated by the Registrar of Cooperative Societies, were binding on the assessee and, accordingly, directed the AO to extend the benefit of deduction u/s 80P(1) r.w s. 80P(2)(a)(i).

***Kodumudi Growers Co-operative Bank Ltd. vs ITO [2018] 103 CCH 0102 (Chen HC)- Tax Case Appeal No. 571 of 2011 dated 01.11.2018***

**1469.** Where assessee co-operative credit society was providing credit facilities to its members alone and not to general public at large and it also did not receive monies by way of deposit from general public, the Court held that it could not be termed as co-operative bank and therefore was entitled to seek deduction under section 80P(2)(a)(i), which provided that interest income

received from the members of a co-operative society (and not co-operative bank) would be allowed as a deduction.

***CIT vs. Nilgiris Co-Operative Marketing Society Ltd.(2016) 97 CCH 0106 ChenHC (Appeal No.758 of 2016)***

**1470.** The Court upheld the Tribunal order allowing assesse, a cooperative credit society engaged in providing credit facilities to its members, deduction u/s 80P(2)(a)(i) on the ground that since the assesse was not a bank but a cooperative credit society, section 80P(4) disentitling certain co-operative bank for deduction u/s 80P are not applicable.

***Pr.CIT v Ekta Co-op Credit Society Ltd. – (2018) 91 taxmann.com 42 (Guj) - Tax Appeal No. 859 of 2017 dated 23.01.2018***

**1471.** The Court ruled in favour of Revenue and denied deduction under section 80P(2)(d) [which permits deduction for whole of the income by way of interest or dividends derived by a cooperative society from its investments with any other co-operative society] to the assessee, co- operative society (engaged in agro-marketing) with respect to interest income earned on investments made in co-operative 'bank' for AYs 2007-2008 to 2011-2012. It denied the benefit to the assessee on the ground that interest income from co-operative 'bank' was not covered by Sec. 80P(2)(d) which covered interest from co-operative 'society'. It highlighted that words 'Co- operative Banks' are missing in clause (d) of Sec. 80P(2) and holds that a co-operative bank is distinct from co-operative society for the purposes of Sec 80P(2)(d). Further, it held that the assessee was not even eligible to claim benefit under section 80P(2)(a) [which provides 100% deduction to a co-operative society where the income is earned by the co-operative society by carrying on the business of banking or providing credit facilities to its members or a cottage industry or the marketing of the agricultural produces grown by its members] as the interest income was taxable as 'income from other sources' and not 'business' income.

***Pr. CIT vs The Totagars Co-operative Sale Society-TS-233-ITAT-HC-2017(KAR)-ITA No.100066/2016 dated 16.06.2017***

**1472.** Where the assessee co-operative society was engaged in tapping of toddy and vending it through licensed shops, the AO denied the assessee's claim for deduction u/s 80P(2)(iii) opining that toddy being an intoxicating liquor, extraction and sale were regulated by State Government under provisions of Abkari Act and, thus, income generated from such vending under license could not be covered under the said section. As section 80P(2)(iii) allows deduction to a co-operative society of the profit derived by it from the marketing of agricultural produce grown by its members, the Court allowed the assessee's claim holding that regulatory regime under Abkari Act would not be a relevant factor in deciding as to whether assessee-society would be entitled to exemption as available u/s 80P and even otherwise, since tapping of toddy was a traditional agricultural enterprise within the State, the State also encouraged it, as distinguished from foreign liquor trade.

***Kuthuparamba Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham Ltd. v CIT - [2018] 95 taxmann.com 299 (KeralaHC) - IT APPEAL NO. 273 OF 2015 AND 139, 140, 142, 143, 151, 153, 154 & 156 OF 2016 dated June 20, 2018***

Go to Index

**1473.** The Court allowed deduction u/s 80P to assessee registered as primary agricultural credit society under Kerala Cooperative Society Act, 1969 ('KCS') and rejected Revenue's stand that assessee was a co-operative bank and not a 'primary agricultural credit society' and hence hit by embargo u/s 80P(4) (which excludes applicability of Sec 80P(2)(a)(i) to 'co-operative bank' other than 'primary agricultural credit society' or a primary co-operative agricultural and rural development bank). It held that the assessee was a "primary agricultural credit society" in terms of Sec 5(cciv) of Banking Regulation Act and also as per 'KCS' Act. The Court states that once assesse was held to be a primary agricultural credit society by the competent authority under the KCS Act, it had to necessarily be held that the principal object of such societies was to undertake agricultural credit activities.
***Chirakkal Service Cooperative Bank Ltd v CIT - TS-183-HC-2016(KER HC)***

**1474.** The Court held that where the assessee, a cooperative society engaged in carrying on business of banking / providing credit facilities to its members, earned interest on investments which were made to enable it to pay off the interest due to its members, such interest earned was eligible for deduction under section 80P of the Act since it was attributable to the activities of the assessee.
***CIT v South Eastern Railway Employees Co-Op Credit Society Ltd – (2016) 96 CCH 0083 (Kol) - ITA 484 OF 2007***

**1475.** The Court remanded the matter to AO where the AO had held that assessee (which was a Co-operative society was formed for welfare of LIC employees) was involved in banking business and tax had to be deducted at source on interest paid on time deposits of its members. Tribunal noted that the AO had not considered assessee's own case for previous assessment year which was decided in favour of assessee by Tribunal and also that he had not gone through the cited decision of jurisdictional High Court in the case of Coimbatore District Central Co-operative Bank Ltd. v. ITO (2016) 382 ITR 266 (Mad).
***LIC Employees Co-operative Bank Ltd. v ACIT – (2018) 91 taxmann.com 183 (Mad) – W.P. No. 812 of 2018, WMP No. 979 of 2018 dated 18.01.2018***

**1476.** The Court, relying on the decision of the Division Bench in The Punjab State Cooperative Federation of House Building Societies v CIT (ITA-17-2016) held that the Tribunal was correct in holding that the income earned from banks other than cooperative banks was taxable as income from other sources not eligible for deduction u/s 80P of the Act.
***Punjab State Cooperative Federation v CIT – (2016) 97 CCH 0140 (P&H HC)***

**1477.** The Tribunal held that where money was deposited by Assessee in bank so as to earn interest and such interest income was attributable to carrying on business of banking; the same was liable to be deducted in terms of s 80P(1)
***State Bank of India Supervising Official's Co.Operative Credit Society Ltd. v ITO - (2016) 47 CCH 0206 (Ahd-Trib)***

**1478.** In the case of Regional Rural Bank (RRB), the assessee, Tribunal allowed the claim of deduction u/s 80P(2)(a)(i) which was rejected by the AO on the ground that the assessee was not a copoperative society as it was not registered under Cooperative Societies Act, 1912 and that

after insertion of section 80P(4) deeming status of Cooperative Society to RRB stood dissolved. Tribunal accepted assessee's submission that it was a cooperative society as per the provisions of section 22 r.w. section 32 of the Regional Rural Bank Act, 1976 which have overriding effect over the provisions of the Act, and not the provisions relied by AO.

***Baroda Uttar Pradesh Gramin Bank v DCIT – (2018) 91 taxmann.com 182 (Allahabad Trib) – ITA Nos. 403, 404 & 405 (Alld.) of 2014 dated 08.01.2018***

**1479.** Where assessee's claim for deduction under section 80P(2)(a)(i) was rejected on ground that it was a co-operative bank, the Tribunal remanded back the matter to Assessing Officer for consideration afresh, with a direction to assessee to produce a certificate from RBI that it did not possess license for doing banking business and further that business carried on by assessee was not akin to business of a co-operative bank.

***Sri Venugopalkrishna Credit Co-operative Society Ltd. v. ITO, Ward-5(2)(4), Bglore-[2019] 101 taxmann.com 49(Bangalore-Trib)***

**1480.** The Tribunal held that the claim of deduction u/s 80P could not be allowed to the assessee-cooperative society, if it was not registered under Co-operative Societies Act (being a pre-requisite for the said deduction) and remanded the matter back to AO to re-examine the aforesaid aspect as it was a new point raised during course of hearing.

***UDAYA SOUHARDA CREDIT CO-OPERATIVE SOCIETY LIMITED vs. INCOME TAX OFFICER [2018] 53 CCH 0451 Bang Trib - ITA NOS.2831/bang/ 2017 DATED AUGUST 17, 2018***

**1481.** The assessee, an agricultural Service Society, engaged in accepting deposits and providing credit facilities to its members, claimed deduction u/s 80P(2)(a)(i) in respect of income earned on FDRs kept with bank. The AO held that interest income earned from investment of surplus funds in Banks and government securities could not be attributable to activity carried out by society and hence was not entitled for deduction under Section 80P(2)(a)(i). CIT(A) upheld order of the AO. Tribunal held that where FDR'S in banks were made from operational funds of cooperative society while carrying out its activity of providing credit to its members, interest earned thereon being incidental to carrying out said activity, was attributable to said activity and hence entitled to deduction under Section 80P(2)(a)(i). However, the Tribunal restored the matter to the file of the AO for limited purpose of examining activities carried out by assessee society and whether deposits made by it in banks were done during course of carrying out its stated activities and thereafter decide the issue in accordance with law. Thus, the Assessee's appeal was allowed.

***THE TIARA CO-OPERATIVE AGRICULTURAL SERVICE SOCIETY LIMITED vs. ITO (CHANDIGARH TRIBUNAL) (ITA Nos. 905 to 908/Chd/2017) dated May 1, 2018 (53 CCH 0109)***

**1482.** Assessee was Co-operative Agricultural and Rural Development Bank, registered under Kerela Co-operative Societies Act, 1969 and the area of operation of assessee-society was confined to Kottayam, Changanasserry and Vaikom Taluks.The Tribunal denied deduction u/s 80P as the assessee's area of operation was not confined to a taluk i.e one Taluk as mentioned by explanation (b) to section 80P but to 3 different taluks.

Go to Index

***Kottayam Co-operative Agricultural & Rural Development Bank Ltd vs ITO- (2018) 54 CCH 0091 CochinTrib- ITA No 295/Coch/2018 dated 17.10.2018***

**1483.** Assessee was primary agricultural credit society, registered under the Kerala Co-operative Societies Act, 1969. For the AY under consideration, assessee filed its returns declaring the income to be 'nil' after claiming exemption u/s 80P(2)(Exemptions to various societies). AO rejected the said claim of assessee holding that the assessee was doing business of banking and it was not entitled to deduction u/s 80P(2) in view of insertion of section 80P(4)(exclusion of application S.80P(2) to co-operative banks). The CIT(A) deleted the said disallowance. The Tribunal followed Chirakkal Service Co-operative Bank Limited & Ors(HC) wherein it was decided that when a primary agricultural credit Society was registered as such under the Kerala Co-operative Societies Act, 1969, such society was entitled to benefit of deduction u/s 80P(2). Thus, the Tribunal held that since there was certificate issued by Registrar of Cooperative Societies, stating that assessee was primary agricultural credit society, assessee was entitled to deduction u/s 80P(2) thereby dismissing the revenue's appeal.

***ITO & Anr v Athirampuzha Regional Service Cooperative Bank Ltd. & Anr. (2018) 52 CCH 0323 CochinTrib - ITA No. 1/Coch/2017 dated 17.04.2018***

**1484.** The assessees were Primary Agricultural Credit Societies (PACS) engaged in providing credit facilities and claimed deduction u/s 80P. The AO denied the said claim on the ground that assessees were having only negligible portion as disbursement of agricultural loans and they were doing business of banking and therefore in view of insertion of provisions of section 80P(4)[which disentitles a co-operative bank other than a PACS or a Primary Co-operative Agricultural and rural development bank for claiming said deduction], assessees were not entitled to deduction. The CIT(A), on allowing assessee's appeal held that the assessees were entitled to benefit of deduction u/s 80P(2). The Tribunal observed that the issue as to whether the assessee were 'PACS' or 'Co-operative Bank' was to be determined as per the Banking Regulation Act,which specifically provided that the determination thereof by the Reserve Bank would be final. Thus, noting that the RBI had given letters to the societies similar to assessee stating that they were Primary Agricultural Credit Societies and therefore in terms of section 3 of Banking Regulation Act were not entitled for banking license, the Tribunal held that the AO was not competent and did not possess jurisdiction to resolve issue as to whether assessee was 'PACS' or 'Co-operative bank'. Accordingly, it upheld the CIT(A)'s order allowing deduction to the assessee and dismissed the Revenue's appeal.

***ITO & Ors v Chengala Service Co-Op Bank Ltd. & Ors (2018) 52 CCH 0281 CochinTrib - ITA No.434/Coch/2017 dated 05.04.2018***

**1485.** Assessee, a primary agricultural credit society was denied deduction u/s 80P(2) by the AO on the ground that assessee was primarily doing business of banking and with the insertion of provisio to section 80P(4) w.e.f 01.04.2007, no deduction was allowable. Further, the AO treated interest income received on investments made with co-operative banks as 'income from other sources', thereby denying claim of deduction u/s 80P(2)(a)(i) on the account of proviso to section 80P(4).

The Tribunal relied on Vaveru Co-operative Rural Bank Ltd. v CIT [(2017) 396 ITR 371] wherein it was held that co-operative societies engaged in providing credit facilities to its members who

had in the course of business made investments with treasury, bank etc and earned interest income, were eligible for deduction u/s 80P(2)(a)(i) in respect of the same.Thus, the Tribunal concluded that the assessee had made investments with other co-operative banks in course of its business of providing banking/ providing credit facilities to its members, it was entitled to deduction u/s 80P(2)(a)(i) in respect of interest income received from such investments.
***ITO vs Kazhakuttam Service Co-op Society- (2018) 54 CCH 0029 Cochin Trib- ITA No 184,196/Coch/2018 dated 19.09.2018***

**1486.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing assessee-society's claim for deduction u/s 80P and held that assessee being a primary agricultural credit society, registered under Kerala Cooperative Societies Act and classified so, under that Act was entitled to the said deduction. The AO had denied the impugned claim opining that the assessees was primarily engaged in the business of banking and therefore, in view of the provisions of section 80P(4) which was inserted with effect from 01.04.2007, the assessee was not entitled to deduction u/s 80P. The Tribunal, however, decided in favour fo assessee by relying on the decision in the case of Chirakkal Service Co-op Bank Ltd. 384 ITR 90 (Ker HC) wherein it was held that income-tax authorities could not probe into the object of the societies to undertake agricultural credit activities and provide loans and advances for agricultural purposes and such primary agricultural credit societies, not being engaged in banking business, were entitiled to benefit of deduction u/s 80P.
***ITO vs Kuthannur Service Co-operative Bank Ltd. [2018] 54 CCH 0278 (Coch Trib) - ITA No.467/Coch/2018, 468/Coch/2018, 469/Coch/2018, 470/Coch/2018 (CO No.77/Coch/2018, 80/Coch/2018, 78/Coch/2018, 79/Coch/2018) dated 29.11.2018***

**1487.** The Tribunal dismissed Revneue's appeal against CIT(A)'s order allowing the assesse-society's claim of deduction u/s 80P in respect of net income derived by extending credit facilities to its members which was disallowed by the AO opining that assessee could not be considered as Primary Agricultural Credit Society as it was engaged in banking business and only negligible percentage of loans disbursed by assessees were for agricultural purposes. The Tribunal relied on ratio laid down in Nannambra Service Co-operative Bank (ITA Nos. 436-438/Coch/2016) wherein it was held that since the assessee had extended credit facilities only to members, income generated was only out of transaction with members thus, deduction u/s 80P was to be allowed only for said income.
***ITO vs Chombal Service Co-operative Bank Ltd. [2018] 54 CCH 0282 (Coch- Trib.)- ITA No.401 /Coch/2018 and 402/Coch/2018 dated 30.11.2018***

**1488.** In the case of a co-operative society registered under Kerala Co-operative Societies Act, 1969, the Tribunal dismissed the Revenue's appeal against the CIT(A)'s order allowing assessee's claim for deduction u/s 80P holding that all the conditions for becoming primary co-operative bank was complied with in case of the assessee, hence, it would fall within provisions of section 80P(4) which excludes any co-operative bank (other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank) from claiming the said deduction. It held that the assessee was registered and classified as Primary Agricultural Credit Society by the Competent Authority under Kerala Co-operative Societies Act and thus, entitled to the benefit of deduction u/s 80P(2). It noted that the Explanation to section 80P(4) stated that

'Primary Agricultural Credit Society' and 'Co-operative Bank' would have same meaning as provided in Part V of Banking Regulation Act, 1949 and the Reserve Bank of India, which was competent authority as per the Banking Regulation Act, treated the assessee society and similar societies as only "Primary Agricultural Credit Society" not falling within ambit of Banking Regulation Act. Further, with respect to the reliance placed by the AO on the decision in the case of Citizens Co-operative Society Limited v ACIT (2017) 397 ITR 1 (SC) wherein the Apex Court had disallowed deduction u/s 80P to an assessee engaged in activity of granting loans to general public as well the member, the Tribunal held that the aforesaid case was distinguishable as in the present case, the assessee had not taken any deposits from the non-members or the public.

***ITO & ORS. v EDANADKANNUR SCB LTD. & ORS. – (2018) 52 CCH 28 (Cochin Trib) – ITA Nos. 431 to 433/Coch/2017, 567/Coch/2017, 561/Coch/2017, 525 to 527/Coch/2017, 560/Coch/2017, 410/Coch/2017, 411/Coch/2017, 412/Coch/2017, 413/Coch/2017, 566/Coch/2017, 426 to 428/Coch/2017, 429 & 430/Coch/2017 dated 10.01.2018***

**1489.** In the case of co-operative societies registered under Kerala Co-operative Societies Act, 1969, the Tribunal dismissed Revenue's appeal against the CIT(A)s' order allowing the assessees' claim for deduction u/s 80P which was denied by the AO on the ground that the assessees were doing the business of banking, and therefore, in view of insertion of provisions of section 80P(4) [disentitling certain co-operative bank for deduction u/s 80P], the assessees were not entitled to deduction u/s 80P(2)(a)(i). The Tribunal followed the decision in case of ITO v. The Chengala Service Co-operative Bank Limited [ITA No.434/Coch/2017 & Ors.] on identical issue wherein it was held that the AO was not competent to resolve / decide the issue as to whether the assessee was a 'Primary Agricultural Credit Society' or a 'Co-operative bank' and the Reserve Bank of India, which was competent authority as per the Banking Regulation Act, treated the assessee society and similar societies as only "Primary Agricultural Credit Society" not falling within ambit of Banking Regulation Act.

***ITO & ORS. vs. KARANNUR SERVICE CO-OPERATIVE BANK LIMITED & ORS. - (2018) 53 CCH 0184 (Cochin Trib) - ITA No. 519-521, 534-536, 558, 559 & 568-570/Coch/2017 dated June 20, 2018;***

***ITO & ORS. vs. OLAVANNA SERVICE CO-OPERATIVE BANK LIMITED & ORS. - (2018) 53 CCH 0197 (Cochin Trib) – ITA No.469-472, 477-479, 482, 517, 518, 530-533, 480, 481, 602, 603, 483, 485 & 490-493/ Coch/ 2017 dated June 20, 2018***

***INCOME TAX OFFICER & ANR. vs. IRUMBUZHI SERVICE CO-OPERATIVE BANK LIMITED & ANR. - (2018) 53 CCH 0169 (Cochin Trib) - ITA No.424, 425, 452 & 453/Coch/2017 dated June 14, 2018***

***ITO v vs. TANALUR SERVICE CO-OPERATIVE BANK LIMITED & ORS. - (2018) 53 CCH 0146 (Cochin Trib) – ITA No. 391-393 & 401-405/Coch/2017 dated June 12, 2018***

**1490.** The assessee, a primary agricultural credit society registered under Kerala Co-operative Societies Act, 1969, had claimed deduction u/s 80P which was denied by the AO on the ground that it was doing the business of banking, and therefore, in view of insertion of provisions of section 80P(4) [disentitling certain co-operative bank for deduction u/s 80P], the assessee was not entitled to deduction u/s 80P(2)(a)(i). The CIT(A), upholding the AO's order, had further held that interest received on investments from sub-treasuries and Trivandrum District Co-operative

Banks were income from other source, thus, not eligible for deduction u/s 80P. The Tribunal allowed the assessee's claim, holding that a Primary Agricultural Credit Society do not have license from Reserve Bank of India to carry on the business of banking and thus is not a cooperative bank, hit by the provisions of section 80P(4). Further, relying on the decision in the case of Kizhathadiyoor Service Cooperative Bank [ITA No. 525/Coch/2014], it also held that the assessee was entitled to the benefit of deduction u/s 80P(2) of the income-tax Act, with regard to interest received on deposits made by the assessee with sub treasury and Trivandrum District Co-operative Bank.

***CHIRAYINKIZHU SERVICE CO-OPERATIVE BANK LIMITED vs. INCOME TAX OFFICER - (2018) 53 CCH 0175 (Cochin Trib) - ITA No. 159/Coch/2018 (SA No. 16/Coch/2018) dated June 19, 2018***

**1491.** The Tribunal held that the assessee- society shall be entitled for deduction u/s 80P(2)(a)(iii) in respect of income derived from marketing of toddy, that was produced by its members by tapping coconut trees grown by them.

***Kannur Range Kallu & Anr. v ACIT - (2016) 47 CCH 0220 (Cochin Trib)***

**1492.** The assessee, a co-operative society, filed NIL income after claiming deduction under Section 80P. The AO denied benefit under Section 80P as it was noticed that there were two categories of Members - Ordinary Members and Nominal Members. AO held that transactions with non-Members, being third parties, was not entitled for deduction either under Section 80P of the Act or under concept of mutuality. CIT(A) upheld the order of the AO. The Tribunal allowed the deduction claimed under Section 80P and held that there was no distinction between ordinary members and nominal members and the nominal members cannot be treated as 'non-members'. Thus, assessee's appeal was allowed.

***SAI DATTA MUTUAL AIDED CO-OPERATIVE CREDIT SOCIETY vs. ACIT (HYDERABAD TRIBUNAL) (ITA No. 888/HYD/2016) dated May 18, 2018 (53 CCH 0052)***

**1493.** The Tribunal rejected the claim of the Assessee that no addition u/s 41(1) (remission / cessation of trading liability the deduction of which has been allowed in the previous years) could be made during the year under consideration since the income of the Assessee was exempt u/s 80P(2) in the previous years. It held that if the contention of the Assessee was to be accepted it would render provisions of 41(1) infructuous where the Assessees were eligible for deduction under Chapter VIA. The Tribunal further observed that as per sec 80AB the deduction u/s 80P has to be computed in accordance with the provisions of the Act which includes sec. 41(1) and, therefore, the income has to be first computed taking into consideration the provision of sec 41(1) and, thereafter, deduction u/s 80P has to be determined. The provisions of the Act, therefore, have to be read harmoniously and in such a manner that none of the provisions are rendered infructuous.

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

**1494.** The Tribunal accepted Revenue's contention that the assessee (a co-operative society) was not eligible to claim deduction u/s.80P(2)(a)(i) for interest income earned by investing its surplus funds in deposits with nationalized and state banks since the said interest income had to be

regarded as income under head “income from other sources” as it was not derived from business of providing credit facility to its members. However, further noting that the assesse-society had also earned interest from investments made in deposits as per section 64 r.w.s. 63 of Multi-State Co-operative Societies Act, 2002 which was attributable to business of providing credit facility to its members on which deduction u/s 80P(2)(a)(i) would be available, the Tribunal held directed AO to re-do computation afresh and allowing deduction u/s 80P(2)(a)(i) with respect to interest income earned as per section section 64 r.w.s. 63 of Multi-State Co-operative Societies Act, 2002.

***Asst.CIT vs Central Bank of India Employees Co-operative Society Ltd. [2018] 54 CCH 0291 (Kol-Trib.)- ITA No.1868 /Kol/2017 dated 30.11.2018***

**1495.** Where the assessee had not retained any amount due to its members and invested its surplus funds in deposits with different banks, the Tribunal held that interest earned thereon could not be treated as Income from other sources and assessee would be entitled for deduction u/s. 80P(2)(a) (1).

***INCOME TAX OFFICER vs. KOLKATA RESERVE BANK EMPLOYEES CO-OP. CREDIT SOCIETY LTD. - (2018) 52 CCH 0172 KolTrib - ITA No. 2253/Kol/2016 dated Mar 1, 2018***

**1496.** The assessee a co-operative society engaged in providing credit facilities to its members claimed deduction u/s. 80P(2)(a)(i) in respect of interest derived from investment of surplus funds in short-term deposits which was denied by the AO who taxed it as income from other sources u/s. 56 as it was not arising in course of providing credit facilities to members of society. The Tribunal noted that there were two views on this issue i.e. i) that of the Apex Court in decision Totgar’s Cooperative Sale Society Limited wherein it was held that such income was taxable as ‘income from other sources’ where the amount invested by assessee was its liability payable to its members and ii) of Tumkur Merchants Souharda Credit Cooperative Limited which distinguished Totgar’s decision and held that where the source of investment was the assessee’s surplus funds not immediately required for the business, interest thereon would be eligible for deduction under section 80P(2)(a)(i). Since there was no information that money invested in bank was out of money payable to members or out of surplus fund retained by assessee, it restored back the matter to the file of AO to determine the same and decide accordingly.

***INCOME TAX OFFICER vs. BOKARO STEEL EMPLOYEE'S (CALCUTTA) CO-OPERATIVE CREDIT SOCIETY LTD. - (2018) 52 CCH 0200 KolTrib - ITA No. 1314/Kol/2015 dated Mar 21, 2018***

**1497.** The Tribunal held that where the assessee, a cooperative society engaged in the banking business earned income from investments made during the course of its ordinary banking business, it was entitled to claim deduction under section 80P(2) in respect of such income. However, since the details pertaining to whether or not the income arose out of ordinary course of business were not on record, the Tribunal remanded the matter to the file of the AO.

***ACIT v Purulia Central Cooperative Bank Ltd – (2016) 47 CCH 0586 (KolTrib) - I.T.A. No. 1885 /KOL/ 2014 & C.O. No. 102/KOL/2014***

Go to Index

**1498.** The AO had denied assessee's claim of deduction u/s 80P(2) noting that assesse, a cooperative society, had been granted a license to carry on banking business by RBI and as per section 80P(4), the said deduction was not available to any co-operative bank. Since the assesse claimed that though it was named as a bank, it was a co-operative society and was not carrying banking business, the AO sought clarification from RBI and the RBI replied stating that the assessee was a co-operative bank. The CIT(A) confirmed the AO's order relying on RBI's reply. Noting that RBI's reply was never confronted to the assessee, though it was explicitly relied upon to decide against the assessee, and the financials of the assessee for the two years under consideration had not been referred to by the AO/CIT(A) to determine whether assessee was carrying on banking business or not, the Tribunal remitted the matter to the file of the AO, to decide the issue afresh in accordance with law.
***Ordnance Equipment Factory Prarambhik Bank Ltd vs Asst CIT [2018] 54 CCH 0267 (Luck-Trib.)- ITA No.783 and 784 /LKW/2017 dated 16.11.2018***

**1499.** The AO opined that interest income by the assessee-credit society was not earned from the activity of providing banking facilities to its members and was outside the purview of 'Principle of Mutuality'. He thus rejected assessee's claim for deduction u/s 40P(2)(d). The CIT(A) was of the view that the interest income earned by the assessee from investment made with a scheduled bank or a cooperative bank for a time period could not be said to be for the purpose of the co-operative housing society of the assessee and hence, would not be eligible for claim of deduction under section 80(P)(2)(d). He thus sustained the disallowance made by AO. The Tribunal held that a co-operative bank continues to be a co-operative society registered under Co-operative Societies,1912 or under any other law for time being in force in any State for registeration of co-operative societies, and, therefore, interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under section 80P(2)(d).
***Kaliandas UdyogBhavan Premises Co-op Society Ltd. v ITO [2018] 4 taxmann.com 15 (Mumbai – Trib.) – ITA NO. 6547 OF 2017 dated 25.04.2018***

**1500.** The Tribunal held that interest and dividend earned by a co-operative society on investments with other co-operative societies is eligible for deduction under section 80P. The question whether the co-operative society is engaged in the business of banking for providing credit facilities to its members and the head under which the income is assessable is not material.
***Lands End Co-operative Housing Society Ltd vs.ITO (Mumbai Trib)- /I.T.A. No. 3566/Mum/2014***

**1501.** The Tribunal upheld the disallowance of deduction u/s 80P(2)(a)(i) claimed by assessee (a co-operative society engaged in banking business) in respect of 'gross' commission receipts (arising on account of collecting electricity charges for & on behalf of MSEB), noting that the amount of gross receipt from MSEB commission was less than the amount of expenses incurred for earning such commission and thus, there could be no distinct deduction u/s 80P because of the negative income earned by assessee from this activity. It held that the eligible amount for deduction can be the `income' and not the `gross receipts' from the specified source.
***Panvel Peoples Nagri Sahakari Patsanstha Maryadit v ITO [TS-706-ITAT-2018(PUN)] - ITA No.2935/PUN/2017 dated 07.12.2018***

Go to Index

**1502.** The Tribunal held that the assessee, a credit cooperative society authorized by the registrar of cooperative societies to accept deposits and lend money to its members and whose main object was to provide credit facility to members, was entitled to deduction u/s 80(P)(2)(a) on interest income earned from fixed deposits with nationalized banks maintained to ensure liquidity and provide ready availability of funds for repayment of deposits on redemption/maturity.
***BALIRAJA GRAMIN BIGARSHETI vs. INCOME TAX OFFICER - (2018) 52 CCH 0247 PuneTrib - ITA Nos. 50 & 51/PUN/2017 dated Mar 26, 2018***

**1503.** Tribunal allowed deduction u/s 80P(2)(a)(i) to an employee credit co-operative society (engaged in providing credit facilities to employees of a nationalized bank) on interest income earned from fixed deposits, noting that the assessee was statutorily required to deposit 25% of its profits in reserve funds, which in turn, have to be parked in fixed deposits with co-operative bank or scheduled banking company as per the regulations of Maharashtra State Co-operative Societies Act. It distinguished the decision in the case of Totgar's Co-operative Sale Society Ltd. v ITO [(2010) 322 ITR 283 (SC)] and State Bank of India v CIT [(2016) 72 taxmann.com 64 (Guj)] by stating that those cases dealt with interest income from surplus funds whereas in the present case the deposits were mandated by statute. Tribunal, thus, also held that the assessee was not entitled to the said deduction with respect to interest income from savings account.
***Maharashtra Bank Employees Co-op. Credit Society Ltd - TS-618-ITAT-2017(PUN) - ITA Nos.454 to 456/PUN/2015, CO Nos.16 & 17/PUN/2017 dated 22.12.2017***

**1504.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing deduction u/s 80P(2)(a)(i) with respect to interest income earned from Co-operative Banks by the assessee, a co-operative society providing credit facilities to its member, noting that the investments made by the assessee with Co-operative Banks were compulsory because of dictate of Maharashtra Co-operative Societies Act, which mandates all Credit Co-operative Societies operating in State of Maharashtra to deposit about 20% to 30% of its funds with Co-operative Banks/ Nationalized Banks. Section 80P(2)(a)(i) allows deduction to a co-operative society with respect to its business income attributable *inter alia* to its activity of providing credit facilities to its members.
***INCOME TAX OFFICER & ANR. vs. KESHAVSMURTI NAGARI & ANR. - (2018) 52 CCH 0476 PuneTrib - ITA No. 936/PUN/2015 (CO NO.30/PUN/2017) dated Apr 4, 2018***

**1505.** The Tribunal dismissed the appeal of the Revenue as well as the Assessee (treating the grounds of appeal challenging addition u/s 68 as not pressed) and held that the Assessee (a credit cooperative society) would be eligible for deduction u/s. 80P in respect of additions made u/s. 68. The Tribunal held that although the credit against FDRs could not be explained and the addition was made u/s 68 but it could not be held that the Assessee had not generated the same from its business of banking or providing facilities to its members. Accordingly, it held Assessee would be entitled to deduction u/s.80P.
***Aman Chote Vyapari Sahakari Pat Sanstha Ltd. vs. DCIT TS-374-ITAT-2017 (ITA No. 1183 to 1190/Pun/2012 dated August 11, 2017)***

**1506.** Where assessee, a co-operative credit society, was engaged in business of providing credit facilities exclusively to its members and had received interest on surplus fund parked with other societies and bank, and Assessing Officer observed that wrong claim of deduction under section

80P(2) was made in respect of interest income received from nationalized banks as interest income earned from other than co-operative societies are not eligible for deduction under section 80P. The Tribunal held that since assessee had not claimed deduction in respect of interest earned on FDs of banks, Assessing Officer had grossly erred in making disallowance of deduction in relation to amount, which was never claimed by assessee in return of income.
***Dy. CIT, Circle- 2 (3), Surat v. Bardoli Vibhag Gram Udyog Vikas Co-op Credit Society Ltd. -[2019] 102 taxmann.com 110 (Surat-Trib.)-IT Appeal No. 2617 (AHD.) of 2016 - dated December 18, 2018***

**1507.** The assessee bank invested amounts in NON-SLR accounts i.e. investment in Bonds & Debentures and claimed deduction of interest earned thereon under Section 80P of the Act. The AO disallowed such interest under Section 80P(2)(a)(i) of the Act. CIT(A) deleted such disallowance relying on the ruling of the Supreme Court in Bihar State Co-operative Bank ltd. v CIT (39 ITR 114). Relying on the ruling of the Allahabad High Court in the case of CIT vs. Muzaffarnagar Kshetriya Gramin Bank Ltd. (256 CTR (All.) 322), the Tribunal upheld the order of the CIT(A) and the Revenue's appeal was dismissed.
***DCIT & ANR. vs. RANCHI KSHETRIYA GRAMIN BANK & ANR. (RANCHI TRIBUNAL) (ITA Nos. 191 & 192/Ran/2016 (CO. Nos. 11 & 12/Ran/2017)) dated May 31, 2018 (53 CCH 0203)***

» *Section 80QQB*

**1508.** The Tribunal held that where the assessee had authored a book on income-tax problems in question answer format, the said book was a literary work in terms of section 80QQB of the Act as it was on a complex issue which required intellect and knowledge and therefore the royalty received on the same would be entitled for a deduction.
***Dilip Loyalka v ACIT – [2015] 64 taxmann.com 121 (Kol – Trib)***

» *General*

**1509.** The assessee, engaged in manufacturing polythene, claimed deduction u/s 80IA for 2 years (1998-99 & 1999-2000)and u/s 80IB for 6 years(AY 2000-01 to 2005-06). The assessee completed substantial expansion by investing in new plant & machinery of value more than 50% of value of plant and machinery already installed as on 1-4-2005 to manufacturing unit situated in Himachal Pradesh and thereafter claimed deduction u/s 80IC for next 2 years (AY 2006-07 & 2007-08). However, when the assessee claimed deduction u/s 80IC for AY 2008-09 & 2009-10, the AO disallowed the claim stating that it was the 11th and 12th year of deduction and as per Section 80IC(6) total deduction u/s 80IC and 80IB could not exceed 10 years. The Tribunal and the High Court upheld AO's order. However, the Apex Court held that as per Section 80IC(6) the deduction could not exceed 10 years only if manufacturing unit was claiming deduction under second proviso to S.80IB(4) i.e units located in North-Eastern state and since the assessee's manufacturing unit was located in Himachal Pradesh, the claim of deduction was to be allowed considering the year when the substantial expansion was completed to be the initial AY.

Go to Index

***Mahabir Industries v PCIT [2018] 94 taxmann.com 260 (SC) / [2018] 302 CTR 449 (SC) – CIVIL APPLICATION NO 4765 – 4766 OF 2018 dated 18.05.2018***

**1510.** The Apex Court held that where the assessee received transport subsidy, interest subsidy, power subsidy and insurance subsidy as a reimbursement of manufacturing costs incurred by the assessee, the same had a direct nexus with the profits of the assessee's business and therefore deduction of such subsidies was allowable under section 80IB and 80IC of the Act was allowable in respect of such subsidies.
***CIT v Meghalaya Steels Ltd – TS-124-SC-2016***

**1511.** Where the assessee had not claimed deduction u/s 80-IA in the return filed u/s 139(1) but had claimed in the return filed u/s 153A, the Court observed that the time limit for filing revised return had not expired and therefore, the deduction not claimed earlier could have been claimed in the revised return. If the claim could be made under revised return, the same could also have been made under the return filed u/s 153A. It further held that alternatively, the return filed u/s 153A was an original return and not revised return and therefore, on that ground also the deduction u/s 80-IA would be allowed to the assessee.
***PCIT vs. VIJAY INFRASTRUCTURE LTD. (2017) 99 CCH 0128 AllahabadHC ITA No. 29 of 2016 dated 12.07.2017***

**1512.** Where assessee challenged the validity of Section 80A(5) and the fourth Proviso to Sec 10B(1) as violative of Article 14 of the Constitution , the Court held that Article 14 permits reasonable classification on fulfilment of two factors: (a) that the classification must be found on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (b) that differentia must have a reasonable connection with the object sought to be achieved. The objective behind insertion of the impugned provisions was to defeat multiple claims of deductions and to ensure better tax compliance. It acknowledged the existence of persons owning 100% EOUs and seeked to limit their time to claim deductions under the Act. Further the parliament acted within its power to differentiate between a return of income filed under Section 139(1) and a belated return filed under Section 139(4) for the purposes of deductions claimed Section 10B(1). Thus there was no violation of Article 14 of the Constitution and accordingly, order of CIT(A) was upheld and writ petition of the assessee was dismissed.
***Nath Brothers Exim International Ltd v Union of India - [2017] 80 taxmann.com 327 (DelhiHC) (WP(C) 12073 of 2015)***

**1513.** The Court held that income earned by the assessee from export incentives, customer claims, freight subsidiary and interest on fixed deposits were eligible for deduction under section 10B of the Act. It dismissed the revenue's argument that section 80A(4) of the Act clarified that income having direct nexus with the business activities was eligible for deduction as the said section merely ensures that units claiming section 10B benefit were not further allowed to claim relief under section 80IA / IB and not to deny benefit under section 10B.
***Riviera Home Furnishing v ACIT – TS-668-HC-2015 (Del)***

Go to Index

**1514.** The Tribunal held that in computing gross total income of the assessee, same had to be determined after adjusting losses and that if gross total income of the assessee so determined turns out to be Nil, then the assessee would not be entitled for deduction.
***DCIT v Precision Electronics Ltd – (2015) 45 CCH 0313 Del Trib***

**1515.** The Tribunal held that deductions under section 80HHD and 80IA of the Act can be claimed simultaneously in respect of the same unit as both the deductions are independent. It held that since deductions under Chapter VIA are objective specific, separate deductions may be simultaneously claimed for different objectives.
***EIH Ltd v DCIT (ITA No 316 / Kol / 2006 & ITA No 1808 / Kol / 2007) – TS-540-ITAT-2015 (Kol)***

**1516.** The Tribunal held that interest from customers on delayed payments is eligible for deductions u/s 80I & 80IA, following the decision in the case of CIT vs Vidyut Corporation 324 ITR 221 (Bom HC) wherein it was held that payment of interest on account of delayed payment of price of goods sold was part of sale price and was profit derived from industrial undertaking for purposes of section 80-IB.
***Abbott India Ltd v ACIT – ITA No.6606, 5625, 7824, 5099, 5922, 3362, 6192, 6150, 8130, 4367, 5154, 5988 & 4881/M, [TS-503-ITAT-2018 (MUM)] dated 24.08.2018***

**1517.** Where assessee didn't claim deduction u/s 80-IC while filing return u/s 139(1) (original return on or before due date) but claimed the same vide the revised return u/s 139(5) and the AO disallowed the same while passing assessment order u/s 143(3) r.w.s. 147 in view of provisions of section 80AC, the Tribunal held that the provisions of section 80AC do not lay down condition that deduction u/s 80-IC must be claimed in return of income filed u/s 139(1) and even otherwise since the assessee had filed revised return u/s 139(5) within stipulated time along with audit report and certificate in Form No. 10CCB, there was sufficient compliance for claiming deduction u/s 80-IC r.w.s. 80AC. Thus, it allowed the assessee's claim for the said deduction.
***ACIT v Monarch Innovative Technologies (P.) Ltd. – (2018) 91 taxmann.com 267 (Mum) – ITA No. 4815 (mum.) of 2016 dated 12.02.2018***

**1518.** The Tribunal held that head office expenses not attributable to eligible units were not to be reduced from the claim of deduction under section 80IA / 80IB of the Act.
***Aditya Birla Nuvo v DCIT – (2015) 45 CCH 0222 Mum Trib***

### *f. Income from Capital Gains*

*Business Income v/s Capital Gains*

**1519.** The Apex Court dismissed the Department's SLP against order of the Court wherein it was held that where assessee had purchased shares with clear intention of being an investor and held shares by way of investment, gain arising out of transfer of shares should be treated as capital gains and not business income

Go to Index

***PCIT v Bhanuprasad D. Trivedi [2018] 94 taxmann.com 114 (SC) – SLP (CIVIL) DIARY NO. 11011 OF 2018 dated 04.05.2018***

**1520.** The AO had taken a view that income arising from sales of shares was taxable as business income. The CIT(A) had noted that only 10 scrips were traded, and it was not a case of repeated sale of same scrip, thus it was not a case of frequent buying and selling to make quick money and concluded that profit arising from sales of shares was taxable as 'short-term capital gain'. The findings of the CIT(A), was further upheld by the Tribunal and High Court and the Apex Court dismissed Revenue's SLP.
***CIT vs Hiren Dand- (2018) 98 taxmann.com 428(SC)- SLP No 9737 of 2018 dated 13.09.2018***

**1521.** The Court held that since the assessee's income was in the nature of short term capital gains as per the conditions in CBDT Instruction No 1827 which laid down the tests for distinguishing the shares held in stock in trade and shares held as investment, the revenue was incorrect in attempting to classify it as business income.
***CIT v Datta Mahendra Shah – (2015) 94 CCH 017 Bom. HC***

**1522.** The Court held that where AO took a view that profit arising from sale of shares was taxable as business income, in view of fact that investment in shares were made out of assessee's own funds and, moreover, assessee had maintained two protfolios, one for 'investment' and other for 'trading', mere fact that assessee held those shares for a short period, would not convert capital gain into business income and, thus, amount in question was to be taxed as short-term capital gain more so since for earlier years, revenue had accepted assessee's claim of short-term capital gain.
***Principal Commissioner of Income-tax-II v. Viksit Engineering Ltd. -[2018] 100 taxmann.com 436 (BombayHC)- ITA No. 485 of 2016 dated November 26, 2018.***

**1523.** The Court held that where AO took a view that profit arising from sale of shares was taxable as business income, in view of fact that there were no instances of repetitive purchase and sale of shares and, moreover, assessee had used its own funds in order to purchase shares, impugned order was to be set aside and assessee's claim that amount in question was liable to tax as short-term capital gain, was to be allowed.
***Pr.CIT-12 v. Business Match Serivces (I) (P.) Ltd.- [2018]100 taxmann.com 411(Bom)-ITA No.699 of 2016-dated November 27, 2018***

**1524.** The Court held that in terms of Circular No. 6 dated 29-2-2016, where assessee sold shares after holding them for a period of more than 12 months, he had an option to treat profit earned on sale of shares as long-term capital gain notwithstanding the fact that investment in those shares was made out borrowed funds.
***Pr. CIT - 17, Mumbai v. Hardik Bharat Patel – [2018] 100 taxmann.co 410 (Bombay)- ITA (IT) No. 390 of November 19, 2018***

**1525.** The Court dismissed Revenue's appeal against Tribunal's order holding that the profit received by the assessee trust on sale of shares (which had been contributed to its corpus by the the

settlor) was long term capital gains and not business income as claimed by the AO. It was noted that (i) the shares were through out held as investment and not as stock-in-trade (ii) only one transfer took place during the year (iii) the settlor had received 96% of the shares by way of allotment in employee stock option plan and only the balance 4% were purchased by settlor from market (iv) the sales were affected for diversification of portfolio and to take advantage of the bullish trend in the price of the said shares prevailing at the relevant time (v) the assessee trust was a genuine trust with the principal object of ensuring effective succession planning mechanism. Accordingly, the above indicated that the assessee-trust was not engaged in any business activity.

***PRINCIPAL COMMISSIONER OF INCOME TAX vs VERNAN PVT TRUST [TS-763-HC-2018(BOM)] - ITA No.692 of 2016 dated 18.12.2018***

**1526.** The Court dismissed Revenue's appeal against Tribunal's order holding that income earned by assessee from sale of a building was to be taxed as capital gains and not business income as claimed by Revenue, noting that (i) the building was shown as investment and not as stock in trade since 1978 (ii) the interest paid was not being claimed as expenditure in the profit and loss account (iii) the long years of holding the property.

***Pr.CIT v Shree Shreemal Builders – ITA No. 205 OF 2016 (Bom HC) dated 31.07.2018***

**1527.** Where assessee entered into a development agreement with a builder for development of land taken on perpetual sub-lease and sold certain units so developed, the Court held that since the major portion of developed building was to remain with assessee after construction, mere sale of one unit therefrom per se or merely because for a particular unit, an intervening transaction of sale was aborted for pursuit of higher profit by itself would not confer on transaction character of business venture. It was accordingly held that the income earned by assessee from sale of developed units was to be taxed as capital gain.

***CIT v. Surjeet Kaur - (2018) 91 taxmann.com 121 (CalHC) - ITA No. 383 of 2008 dated 05.01.2018***

**1528.** Where Assessee converted the stock-in-trade of shares into investments and sold the same at a later stage, the Court held that profit arising from such sale of shares was deemed to be capital gains and not business income, and since the shares were held as long term capital asset, profit arising from such sale had to be exempt from tax u/s 10(38) of the Act. The appeal was, accordingly, disposed of in favour of the asssessee.

***Deeplok Financial Services Ltd. V. Commissioner of Income Tax [2017] 80 taxmann.com 51 (CalcuttaHC) (ITA No. 1 of 2017)***

**1529.** The assessee was engaged in the business of investment and securities and had at the relevant time maintained a distinct portfolio in respect of stock in trade and investment. For the particular year, the assessee acquired shares in certain companies that underwent amalgamation. Those companies, which had investment portfolio containing shares of the companies in which the assessee had holdings, were treated as stock in trade. The assessee shifted some of the shares to its investment account and later sold them during the Assessment Year and offered the gains on these shares as capital gains. The AO disregarded the assessee's claim and taxed all gains as business income. Noting that the assessee had distinct portfolio of shares and mutual funds

under the head investments and some shares as stock in trade, the High Court upheld the Tribunal's order accepting assessee's claim.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. PAVITRA COMMERCIAL LTD. - (2018) 101 CCH 0038 DelHC - ITA 146/2018 & CM APPL. 5059/2018 dated Feb 9, 2018***

**1530.** The Court held that consideration received in the form of money and residential flat upon entering into an agreement with a builder was not business income. It rejected the contention of the Revenue that since the assessee exploited land owned by her to be used for construction of building, the activity was an adventure in the nature of trade.
***Raj Dulari Bhasin v CIT (ITA 11/2004) – TS-738-HC-2015 (Del)***

**1531.** Where the assessee had disclosed income from sale of mutual funds / shares as short term capital gains and long term capital gains in its return but the AO taxed the income as income from business, the Court considering the material on record i.e. number of transactions, holding period, the disclosure of the impugned shares / mutual funds as investments in the balance sheet and the fact that in the earlier years, similar income had been treated as income from capital gains and not income from business income, allowed the appeal of the assessee and held that the AO was incorrect in treating the income from sale of such investments as business income.
***Pr CIT v Jayantibhai M Patel – (2017) 98 CCH 0067 (Guj) HC – Tax Appeal No 38 of 2017, 76 of 2017***

**1532.** The Court held that where the assessee undertook purchase and sale of shares, wherein the transactions were delivery based, the assessee declared the shares as investment for the past several years, surplus arising out of transfer has been treated as capital gains, the average holding period of the investments was more than 30 days and the assessee was not registered with any institution / body for the dealing in shares, the AO was incorrect in treating gains on sale of such shares as business income as opposed to short term capital gains.
***CIT v SMAA Enterprise Pvt Ltd – (2016) 95 CCH 0124 (Jammu and KashmirHC)***

**1533.** The Tribunal held that where investment in shares had been shown at the cost price which otherwise if held for business would have been shown as stock in trade, valued at cost of market price whichever was lower, the income from sale of investments was to be treated as short term capital gains especially where no link was established between the investment account and the F&O business.
***ACIT v Bhupendra Shantilal Shah - (2015) 44 CCH 0559 Ahd Trib***

**1534.** The Tribunal held that profits earned on sale of shares in previous and subsequent assessment years had been considered by assessee and accepted by Revenue, as capital gains and hence could not be considered as business income of assessee in impugned case.
***Dr.Jayakumar Chhaganlal Shah v DCIT - (2016) 47 CCH 0186 Ahd Trib***

**1535.** The Tribunal held that where the assessee had purchased shares of three companies but had undertaken only 12 transactions in the year and neither did she use any borrowed funds nor

was the frequency of sales to a great extent, the income arising from the investment was to be treated as capital gains and not from a venture in trade.
***ACIT v Jayshree M Patel – (2015) 45 CCH 0134 Ahd Trib***

**1536.** The assessee was in business of real estate and it had acquired plot of land with intention of earning profit. The AO during assessment proceedings observed that the above plot was sold and concluded that as per sec 28, it should be chargeable to income tax under head "Profits & gain of business or profession" which was however set aside by the CIT(A). The Tribunal observed that the CIT(A) had rightly not concurred with AO because the erstwhile company had purchased this land in AY 2002-03 and was shown as investment and was never treated as stock-in-trade and the land was sold during current AY 2009-10 after amalgamation.The Tribunal concluded that conduct of both assessees, amalgamating company as well assessee would indicate that from the beginning this piece of land was treated as investment and the AO had not given any other circumstances which could conclude that this transaction was to be treated as business transaction. Thus, the Tribunal concluded that the AO's conclusions were based on assumption and not on evidence and the Tribunal upheld the conclusions of CIT(A).
***Ganesh Housing Corp Ltd vs DCIT- (2018) 54 CCH 0108 Ahd Trib- ITA No 3034/Ahd/2015 dated 23.10.2018***

**1537.** The Tribunal accepted assessee's claim that the income arising on sale of investment in shares was chargeable to tax as capital gains and not business income, noting that the shares were shown as investment in books of account also and in past, such income was accepted as capital gain and it was only during the relevant year the AO had not accepted the same. It held that it was not open to the AO to take a different view in respect of relevant assessment year without showing reasons for doing same. The Tribunal held that when assessee makes investment and chooses to rely on same and obtain a higher price out of it than what it originally acquired, enhanced price received is a realization of investment and, hence, same is to be treated as capital gain.
***Second Leasing (P.) Ltd v ACIT - [2018] 95 taxmann.com 133 (Delhi - Trib.) - IT APPEAL NO. 1565 (DELHI) OF 2011 dated June 4, 2018***

**1538.** The assessee-company declared short term capital gain and long term capital gains. The AO treated the capital gains as business income considering the frequency of transactions of purchase and sale of shares (in light of the circular no 4/2007), and held that the main business of assessee was trading in shares. The CIT(A) held that profit on sale and purchase of shares was to be treated as capital gains as the assessee had been consistently showing capital gains and the same was accepted by the Revenue in the earlier years. The Tribunal held that there was nothing on record to demonstrate any change in facts and circumstances during year under consideration and there was no justification to support the findings of the AO that capital gain claimed by assessee was in nature of business income or that main business of assessee was that of share trading. Accordingly, it dismissed the appeal of the Revenue.
***EASTMAN INDUSTRIES LTD. & ANR. vs. ACIT & ANR. (2017) 50 CCH 0122 DelTrib ITA No. 286/Del./2013, 45/Del./2013 dated 09.06.2017***

Go to Index

**1539.** The Tribunal held that the assessee could not be labelled as a dealer in shares and thus income derived therefrom could not be treated as business income since the assesse regularly showed investments in shares at purchase value taking them as investments and did not claim deduction of Securities Transaction Tax paid on the deals. Accordingly, the income arising therefrom was treated as Capital Gains.
***ACIT v KS Gupta & Sons – (2015) 45 CCH 0284 Del Trib***

**1540.** The Tribunal held that where assessee declared profit on redemption of units of mutual fund as short term capital gain, in view of fact that only few such transactions took place during relevant year and no borrowed funds were utilised to purchase units of mutual fund, impugned order holding that profit in question was liable to tax as business income, was to be set aside therefore, profit earned on redemption of units of mutual funds was to be taxed as short-term capital gain.
***Asst. CIT, Circle-32(1), New Delhi v. Wig Investment- [2018] 100 taxmann.com 135 (Delhi Trib.)- ITA Nos. 2167 (DELHI) of 2014 & 4141 (DELHI) of 2015 CO No. 21 (DELHI) of 2015.***

**1541.** The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the AO's order wherein the AO had considered the Short Term Capital Gain on sale of shares and Long Term Capital Gain on sale of unlisted shares in company earned by the assesse to be 'business income'. It was submitted by assessee that the shares were shown as investments in the Balance sheet (not as stock in trade) and that in earlier years also the profit on sale of investment had been taxed as Capital Gains only and the same had been accepted by the department. The Tribunal held that the income was to be assessed under head 'capital gains' only since the assessee had given detailed explanation both on facts and on law and also on consistent treatment by department in earlier years. Further, it held that the e Board Circular [F.No. 225/12/2016/ITA.II,] dt. 02-05-2016 had settled the issue that the income arising from transfer of unlisted shares should be considered under head 'capital gains' only and even for Short Term Capital Gain on sale of listed shares, the parameters did indicate that assessee was only investing and not trading.
***G2 CORPORATE SERVICES LLP vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0130 HydTrib - ITA No. 832/Hyd/16, 833/Hyd/16 dated Jun 8, 2018***

**1542.** The Tribunal held that where shares were purchased by the assessee in the capacity of an investor and frequency of share transactions was very low, profit arising from sale of such shares was liable to be taxed under head 'Income from capital gains' and not 'Income from Business & Profession.
***Anjana Devi Agarwal v ACIT - [2016] 67 taxmann.com 53 (Kolkata –Trib)***

**1543.** The Tribunal held that sale on investments would be classified as short term capital gains and not business income where there was no repetition of purchases and sales and the average holding period was substantial.
***Business Match Services India Pvt Ltd v DCIT - (2015) 44 CCH 0507 Mum Trib***

**1544.** The Tribunal held that where the assessee, a dermatologist, had not borrowed funds but used her own capital and interest free funds from her father to purchase shares and held major shares for more than one year, the gains declared by the assessee were to be assessed as long term

capital gains under the head Income from Capital gains and not as business income. Further, considering that the assessee was a dermatologist and did not hire any staff for carrying out activity of purchase and sale of shares, the Tribunal held that trading of shares was not its main activity.

***Amrita Pankaj Talwar v ACIT – (2015) 45 CCH 0180 Mum Trib***

**1545.** The Court rejecting the assessing officer's contention, held that since the assessee's major income consisted of income from sports endorsement, the entire investment in shares was made out of his own funds and investment in shares with Portfolio Managers was a meagre percentage of aseessee's total investments, income on sale of shares and mutual funds was taxable under the head capital gains and not business income.

***Sachin R Tendulkar [2017] 77 taxmann.com 305 (Mumbai Tri.)]***

**1546.** The Tribunal held that where the assessee was an 'ESOP Trust' created by settler-company for implementing its ESOP scheme the assessee was merely acting as 'Special Purpose Vehicle'. Shares held by the assessee were in fiduciary capacity and assessee did not have absolute rights over those, so these shares could not be categorised as business assets. Thus, gain arising to assessee on transfer of shares to employees of settlor-company was to be treated as capital gain and not as business profits

***Mahindra & Mahindra Employees Stock Option Trust v Add CIT – [2015] 62 taxmann.com 390 (Mum – Trib)***

**1547.** The Tribunal directed the AO to assess the gains arising on sale of the plot which had devolved on the assessee after death of his father as a consequence of automatic dissolution of partnership firm in which his father was a partner under the head 'capital gain' and not as business income, noting that four plots of land had devolved on assessee and capital gain arising from sale of other three plots had been duly accepted by the AO in earlier year and there was nothing to suggest that the assessee had undertaken any business activity vis-à-vis plot of land devolved on him so as to construe profit on its sale as 'business income'. It, was, thus held that there was no justification to treat plot of land in question as 'stock-in-trade' and the gains arising from sale of the said land was taxable as capital gains.

***Balkrishna P. Wadhwan v DCIT – (2018) 91 taxmann.com 432 (Mum) – ITA No. 5414 (Mum.) of 2015 dated 28.02.2018***

**1548.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order treating the income derived by the assessee from investments in securities availing Portfolio Management Service (PMS) to be Capital Gains and not business income, noting that the assessee had been consistently employing services of PMS for augmenting value of securities and relying on the decision in the case of Shri Apoorva Patni Vs. Addl.CIT [ITA No.239/PN/2011] wherein it was held that when the income is earned by the assessee out of investments in securities using specialized professional services of PMS, such income became taxable under the head 'Capital Gains' and the same should not be construed as 'Business Income'.

***INCOME DTAX OFFICER vs. ROOPA JAYANT GUPTA - (2018) 53 CCH 0233 Pune - ITA Nos. 1296 to 1300/PUN/2017 dated June 20, 2018***

Go to Index

**1549.** The Tribunal allowed the assessee's appeal and held that income from sale of shares should be treated as short term capital gains and not income from business noting that the assessee was showing its pool of shares as investment in its hands and making declaration in this regard in Balance Sheet from year to year. It held that the position of the assessee could not be disturbed and once stand had been taken by assessee in particular assessment year, same would remain applicable in subsequent assessment years also.
***Ajinkya Electromelt Pvt Ltd. Vs Dy.CIT [2018] 53 CCH 0511 ITA No.891/Pun/2016 DATED AUGUST 30, 2018***

**1550.** The Tribunal held that where year after year assessee had taken a stand and declared gains arising on its investment under capital gains, the AO and CIT(A) erred in considering the short-term gain from sale of shares as business income. It noted that the assessee through the D mat account made investment in shares and since no D mat account could be opened in name of partnership firm the same account was being used for investing in shares by the firm which was engaged in share transactions. In case of share transactions by assessee, entries were routed through capital account of assessee in books of partnership firm and since partnership firm had declared relevant income from business, the AO and CIT(A) questioned taxability of gain that arose on short-term basis and assessed income from 'short term capital gains' from share transactions under head income from business. The Tribunal concluded that since assessee was showing its pool of shares as investment in its hands and making declaration in this regard in balance sheet from year to year and consistently declared gains arising on its investment under head 'Capital gains', both long-term and short-term, the same was to be accepted and taxed under the head Capital Gains for the relevant year.
***Satish Gupta vs ACIT – (2018) 98 taxmann.com 298 (Pune-Trib)-ITA No 1287 of 2014 dated 24.09.2018***

**1551.** The Tribunal held that whether the income arising out of sale of scrips held by the assessee was chargeable to tax under the head income from business or income from capital gains was to be determined after ascertaining the intention of the assessee at the time of acquiring the shares by taking to consideration viz. how the transactions were recorded and reflected in the balance sheet, the volume of the transactions, period of holding, use of borrowed funds etc. The Tribunal held that in the instant case since the income arising out of sale was more in the nature of capital gains which was also accepted in the earlier years. Consequently it held that the Department was incorrect in treating it as income from business.
***Nathulal Pannalal Lavti v Add CIT – (2016) 47 CCH 0497 (Rajkot – Trib) - ITA No. 1259/RJT/ 2010***

**1552.** The Tribunal held that the proceeds from sale of plots of land were to be taxed as capital gain and not as business income considering the sale to be adventure in nature of trade in view of the following facts:

- assessee had purchased agricultural land in 1960 and with passage of time and rapid urbanization, said land, being in residential area, became non-agricultural land
- as smaller sized plots were required by end-users in this area, assessee divided said land in small sized plots to get market price
- sale consideration was not ploughed back in land investments

Go to Index

***ACIT v Narendra J. Bhimani – (2018) 90 taxmann.com 329 (Rajkot Trib) – ITA No. 411 (Rjt.) of 2012 CO No. 18 (Rjt.) of 2012 dated 31.01.2018***

**1553.** The assessee, engaged in the activity of purchase and sale of shares, had offered income from sale of certain shares under the head 'capital gains' as the same were declared as investments in the books of the assessee. Considering the substantial nature of transactions and the magnitude of purchase and sale of shares, the AO held that income from such activity should be taxed under the head 'business and profession'. Considering the remand report and the submissions filed, the CIT(A) upheld the order of the AO. The Tribunal observed that except stating that the assessee had large number of transactions, no evidence was brought on record by the AO to substantiate that the subject income is a 'business income'. Accordingly, relying on the ruling of the Gujarat High Court in Ramniwas Ramjivan Kasat (82 taxmann.com 458) and noting that in earlier assessment year, the income was assessed as capital gains in assessee's own case, the Tribunal set aside the order of the CIT(A) and AO and held that though the rule of res judicata does not apply to Income-tax proceedings, the rule of consistency is applicable and thereby the income from sale of shares was taxable as capital gains.
***ITO vs. Pedarla Srinivasa Murthy – [2018] 53 CCH 0016 (Vishakhapatnam ITAT) – ITA No. 123&124/Vizag/2016 dated May 9, 2018***

**1554.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO by disallowing the assessee's claim for deduction u/s 54F against the capital gains earned from sale of plots of land. The AO noted that before selling the impugned land, the assessee had divided the same into plots after approval of layout by competent authority and accordingly, he treated the land to be capital asset only till the approval of layout (and thus gains till such date to be capital gains) and from approval of layout to till sale of plots as stock-in-trade (and thus gains from date of approval till the sale date to be business income) as per section 45(2). It was noted that assessee was never in real estate business and the land was purchased in year 1997 whereas the approval was taken after 9 years. The Tribunal held that the assessee's intention was to keep land as it was, and no intention of converting into business asset and simply because, assessee took approval for layout and divided into plots and some commission was paid for sale of same, it could not be said that land in question was in adventure in nature of trade. Thus, provisions of s. 45(2) had no application to facts of instant case. Further, it held that the the intention of the assessee at the time of purchase is paramount.
***ITO v GOGINENI SARADA (2018) 53 CCH 0597 (VishakapatnamTrib) ITA Nos. 152/VIZ/2017, 122 & 152 /VIZ/2017 dated July 31, 2018***

*Income from House Property v/s Capital Gains*

**1555.** The Tribunal held that the receipt of one time premium on allotment of tenancy rights perpetually to tenants is chargeable to tax as capital gains under section 45 and not as income from house property as the property constituted a bundle of rights and transfer by way of allotment of perpetual tenancy with right of occupancy and enjoyment of property perpetually in favour of the tenant constituted a transfer of one of the rights associated with the property and therefore chargeable to 'Income from Capital Gains'.
***Sujaysingh P. Bobade v ITO - [2016] 68 taxmann.com 161(Mumbai-Trib)***

Go to Index

*Salary v/s Capital Gains*

**1556.** The Tribunal held that where on assessee's leaving job of Google-USA and joining Indian subsidiary Google-India, Google-USA realized Stock held by assessee under ESOP and remitted same to assessee through Google-India, gain on such sale could not be treated as perquisite under the head salary and the same was capital gains.
***Dr. Muthian Sivathanu v. Asst. CIT, Non-Corporate Circle-17, Chennai-[2018] 100 taxmann.com 49 (Chennai - Trib.)- ITA No. 553 (CHNY.) of 2018-dated October 24, 2018***

*Transfer*

**1557.** The Apex Court dismissed assessee's SLP against Karnataka HC judgement wherein the HC had held that surrender of Floor Area Ratio ('FAR') relating to land in favour of developer for construction of flats amounts to transfer u/s 2(47) exigible to capital gains tax on the ground that a right to construct additional storeys on account of increase in available floor space index (FSI) is a capital asset and that surrender of FAR amounted to 'transfer' as assessee relinquished his rights over the FAR.
***Dinesh Rankha vs CIT -TS-211-SC-2016***

**1558.** The Apex Court upheld the order of the Court where it was held that booking rights in a flat was to be treated as acquired upon the execution of the buyers agreement with the builder and not on the date of booking confirmation letter for provisional allotment as the book confirmation letter specifically stated that no right to provisional allotment accrued till the agreement was signed.
***Gulshan Malik v CIT – TS-625-SC-2015***

**1559.** The Apex Court held that collaboration agreement for land development would be covered under the ambit of transfer under section 269UA of the Act. It rejected assessee's contention that since the collaboration agreement does not purport transfer of land, section 269UA had no application. Observing that possessory rights were granted to the assessee to construct buildings on the land, It held that transfer was defined to include within its scope agreement which have the effect of transferring all the important rights in land for future considerations.
***Unitech Ltd v UOI – TS-639-SC-2015***

**1560.** The Apex Court allowed the SLP against High Court ruling wherein it was held that upon takeover of its proprietary concern by a company the assessee would not be entitled to claim capital gains exemption benefit under section 47(xiv)(c) as sub-clause (c) condition of receiving consideration only by way of share allotment was not met**.**
***K. V. Mohammed Zakir v CIT - [2018] 92 taxmann.com 110 (SC) - SPECIAL LEAVE PETITION (CIVIL) DIARY NOS. 36602 OF 2017 dated March 5, 2018***

**1561.** Where as per a Joint-Development Agreement between the assessee and a developer, the assessee was to transfer possession of 21.2 acres of land to the developer for development but the agreement fell through after payment two installments (on which the assessee had already

paid tax) for want of permission from the authorities, the Apex Court dismissed the Revenue's appeal and held that the assessee was not liable to capital gains on the transfer of possession of the balance part of the land in the absence of registration of the JDA which was pre-condition laid down by way of Amendments to Section 53-A of the Transfer of Property Act and the Indian Registration Act. It noted that as per the agreement, the third installment was payable only after the developer had obtained requisite approvals and that as per the termination clause contained in the agreement in the event of the JDA being terminated, whatever parcels of land which had already been conveyed, would stand conveyed, but that no other conveyances of the remaining land would take place. Accordingly, it held that the High Court was justified in holding that the transfer of possession would not amount to a transfer under Section 2(47)(v) of the Act.
***Balbir Singh Maini [TS-444-SC-2017] - CIVIL APPEAL NOS. 15619 TO 156677 OF 2017 dated 04.10.2017***

**1562.** The Court held that capital contribution in the form of immovable properties, stocks, shares by assessee company to partnership firm was not a taxable transfer for years prior to assessment year 1988-89 and was not used as a device to convert an asset into money for evading capital gains tax since the partnership firm was engaged in the business of dealing in immovable properties and securities.
***Jamnalal Sons Ltd. [TS-547-HC-2016 (BomHC)] (Income Tax Reference No of 225 of 1999)***

**1563.** The Court held that there were two significant factors why the CIT(A) and the ITAT did not adopt the valuation of the stamp authority for the purpose of collecting capital gain tax in the hands of the assessee. Firstly, there was a gap of nearly 3 years between the date of execution of the MOU and the execution of a formal development agreement. Obviously, the valuation made by the stamp authority was as on the date of the execution of the development agreement. Secondly and more importantly, the stamp valuation of Rs.4.63 crores were for a larger area of 7644 sq. meters where the assessee had assigned the development rights only with respect to 3872 sq. meters. Thus, the Court upheld the order of Tribunal and dismissed Revenue's appeal.
***Pr. CIT vs. EXECUTOR OF ESTATE OF LATE SMT. MANJULA A. SHAH (2018) 103 CCH 0217 BomHC INCOME TAX APPEAL NO. 859 of 2016 dated 11.12.2018***

**1564.** The Court held that where purchase of property was delayed due to void compulsory acquisition by Appropriate IT Authority, date of purchase would relate back to original agreement, and not to date of execution of sale deed and benefit of cost indexation was to be provided from said date.
***Amarjeet Thapar v. ITO, Ward 24(1)(1)- [2019] 101 taxmann.com 221 (BomHC)- WP. No. 3548 of 2018-dated December 14, 2018***

**1565.** The assessee had entered into a development agreement with one, GPL wherein land owned by the assessee was given for development to GPL. In terms of the development agreement an amount of Rs.13.75 crores was paid as a deposit to the assessee by GPL. The agreement, *inter alia*, gave powers to GPL to obtain various permission, commence construction of homes and sell them. The agreement, *inter alia*, provided that Rs.55 crores was to be the notional costs of the land and on sale of the constructed property, 30% of its sale proceeds, were to be received by the assessee from GPL, over and above the amount towards the cost of the land. The Court

held that since the development agreement was not registered it did not result in transfer as per section 2(47)(v) r.w. section 53A of the Transfer of Property Act. Further, it held that since the possession of the property was given to the Developer (GPL) for specific purposes to develop the property, it was not a right akin to the ownership of the land by the assesses and thus it was not a transfer as per section 2(47)(vi) also as the possession continued to be with the assessee. Therefore, the Court held that Rs.13.75 crores received as deposit did not constitute income in absence of transfer of land.

***Pr.CIT v Fardeen Khan - [2018] 96 taxmann.com 398 (BombayHC) – ITA Nos. NOS. 162 & 285 OF 2016 dated July 25, 2018***

**1566.** The Court held that the amount received by the retiring partner on retirement from firm on account of goodwill will not be subjected to tax as capital gains in his hands in light of the decision of the Court in CIT v. Riyaz A. Sheikh [2014] 41 taxmann.com 455/221 Taxman 118 (Mag.) wherein it was held that as per Section 45(4) income arising on account of distribution of assets upon dissolution of a firm was taxable in the hands of the firm.

***PCIT v. R.F. Nangrani HUF – [2018] 93 taxamann.com 302 (Bombay) – IT Appeal No. 33 of 2016 dated April 18, 2018***

**1567.** The Court held that the fact that an agreement for sale of property is registered does not make it a conveyance. The sale or transfer is not complete on the date of the execution of the agreement if there are obligations to be fulfilled by both parties.

***PCIT vs. Talwalkars Fitness Club (Bombay High Court) - INCOME TAX APPEAL NO. 589 OF 2016 dated 29.10.2018***

**1568.** The assessee, vide a Power of Attorney (POA) dated 14-3-1993, had given only access of a property to developer to do certain jobs on their behalf but the said POA did not disclose that possession had been given to developer in pursuance thereto. Subsequently, a written agreement dated 30-4-2001 was entered into for transfer of the said property to the said developer which in clear terms recorded that the assessees were owner and in possession of property. The assessee claimed that no transfer was effected in AY 2002-03 but same was effected in AY 1993-94 when the said POA was executed in favour of the developer. Noting the above facts, the Court held that the transfer within meaning of section 2(47)(v) of the said property had taken place only in AY 2002-03 vide the agreement dated 30-4-2001 i.e. when actual possession was given to the developer and accordingly, it upheld the Tribunal's order confirming the AO's action of taxing the gains arising on transfer of the said property in AY 2002-03.

***Dr. Joao Souza Proenca v ITO – (2018) 401 ITR 105 (Bom) – ITA No. 5 & 6 of 2012 dated 17.01.2018***

**1569.** The Court held that only income actually received or accrued to the assessee on sale of shares was to be taxed and not the deferred contingent income. It held that where the agreement provided for a fixed amount of initial consideration as well as a deferred consideration to be received over a period of 4 years which was to be worked out based on profits made by the company whose shares were being transferred, the deferred income had not accrued in the year of transfer and therefore not taxable in the year of transfer.

Go to Index

***CIT v Mrs. Hemal Raju Shete – (2016) 68 taxmann.com 319 (BombayHC)***

**1570.** The Court upheld the Tribunal's order and held that the date of handing over of physical possession of property by assessee-individual (i.e. March 1, 2008), and not the date of execution of Development Agreement (i.e. September 13, 2007) was to be considered as the date of transfer. Accordingly, it allowed the assessee's capital gains exemption claim u/s. 54EC by holding that the investments made by assessee in August 2008 was within the 6 months deadline prescribed u/s. 54EC which was denied by the Revenue on the ground that the 'transfer' of asset was effected on the date of execution of Development Agreement (i.e. September 2007) and not the date of handing over of physical possession of property. The Court further observed that on the date of execution of the development agreement, the entire consideration was not received by assessee and that the entire consideration was received only when the possession was handed over by assessee to the developer on March, 1, 2008 when the complete control over the property was passed on to the developer.

***CIT v Dr. Arvind S. Phake - TS-603-HC-2017(BOM HC) - INCOME TAX APPEAL NO.139 OF 2015 dated 20.11.2017***

**1571.** The shares of the assessee company were held by 3 families. The assessee company owned shares of M/s.R.S.Rekhchand Mohta Spinning and Weaving Mills Ltd. (RMSWML) and M/s. Vaibhav Textiles Mills Ltd. (VTML) Pursuant to family settlement between the shareholders family, the assessee company was required to transfer the shares of RMSWML and VTML to 2 shareholder families. The assessee contended that no capital gains was chargeable to tax since the transfer was in pursuance of family settlement which was not a transfer. The AO contended that the same was chargeable to tax as the family settlement was between the shareholders and the company being a separate legal entity could not have entered into family settlement. The CIT(A) held that family arrangement/settlement would only be applied to members of the family who were parties to the settlement and not to the assessee company even though it was under control and management of the members of the family. The Tribunal upheld the order of AO and the CIT(A). The Court held that share-transfer by the assessee-company pursuant to the family arrangement among the shareholders of the assessee-company was not exempt as the assessee-company was a separate legal entity and was not a party to the family settlement. Further, it rejected the assessee's contention to lift the corporate veil on the ground that it would deny the separate existence of the company.

***B. A. Mohota Textiles Traders Pvt. Ltd. [TS-234-HC-2017(BOM)] ITA No 73 of 2002 dated 12.06.2017***

**1572.** The Court upheld the decision of the AAR, wherein it was held that at the time of conversion of a partnership firm into a company, there would be no capital gains tax liability notwithstanding the fact that the conditions stipulated in Section 47(xiii) were not fulfilled as shares allotted to the partners of the extinct firm consequential to the registration of the firm as a company would not give rise to any profit or gain and that by receiving such shares the value of which was nothing more than the value of the sum total of their interest in the firm or the worth of their shareholding in the firm, therefore no gain was made by the partners and that all the assets automatically vest in the newly registered company as per the statutory mandate contained in

section 575, and therefore it could not be said that the partners had made any gain or received any profit, assuming that there was transfer of capital assets. Accordingly, the Court held that where there was no profit or gain arises at time of conversion of partnership firm into a company, in such a situation, notwithstanding non-compliance with clause (d) of proviso to section 47(xiii) by premature transfer of shares, transferee company was not liable to pay capital gains tax.
***CIT v.Umicore Finance Luxemborg [2016] 76 taxmann.com 32 (Bombay) (Writ Petition No.510 Of 2010)***

**1573.** The assessee had entered into a joint development agreement with a developer on 7-12-2000 with respect to a land owned by the assessee, in terms of which 39% of constructed area was to be given to assessee and remaining 61% was to be allotted to the developer. CIT passed a revision order u/s 263 for AY 2007-08, holding that in view of section 2(47)(v) r.w.s. 45, capital gains tax ought to have been paid in AY 2007-08 i.e. the year when joint development agreement was executed. The Tribunal set aside the revision order. The Court held that no transfer within meaning of section 2(47)(v) would take place until the developer constructed the said property and handed over 39% of the same to assessee as per terms of agreement. Further, it held that even otherwise, since it was not Revenue's case that there was any monetary profit or gain that accrued to assessee at time of execution of agreement, no tax was payable u/s 45(1) in assessment year in appeal i.e. AY 2007-08.
***Pr.CIT v Infinity Infotech Parks Ltd [2018] 96 taxmann.com 274 (Calcutta) - ITAT NO. 225 OF 2015; GA NOS. 4049 AND 4050 OF 2015 dated July 18, 2018***

**1574.** The Court allowed assessee's appeal against the Tribunal's order wherein the Tribunal had upheld the addition of capital gains made by the AO while making assessment for AY 2002-03 by invoking provisions of section 45(4) [applicable in case of deemed distribution of assets among partners at time of dissolution] on the allegation that assessee-firm had dissolved on 31.03.2002. The Court noted that there was no dissolution in assessee's case and only some partners retired and few partners were inducted and the firm continued with the earlier businesses, which was evident from the partnership deed.
***G.H. Reddy and Associates vs Asst CIT (2018) 103 CCH 0224 Chen HC Tax case(Appeal) No.1106 of 2008 dated 16.11.2018***

**1575.** The Court held that the actual transfer of shares took place only when the transferees name was entered into the share register irrespective of the fact that 60 percent of the consideration was paid prior. Since the transferee's name was entered into the register after a period of one year of purchase of the shares by the transferor, the resultant gain was long term capital gains. It further held that 15 percent share of rent income from a property could not equated to 15 percent co-ownership in the property and therefore the assessee could not be considered as an owner of the said property, thereby satisfying the condition of not owning more than one house property under section 54.
***CIT v Kapil Nagpal – (2015) 94 CCH 0009 Del HC***

**1576.** The Court held that where assessee was yet to acquire development rights in respect of land in question in absence of any transfer of such development rights, advance received by assessee for sale of such development rights could not be taxed relevant year.

Go to Index

***CIT v. DLF Commercial Project Corporation, [2017] 88 taxmann.com 422(DelhiHC), ITA Nos. 627 of 2012 & 507 of 2013, dated July 15, 2015***

**1577.** On a conjoint reading of the provisions of Explanation 1 to section 2(47), section 269UA(d) and section 269UA(f)(i), the Court held that no transfer of capital asset took place when the plant and machinery along with land and building was leased out for a limited period of 10 years (being less than 12 years) giving limited right to the lessee to hold and possess the facilities leased to it with further restriction on subletting it or transferring any right or interest without the permission of the lessor.
***Teletube Electronics Limited v CIT (ITAs No 38 & 132 / 2002) – TS-551-HC-2015 (Del)***

**1578.** Transfer of immovable property takes place on execution of sale deed and, therefore, to hold that upon mere execution of agreement to sell, immovable property gets transferred to purchaser, even within extended definition of section 2(47), would be incorrect.
***Ushaben Jayantilal Sodhan v ITO [2018] 93 taxmann.com 453 (GujaratHC) – R/TAX APPEAL NO. 393 OF 2014 dated 01.05.2018***

**1579.** The Court held that where the assesee company gifted shares to its sister company, such company was exempt from capital gain as it was exempt under section 47(iii) of the Act. Further, it held that the proviso to company was exempt from capital gain as it was exempt under section 47(iii) of the Act. Further, it held that the proviso to section 48 which provides that the market value would be considered as full value of consideration was not applicable to the instant case as it applied only to gift of shares by a company to its employees.
***Pharmacem v ITO – (2016) 66 taxmann.com 149 (GujHC)***

**1580.** The Court held that though provision of section 47(xiii)(b) does not envisage immediate allotment of shares in exchange of capital account balances of partners of partnership firm on or before date of succession of business of partnership firm by limited company, but the allotment of shares has to be complied with before end of relevant previous year in which such succession of business takes place. It held that providing for some period for completing said process of allotment of shares is also reasonable, however, 'reasonable period' cannot be stretched to cover a large period like 3 to 4 years. Further, the Tribunal held that in case of non-compliance of such condition, capital gains tax liability is to be fixed in hands of successor company for previous year in which requirements or conditions of section 47(xiii)(b) are not complied with vide section 47A(3).
***CIT v Prakash Electric Co - [2018] 97 taxmann.com 210 (KarnatakaHC) – ITA Nos. 884 OF 2007 & 60 OF 2015 dated July 23, 2018***

**1581.** The Court held that where two partners of assessee-firm had contributed a property to assessee-firm and, later on, said partners had retired from firm and relinquished all rights and interest in property in favour of continuing partners, capital gains on sale of said property was to be taxed in hands of assessee-firm and not in hands of retired partners.
***S.K. Ravikumar v. ITO, Ward 8(4), Bgl - [2019] 101 taxmann.com 18 (KarnatakaHC)- ITA No.82 of 2010-dated November 28, 2018***

Go to Index

**1582.** The Court set aside the Tribunal's order and denied the assessee capital-gains exemption benefit u/s. 47(xiv) upon take-over of assessee's proprietary concern by a company during AY 2001-02, as sub-clause (c) condition (of receiving consideration only by way of share allotment) was not met. It noted that the assessee-proprietor was allotted shares only to the tune of Rs. 1.52 cr out of the net assets worth Rs. 5.17 cr taken over by the company. Noting that there was clear deficit, which was never paid or satisfied in the form of shares as envisaged under Section 47(xiv)(c) of the Act, it rejected the Tribunal's reasoning that the 'deficit' was to be treated as 'loan' given by the proprietorship concern thereby reducing the net assets of the company for which shares were to be issued. Clarifying that "under no circumstances could a person borrow from himself", it emphasized that the 'proprietor' and 'proprietorship concern' are not two different entities. It held that whatever was pumped in by the 'proprietor' to his proprietorship, was nothing other than investment which formed part of the assets, which, when taken over by the Company, would have to be compensated [after deducting the liabilities] and that to claim benefit under section 47(xiv)(c), such compensation was to be discharged by the company only by allotting shares and in no other manner.
***CIT vs Shri K.V. Mohammed Zakir-TS-235-HC-2017(KER HC)-ITA No.1797 of 2009 dated 10.04.2017***

**1583.** Assessee was partner in various firms and he had substantial land holdings. Suit property was sold and same was purchased by father of assessee and later on after death of assessee's father, property devolved on assessee. Assessee sold suit property and same was purchased by owners of a newspaper, who made constructions thereon. Assessee had not declared any capital gains in return. Sale was sought to be assessed as capital gains by AO. CIT(A) held that sale of land was not to be assessed as capital gains u/s.45. Tribunal treated transferred property as agricultural land, hence, not assessable to capital gains. On Revenue's appeal, the Court held that, AO dealt with certificate of Village Officer produced before him and negatived same as having been issued long after sale. Fact of sale made for obvious non-agricultural purpose along with user of land having not been proved. Village Officer's certificate was only document produced by assessee before AO and same could not be relevant. Inspector who visited site reported that adjacent property did not show a routine agricultural operation and was merely dotted with certain coconut trees. Assessee failed to establish that land in his possession and sold by him was agricultural land put to use for agricultural purposes—Orders of CIT(A) and tribunal were set aside and Revenue's appeal was allowed.
***Pr.CIT vs. Kalathingal Faizal Rahman-(2018) 102 CCH 0155 KerHC-ITA No.99 of 2016-Dated July 2, 2018***

**1584.** The Court held that where the partners of a firm constituted a private limited company and transferred their rights in the firm to the company in lieu of the equity shares of the company, it did not amount to dissolution of the firm since the rights held by the partners continued to exist in the form of the equity shares held in the company and therefore the transfer did not amount to distribution or transfer of capital assets chargeable to capital gains.
***Pipelines India v ACIT – (2016) 67 taxmann.com 112 (MadrasHC)***

**1585.** Where the assessee-company had offered a land, which was held by it as capital asset and converted the same into stock-in-trade in year 2000, as security for amounts advanced by

another company to the sister concern of assessee-company under a Memorandum of Association entered into with the said company and the said company sold the said land belonging to assessee to one, RSPL for repayment of loan borrowed by its sister concern, the AO held that there was transfer of property between assessee and RSPL and computed long-term capital gains in the hands of assessee. Relying on the decision in case of the said sister concern of assessee of CIT v. Essorpe Holding (P.) Ltd. (2017) 249 Taxman 222 (Mad) having similar facts, the Court held that the AO should apply provisions of section 45(2) and compute capital gains upto date of conversion into stock-in-trade, and thereafter on actual sale of land, i.e., difference between value of sale and stock-in-trade, was to be considered as 'business income'.

***Pr.CIT v Essorpe Mills Ltd. – (2018) 92 taxmann.com 100 (MadHC) – T.C.A. No. 841 of 2017 dated 20.02.2018***

**1586.** Where the assessee had exercised its 'right to nominate' another group concern for transfer of its unexercised call options right, the Tribunal held that since the right to nomination came to an end, in terms of Explanation 2 to section 2(47), the same was covered by definition of 'transfer' and, consequently, said transfer of capital assets was liable to be taxed as capital gain.

***Vodafone India Services (P.) Ltd. v DCIT – (2018) 89 taxmann.com 299 (Ahd) – ITA No. 565 (Ahd.) of 2017 dated 23.01.2018***

**1587.** The assesse being a builder/developer had entered into a development agreement by virtue of which a right in land was created in its favour by owner of land. Despite development agreement entered the landlord decided to sell land to other parties. Thus, the assessee filed a suit in Court of Law for specific performance of preemptive rights to purchase of land and acquired 'right to sue'. The assessee claimed that 'right to sue' was a personal right and did not fall within definition of 'capital asset' under section 2(14), and thus damages received from potential purchaser for such relinquishment of 'right to sue' was claimed as a capital receipt. The Revenue authorities rejected assessee's explanation and brought the amount of damages in question under tax as revenue receipt. The Tribunal in the instant case held that in order to attract charge of tax on capital gains, receipt must have been originated in a 'transfer' within meaning of section 45, read with section 2(47), and since 'right to sue' was a right in personam and such right could not be transferred, amount received as compensation in lieu of said right was of capital nature and not chargeable to tax under section 45.

***Bhojison Infrastructure (P) Ltd vs ITO- (2018) 99 taxmann.com 26 (Ahd- Trib)- ITA No 2449 of 2016 dated 17.09.2018***

**1588.** Where the assessee had signed documents by virtue of Power of Attorney executed in favour of the assessee by two individual NRIs, who were original vendors of transactions of sale of immovable properties and the AO made an addition of long term capital gains to the assessee's income, the Tribunal deleted the said addition noting that in spite of having the information about the residential address of the two NRIs in India, the AO had not taken any initiative to make an enquiry about the genuineness of the whereabouts of the said vendors with intent to impose tax on capital gain upon them. It was also noted that the payments made by the purchasers were not credited in the accounts of the assessee but the NRIs.

Go to Index

***Samir Trikambhai Patel vs ITO [2018] 96 taxmann.com 291 (Ahd Trib) - IT APPEAL NO. 1440 (AHD.) OF 2016 dated August 8 2018***

**1589.** The Tribunal held that the surrender of tenancy right was a "transfer" as defined under the Act and that the consideration received on such transfer was assessable to tax under section 45 of the Act and not under the head 'Income from Other Sources'. It further allowed deduction under section 48 of the Act for expenses incurred on dismantling factory constructed on lease- hold land while computing capital gains upon surrender of lease hold rights on the ground that it was wholly and exclusively in connection with the transfer irrespective of the fact that the expenses were incurred by a person other than the assessee.
***Sri Laxmidas Bapudas Darbar v ITO [ITA No 731 / Bang / 2014] – TS-498-ITAT-2015 (Bang)***

**1590.** The Tribunal dismissed the assessee-company's plea that since shares were deposited in Escrow account in terms of the Arbitration Award (pursuant to a family settlement), there was no transfer of shares as contemplated u/s. 2(47) and upheld the capital gains taxability on transfer of shares for AY 1996-97. It dismissed the argument of the assessee that there was no 'transfer' as the shares were deposited in an escrow account, noting that the issue was not raised by assessee in the original assessment proceedings and clarified that the same could not be raised for the first time in remand proceedings. It held that that the scope of assessment proceedings could not be widened in the remand proceedings.
Moreover, on merits, it held that shares deposited in an Escrow account in terms of the Arbitration Award amounted to cessation of control or possession of shares, thereby alienating the ownership of such shares, which amounts to transfer u/s. 2(47).
***Mangala Investments Ltd. vs DCIT-TS-245-ITAT-2017(Bang)-ITA No. 1322/1323/1324/bang/2012 dated 01.05.2017***

**1591.** Assessee, engaged in business of real estate, received certain amount by granting easement rights to 'R'. The assessee contended that granting of easement rights did not result in transfer as envisaged in S.2(47) and thus capital gains arising therefrom were not taxable and further contended that since the entire consideration amount wasn't received & the amount received was shown under the head- current liability, the same was not liable to tax. AO rejected both the contentions and bought to tax the amount received during the relevant AY. CIT(A) opined that the grant of easement right resulted in transfer and capital gains arising therefrom were taxable on accrual basis irrespective of actual receipt of consideration. The Tribunal upheld the order of CIT(A).
***Oikos Apartments (P.) Ltd v ITO [2018] 95 taxmann.com 44 (Bengaluru – Trib) – ITA NO 1384 OF 2017 dated 31.05.2018***

**1592.** The Tribunal rejected assessee's contention of considering date of agreement (as against the date of registration) for the purpose of calculating holding period of property transferred under Joint Development Agreement (JDA). It observed that the assessee transferred property under JDA on June 14, 2007 which was acquired by way of an agreement to sale on June 28, 2000 but noted that the sale deed was registered/executed on December 5, 2005. It accepted assessee's contention that upon entering into agreement of sale, the seller relinquishes certain rights in favor of the buyer but held that the crucial factors to be considered is whether the buyer

had taken possession of the property and paid consideration agreed. Noting that the assesse had never produced agreement to sale before the AO and that out of total consideration of Rs. 12 Lakhs, only Rs. 1 Lakhs had been paid and that there was no covenant in the agreement to sale that possession could be transferred in favour of assesse, it held that the date of agreement could not be taken as the date of transfer as the assessee had not acquired any interest in the said property from the date of agreement of sale. Hence, it held that the date of registration ought to have been considered as the date of transfer and accordingly held that the capital gains would be treated as "short term capital gains", not eligible for exemption u/s 54F.

***M.C.Sathyanarayana Gowda - TS-109-ITAT-2018(Bang) - ITA No.1057 /Bang/2016 dated 26/02/2018***

**1593.** Assessee, an owner of an immovable property entered into a registered, Joint Development Agreement (JDA) in respect of property with 'S' Builders. As per JDA, assessee would get 30 per cent of built-up area and proportionate undivided share of land and builder would be entitled to 70 per cent of built-up area and proportionate undivided share of land. Revenue authorities opined that there was a transfer within meaning of section 2(47)(v) during relevant previous year by virtue of JDA. It was noted that clauses in JDA regarding possession clearly stated that what was given was not possession contemplated under section 53A of Transfer of Property Act, 1882, and that it was merely a license for builder to enter property for purpose of carrying out development. It was also found that a MOU was executed in subsequent assessment year whereby legal possession of property was delivered to builder. The Tribunal held that, there was no transfer of property within meaning of section 2(47)(v) in relevant year and, thus, capital gain could not be brought to tax in assessment year in question.

***Smt. Lakshmi Swarupa v. ITO, Ward 4 (4), Bgl. - [2018] 100 taxmann.com 148 (Bangalore - Trib.) -ITA No. 2278 (BANG.) of 2018***

**1594.** Where assessee sold his agricultural land and claimed deduction u/s 54B by investing sale proceeds in agricultural lands which was disallowed by the AO on the ground that purchase was made by way of an 'agreement to sell' and not through registered deed, the Tribunal allowed deduction u/s 54B against capital gains earned on sale of agricultural land to assessee and held that since the assessee had obtained possession of new agricultural property with full rights by way of agreement to sell, the registration of sale deed was not necessary. It relied on SC ruling in Sanjeev Lal wherein considering Sec.2(47), it was held that, capital asset could be deemed to have been transferred if a right in a property was extinguished by executing an agreement to sell.

***Anil Bishnoi vs ACIT [TS-459-ITAT-2017(CHANDI)] ITA No. 1459/Chd/2016 dated 27.09.2017***

**1595.** The Tribunal held that the amount received by assessee on retirement as partner from firm, on account of the credit balance standing in the capital account and current account, and not for relinquishing or extinguishing his rights over any assets of firm, would not be chargeable under section 45(4) as capital gains.

***Sharadha Terry Products Ltd v ACIT - [2016] 68 taxmann.com 282 (Chennai-Trib)***

**1596.** The Tribunal allowed assessee's appeal and held that transfer of property held by assessee referred to in the Joint Development Agreement (JDA) did not take place in subject AY 2012-13

(in which JDA was entered) since pursuant to such JDA the possession of the scheduled property was not handed over to the builder and the builder was granted only a right to enter into the premises for the purpose of demolition of the existing building and re-construction and accordingly, the conditions specified in Section 53A of the Transfer of Property Act were not complied with. The Tribunal held that the transfer took place only in subsequent AY 2013-14 by execution of the POA dated August 17, 2012 through which the assessee authorized builder to convey, sell, transfer the property. Accordingly, it deleted the addition made for AY 2012-13.
***Rameysh Ramdas v ITO [TS-467-ITAT-2018(CHNY)] - ITA No.1399/Chny/2017 dated 07.08.2018***

**1597.** The Tribunal held that the AO was incorrect in denying the assessee benefit under section 54 of the Act on the ground that he had violated the conditions contained therein by transferring the new house property to his daughter. Since the assessee had settled the property to his daughter without any consideration out of love and affection and therefore it was akin to a gift which was not considered as a transfer under section 47(iii) of the Act. It clarified that to avail of the said exemption, the daughter was not to transfer the property by any means.
***ITO v Abdul Hameed Khan Mohammed – TS-26-ITAT-2015 (Chen)***

**1598.** The Tribunal held that as per the newly inserted sub-section (5A) to s. 45, by the Finance Act, 2017, capital gains in case of a joint development agreement arises only in the previous year in which the certificate of completion for the whole or the part of the project is issued by the competent authority.
***Dy. CIT vs. HEMA MOHANLAL (2018) 54 CCH 0393 CochinTrib ITA No.367/Coch/2017 dated 17.12.2018***

**1599.** The assessee entered into an agreement with a builder for construction and sale of dwelling units and also executed irrevocable general power of attorney on the same day. The AO held that on a conjoint reading of both the documents, assessee had delivered physical possession of land to builder on such day and that there was transfer of capital asset as defined under Section 2(47) of the Act, resulting in long-term capital gains in the hands of the assessee.
Relying on the ruling of Supreme court in CS Atwal vs CIT (2017-TIOL-374-SC-IT order dated 4.10.2017), the Tribunal held that since the agreement was not registered, there was no contract in eye of law in force under Section 53A of the Transfer of Property Act, and consequently the same would not amount to transfer within meaning of section 2(47)(v) and thereby capital gains could not be chargeable in hands of assessee during year under consideration.
***Abhaya Prasad Panda & Anr. vs. ITO – [2018] 53 CCH 0011 (Cuttack ITAT) – ITA 250/CTK/2015, 214/CTK/2015 dated May 7, 2018***

**1600.** The Tribunal held that the signature bonus received by the assessee for demitting 60% of rights in the oil fields was a non- taxable capital receipt. It noted that the amount was received by assessee under the joint operation agreement ('JOA') pursuant to surrendering 60% of rights to other companies and rejected revenue's stand that since the JOA was entered in respect of a business already yielding revenue, the amounts were revenue in nature. It held that when revenue yielding ongoing concern was transferred there would only be capital gain or capital loss. Further it noted that the transaction did not result in any capital gain considering that for

transfer of 60% share in oil fields (having book value of Rs. 882.86 crores), assessee received only sum of Rs. 219.76 crores.

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

**1601.** The Tribunal held that where assessee had entered into an agreement for transfer of development right in a land and handed over said land for development, in view of fact that such agreement was unregistered, there was no transfer of land as per provision of section 2(47)(v).

***Saamag Developers (P.) Ltd. v. Asstt. CIT [2018] 98 taxmann.com 467/173 ITD 350 (Delhi – Trib.) – ITA Nos 2053 to 2057 (Del) of 2017 dated October 8, 2018***

**1602.** The assessee company gifted huge volume equity shares in a public company, without any consideration, to its sister concern by passing a board resolution and a special resolution in the extra ordinary General meeting. The AO held that the said transaction would not fall under the purview of Section 47(iii) as transfer of asset under a gift or will or an irrevocable trust is not possible by an artificial person. Further, since the assessee could neither establish the genuineness of the transaction, nor prove the commercial expediency and business prudence, AO held that the said transfer of shares was to evade taxes and hence held that the transaction was taxable under Section 45 and computed value of shares transferred by taking the market value of each share. The CIT(A) upheld the order of the AO. The Tribunal held that since assessee did not demonstrate, by way of documentary evidence or in any manner, to prove genuineness and validity of transaction, assessee was directed to provide all relevant information / details to assist the AO. Thus, the matter was set aside to the file of the AO to make proper enquiry with respect to reality, genuineness and validity of alleged transaction.

***Gagan Infraenergy Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0080 (Delhi Tribunal) – ITA No. 1031/Del/2018 (Stay Application No.193/Del/18) dated May 15, 2018***

**1603.** Where assessee-company, engaged in real estate development, under a shareholders agreement with a financial partner gave possession of a land to a SPV, as part of an arrangement to develop integrated township, Tribunal held that since all transactions embodied in shareholders agreement were unregistered agreements, provisions of section 2(47)(v) would not be applicable and accordingly no liability of tax could be fastened on assessee merely on basis that possession of land having been handed over by assesse.

***Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018***

**1604.** Where the AO had passed the reassessment order making additions to assessee's income on account of capital gain arising on transfer of land after finding that the assessee had entered into a development agreement in respect of its land for construction of residential house and the assessee had contended that possession of the impugned land was not transferred to developer and same was continuously enjoyed by assessee, the Tribunal held that the assessee had handed over possession to developer, attracting provisions of section 2(47)(v) r.w. section 53 of the Transfer of Property Act, 1882 and the capital gains on transfer of the impugned land was taxable in the year in which the agreement was entered into, noting that as

per the said agreement, the assessee had permitted the developer to enter into premises of its land and do all necessary things for construction of apartments.

***K. Vijaya Lakshmi v ACIT – (2018) 91 taxmann.com 253 (Hyderabad Trib) – ITA Nos. 1561 (hyd.) of 2016 and 372 (hyd.) of 2017 dated 28.02.2018***

**1605.** The AO reopened the assessment as he was of the view that capital gains arose during year under consideration as assessee entered into a development agreement along with seven other parties. The Assessee filed a return of income declaring NIL income in response to notice issued under Section 148 of the Act. AO taxed the capital gains arising on the said development agreement and made certain other additions also. The CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of the *Bombay High Court in the case of M/s. Chaturbhuj Dwaraakdas Kapadia Vs. CIT [260 ITR 491]* and held that since there was no transfer of complete control over property, even in so called development agreement, the capital gains tax was bad in law. Accordingly, the Assessee's appeal was allowed.

***KHAMBHAMPATI JAYALAKSHMI & ORS. vs. ITO & ORS. (HYDERABAD TRIBUNAL) (ITA No. 1587, 1588, 1598, 1599, 1600 & 1679/Hyd/16) dated May 23, 2018 (53 CCH 0073)***

**1606.** Where the AO had passed the reassessment order making additions to assessee's income on account of capital gain arising on transfer of land after finding that the assessee had entered into a development agreement in respect of its land for construction of residential house and the assessee had contended that possession of the impugned land was not transferred to developer and same was continuously enjoyed by assessee, the Tribunal held that the assessee had handed over possession to developer, attracting provisions of section 2(47)(v) r.w. section 53 of the Transfer of Property Act, 1882 and the capital gains on transfer of the impugned land was taxable in the year in which the agreement was entered into, noting that as per the said agreement, the assessee had permitted the developer to enter into premises of its land and do all necessary things for construction of apartments. Further, it held that section 45(5A) being substantive provision and inserted vide the Finance Act, 2017, w.e.f. 1-4-2018, could not be applied to development agreement entered into during the year 2008-09, in which section 2(47)(v) was attracted.

***Adinarayana Reddy Kummeta v ACIT – (2018) 91 taxmann.com 360 (Hyderabad Trib) – ITA Nos. 1712, 1714 (Hyd) of 2016, 458 and 459 (Hyd) of 2017 dated 28.02.2018***

**1607.** The Tribunal held that where date of agreement fixing amount of consideration and date of registration for transfer of capital assets are not same, then value adopted or assessed or assessable by stamp valuation authority on date of agreement may be taken for purpose of computing full value of consideration for such transfer.

***Manoj Yadav vs ITO- (2018) 54 CCH 0072 IndoreTrib- ITA No 916,930/Ind/2016 dated 09.10.2018***

**1608.** Where the assessee converted agricultural land into residential plot before selling it, AO held gains arising from such sale was liable to be taxed in hands of assessee as *'long term capital gains'.* CIT(A) held that the same was adventure in nature of trade and the income arising thereon was liable to be taxed as *'business income'*. Tribunal held that the assessee had sold 'residential plot' on his agricultural land after developing roads etc. and since the same was an

act of business and adventure in nature of trade, income was to be taxed as per provisions of section 45(2). Thus, Tribunal held that capital gains should be calculated as on date of conversion of agricultural land to 'stock in trade' and thereafter only profit and gain of business should be computed on sale. Considering totality of facts and circumstances, the Tribunal restored the matter to the AO.

***SURAJ MAL vs. ITO (JAIPUR TRIBUNAL) (ITA No. 659/JP/2017) dated May 1, 2018 (53 CCH 0079)***

**1609.** During assessment, the AO noted that the assessee along with his two brothers (also party to the appeal) had sold leasehold rights of limestone & Marble mines to a company 'J'.He held the said transaction to fall within the meaning of 'transfer' u/s 2(47) and accordingly made addition of 1/3rd of the consideration received in the hands of each assessee (being their individual share in the said right). On appeal, the CIT(A) held only one of the brothers to be the legal owner of the mining rights. Further, it held that since only the sale deed was executed but possession was not given, there was no transfer u/s 2(47).The CIT(A) thus deleted the addition made by the AO. On revenue's appeal, Tribunal held that it was a case of transfer of mining rights under lease which were agreed to be transferred for a consideration to J company. It rejected the assessee's contention that the said right were not yet transferred as the said transfer was subject to renewal of lease. The Tribunal held that though the mining rights per se were not transferred however, by virtue of agreement, the assessee transferred and surrendered his rights in said asset as on date of agreement and was bound to transfer leaseholds rights in favour of J company only whenever same were renewed by Government, thus relinquishing his right. However, the Tribunal upheld the CIT(A)'s finding that only one of the brother was the owner of the mining rights and thus the amount received for execution of the said agreement was liable to be assessed as capital gain in the hands of the said brother (owner of mining lease).Further, the Tribunal rejected the AO's stand that since the assesses had acquired the said rights as inherited property as per section 49(1)(i)(iii)(a) and the cost of previous owner was Nil, the cost of acquisition in the hands of the assesses will be Nil. It held that it was clear from provisions of section 55(2)(a)(b) r.w.s. section 55(3) that in case, assessee had exercised his option that cost of acquisition of capital asset should be fair market value as on 01.04.1981 then, cost of acquisition of capital asset of previous owner became irrelevant for purpose of computing capital gain and accordingly, directed the AO to compute capital gain after allowing cost of acquisition being fair market value as on 01.04.1981.

***ITO & Ors v Vijay Mangal & Ors. (2018) 52 CCH 0373 JaipurTrib - ITA No. 276/JP/2017dated 18.04.2018***

**1610.** The Tribunal rejected the assessee's contention that plots of land sold by it were agricultural land, noting that –

- though the assessee had inherited agricultural land from his father he had sold the land pieces after plotting smaller residential plots
- from size of plots also it was evident that these were residential plots and not agricultural plots of land
- there was no evidence on record to suggest that at time of sale, agriculture activities were being carried on said pieces of land

Go to Index

- Stamp duty authorities had also recognized plotting as residential plots which was very much evident from registered sale deeds and stamp duty paid on such sale of residential plots

Further, noting that it was not a case that the buyers had acquired agriculture plots and subsequently changed it to residential use but a case where the assessee himself had developed residential plots and then sold it to individual buyers, the Tribunal held that by such plotting of land, the assessee had converted the agriculture land held as capital asset into stock-in-trade of assessee's business and, thus, it remanded the matter to AO to determine capital gains in accordance with section 45(2) as well as business income on sale of such plots.
***Mahaveer Yadav v ITO – (2018) 91 taxmann.com 476 (Jaipur Trib) – ITA No. 209 (JP.) of 2017 dated 27.02.2018***

**1611.** The Tribunal accepted assessee's contention of treating the capital gains on sale of non-agricultural land as long-term capital gains where the assesssee had entered into an agreement to sale (for purchasing the land) on 11.04.2007 but due to provisions of section 42 of the Rajasthan Tenancy Act, 1955 prohibiting sale of agricultural land by a member of scheduled caste in favour of non-member (the assessee), the sale deed could be executed in favour of the assessee only on 13.04.2010, after conversion of the said agricultural land into non-agricultural land during FY 2009-10. The AO had treated the said gains as short-term capital gains considering the date of sale deed as the date of acquisition instead of date of agreement to sale. The Tribunal noted that the assessee had paid part consideration at the time of entering into the agreement of sale and the possession of the land was also handed over at the same time, thus making the land available for enjoyment of the assessee and the sale deed only ratifed the transaction of transfer entered into vide the agreement.
***Rajasthan Agencies Pvt. Ltd v ITO [TS-59-ITAT-2018(JPR)]– 680& 681/JP/2017 dated 25.01.2018***

**1612.** The Tribunal held that unless document is registered, it has no effect in law for purpose of section 53A of Transfer of Property Act 1882 and, therefore, where assessee received certain amount by virtue of an unregistered agreement of assignment of leasehold rights, no case of transfer of property was made out under section 2(47)(v) and said amount could be brought to tax in the said year.
***Mallika Investment Co. (P.) Ltd. v. ITO, Wd-4(2), Kol- [2019] 101 taxmann.com 48 (Kolkata - Trib.)-ITA No.1245 (KOL) of 2015 – dated December 12, 2018***

**1613.** The Tribunal held that section 45(3) would only apply in respect of capital asset transferred by partners to the firm as their capital contribution and would not apply to cases where partners of a firm introduced land into the partnership business as a current asset which was accounted for as a current asset and not a capital asset by the firm as well.
***ITO v. Orchid GrihaNirman (P.) Ltd. [2016] 74 taxmann.com 187 (Kolkata - Trib.) (IT APPEAL NO. 2269 (KOL.) OF 2013)***

**1614.** Where the assessee had claimed long-term capital loss on account of sale of equity shares held in its 100% second step down subsidiary company and the AO, noting that that there was a huge price variance between the quoted price in NSE and the off-market selling price shown by

the assessee, had added amount of difference in selling price of shares to assessee's income under the head 'long term capital gain' and subsequently, before the Tribunal the asessee contended that the transfer itself was not a 'transfer' in view of provisions of section 47(iv), the Tribunal accepted the assessee's contention relying on the decision in the case of Petrosil Oil Co. Ltd. v. CIT (1999) 236 ITR 220 (Bom) wherein it was held that a second step down 100% subsidiary company is also regarded as subsidiary under the Companies Act, 1956 and transfer of capital asset to such a subsidiary company could not be regarded as 'transfer' in view of provisions of section 47(iv).

***Emami Infrastructure Ltd. v ITO – (2018) 91 taxmann.com 62 (Kolkata Trib) – ITA No. 880 (Kol.) of 2014 dated 28.02.2018***

**1615.** Where the assessee had transferred its immovable property vide an agreement dated 22.03.1992, receiving an advance for the same, but the sale deed was not executed in the name of transferee due to some problem related to the title of the property and it was only vide the sale deed dated 02.07.2011 that the impugned property was transferred, the Tribunal held that since the transfer of property was completed in terms of section 2(47)(v) r.w.s. 53A of Transfer of Property Act by giving possession of property on date of sale agreement, the capital gains would be subjected to tax in year of transfer of property i.e. financial year 1991-92 and not in the year of its registration i.e. financial year 2011-12. It thus held that capital gains arising out of sale of immovable property would be taxable in year in which sale transactions were entered into by assessee, even if transfer of immovable property was not effective or competent for want of registration under general law.

***Mangilall Estates (P.) Ltd. v DCIT – (2018) 91 taxmann.com 266 (Kolkata Trib) – ITA No. 156 (kol.) of 2015 dated 21.02.2018***

**1616.** The Tribunal held that the creation of goodwill and distribution of the amount among retiring partners did not attract capital gains under section 45(4) of the Act as none of the conditions provided therein were satisfied. It held that creation of goodwill was merely a mode of making the payment to the retiring partners without any impact on the capital assets.

***Electroplast Engineers v ACIT – (2015) 45 CCH 0189 Mum Trib***

**1617.** The Tribunal deleted capital gains addition under Section 45(4) of the Act made by the AO on the payment made by the firm to the retiring partners on account of settlement of their accounts. The assessee had acquired land in 2005 for Rs.4.67 crore which was revalued at Rs.67.92 crore in 2008 upon admission of a new partner. Subsequently, during the impugned AY, 3 partners retired from the firm and took the amount standing to their credit including the amounts on revaluation of land. The AO alleging that the entire arrangement was a scam to transfer the land from the retiring partners to the newly admitted partner (as pursuant to the admission of one partner and subsequent retirement of three partners, the new partner gained a larger share in the firm and in the land) added the entire revalued amount i.e. Rs.67.92 crore as income of the assessee under Section 45(4). The Tribunal noting that there was no distribution of assets of the firm to the partners, held that the provisions of Section 45(4) of the Act were not attracted. It held that in the instant case, it was the firm and the continuing partners that had acquired the rights in the assets of the firm from the retiring partners, which was a taxable transaction in the hands of the retiring partners and not in the hands of the firm.

Go to Index

***Mahul Construction Corporation v ITO – TS-550-ITAT-2017(Mum) - ITA No. 2784/Mum/2017 dated 24.11.2017***

**1618.** The Tribunal held that receipt of money by assessee, a land owner, under land development agreement with a developer, for making all procedural compliances in respect of its land declared as 'slum area' did not result into transfer under section 2(47)(v) as the possession of the land was to be given to developer only upon fulfillment of certain conditions i.e. sanctioning of scheme by Slum Rehabilitation Authority and obtaining the 'letter of intent' and other requisite permissions from the Competent Authorities since the important condition of transfer u/s 2(47)(v) was not fulfilled viz, neither possession was parted with nor agreement was registered,.
***Jawaharlal L. Agicha [TS-551-ITAT-2016(Mum)] (ITA NO.1844/Mum/2012)***

**1619.** The Tribunal held that the conversion of a company into a LLP constitutes a "transfer". Accordingly, if the conditions of section 47(xiiib) are not satisfied, the transaction is chargeable to 'capital gains' u/s 45. It held that if the assets and liabilities of the company are vested in the LLP at 'book values' (cost), there is in fact no capital gain. The Tribunal also held that the argument that u/s 58(4) of the LLP Act, the LLP is entitled to carry forward the accumulated losses & unabsorbed depreciation of the company, notwithstanding non-compliance with section 47(xiiib) is not acceptable.
***ACIT vs. Celerity Power LLP - ITA No. 3637/Mum/2015 & C.O No.2/Mum/2016 dated 16.11.2018***

**1620.** The Tribunal held that the assessee who had entered into an agreement for sale of his flat was not subjected to capital gains tax during the year under review despite the fact that he received an advance of the sale consideration and the agreement was registered during the year, since the possession of the flat was not handed over during the year and was only handed over in the subsequent year in which the assessee had offered the capital gains to tax. It held that the flat came into full and exclusive control of new purchaser only after possession of the same was handed over by the assessee.
***Ashok M Seth v DCIT – (2017) 49 CCH 046 Mum Trib – ITA No 187 & 188 / Mum / 2015***

**1621.** Where wholly owned subsidiary of assessee, namely 'Apex', a Mauritius based company, sold shares held by it of another company namely 'IDEA' to an unrelated Indian company, since there was absence of transfer of assets by resident to a non-resident, transaction in question would not fall within ambit of section 93 and, therefore, capital gain arising out of sale of shares of 'IDEA' by 'Apex' was not taxable in hands of assessee.
***Tata Industries Ltd v ACIT - [2017] 87 taxmann.com 240 (Mumbai - Trib.) dated 10.11.2017***

**1622.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that sum received by individual-assessee pursuant to his retirement and dissolution of partnership firm was a capital receipt, where the assessee along with his partner had acquired development rights in a plot, however subsequently owing to dispute amongst them the matter was referred to arbitrator whereby the High Court had directed the other partner to pay assessee certain amount on dissoution of partnership. The Tribunal rejected Revenue's stand that the partnership firm was neither registered nor any activity was carried and therefore the amount received was pursuant

to the relinquishment of his right in the development rights in land and could not be said to be on retirement as partner of firm, noting that (i) there was a valid partnership deed wherein the partners had contributed equally and opened a bank account (ii) agreement for acquisition of the development right in respect of the plot was executed by the assessee as agent on behalf of the firm (iii) arbitration proceedings clarified that the assessee was to retire from the said firm in lieu of the consideration to be given to him.

***ITO v Ramal P. Advani [TS-534-ITAT-2018(MUM)] ITA No.6491&6963/MUM/2016 dated 27.08.2018***

**1623.** The assessee had written-off of its investment in its wholly owned Chinese subsidiary as there were persistent losses and the net worth of the company had eroded. The AO held that the claim of capital loss was not allowable as the same did not arise due to transfer of asset, thereby it did not arise as per the computation specified in Section 48. The Tribunal set aside the order of the CIT(A) and restored the matter to the file of the AO by holding that since the investment in the subsidiary company was capital in nature, there is no provision in Act regarding carry forward of loss in capital field, which is not arising out of transfer of capital asset.

***Daga Global Chemicals P. Ltd. & Anr. vs. DCIT – [2018] 53 CCH 0007 (Mumbai ITAT) – ITA No. 5296 & 5889/Mum/2017 dated May 2, 2018***

**1624.** Where the assessee firm had purchased land in Kurla (Kurla Land) in the earlier years and during the year under review, the assessee admitted a new partner and subsequently 3 other partners retired, the Tribunal held that the AO was not justified in invoking the provisions of Section 45(4) in the hands of the assessee alleging that by way of admission and subsequent retirement of partners, the assessee had distributed the assets of the firm. The Tribunal held that admission of a new partner to the existing partnership-firm did not result in distribution of assets and that even upon the retirement of the other partners there was no redistribution of assets of the firm. It held that during the continuation of the partnership, partners do not have separate right over the assets of the firm and accordingly held that since the firm was not dissolved there was no case of there being any sort of distribution of assets to the partners.

***INCOME TAX OFFICER vs. FINE DEVELOPERS DHEERAJ APARTMENT - (2018) 52 CCH 0134 MumTrib - ITA No. 5038/Mum/2012 dated Feb 28, 2018***

**1625.** The Tribunal allowed the assessee's appeal against the CIT(A)'s order wherein the CIT(A) had upheld the AO's order taxing the amount received by the assessee on issue of its own shares to its Singapore-based holding company as short-term capital gains. The Tribunal held that the endeavor of the departmental officers to tax the transaction in question as capital gains was not supported by the any legal base as there was no transfer of capital asset to invoke the provisions of section 45. It was noted that as per the balance sheet of the assesse, it had only sold some vehicles during the year and no other asset was sold. With respect to the CIT(A)'s observation that the assessee had transferred the Interest/(stake) in itself outside India to it holding company, the Tribunal held that the concept of 'creating of interest in any assets in any manner' and transferring 'interest/stake' was not part of the word 'transfer' for the year under consideration and nor it was applicable to that year, noting that Explanation 2 to section 2(47), whereby the concept of 'creating of interest in any assets in any manner', relied upon by the CIT(A), was introduced in the year 2013 (whereas the year involved was AY 2011-12). Further,

with respect to Explanation 5 of the section 9, it held that the assesse was not covered by the said Explanation since it was not a non-resident.

***SUPERMAX PERSONAL CARE PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0096 (Mum Trib) - ITA 6107/Mum/2016 dated June 1, 2018***

**1626.** The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had denied the assessee's claim for long term capital loss arising on account of reduction in share capital in a company 'ANNPL' effected under capital reduction scheme on the ground that such reduction did not result in transfer of capital asset as envisaged u/s 2(47) since the percentage of shareholding of assessee as well as face value per share remained the same after implementation of the scheme. The Tribunal allowed assessee's claim for loss noting that on account of reduction in number of shares held by assessee in ANNPL, it had extinguished its right and in lieu thereof, assessee had received certain consideration also. It relied on the Apex Court decision in the case of Kartikeya V. Sarabhai vs. CIT wherein the company had paid Rs. 500 per share upon a reduction of the share capital of the company by way of reducing the face value of each share from Rs. 1,000 to Rs. 500 and it was held that this amounted to transfer in view of the provisions of section 2(47).

***Jupiter Capital Pvt Ltd vs ACIT [2018] 54 CCH 0310 (Mum- Trib.)- ITA No.445/Bang/2018 dated 29.11.2018***

**1627.** The Tribunal held that conversion of cumulative compulsory convertible preference shares (CCPS) into equity shares could not be considered as transfer within meaning of section 2(47) and therefore, any profits derived from such conversion were not liable to capital gain tax under section 45(1)

***Periar Trading Company (P.) Ltd. v. ITO, Mumbai - [2018] 100 taxmann.com 263 (Mumbai - Trib.)- ITA No.1944 (MUM.) of 2018-dated November 9, 2018.***

**1628.** Assessee owned certain leasehold rights in land - Subsequently, assessee decided to develop said land into a residential project and thus he converted land into stock-in-trade - Assessee applied for permission from local authority for plan sanction in year 1994. Local authority gave permission for construction of project in year 1998. Thereupon, assessee entered into development agreement with 'B' developers. Since construction of project was completed in assessment year 2008-09, capital gain arising therefrom was offered to tax in said year. Assessing Officer took a view that date on which assessee had filed his application to local authority was to be taken as date of conversion of capital asset into stock-in-trade within meaning of section 45(2). The Tribunal held that for purpose of section 45(2), date of conversion of capital asset into stock-in-trade has to be determined either on basis of entry passed in books of account of assessee or intention of assessee to exploit capital asset as stock-in-trade for its business purpose. Since assessee had filed an application before local authority in year 1994 seeking permission for development of land, Assessing Officer was right in coming to conclusion that conversion of capital asset into stock-in-trade said to have been taken place in said year itself. So far as year of taxability of capital gain was concerned, since project was completed in all respects in assessment year 2008-09 and thereupon revenue from said project had been recognised, capital gain was payable in assessment year 2008-09.

Go to Index

***Puran Ratilal Mehta v. Asst. CIT, Circle 23(3), Mum. - [2019] 102 taxmann.com 187 (Mumbai - Trib.) IT Appeal Nos. 1274 to 1279, 1320 to 1325 of 2011 & 6646 of 2012 dated December 5, 2018***

**1629.** Where assessee had sold leasehold right in a plot of land acquired by it by way of an additional compensation received for compulsory acquisition of agricultural land, belonging to her late father, the Tribunal held that since it was a right in plot of deceased father against which assessee was allotted leasehold right and same could not be considered as agricultural land transferred during year, consideration received on account of such transfer of leasehold right in land was assessable to tax under head 'capital gain'
***Pyaribai K Jain v. Addl. CIT, Mumbai-[2019] 102 taxmann.com 146 (Mumbai - Trib.)-IT Appeal No. 2387 (Mum.) of 2017 -dated December 21, 2018***

**1630.** The Tribunal held that sale consideration on transfer of property was not taxable in AY 2008-09 since the sale deed was registered in April 2008 (revelant to AY 2009-10). It further outlined the conditions which have to be cumulatively satisfied in order to tax income on transfer, namely (i) registration of sale deed, (ii) assessee should have acquired a legal right to receive consideration and (iii) property's possession must be handed-over to the buyer.
***Prakash V. Kittur - TS-49-ITAT-2015(PANAJI) - ITA No. 186/PNJ/2015***

**1631.** The Tribunal held that the assessee was not liable to capital gains tax under section 45(3) on the security deposit received by it pursuant to a joint venture agreement, since the assessee had not transferred the land to the AOP. Further, it noted that the security deposit was subsequently refunded by the assessee to the developer and therefore could not be taxed as income from capital gains.
***Ashok Gordhandas Kirpalani v ITO –TS-313-ITAT-2016 (Pune)***

**1632.** Where assessee received amount on time of her retirement from partnership firm after surrendering her right, title and interest, the Tribunal held that the same was said to be received for consideration (i.e. the surrender of her right, title, interest in the firm on her retirement) and, thus, same could not be taxable in hands of assessee under section 56(2)(vi) of the Act and that the same was taxable as income from capital gains.
***Smt. Vasumati Prafullachand Sanghavi – DCIT - [2018] 89 taxmann.com 95 (Pune - Trib.) - IT APPEAL NO. 161 (PUN.) OF 2015 dated 13.12.2017***

**1633.** The Tribunal held that where cold storage being destroyed by fire, assessee received insurance claim of Rs. 1.35 crores on account of loss of goods and cold storage plant and actual expenditure incurred on reconstruction/renovation of cold storage was Rs.3.55 crores, no short-term capital gain under section 45(1A) could be charged.
***K.S. Cold Storage v. ACI, Circle-3(1), Dhule- [2019] 101 taxmann.com 120 (Pune-Trib)-ITA Nos.1448 & 1580(Pun) of 2014-dated November 28, 2018.***

**1634.** The assessee entered into an agreement with the developer to construct a building on the land owned by the assessee, which it had converted into stock-in-trade in an earlier AY (prior to entering into the agreement). Only physical possession of the said land was handed over to

developer at time of execution of the agreement. In the previous year relevant to AY 2009-10 (i.e the impugned year), the assessee received certain amount as advance as an safeguard of interest, which was equivalent to his share out of amount collected by developers from prospective buyers. The AO added the said amount to assessee's total income. However, the Tribunal held that the business profits arising to the assessee would be taxable only in the year when the land is sold/handed over by the developers to the buyers of the flat since that would be the proper period of having right to collect the said amount. Accordingly, it directed the AO to delete the addition during the relevant AY. Further, noting that the developer had recognized completion and sale of the developed portion in subsequent AY 2011-12, it held that the business profits arising to the assessee also would be taxable in the said year.

The AO had also made addition to the assessee's income being capital gains arising on conversion of capital asset (land) into stock in trade as per section 45(2). In this regard also, the Tribunal held that the capital gain arising out of the said conversion was taxable only in the subsequent year when the business profit was taxable in the hands of assessee i.e. AY 2011-12. Further, it held that the said capital gains was to be computed considering the fair market value of the land on the date of conversion as the sale consideration and not on the basis of existing market value.

***ITO v Vilas BabanraoHukari (HUF) [2018] 93 taxmann.com 465 (Pune-Trib.) – ITA NO.1640 & 1640 OF 2014 dated 25.05.2018***

**1635.** During assessment proceeding, AO noted that assessee was engaged in business of borrowing and lending funds. It converted its shares held as stock in trade into investment. During relevant AY, assessee sold shares out of shares converted into investment and claimed LTCG on sale of such shares.AO treated same as business income on ground that assessee's act of shifting value of stock-in-trade to head investment clearly indicated colourable mind of assessee and thus, intentionally avoided payment of tax @35%.CIT(A) merely disposed of issue upholding version of AO. The Tribunal held that in entire framework of Act, there was no direct and specific embargo for conversion of stock-in-trade of shares to investment and vice versa.Over years, Courts held that once such conversation took place, assessee should maintain that pattern.There should not be any further change in pattern and thereby, statement of accounts should also be maintained.There should not be any action of assessee by which any loss arises to Revenue.It was not disputed that conversion took place from stock-in-trade to investment and also such conversion had no legal bar.Order of CIT(A) was set aside and assessee's ground allowed.

***SAKAL PAPERS LTD. & ANR. vs. Dy. CIT & ANR. (2018) 54 CCH 0437 PuneTrib ITA No. 1450/PUN/2009, 926/PUN/2013 dated 20.12.2018***

**1636.** Where the assessee entered into an agreement for sale of land on March 31, 2008, under which the consideration was paid to the assessee only on December 15, 2008 and the agreement was registered only on January 10, 2011, the Court held that in view of the facts, the AO was correct in levying capital gains tax in the year AY 2011-12 as the transfer could not have been recognized in AY 2008-09.

As regards the alternative contention of the assessee, that since the AO adopted the stamp duty value (of AY 2011-12) which far exceeded the fair value of the land as on the date of sale deed AY 2008-09), the valuation was to be referred to the DVO under section 50C(2), the Court

upheld the contention of the assessee and held that the AO was to refer to the valuation of land to the DVO as on the date of agreement.
***Devendra J.Mehta vs. ACIT (2016) 48 CCH 0227 Rajkot Trib (ITA No. 55/RJT/2016)***

*Capital Asset*

**1637.** The Court held that the property in question being an ancestral agricultural land could not be treated as 'capital asset' u/s 2(14)(iii) of the Act and accordingly the gains on sale of such land was exempt from capital gains tax. The Court observed that the assessee carried out agricultural activities and used the agricultural produce for his personal and family consumption and thus the said land could not be treated as a non-agricultural land merely because it was located near the sea or that the asssessee was not doing any regular agricultural activity or that the assessee did not show any agricultural income.
***Shankar Dalal & Ors vs. Commissioner of Income Tax & Ors - (2017) 98 CCH 0117 BomHC (Tax Appeal Nos : 1,2,10,12,16 of 2015 and 80,81,82,83,84,85,86 of 2014)***

**1638.** Where the AO sought to tax the gains arising on sale of assessee's land alleging that it was non-agricultural income in the past 5 AYs but the CIT(A) and the Tribunal post examining the relevant details (viz., copy of sale deed, revenue records, survey report, positive income/loss from cultivation of trees and vegetables reflected in the capital account) held that the land was in fact agricultural and deleted the addition of the AO, the Court held that the question before it was not a substantial question of law. It held that it was not for the Court to re-analyse evidence or determine whether evidence on record was sufficient to justify the finding and accordingly dismissed the Revenue's appeal.
***CIT vs. Dr. N. Rangabashyam (2017) 99 CCH 0185 ChenHC T.C.A. No. 429 of 2017 dated 02/08/2017***

**1639.** The Court held that the transfer of intangible assets such as a trademark or brand name associated with business could not lead to taxable income from capital gains. Further, it observed that in the instant case, what stood extinguished as a result of termination of the Joint Venture Agreement was a bundle of rights of the assessee including such business rights. It held that the transfer of intangible assets described under the JVA could not be held to fall within the ambit of capital assets provided for in section 55(2) of the Act and therefore their cost of acquisition could not have be deemed to be 'Nil'.
***CIT v HCL Infosystems Ltd – (2015) 94 CCH 0155 Del HC***

**1640.** Where assessee was not an agriculturist and land sold by him was never put to any agricultural use, the Court held that mere categorization of land as 'Nilam' in revenue records was not suffice to raise a presumption that it was a case of sale of agricultural land and accordingly denied the assessee's claim that the land being agricultural land was not a 'capital asset' under Section 2(14).
***Sreedhar Ashok Kumar v CIT - [2018] 89 taxmann.com 145 (KeralaHC) - IT APPEAL NO. 251 of 2015 dated 11.12.2017***

Go to Index

**1641.** Where i) land sold by assessee was entered as agricultural land in revenue records and assessed under the Land Revenue Code and moreso, the Assessing Officer had accepted agricultural income declared from land in question, the Court held that capital gain arising from sale of it could not be brought to tax in the hands of the assessee. Accordingly, it upheld the Tribunal's order and dismissed the Revenue's appeal.
***CIT v Ashok Kumar Rathi - [2018] 89 taxmann.com 406 (MadrasHC) - T.C.A. NO. 590 OF 2017 dated 07.12.2017***

**1642.** The assessee owned plots of agricultural land which it converted to non-agricultural land and sold during the year. It offered to tax the LTCG arising on sale of land. The land was shown as investment in the books and was subjected to wealth tax. The AO observed that the assessee had converted the agricultural land into non-agricultural land prior to its sale with the intention to fetch the competitive price and that the land was sold to real estate developer which shows that the same was in the nature of stock-in-trade and not capital asset. Accordingly, it treated the sale of land as adventure in the nature of trade taxable under the head 'business income'. On appeal, CIT (A) upheld the AO's order. The Tribunal noted that the assessee sold only few plots during the relevant AY and there was considerable time lag between the purchase and sale and that the land was shown as investment in the books of accounts of the assessee. With respect to conversion of land into non-agricultural prior to sale, the Tribunal held that such an act was to maximize the gain on sale of property. Further, it held that the intention at the time of acquisition of asset and not at the time of sale was to be seen to determine whether it was a business or a capital asset. Accordingly, it allowed the assessee's claim of treating profit on sale on plot/land as capital gains.
***Hiteshkumar Ashokkumar Vaswani [TS-242-ITAT-2017(Ahd)] /I.T.A. No.1010/Ahd/2015 dated 17.05.2017***

**1643.** The Tribunal held that provisions of item (b) of sub-clause (iii) of section 2(14) which provides for considering distance of land from municipal limits aerially, not by road, and which have been substituted by Finance Act, 2013 with effect from 1-4-2014 are prospective in operation. Asst. CWT, Central
***Circle 1(2), Bgl. v. M.R. Jayaram-[2018] 100 taxmann.com 145 (Bangalore - Trib.)- WT Appeal Nos. 45 TO 49 (Bgl.) of 2018 CO Nos. 117,118,122&123 (BANG.) of 2018***

**1644.** The Tribunal upheld capital gains addition in respect of sale of various lands held by assessee (an individual engaged in buying / selling of immovable properties) during AY 2007-08 and rejected the assessee's claim of exemption of the land being agricultural land and falling under exclusion clause (iii) to Sec 2(14) (which defines 'capital asset') on the ground that land was converted from agricultural to non-agricultural prior to sale with the sole purpose and intent to sell the land for industrial purpose. It also noted that the assessee was a chartered accountant by profession and not an agriculturist. In absence of 'agricultural land' definition under the Act, the Tribunal refered to the criteria laid down by SC in cases of Raja Binoy Kumar Sahas Roy and Smt. Sarifabibi Mohmed Ibrahim and Bombay HC in cases of V. A Trivedi and Gopal C. Sharma and ruled that the scheme and object of exempting agricultural land from the definition of capital asset is to encourage cultivation of land and agricultural operations and that therefore, for the purpose of granting exemption, a restricted meaning had to be given to the

expression 'agricultural land' and merely showing the land as agriculture in the land record and the use for agriculture purpose in remote past are not the decisive factors but the future use of the land for non-agricultural purpose would change the character of the land from agriculture to non- agricultural at the time of sale.

***B Sudhakar Pai [TS-360-ITAT-2016(Bang)] - I.T. A. No.708/Bang/2011***

**1645.** The Tribunal held that the gains arising on sale of land by the assessee was exigible to capital gains tax for AY 2012-13. It characterized the assessee-individual's land (inherited from his father) as non-agricultural, despite the fact that it was purchased by his father as 'agricultural land' falling beyond 8 kms of the municipal limit and classified as agricultural lands in revenue records. Relying on the decision of the Gujarat High Court in Sarifabibi Mohamed Ibrahim [TS-5290-HC-1981(GUJARAT)-O], it held that classification of land as agricultural in revenue records is not conclusively proof of the nature of land sold by the assessee. The mere fact that the land in question was used for the purpose of agriculture in the past was not the deciding factor as to its characterization. It noted that no agricultural activities were carried out on the land in the recent past because of urbanization and real estate development that took place in that area. It also rejected the assessee's stand that at the time of sale, it had been carrying agricultural operation by way of growing Eucalyptus trees and observed that the said trees were not grown by any integrated activity involving human skill and labour. It held that there was no economic utilization of the land for earning income by carrying on agricultural operations. Accordingly, it held that the capital gains arising out of transfer of the said land was subject to capital gains taxation.

***ITO vs. Shri Vijay Shah - TS-182-ITAT-2017(CHNY) - /ITA No. 2496/Mds/2016 dated 26.04.2017***

**1646.** The Tribunal held that merely because the adjoining land was converted into industrial and factory land, the agricultural land of the assessee would not lose its character as agricultural land. It was not the case of the Revenue that the assessee's land was used for industry or factory. The assessee's land continued to be an agricultural land. ITAT in the assessee's own case for the AY 2011-12 found that the assessee was not in the business of real estate. Accordingly, orders of both the lower authorities were set aside by holding that the land in question was agricultural land and the profit on such sale of land was not liable for taxation by virtue of s. 2(14)(iii).

***T.S.R Khannaiyann vs ACIT- (2018) 54 CCH 0159 Chen Trib- ITA No 256,257,812/Chny/2018 dated 12.09.2018***

**1647.** The assessee claimed gains on sale of agricultural land as exempt as it was not an asset under section 2(14)(iii) of the Act. The AO held that since land was purchased alongwith constructed house, it was a sale of land alongwith sale of house property and hence taxed it as capital gains after providing indexation to cost. The CIT(A) deleted the addition and held that since the land was not used for commercial purposes, the gains arising from sale of such agricultural land was exempt under Section 10. Relying on the ruling of the jurisdictional High Court in Hindustan Industrial Resources Ltd., the Tribunal held that since the land in question was agricultural land at time of purchase and also at time of sale, the said land was treated as agricultural land and no capital gain was chargeable on sale of such agricultural land.

Go to Index

***ITO & Anr. vs. Gomantak Exims Ltd. & Anr. – [2018] 53 CCH 0106 (Delhi Tribunal) – ITA No. 2708/DEL/2012 (CO No. 435/DEL/2012) dated May 15, 2018***

**1648.** The Tribunal held that when the land sold by the assessee was within the Hyderabad Airport Development Authority, which was gram panchayat land, the character of land was agricultural land and not a Capital asset under section 2(14)(iii). Consequently, gain on sale of the same was not taxable.
***ITO v Adela Krishna Reddy – (2016) 47 CCH 0326 (Hyd – Trib)***

**1649.** The Tribunal held that a call option simplicitor in shares was not a capital asset because without exercising the option, no actual asset was created. However, where a call option was for an incredibly large period of 150 years and the shareholder executed an irrevocable power of attorney in favour of the buyer of the option and authorized him to exercise all the rights of shareholders and undertook not to transfer the shares except to the option buyer, the option right was to be reckoned as a transfer / alienation of a valuable right which would be a class of asset distinct from the shares.
***Praful Chandaria v Add DIT – (2016) 73 taxmann.com 14 (Mum Trib) – ITA Nos 4313/ Mum / 2011 & 4717 / Mum / 2013***

*Computation*

» *Cost of Acquisition*

**1650.** Where the assessee had been subjected to payment of income-tax on capital gains accruing from sale of land and the dispute was on the computation of cost of acquisition, the Apex Court held that declaration in the return filed by the assessee under the Wealth Tax Act in respect of the cost of acquisition of the land would certainly be a relevant fact for determination of the cost of acquisition under section 55(2) of the Act and comparable sales made in subsequent in point of time for which appropriate adjustments could be made was also to be considered as relevant and which had been rightly considered by the Tribunal. Accordingly, it restored the order of Tribunal which it had been reversed by the High Court.
***Ashok Prapann Sharma vs. CIT & Anr. (2016) 97 CCH 0109 ISCC (Civil Appeal No. 2314/2007)***

**1651.** The Court reversed the decision of the Tribunal which held that life interest held by the assessee in Neville Wadia Trust received on account of relinquishment by his father would come within the purview of gift as stipulated by section 49(1)(ii) and, therefore, cost to the previous owner would be deemed to be the cost of the Assessee and accordingly capital gains upon sale of lift interest should be calculated in the hands of the Assessee. The Court held that relinquishment of life interest in Neville Wadia Trust by the Father of the Assessee would not tantamount to a gift to the Asssessee as Gift under the Transfer Property Act as well as the Gift Tax Act presupposes a transfer from one person to another person which was not so in the instant case viz. relinquishment. The Court following the decision of the division bench in the case of CIT vs. Neville N. Wadia (90 ITR 155) (Father of the Assessee) (in which it was held

that surrendering of life interest in the Trust would not amount to transfer as stipulated by section 16(3)(iv) of IT Act, 1922) held that unilateral act of relinquishment by Father of the Assessee of Life Interest in the Trust would not tantamount to a transfer and, therefore, the same could not be treated as a Gift in the hands of the Assesee and COA could not be deemed as Cost to the previous owner.
***Nusli N. Wadia vs. CIT (2017) 98 CCH 0105 Bom HC (ITR No. 55 of 2000 dated March 10, 2017)***

**1652.** The Court dismissed Revenue's appeal against the Tribunal's order accepting assessee's claim that the immovable property inherited by the assessee under will and perfection of title from perpetual leasehold rights to complete ownership did not amount to the acquisition of property by assessee. It held that acquisition took place upon bequest under will being effective. The Court held that the perfection of title from perpetual leasehold rights to complete ownership had to be regarded as cost of acquisition within meaning of such expression in section 48 and 55. Further, it allowed the assessee's claim for deduction of amount paid to others asserting rights to the immovable property by considering the said payment as cost of improvement.
***CIT v ADITYA KUMAR JAJODIA (2018) 407 ITR 0107 (CalHC) – ITA No. 114 of 2014 GA No. 2277 of 2014 dated July 20, 2018***

**1653.** The Court dismissed appeal of the Revenue against order of the Tribunal wherein the Tribunal accepted the indexed cost of acquisition calculated by the assessee (for computing capital gains) by adopting the fair market value of the land & building as on 01/04/1981. The Court held that while calculating the indexed cost of acquisition, the assessing officer wrongly substituted the fair market value of the said property with the guideline value provided to him by the Sub-Registrar since the guideline value was only one of the indicators to arrive and not the only indicator to arrive at fair market value, especially when the assessee had provided relevant material in the form of agreement for sale qua similar and comparable properties.
***Commissioner of Income Tax vs. K.A.Fathima (2017) 98 CCH 0107 Chen HC (TCA No. 171 of 2017)***

**1654.** The Court held that where excise duty paid by assessee was related to cost of acquisition of capital assets which formed part of overall project cost incurred in pre-commissioning phase of project, refund of excise duty or drawback in A.Y. 2009-10 would go to ultimately reduce cost of project and could not be treated as business income.
***CIT v. Maithon Power Ltd. [2015] 63 taxmann.com 158/376 ITR 414(DelhiHC)***

**1655.** The Tribunal directed apportionment of total consideration of Rs. 450 cr received by assessee in the ratio of value of trade-marks pre-1981 (31.55%) and post-1981 (68.45%) based on valuation by M/s. RSM & Co., for the purposes of computing capital gains on sale of rights in trademarks under the name and style of 'Nirma' and 'Nima' during AY 2001-02. It held that for trademarks/brands developed by assessee post-1981 (i.e self-generated assets), the cost of acquisition could not be ascertained and hence capital gains could not be computed in view of the Apex court ruling in B C Srinivasa Shetty. For the purposes of computing capital gains for pre-1981 brand category, the Tribunal accepted valuation report of M/s. RSM & Co. ascertaining

fair market value of the brands as on 01.04.1981 which was treated as cost of acquisition and held that RSM & Co. report is pragmatic and scientific.
***Nirma Chemical Works Pvt. Ltd. [TS-403-ITAT-2016(Ahd)] - ITA. No: 1706/AHD/2009***

**1656.** Where valuation report of Chartered Engineer given by assessee was credible evidence to prove cost of construction of assessee's property, Assessing Officer was not justified in making addition by working out cost of construction of said property on mere estimation.
***Robert Martiz v. ITO [2018] 96 taxmann.com 179 (Bang. – Trib.) -ITA Nos. 1179 & 1180 (BANG.) of 2018 [Assessment Year 2009-10] dated July 6, 2018***

**1657.** The assessee sold a land for a total consideration of 32.50 lakh. He adopted cost of acquisition on basis of FMV of land as on 1-4-1981 at rate of Rs.1.10 lakh. However, the Assessing Officer however adopted cost of acquisition at lower rate on basis of Gazette Notification of 1999 giving value of properties in vicinity of area where the assessee's property was situated. The Tribunal held that since claim of the assessee was not supported by any evidence, cost of acquisition adopted by the Assessing Officer was justified.
***Robert Martiz v. ITO [2018] 96 taxmann.com 179 (Bang. – Trib.) -ITA Nos. 1179 & 1180 (BANG.) of 2018 [Assessment Year 2009-10] dated July 6, 2018***

**1658.** The Tribunal held that in case of sale of property acquired under gift or Will, if title of previous owner was itself defective or subject to some encumbrance, cost incurred on its removal or discharge would qualify for deduction under section 48(ii) of the Act. Further it held that where the assessee, having acquired a house property from his father under Will, sold same during relevant year, in view of fact that assessee was absolute owner of property at time of sale, certain payments such as professional fee, commission etc said to have been made as per Will could neither be considered as diversion of income by overriding title nor expenditure incurred wholly and exclusively in connection with transfer of property.
***Kumar Rajaram vs ITO - [2016] 67 taxmann.com 110 (Chennai-Trib)***

**1659.** The Tribunal held that where assessee had entered into an agreement for transfer of its trademark for a period of two years, capital receipt on account of such transfer of trademark was not chargeable to tax under section 55(2) in A.Y. 1998-99 in view of the decision of the Apex Court in CIT v. BC Srinivasa Shetty [1981] 5 Taxmann1/128 ITR 294(SC) as, though trademark was a capital asset, but its cost of acquisition was not ascertainable.
***ITO, Ward-5(4), New Delhi v. Modern Home Care Products Ltd.- [2018] 100 taxmann.com 282 (Delhi - Trib.)- ITA No. 2595 (DELHI) of 2002 C.O. No. 192 (DELHI) of 2007-dated November 13, 2018***

**1660.** The assessee sold certain parcels of land situated on National Highway and offered Long Term Capital Gain to tax.The assessee presented report of Government Approved Valuer which suggested that fair market value of land as on 1-4-1981 was Rs. 120 per sq. meter. AO did not accept said valuation and on basis of sale of land in a nearby village in year 1981, AO assessed fair market value of land as on 1-4-1981 at Rs. 10 per sq. meter. Thus, certain addition was made to capital gain liable to tax.The Tribunal noted that assessee's land was situated on National Highway and thus it had greater potential and market value. Moreover, there was no

data available on situation of land, sale of which was referred to by AO.The Tribunal thus deleted addition made by AO. The Court held that while adopting valuation of immovable properties situational advantages and disadvantages are important factors. It further held that finding recorded by Tribunal being a finding of fact, no substantial question of law arose therefrom.
***CIT v Charusheela M Bhatia [2018] 94 taxmann.com 397 (GujaratHC) – R/TAX APPEAL NO. 354 OF 2018 dated 17.04.2018***

**1661.** The Tribunal granted concessional rate of tax of 10% u/s 115E on long term capital earned on sale of bonus shares as well as shares acquired from foreign investors without any consideration, to non-resident assessee. The assessee had purchased certain shares of a company promoted by him with his father, using convertible foreign exchange, on which he was subsequently allotted bonus shares, further certain shares purchased by foreign investors using convertible foreign exchange, were transferred to him (due to non-fulfillment of certain conditions by such shareholders) on which also he was allotted bonus shares. Noting that the assessee could not have acquired bonus shares unless he owned the original shares and fulfilled conditions for allotment of bonus shares, the Tribunal relying on Apex court ruling in Dalmiya Investment Co Ltd, held that the bonus shares acquire the nature of the original shares, though the cost of acquisition shall be 'nil' u/s 55(2)(aa). Further, regarding shares acquired from foreign investor without any cost of acquisition, the Tribunal noting that such investors acquired those shares in convertible foreign exchange and AO had accepted the gains on them as LTCG, after considering holding period in the hands of foreign shareholders held that as the assessee received shares without any cost, it was to be treated as gift and cost of acquisition of the previous owner shall be the cost of acquisition to the assessee and therefore, such shares were also foreign exchange assets u/s 115E.
***Shashi Parvatha Reddy vs DyCIT-TS-486-ITAT-2017(HYD)-ITA No.392/Hyd/2017 dated 31.10.2017***

**1662.** The Tribunal allowed deduction u/s 48 to the assessee-individual with respect to expenses incurred for clearing the encumbrances on the shares while computing capital gains on sale of shares of Navbharat Power (NPPL) [held by him in individual capacity as well as shares held by a company -MEVPL in which he was an MD]. Assessee had entered into an agreement with ESSAR power Ltd for sale of NPPL' shares as per which the shares were required to be free of all encumbrances and hence to safeguard the transaction, the assessee (in his individual capacity and also as MD of MEVPL) agreed to pay financial compensation to settle the dispute with PVP group (with whom the shares of MEVPL group were pledged).
***Y. Harish Chandra Prasad [TS-385-ITAT-2017(HYD)] ITA No. 1592/Hyd/2014***

**1663.** The assessee had acquired the property from his ancestors which was subject to mortgage. He had paid expenditure for cancellation of lease rights and taking possession of mortgaged property and claimed it as part of cost of acquisition of the property. The AO disallowed the same contending that the property was mortgaged by the previous owner and the impugned expenditure could not be allowed to be taken as part of cost of acquisition. The CIT(A) upheld the order of the AO. The Tribunal held that when the mortgage was created by the previous owner during his life time, the assessee obtained only mortgagor's interest in the property and by discharging the mortgage debt, he acquired mortgagee's interest in property. Therefore, it

held that the amount paid to clear off mortgage was cost of acquisition of mortgagee's interest in property which was deductible as cost of acquisition u/s 48.
***MANIZA JUMBAHOY vs.ACIT (2017) 50 CCH 0123 HydTrib ITA No. 998/Hyd/2012 dated 02.06.2017***

**1664.** The Tribunal allowed assessee's claim for deduction of amount paid by assessee for the purpose of clearing the mortgage as cost of acquisition u/s 48 where the property was mortgaged by the previous owner (assessee's father), holding that assessee could not inherit more than the interest of the testator i.e. the father, hence once the interest of the testator in the mortgaged property included the interest of mortgage, then the said interest of mortgage was also inherited by the assessee along with the flat in question.
***Premlata Tibrewala v ITO [TS-608-ITAT-2018(JPR)] - ITA No. 489/JP/2015 dated 10.10.2018***

**1665.** The Tribunal remanded the issue of allowing deduction for indexed cost of improvement / construction (of 1st & 2nd floor) with respect to sale of a residential property comprising of ground floor, 1st floor & 2nd floor, noting that though the AO had in the remand report [called by the CIT(A)] had accepted the factum of construction of 1st & 2nd floor after acquisition of ground floor, assessee's claim was disallowed in absence of documentary evidence of expenditure. It held that instead of rejecting claim, correct amount of cost of construction was required to be examined by the AO as well as the CIT(A) on proper verification of record. Further, noting that the assessee had not given supporting evidence and also not maintained any account of cost of construction, the Tribunal held that the same could be considered only on estimation basis. Accordingly, it remanded the matter to AO to examine the correct amount of cost of construction on verification of record.
***GHANSHYAM DAS THAKAWANI vs ITO [2018] 54 CCH 0388 (Jaip Trib.)- ITA No.876 /JP/2017 dated 26.11.2018***

**1666.** During relevant year, the assessee had sold its scrap paper manufacturing plant including capital wor-in-progress ('Capital WIP') to ASPL. The assessee declared short-term capital loss on said sale transaction which was accepted. The Commissioner passed a revisional order holding that cost of capital WIP could not be taken into accounting in arriving at short-term capital gain as chargeable under section 50. The Tribunal held that, since the assessee had incurred huge cost for acquiring capital WIP, it was a valuable 'property' and, hence, in nature of a 'capital asset'. Therefore, when the assessee sold plant and machinery along with capital WIP, the cost incurred on capital WIP was required to be reduced as 'cost of acquisition' while arriving at taxable amount of capital gain/loss within meaning of section 50. In view of aforesaid, the impugned revisional order was to be set aside.
***Titagarh Industries Ltd. v. Dy CIT [2018] 95 taxmann.com 288 /171 ITD 559 (Kol. – Trib.) - ITA No. 1052 (KOL.) of 2017 [Assessment Year 2012-13] dated July 4, 2018***

**1667.** The assessee earned capital gain on sale of shares kept under Portfolio Management Scheme and claimed the deduction of fees of PMS. The AO disallowed the same by holding that fees for PMS could not be treated as transfer or cost of acquisition/improvement u/s 48 of the Act. Both, the CIT(A) and Tribunal upheld the said disallowance.

Go to Index

***Mateen Pyarali Dholkia v DCIT [2018] 94 taxxman.com 294 (Mumbai – Trib.) – ITA NO 6950 OF 2016 dated 30.05.2018***

**1668.** The assessee declared receipt of 30% of consideration received in respect of sale of property as Long Term Capital Gains claiming that the property devolved on him in view of Memorandum of Family Arrangement cum compromised deed dated 03-06-2004 to the extent of 30%. According to the AO, since no cost was incurred by the assessee to acquire the asset and the mode of acquisition was other than that mentioned in section 49 of the Act, the cost of the previous owner could not be allowed as cost in the hands of the assessee and hence, he treated the entire share of Rs. 3.15 crore as long term capital gain. Moreso, the AO doubted the genuineness of the Memorandum alleging that there was no real dispute. The Tribunal, on examination of the facts, held that the family arrangement cum compromise deed was documented by way of Memorandum in writing which was registered in the presence of witnesses. It observed that the arrangement cum compromise clearly stated about the dispute and held that as per settled law when parties entered into family arrangement, validity of the family arrangement was not to be judged with reference to whether the parties should raised dispute or rights or claimed rights or a certain properties had in law any such right or not. Accordingly, it upheld the genuineness of the arrangement and the assessee's claim of LTCG and consequent exemption under Section 54.

***KUNAL R. GUPTA vs. INCOME TAX OFFICER - (2018) 52 CCH 0245 MumTrib - ITA No. 5768/Mum/2017 dated Feb 28, 2018***

**1669.** The Tribunal dismissed the assessee's appeal against CIT(A)'s order upholding the AO's order adopting the stamp duty value of the property sold as on the date of sale to be the sale consideration and also adopting the guideline value as on 01/04/1981 to be the cost of property while computing capital gains on sale of the said property. It noted that the assessee prayed for upward revision of cost of land (FMV as on 01/04/1981) only by contending that the guideline value as on 1981 was very low compared to the market value of the property in 1981 and hence the same were subsequently revised in 1982, without furnishing any information to substantiate that the guideline value in 1981 was incorrect.

***JAYANTHI BHARATH KUMAR v DCIT (2018) 53 CCH 0368 (VishakapatnamTrib) - ITA No. 272/Vizag/2017 dated July 13, 2018***

» *Cost of Improvement*

**1670.** The Tribunal held that assessee is not entitled to deduction on account of cost of the improvement where assessee fails to substantiate his claim with documentary evidence. During assessment proceeding, AO noted that assessee was 6.67% owner in immovable property.Assessee acquired said property by way of inheritance in year 2009.Assessee along with other co-owners sold said property for a sale consideration.Assessee claimed that he had not earned any capital gain income on sale of such property.No capital gain income was offered in income tax return.Assessee calculated capital gain income on sale of such property at nil.Assessee filed copies of duplicate bills for construction of 2 rooms on 1st floor, wall fencing and renovation of building.AO did not believe assessee's claim for improvement of cost of building.AO also observed that valuation report from registered valuer does not speak about

construction of 1st floor and compound wall.AO disregarded assessee's claim and worked out LTCG.CIT(A) confirmed order of AO. The Tribunal held that assessee's claim was not substantiated before lower authorities by supporting evidence.Moreover, one of parties namely Mr. D did not appear in response to notice issued u/s 131.Other party namely Mr. G Prop of R Furniture conceded that he had provided bills to assessee on request owing a very old association with assessee.Assessee failed to discharge his onus by documentary evidence in support of his claim.Map filed by assessee showing construction of 2 rooms on 1st floor on building was proposed layout.Proposed layout does not prove that assessee had constructed two rooms on 1st floor of building.There was no other document filed by assessee evidencing that assessee had constructed two rooms on 1st floor of building.There was no mention in valuation report of registered valuer about two rooms on 1st floor of building.Registered valuer had valued property taking entire land and building constructed thereon for entire built-up area of building as on 1st April 1981.As such valuer had not reduced built up area in respect to impugned two rooms to determine actual built up area of property as on 1-4-1981.No separate deduction on account of cost of improvement for constructing two rooms and wall fencing could be given to assessee.

***AMIT SUBHASCHANDRA ACHARYA vs. ITO (2018) 54 CCH 0367 AhdTrib ITA NO. 1138/AHD/2015 dated 13.12.2018***

**1671.** Where assessee HUF paid sum to brothers for getting the premises vacated and claimed the same as cost of improvement for the purpose of computing long term capital gains under section 48 on sale of house property, the Tribunal upheld the assessee's claim on the ground that if the brothers had refused to vacate the house in which case the only resort left with the assessee would have been filing a suit for the possession and that would consume time and accordingly, the payments were made for improvement of title of the property and they are entitled to claim deduction of cost of payment.

***Nanubhai Keshavlal Chokshi HUF [TS-622-ITAT-2016(Ahd)] (ITA.No.86/Ahd/2012)***

**1672.** The assessee sold two parcels of land and filed its returns declaring Short Term Capital Gains. In Scrutiny assessment, the AO observed that while computing STCG, assessee had claimed cost of improvement of the land (Land filling & Construction of Compound Wall) as a part of acquisition of the land. The bills produced towards expenses were supported by corroborate evidence by the assessee. Thus, the AO issued summons u/s 131 to the three parties whom the assessee had made payments for the said expenditure. First party (for land filling) appeared and made assertion contradicting the claim of assessee and other 2 parties (for construction of compound wall) did not appear. The AO disallowed the claim of expenditure and enhanced the amount of STCG. The CIT(A) concurred with AO with regards to the expense of land filling disallowing the expenditure but granted relief in respect of the two parties for the reason that despite seeking remand report on issue, AO had failed to bring any adverse material on record. The assessee had also demanded a copy of statement as well as cross-examination of witness which was brushed aside. Thus, the Tribunal held that AO as well as CIT(A) had failed in discharging obligation cast upon them as quasi-judicial authority in this regard and their actions suffered from serious irregularities while drawing conclusion adverse to assessee. It thereby remanded back the matter for fresh adjudication to the AO.

Go to Index

***Harjivanbhai C Patel & Anr v DCIT & Anr (2018) 52 CCH 0447 AhdTrib - ITA No. 2384/Ahd/2016, 2460/Ahd/2016 dated 27.04.18***

**1673.** The Tribunal allowed assessee's claim for deduction of indexed cost of improvement on sale of 6 cent of land, which was rejected by the CIT(A) holding that the no evidence was produced for the same. As per the purchase deed, it was noted that the assessee had in total 34 cents of land which was described as 'paddy land' in the said deed. Further, the balance 28 cent of land were compulsorily acquired under the Land Acquisition Act and the notice for such acquisition described the land as "filled wet land". Further, perusing the handwritten note book wherein the details of expenditure incurred for filling up of land and constructing a compound wall were given, the Tribunal held that CIT(A) was not justified in denying claim of indexed cost improvement on land.
***Rajesh Puneyani v ITO - ITA No.1267/Bang/2018 dated 24.09.2018***

» *Cost of transfer*

**1674.** The Court reversed the Tribunal's order wherein the Tribunal had rejected assessee's claim for deduction of expenses claimed against the sale of mining right by holding them to be revenue expenses. The Court noted that for an earlier assessment year, the Tribunal had accepted the said expenses which comprised of amount paid for dismantling of existing structure, fencing of boundary, construction of temporary site office and security in plant area to be capital in nature and had thus allowed deduction of such expenses against receipts from sale of mining rights. The Court also noted that the Tribunal had disallowed the said expenses for want of details whereas the CIT(A) had given a finding that the payment was made through cheque and the same was reflected by the assessee in the balance sheet. Accordingly, it allowed assessee's appeal.
***CHAMBAL FERTILISERS AND CHEMICALS LTD. & ANR v JCIT (2018) 102 CCH 0202 RajHC - D.B. Income Tax Appeal No. 52/2018, 68/2018 dated July 31, 2018***

**1675.** The Tribunal allowed the assessee a deduction under section 48 of the Act with respect to the amount incurred on buy back of shares without which the business transfer would not have been possible thereby making it wholly and exclusively in connection with the transfer of asset (the trading division transferred).
***DCIT v Nitrex Chemicals India Pvt Ltd [ITA Nos 3388, 3408, 3841 & 756 / Del / 2009; ITA No 2331 / Del 2011; ITA No 5801 / Del / 2012] - TS-455-ITAT-2015(DEL)***

**1676.** The Tribunal allowed assessee's claim for deduction of compensation paid to tenants for vacating possession of the property as an expenditure incurred for transfer while computing capital gain arising from transfer of property, relying on the decision in the case of CIT vs A Venkataraman & Ors [137 ITR 846 (Mad HC)], Mrs June Perrett vs ITO (2008) 298 ITR 268 (Kar HC) and CIT vs Eagle Theaters (2012) 205 taxmann.449 (Del HC) wherein it was held that the payment made to the tenants to obtain vacant possession was an expenditure incurred wholly and exclusively in connection with transfer of property and the said amount was deductible as an expenditure.

Go to Index

***Acmevac Pumps & Engg Pvt Ltd v ACIT [TS-463-ITAT-2018(MUM)] - ITA No.5155/MUM/2017 dated 10.08.2018***

**1677.** The Tribunal held that portfolio management service fee paid by the assessee to various portfolio managers could not be allowed as deduction u/s 48 while computing capital gain arising from sale of shares kept in portfolio management services accounts held with various funds since these fees have a major component towards advisory charges of experienced and qualified professionals acting as portfolio managers who render these specialized and skilled services on a continuous basis to investor client for fee and are not paid towards cost of acquisition of the capital assets or for improvement of the capital asset nor are these fees being expenditure incurred wholly and exclusively in connection with transfer of the capital asset.
***Capt.AvinashChander Batra v DCIT - [2016] 68 taxmann.com 366 (Mumbai-Trib)***

» *Sale consideration*

**1678.** Where the assessee, an NBFC, engaged in the business of hire purchase, financing, leasing and investments, sold its holding in two companies to comply with the guidelines issued by the RBI (that companies should focus on their core activities) and the shares in the companies were sold for a value of Rs. 1 per share on account of the fact that the said companies were loss making / earned insignificant profits, resulting in a capital loss of Rs.3.98 crore, the Court held that while the AO was entitled to question the valuation, he could not reject the same without producing materials to disprove the justification offered by the assessee or to substantiate his doubts. Accordingly, it held that the AO was incorrect in questioning the capital loss and denying the assessee benefit of set off thereon.
***CIT Vs. Sriram Investment Ltd. (2016) 97 CCH 0125 ChenHC (Civil Miscellaneous Appeal No. 1421 of 2010)***

**1679.** The Court held that actual sale consideration could not have been substituted by fair market value of capital asset for taxing capital gains arising out of sale of shares by assessee an individual to its related entity. Section 52 which allowed such substitution under certain circumstances was omitted from 1-4-1988 and thus was not applicable to relevant assessment years.
***Arjun Malhotra v CIT [2018] 92 taxmann.com 338 (DelhiHC) – ITA NOS. 405 , 406 OF 2005 dated 20.04.2018***

**1680.** The Court held that where a part of the consideration arising out of transfer of an undertaking to which the assessee was entitled to, was with its consent, diverted to its shareholders, the assessee could not escape accounting for such consideration merely on the ground that it did not receive the same. The Court held that merely because the assessee had agreed for a part of the sale consideration to be directly received by its shareholders, it would not make the consideration unreal in its hands.
***CIT v Salore International Ltd – (2016) 96 CCH 0009 (DelHC)***

Go to Index

**1681.** The assessee transferred its trade mark, goodwill, technical knowhow and franchise rights under different agreements in favour of another company where the trademark was valued at nearly twenty times value of goodwill. The AO opined that the assessee had undervalued goodwill as transfer of trademark was not taxable and thus he made addition u/s 45 by substituting the value of goodwill by a sum arrived at by him by taking book mean of transferred value of trademark and goodwill and projecting resultant figure as a consideration for transfer of goodwill. The Court upheld the order of the Tribunal and CIT(A) deleting the said addition, noting the CIT(A)'s finding that the under the transfer of trademark the assessee had not transferred merely an emblem or figure, but also reputation of its products, leaving very little by way of goodwill. It also held that if the assessee's valuation for goodwill was not backed by any material or data on the record, the substitution adopted by the AO suffered from greater vice and that there was no basis for the AO to believe that the trademark and goodwill must value at the same level.

***CIT v Bisleri International (P.) Ltd - [2018] 94 taxmann.com 259 (GujaratHC) - R/TAX Appeal No. 1530 OF 2007 dated May 7, 2018***

**1682.** The Court dismissed Revenue's appeal against Tribunal's order holding that the capital gains arising on transfer of land (on which a building was standing earlier and the same was demolished before transfer) was liable to be taxed as long-term capital gains. It rejected AO's contention that what was transfered were both land as well as building and further since there was no breakup of sale consideration available for the same and the assessee-firm had failed to prove that it had not claimed any depreciation on land, the capital gains arising on transfer of entire property was taxable as short term capital gains u/s 50. The Court noted that the purchaser of the property had also sought permission to demolish the superstructure (though the assessee-firm itself had demolished the building before transfer) and hence the building was of no value to the purchaser. It relied on the decision in the case of CIT Vs. Union Co. (Motors) Ltd. [(2006) 283 ITR 445 (Mad HC)] wherein the purchaser had himself demolished the building after transfer and yet the Court held that the sale consideration paid by the purchaser was only for the land, since the building had no value and got demolished and thus, gains on transfer of land was chargeable to tax as long-term capital gains.

***JAIDAYAL PRANNATH KAPUR vs. ITO - (2018) 408 ITR 0315 (Mad HC) - Tax Case Appeal No. 143 of 2009 dated 18.09.2018***

**1683.** The Court dismissed the appeal of the Revenue and held that the fair market value of the property cannot be substituted for the full value consideration u/s 48 for the purpose of computing capital gains arising on transfer of land/building the assessee to its group concern, thereby rejecting the stand of the revenue to adopt market value. It held that the expression full value of consideration u/s 48 could not be construed as the market value but was to be taken as the price bargained for by the parties to the sale. Accordingly, it held that there was no occasion for the AO to make references to the DVO u/s 55A of the Act as there was no requirement to determine FMV & therefore the reference made was without jurisdiction. Further, it rejected the Revenue's invocation of Section 50C to have the FMV determined and clarified that even if Section 50C was invoked, the stamp duty valuation would prevail and not the market value. Thus, it ruled in favour of the assessee.

Go to Index

***Pr.CIT vs. M/s Quark Media House India Pvt. Ltd. TS-38-HC-2017(P&H) ITA No.110/2016 dated 24.01.2017***

**1684.** The Tribunal, relying on the decision of the High Court in Sri. Ved Prakash Rakhra (2015) 370 ITR 762 (Kar), held that for the purpose of determining the consideration arising from transfer of land by the assessee to a developer under a Joint-Development Agreement, the fair market value of the proposed construction as on the date of the agreement was to be adopted. Accordingly, it held that the AO had erred in considering the cost of construction as consideration accruing to the assessee on account of transfer.
***Y. S. MYTHILY vs.INCOME TAX OFFICER (2017) 50 CCH 0107 BangTrib ITA No. 235/Bang/2016 ITA No. 235/Bang/2016 dated 09.06.2017***

**1685.** Where the assessee's land and building was compulsorily acquired by the Government and building was a business asset of assessee who was using it as a dhaba/hotel, the Tribunal held that the part of the consideration received on account of building which was to be treated as Short Term Capital Gain and remaining consideration, being received on account of transfer of capital asset i.e. land, would tantamount to Long Term Capital Gain. Thus, it remanded the matter to the AO to determine the quantum of consideration received on account of land and building separately.
***Het Ram Sharma v ITO - [2018] 97 taxmann.com 75 (Chandigarh - Trib.) – ITA Nos. 482 & 483 (CHD.) OF 2018 dated July 23, 2018***

**1686.** The Tribunal held that adoption of fair market value of shares in lieu of sale consideration declared by the assessee was invalid. It held that the expression full value of consideration in section 48 was not the same as fair market value contained in section 55A of the Act and absent a specific provision in the Act, the AO could not proceed to determine fair market value.
***ACIT v Divya Jain – (2015) 45 CCH 0109 Del Trib***

**1687.** Where the assessee sold shares in Scorpio Beverages Pvt Ltd ('SBPL') to a Mauritius based company for a consideration of Rs.63.69 per share (as per the agreement), the Tribunal held that the AO erred in invoking section 50D of the Act and substituting the actual sale consideration with the fair market value observing that i) Section 50D would apply only when the consideration of the asset was not determinable (which was not so in the instant case and that ii) full value of consideration could not be reckoned as FMV unless the Act specifically provided so and that Section 50CA was introduced vide Finance Act 2017 and was not applicable to the assessee's transaction. It further held that the fair market value as determined by the AO did not accrue to the assessee.
However, it noted that as per an arrangement between the assessee and the Hutch Group, the assessee along with his wife, held 100% of equity shares of SBPL which in turn, through its step down subsidiaries held equity shares in Hutchison Essar Ltd. (HEL) [which was subsequently taken over by Vodafone International Holdings BV and was renamed as Vodafone India Pvt. Ltd ('VIL')]. It noted that as per the arrangement, Vodafone International Holdings Pvt. Ltd, as and when permitted by Government of India by way of relaxation of the limits imposed on foreign investment in the telecommunication sector, had the option to acquire the shares of SBPL from the assessee. Therefore, it held that the sale consideration of shares in SBPL was linked with the FMV of VIL and held that the consideration had to be determined by taking into consideration

the value per share of VIL as well. Accordingly, resorting to Rule 11UA, it computed the per value share of SBPL at Rs. 131.86 after taking into consideration the value per of VIL and directed the AO to re-compute the capital gains in accordance with the mechanism adopted by it.

***Shri Analjit Singh [TS-572-ITAT-2017(DEL)] -I.T.A .No.-4737/Del/2017 dated 1.12.2017***

**1688.** The Tribunal held that without bringing comparable instances of sale, fair market value (FMV) of the property sold by assessee could not be determined on mere estimate basis.

***DCIT v Sandhya Reddy - (2015) 44 CCH 0475 Hyd Trib***

**1689.** The Tribunal held that where there was no material or evidence brought on record by the income-tax authorities to show that any consideration over and above the stated consideration had been paid by the assessee for acquisition of the impugned property, no addition was warranted.

***Mohan N Karnani v ACIT - (2015) 44 CCH 0487 Mum Trib***

**1690.** Where the assessee, sold shares held by it in a private limited company @ Rs.1,195 per share on which it did not offer any capital gains to tax as after considering the indexed cost of acquisition and the investment made in Government REC bonds u/s 54EC of the Act, as there was no surplus capital gains, the Tribunal held that the AO was incorrect in valuing the sale price per share at Rs. 202 per share and holding that the difference between the actual sale price and the value arrived at by the AO (Rs.1,195 – Rs. 202 per share) was to be taxed as unexplained cash credits. The Tribunal noted the fact that the sale price of Rs. 1,195 per share was agreed upon pursuant to an agreement between the assessee and the buyer and held that in valuing the shares of a privately held company, the enterprise valuation has to be taken by valuing even the assets held by subsidiaries of the said Company. It observed that it was common for the sellers to charge a controlling premium for the sale of such shares to enable restructuring and re-aligning the shareholding pattern and therefore the sale price was to be considered as genuine and bona fide. Accordingly, it held that the alleged excess consideration for the sale of the shares could not be treated as unexplained income.

***Amritlal T. Shah vs. ITO - I .T.A. No.766/Mum/2012 (ITAT Mumbai)***

**1691.** The assessee while computing the capital gains in respect of sale of development rights of salt pan, excluded the amount of 50 crores which was to be received in the event that a part of the land was developed under the CRZ notification on the ground that it was a contingent sum which could not be considered as income. The Tribunal, noting that no permission for development work had been given till date, held that assessment had to be made on the basis of real income and since there was no certainty that the assessee would receive the amount in the future, it could not be included in the sale consideration. It further held that expression “full value of consideration received or accruing” u/s 45 would mean the amount actually received by the assessee or consideration which had accrued to the assessee. Accordingly, it held that the Revenue could not assess any hypothetical or notional income to tax and deleted the addition of 50 crores in respect of sale of land.

***Late Shri Gordhandas S Garodia vs DCIT – ITA No. 5097 / mum / 2015 dated 1.11.2017***

Go to Index

**1692.** The assessee-mill sold the land (including part of the land bearing staff quarters) to a developer and the dispute arose whether the gains from sale from such land would be LTCG or STCG. The AO computed the gains as STCG since the assessee claimed depreciation on the staff quarters. However, it was evident from the development agreement that the consideration to be given by the developer was for the 'land' and not for the staff quarter and thus,theassessee bifurcated the builtup land (staff quarter) and the remaining landthereby offering to tax the gains from portion of land bearing staff quarter as STCG and from sale of remaining portion of land as LTCG which was allowed by the CIT(A).The Tribunal concurred with CIT(A) However,as neither the relevant documents nor the sale agreement was filed, the exact extent of land sold and its value could not be asserted which obviated the conclusive finding on the assessee'sclaim and thus for the said purpose/issue, the matter was remanded back to the AO.
***CIT v Seth Industries (P.) Ltd. [2018] 94 taxmann.com 318 (Mumbai – Trib.)- ITA NO 4094 OF 2013 & 2279 OF 2015 dated 18.05.2018***

**1693.** The Tribunal deleted the addition of Rs. 5261.28 crore on account of alleged capital gains arising on hive-off of the assessee's telecom business. It held that where the assessee de-merged its telecom undertaking in Bihar to Idea Cellular Ltd.('Idea') without any consideration, pursuant to the Scheme of Arrangement approved by Gujarat and Bombay High Court, accordingly not paying capital gains tax, the Revenue was not justified in treating the revalued assets as 'full value of consideration' for the purposes of computing capital gains on transfer of undertaking to Idea. Relying on the decisions of the Apex Court in PNB Finance Ltd and the AAR in Dana Corportaion and Goodyear Tire and Rubber Co., it held that where the scheme of Arrangement specifically provided that no consideration shall be paid by ICL for telecom undertaking acquired, no capital gains would arise in the hands of the assessee, since no consideration accrued or was received by the assessee. It held that when one of the ingredients for computation for capital gain is absent (i.e sale consideration in this case), no capital gains could be levied due to failure of computation mechanism. It further observed that wherever considered appropriate, the legislature had inserted specific provisions for assumption of sale consideration for transfer of assets in specified cases, since the only two other sections (i.e. Sec 5OC and Sec 5OD), which provide for imputation of consideration were also not applicable to present case, no consideration could be imputed in the instant case.
***Aditya Birla Telecom Limited [TS-608-ITAT-2016(Mum)] (ITA No.341/Mum/2014)***

**1694.** Where the assessee transferred its shareholding in 2 companies in which he was director viz. ABL and ACDL in lieu of shares of another group company AIPL and returned long term capital gains adopting the valuation of shares of AIPL as on the date of accepting the exchange (i.e. Rs.32.42 – arrived at by an independent valuer) as the sale consideration, the Tribunal held that the AO was unjustified in disregarding the valuation of the independent valuer and computing the sale consideration @ Rs.65 per share on the basis of a solitary sale transaction undertaken by the assessee on the record date of the exchange as opposed to the rate considered by the assessee as on the date of acceptance of exchange and accordingly deleted the capital gains addition made by the AO. The Tribunal noted that AIPL (the company whose shares the assessee was acquiring) had extended the exchange offer on the basis of swap ratio and valuation under the offer letter which was arrived at on the basis of the independent valuer.

Go to Index

***Mukesh Ramanlal Gandhi v Add CIT - TS-588-ITAT-2017(Mum) - ITA No.2712/Mum/2015 dated 06.12.2017***

» *Period of holding*

**1695.** For determining whether Assessee was entitled for long term capital gain benefits the Tribunal held that the period of holding of the property will be counted from the booking of the flats pursuant to which the unstallments have been paid by the assessee and construction has been made by the builder.
***Bhagwan Tahiliani vs ITO- (2018) 54 CCH 0053 Mum Trib- ITA No 1070/2015 dated 27.09.2018***

**1696.** Where the assessee sold its office unit, which was claimed to be a long term capital asset, and offered to tax the applicable gain as long term capital gain, but the AO contending that the assessee had merely received the allotment letter for the office 36 months prior to the date of transfer and had actually registered the agreement (for purchase of the office) within the 36-month period, treated the asset as a short term capital asset and taxed the gain as short term capital gain, the Tribunal held that the holding period should be computed from the date of issue of allotment letter and that since the allotment letter was issued more than 36 months prior to the date of sale of the office unit, the office unit was a long term capital asset and the gains on sale were rightly offered to tax as long term capital gains by the assessee.
***Anita D Kanjani v ACIT – (2017) 49 CCH 0043 Mum Trib – ITA No 2291 / Mum / 2015***

**1697.** The assessee purchased the booking of a property vide agreement of sale dated 12-2-2007, from a person who had earlier made the said booking with a builder. The assessee sold the said property on 10-9-2010 and claimed long-term capital loss thereon, after considering indexation. The AO was of view that title of property was changed in favour of assessee only by a buyer's agreement dated 7-11-2007 signed by builder and assessee transferred apartment before period of 36 months from date of purchase, i.e., on 7-11-2007, thus, denied long-term capital loss and worked out short-term capital gain. The CIT(A) noted that the builder had vide a letter dated 19-3-2007 confirmed that the said property was transferred in the name of the assessee on 19-3-2007. Thus, it held that the period of holding of the said property started from 19-3-2007 to September 2010 which was more than 36 months and directed the AO to work out the gain as long-term capital gain. The Tribunal dismissed Revenue's appeal against the CIT(A)'s order relying on the decision in the case of CIT v. K. Ramakrishnan [2014] 48 taxmann.com 55 (Delhi) wherein it was held that in order to determine taxability of capital gain arising from sale of property, it is date of allotment of property which is relevant for purpose of computing holding period and not date of registration of conveyance deed. Thus, it held that there was no illegality and infirmity in the order passed by the CIT(A).
***DCIT v Deepak Shashi Bhusan Roy - [2018] 96 taxmann.com 648 (Mumbai - Trib.) – ITA Nos. 3204 & 3316 (MUM.) of 2016 dated July 30, 2018***

Go to Index

» *Indexation*

**1698.** Where the assessee inherited a capital asset/property (acquired by his father in 1945) by virtue of a will on death of his father in 2004, the Court held that the cost for which assessee's father acquired the said property was the deemed cost of acquisition and since the property was acquired in 1945, the indexed cost of acquisition was required to be computed by considering cost of acquisition (i.e. fair market value) as on 1-4-1981 and using the Cost Inflation Index for year beginning on 1-4-1981 and not the Cost Inflation Index for the year in which the assessee had inherited the property (i.e. 2003-04).
***Pr.CIT v Prakash Krishnalal Bhagwati – (2018) 91 taxmann.com 291 (GujHC) – Tax Appeal No. 1031 of 2017 dated 22.01.2018***

**1699.** The Tribunal held that while computing capital gains on sale of inherited property indexation would be allowed from the year in which the property was purchased by the previous owner and not from the year in which property was inherited by assessee as on the conjoint reading of section 2(42A), 47(iii), 49(1)(ii)(iii) and 55(2)(b)(ii), no transfer of a capital asset is considered to take place on inheritance and succession and since for applying other provisions relating to computation of capital gains, period of holding and cost incurred by the previous owner is to be considered, then it would be improper to apply only the cost inflation index, applicable to the year of inheritance.
***Sudip Roy [TS-572-ITAT-2016(Kol)] (ITA No.2864/Kol/2013)***

**1700.** The Tribunal held that where State Government vide deed of assignment assigned a property to the assessee for construction of building and erection of machinery, but subsequently handed over management of said industrial estate to State Small Industries Development Corporation Ltd. who sold property in question to assessee in year 1994 by executing a sale deed for a consideration already paid by assessee in terms of deed of assignment, the Tribunal held that since the assessee obtained possession of land and paid entire purchase consideration in terms of deed of assignment much prior to 1.4.1981, it was entitled to consequent indexation benefit on the ground that the expression 'where capital asset became property of assessee before 1.4.1981 as used in section 55(2)(B)(i) of Act cannot be equated to legal ownership.
***Stewarts & Lloyds of India Ltd v CIT - [2016] 67 taxmann.com 41 (Kolkata-Trib)***

**1701.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order holding that with respect to the capital asset acquired under a gift/ will, the benefit of indexed cost of acquisition is to be allowed with reference to the year in which the previous owner first held the asset, following the decision of CIT v. Manjula J. Shah [2013] 355 ITR 474 (Bom.) wherein it was held that capital gains arising on transfer of a capital asset acquired by assessee under a gift or will, indexed cost of acquisition has to be computed with reference to year in which previous owner first held asset and not year in which assessee became owner of asset.
***ITO v Smt. Nita Narendra Mulani - [2018] 96 taxmann.com 204 (Mumbai - Trib.) - ITA No. NO. 243 (MUM.) OF 2016 dated July 25, 2018***

Go to Index

» *Slump sale*

**1702.** The Apex Court held where a partnership firm was dissolved and assets of the firm were sold on a going concern basis to another AOP and the assessee partner received his share on sale of firm, the assessee was liable for capital gains tax. It rejected assessee's contention that it has to be treated as slump sale under section 50B and in absence of provisions relating to mode of computation at the relevant time, no capital gains tax was payable since there was a specific and separate valuation for land as well as building and also machinery. It further held that business income would be assessed in the hands of AOP who took over the firm and not in the hands of the assessee.
***VatsalaShenoy [TS-562-SC-2016] (Civil Appeal No 1234 of 2012)***

**1703.** The Apex Court held that where assessee-company had sold its entire running business with all assets and liabilities in one go, it was a slump sale of a 'long term capital asset' and should be taxed accordingly. It rejected the revenue's stand of treating the gains as short term capital gain on transfer of depreciable assets u/s 50(2) and clarified that sec 50(2) would apply to a case where the assessee transfers one or more block of assets which he was using in running of his business and not when the assessee sold his entire business as a running concern. The appeal of the revenue was, accordingly, dismissed.
***Commissioner of Income Tax v. Equinox Solution (P.) Ltd - [2017] 80 taxmann.com 277 (SC) (CA No. 4399 of 2010)***

**1704.** The assessee had sold its immovable property and furniture and fixtures and plant and machinery separately. The immovable property, on which there was a building, was sold for redevelopment as a result of which building was not subject matter of sale as building now did not exist and no consideration was received for the building. The AO opined that the assesse had sold assets on slump sale basis attracting provisions of section 50B. Noting the above facts, the Court upheld the CIT(A)'s order holding that there was no slump sale and directed AO to allow relief considering the amount of long term capital gains computed by assessee without invoking the computation methodology stipulated in section 50B.
***Pr.CIT v Linde India Ltd. – (2018) 90 taxmann.com 412 (CalcuttaHC) – GA No. 1113 of 2016 ITAT No. 166 of 2016 dated 15.01.2018***

**1705.** The Court held that in computing net worth under section 50B of the Act where slump sale of an undertaking included an entire block of assets, the actual cost of assets should be reduced by depreciation actually allowed or allowable under the Act even if not claimed by the assessee.
***CIT v Dharampal Satyapal – TS-2-HC-2016 (DEL)***

**1706.** Where the assessee had entered into slump sale transaction and the CIT(A) had held that the transaction was sham designed to avoid tax liability by artificially inflating assets value, however, in the case of buyer, the Tribunal held transaction was not sham, the Court held that unless there are exceptional facts to the contrary, the same finding had to be maintained in the case of the seller.
***Triune Projects Private Limited vs. DCIT (2016) 97 CCH 0117 Del HC (ITA 448/2016)***

Go to Index

**1707.** The assessee sold a port terminal owned by it to its subsidiary, KCPL as a going concern on slump sale basis and as per sale agreement, KCPL would retain certain amount out of total sale consideration and same would be paid to assessee only when assessee obtained waiver of Minimum Guarantee Throughput (MGT) from Port Trust till transfer of terminal undertaking by assessee to KCPL. The AO was of the view that as per agreement the above retained money would form part of sale consideration. The Tribunal observed that on reading of slump sale agreement it clearly showed that if assessee did not get waiver of MGT from Port Trust then assessee would not be in a position to claim the retained sum. Thus, in the actual scenario where assessee could not get waiver of MGT from Port trust, the Tribunal held that the retained sum could not be treated as a part of sale consideration and remanded the matter for re-consideration.

***Konkan Storage Systems (P) Ltd vs ACIT- (2018) 98 taxmann.com 308 (Bang-Trib)- ITA No 1073 of 2017 dated 12.09.2018.***

**1708.** The assessee offered to tax LTCG of Rs.10 crores u/s 50B, claiming the same to be on account of transfer of hospital business, by way of slump sale, wherein the networth of the said business was negative Rs.66.36 crores. The AO computed the sales consideration as Rs.66.46 crores (i.e. 66.36 + 10). Before the Tribunal, the assessee raised an additional ground claiming that since lands and buildings of the hospital were not transferred under the Business Transfer Agreement, it was not a case of slump sale. The Tribunal accepted assessee's claim that the hospital business transferred by it under the Business Transfer Agreement was not a slump sale as defined u/s 2(42C) for the purpose of section 50B rather a composite sale of assets. It held that wherever any left-out asset is insignificant to the assessee's business and the entire business has been sold as a going concern, it would be a slump sale but wherever any significant asset without which business of the assessee could not be continued is not sold, sale of entire business leaving that asset would not be a slump sale. Accordingly, noting that in the present case, the lands and buildings of the hospital was a significant asset, without which it was not possible to run the hospital business, it held that capital gains could not be computed u/s 50B. Further, noting that the assessee had already offered to tax the sale consideration received from the aforesaid composite sale as LTCG, the Tribunal thus deleted the addition made by the AO.

***MANIPAL HEALTH SYSTEMS PVT. LTD. & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. - (2018) 53 CCH 0263 BangTrib - ITA Nos. 1551/Bang/2016, 1552/Bang/2016, 1667/Bang/2016, 1668/Bang/2016, 1557/Bang/2016, 1558/Bang/2016, 1076/Bang/2017, 1208/Bang/2017, 1209/Bang/2017 dated June 27, 2018***

**1709.** The Tribunal held that since the assessee had assigned specific consideration for the tea estate along with the standing trees and listed out and assigned value to every movable property transferred to the buyer and since the sale agreement did not include liabilities, investments and deposits, the transfer could not be considered as a slump sale irrespective of the fact that the assessee sold the tea estate as a going concern. It held that going concern was a functional qualification for determining slump sale but was not sufficient enough to decide the exact legal character of the transaction and accordingly deleted the capital gains addition made by the revenue.

***DCIT v Tongani Tea Co Ltd (I.T.A No. 1233/Kol/2008)– TS-647-ITAT-2015 (Kol)***

Go to Index

**1710.** The Tribunal held that where assessee, sold its manufacturing unit, the transaction in question could not be regarded as slump sale since transferee had taken over all fixed assets and specified current assets but did not take over loan and liabilities. It further held since settlement compensation received by assessee on non-performance of machinery purchased was not in nature of discount or subsidy or reimbursement, it could not be reduced from actual cost of machinery under section 43(1) for the purpose of re-computing depreciation.
***DCIT v Xpro India Ltd - [2016] 68 taxmann.com 249 (Kolkata-Trib)***

**1711.** The Tribunal held that net worth of an undertaking transferred under slump sale under section 50B of the Act was to be calculated for all assets and all liabilities and therefore negative net worth arising from the computation was to be added to the cost of acquisition of the undertaking.
***SRM Energy Ltd v DCIT – (2015) 44 CCH 0566 Mum Trib***

**1712.** The Tribunal accepted the assessee's treatment of amount received for transfer of its customers and business leads to its sister concern pursuant to the collapse of its business as 'business receipts' and rejected the Revenue's stand of the transaction as slump sale u/s. 50B. Referring to the definition of 'slump sale' u/s. 2(42C) which presupposes the transfer of one or more undertakings for a lump sum consideration without assigning of values to individual assets and liabilities and the definition of an undertaking as per Explanation 1 to Sec. 2(19AA), it held that the assessee had neither transferred an undertaking nor a unit / business activity and had in fact received itemized consideration for the customer list and business leads which under no circumstance would attract the provisions of Section 50B. It held that lower authorities failed to appreciate that the very business of the assessee had collapsed, and therefore, it would be beyond comprehension to conclude that the assessee would be in a position to have transferred a business activity.
***L&T Finance Ltd vs DCIT-TS-498-ITAT-2017-ITA No. 2577/Mum/2010 dated 25.10.2017***

**1713.** The assessee enterted into an agreement with its subsidiary to transfer its packaging division to its subsidiary against the issue of its own shares. The Revenue contended that the said transaction was "slump sale" u/s 2(42C) and therefore it was taxable as per provisions of S.50B. However, the Tribunal rejected the Revenue's contention and held that since the transfer of undertaking was not for money but for equity shares, the said transaction was to be treated as "exchange" and not sale, and, therefore Section 2(42C) was not applicable.
***Oricon Enterprises Ltd v ACIT [2018] 94 taxmann.com 250 (Mumbai – Trib.) – ITA NO 2913 of 2015 dated 16.05.2018***

**1714.** Tribunal held that transfer of business division on a going concern basis to subsidiary against shares and debentures is not a 'slump sale' but an 'exchange' and, thus, provisions of section 50B are not applicable. Further, Tribunal held that since the compensation (sale consideration) was not allocable item-wise and it was also not possible to attribute the cost of acquisition to individual assets in the undertaking, it was not possible to compute capital gains and, therefore, the amount of capital gains was not taxable u/s 45.
***Bennett Colman & Co. Ltd. vs. ACIT – (2018) 168 ITD 631 (Mum) – ITA Nos. 3298 & 3537 (Mum.) of 012 dated 08.01.2018***

Go to Index

» *Valuation Officer*

**1715.** The assessees sold tenancy rights acquired by them from their father under inheritance and claimed the benefit of indexation on the cost of acquisition being the fair market value (FMV) of the said rights as on 1st April, 1981. The AO denied the said benefit by considering the Cost of acquisition to be Nil as per section 55(2)(a). CIT(A) upheld the AO's order. The Tribunal held that the cost of acquisition of the tenancy rights (which were acquired prior to 1st April, 1981) could not substituted with the FMV as on 1st April, 1981 as provided u/s 55(2)(b), since as per section 55(2)(a) the cost of acquisition of tenancy rights was to be taken as the actual purchase price paid (if any) or otherwise as Nil. Thus, it restored the case to the file of AO for the limited purposes of determining the cost of acquisition of the tenancy to the previous owners (i.e. their father) from whom the assessees had acquired rights in the tenancy by inheritance, in terms of Section 55(3). The Court held that section 55(2)(a) deals with capital assets inter alia being in nature of tenancy rights whereas section 55(2)(b) is a residuary clause dealing with the cost of acquisition of the capital assets which are not covered by section 55(2)(a) and thus section 55(2)(b) would have no application in the present case involving tenancy rights. Thus, it dismissed the assessee's appeal against the Tribunal's order. However, noting of the assessee's submission that cost to the previous owner was not ascertainable and thus in terms of section 55(3), FMV on the date on which the capital asset become the property of the previous owner was to be considered as cost, the Court held that the assessees' could challenge the orders of the AO passed pursuant to the remand.
***DHARMAKUMAR C. KAPADIA & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 102 CCH 0104 (Bom HC) – ITA No. 239 of 2016, 241 of 2016 dated June 18, 2018***

**1716.** The Court held that where it was not case of Assessing Officer that assessee received a consideration more than what was mentioned in sale deed, there was no necessity for computing fair market value and accordingly Assessing Officer could not have referred matter to D.V.O. under section 55A. The Assessing Officer was only concerned with amounts actually received by the assessee. The amount recieved was admittedly the amount mentioned in the sale agreement.
***Quark Media House India (P) Ltd [2017] 77 taxmann.com 301 (Punjab & HaryanaHC)***

**1717.** The Tribunal held that where assessee claims that value adopted or assessed or assessable by stamp valuation authority exceeds fair market value of property as on date of transfer and assessee rasises specific dispute and claim before AO that stamp valuation of property sold was not its fair market value, it is bounden duty of AO to refer the matter to VO. As the same was not done, the Tribunal upheld the CIT(A)'s order quashing the addition made by AO.
***ACIT vs Tarun Agarwal [2018] 97 taxmann.com 346 (Agra-Trib)- IT APPEAL NO. 343 (Agra) OF 2017 dated August 20 2018***

**1718.** Assessee was co-owner in agriculture land which was sold during the year and the AO observed that assessee had failed to offer net capital gain for taxation in his return of income, therefore, assessment was reopened and notices u/s 147/142(1) were issued upon assessee. DVO had determined fair market value of agriculture land on AO's request and by adopting the above fair

market value, AO computed capital gain and made addition which was upheld by CIT(A). The Tribunal held that assessee had disclosed value of land which was on basis of registered valuer's report and held that under clause (a) of section 55A, in a case where value of asset as claimed by assessee was in accordance with estimate made by Registered Valuer, AO was entitled to make reference to Valuation Officer if AO was of opinion that the value so claimed was less than fair market value. However, in the instant case since value disclosed by assessee was more than FMV, reference made to DVO was bad in law and thus the Tribunal concluded that it had to compute capital gain on basis of value adopted by assessee and reference made by AO to DVO was bad in law.

***Ambalal Somabhai Prajapati vs ITO (2018) 54 CCH 0030 Ahd trib-ITA 315/2016 dated 18.09.2018***

**1719.** The Tribunal, applying the provisions of section 55A(2)(a) held that no reference could be made by the AO to the DVO if in the opinion of the AO value shown was very high i.e more than the fair market value of the property as on 1st April, 1981. Accordingly, it held that the estimation of the fair market value of the property as on 1st April 1981 as made by the assessee had to be accepted.

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

**1720.** The Tribunal upheld the order of the CIT(A) and held that where there were 2 valuation reports for the purpose of determining stamp duty value u/s 50C (viz. the Registered Valuaer's Report and the DVO's Report), and the DVO's report had not taken into account certain vital facts, the CIT(A) was justified in rejecting the report of the DVO and accepting the Registered Valuer's report. Accordingly, it rejected the contention of the Revenue that it was not open to the appellate authority to reject the DVO's report and held that since determination of "fair market value" is a factual determination, if the DVO's report was proved wrong on facts then the appellate authority could adopt other methods of valuation.

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

**1721.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO to the capital gains offered to tax by the assesse on sale of land where the AO had adopted the valuation done by District valuation officer (DVO) as on 01/04/1981 to arrive at the Cost of Acquisition of the property. The valuation of property done by DVO was much less than that shown by assesse which was based on the report of registered valuer. AO had made reference to the DVO u/s 55A(b)(ii). It was noted that as per section 55A(a), prior to 01/07/2012, AO could refer valuation of capital assets to a Valuation Officer in only case where value claimed by assessee based on registered valuation report was less than its fair market value, which eveidently was not applicable in the present case. Further, to make reference to DVO u/s 55A(b)(ii), AO had to record a finding that section 55A(a) was not applicable. In absence of such finding and placing reliance on the decision in the case of Royal Calcutta Turf Club v DCIT [ITA No.231/Kol/2013] wherein it was held that section 55A(b) can be invoked only in cases when the value of the asset claimed by the assessee is not supported by an estimate made by a

registered valuer, the Tribunal held that the AO should not have invoked the provision of section 55A(b)(ii).
***ITO v PIONEER IRON & STEEL CORPORATION (P) LTD. - (2018) 53 CCH 0148 (KolTrib) - ITA No. 203/Kol/2016 dated Jun 13, 2018***

**1722.** The Tribunal held that where fair market value claimed by the assessee was higher than that estimated by the AO the provisions of section 55A of the Act should not have been invoked. It held that provisions of section 55A of the Act could be invoked only in case the valuation report was not submitted by the assessee.
***Rashmikant Baxi (HUF) v ITO – (2015) 45 CCH 0091 Mum Trib***

**1723.** The Tribunal held that if the difference between the sale consideration of the property shown by the assessee and the FMV determined by the DVO under section 50C(2) was less than 10%, the AO was not justified in substituting the value determined by the DVO for the sale consideration disclosed by the assessee and that unregistered sale agreements prior to 01.10.2009 were not subject to s. 50C as per CBDT Circular No.5/10 dated 03.06.2010
***Krishna Enterprises vs. ACIT (ITAT Mumbai)***

**1724.** The Tribunal held that consideration received by the assessee company on assignment of developed patent of a medicine would be taxable as capital gains and would be subject to applicability of Sec.55(2) which states that cost of acquisition for self-generated goodwill, right to manufacture etc. shall be taken 'nil' and did not accept the contention of the assessee that the amount was non taxable capital receipt as no cost was incurred for developing of the patent. It held that for developing a patent of medicine, the assessee had to carry out research analysis and experimentation, and conduct clinical tests and administering drugs to the patients and therefore the claim that no cost was incurred was not acceptable. It held that the assessee's case fell under the ambit of 'right to manufacture/produce/process any article or thing' as envisaged u/s 55(2)(a). Accordingly it held that the CIT(A) had rightly invoked Section 55 and taxed proceeds as income from capital gains.
***Bharat Serums and Vaccines Ltd. vs. ACIT TS-72-ITAT-2017(Mum) ITA No.3091/Mum/2012 dated 15.02.2017***

» *Section 50*

**1725.** The Apex Court dismissed the leave petition filed by the Revenue against the order of the High Court wherein it was held that the AO could not invoke explanation 3 to 43(1) of the Act merely because there was no bifurcation towards individual assets and the same could only be invoked if the main purpose of transfer of asset was reduction in tax liability.
***CIT v Sandvik Chokshi Ltd [SPL No 6155 / 2015] - TS-468-SC-2015***

**1726.** The Apex Court upheld Bombay High Court judgement wherein by relying on the judgement of Ace Builders P.Ltd, it was held that exemption under section 54E is available in respect of capital gains arising on transfer of depreciable asset held for more than 36 months on the ground that fiction created by the legislature has to be confined to the purpose for which its is created and

that section 50 has limited application only in the context of mode of computation of capital gains contained in section 48 and 49.
***V.S.Dempo Company Ltd. -TS-532-SC-2016-ITA No. 989 of 2015***

**1727.** The Court confirmed Tribunal's order holding that value of broken bottles should not be reduced from written down value while computing short term capital gains u/s 50 of the Act (relating to depreciable assets) arising from sale of bottles, pursuant to transfer of assessee's entire soft drinks and beverage undertaking as the assessee had accounted for breakages and though the realization from the sale of broken bottles was offered to tax, loss from breakages were not claimed in computation of income.
***Commissioner of Income Tax v. Alankar Business Corporation Ltd - (2017) 98 CCH 0160 ChenHC (TCA No. 2695 of 2016)***

**1728.** The assessee, a resultant amalgamated company filed a revised return reducing the short term capital gains declared by one of the amalgamating companies on sale of depreciable assets prior to amalgamation, contending that prior to amalgamation the block of assets ceased to exist in the hands of the amalgamating company but post amalgamation since the accounts of both companies were merged the block of depreciable assets did not cease to exist as there were additions to the said block and therefore the provisions of Section 50 would not apply. The CIT(A) disagreeing with the assessee enhanced its income by the said short term capital gains. The Tribunal reversed the order of the CIT(A), observing that even though the sale of assets of the one of amalgamating company took place, there were purchases made by the other amalgamating company as a result of which the block continued to exist and therefore held that the pre-conditions of Section 50(1) i.e. extinguishment of block of assets were not fulfilled and therefore no short term capital gains could arise.
***Makino India Private Limited vs ITO-TS-448-ITAT-2017(bang)-TP LT.(T.P)A. No.1015/Bang/2014 dated 13.09.2017***

**1729.** The Tribunal held that once the asset had been taken in the block of assets and if any sale consideration for the asset was realized or credited into the fixed asset account, it was to be reduced from the block of assets and it could not be treated as a profit on sale of asset until and unless whole of the block did not exhaust, irrespective of the fact that the assessee had not paid any amount for acquiring the said asset.
***ACIT vs. ESCORTS HEART INSTITUTE & RESEARCH CENTRE LTD. (2018) 53 CCH 0327 DelTrib – ITA Nos. 5660 & 5661/Del/2015 dated 12th July, 2018***

**1730.** The Assessee HUF filed its return of income (which was processed under section 143(1) of the Act) admitting loss which included short term capital loss on account of demolition of its capital assets. The AO was of view that since demolition of asset did not constitute transfer of capital asset, prima facie loss was not allowable and income chargeable to tax had escaped assessment within meaning of section 147 of the Act and therefore reopened assessment and disallowed short term capital loss. The Tribunal, noting that the impugned asset formed part of a block of assets held that once an asset was a depreciable asset and formed a part of a Block and such block of assets had ceased to exist at end of previous year, provisions of section 50 would apply and therefore where the block of assets ceased to exist, the difference

between written down value and salvage money received ought to have been treated as short term capital gain or short term capital loss, as the case may be. Accordingly, it held that the action of AO in adding back short term capital loss of amount to income of assessee was erroneous and was not in accordance with law and therefore deleted the addition made
***Sidamshetty Ramesh v ITO – (2017) 50 CCH 0029 (Hyd Trib) – ITA 1421 / Hyd / 2016 dated 12.05.2017***

**1731.** The Tribunal held that where the assessee sold a property consisting of land and building, the AO was incorrect in treating the gains arising therefrom as short term capital gains under section 50 of the Act, treating the assets as depreciable assets, as opposed to long term capital gains as computed by the assessee, since land was not a depreciable asset and the assessee had not claimed any depreciation on the building sold.
***Pyne Properties P Ltd v ITO – (2016) 47 CCH 0588 (Kol – Trib) – ITA No 5475 / Del / 2014, ITA No 2477 / Del / 2015***

**1732.** The Tribunal held that the cost of shares allotted pursuant to corporatization of BSE would be calculated as per Section 50 of the Act and not as per Section 55(2)(ab) if depreciation was claimed on BSE membership. Further, indexation benefit on sale of such share would be available from the date of corporatization of BSE and not from the date of acquisition of original membership of BSE.
***Twin Earth Securities (P)Ltd v ACIT- TS-75-ITAT-2016 (MUM)***

**1733.** The Tribunal held that where the assessee had parted with the full sale consideration and had negotiated an agreement wherein it was granted an allotment letter and the ability to have every other person excluded from dealing with the property and had also proceeded with the work of fit outs of the building, it could be said that the assesee had acquired the property for the purpose of section 50(1)(iii) and that the distinction between possession and occupation was not relevant for the purpose of acquisition contemplated under section 50(1)(iii) of the Act.
***Indogem v ITO – (2016) 72 taxmann.com 315 (Mum Trib) – ITA No 3442 (Mum) of 2016***

» *Section 50C*

**1734.** The High Court held that the transfer for the purpose of section 50C of the Act takes place when the agreement to sell is executed and part consideration is received. Since the agreement to sell was executed and part consideration was received in 2001, the transfer is said to have taken place in 2001 which is before the provisions of section 50C were made available and therefore section 50C would not be applicable.
***CIT v Shimbhu Mehra – (2015) 94 CCH 0051 Allahabad HC***

**1735.** The Court held that when there was a gap of nearly 3 years between date of execution of the MOU and the execution of a formal development agreement, then, valuation of the stamp authority for collecting capital gain tax in the hands of the assessee could not be adopted.
***Pr.CIT vs. Executor of Estate of Late Smt. Manjula A. Shah-(2018) 103 CCH 0217 BombayHC-ITA No.859 of 2016-Dated December 11,2018***

Go to Index

**1736.** The Court upheld the applicability of Section 50C on sale of rights in immovable property and dismissed assessee's contention that since the actual owner of the land was the State of Rajashtan 50C would not apply to it considering that the assessee was granted lease rights in the property for perpetuity. Further, it dismissed the contention of the assessee that occupancy rights are not in the nature of capital assets and held that considering the assessee was granted lease rights for perpetuity, there was transfer of immovable property in light of the decision of the Apex Court in R.K. Palshikar (HUF) v. Commissioner of Income Tax, AIR 1988 SC 1305 (wherein it was held that premium paid for acquisition of the leasehold interests for a period of 99 years amounted to a transfer of capital assets). Accordingly, it dismissed assessee's appeal.
***RAJESH GUPTA HUF vs. PRINCIPAL COMMISSIONER OF INCOME TAX & ANR. - (2018) 101 CCH 0196 DelHC - ITA 246/2018 & CM APPL. 7363-7364/2018 dated Feb 26, 2018***

**1737.** The assessee made distress sale of plot of land (which was shown as stock-in-trade in its balance sheet) below the market value. The AO rejected the assessee's stand that the property in question which was sold had been held by it as 'stock in trade'. The AO observed that the assessee had sold plot at the same price at which it was purchased even when the market value of the property was higher. Accordingly, he concluded that the assessee had shown its assets as 'stock in trade' in order to avoid Section 50C of the Act and he treated the plot of land as investment of the assessee and made addition applying Section 50C to arrive at a net short term capital gain. The Court observed that the assessee had failed to place relevant and satisfactory materials before the authorities in support of its claim that the property should have been treated as its stock in trade and not as an investment and mere inclusion of the property as 'stock in trade' in its accounts would not relieve the assessee from satisfying the Income Tax Authorities of the genuineness of the sale of the property. Accordingly, it upheld the order of the AO.
***SARAS METALS PVT. LTD. vs. CIT & ANR. (2017) 99 CCH 0087 DelHC ITA 251/2016 dated 04/07/2017***

**1738.** During assessment proceeding, AO had received an AIR alongwith sale deed from which he noticed that in return of income, assessee had showed value of property less than at circle rates. AO invoked provisions of s. 50C and assessed assessee's total income by adopting value of said property at circle rates. CIT(A) confirmed AO's finding. The Tribunal held that, when AO has passed an order without following provisions of Act, proceedings deserved to be quashed rather than giving him another chance to record proper reasons. The lower authorities had passed the order in summary manner without going into the merits of the case and analyzing the legal issue involved, the applicability of s. 50C(2)(a), in a particular. Also, the AO had not found any adverse material evidence to indicate that assessee has received any excess money over and above the sale consideration, in the return of income. AO did not deserve a second chance as he had passed a non-speaking order in a most summary manner without following provisions of the Act.
***Dr. Sanjay Chobey vs. Asst. CIT –(2018) 53 CCH 0551 AgraTrib.-ITA No.140/Agr/2018-Dated Jul 2, 2018***

Go to Index

**1739.** The Tribunal held that stamp duty valuation as on date of agreement was to be considered and not as the date of execution of the sale deed in light of the amendment introduced to section 50C with retrospective effect and deleted addition under section 50C. It held that once it was undisputed that a statutory amendment is being made to remove an undue hardship to the assessee such an amendment had to be treated as curative and hence retrospective in nature.
***Dharamshibhai Sonani [TS-549-ITAT-2016 (Ahmd)] (I.T.A. No.1237/Ahd/2013)***

**1740.** Where there was an agreement to sell a property between the assessee-HUF and purchaser in September, 1966, whereby, the purchaser agreed to purchase property for certain value and paid certain amount as earnest money, but due to litigation in Civil Court, the sale deed was executed later on 29-11-2010, Tribunal held that the sale deed of September 1966 was to be considered for calculating long-term capital gains and the provisions of section 50C which were not applicable in that year could not be invoked against assessee
***Hari Mohan Das Tandon (HUF) v Pr.CIT – (2018) 91 taxmann.com 199 (Allahabad Trib) – ITA No. 44 (Alld) of 2016 dated 08.01.2018***

**1741.** The Tribunal observing that the consideration received by the assessee on sale of plot was not assessed by a stamp valuation authority as no sale deed or agreement was registered, rejected the Revenue's application of Sec 50C on an unregistered document & allowed assessee 's claim of long term capital loss by treating the sales consideration @ Rs. 26 lakhs as opposed to Section 50C value of 81lacs on transfer of plot to his nephews during 2009-10, holding that the provisions of 50C 0f the Act would not be applicable. It further held that the amendment in Sec 50C inserting the word 'assessable' w.e.f. October 1, 2009 was prospective in nature and hence was not applicable to subject AY.
***Shri Ramesh Verma vs. DCIT TS-59-ITAT-2017(Chandi) ITA No. 394/CHD/2015 dated 05.01.2017***

**1742.** Where the Assessee sold house property during the year and computed capital gains based on the sales consideration, the AO made addition to the income of the assessee under Section 50C of the Act on account of difference in the valuation of property done by the DVO and the sale consideration. The CIT(A) upheld the order of the AO. The Tribunal relied on the ruling of the *Patna High Court in the case of Bimla Singh vs. CIT (308 ITR 71)* wherein it was held that in valuation of house property bonafide difference was bound to occur. Thus, the Tribunal deleted the addition made and held that the difference between investment on house property and valuer's report was too meager and could be ignored. Thus, the assessee's appeal was allowed.
***AMAN JOLLY vs. ITO (DELHI TRIBUNAL) (I.T.A.No. 935/DEL/2018) dated May 14, 2018 (53 CCH 0382)***

**1743.** The assessee computed LTCG by treating the actual consideration received on the transfer of property as the FMV instead of adopting the stamp duty value (SDV) of the property since it was a distressed sale and the SDV was not reflective of the real FMV of the property. The assessee requested the AO to make the reference to the valuation officer u/s 50C(2) for determining the FMV of the property. However, rejecting the assessee's request, the AO adopted the SDV of the property u/s 50C(1) as the FMV since it was higher than the consideration actually received

on transfer of property. The CIT(A) held that the assessment was bad in law and annulled the assessment. On Revenue's appeal, the Tribunal held that where the SDV of the property exceeded the FMV, the AO ought to have referred to the valuation officer u/s 50C(2) and the non-compliance of the provisions prescribed u/s 50C(2) was not justified. Accordingly, it upheld CIT(A)'s annulment of the assessment. It rejected the Revenue's contention that the matter should be set aside to the file of the AO for making reference to the valuation officer and held that setting aside could not be exercised so as to allow AO to cover up the deficiency in the case.

***Aditya Narain Verma (HUF) [TS-220-ITAT-2017(DEL)] ITA No. 4166/DEL/2013 dated 07.06.2017***

**1744.** The Tribunal remanded the matter back to AO to make further enquiries and make assessment consistent with statutory provision in a case where the AO had adopted the stamp duty value of the property sold by the assessee-company as the sale consideration for computing capital gains as per section 50C, rejecting the assessee's contention that the stamp duty value exceeds the fair market value. It noted that as per section 50C(2), when it is pleaded that the actual amount received is a far less than the circle rates of the registration authority or that the value adopted or assessed by the stamp valuation authority exceeds the fair market value of the property as on the date of transfer, the AO had to refer the matter to the DVO for the determination of the actual value, which was not done in the present case.

***BETTER OPTION ESTATES PVT. LTD. v DCIT (2018) 53 CCH 0394 DelTrib – ITA No. 948/Del/2017 dated July 25, 2018***

**1745.** The Tribunal held that in view of proviso to section 50C, where date of agreement fixing amount of consideration and date of registration regarding transfer of capital asset in question are not same, value dopted or assessed or assessable by stamp valuation authority on date of agreement is to be taken for purpose of full value of consideration.

***Amit Bansal v. Asst. CIT, Central Circle, Karnal- [2018] 100 taxmann.com 334 (Delhi – Trib.)- ITA No. 3974 (DELHI) of 2018 -dated November 22, 2018***

**1746.** The Tribunal held that where the consideration received or accruing as a result of the transfer by an assessee of a capital asset being land or building or both is less than the value adopted or assessed by an authority of a State Government for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or asset shall be for the purpose of section 48 of the Act deemed to be the value of the consideration received or accruing as a result of such transfer. However, in present case, as property was not free from encumbrance, sale consideration of such property would always be lower than market value. Further, CIT(A) discarded assessee's claim on the ground that power of attorney and agreement to sale were executed subsequent to receipt of sale consideration by the assessee. He was of the opinion that these documents were prepared to justify the cash deposits. In normal circumstances, the suspicion of CIT(A) may be correct but in the present case, where the property is not free from encumbrance, sale consideration of such property would always be lower than the market value. Moreover, no enquiry is conducted from the buyers of the property with regard to the date of payment of sale consideration. Undisputedly, in the registered sale deed, date of receipt of sale consideration did not find any mention. It merely stated that entire sale consideration has been

received. Under such circumstances, the AO ought to have made enquiries from the buyers of the property. In the absence of such enquiry and bringing some material suggesting actual date of payment of sale consideration, it could not be considered with certainty that sale consideration was not paid prior to execution of the sale deed.

***Chandravati Kaithwas ANR vs. ITO & ANR.-(2018) 54 CCH 0341 IndoreTrib-ITA No.506/Ind/2016, 508/Ind/2016-Dated December 11, 2018***

**1747.** AO noted that Registrar had adopted high value of sale consideration than declared sale consideration in respect of a property. Hence, provisions of s. 50C were applicable. Assessee failed to file any evidence that either he or purchaser of such property was aggrieved with stamp duty charged by Registering Authority. AO held that stamp duty charged by Registering Authority was very well as per law and agreed upon by assessee. Capital gain arising on such sale of land was calculated on sale consideration as per value adopted by Stamp Authority. CIT(A) confirmed finding of AO. The Tribunal held, section. 50C(2)(a) provides that where assessee had claimed that value adopted by SVA had exceeded FMV of a property as on date on transfer, and value so adopted by stamp valuation authority was not disputed in any appeal/ revision or no reference has made before any authority, Court or High Court, AO may refer valuation of capital assets to Valuation Officer. In present case, assessee had specifically objected before AO in respect with valuation adopted by SVA and given undisputed fact that said valuation was not disputed in any appeal or revision, AO was required to refer matter to Valuation Officer. Therefore, matter was remanded to AO to determine valuation of capital asset so transferred.

***Harphool Jat vs. ITO-(2018) 53 CCH 0600 JaipurTrib-ITA No.1080/JP/2016-Dated Jul 6, 2018***

**1748.** The Tribunal rejected the AO's approach of computing capital gains on sale of two lands by the assesssee during AY 2012-13 and invoking provision of section 50C to adopt the stamp duty value as the sale consideration for the said lands, noting that the assessee was engaged in the business of purchase and sale of lands and section 50C was applicable only for capital assets and not for assets held as stock-in- trade. It also clarified that section 43CA was introduced in the Statute by Finance Act, 2013 w.e.f 01.04.2014 to adopt the stamp value in respect of assets other than capital assets and thereby, the same was applicable only from AY 2014-15 and not earlier.

***AMAR DAS vs. ITO (2018) 53 CCH 0337 KolTrib – I.T.A No. 306/Kol/2017 dated 13th July, 2018***

**1749.** The Tribunal held that section 50C is a deeming provision and applies only to the transfer of land or building. It does not apply to the transfer of "booking rights" and to right to purchase flats in a building.

***Baniara Engineers Pvt. Ltd vs. ITO - ITA No.635/Kol/2018 dated 04.07.2018***

**1750.** The Tribunal held that once the net sale consideration has been fully applied under the provisions of s. 54, then the deeming consideration as defined u/s 50C cannot be brought into tax once the assessee is eligible for exemption u/s 54.

Go to Index

***SABITA DEVI AGARWAL vs. ITO (2018) 54 CCH 0446 KolTrib ITA No. 1231/Kol/2016 dated 19.12.2018***

**1751.** The Tribunal held that the AO is not entitled to make an addition to the sale consideration declared by the assessee if the difference between the valuation adopted by the Stamp Valuation Authority and that declared by the assessee is less than 10%.
***John Fowler (India) Pvt Ltd vs DCIT-ITA No. 7545/Mum/2014 dated 25.01.2017***

**1752.** The Tribunal upheld the AO's invocation of Section 50C of the Act with respect to the alleged transfer of development rights in land by the assessee and rejected the assessee's stand that the gains were taxable as business income since the assessee was aware at the time of acquisition that the development of land and construction of building thereon was a long term project and therefore the assessee's intention was to always hold the land for a long period of time to earn gains by way of appreciation in the value of land. It further held that Section 50C was applicable to sale of development rights and that in the instant case the assessee had not only sold development rights in the land but also the entire land along with ownership rights in the land.
***Dattani Development – TS-415-ITAT-2016 (Mum) - /I.T.A. No.5075/Mum/2010***

**1753.** The Tribunal held that where AO having invoked provisions of section 50C, made certain addition to assessee's income, in view of fact that even after applying provisions of section 50C, difference in capital gain declared by assessee and figure adopted by AO did not even exceed 10 per cent of stamp duty valuation, impugned addition deserved to be set aside
***Surendra S. Gupta v ACIT [2018] 93 taxmann.com 456 (Mumbai – Trib.) – ITA NO 4791 OF 2014 dated 09.05.2018***

**1754.** Where assessee (a partner in LLP) computed capital gains on land transferred by it to the LLP as capital contribution, taking the amount recorded in the books of the LLP as full value of consideration u/s 45(3), Tribunal rejected the invocation of deeming provisions of section 50C for substituting the sales consideration by the stamp duty value ruling that though section45(3) is not a specific provision overriding the other provisions of the Act and that importing a deeming fiction provided in section 50C could not be extended to another deeming fiction created by the statute by way of section 45(3) to deal with special cases of transfer between partnership firm and partner. Tribunal also rejected revenue's reliance on the ruling in the case of Carlton Hotel Pvt Ltd v ACIT [(2009) 122 TTJ 515 (Luck)] wherein it was held that provisions of section 50C overrides the provisions of section 45(3) by holding that the findings in the said ruling was given under different facts and that the Lucknow Bench had simply observed that the provisions of section 50C overrides the provisions of section 45(3) but had not given a categorical finding.
***DCIT v Amartara Pvt Ltd - TS-612-ITAT-2017(Mum) – ITA Nos. 6050 & 6114/Mum/2016 dated 29.12.2017***

**1755.** Assessee sold a property for consideration of Rs. 42 lakhs. Assessing Officer noted that stamp value of said property was Rs. 56.19 lakhs and, accordingly, treated stamp duty value as full value of consideration under section 50C. However, assessee objected to stamp valuation and requested Assessing Officer to make a reference to District Valuation Officer (DVO). DVO

determined fair market value (FMV) of property at Rs. 46.96 lakhs. Assessing Officer computed capital gain by adopting full value of consideration on basis of DVO's report instead of actual sale consideration of Rs. 42 lakhs shown by assessee which resulted into addition of Rs. 4.96 lakhs. The Tribunal held that when Assessing Officer had obtained DVO's report, same was binding on him and therefore, valuation done by DVO was correctly adopted as full value of sale consideration

***Anil Murlidhar Deshmukh v. ITO, Ward-3(2), Nashik- [2019] 101 taxmann.com 93 (Pune - Trib.)- ITA No. 1821 (PUN) of 2017-dated December 13, 2018***

**1756.** The Tribunal allowed exemption u/s 54 to assessee-doctor for investing net sale-consideration on sale of residential property during AY 2007-08 in construction of new residential house property. It noted that the assessee had computed capital gains by adopting sale consideration of 60 lakhs received by him, whereas AO applied Sec 50C and computed gains adopting stamp duty valuation of Rs. 82 lakhs and held that though the deeming fiction u/s 50C was applicable for the purposes of computing capital gains, it would not mean that assessee needed to invest the full value consideration u/s 50C in the new property for claiming Sec 54 exemption. It held that once the net sale consideration had been fully applied under the provisions of section 54 of the Act, then the deeming consideration as defined u/s 50C of the Act could not be brought into the provisions of section 54F of the Act.

***Chalasani Mallikarjuna Rao [TS-574-ITAT-2016(VIZ)] (I.T.A.No.206/Vizag/2013)***

*Deductions*

» *Section 54 / 54F*

**1757.** The Apex Court modified the Kerala HC order wherein it had ruled that for claiming Sec 54F exemption, the date relevant for investment in residential house is the due date for filing original return u/s 139(1) and not belated return u/s 139(4); and directed the AO to consider the matter de novo without being influenced by any observation made by the HC, in accordance with law.

***Xavier J Pulikkal v DCIT - TS-45-SC-2015***

**1758.** The Court noting the finding of the Tribunal that the Assessee had not even started construction during the period specified u/s 54F, denied the benefit u/s 54F claimed by the Assessee by purchasing a plot of land for construction of residential flat from sale proceeds arising from transfer of his share in ancestral land and held that mere payment of development charges to the builder by the Assessee would not mean that the Assessee has satisfied the primary ingredients / condition of section 54F (construction of residential house or purchase of residential house within specified period).

***Ajay Kumar vs. ITO (2017) 98 CCH 0041 Allahabad HC (ITA No. 161 of 2011 dated 02.02.2017)***

**1759.** The assessee filed his return for a specified year which was picked up for scrutiny assessment in response to which the assessee gave detailed information in relation to the purchase and sale of flats which had resulted into capital gain, which it claimed to be exempt u/s 54F of the

Act. The AO completed the assessment as per section 143(3) but later reopened the assessment on the ground that the deduction u/s 54F was incorrectly claimed. The Tribunal set aside the reassessment proceeding and held that the assessee had furnished all the details in relation to capital gains during the regular assessment to which the AO had applied his mind and the reassessment proceeding was merely a case of change of opinion of the AO. The Tribunal further held that the AO could not reopen assessment after the expiry of four years from the end of the relevant assessment year merely on the basis of certain objections that were raised by the audit party. The High Court affirmed the decision of the Tribunal.
***CIT v. Shankardas B. Pahajani – [2018] 93 taxmann.com 248 (BombayHC) – IT Appeal No. 1432 of 2007 dated April 24, 2018***

**1760.** The Court dismissed Revenue's appeal against Tribunal's order allowing exemption u/s 54 to individual assessee for flats received as part of consideration for sale of residential property. Noting that the assessee had received sale consideration partly in cash and partly in form of new flats to be constructed and allotted, it was held that new flats amounted to assessee's investment for acquisition of new residential house and thus AO was not justified in denying benefit u/s 54. It also rejected Revenue's contention that market value of such flats could not be considered as investment in new residential house when assessee had not made payment in money terms or in kind.
***CIT v Peter Savio Pereira -[TS-694-HC-2018(BOM)] – Income Tax Appeal No. 483 of 2016 dated 26.11.2018***

**1761.** The Court denied to the assessee exemption claimed under section 54F by holding that failure to deposit the amount of consideration not utilized towards the purchase of new flat in the specified bank account before the due date of filing return of Income u/s 139(1) is fatal to the claim for exemption. The fact that the entire amount had been paid to the developer/builder before the last date to file the ROI is irrelevant.
***Humayun Suleman Merchant vs. CCIT (BombayHC)-ITA No. 545 OF 2002***

**1762.** The Court dismissed asssessee's writ challenging Chief Commissioner's order u/s 119(2) rejecting assessee's application for waiver of interest u/s 234A/B/C for non-payment of advance tax on capital gains arising during AY 1996-97. It noted that the assessee omitted to pay advance tax in anticipation of obtaining exemption u/s 54F, however coordinate bench while adjudicating on quantum proceedings restricted assessee's exemption claim u/s 54F proportionately to the amount invested in the new property. It dismissed the contention of the assessee that waiver of interest would be justified as its case clearly fell within the discretionary powers of clause 2(d) of CBDT order (dated May 23rd 1996) which provided for waiver of and / or reduction of interest on the ground that the non-payment of tax was on the basis of the decision of the jurisdictional High Court which was subsequently nullified by either retrospective amendment of the law or by a Supreme Court decision. This was not so in the case of the assessee as assessee was unable to establish that non-payment of tax was due to unavoidable situations, the Court approved rejection of interest waiver application.
***Humayun Suleman Merchant [TS-624-HC-2016(BOM)] (W.P. No.3184 of 2004)***

Go to Index

**1763.** Where the assessee had utilised entire capital gain by way of making payment to developer of new flat but neither the possession of the flat was given nor the flat was completed, the Tribunal held that the assessee's claim for exemption u/s 54 could not be denied since section 54(2) does not provide that in case assessee cannot get possession of property, he would not be entitled for exemption u/s 54. It held that the requirement of section 54 is that the capital gain is utilised or appropriated as specified in section 54(2) and the assessee had complied with the conditions stipulated in section 54(2).

***ACIT v M. Raghuraman – (2018) 169 ITD 315 (ChenHC) – ITA No. 1990 (Madras) of 2017 dated 08.02.2018***

**1764.** The Court allowed the assessee, an NRI, exemption under section 54F of the Act for investing her long term capital gains (arising out of sale of plot in India) in a residential house in the USA, noting that the amendment to Section 54F, providing for exemption only if the investment was made in a residential house in India, was brought about vide Finance Act, 2014 and therefore not applicable prior to such date. It held that prior to the amendment to Section 54F, the only condition stipulated was investment in a residential house.

***Leena Jugalkishor Shah v ACIT – TS-419-HC-2016 (Guj) - TAX APPEAL NO. 483 of 2006***

**1765.** The Court held that benefit of deduction under section 54F in case of construction of residential house, is available only when construction is completed within a period of three years after date of transfer of long-term capital asset and, therefore, where construction took place prior to date of transfer, conditions of section 54F were not fulfilled and, consequently, assessee's claim for deduction was to be rejected. However, with respect to transfer of one of the flats, as the construction was carried out subsequent to the transfer, exemption u/s 54F could not be denies in respect of transfer of the said flat.

***Ushaben Jayantilal Sodhan v ITO [2018] 93 taxmann.com 453 (GujaratHC) – R/TAX Appeal No. 393 OF 2014 dated 01.05.2018***

**1766.** The Court held that where consideration that arose in hands of HUF (assessee) on sale of capital asset had been invested for purchase of new residential house in name of some of its members instead of the HUF assessee, deduction under section 54F would still be available to the HUF. It noted that mere technicality that the sale deed was executed in the name of member of the HUF rather not HUF, would not be sufficient to defeat the claim of deduction.

***PCIT vs Vaidya Panalalmanilal (HUF)- (2018) 98 taxmann.com 189 (GujratHC)- RTax No 1165 of 2018 dated 24.09.2018***

**1767.** The Court held that where AO rejected assessee's claim for deduction under sec. 54 on ground that construction of new property was not completed within a period of three years as prescribed in section 54, in view of fact that delay was beyond control of assessee because construction was put up by builder, and the assessee had invested amount in construction of new property within prescribed time period impugned order passed by Tribunal allowing assessee's claim was to be upheld.

***Pri. CIT, Bengaluru v. Dilip Ranjrekar-[2019] 101 taxmann.com 114 (KarnatakaHC) – ITA No.217 of 2018-date December 5, 2018***

Go to Index

**1768.** The Court held that as per the proviso to section 54F of the Act, an assessee was not entitled to claim capital gains exemption if he owns more than one residential house on the date of transfer of the original asset and income from such residential property is chargeable to tax under the head house property. It held that merely because the assessee owned two properties – one residential and the other commercial, the income of which was taxable under the head house property, the exemption could not be denied since the assessee only one of the properties was a residential property.
***CIT v I Ifthiqar Ashiq – (2016) 68 taxmann.com 25 (MadrasHC)***

**1769.** The Court held that not only cost of construction of new property incurred after sale of old property would be eligible for exemption u/s 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. It observed that section 54(1) nowhere contemplates that the same money received from the sale of a residential house should be used in the acquisition of new residential house as it allows adjustment and/or exemption in respect of property purchased one year prior to the transfer, which gave rise to the capital gain. Further, it opined that cost of new residential house would necessarily include cost of land, cost of materials used in construction, cost of labour and any other cost relatable to acquisition and construction of residential house
***C. Aryama Sundaram vs CIT [2018] 97 taxmann.com 74 (Madras) - TAX CASE (APPEAL) NO. 520 OF 2017 dated August 06 2018***

**1770.** The AO disallowed the assessee's claim for deduction u/s 54F on the ground that though the assessee had purchased a certain land after the sale of old asset, the residential house had not been constructed and completed on the said land within three years from date of sale of old asset. The CIT(A) allowed the assessee's appeal holding that there were genuine and bona fide reasons which resulted in the delay in completion of construction of the residential house, which were beyond the control of the assessee. The Tribunal concurred with the CIT(A)'s findings and held that the assessee was eligible for deduction u/s 54F. The Court dismissed Revenue's appeal holding that since the Tribunal and the CIT(A) had concurred in their factual finding, the appeal filed against order of the Tribunal could not be entertained.
***Pr.CIT v Smt. Charumathi Seshadri - [2018] 97 taxmann.com 178 (MadrasHC) - T.C.(A) NO. 293 OF 2018 dated July 17, 2018***

**1771.** The Court ruled in favour of taxpayer and upheld Sec 54F (capital gains exemption) benefit to assessee-individual for AY 2012-13. Noting that the assessee alongwith his sons (in the capacity of land-owners) entered into joint development agreement ('JDA') with a builder for construction of flats for which assessee received 15 flats as consideration, it rejected the Revenue's stand that 15 flats did not qualify as 'a residential house' under in Sec 54F as the flats were in different blocks and not in the same block. Relying on the decision of the coordinate bench in V.R.Karpagam ([TS-529-HC-2014(MAD)-O], it followed the interpretation of the phrase 'a residential house' provided therein i.e. as covering more than one flat/apartment as long as the same was in the same location/address and dismissed the appeal of the Revenue. Further, it clarified that the amendment to Section 54F vide Finance (No.2) Act, 2014 substituting 'a residential house' with 'one residential house', was prospective in nature, and hence not applicable to subject AY

Go to Index

***Shri Gumanmal Jain [TS-102-HC-2017 (MAD)] (TCA No. 33 of 2017) dated 03/03/2017.***

**1772.** The Court held that where the assessee was unable to utilize the capital gains arising on transfer of land in construction of a residential house within the prescribed period of 3 years as per section 54F and a condonation application was made to CBDT under section 119 for extension of time as construction could not be completed on account of interim prohibitory orders of Court, the delay could not be condoned on the ground that conditions under section 54F were not complied on account of circumstances beyond the control of the assessee and the powers of the Board under section 119(2)(c) could be invoked by assessee only till the time deduction could be claimed under section 54F and not till perpetuity.
***Shivinder Singh Brar, Karta HUF [TS-544-HC-2016 (P&H)] (C. W. P. No. 12979 of 2015)***

**1773.** Where assessee, an individual, deposited un-utilized sale consideration in capital gain account scheme within due date of filing belated tax return under section 139(4), the Court held that relief under section 54B and section 54F would be allowable. It held that it was not necessary that investment should have been made within original due date of filing return under section 139(1) noting that Section 54 refers to Section 139 for the time limit to acquire eligible new asset, which included return u/s 139(4) also i.e. time limit of one year from the end of assessment year.
***Pr CIT v Shankar Lal Saini - [2018] 89 taxmann.com 235 (RajasthanHC) - Income Tax Appeal No. 153 of 2017 dated 19.12.2017***

**1774.** The Tribunal held that where assessee had purchased new residential house due date specified under section 139(4) from date of transfer of original asset, requirement to deposit net consideration received by assessee in capital gain account scheme as per section 54F(4) would not be attracted and assessee would be eligible to benefit exemption under section 54F.
***Shrawankumar G Jain v. ITO [2018]99 taxmann.com 88/173 ITD 417 (Ahd. Trib.)- ITA No 695 (Ahd) of 2016 dated October 3, 2018***

**1775.** The Tribunal held that where assessee is not able to invest capital gains in purchasing residential house or in constructing house within the period stipulated in section 54F(1), the amount should be deposited in the capital gains account duly notified by Central Government in order to avail the benefit of section 54F.
***Sanjay K.Rana vs. ITO (2016) 48 CCH 0129 (AhdTrib) (ITA No. 996/Ahd/2014)***

**1776.** Where assessee, after receiving Rs.78 lakhs on sale of his old property, invested in another property by entering into two separate contracts on same date, one for Rs.60 lakhs for purchase of house property and remaining Rs.18 lakhs for purchase of furniture and fixtures in said property so as to claim deduction u/s 54 and the AO disallowed assessee's claim for deduction to the extent of Rs.18 lakhs on the ground that expenses incurred on buying furniture could not be said to be expenses incurred for making house habitable, the Tribunal held that the cost of residential house is entire cost of house, and it could not be open to AO to treat only cost of civil construction as cost of house and segregate cost of other things as not eligible for deduction u/s 54. It held that even if assessee were to buy house, without furniture, consideration would have been same, therefore two agreements could not be considered in isolation and therefore,

assessee's claim of deduction u/s 54 for investing capital gains in residential house along with furniture and fixtures during relevant year was to be allowed in entirety.
***Rajat B Mehta v ITO – (2018) 62 ITR(T) 334 (Ahmedabad - Trib) – ITA No. 19 (Ahd.) of 2016 dated 09.02.2018***

**1777.** Assessee had entered into an agreement with a construction company for development of a piece of land owned by him and as per agreement, the assessee was to receive 37.5 percent of built up area in form of 6 flats. The AO restricted assessee's claim of deduction under Section 54F to only one flat in view of the amendment to section 54F. The Tribunal held that the amendment to Section 54F (whereby the expression 'a residential house' was amended to 'one residential house') was not retrospective in nature and would be applied prospectively and that in furtherance to the various judicial pronouncements on identical facts, the assessee was entitled to deduction under Section 54F in respect of all 6 flats.
***T.A.V. Gupta v. ITO – [2018] 93 taxmann.com 249 (Bangalore – Trib.) – IT Appeal No. 209 (BANG.) of 2018 dated April 25, 2018***

**1778.** The Tribunal held that, Assessee is not entitled to benefit of section 54F in respect of investment made by assessee in purchasing capital asset (land) before period of one year prior to sale of another capital asset.
***Parswanath Padmarajaiah Jain v. Asst. CIT, Circle-1(1)(1), Bengaluru- [2019] 102 taxmann.com 92 (Bengaluru – Trib) ITA No. 453 (BANG.) of 2018 dated December 21, 2018***

**1779.** The Tribunal held that where the assessee, having sold residential property, paid entire sale consideration to one 'M' for purchase of another house property within time limit prescribed under section 54 of the Act, even though said transaction did not eventually materialize and 'M' had to refund amount paid by assessee, the assessee's claim for deduction under section 54 was to be allowed.
***T.Shiva Kumar v ITO - [2016] 68 taxmann.com 43 (Bangalore-Trib)***

**1780.** The Tribunal granted benefit under section 54F of the Act on the entire amount of investment in new house including the amount paid to the builders for amenities like car parking. It dismissed the revenue's action of restricting the benefit to the value disclosed in the registered sale deed and held that disclosure of a lower value of property (excluding amount paid for amenities like car parking) for stamp duty was an issue alien to the question of allowing deduction under section 54 of the Act.
***S Tejraj Ranka v ACIT (ITA No.82/Bang/2014) – TS-512-ITAT-2015 (Bang)***

**1781.** The Tribunal allowed the assessee exemption from long term capital gains tax under section 54F on sale of agricultural land subsequently converted into residential sites and rejected the contention of the revenue that the conversion of agricultural land into non-agricultural property demonstrated the assessee's intention to venture into commercial activity and therefore the gains were to be treated as business profits.
***TD Satyan (HUF) v ITO – TS-31-ITAT-2015 (Bang)***

Go to Index

**1782.** The Tribunal allowed assessee's claim for deduction u/s 54, even though he had not deposited the unutilised long term capital gain in the designated bank account as contemplated u/s 54(2), noting that the assessee had completed the construction of new asset before the due date for filing belated return u/s 139(4). It relied on the decision in the case of Fathima Bai v. ITO [2009] 32 DTR 243 (Kar HC) wherein it was held that the timelimit for depositing under the capital gains scheme or utilisation can be before the due date for filing return u/s 139(4).
***Rajesh Puneyani v ITO - ITA No.1267/Bang/2018 dated 24.09.2018***

**1783.** The Tribunal held that sub-section (2) of section 54 which requires the assessee to deposit the unutilised amount in capital gain account scheme before filing of Income-tax return, regulates procedure for substantive rights of exemption provisions u/s 54 and this enabling section cannot abridge or modify substantive rights given vide sub-section (1) of section 54 as otherwise, the real purpose of substantive provision, i.e., sub-section (1), will get defeated. Thus, where the assessee had not deposited the unutilised amount in capital gain account scheme before filing of Income-tax return as required by section 54(2) but at time of assessment proceedings proved that he had already invested capital gains on purchase/construction of new residential house, the Tribunal held that the benefit under substantive provisions of section 54(1) could not be denied to assessee and any different or otherwise strict construction of sub-section (2) would defeat the very purpose and object of exemption provisions of section 54.
***Mrs. Seema Sabharwal v ITO – (2018) 169 ITD 319 (Chandigarh Trib) – ITA No. 272 (Chd.) of 2017 dated 05.02.2018***

**1784.** The assessee-individual invested substantial amount of capital gains on sale of residential house in a flat (i.e under-construction property) before the due date of filing ROI and claimed deduction u/s 54. However, the possession was not handed over by the builder to the assessee. The AO denied the deduction u/s 54 on the ground that builder was not able to handover the possession of the flat to the assessee within the stipulated period of 3 years from the date of transfer of original asset. The CIT(A) upheld the order of the AO. The Tribunal observed that substantial amount of capital-gains was invested in new flat before the return filing due-date and the flat was also allotted to assessee, and held that the exemption could not be denied even if construction was not completed within specified period.
***Bhavna Cuccria [TS-247-ITAT-2017(CHANDI)] ITA No.341/Chd/2017 dated 23/05/2017***

**1785.** The Tribunal held that where assessee sold an immovable property and invested a part of sale consideration in reconstruction of another property belonging to assessee's husband where she resided with her husband and children, the said investment would be eligible for exemption claimed u/s 54F.
***Smt Kalavathy Sundaram vs ITO- (2018) Taxmann.com 640 (Chennai-Trib)- ITA No 3187 of 2016 dated 07.09.2018***

**1786.** The Tribunal held that the benefit under section 54F was available to HUF despite the fact that the property was purchased in the name of individual co-parcener even though HUF was an independent assessable unit under Act, as, under common law , HUF cannot be considered as a legal entity and has to be represented by any one of the coparceners. It held that when the nucleus of the HUF fund was used for purchase of property in the name of any one coparcener,

the property belonged to the HUF. It further rejected Revenue's contention that since the assessee used borrowed funds and did not utilize the sale proceeds on transfer of a capital asset to invest in new property, deduction should be denied and held that "where the assessee borrowed funds and utilized it in purchasing the capital asset and thereafter used the sale proceeds or capital gain for repaying the loan borrowed, it would amount to sufficient compliance of the requirement of Section 54F of the Act.

***Shri Puranchand & Family vs. Income Tax Officer TS-52-ITAT-2017(CHNY) ITA No.2974/Mds/2016 dated 31.01.2017***

**1787.** The Tribunal held that Section 54 and 54F are beneficial provisions and merely because the assessee has not made any specific reference, that cannot be a reason to disallow the claim of the assessee when the condition to claim exemption were fulfilled.

***ACIT vs Dr S. Sankaralingam- (2018) 54 CCH 0378 ChenTrib-ITA No 3185/Chny/2017 dated 05.10.2018***

**1788.** Tribunal held that the assessee was eligible to claim deduction u/s 54F with respect to the entire sale consideration received on sale of equity shares if it was utilised for constructing a new residential house within three years period, irrespective of the fact that the assessee had not deposited unutilized portion of sale consideration in a capital gain account scheme in year of transfer before due date of filing of return u/s 139(1).

***Smt. M.K. Vithya v ITO – (2018) 91 taxmann.com 102 (Chen) – ITA No. 2739 (Mds) of 2017 dated 09.01.2018***

**1789.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing assessee's claim for deduction u/s 54F where the assesse had invested the entire capital gains amount in the acquisition of the new residential property which was held jointly with his brother, noting that the brother had categorically admitted that he had not made any investments in the construction of the property. It held that just because the assessee had made the investment which was held jointly with his brother, it would not disentitle the assessee to claim of deduction u/s 54F, especially when he was the one, who had made the entire investment.

***ITO v Shri Immnuel Charles [TS-748-ITAT-2018(CHNY)] - I.T.A.No.2366/Chny/2018 dated 13.12.2018***

**1790.** The AO had disallowed the assessee's claim of exemption u/s 54F on account of purchase of land against long term capital gain derived on sale of another land, though he had allowed the exemption with respect to cost of constructing a residential house thereon. The CIT(A) had allowed the said exemption only to the extent of 5 cents of the land (out of total 196.144 cents) purchased by the assessee on the ground that the remaining part could not be considered to be land appurtenant to the residential house constructed thereon (being a pre-requisite for allowing the said exemption). The Tribunal held that land appurtenant to residential house had to be determined with regard to locality where residential house was situated, social status of individual assessee, profession of individual and other factors for proper and convenient enjoyment of residential house and since such factors were not on record, it had remanded the issue of exemption u/s 54F back to the file of AO. On second round of appeal, the CIT(A) considered 50 cents of land as land appurtenant to the residential house. The Tribunal

dismissed Revenue's appeal against the said CIT(A)'s order passed in second round as Revenue agreed before the Tribunal that 50 cents of land was reasonable.
Further, with respect to AO's disallowance of the exemption on the ground that the asssessee had not deposited the sale consideration received in the Capital Gains Account Scheme, the Tribunal allowed the assessee's appeal noting that the assessee had made investment in residential house before the due date of filing of return mentioned in section 139(4) and relying on coordinate bench decision in the case of ITO v. Late Shri K.Sasidharan [ITA No.56/Coch/2017] wherein it was held that as per section 54F(4), if assessee claimed exemption by retaining cash then said amount was to be invested in the Capital Gains Account Scheme but if intention was not to retain cash but to invest in construction or any purchase of property and if such investment was made within period stipulated therein i.e. section 139(4), then section 54F(4) was not all attracted.
***ACIT v TONY J. PULIKAL & Anr (2018) 53 CCH 0389 CochinTrib – ITA No. 472/Coch/2016 (CO No. 02/Coch/2017) dated July 25, 2018***

**1791.** The Tribunal allowed assessee's claim for deduction u/s 54F which was rejected by the CIT(A) on the ground that the tower in which flats were purchased, the lift was not installed and project was still not completed (after 3 years from the date of sale of original asset). The Tribunal held that since the assessee had made the entire payment and was in complete possession of the flat, the deduction could not be denied merrely because certain finishing work was not done. However, the Tribunal restricted the deduction (for AY 2013-14) only to one out of the two flats purchased noting that both the flats were on different floors and relying on the decision in the case of Gita Duggal (2013) 257 CTR 20 (Del HC) wherein it was held that a residential house can be construed to mean two units only if they have been purchased to be used as one and are adjacent to each other with common facilities. Accoridngly, assessee' appeal was partly allowed.
***Kamala Ajmera v ITO – TS-564-ITAT-2018(DEL) - ITA No.347/DEL/2017 dated 17.09.2018***

**1792.** The Tribunal held that where assessee entered into agreement with a builder for purchase of semi-finished apartment within period prescribed under sec. 54F, his claim for deduction could not be rejected merely because said builder failed to complete construction within prescribed time limit.
***Dr. Kushagra Kataria v. Dy. CIT, Circle-1(1), Gurgaon-[2019] 101 taxmann.com 359 (Delhi - Trib.)-IT Appeal No. 1452 (DELHI) of 2016-dated December 21, 2018***

**1793.** The Tribunal held that merely because the assessee offered to tax rental income on property gifted to his wife, via a registered gift deed, as per the clubbing provisions, it could not be held that the assessee was actually the owner of the property and accordingly the contention of the AO that the assessee violated the provisions of section 54 of the Act by owning more than one residential property on the date of transfer of the original asset was incorrect.
***ITO v Samir Jasuja – (2015) 45 CCH 0246 Del Trib***

**1794.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for deduction u/s 54F on account of investment towards purchase of residential house against the long-term capital gains arising on sale of 51% unquoted equity shares of a company

(EKWL). The AO had disallowed assessee's claim on the ground that deduction u/s 54F is available only if the original asset sold is a long-term capital asset other than residential house and since EKWL owned a residential property/ plot, the assessee had in effect sold a residential house and not only shares. The Tribunal relied on the Apex Court decision in the case of Bharat Hari Singhania & Ors v CWT (1994) 207 ITR 1 (SC) wherein it was held that shareholder does not own and cannot claim any portion of property held by a company of which he is the shareholder since company is an independent juristic entity and the shareholder is only entitled to participate in profits in form of dividends.

***DCIT vs. NIRANJAN KOIRALA - (2018) 53 CCH 0439 DelTrib – ITA No. 2253/DEL/2010 dated July 20, 2018***

**1795.** The Tribunal, relying on the decision in the case of Shyam Sunder Mukhija vs ITO [1991 38 ITD 125] wherein it was held that a farm house could also be treated as a residential house eligible for exemption u/s 54F, held that where the assessee established the existence of a residential structure in the property purchased by way of evidence relating to facilities of water, electricity and other sanitation, the assessee was entitled to claim exemption u/s 54 of the Act. It held that whether or not other facilities befitting the lifestyle of the assessee were available or whether the assessee was residing there or not was irrelevant for grant of exemption.

***Manoj Kumar Sabharwal vs ITO (2017) 51 CCH 188 DelTrib. ITA No. 3930/del/2017 dated 16.10.2017***

**1796.** The Tribunal allowed the assessee benefit under section 54F of the Act for investing long term capital gains arising on transfer of his property situated in Gurgaon in a new residential house and dismissed the contention of the Revenue that the assessee had two residential properties and therefore did not satisfy the conditions prescribed under section 54F of the Act since one of the premises owned by the assessee was used for its business purposes. It held that the registration of the said property with the municipality as a residential property was not determinative of whether the property was residential or not.

***Sanjeev Puri v DCIT – TS-436-ITAT-2016 (Del)***

**1797.** The Tribunal relying on Karnataka HC ruling in C.N. Anantharaman (ITA No. 1012/2008 dated 10/12/2014) allowed the assessee deduction u/s 54 against capital gains on sale of land appurtenant to the residential house owned by assessee held that for claiming deduction u/s 54 it was not necessary that the whole of the residential house should be sold, as the legislature has used the words residential house 'or' land appurtenant thereto which is distinctive in nature. The Tribunal rejected Revenue's stand that since the capital asset sold by assessee was the 'land appurtenant to the house' but not the 'residential house' itself, deduction could not be allowed.With respect to 'cost of acquisition of property sold' u/s. 49(1) for the purposes of computing capital gains, Tribunal noted that the land sold during the year was part of the portion of the property inherited by assessee from his mother in 1994 (who had acquired the property in 1985 under a will). The Tribunal held that as far as assessee was concerned, the cost to immediate previous owner should be taken for the purposes of Sec. 49 and accordingly FMV of land as on 1985 was to be considered. The Tribunal rejected the AO's stand to consider circle rate of property as on April 1, 1981 as against market value determined by registered valuer. The Tribunal relied upon Allahabad HC ruling in Dinesh Kumar Mittal (193 ITR 170) wherein it

was held that there is no rule to the effect that stamp duty valuation was to be taken as market value.

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

**1798.** The assessee had invested sale proceeds from transfer of reside'ntial house property in another residential house property and had claimed deduction u/s 54, the AO based on spot enquiries during regular assessment denied deduction u/s 54 as he was informed that the assessee had entered into a development agreement and demolished the impugned property in the subsequent year. Restricting itself to the claim for the relevant AY, the Tribunal held that the AO was unjustified in denying the deduction u/s 54 on the basis of an event which happened in a subsequent year. It held that since no such demolition occurred in the year in which claim was made, the AO could not travel back to the impugned AY and deny exemption.

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

**1799.** The assessee sold property and utilized the consideration received in constructing another residential property. In the relevant AY of transaction, the assessee neither admitted capital gains arising therefrom nor claimed deduction u/s 54F.In the course of scrutiny assessment, the AO noticed the said transaction and issued a show-cause notice. In response to the said notice, the assessee furnished all information called for and stated that he was entitled for exemption u/s 54F since the consideration was used for construction of residential property. The AO accepted the income declared by the assessee but the Commissioner passed a revisional order disallowing the claim of deduction on the ground that the assessee failed to declare capital gain and claim exemption in the return of income. However, on assessee's appeal, the Tribunal held that since there was no dispute about the utilization of sale proceeds for constructing residential property,the assessee's claim for deduction was to be allowed.

***Manohar Reddy Basani v ITO [2018] 94 taxxman.com 321 (Hyderabad – Trib.) – ITA NO 1307 of 2017 dated 30.05.2018***

**1800.** The Tribunal upheld the valuation adopted by the assessee with respect to a property sold during the year, for arriving at the cost of acquisition being the fair market value of the said property as on 01/04/1981, rejecting the value adopted by the AO based on the Sub-Registrar Office's (SRO) register. It was noted that the value adopted by the assessee was based on an approved Valuer's report (wherein the valuer had also determined cost of built up area by giving reasons) and also supported by the value at which the State Govt had purchased property in 1980 in near vicinity. Further, the AO had merely rejected the contention of the assessee without any material to the contrary. The Tribunal also observed that as per section 50C also, if any question is raised against the stamp authority valuation, reference is to be made to the DVO and thus the AO's mere reliance upon the SRO's report was not in accordance with law. Thus, noting that the assessee had not only mentioned about the comparable case but also furnished approved Valuer's report, who was a technical expert, the Tribunal upheld the valuation adopted by the assessee's.

The assessee had also claimed exemption u/s 54 but AO denied the claim on the ground that the purchase of a residential property was done in Feb 2010 whereas the sale of original property owned by assessee was made in Oct 2011 and thus in order to claim exemption u/s

54 assessee should either purchase property within period of one year or two years after which transfer took place or constructed property within period of three years after due date. Thus, assessee ought to have purchased a new property after October 2010 whereas property was purchased in February 2010 as per sale deed and second contention of construction did not apply to assessee who purchased a property as Sale deed clearly showed that property was an outright purchase of residential house, therefore it could not be said that assessee constructed residential house. Further, assessee had failed to claim exemption in original assessment as well as revised assessment. Therefore, the Tribunal dismissed assessee's ground for claiming exemption u/s 54.

***Ghansham Lekhraj Rupani v ITO (2018) 52 CCH 0395 HydTrib - ITA No. 1669/Hyd/2016 dated 18.04.2018***

**1801.** In a case where purchase of new property was not concluded or agreement of the same was not certain to be honoured on the date of filing of return, irrespective of the fact that (i) the assessee had paid a sum of Rs.1 crore to the vendor for purchase of the said property and (ii) transaction had not gone through because the vendor intended to cheat him and the assessee had issued a legal notice to the vendor and also filed a civil suit before the Civil Court at Hyderabad for specific performance of the agreement, the Tribunal held that the assessee could not have claimed to have purchased residential property within one year before or within two years after sale of original asset or to have constructed property within three years after sale of property for purposes of claiming deduction u/s. 54F(4).

***Mahesh Malneedi v ITO – (2018) 169 ITD 154 (Hyd Trib) - ITA No. 1021 (Hyd.) of 2017 dated 25.01.2018***

**1802.** The assessee had transferred its land, purchased in 2003, to a developer for joint development of the land and claimed that the gains arising out of development agreement being LTCG was exempt under Section 54F as the assessee was receiving residential flats as consideration. The AO denied the benefit under Section 54F and held that the gains were STCG as the assessee purchased the property in 2006 as against 2003. The Tribunal accepted the assessee's contention that the land was purchased by it in 2003 itself and it was only to obtain approval from the authorities (which was obtained in 2006) that there was a revised agreement dated 2006. Accordingly, it held that the AO was not justified in treating the gains as STCG. However, noting that the assessee's claim of exemption under Section 54F had not been examined, it remitted the issue back to the AO to decide the claim.

***DODDAPANENI ATCHAIAH TENALI vs. Assistant Commissioner Of Income Tax - (2018) 52 CCH 0132 HydTrib - ITA No. 1553/Hyd/2016 dated Feb 28, 2018***

**1803.** Where a group consisting of assessee and three other family members had entered into development agreement on 05-03-1995 under which they were entitled to receive 51 flats in total out of flats constructed by Developer against the surrender of their share in land (which were also subsequently sold) and the AO computed capital gains arising on sale of land in the current AY i.e. AY 2003-04 when the developer had finally handed over the completed project, relying on the decision in the case of Dr. Maya Shenoy v ACIT (2009) 124 TTJ 692 (Hyd Trib) and Potla Nageswara Rao v DCIT (2014) 365 ITR 0249 (AP), the Tribunal held that the transfer of land in consideration of flats constituted one transaction giving rise to capital gains and sale

of flats by assessee constituted another transaction giving rise to capital gains and when the transfer was complete, automatically, consideration mentioned in agreement for sale had to be taken into consideration for purpose of assessment of income for assessment year when agreement was entered into and possession was given. Accordingly, it held that the action of AO in working out long term capital gains arising in AY 1995-96 in the impugned AY i.e. AY 2003-04 could not be upheld. Further, with respect to the assessee's claim for deduction u/s 54F on sale of all the flats received under the development agreement and subsequent investment in a residential house, the Tribunal held that all the apartments/ flats received in the development agreement would become one house technically, even though they were of independent units. However, since this aspect had not been considered by the AO or the CIT(A) in the correct perspective, the matter was remanded to AO for re-examination keeping in mind the date of sale of various apartments and the claim u/s 54F/54.

***DR. SUDHIR NAIK & ORS. v ITO – (2018) 52 CCH 70 (Hyd Trib) – ITA No. 1463/Hyd/16 to 1470/Hyd/16 dated 31.01.2018***

**1804.** Assessee had sold plots and purchased residential house at Mumbai and claimed deduction u/s 54F for investments in purchase of flat. The AO disallowed assessee's claim, by holding that assessee failed to deposit entire sale consideration in the scheme of deposits in capital gains account on or before the due date of filing return and accordingly made additions. The Tribunal relied on Karnataka High Court in CIT Vs. K. Ramachandra Rao, where in it was held that the provisions of section 54F (4) would not be attracted in the event if the assessee had purchased or constructed the residential house within the period prescribed under section 54(1) of the Act. Thus, the Tribunal observed that in the present case plot was sold on 27.2.2012 and the due date of filing of return was 29.9.2012 and the payment was made to builder of Rs.10 lakhs on 3.10.2012 and thereafter Rs.15 lakhs was paid on 2.11.2012 and agreement for purchase was registered on 3.12.2012. Thus, the Tribunal observed that the sale consideration was utilised within one year from date of sale of original asset, thus the AO was directed to allow deduction u/s 54F.

***Manish Kumar Lath vs CIT- (2018) 54 CCH 0129 Indore Trib- ITA No 616/Ind/2017 dated 26.10.2018***

**1805.** The assessee declared capital gain arising from sale of agricultural land situated at Jaipur and claimed deduction under section 54F. The AO and CIT(A) had allowed deduction under section 54F only in respect of one new asset as against claim of total investment made by assessee in three separate properties in three different areas. The Tribunal upheld CIT(A) order and noted that in assessee's case there were only one constructed house and the other two were plots and that too in different areas, therefore, the deduction allowed had been correctly arrived at by the AO who had placed reliance on the decision of the Punjab and Haryana High Court in the case of Pawan Arya v. CIT [2011] 11 taxmann.com 312/200 Taxman 66, which directly covered the issue. Thus, the Tribunal concluded that the incentive for granting the deduction under section 54F was for investment in the residential house of the assessee which meant that the investment is made for own residential requirement of the assessee and not future investment in the property. Therefore, in the absence of any material to show that the three different properties were purchased to meet the residential requirement of the family of the assessee, the claim of the assessee could not be accepted

Go to Index

***Rakesh Garg vs ITO – (2018) 98 taxmann.com 360 (Jaipur-Trib)- ITA No 1100 of 2016 dated 13.09.2018***

**1806.** The Tribunal held that where assessee had sold an immovable property and claimed deduction under section 54 on account of an advance given to a developer for booking of a flat in a residential project to developed, since assessee had booked flat prior to sale of existing immovable property and, further, neither on date of payment of advance nor till expiry of time period prescribed under section 54 alleged new flat was in existence, exemption under section 54 could not be granted.
***Jagdish Wadhwani v. ITO, Ward 3(2), Jaipur [2018] 100 taxmann.com 79 (Jaipur - Trib.)- ITA No. 975 (JP) of 2016-dated October 31, 2018***

**1807.** The assessee sold his residential units during the relevant year and claimed exemption u/s 54 in respect of a new residential flat which it purchased and obtained possession within the time prescribed u/s 54. The AO denied the exemption claim of the assessee u/s 54 on the ground that the assessee had availed house building loan and invested only part of capital gain in new residential unit. The Tribunal allowed the claim of the assessee and held that availing of house building loan from bank for purchasing a new residential unit could not act as a disqualification for claim of exemption u/s 54 when primary conditions imposed in section 54 were satisfied.
***Amit Parekh v. ITO – [2018] 92 taxmann.com 295 (Kolkata – Trib.) – IT Appeal No. 41 (Kol.) of 2016 dated April 4, 2018***

**1808.** The Tribunal held that section 54F nowhere envisages that sale consideration obtained by assessee from sale of original capital asset is mandatorily required to be utilized for purposes of meeting cost of new asset. It relied on the P&H High Court in the case of CIT vs. Kapil Kumar Agarwal wherein it was held that s. 54F nowhere envisages that sale consideration obtained by assessee from sale of original capital asset is mandatorily required to be utilized for purposes of meeting cost of new asset. It held that investment made by the assessee may be sourced other than entirely from the capital gains. Thus, objection of the Revenue authorities cannot be sustained.
***SABITA DEVI AGARWAL vs. ITO (2018) 54 CCH 0446 KolTrib ITA No. 1231/Kol/2016 dated 19.12.2018***

**1809.** The Tribunal held that the claim of deduction u/s 54 F is to be allowed if after selling a property, the assessee invests the sale consideration towards purchase of a residential property or for the construction of a residential property though the construction of the house property is not completed within stipulated period of 3 years.
***SABITA DEVI AGARWAL vs. ITO (2018) 54 CCH 0446 KolTrib ITA No. 1231/Kol/2016 dated 19.12.2018***

**1810.** The assessee had entered into an agreement to sell a flat on 16-9-2011 and out of the agreed sale consideration, certain amount was received by way of advance money and sale deed of said flat was registered on 27-12-2011. Further, assessee had earlier purchased a new residential flat on 4-10-2010 and claimed the same as deduction under section 54 for the above sale. The AO had denied the exemption on the ground that assessee did not purchase

residential flat within one year of sale of old asset as the AO considered date of registration i.e 27.12.11 as date of transfer of property. The Tribunal held that where assessee had executed an agreement to sell property and the vendee got a right to get the property transferred in his favour by filing a suit under Specific Performance Act, it could be deduced that some right in respect of said property had been transferred in favour of vendee on date of execution of agreement to sell. Thus, it was undisputed that assessee had purchased a new residential property within one year prior to date of execution of agreement to sell and the assessee's claim for deduction under section 54 was to be allowed.

***Gautam Jhunjhunwala vs ITO- (2018) 98 taxmann.com 220 (Kol- Trib)- ITA No 1356 of 2017 dated 07.09.2018***

**1811.** The Tribunal held that assessee could not be denied the benefit of section 54F claimed on account of purchase of flat against long-term capital gains earned on sale of shares, even though out of total sale proceeds, he had used a part of it for providing unsecured loan to certain entity and invested in some bonds and thus, had failed to deposit monies in capital gain account scheme before due date of filing return of income u/s 139(1). It relied on the co-ordinate bench decision in the case of Sunayana Devi v. ITO [86 taxmann.com 72] wherein it was held that since the assessee had invested the sale consideration in construction of a residential house within three years from the date of transfer, he could not be denied deduction u/s 54F for the alleged reason that he had not complied with the requirements of section 54F(4).

***Vijay Mahipal vs ITO [2018] 54 CCH 0245 (Kol- Trib.)- ITA No.502 /Kol/2017 dated 20.11.2018***

**1812.** The Tribunal held that in view of amendment to proviso to section 54F by Finance Act, 2000, even if new asset purchased within prescribed period had been let out by assessee, she would still be entitled toclaim deduction under section 54F.

***Asst. CIT, Cir-32, Kolkata v. Mrs. Ishita Mohatta-[2019] 101 taxmann.com 14 (Kolkata - Trib.)- ITA No.788 (KOL.) of 2017 CO No. 45 (KOL.) of 2018 -dated November 28, 2018***

**1813.** The Assessee reinvested the capital gains earned on sale of house property in purchasing / constructing three residential houses. The AO held that the Assessee would be entitled to exemption under Section 54 of the Act in respect of only one house property. The CIT(A) granted exemption under Section 54 of the Act to assessee in respect of reinvestment made in all three houses. The Tribunal upheld the order of the CIT(A) and dismissed the Revenue's appeal for the following reasons:

i. Assessee had purchased three adjacent plots of land and made construction by inter connecting buildings using steel bridges to allow movement within houses
ii. Modified occupancy certificate was issued to the assessee by considering entire building as a combined single building
iii. Section 54 was amended with effect from AY 2015-16 wherein exemption under Section 54 of the Act would have to be restricted to reinvestment in one residential house. The said amendment could not be retrospectively applied.

***ACIT & ANR. vs. RESHMI P. LOYALKA & ANR. (Kolkata Tribunal) dated May 23, 2018 (53 CCH 0063)***

Go to Index

**1814.** The Tribunal held that investment in new property would be construed from the date of making advance payment towards booking the property and not the date of the agreement for the new property. Accordingly, it allowed the assessee the benefit of exemption under section 54F Act.
***Smt Rathan B Shetty v ACIT (ITA. No. 253/Mum/2013) – TS-656-ITAT-2015 (Mum)***

**1815.** The Tribunal held that when both flats purchased by the assessee were joined and used as a single unit it had to be considered as a single residential house for the purpose of section 54F of the Act.
It further held that cost of the new asset shall not be reduced by the deduction allowed under section 54F of the Act for the purpose of computing deduction under section 54F of the Act.
***Dinanath Badrinath Chhabra v ITO – (2015) 45 CCH 0299 Mum Trib***

**1816.** The Tribunal held that where assessee invested sale consideration of immovable properties in construction of new residential house, exemption under section 54F could not be denied merely because construction was not completed as the intention of Legislature is to encourage investments in acquisition of a residential house and completion of construction or occupation is not requirement of law.
***Vishal Dutt v ITO - [2016] 68 taxmann.com 337 (Mumbai-Trib)***

**1817.** The Tribunal held section 54F relief cannot be denied to assessee when he has invested entire sales consideration in purchase of residential house but he is unable to get possession of flat, which is under construction, due to fault of the builder.
***Rajeev B. Shah v ITO – (2016) 71 taxmann.com 198 (Mumbai – Trib) - I.T. APPEAL NO. 262 (MUM.) of 2015***

**1818.** The Tribunal, allowed the assessee individual section 54F exemption for AY 2010-11 with respect to long term capital gains (LTCG) arising to assessee-individual upon flat sold on November 18, 2009 and rejected Revenue's action of treating the gains as short term. It rejected Revenue's contention that the date of registration i.e October 6, 2007 should be considered as acquisition date, and relying on the Delhi HC decision in Gulshan Malik held that the date of execution of agreement to sale executed by builder in favour of assessee (i.e 16 november 2006) was to be treated as date of acquisition. It also rejected Revenue's contention that assessee had intentionally waited for mechanical lapse of 36 months and had deliberately put the date on agreement as November 18, 2009 to avoid the payment of tax, despite stamp duty paid earlier on November 6, 2009 and held that every individual had a right to deal his assets as per his own choice and convenience and the Revenue would not dictate any particular way unless otherwise the transaction was prohibited by law.
***Michael Jude Fernandes vs ITO-TS-399-ITAT-2017(Mum)-ITA no. 3557/mum/2014 dated 18.08.2017***

**1819.** The Tribunal upheld assessee's right to claim capital gains exemption u/s 54F in a belated return of income filed in compliance to a notice issued u/s 148 and held that section 54F did not cast any statutory obligation on part of the assessee to file its return of income within the stipulated time period contemplated u/s 139 or 148 of the Act as a precondition for claim of exemption. Further it rejected Revenue's contention that return was invalid since it was filed beyond the

specified 30 days period from the date of service of noticeand held that the same would not cease to be a return of income filed pursuant to the notice u/s 148, though involving some delay.
***Amina Ismil Rangari vs ITO-TS-424-ITAT-2017(Mum) I.T.A. No. 6261/Mum/2013 dated 15.09.2017***

**1820.** The Tribunal held that acquisition of new flat in an apartment under construction was to be considered as a case of "Construction" and not "Purchase". Further, it held that the date of commencement of construction was not relevant for purpose of s. 54 and therefore the deduction could not be denied merely because the construction may have commenced prior to the date of transfer of the old asset. Therefore, since the construction was completed within 3 years from the date of transfer, the assessee could not be denied of the exemption.
***Mr. Mustansir I Tehsildar v ITO - I.T.A. NO. 6108/MUM/2017 dated 18.12.2017***

**1821.** Where the assessee had sold its erstwhile flat and shares and claimed deduction under section 54 and 54F of the Act by making investments in residential property, but the AO contending that the assessee had made investment in two flats by registering two separate sale agreements, allowed deduction only with respect to one flat, the Tribunal upheld the order of the CIT(A) and held that when the assessee acquired a flat, with the intention to use it as one residential unit, it would not make any distinction whether the flats were constructed as such by builder or same was altered or combined into one at instance of assessee. It also held that in case of beneficial provisions it was a well-accepted rule of interpretation that a liberal view had to be accepted and therefore where the assessee had made compliance of the provisions of sections in substance then, the benefit could not be denied on irrelevant considerations or for the reasons which were not material to the issue involved.
***Assistant Commissioner of Income Tax [(2017) 49 CCH 007 MumTrib]***

**1822.** The assessee sold her bungalow and purchased 4 flats from the consideration received and claimed exemption u/s 54F.It was undisputed that the 4 flats were small units combined into 1 residential unit. The AO held that only one flat could be purchased against long term capital gain but however, took cognizance of fact that as per society bills two flats were considered as single unit, therefore, concluded that two residential units were purchased by assessee, and as such allowed exemption in respect of investment made in respect of only one residential unit. The CIT(A) held that it was conceded factual position that assessee had merged four flats into one residential unit, therefore, claim of exemption u/s 54 was rightly raised by her and to be allowed completely. The Tribunal followed CIT-12 vs. Raman Kumar Suri wherein it was concluded that where assessee had acquired one residential house consisting of two flats, it could not be said that assessee had purchased two residential houses. Thus, the Tribunal held that where acquisition of two flats had been done independently by assessee, but however, said flats were constructed in such way that adjacent units or flats could be combined into one, and eventually had been merged into single unit and were used for purpose of residence by assessee, the claim of exemption u/s 54 could not be denied and dismissed revenue's appeal.
***ITO (International Taxation) v Kavita Gupta (2018) 52 CCH 0308 MumTrib - ITA No. 6884/MUM/2014 dated 11.04.2018***

Go to Index

**1823.** The Tribunal held that the basement having an independent entry-gate, staircase, living room, bedroom, dining room, washbasin, toilet, kitchen and mini-drawing room was a part and parcel of residential house and therefore held that the assessee was entitled to claim exemption under Section 54 of the Act by investing the capital gain realized by it.

***ACIT v Shri Shrey Sharma Guleri Prime Channel Software Communications (P.) Ltd - [2018] 92 taxmann.com 43 (Mumbai - Trib.) - IT APPEAL NO. 6147 (MUM.) OF 2016 dated MARCH 22, 2018***

**1824.** The Tribunal set aside the CIT(A)'s order wherein the CIT(A) had upheld the AO's order denying deduction claimed u/s 54 against the long-term capital gains which was offered to tax by the assessee in the revised return filed after issuance of notice u/s 143(2). It was noted that the AO had accepted the long-term capital gains offered to tax in the revised return but had not accepted the assessee's impugned claim u/s 54 against the said gains. The Tribunal held that the assessee can file a revised return of income even in course of the assessment proceedings, provided the time limit prescribed u/s 139(5) is available and restored the issue to the file of the AO for examining and allowing assessee's claim of deduction, subject to fulfilment of conditions of section 54.

***Mahesh H. Hinduja v ITO - [2018] 95 taxmann.com 168 (Mumbai - Trib.) - IT APPEAL NO. 176 (MUM.) of 2017 dated June 20, 2018***

**1825.** Where the assessee claimed deduction under Section 54 for investment in a new house property and the AO disallowed the assesseee's claim of deduction since the assessee had not invested capital gain in purchase of new house property within prescribed time which is a requisite condition for deduction under Section 54F, the Tribunal held that since the deduction was claimed under Section 54 and not under Section 54F, the conditions and restrictions imposed under Section 54F were not applicable upon the assessee. Accordingly, the matter was remitted to Assessing Officer for de novo adjudication.

***Gayatri Prasoon Pandey v. ACIT – [2018] 93 taxmann.com 191 (Mumbai – Trib.) – IT Appeal No. 2940 (MUM.) of 2016 dated April 25, 2018***

**1826.** Where the assessee's claim for deduction u/s 54F on account of purchase of a residential flat in Dubai out of proceeds of sale of long-term capital asset being 50% share in a private limited company in India was rejected by the AO since the new property purchased was situated outside India, the Tribunal allowed the assessee's claim for the said deduction, noting that prior to amendment in section 54F by the Finance Act, 2014 w.e.f. 1-4-2014, there was no restriction upon taxpayer to make investments outside India in purchasing residential house property and since the residential property was purchased by assessee in year 2011-12, the deduction u/s 54F was to be allowed. Further, it also admitted the assessee's claim for converting the aforesaid gains offered to tax as short-term capital gain while filing return of income into long-term capital gain wherein the said claim was made for first time before CIT(A) without filing a revised return and remanded the matter to AO for examining the said claim on merits.

***Ashok Keshavlal Tejuja v ACIT – (2018) 91 taxmann.com 28 (Mum) – ITA No. 3429 (mum.) of 2016 dated 15.02.2018***

Go to Index

**1827.** The Tribunal held that where assessee had purchased new house property within stipulated period of two years from date of transfer of original asset, deduction under section 54 could not be disallowed on ground that assessee had utilized housing loan taken for purchase of home.
***Hansa Shah v. ITO [2018] 98 taxmann.com 393/173 ITD 260 (Mum – Trib.)-ITA Nos. 2053 to 2057(DELHI) of 2017-dated October 8, 2018***

**1828.** The assessee claimed deduction u/s 54F against the long term capital gain earned on sale of godown which was held for more than 36 months from the date of agreement i.e. 24-04-2008. The AO treated the the gain as short term capital gain on ground that period of holding was to be reckoned from the date of registration of property i.e. 11-07-2008 and the same was less than 36 months and accordingly, he made addition without granting benefit of deduction u/s 54F. The Tribunal held that "transfer" for the purpose of of section 2(47) meant a defacto ownership and not necessarily legal ownership. Further, noting that the assessee had made initial payment and acquired irrevocable right, title and interest including possession of Godown on the date of agreement i.e. 24-04-2008 and the registration of property which was done subsequently on 11-07-2008 was only formality, it held that the period of 36 months of holding of long term capital ought to be reckoned from 24-04-2008 and not from 11-07-2008 as wrongly adopted by AO. Accordingly, the Tribunal held that capital gains to be long term capital gains and allowed deduction u/s 54F thereon.
***SANJAYKUMAR FOOTERMAL JAIN vs. INCOME TAX OFFICER [2018] 53 CCH 0449 ITA No.4853/Mum /2016 DATED AUGUST 28,2018***

**1829.** The assessee claimed that he was entitled for claim of deduction under section 54 on the investment/purchase of new residential house before the sale of another residential house. The Assessing Officer took a view that since new residential house had been purchased out of own sources i.e. savings from bank account and bank loans, and the assessee had not utilized long-term capital gain for the purchase of new assets, he was not eligible for claim of deduction under section 54. The Tribunal held that section 54F, nowhere envisages that the sale consideration obtained by the assessee from the original capital asset is mandatorily required to be utilised for the purchase or construction of a house property. No provision has been made by the statute that in order to avail benefit of section 54F, the assessee has to utilize the amount received by him on sale of original capital asset for the purpose of meeting the cost of the new asset. The assessee has made investment well within the stipulated period. The Investment was more than the capital gain earned by him. The investment made by the assessee being within the stipulated time and more than the capital gain earned by him, the addition was rightly deleted by the Tribunal under the head long-term capital gain.
***Yatin Prakash Telang v. ITO [2018] 96 taxmann.com 201/171 ITD 705 (Mum. – Trib.)- ITA No. 1136 (MUM.) of 2018 [Assessment Year 2012-13] dated July 4, 2018***

**1830.** The Tribunal held that Indexation benefit cost of acquisition shall be available to assessee on basis of index of year in which payments are actually made by assessee. Indexed cost of acquisition has been defined to mean an amount which bears to the cost of acquisition the same proportion as cost inflation index for the year in which the asset is transferred bears to the cost inflation index for the first year in which the asset was held by the assessee. We find that the expression used is 'held' as against 'acquired' or 'purchased' as used in other Sections like

section 54 / 54F which shows that legislatures were conscious while making use of this expression. The expressions like 'owned' / 'acquired' has not been used for allowing the indexation benefit to the assessee. However, the important question that arises for consideration, is that whether the indexation benefit of even the future installments would also be allowable to the assessee from the year in which the asset is first held by the assessee. Indexation benefit against the cost of acquisition shall be available to the assessee on the basis of index of the year in which the payments were actually made by the assessee.
***Lakshman Charanjiva vs ITO (Intl Taxation)- (2018) 54 CCH 0063 MumTrib- ITA No 28/Mum/2017 dated 03.10.2018***

**1831.** The Tribunal held that assessee was eligible for deduction under section 54F on capital gains arising from sale of property, where an assessee had sold a property which was used for commercial purposes on which depreciation was claimed and the said property was held for a period of more than thirty-six months and a residential flat was purchased from consideration received from the above sale. The AO had treated the above commercial property as short term capital asset under deeming provisions of section 50 and had disentitled the assessee from claiming exemption u/s 54F. The Tribunal allowed the claim u/s 54F relying on the case of ACIT vs Kiran Gadhia (ITA No 4021(mum) 2015) wherein under similar circumstances deduction u/s 54/54F was allowed and dismissed revenue's appeal.
***DCIT vs Hrishikesh Desai- (2018) 98 taxmann.com 305 (Mum-Trib)- ITA No 2766 of 2017 dated 26.09.2018***

**1832.** The Tribunal dismissed assessee's appeal against the CIT(A)'s order upholding the AO's action in restricting the assessee's claim for deduction u/s 54 in respect of one flat and disallowed assessee's claim of deduction in respect of another flat at a different location, rejecting the assessee's contention that the purchase of two flats in different localities was on account of family compulsions which were only bald assertions, not supported by any cogent evidence. With respect to purchase of one the residential house, the assesssee claimed that it consisted of two flats combined to make it one residential unit. In the regard, the Tribunal accepted assessee's contention, however, remanded the matter to AO to verify whether the two flats had been joined together or not to make it a single unit.
***ABHIJIT ASHOK BHALERAO & ORS. v ACIT – (2018) 52 CCH 66 (Pune) – ITA Nos. 146-148/Pune/ 2015 dated 29.01.2018***

**1833.** Assessee had sold an agricultural land and utilised sale consideration for construction of new residential house and claimed deduction under section 54F. The Tribunal held that since both Assessing officer and Commissioner (Appeals) had agreed to fact that Inspector had visited site and had reported that new house was constructed, exemption under section 54F could not be denied simply because bills and vouchers were not produced.
***Govind Gangadhar Sabane v. ITO, Ward-1(4)-[2019] 101 taxmann.com 230 (Pune - Trib.)- IT Appeal No. 1654 (PUN.) of 2016 dated December 18, 2018***

**1834.** The Tribunal upheld Sec 54F (capital gains exemption) benefit to assessee-individual for AY 2009-10. Noting that the assessee entered into a joint development agreement with a builder and leased the building so constructed to an educational society (which used the premises for

the purpose of accommodation of students) , the Tribunal held that the flats were constructed for residential purpose and had to be considered as residential house for the purpose of exemption u/s 54F as the assessee furnished copy of plan sanctioned by municipal authorities which clearly showed that apartments constructed by builder were residential houses and merely because the house was leased out to an educational socity, it could not be said that the property in question was a commercial property, which was not entitled for exemption u/s 54F. The appeal of the revenue was, accordingly, dismissed.
***Income Tax Officer & Ors vs. Ravuri Sai Chaitanya & Ors. (2017) 49 CCH 0128 Vishakapatnam Trib. (ITA No. 498,499,500/Vizag/2013)***

» *Section 54B*

**1835.** The Court upheld the Tribunal's order rejecting assessee's claim for deduction u/s 54B on account of utilization of the amount representing capital gain arising from sale of agricultural land for purchase of another agricultural land. It was noted that as per the provisions of section 54B, the assessee or the assessee's parents had to use the land for agricultural purposes for a minimum period of two years, whereas the assessee had not used the land for agricultural purposes for a minimum period of two years before its sale. The non-usage of land for agricultural purposes was evident from the facts that the asseessee had incurred expenses only for improving the land rather than for its cultivation and the assessee, in his submissions had stated that the land was purchased for the purpose of making a farm house and guest house for him and his family.
***Gopal S. Pandit v CIT - [2018] 95 taxmann.com 246 (KarnatakaHC) - IT APPEAL NO. 34 OF 2017 dated June 25, 2018***

**1836.** The Tribunal held that Capital gains utilized towards purchase of new asset before furnishing of return of income either under section 139(1) or belatedly under section 139(4), would be deemed to be sufficient compliance of section 54B (2). Where, the assessee furnished return subsequent to due date of filing return under section 139(1), but within extended time limit under section 139(4), the assessee was entitled to benefit of investment made up to date of furnishing of return as contemplated under section 54B.
***Manilal Dasbhai Makwana v. ITO [2018] 96 taxmann.com 219/172 ITD 1(Ahd. – Trib.)- ITA Nos. 109 & 110 (AHD.) of 2017 [Assessment Year 2012-13] dated July 4, 2018***

**1837.** The Tribunal allowed Revenue's appeal and held that sale of hotel premises by assessee was a slump sale liable to be taxed u/s 50B, rejecting the assessee contention that only the land and building of the hotel were sold and separate considerations were assigned and received for the same. It held that from the sale deed executed it was clear that the intention of the parties was to sell the hotel business as a going concern and the same was nothing but a slump sale. Further, the Tribunal noted that the entire business was sold for a total consideration of Rs.20 crore wherein the building and other amenities were valued as a whole, without assigning value to any item of the assets and consequent to the sale of the hotel premises, the business of assessee was closed down.

Go to Index

***ASSISTANT COMMISSIONER OF INCOME TAX vs. OOTY GATE HOTEL [2018] 53 CCH 0443 (Coch Trib) ITA No.384 /Coch /2017 DATED AUGUST 14,2018***

**1838.** The Assessee in his computation of income claimed deduction u/s. 54B on purchase of new agricultural land which the AO disallowed holding that no evidence for claim of exemption u/s. 54B was filed. The CIT(A) accepted the fact that new land was purchased, but he contended that since assessee could not establish that old and new land were used for agricultural purposes, claim of assessee was not allowed. The Tribunal noted that the observation of CIT(A) was ex-facie wrong as the Revenue authority had recorded a finding that assessee was growing soyabean and paddy from FY 2005-06 to 2009-10 and thus, the Tribunal concluded that where assessee successfully demonstrated that it had fulfilled conditions for availing benefit of section 54B, deduction was to be allowed.
***Sunil Sojatia vs ACIT- (2018) 54 CCH 0110 Indore Trib- ITA No 310,312/Ind/2015 dated 23.10.2018***

**1839.** The Tribunal held that where assessee incurred certain expenditure on levelling of agricultural land for purpose of irrigation from canal, benefit of indexed cost of improvement was to be granted in respect of said expenditure while computing capital gain arising from sale of said piece of agricultural land. It further held that while computing deduction under section 54B, stamp duty paid by assessee was to be considered as part of cost of purchase of agricultural land.
***Mathur Lal v. ITO, Ward 2(2), Kota- [2018] 100 taxmann.com 51 (Jaipur-Trib.)- ITA No. 940 (JP) of 2018-dated October 12, 2018.***

**1840.** Where the Assessee did not disclose sale and purchase of agricultural land in its original return of income, the AO added capital gain on sale of agricultural land but did not grant any benefit under Section 54B of the Act for purchase of agricultural land as the same was not based on original return of income but raised in revised return of income. CIT(A) upheld the order of the AO. The Tribunal held that since the assessee had duly submitted documents regarding purchase of agricultural land and same were already on record before AO, the claim exemption of exemption under Section 54B should be granted to the assessee as the AO did not find any fault in purchase documents. Thus, Tribunal set aside order passed by CIT(A).
***SANJAY SHANKARRAO JADHAO vs. JCIT (Nagpur Tribunal) (ITA No.66/Nag./2017) dated May 8, 2018 (53 CCH 0153)***

**1841.** Where the assessee had transferred his share in land which was used for agricultural purposes and claimed benefit of deduction under Section 54B of the Act, the Tribunal held that the AO was not justified in denying the assessee benefit of the said deduction on the mere ground that the assessee had applied for permission to convert its land from agricultural land to non-agricultural (which was granted) without appreciating that the land was actually used for agricultural purposes. It held that notwithstanding the permission to use the land for non-agricultural purposes, what had to be considered was the actual use of the land. Accordingly, it held that the assessee was eligible for deduction under Section 54B of the Act.

Go to Index

***ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. BAJAJ SATYANARAYAN GIRDHARILAL & ORS. - (2018) 52 CCH 0312 PuneTrib - ITA No. 171/PUN/2012, 172/PUN/2012, 173/PUN/2012 dated Mar 28, 2018***

» *Section 54EC*

**1842.** The Tribunal allowed assessee's claim for deduction u/s 54EC against the capital gains arising on sale of land vide sale deed dated 19.03.2012, for entire amount of Rs.1 crore invested in NHAI bonds which was allowed by the AO only to the extent of Rs.50 lakhs. It relied on the co-ordinate bench decision in the case of Aspi Ginwala, Shree Ram Engg. & Mfg. Industries vs. ACIT [20 taxmann.com 75 (Ahd)] wherein it was held that as per proviso to section 54EC, where assessee transfers his capital asset after 30th September of the financial year he gets an opportunity to make an investment of Rs. 50 lakhs each in two different financial years and is able to claim exemption up to Rs. 1 crore u/s 54EC.
***Tushar Vasudevbhai Patel vs. DCIT(IT) (2018) 53 CCH 0393 AhdTrib – ITA No. 2954/Ahd/2015 dated 16th July, 2018***

**1843.** The assessee had executed an agreement to sell but registered the same at a later date. The AO had invoked section 50C and considered the full value of consideration as on the date of registration and made certain additions to capital gain arising from sale of land. The Tribunal remanded the matter back to the AO and concluded that, in view of proviso to section 50C, the Stamp Duty Valuation on the date of agreement could be deemed as the full value of consideration for the capital asset and the AO was directed to thereafter compute long term capital gain for the current year. Further, the Tribunal also held that where assessee invests earnest money or advance received on sale of capital assets in specified assets mentioned u/s 54EC, before the date of transfer of asset (i.e. investment made in certain bonds of NHAI & RECL or any other prescribed bonds prior to transfer of property), the amount so received on transfer would still qualify for exemption under section 54EC.
***Rahul G Patel vs DCIT- (2018) 97 taxmann.com 598 (Ahd- Trib)- ITA No 2767 of 2015 dated 26.09.2018***

**1844.** Assessee, an employee of Infosys BPO Ltd., was granted ESOP options, of which 6000 options were subsequently vide Option Transfer Agreement bought back by Infosys Technologies Ltd. Few options were held for a period of more than 3 years before their transfer and thus, assessee treated such gains as 'LTCG' and claimed exemption u/s 54EC. The AO held such options to be short term in nature and denied exemption benefits and the same was upheld by the CIT(A). The Tribunal held that the options were sold to Infosys Technologies Ltd., without any exercise of option and if ESOP options had been exercised, and shares allotted thereby would have been sold after their allotment, then undisputedly gains arising therefrom would have to be treated as STCG. Further, the Tribunal relied on ITAT Delhi Bench in case of ACIT Vs. Ambrish Kumar Jhamb wherein it was held that, ESOP options provided valuable right to assessee, to exercise and have allotment of shares, thus right of shares constitituted capital asset and the gain on that was to be taxed as long term when held for more than 3 years.Thus, the Tribunal concluded that capital gain arising from transfer of ESOP options should be considered as LTCG.

Go to Index

***N.R. Ravikrishnan vs ACIT- (2018) 54 CCH 0141 Bang Trib- ITA No 2348/Bang/2018 dated 31.10.2018***

**1845.** The Tribunal denied the assessee capital gains exemption under section 54EC of the Act, which provides for exemption on investment in REC bonds, since the investment was made beyond the prescribed period of 6 months from the transfer of capital asset. It held that the period of 6 months was to be reckoned from the date of execution of sale deed and not the date of receipt of consideration since the property stood transferred upon execution of the sale deed.
***Harikrishna R v ITO – TS-136-ITAT-2016 (Bang)***

**1846.** The assessee, one of the two partners of the partnership firm, took over the business as sole proprietor and acquired the capital assets in May 2003 on account of death of other partner on refusal of deceased's legal heir to continue the business. In July 2004, assessee sold the capital asset which was acquired by the firm in the year 1984 and made an investment in REC bonds by treating the asset as Long Term Capital Gain thus claiming deduction u/s 54EC by claiming that the acquisition date would be the date on which the said asset was acquired by the firm in which the assessee at the relevant time was a partner. However, since u/S.45(4)(inserted vide Finance Act,1987), distribution of assets on dissolution of a firm was to be construed as a 'transfer', the Tribunal held the capital asset acquired by the assessee as Short Term Capital Gain and denied exemption u/s 54EC. However, the Tribunal accepted the assessee's contention that the capital gain in the hands of the assessee would be to the extent of difference between the sale consideration of the property in July 2004 and the Fair Market Value of the same in May 2003 leading to the directing the AO to recompute the Capital Gain in the hands of assessee accordingly.
***Amar Kanayalal Nagpal v ITO [2018] 94 taxmann.com 51 (Mumbai-Trib) – ITA NO 1744 OF 2012 dated 30.05.2018***

**1847.** The Tribunal allowed the assessee's appeal and directed the AO to allow the assessee's claim made u/s 54EC on account of investment in NHAI Bonds, which was rejected by the AO on the ground that the same did not appear in income-tax return filed by the assessee. It was noted that since XML file containing computation of income (from computerized return filing software uploaded on e-filing portal of income-tax department) showed that the assessee had claimed deduction on account of investment in NHAI Bonds u/s 54EC but due to software generated error**,** this claim remained to be considered in e-processing of return.
***Rajesh Hasmukhlal Shah v ITO - [2018] 95 taxmann.com 84 (Surat-Trib.) - IT APPEAL NO. 517 (AHD.) OF 2015/SRT dated June 7, 2018***

» *Section 54G*

**1848.** The Apex Court held that Sec 54G gave a period of three years to purchase a new machinery or plant etc. hence there was no compulsion on the assessee to purchase machinery, plant etc. within the same AY in which the transfer took place. It further held that advances paid for the purpose of purchase and/or acquisition of assets would amount to utilization of capital gains earned by the assessee.

Go to Index

***Fibre Boards (P) Ltd. Vs. CIT [CIVIL APPEAL NOS. 5525-5526 OF 2005] - TS-454- SC-2015***

**1849.** The Tribunal held assesse-company was not to be eligible for deduction u/s 54G on sale of its factory building as the same was not situated in notified urban area as stipulated under the said section.
***DCIT v Geneva Industries Ltd. – (2018) 90 taxmann.com 406 (Bang) – ITA No. 1560 & 1628 (Bang) of 2013 dated 19.01.2018***

**1850.** Where deposit of unutilised capital gains was made by the assessee in the Capital gains Account scheme within time limit provided for filing return u/s 139(5) and not u/s 139(1), the Tribunal held that section 139(5) was a part of section 139(1) and hence deposit made within time limit u/s 139(5) would also be entitled for exemption u/s 54G of the Act. The appeal of the Revenue was, accordingly, dismissed.
***Deputy Commissioner of Income Tax v. Kilburn Engineering Ltd [2017] 79 taxmann. com 250 (Kolkata- Trib.) (ITA No 1987 (Kol.) of 2013)***

**1851.** During AY 1995-96, the assessee had entered in to an agreement for selling rights in an industrial plot in Mumbai and had simultaneously shifted its industrial undertaking to nashik (in a non-urban area) but the agreement could not materialize and land was finally sold in 2004 to a new developer and immediately after receiving the sale proceeds the assessee had invested the money in purchasing plant and machinery for the factory at Nashik (which was already operational in 1995) and deposited part of it in capital gains account scheme. The Tribunal allowed the assessee company's claim of exemption u/s 54G with respect to capital gains arising on sale of land and rejected Revenue's denial on the ground that the investment was made in plant and machinery after 9 years of shifting of industrial undertaking. It further clarified that there was no precondition in the section that new machinery should be purchased at the time of shifting of industrial undertaking and that the assessee could purchase machinery even after shifting and commissioning of business from the new premises.
***Everest Industries Ltd. vs. ACIT-TS-410-ITAT-2017(Mum)-ITA no. 815/mum/2007 dated 15.09.2017***

*Others*

**1852.** The Apex Court, relying on the decision in the case of Ghanshyam (HUF) [TS-5026-SC-2009-O], set aside High Court order and held that as per the provisions of the amended section 45(5) in the Income Tax Act, enhanced compensation and interest thereon received by the assessee by an interim order in respect of land acquisition was taxable in the year of receipt.
***Chet Ram (HUF) vs CIT-TS-423-SC-2017 Civil appeal No. 13053 / 2017 dated 12.09.2017***

**1853.** The Court held that amount realised by assessee from sale of a property received as alimony from her husband in terms of decree of divorce, was to be regarded as capital receipt not liable to tax.
***Shrimati Roma Sengupta v CIT - [2016] 68 taxmann.com 177 (CalcuttaHC)***

Go to Index

**1854.** The Court held that where assessee earned long term capital gain from sale of property, in view of fact that assessee had to pay certain liquidated damages in term of earlier agreement to sell which did not materialise, it could be concluded that there was a close nexus and connect between payment of liquidated damages and transfer of property resulting in income by way of capital gains, and, thus amount so paid was eligible for deduction under sec. 48(i)
***Kaushalya Devi v CIT [2018] 92 taxmann.com 335 (DelhiHC) – ITA NO 600 OF 2004 dated 20.04.2018***

**1855.** Where the assessee purchased vacant land in his own name, upon which he constructed residential property in which both he and his wife resided, the Tribunal held that the assessee was not correct in contending that the long term capital gains arising on sale of the said property was to be split between the assessee and his wife and held that since the assessee was the sole owner of the property and the sale deed also stated so, the assessee was to be taxed on the full long term capital gains in his own name.
***RAGHURAM P NAMBYAR & ANR. vs. Assistnat Commissioner Of Income Tax & ANR. - (2018) 52 CCH 0158 BangTrib - ITA No. 2007/Bang/2016, 12/Bang/2014 dated Mar 2, 2018***

**1856.** The Tribunal held that where capital gain has arisen to a non-resident from transfer of shares in an Indian company, mandate of second proviso to section 48 becomes inapplicable and the case gets restricted to the first proviso to section 48 alone; since proviso below section 112(1)(c) provides that tax is payable in respect of income arising from transfer of a long term capital asset before giving effect to provisions of second proviso to section 48. Thus, in such circumstances, tax rate of 10 percent should be applied.
***DDIT vs Mitsubishi Motors Corporation - [2016] 68 taxmann.com 386 (Delhi-Trib)***

**1857.** The Tribunal held that merely because assessee was co-owner of the property it did not mean that the capital gains are partly assessable in her hands if the facts showed that the other co-owner bought the property from his own funds and had showed it as his sole property in the balance sheet.
***ITO vs. Dr.Vandana Bhulchandani (Mumbai-Trib)- ITA No. 978/Mum/2013***

**1858.** Where the assessee purchased IRFC bonds owned by Harshad Metha and sold the same back to him within a short period of 15 days and in this process claimed loss and also received tax free interest from these IRFC bonds, transactions of purchase and sale of bonds in question not being carried on during course of business was not a business activity, hence, provisions of section 94(4) (which only apply in cases where the buying and selling of securities was the business of the assessee) would not be applicable in the case of the assessee and the assessee's claim of short term capital loss could not be denied. It further held that Section 94(4) would apply in the case of the assessee only if the AO applied Section 94(1) in the case of Harshad Metha which was not done so in the instant case.
***DCIT v Growmore Leasing & Investment Ltd - [2017] 87 taxmann.com 294 (Mumbai - Trib.) - IT APPEAL NOS. 1807, 2192 (MUM.) OF 2015 dated 17.11.2017***

***g. Income from Other Sources***

Go to Index

*Business Income v/s Income from Other Sources*

**1859.** Where the assessee received interest from Goshree Island Development Authority on cancellation of auction plots under direction of Supreme Court, the Tribunal held that since interest was emanating from amount paid by assessee pursuant to auction and not directly from its business activities, it could not be considered as business income of assessee and the said interest was to be taxed as 'Income from other sources'.
***Dewa Projects (P.) Ltd v ACIT - [2018] 92 taxmann.com 235 (Cochin - Trib.) - IT APPEAL NOS. 150, 151 & 219 (COCH.) OF 2014 dated MARCH 19, 2018***

**1860.** The Tribunal held that where assessee was engaged in business of real estate development and construction, interest income earned by him from depositing surplus funds in FDRs could not be considered as business receipts rather same was taxable as 'income from other sources'.
***Puran Ratilal Mehta v. Asst. CIT, Circle 23(3), Mum. - [2019] 102 taxmann.com 187 (Mumbai - Trib.) IT Appeal Nos. 1274 to 1279, 1320 to 1325 of 2011 & 6646 of 2012 dated December 5, 2018***

**1861.** Where the assessee which had discontinued its business operations and offered to tax interest income earned from inter corporate deposits in its return as 'income from business', the Tribunal upheld the AO's view that interest income was to be taxed as 'income from other sources' in view of fact that since all along assessee had treated interest income under head 'Income from other sources' and without any change in material facts, same could not be brought under head 'income from business' in assessment years in question. Further, it held that in view of fact that as per memorandum of association main object of assessee-company was to manufacture fregnance and flavours, there was no justification for treating interest income under head 'income from business'.
***Sai Fragrance & Flavours (P.) Ltd. v ACIT – (2018) 90 taxmann.com 307 (Mum) – ITA Nos. 7012 (Mum.) of 2011 & 6085 (Mum.) of 2013 dated 31.01.2018***

*Capital Gains v/s Income from Other Sources*

**1862.** The Tribunal held that surplus arising on transfer of booking rights in office premises in a technology park was to be considered as Income from Other Sources and not long term capital gains as mere making of payment by the assessee to the builder prior to sanction of the building plan cannot said to have yielded a vested right to get a property considering that there was no property in place and no definite process for creating the said property had been initiated. Further it held that at the time of making the advance, the assessee was aware that office premises could be used only for IT activities while the assessee was not into the IT business indicating that there was no intention to buy the premises.
***S Narendrakumar & Co v DCIT (ITA No 7080 / Mum / 2012) – TS-650-ITAT-2015 (Mum)***

*Income from House Property v/s Income from Other Sources*

Go to Index

**1863.** Where assessee vide a license agreement had acquired right to use a shop in a shopping Plaza and earned income in form of sub-license fee which was offered to tax under the head 'income from house property' after claiming statutory deduction in view of various provisions as enshrined u/s 22 to 27, the Court held that for income to be charged under head "income from house property", assessee must be owner of property and since, in the present case, conditions of clause (iiib) to section 27, including provisions of section 269UA(f) referred in the said clause (iiib) were not satisfied, the assessee could not be held to be the owner as defined in section 27. Further, noting that it was not the case of the assessee that the said income was chargeable to tax under head salary, profits and gains of business or profession or capital gains, it held that the said income had to be assessed under residuary head "income from other sources"
***RAM KRISHAN ASSOCIATES & ORS. v CIT & ORS – (2018) 101 CCH 52 (Del HC) – ITA Nos. 731/2005, 732/2005 & 735/2005 dated 31.01.2018***

**1864.** Where the assessee had leased premises which was fully furnished, centrally air conditioned and with adequately power backed generator and offered the rental income under the head 'income from house property', after claiming deduction u/s 24(a), the Court upheld the AO's order and held that the rental income of the assessee was composite rent i.e. both for building as well as he machinery and furniture which was taxable u/s 56(2)(iii). It further held that the assessee was entitled for claim of depreciation u/s 57(iii) and directed the AO to give effect for the same.
***JAY METAL INDUSTRIES PVT. LTD. vs. CIT (2017) 99 CCH 0101 DelHC ITA 308/2016 dated 13/07/2017***

**1865.** The Tribunal held that where the assessee let out his building along with furniture and fixtures and electrical installations, the rental income earned therefrom, being composite and inseparable from each other would be tax under Income from Other Sources and not Income from House Property.
***ACIT v Ajay Kalia – (2016) 66 taxmann.com 99 (DelTrib.)***

*Section 56(2)(vii)/ (viia)*

**1866.** The Tribunal upheld the order of the CIT(A), treating amounts received by the assessee for confirming a sale deed as taxable under the head "Income from Other Sources". It rejected the contention of the assessee that the amount was not taxable as it was a capital receipt and proceeded to tax the receipt under section 56(2)(vii) since the amount was received from a non-relative without any consideration.
***Maheshkumar R Patel v ITO (ITA No.1932, 1933 & 1934 /Ahd/2015) – TS-684-ITAT-2015 (Ahd)***

**1867.** The Tribunal held that the receipt of bonus shares by the assessee could not be taxed under section 56(2)(vii)(c) of the Act, since the recipient of bonus shares could never be considered as receiving something without consideration or for a consideration less than the FMV of the property since a consideration would have flown out from the holder of the shares which would be reflected in the depression in the intrinsic value of shares held by him. Further, it noted that

on receipt of the shares, the assesee's percentage in the total equity shares of the company remained constant.
***DCIT v Rajan Pai – TS-299-ITAT-2016 (Bang)***

**1868.** Where the assessee had acquired shares of one, TEPL which were valued the shares as per rule 11UA of the Income-tax Rules, 1962, i.e., on basis of book value of assets of TEPL and not as per market value of assets, the Tribunal held that the AO was unjustified in making an addition under Section 56(2)(viia) by substituting the valuation adopted by the assessee with the market value and alleging that the difference was the income of the assessee. The Tribunal held that under the provision of rule 11UA there was no reference to the fair market value of the land as taken by the Assessing Officer and accordingly deleted the addition made.
***Minda S M Technocast (P.) Ltd. v Add CIT - [2018] 92 taxmann.com 29 (Delhi - Trib.) - IT APPEAL No. 6964 (DELHI) OF 2017 dated MARCH 7, 2018***

**1869.** Tribunal rejected the stand of assessee-HUF that the shares received by it as gift from Karta's mother (not being a member) were not covered by the provisions of section 56(2)(vii) as it would qualify as gift from 'relative', noting that the proviso to section 56(2)(vii) provides separate definition of 'relatives' in case of individual and HUF and thus the 'relatives' mentioned with respect to an individual cannot be considered when the recipient of the property is an HUF, irrespective of the fact that all the members of the HUF are individuals related to the donor.
***Subodh Gupta (HUF) v Pr.CIT - TS-10-ITAT-2018(DEL) - ITA No. 3571/Del/2017 dated 05.01.2018***

**1870.** The Pr.CIT, while passing order u/s 263 brought to tax the unquoted equity shares received as gift u/s 56(2)(vii) adopting the price at which the said shares were subsequently sold by the assesse to a third party for valuing the same, placing reliance on the definition of 'fair market value' ('FMV') as provided u/s 2(22B). The Tribunal rejected revenue's adoption FMV as provided u/s 2(22B), holding that the valuation was to be done as per the specific Rule 11UA(1)(c)(b) applicable for determining FMV of unquoted equity shares for the purposes of section 56.
***Subodh Gupta (HUF) v Pr.CIT - TS-10-ITAT-2018(DEL) - ITA No. 3571/Del/2017 dated 05.01.2018***

**1871.** The Tribunal held that deemed-gift income-addition under section 56(2)(viia) with respect to group company's shares taken-over by assessee (a closely held company) alleged to be at consideration below FMV was to be deleted as while calculating FMV, provisions of section 56(2)(viia) were not properly and correctly applied in assessee's case and the matter was remanded back for reconsideration.
***Medplus Health Services (P.) Ltd v ITO - TS-129-ITAT-2016(HYD)***

**1872.** The assessee, during year under consideration, made offer to existing shareholders for buy back of 25% of its existing share capital. The AO assessed the difference between book value of shares and purchase price (buy back price) of shares as income of assessee u/s 56(2)(viia) noting that one of the directors from whom shares had been bought back had reinvested amount in the assesse-company in form of loan and thus opining that the entire exercise of buy back

was carried out to reduce liability of company by purchasing shares below fair market value. The Tribunal held that combined reading of provisions of section 56(2)(viia) and memorandum explaining provisions would show that provisions of section 56(2)(viia) would be applicable only in cases where receipt of shares become property in hands of the recipient and shares would become property of the recipient only if it was "shares of any other company". It held that since the assessee had purchased its own shares under buyback scheme and the same had been extinguished by reducing capital, the tests of "shares of any other company" and "becoming property" had failed and, hence, the tax authorities were not justified in invoking provisions of s. 56(2)(viia) for buyback of own shares. Thus, it directed the AO to delete addition made u/s 56(2)(viia).

***VORA FINANCIAL SERVICES P. LTD. vs. Assistant Commissioner Of Income Tax - (2018) 53 CCH 0289 (Mum) - ITA No. 532/Mum/2018 dated June 29, 2018***

**1873.** The Tribunal dismissed the Revenue's appeal and held that Signature villa at Dubai received as 'gift' by assessee from Dubai's leading private limited construction company ('donor company') was not taxable in the hands of the Assessee. It rejected Revenue's stand that the gift transaction was mere camouflage for payment of consideration for brand endorsements performed by the Asssessee for donor company,noting that Assessee was not under any obligation to undertake any sort of brand endorsements. The Tribunal further noted that Assessee's presence at the donorcompany's annual day celebration and further addressing its employees was a mere goodwill gesture and did not mean that Assessee was involved in brand endorsement for donor. Further, the Tribunal observed that amended Sec 56(2)(vii) (which now includes gift of immovable property under its ambit w.e.f October 1, 2009) was not applicable for relevant AY (2008-09) and therefore would not apply in the instant case.

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

**1874.** Where assessee, who was director of a company, alongwith his wife, purchased certain immovable properties from the company at a value lower than the market value determined for stamp duty purposes, Tribunal rejected revenue's contention that the difference between the stamp duty valuation and actual sale value can be added u/s 56(2)(vii)(b) as the amendment empowering AO to assess such difference as income in case of sale of property for a consideration less than stamp duty value of property was incorporated into statute by Finance Act, 2013 with effect from 1-4-2014 and, hence, not applicable for AY 2011-12 and 2012-13 being the years under appeal.

***Keshavji Bhuralal Gala v ACIT – (2015) 169 ITD 23 (Mum) – ITA Nos. 4938 of 2016 & 6023 of 2014 dated 08.01.2018***

**1875.** The assessee was an executive director of Dorf Ketal Chemicals India Pvt Ltd. ("Company"). On 28.01.2010 the assessee acquired 20,94,032 shares of company at 100 per share at face value for a consideration of 20.94 crores. According to the AO under Rule 11UA(c), the FMV of shares of company was Rs.1,4389.64. Therefore, the difference in share value was brought to tax u/s.56(2)(vii)(c). According to the AO, assessee being a salaried employee the shares allotted to him could also be treated as perquisite or profit in lieu of salary u/s.17. The Tribunal dismissed Revenue's appeal holding that provisions of section 56(2)(vii) did not apply to rights

shares offered on a proportionate basis even if the offer price is less than the FMV of shares. Further as regards the contention of Revenue that assessee was allotted disproportionate allotment would not be applicable as the assessee applied for and was allotted a lesser than proportionate share offered to him and his shareholding reduced from 34.57% to 33.30%. It further noted that transaction of issue of shares was carried out to comply with a covenant of the loan agreement with the bank to fund the acquisition of the business by the subsidiary in USA. Thus, the shares were issued by Company for a bonafide reason and as a matter of business exigency. The CBDT Circular No.2/11 explaining the provisions of section 56(2) (viic) supported the case of assessee that the intention was not to tax transactions carried out in normal course of business or trade, the profit of which are taxable under the specific head of income. As regards the alternate contention of the AO that the same could be considered for taxability as a perquisite u/s.17, the Tribunal held that the provisions of sec 17 do not apply to shares allotted by Company to the assessee, as the shares were not allotted to the assessee in his capacity of being an employee of the company. They were offered and allotted to assessee by virtue of the assessee being a shareholder of the company.

***Asst CIT vs Subodh Menon (Mumbai) (2018) 54 CCH 0375 MumTrib ITA No. 676/Mum/2015, 2776/Mum/2015 dated 07.12.2018***

**1876.** During relevant year, the assessee raised certain loan from SFC. The assessee paid said amount as advance for purchase of one flat. In course of assessment, the Assessing Officer opined that in absence of a legally enforceable repayment agreement, amount received from SFC could not be regarded as loan and same was to be added to the assessee's income by invoking provisions of section 56(2)(vii). The Commissioner (Appeals) noted that amount given to the assessee had been also filed a confirmation before the Assessing Officer from SFC during course of assessment proceeding. The Commissioner (Appeals), thus, deleted addition made by the Assessing Officer. The Tribunal held that when in case of SFC, amount in question was regarded as loan, the revenue could not take up a contrary stand in the assessee's case and treat same loan in hands of the assessee as gift or a sum received without consideration taxable under section 56(2)(vii)(a). Therefore, the Commissioner (Appeals) was justified in deleting the impugned addition.

***ITO v. Paramveer Abhay Sancheti [2018] 95 taxmann.com 258 (Nag. Trib.)- ITA No. 215 (NAG.) of 2015 dated July 2, 2018***

**1877.** Assessee was shareholder in company, JMPP. There were total seven shareholders in company and all of them were close relatives of assessee. Company issued shares at rate of Rs. 100 per share under rights issue. Assessee alone had applied for rights issue and company had allotted shares to assessee. Fair market value of shares was Rs. 416.38 per share. Principal Commissioner invoked revision under section 263 for reason that assessee had received shares for value lesser than book value; therefore, provisions of section 56(2)(vii)(c) would be attracted and differential amount between book value and price paid by assessee for shares required to be brought to tax under head 'income from other sources'. The Tribunal held that transactions between close relatives are outside scope of application of section 56(2)(vii)(c) and as, in instant case, transaction of transfer of shares was within family and close relatives, proviso to section 56(2)(vii)(c) clould not be applied for taxing income under head 'income from other sources.

Go to Index

***Kumar Pappu Singh v. Dy.CIT, Circle-1, AP- [2019]101 taxmann.com 122(Vishakhapatnam Trib)-ITA No.270(viz.) of 2018-dated December 7, 2018***

*Section 56(2)(viib)*

**1878.** The Court held that in case of a company in which public is not substantially interested, any premium received by said company on sale of shares, in excess of its face value (to the extent it exceeds FMV), would be treated as income from other sources u/s 56(2)(viib), irrespective of the fact that the source of the funds or genuineness of the share applicant is proved as required by section 68. It held that where the company is not able to explain nature and source for credit (entire share application money / share capital) in books of account or explanation offered is not satisfactory, the entire credit would be charged to tax u/s 68. However, if an explanation is offered and it is satisfactory, then charge to tax will only be to that portion exceeding FMV determined, which any way has to occur u/s 56(2)(viib).
***Sunrise Academy of Medical Specialities (India) (P.) Ltd. v ITO [2018] 96 taxmann.com 43 (Kerala) - WA. NO. 1297 OF 2018; WP(C) NO. 3485 of 2018 dated July 12, 2018***

**1879.** The Tribunal held that where assessee issued compulsory cumulative convertible Preference Shares (CCCPS) at huge premium, in view of fact that as per 'Letter of Offer', holder of preference share was also given voting right on various resolutions, it became necessary to look into all terms of issue of preference shares so as to find out whether receipt of share premium in question was for issue of preference shares or for issue of equity shares and for said purpose matter was to be remanded back for disposal afresh in terms of rule 11UA.
***2M Power Health Management Services (P.) Ltd. v. ITO, Ward-7(1)(2)-[2019] 102 taxmann.com 96 (Bangalore - Trib.)-IT Appeal No. 2880 (BANG) of 2018-dated December 21, 2018***

**1880.** The Tribunal restored the issue of addition of share premium amount received by the assesee-company on substantive basis u/s 68 and protective basis u/s 56(2)(viib) back to the AO with the direction (i) to AO - to do objective evaluation of the share valuation report submitted by the asessee (showing that the share were issued at the fair market value) and (ii) to assessee - to provide supporting evidences to substantiate the estimate of cash flow considered for valuation done on discounted cash flow (DCF) basis. Noting that the AO had rejected the valuation report on the ground that the the projected cash flow at the time of the valuation did not materialize in subsequent years, it held that if AO's such contention is accepted then the basic fallacy would arise that discounted future cash flow should be equal to the actual cash flow of the assessee. However, the Tribunal also held that if wide variations in with actual results compared with the projected cash flow subsequent years is accepted then provisions of section 56(2)(viib) would become redundant. Accordingly, it held that there was a need to do objective evaluation of the valuation report submitted.
***Stryton Exim India Pvt Ltd v ITO [TS-616-ITAT-2018(DEL)] - ITA No. 5982/Del/2018 dated 23.10.2018***

**1881.** The assessee allotted equity shares considering the provisions of Section 56(2)(viib) read with Rule 11UA after obtaining valuation report from a merchant banker wherein fair market value of

shares was computed on the basis of Discounted Cash Flow. The AO rejected the valuation report and made an addition under Section 56(2)(viib). The Tribunal observed that the AO should have made a reference to the Valuation Officer on rejecting the valuation report provide by the assessee. However, as the assessee failed to provide any evidence to substantiate the basis of projections in the valuation report, the Tribunal upheld the order of the AO and CIT(A) and held that rejection of assessee's valuation report was justified and in absence of the such evidences, referring the matter to the Valuation Officer did not also serve any purpose.
***AGRO PORTFOLIO PRIVATE LTD. vs. ITO – [2018] 53 CCH 0043 (Del ITAT) – ITA No. 2189/Del/2018 dated May 16, 2018***

**1882.** Tribunal deleted the addition made u/s 56(2)(viib) by the AO adopting the FMV (Rs.26.69 per share) computed as per the Net Asset Value (NAV) method with respect to shares issued by the assessee-company, where the assesse-company had issued the shares at a price which was within the FMV (Rs.54.98 per share) computed as per the Discounted Cash Flow (DCF) method. , rejecting the adoption of Net Asset Value (NAV) method . It held that DCF method is one of prescribed method and that the AO had not found any serious defect in facts and details used in determining fair market value under the said method.
***ACIT v Safe Decore (P.) Ltd. – (2018) 90 taxmann.com 161 (Jaipur Trib) – ITA No. 716 (JP) of 2017 C.O. No. 36 (JP.) of 2017 dated 12.01.2018***

**1883.** The Tribunal allowed assessse's appeal and deleted the addition which was made by the AO u/s 56(2)(viib) by rejecting the FMV of shares determined by the assessee on the basis of valuation report prepared as per guidelines given by ICAI following Discounted Cash Flow (DCF) method and determing FMV based on Net Asset Value (NAV) method. It held that when law [i.e. section 56(2)(viib) r.w. Rule 11UA(2)(b)] had specifically given an option to assessee to choose any of method of valuation of his choice and assessee exercised an option by choosing a particular method (DCF), changing method or adopting a different method would be beyond powers of revenue authorities. Further, it noted that the AO not found any fault in the valuation reports.
***Rameshwaram Strong Glass (P.) Ltd. v ITO [2018] 96 taxmann.com 542 (Jaipur - Trib.) – ITA No. 884 (JP) OF 2016 dated July 12, 2018***

**1884.** The Tribunal deleted addition u/s. 56(2)(viib) in case of assessee-company (engaged in investment and financing) with respect to issuance of 0.1% redeemable non-cumulative preference shares ('RNCPS', of face value Rs.10 per share) at a premium of Rs.1,990 per share during AY 2013-14. It upheld the the fair market value ('FMV') determined by the valuer and rejects valuation arrived at by AO. It noted that the AO determined the FMV of the preference shares at Rs.1285.41/- per share (adopting 15% discount factor) as against the FMV of Rs.2,000/- determined by the valuer (adopting 10% discounting factor) and made addition u/s. 56(2)(viib) of Rs.14. 64 cr and held that the method followed by the valuer who arrived at 10 percent based on the rate of return on preference shares issued by other companies for the relevant period. However, it rejected the assessee's contentions that AO could not disregard valuation report from an independent accountant and that in case the AO was not satisfied with the value determined by the expert valuer, then the only option was to get it done by another

expert valuer and held that the AO not only has a right but he is also duty bound to examine the valuation report, evaluate it and record his findings on the same.
***Microfirm Capital Pvt. Ltd v DCIT - TS-587-ITAT-2017(Kol) - I.T.A. No. 513/Kol/2017 dated 30.11.2017***

**1885.** The Tribunal held that the provisions of section 56(2)(viib) are applicable to only those transactions which are entered into after 1-10-2009.
***ShailendraKamalkishoreJaiswal v ACIT [2018] 94 taxmann.com 39 (Nagpur – Trib.) – ITA NO. 18 OF 2015 dated 11.05.2018***

*Deduction u/s 57*

**1886.** The Court held that where the assessee had taken a loan and advanced part of the loan to another company, the interest paid on the loan taken was in the nature of expenditure wholly and exclusively laid out for the purpose of earning interest income and was to be netted against income from other source as per section 57(iii) of the Act.
***Vodafone South Limited v CIT – (2015) 94 CCH 0026 Del HC***

**1887.** During assessment proceeding, AO noted that assessee was incorporated for exploration, development and production of oil and gas. Assessee entered into a business transfer agreement with M/s JCPL and M/s JSPL for acquiring their 20% and 35% participatory interest in A Block and G Block. Due to formalities and want of approvals, actual transfer of interest was not materialized. In absence of business operations, AO held that interest paid to a sister concern was not allowable as a revenue expense and should be capitalized. Also interest on FDRs in bank and ICDs with sister concerns earned by assessee were taxable under head 'income from other sources' and not as 'business income'. CIT(A) confirmed AO's action. The Tribunal granted relief to assessee. The Court held that, Tribunal agreed and accepted that money received by assessee under ICDs was in preceding year. Thereafter, another amount was transferred and given as ICDs to M/s J also in preceding year. There was a nexus between interest paid @ 12 % p.a. and interest received @ 12.5% p.a. Assessee had earned interest of half percent. Even if interest received was taxable under head 'income from other sources', interest paid was deductible u/s 57. AO referred to original business transfer agreement between assessee and M/s JCPL and M/s JSPL. Assessee had incurred expenses of more than Rs.2,00,000/- on operations and support staff. ITAT opined that business had commenced as assessee had entered into business transfer agreement. It could be urged that this finding was not detailed, albeit assessee had furnished performance bank guarantee for M/s JCPL and M/s JSPL. Thus, performance guarantees for two blocks were given by assessee. Interest earned on FDRs obtained to procure performance bank guarantees was connected with two oil blocks. Tribunal mentioned that CIT(A) had allowed deduction u/s 35D thereby indirectly accepting that assessee had commenced business. Assessee had advanced more than Rs.12.11 Crores to M/s JCPL in furtherance to business transfer agreement to meet cash call for participatory interest in A Block. The Court held that the Tribunal's finding that business was 'set up' had sufficient backing and support from material and evidence referred to in impugned order. However, objection regarding 'commencement of business had lost much significance and importance in view of direct nexus between interest paid and interest received on ICDs. Interest

paid to earn interest had to be allowed as a deduction u/s 57 as opposed to capitalization of the same by the AO on the alleged ground that businsess had not commenced. Revenue's appeal was dismissed.

***Pr. CIT vs Jubilant Energy Nelp- V- Pvt ltd- (2018) 103 CCH 0293 DELHC- ITA 1440/2018 dated Dec 12, 2018***

**1888.** The Tribunal disallowed the claim of deduction u/s 57 of the assessee for PMS charges, salaries, professional charges against the dividend/interest income. The Tribunal referring to sec 57 noted that, the case of the assessee's claim was outside the ambit of section 57(i), Further with respect to section 57(iii) the Tribunal stated that the assessee failed to establish that the above expenditure was wholly and exclusively for the purpose of earning interest/dividend. The Tribunal also rejected the assessee's alternative plea that even if expenses were not allowable u/s. 57, the same should be allowed against income from capital gain in the present year or future years by stating that the claim of expenses in present case was not for those expenses which were incurred on account of transfer of asset or cost of acquisition / improvement of asset as contemplated u/s. 48 of the Act.

***Sh. M.J. Aravind vs JCIT (2)(3) Bangalore – TS-226-ITAT-2018(Bang)- ITA No. 1991/Bang/2016***

**1889.** The Tribunal dismissed Revenue's appeal for AY 2008-09 & held that pre-operative expenses towards audit fees, salaries, legal and professional charges, financial and bank charges were allowable u/s 57(iii) since such expenditure was essential for retaining assessee's corporate entity status. It noted that the AO had not questioned genuineness of expenses, but disallowed them on the ground that the assessee had only acquired land and manufacturing facilities during the subject year and thus its business was not set up and accepted assessee's reliance on plethora of judicial precedents wherein it was held that where a "company had to file various statements and returns and perform various functions to retain its status as a company for which it had to incur certain expenditure , such expenditure was allowable as deduction under section 57(iii) of the Act.

***ACIT vs. L.S.Cable India Pvt Ltd. TS-58-ITAT-2017(DEL) ITA No.1257/Del/2012 dated 09.02.2017***

**1890.** Tribunal upheld AO's action of denying exemption to the assessee, a mutual benefit company, with respect to its interest income derived from Fixed Deposit Receipts and Savings Bank Account and taxing the same as Income from Other Sources. It rejected assessee's contention of allowing proportionate expenditure applying the methodology laid down u/s 14A r.w. Rule 8D, observing that this may not give appropriate amount/ correct expenditure. However, noting that interest income formed major part of the income of the assessee, Tribunal directed AO to consider 10% of the receipts being taxed as an 'expenditure laid out wholly and necessarily for earning the interest income' taking support from the provisions of section 80HHC and work out the taxable income.

***Hyderabad Mutual Benefit Society v ITO - TS-607-ITAT-2017(HYD) - ITA No. 692 & 693 of 2017 (HYD) dated 29.12.2017***

Go to Index

**1891.** The Tribunal upheld the CIT(A)'s order rejecting the assessee's claim for deduction of certain expenses u/s 57 from "Income from Other Sources' for want of documentary evidence to show that the said expenses were incurred wholly and exclusively for purpose of earning income declared under head income from other sources. It was noted that the assessse had not furnished any independent evidence the regard to the receipt of the commission income, other income and share of profit itself and thus the same was not subjected to verification. Similarly, documentary evidences of various expenses claimed such as depreciation on fixed assets, legal fee, interest expense, etc. were also not produced nor their co-relation with the aforesaid income was established.

***ITO & Ors v Vijay Mangal & Ors. (2018) 52 CCH 0373 JaipurTrib - ITA No. 276/JP/2017dated 18.04.2018***

**1892.** Where the Assessee claimed interest charged by bank on housing loan as deduction under Section 57 of the Act against interest income earned from various parties to whom the advances were given, the AO disallowed such interest claimed under Section 57 of the Act. The CIT(A) upheld the order of the AO. The Tribunal held that the assessee demonstrated that she had earned substantial interest income out of advances given from amount so borrowed from bank. Tribunal held that since there was no finding by the AO or the CIT(A) that interest earned were not out of interest bearing funds taken from bank, the matter was restored back to the file of the AO to decide the matter afresh. Thus, the Assessee's appeals were allowed for statistical purposes.

***ANURADHA AGARWAL & ORS. vs. ITO & ORS. (JODHPUR TRIBUNAL) (ITA No. 498 to 500 of 2017)) dated May 25, 2018 (53 CCH 0132)***

**1893.** The Tribunal rejected assessee's claim for deduction u/s 57(iii) with respect to expenses incurred by way of D-mat charges, legal expenses and medical relief expenses against the interest income earned on FDRs and bank accounts which was assessed under head 'income from other sources', since the assessee could not establish that aforesaid expenses were incurred wholly and exclusively for purpose of earning interest income [the same being a pre-requisite condition for allowability of such expenditure as a deduction u/s 57(iii)].

***Bank of India Retired Employees Medical Assistance Trust v ITO(E) [2018] 96 taxmann.com 277 (Mumbai - Trib.) – ITA No. 6469 (MUM.) of 2016 dated July 11, 2018***

**1894.** Where the assessee-company was not engaged in carrying on any business activity of acquisition of shares but in making long-term investments and the dividend income earned on such investment was taxable under head 'Income from other sources', the Tribunal held that any expenditure incurred to earn dividend income including finance charges was to be allowed u/s 57(iii). However, since, the assessee had failed to furnish any details in respect of investments which earned income and investments which did not earn dividend income for year under consideration, the Tribunal upheld the CIT(A)'s order directing the AO to allow finance charges on proportionate basis in respect of investments which earned dividend income after verifying facts.

***Asia Investments (P.) Ltd. v ACIT – (2018) 91 taxmann.com 431 (Mum) – ITA Nos. 7539 (Mum.) of 2013 and 62 & 4779 (Mum.) of 2014 dated 23.02.2018***

Go to Index

**1895.** For AY 2003-04 to AY 2008-09, the AO had rejected assessee's claim that the rent received on sub-letting the property and service charges for rendering certain services relating to such letting out should be assessed as income from business. He instead assessed the same as income from house property, thereby not allowing deduction for business expenditure. The CIT(A) confirmed the AO's order. Tribunal upheld the decision of the authorities below to assess the rental income as income from house property. As regards the service charges, the Tribunal directed that the same should be assessed as income from other sources and the expenditure incurred by the assessee should be allowed as per the provisions of section 57. Subsequently, under the order passed by the AO, giving effect to the above order of the Tribunal, he held that the assessee's claim for depreciation and other expenses like corporate expenses, etc. were inadmissible as per section 57 as the said expenses had no direct nexus with earning of service charges. The CIT(A) upheld the said order passed by the AO to give effect to the Tribunal's directions. Further, before the CIT(A), the assessee had also submitted that the Tribunal in the assessee's own case for AY 2009-10 had reversed its order for AY 2003-04 to AY 2008-09 (referred above), allowing the assessee's appeal. However, the CIT(A) refused to follow the Tribunal's order for AY 2009-10 in view of the Tribunal's binding order for AY 2003-04 to AY 2008-09. On further appeal, the Tribunal held the CIT(A) was correct in following the said binding order. Further, with respect to the assessee's contention that the AO had not followed the Tribunal's directions correctly, it held that the AO and the CIT(A) had correctly followed the Tribunal's earlier order, giving detailed findings. [It is to be noted that in the present case, the Tribunal had rejected the assessee's adjournment petition and decided the matter ex-parte.]
***PROLIFIC VENTURES PRIVATE LIMITED vs. INCOME TAX OFFICER - (2018) 52 CCH 0267 MumTrib - ITA Nos. 38 to 43/Mum/2018 dated April 2, 2018***

**1896.** The AO disallowed the brokerage expenses claimed by assessee u/s 57 against interest income on ground that assessee failed to file details and supporting evidence. The Tribunal upheld CIT(A)'s order allowing assessee's claim by noting that copies of debit notes of brokers were already submitted during assessment proceedings which the AO had not considered. Accordingly, Revenue's appeal was dismissed.
***Asst CIT vs Girish Matlani [2018] 54 CCH 0253 (Mum Trib) - ITA No.5105/Mum/2016 dated 20.11.2018***

**1897.** The Tribunal denied deduction u/s 57(iii) to the assessee, a members club, of expenses incurred for upkeep of the club and other facilities including the depreciation charged on various assets against the interest income received from FDRs kept in bank which represented the membership fees received by the assessee from its members and taxable u/s 56 as 'income from other services'. It held that the eligibility for deduction u/s 57(iii) arises only if expenditure has been laid out wholly and exclusively for purpose of earning income which was chargeable under the head 'income from other sources' and since assessee failed to establish nexus between expenditure incurred under various heads including depreciation and had also failed to justify apportionment of expenditure to earning of interest income, its claim was rightly rejected by the lower authorities below.
***Poona Club Ltd. v ACIT – (2018) 90 taxmann.com 422 (Pune) – ITA Nos. 1068 & 1069 (Pune) of 2014 dated 23.01.2018***

Go to Index

*Others*

**1898.** The assessee issued Optional Fully convertible Debentures (OFCD) and earned interest from bank on fixed deposits which were made from the amount received on issue of OFCD. It claimed the interest to be capital receipt, not chareable to tax, on the ground that the debentures were issued for purpose of setting up of hydro electric power projects. The Court noted that the CIT(A) as well as the Tribunal had recorded the finding that there was neither setting up nor commencement of business by assessee during the year under appeal and thus the amount received in form of OFCD was not received for purchase of plant and machinery. Therefore, the Court held that the interest earned from said amount could not be said to be inextricably linked with setting up of plant and machinery and the same could not be capitalized. Accordingly, it held that the Tribunal had rightly assessed interest earned by assessee under head 'income from other source' and dismissed the assessee's appeal.
***Shree Maheshwar Hydel Power Corporation Ltd. v CIT [2018] 96 taxmann.com 167 (BombayHC) – ITA No. 67 OF 2016 dated July 17, 2018***

**1899.** The Tribunal held that where deemed income under section 68 of the Act was not chargeable under the first four heads of income, the same was assessable as income from other sources. It further held that the assessee was eligible to set off such income against business losses and noted that the amendment to section 115BBE denying such set off was brought about as an amendment to Finance Act, 2016 with prospective effect.
***Satish Kumar Goyal v JCIT – TS-327-ITAT-2016 (Agra ITAT)***

**1900.** The Tribunal remitted the issue of taxation of gift received by the assessee from from the wife of elder brother of assessee's husband back to the CIT(A), noting that the CIT(A) had simply brushed aside documentary evidence filed by assessee with the observation that affidavit, confirmation and the cheque just explained receipt of amount by assessee but not genuineness of gift, without even discussing the contents of documentary evidence filed by the assessee as well as the statement of donor. It held that it was, thus, case of non reading and misreading of material documentary evidence brought on record by assessee before CIT(A).
***PRIYA ARORA vs. ITO (2018) 53 CCH 0334 AgraTrib – ITA No. 347/Agra/2016 dated 13th July, 2018***

**1901.** The Tribunal held that interest received by the assessee on enhanced compensation for loss of physical abilities in a motor accident was not taxable under section 56(2)(viii) read with section 145A(b) of the Act since the award of compensation under motor accidents claims could not be regarded as income in the first place and therefore there was no question of taxing interest income incidental to it. The Tribunal further held that Section 56(2)(viii) of the Act was not a charging section and only provided taxation of interest income in the year of receipt as against the year of accrual and therefore where the interest was not in the nature of income in the first place, 56(2)(viii) was not applicable.
***Urvi Chirag Sheth v ITO – TS-302-ITAT-2016 (Ahd)***

**1902.** The Tribunal held that for purpose of sub-rule (2) of rule 11UA, an auditor cannot be accountant of assessee company. Therefore, where person who valued shares of assessee-company was

none other than person who signed audit report under section 44AB, Assessing Officer was justified in ignoring valuation report submitted by assessee and determining fair market value on basis of NAV.

***Kottaram Agro Foods (P.) Ltd. v. Asst. CIT (ODS), Range-4(1), Bangalore-[2019] 102 taxmann.com 183 (Bangalore - Trib.)-IT Appeal Nos. 2852 & 2853 (Bang) of 2018- dated December 28, 2018***

**1903.** The Tribunal set aside the AO's action in taxing the interest received by the assessee-company on refund of income-tax pertaining to various non-resident companies (which were received by assessee for reason that tax liability of these companies was upon the assessee) at the tax rate applicable to foreign companies i.e. 48% as against the assessee offering the said income at the tax rate applicable to it. The Tribunal held that it failed to understand how the tax rate of non-resident companies would be applied on the said interest income earned by the assessee on the refund of Income tax when the rate of interest was determined by the Income tax Act. It was also noted that in subsequent year the CIT(A) had decided the issue in favour of the assessee and the Revenue was advised not to file an appeal before the Tribunal against CIT(A)'s order.

***OIL AND NATURAL GAS CORPORATION LTD. & ANR. vs Addl CIT[2018] 53 CCH 0462 (Del Trib) ITA NOS. 357 /Del /2005 DATED AUGUST 17,2018***

**1904.** AO had charged interest on advances as income of assessee. AO calculated interest accrued on FRD/TDR as per form 26AS, statements filed by bankers' proof of TDS statement deducted. The Tribunal held that, merely because assessee had treated such income differently, or that in year under consideration, initially had paid advance tax on suchbasis, it would not be conclusive of nature of income. What needed to be ascertained was whether assessee was legally correct in asserting that income did not belong to assessee, but government of Gujarat, and that therefore, it could not be taxed in hands of assessee. Assessee had been disclosing such income earlier till AY 2009-10. It was case of assessee that in light of letters of Government of Madhya Pradesh interest income accrued on fixed deposits could not be said to be income of assessee. As there was no dispute with regard to fact that as per terms of letters dated 23.3.2010 & 30.08.2018, assessee was required to spend interest income as per direction of Government, AO was directed to delete the addition.

***M.P Police Housing Corporation Ltd vs ACIT- (2018) 54 CCH 0076 IndoreTrib- ITA No 383/Ind/2013, ITA No 259& 260/Ind/2015, ITA No 269,449/Ind/2016 and ITA No 125/Ind/2017 dated 10.10.2018***

**1905.** The Tribunal allowed assesse's appeal and deleted the addition made by the AO on account of interest on advance made to a firm, noting that (i) it was demonstrated by the assessee that advance so made had become non-recoverable and accordingly, no interest had accrued to assessee (ii) assessee had nowhere claimed it as business advance, rather it was a simple loan on which assessee was earning interest and offering same for tax till some years back.

***Sachidanand Madhukarrao Chitale vs Asst.CIT [2018] 54 CCH 0165 (IndoreTrib) ITA No. 15/Ind/2017 dated 02.11.2018***

Go to Index

**1906.** The Tribunal though not agreeing with the view of the Co-ordinate bench wherein the assessee was allowed to net off interest paid to the Department against the interest received from the Department, followed the said order of the Tribunal. It ruled against referring the matter to a larger bench since it was not of wide import. Further, it expressed its reservations that the interest paid and interest received had no nexus and while interest payable on income tax was not deductible as an expense, interest received on refund was taxable as income from other sources and netting off the two would result in the assessee not paying tax on interest income to that extent.
***Lupin Ltd – TS-334-ITAT-2016 (Mum)***

**1907.** Where the assessee entered into an agreement with Shapoorji Pallonji & CO Ltd ('the company') pursuant to which the company provided the assessee a business advance which was to be used by the assessee for purchase of the land for the company, the Tribunal held that the AO erred in taxing the receipt business advances u/s 56(2)(vi) merely on conjecture / surmises contending that the receipt of money was for no consideration, without appreciating the assessee furnished a copy of the board resolution passed by the company approving the advance to the assessee and the company also confirmed that it had provided advance to the assessee in pursuance of the agreement. It held that the AO failed to establish how the business advance represented the assessee's income and accordingly deleted the addition made by the AO.
***Shri Nilesh Janardan Thakur v ITO - I.T.A No.3738/Mum/2013***

**1908.** The Tribunal dismissed Revenue's appeal, and held that the amount of Rs. 1 Cr received as a gift by individual-assessee in contemplation of death of a person (with whom assessee was closely associated with) was exempt u/s. 56(2)(v)(d) proviso as the conditions set out in Sec.191 of Indian Succession Act (so as to constitute a valid gift in contemplation of death) were fully satisfied. The AO denied assessee's claim of exemption u/s. 56(2)(v)(d) proviso on the ground that FDRs and cheques amounting to Rs 1 Cr. were received by assessee from sister of the deceased and hence could not be said to have been received in contemplation of death. The Tribunal noted that before her death, the deceased expressed her will to give gift to the assessee and accordingly handed over cheques and FDRs to her sister, shortly after which she died and further observed that the sister of the deceased not only endorsed the existence of oral will/wish of her elder sister but also ensured that her sister's will was fulfilled by facilitating encashment of FDRs to the assessee by way of filing an affidavit to that effect which clearly stated that the amount of Rs.1 crore has been given to assessee in accordance with the last wish of her sister (deceased). Accordingly, the Tribunal dismissed the AO's denial of exemption.
***Vijayraj Uttamchand Mundada [TS-146-ITAT-2018(PUN)] - ITA No.592/PUN/2014 dated 01-03-2018***

### *h. Deemed Dividend*

**1909.** The Apex Court stayed the operation of the High Court's order wherein the High Court had upheld deemed dividend taxability on the advances received by the assessee-company from another company (in which it had more than 10% shareholding), rejecting the assesse's contention that the advance was received as 'advance in the course of business'. The High

Court had noted that the AO had carried out extensive and painstaking enquiry which indicated that the assessee had utilized the advances for purchasing shares and giving loans and, thus, it was concluded that the advance was used by the assessee for its own purpose.
***M/S NEGOLICE INDIA LTD v CIT - [TS-280-SC-2018] - Petition(s) for Special Leave to Appeal (C) No(s). 10006/2018 dated May 04, 2018***

**1910.** The Supreme Court by applying the provisions of Explanation 3 to Section 2(22)(e) upheld deemed dividend addition in hands of the assessee HUF in respect of loans/advances received from one concern (in which it beneficially held more than 10% share-capital) since the shareholder (i.e Karta in this case) was a member of the said HUF and had substantial interest in the HUF (being its karta). Rejecting the assessee's reliance on the co-ordinate bench ruling in C.P. Sarathy Mudaliar wherein it was held that HUF cannot be a shareholder of a company, the Apex court remarked that Mudaliar judgment was rendered in context of Sec 2(6A)(e) of the erstwhile Income Tax Act, 1922 wherein there was no provision like Explanation 3 to section 2(22)(e). Further, observing that in the audited return of the company, the assessee-HUF was shown as the registered and beneficial shareholder despite share certificate issued in the name of the Karta and also the money towards shareholding in the company was paid by assessee-HUF. The Apex court held that it was not even necessary to determine as to whether HUF can, in law, be beneficial shareholder or registered shareholder in a Company.
***Gopal & Sons (HUF) [TS-1-SC-2017]***

**1911.** The Apex Court confirmed High Court ruling wherein it was held that deemed dividend was not taxable in the hands of recipient concern, if such concern was not a shareholder of lender company. The Court held that the High Court order was a detailed judgment going into section2(22)(e) of the Act and accordingly, there was not infirmity in the order.
***Ankitech Pvt Ltd-TS-462-SC-2017 CIVIL APPEAL No. 3961 OF 2013 dated 05.10.2017***

**1912.** The Apex Court dismissed Revenue's appeal and upheld the order of the High Court wherein it was held that any payment by a closely-held company by way of advance or loan to a concern in which a substantial shareholder is a member holding a substantial interest is deemed to be "dividend" on the presumption that the loans or advances would ultimately be made available to the shareholders of the company giving the loan or advance. However, the legal fiction in s.2(22)(e) does not extend to, or broaden the concept of, a "shareholder". As the assesse was not a shareholder of the payment company, the dividend was not assessable in its hands.
***CIT vs Madhur Housing and Development company – CIVIL APPEAL No. 2076 of 2012 dated 05.10.2017***

**1913.** The Apex Court upheld the order of the High Court wherein the High Court rejected the Revenues invocation of section 2(22)(e) since the loan was granted by the firm in which the assessee was a partner and not the company in which he was a shareholder and that the deeming fiction in section 2(22)(e) could only be extended to interpret dividend and not the definition of shareholder. It rejected the Revenues stand that the loan transaction was a façade as the Revenue had failed to establish that the transaction was a tax evasion ruse.
***CIT v Subrata Roy Sahara – SPL No 18598 -18599 / 2015***

Go to Index

**1914.** The assessee- partnership firm consisting of three partners, namely, 'N', 'S' and 'J' Ltd. having a profit sharing ratio of 35%, 15% and 50% respectively, had taken a loan from 'J' ltd. (wherein the assessee-firm had subscribed to the equity capital in the name of two of its partners, namely, 'N' and 'S' totalling 48.19% of the total shareholding). Thus, 'N' and 'S' were shareholders on the company's register as members of the company. They held the aforesaid shares for and on behalf of the firm, which happened to be the beneficial shareholder. The question arose as to whether for section 2(22)(e) got attracted in as much as a loan had been made to a shareholder being a person who is the beneficial owner of shares holding not less than 10% of the voting power in the assessee-company, and whether the loan was made to any concern in which such shareholder was a partner and in which he had a substantial interest (which is defined as being an interest of 20% or more of the share of the profits of the firm). The Apex Court held that for the purpose of attracting provisions of section 2(22)(e), after the amendment made in in 1987, it was not necessary for a beneficial owner to also be the registered owner. However, since the assessee placed reliance on the decision in the case of CIT v. Ankitech (P.) Ltd. (2012) 340 ITR 14 (Del HC) wherein it was held that the expression "shareholder" would continue to mean a registered shareholder even after the amendment and the same was affirmed by the Apex Court in the case of CIT v. Madhur Housing & Development Co. [Civil Appeal No. 3961 of 2013], the Apex Court placed the matter before the Chief Justice of India in order to constitute an appropriate Bench of three learned Judges in order to have a relook at the entire question.
***National Travel Services v CIT – (2018) 401 ITR 154 (SC) – Civil Appeal Nos. 2068 to 2071 of 2012 & 837 of 2018 dated 18.01.2018***

**1915.** The Court dismissed Revenue's appeal and upheld Tribunal's order deleting addition made u/s 2(22)(e), noting that the assessee never received "Payment" of "any sum" as required under the said section. It was noted that the amount credited to the sister concern's a/c in books was only an accounting entry which was reversed in subsequent year since the cheque received from the said sister concern was not accepted by the assessee (and was subsequently cancelled).
***COMMISSIONER OF INCOME TAX vs. M/S ASSOCIATED METALS CO. – [TS-179-HC-2018(ALL)] - ITA No.532 of 2011 dated 01.12.2017.***

**1916.** The Court held that where the assessee received advances from a company engaged in the business of investment and finance, the advances were given in the ordinary course of business and therefore would fall within the exception clause (ii) of section 2(22)(e) of the Act and could not be considered as deemed dividend.
***CIT vs. Goel Investment Ltd. (2016) 97 CCH 0036 (Allahabad HC) (ITA No. 419 of 2006)***

**1917.** The Court held that any payment by a private company by way of advance or loan to a shareholder holding not less than 10 percent of the voting powers of the company would not be classified as deemed dividend if the loan or advance was made in the ordinary course of its business where the lending of money was a substantial part of the business. For the meaning of substantial part of business, the Court held that it was not possible to give a fixed definition of the term and any business which was not trivial or inconsequential as compared to the whole of the business would be termed as substantial. It accordingly held that the loan granted in the given case could not be treated as deemed dividend under the Act.
***Ravi Agarwal v ACIT – (2015) 94 CCH 0040 Allahabad HC***

Go to Index

**1918.** Where AO during assessment proceedings had examined the issue of deemed dividend in respect of loans taken from sister concern and after a detailed discussion added a certain sum as deemed dividend u/s 2(22)(e), Court held that the initiation of reassessment, after a period of four years, on the ground that while making addition u/s 2(22)(e), AO had considered only credit balance in account, not all transactions of loan/advance, is completely without jurisdiction. Court held that the reasons recorded sought to take a different view (i.e. change of opinion) on same material on which original assessment order was passed.
***B.M. Associates v ACIT – (2018) 90 taxmann.com 162 (Bom) – Writ Petition No. 2976 of 1999 dated 18.01.2018***

**1919.** The Court held that where the assessee firm had received security deposit from a company in which assessee's partners were shareholders, such a security deposit could be taxed as deemed dividend in hands of its partners and not in hands of assessee.
***CIT v Skyline Great Hills - [2016] 68 taxmann.com 188 (Bombay)***

**1920.** The assessee received an advance of Rs 20 Cr from Ginza Industries Ltd. ('Ginza') (in which it held more than 10 percent of its share capital) towards procurement of import License worth Rs.50 Cr. approx., which the AO taxed as deemed dividend. The Court noted that the assessee utilized advances for purchasing shares, giving loans which showed that it was assured of advance being for its own purpose and that no import license was procured and no actual imports were done by Ginza which had no intention or relevant knowledge or expertise to deal in such premium markets. Accordingly, it held that the appellate authorities had erred in ignoring the AO's detailed investigation and had erroneously classified the advances as business advances and accordingly taxed the advance as deemed dividend in the hands of the assessee.
***Prasidh Leasing Ltd. - TS-90-HC-2018(DEL) - ITA 637/2004 dated 20.02.2018***

**1921.** The Court held that where the assessee company received certain advance from 'J' Ltd., even though assessee owned 95 percent shares in 'V' Ltd. which in turn owned 99 percent shares of 'J' Ltd, the assessee itself was not a shareholder in lender company and therefore the loan amount in question could not be added to assessee's income as deemed dividend under section 2(22)(e) of the Act
***Pr CIT v Rajeev Chandrashekhar - [2016] 67 taxmann.com 358 (KarnatakaHC)***

**1922.** Where amounts were being received by assessee, a publishing company, from its subsidiary company engaged in distributing assessee's publications in Gulf region, only as part of regular business transactions and which were being accounted properly, the Court held that such payments could not be treated as loan or advances, so as to make disputed amounts a deemed dividend, as defined u/s 2(22)(e)
***CIT v. Malayala Manorama Co. Ltd. - (2018) 253 Taxman 292 (KerHC) – ITA Nos. 167 of 2008 & 1686, 1693 of 2009 dated 03.01.2018***

**1923.** The Court dismissed assessee's appeal against the Tribunal's order confirming the addition u/s 2(22)(e) on account of loan received by the assessee from a closely held company in which she was a shareholder, noting that though the assessee contended that she did not have 10%

shareholding in the said company so as to be covered u/s 2(22)(e), the AO had found that the annual returns filed before Registrar of Companies (RoC), indicated the assessee had more than 10% shareholding. It was also noticed that though the company had filed a revised annual return with the RoC indicating the transfer of shares held by her, such revised return was filed only after she received notice u/s 148 for initiating reassessment proceedings to tax the said loan amount as deemed dividend u/s 2(22)(e) and thus was an afterthought to wriggle out of the liability. The Court held that all the documents produced by the assessee to claim that she did not have 10% shareholding were cooked up and since all the authorities below had concurred on the facts, no question arose from the Tribunal's order.
***Lailabi Khalid v CIT - [2018] 95 taxmann.com 298 (KeralaHC) - IT APPEAL NO. 179 TO 181 & 197 OF 2013 dated June 11, 2018***

**1924.** The assessee received certain amount of money under transactions recorded in mutual or current account with a company in which she owned 25.24% equity. The AO treated the same as deemed dividend under Section 2(22)(e). The Court upheld the order of the Tribunal wherein it was held that if any sum was received by the assessee which formed part of running current account giving rise to mutual obligations, the same could not be treated in the character of loan or advance out of accumulated profit. Thus, the Court held that the provisions of Section 2(22)(e) were not applicable to the sum received by the assessee.
***CIT vs. Gayatri Chakraborty – [2018] 102 CCH 0053 (Kol High Court) – ITA No 160 of 2016 dated May 3, 2018***

**1925.** The Tribunal held that where the assessee-company was not the shareholder of lender-company, then notwithstanding the fact that both companies had common shareholder having substantial interest in both companies, taxability of deemed dividend in terms of provisions of section 2(22)(e) would not arise in hands of recipient-company (assessee) which was not registered shareholders of lender company.
***INCOME TAX OFFICER & ORS. vs. PRIMA TRANSFORMER PVT. LTD. & ORS. - (2018) 52 CCH 0305 AhdTrib - ITA No(s) 573-580/Ahd/2016 dated April 02, 2018***

**1926.** Where the assessee earlier operated a sole proprietorship, the business of which he transferred to a private limited company in which he had substantial interest as a result of which the assessee and the company had various accommodation adjustment entries for transfer of funds on a need basis, the amount received by the assessee from the private limited company could not be treated as a loan / advance and it was in the course of business and therefore was not taxable as deemed dividend under Section 2(22)(e) of the Act in the hands of the assessee.
***DILIP GOVINDLAL SHAH & ANR. vs.INCOME TAX OFFICER & ANR- (2017) 51 CCH 0169 AhdTrib dated 06.10.2017***

**1927.** The Tribunal held that deemed dividend could only be assessed in the hands of the shareholder of the lender company and not in the hands of a person other than the shareholder and therefore the loan received by the assessee company could not be taxed as deemed dividend, merely because it had a common shareholder with the lender company, since it was not the shareholder of the lender company.
***Mahavir Inductoment Pvt ltd v ACIT – (2016) 46 CCH 0007 (Ahd)***

Go to Index

**1928.** Assessee-company borrowed a sum of Rs. 4 crores from company, MPPL for business purpose. Assessing Officer noticed that there were common directors in both assessee company and MPPL and, therefore, sum of Rs. 4 crores received from MPPL was liable to be added as deemed dividend under section 2(22)(e) in hands of assessee. The Tribunal noted that in view of decision in case of Asstt. CIT v. Bhaumik Colour Labs (P.) Ltd. [2009] 118 ITD 1/27 SOT 270 (Mum.) (SB), deemed dividend can be assessed only in hands of a person who is a shareholder of lender company and not in hands of a person other than a shareholder - since assessee, in instant case, was not a shareholder in lender company. The Tribunal held that Assessing Officer was unjustified to tax sum of Rs. 4 crores as deemed dividend under section 2(22)(e)(e).

***Microfinish Valves (P.) Ltd. vs. Asst. CIT, Circle 2(1) Hubli- [2018] 100 taxmann.com 146 (Bangalore –Trib.)- ITA No. 1706 (BANG) of 2017-dated November 16, 2018***

**1929.** The Tribunal held that the AO was justified in making addition of deemed dividend under section 2(22)(e) where the assessee failed to substantiate his claim that he was no longer holding more than 10 percent of the shareholding of company on account of transfer of the said shares, since neither was the transfer of shares and consequent long term capital gains reflected in his return of income nor was there any other evidence to substantiate his claim.

***M. Khalid vs.Assistant Commissioner Of Income Tax (2016) 48 CCH 0134 (Cochin Trib) (ITA Nos. 346-351/Coch/2016)***

**1930.** Where the assessee had entered into MOU in December, 2012 with NIPL for sale of property, however, due to fall in market value of property, the Board of NIPL decided against acquiring the property, pursuant to which assessee returned the advance in March, 2013, the Tribunal held that amounts received by assessee was nothing but loan/advance from NIPL and that the assessee was camouflaging the same as a commercial transaction relating to sale of property in order to circumvent the provisions of Sec. 2(22)(e). Accordingly, it upheld deemed dividend addition u/s 2(22)(e) in the hands of the assessee.

***Shri Hemanth Kumar Bothra vs The Asst.Commissioner of Income-tax-TS-495-ITAT-2017(Bang)- ITA No. 03.11.2017***

**1931.** Where assessee director of a company received an advance from said company for blocking deal of sale and purchase on behalf of company, the Tribunal held that sum advanced to assessee was for business purposes, and same could not be taxed in assessee's hands as deemed dividend under section 2(22)(e).

***Dinesh Pandey v DCIT - [2018] 92 taxmann.com 125 (Delhi - Trib.) - IT APPEAL NO. 3562 (Delhi) OF 2017 dated MARCH 9, 2018***

**1932.** The assessee was an individual who held certain shares in the company 'B'(shares without voting rights). The said company gave loan to another company 'M' in which also the assesee held shares (15% noncumulative preference shares & shares through partnership firm but without voting rights).The AO treated the loan amount as deemed dividend in the hands of the assessee u/s 2(22)(e). However, the assessee contended that the said provisionswere applicable only if the assessee held 10% of the voting right in the payer company and held 20% of the beneficiary owners right in the receiving company. In this case, as the assessee did not

hold requisite no. of shares to attract the provision of S.2(22)(e),the CIT(A) accthe Tribunal dismissed the appeal filed by the revenue.
***ACIT v K.P. Singh [2018] 95 taxmann.com 263 (Delhi-Trib) – ITA NO 5472 OF 2014 dated 31.05.2018***

**1933.** The Tribunal deleted the addition u/s 2(22)(e) as deemed dividend of amounts received from three companies in which assessee was a director and a substantial shareholder, holding that the provisions of said section were not attracted as the impugned amounts were received in ordinary course of business. It was noted that the assessee had received the said amounts as (i) advance as well as security deposits from one of the company (who was a tenant) with respect to property let out in normal course of business of letting out of property (ii) an advance on account of agreement to sell and (iii) interest. Accordingly, the Tribunal allowed assessee's appeal.
***Jinendra Kumar Jain vs Asst CIT [2018] 54 CCH 0241 (DelTrib) ITA NO.4126/ Del//2014 dated 19.11.2018***

**1934.** Where Assessee-company and other group companies were taking money from each other and utilizing same for purpose of business transactions only and no amount had gone to shareholder, the Tribunal held that same could not be considered as loans and advances as per section 2(22) (e).
***Saamag Developers (P.) Ltd. v. Asst.CIT [2018]98 taxmann.com 467/173 ITD 350 (Delhi – Trib) IT Appeal Nos. 2053 to 2057(DELHI) of 2017 dated October 8, 2018***

**1935.** The Tribunal deleted the addition made by CIT(A) u/s 2(22)(e) considering the amounts received from various group companies as deemed dividend. It noted that assessees along with its group companies was in the process of execution of various real estate projects and that all the group companies maintained current account with each other and transferred the money as and when needed to each other. Thus, it held that the transaction between group concerns were current and inter banking accounts containing both types of entries i.e. giving and taking amount and, hence, held that the same could not be considered as loans and advances as contemplated u/s 2(22)(e).
***Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018***

**1936.** The Tribunal held that where the assessee holding 48.46 percent of shares in N Ltd had received a repayment of sum given to N Ltd in the earlier years on which no addition was made, the AO was not justified in treating a similar amount received in the impugned year as deemed dividend under Section 2(22)(e) of the Act. Accordingly, it deleted the addition made.
***Nanak Ram Jaisinghani v ITO - [2018] 92 taxmann.com 86 (Delhi - Trib.) - IT APPEAL NO. 6729 (DELHI) OF 2014 dated March 7, 2018***

**1937.** Where the AO had added Rs.75,000 received by the assessee from a company in which it held substantial interest as deemed dividend u/s 2(22)(e) without examining the assessee's contention that Rs. 75,000 received by it was repayment towards Rs. 35 Lakhs given by the assessee to the company, the Tribunal restored the matter to CIT(A) by directing him to

readjudicate the issue after by verifying the nature of Rs.35 Lakhs paid by the assessee to the company and thereafter decide the issue in accordance with law.
***Nanak Ram Jaisinghani vs. ITO (2017) 50 CCH 0266 DelTrib ITA No. 2059/Del/17***

**1938.** The assessee was a shareholder of two companies viz. SSP Developers Pvt. Ltd. (SSPD) and Vishnu Apartment Pvt. Ltd. (VAPL). VAPL sold commercial space to SSPD for Rs. 6.26 crore without the assessee's involvement. The AO added Rs.6.26 crore as deemed dividend u/s 2(22)(e) in the assessee's income on the ground that the assessee held 50% shares in SSPD and 18.33% shares in VAPL and the transaction of selling commercial space by VAPL to SSPD had indirectly benefitted the assessee. The CIT(A) observed that when the commercial space was sold by VAPL to SSPD, the assessee's shareholding in VAPL had been diluted to 5.5% and therefore accordingly held section 2(22)(e) which prescribes a minimum shareholder of 10% was not satisfied. Further, he observed that since the term "any payment" used in section 2(22)(e) [providing for any payment by way of advance or loan to a shareholder] was not defined under the Act, in the ordinary sense the said term would mean benefit in cash and since no cash payment was received by the assessee, the AO erred in taxing the alleged benefit u/s 2(22)(e) of the Act. The Tribunal also held that the given transaction did not benefit the assessee as no money was received by the assessee as also assessee did not hold controlling share in transferor company, it upheld the CIT(A)'s deletion of addition made by the AO u/s 2(22)(e).
***Siddharth Gupta [TS-221-ITAT-2017(DEL)] I.T.A. No. 6206/DEL/2013 dated 30.05.2017***

**1939.** The Tribunal held that the provisions of section 2(22)(e) of the Act only apply to loans given by a private limited company to its shareholders holding more than 10 percent voting rights. Where the recipient of the loan was not a shareholder, the said provisions would not be applicable. Further, it noted that the inter-corporate deposit received was in the course of regular business transactions.
***DCIT v Ace Tyres Limited – (2015) 45 CCH 0118 Hyd Trib***

**1940.** Where the assessee received loan from another company in which it was not a shareholder but the AO sought to tax the loan received in the hands of the assessee as deemed dividend under section 2(22)(e) on the ground that the shareholder of the assessee was also a shareholder in the company from whom the assessee had received the loan, the Tribunal upheld the order of the CIT(A) and held that the deeming fiction contained in Section 2(22)(e) could only be applied only in the hands of the shareholder and not the non-shareholder viz., the concern. Accordingly, it deleted the addition made by the AO.
***INCOME TAX OFFICER vs.J.K.M. INVESTMENT PVT. LTD. - (2017) 51 CCH 0533 KolTrib - ITA Nos. 1461 & 1462 /Kol/2015 dated 08.12.2017***

**1941.** The Tribunal held that where the assesee firm was not the shareholder of its sister concern, advance tax paid by the sister concern in the name of the assessee could not be taxed as deemed dividend in the hands of the assessee.
***Shiv Transport & Travels v ITO – (2016) 67 taxmann.com 108 (Kolkata – Trib)***

**1942.** Where the assessee received certain amount from a Company in the nature of loans and advances, CIT(A) upheld the AOs order wherein it was held that such amount was in the nature

of deemed dividend as per Section 2(22)(e). Before the Tribunal, it was contended that the assessee's account with such Company was in in the nature of current account and not loans and advances. Relying on the decision of the co-ordinate bench in Smt. Gayatri Chakraborty (ITA No. 151/Kol/2013 dated 30.10.2015), the Tribunal held that provisions of Section 2(22)(e) are not applicable if the relevant transactions are in nature of current account transactions. However, it held that since the nomenclature by assessee alone could not determine exact nature of the relevant transactions, the matter was remanded to the AO for verification.
***Rajesh Pagaria vs. ITO – [2018] 53 CCH 0028 (Kolkata ITAT) – ITA No 464 of 2014 dated May 11, 2018***

**1943.** The Tribunal held that exempt capital gains was not to be included while computing accumulated profits under section 2(22)(e). Since the assessee had only negative accumulated profits after the exclusion of exempted capital gains the provisions of section 2(22)(e) were not attracted.
Further, it held that section 2(22)(e) of the Act would apply only to the shareholders of the company.
***Manoj Murarka v ACIT (I.T.A No. 1703/Kol/2014 & I.T.A No. 2140/Kol/2010) – TS-669-ITAT-2015 (Kol)***

**1944.** The Tribunal held that gratuitous loans and advances given by a company to classes of shareholders would come within the purview of section 2(22) but not to cases where loan or advance was given in return to an advantage conferred upon the company by such shareholder. It further held that deemed dividend could only be assessed in the hands of the person who was a shareholder of the lender company and not in the hands of the person other than the shareholder.
***DCIT v Machino Techno (Sales) Pvt Ltd – (2015) 45 CCH 0199 Kol Trib***

**1945.** Assessee-company was a common shareholder in two companies, namely, 'V' and 'P'. An information was received from Deputy Commissioner that 'P' had given loan to 'V' and since assessee was a registered shareholder having substantial interest in 'P' as well as in 'V', deemed dividend within meaning of section 2(22)(e) had arrived in hands of assessee. On basis of said information, reassessment notice was issued against assessee and addition was made. The Tribunal noted that amount given by 'P' to 'V' was depicted in balance-sheet of 'P' as Inter-Corporate Deposit (ICD) and so was position in balance-sheet of recipient, i.e., 'V'. It was abundantly clear that both parties to transaction had transacted considering transaction to be one of an ICD. The Tribunal held that since transaction demonstrated that it was in form of a 'deposit' and not as a 'loan', impugned addition made under section 2(22)(e) was justified.
***KIIC Investment Company v. Dy. CIT(IT)-3(1)(2), Mumbai- [2019] 101 taxmann.com 19 (Mumbai - Trib.)- ITA Nos. 1381 (MUM) of 2017 & 564 (MUM) of 2018-November 6, 2018***

**1946.** Assessee was a major shareholder in three companies namely, 'P', 'GVR' and 'DHR'. During year, 'P' had advanced monies to 'GVR' and 'DHR'. Assessing Officer was of view that amounts given by 'P' was deemed dividend in hands of assessee. The Tribunal noted that on dates when advances were given by 'P' to 'GVR', assessee was neither holding any shares in 'GVR' nor it was a shareholder of 'P' on aforesaid dates. Further, there was no material to point out that

payment made by 'P' to 'GVR' was for individual benefit of any shareholder of 'P' or payment made to GVR was for individual benefit of assessee. However, as far as advances given by 'P' to 'DHR' were concerned, assessee had failed to bring on record any deposit agreement or any other bilateral agreement, which would prove that advances given by 'P' to 'DHR' was not loan. Thus, inclusion of amount paid by 'P' to GVR within scope of section 2(22)(e) was unjustified. However, in case of advances given by 'P' to 'DHR', same was rightly treated to be falling within scope of section 2(22)(e).

***KIIC Investment Company v. Dy. CIT(IT)-3(1)(2), Mumbai- [2019] 101 taxmann.com 19 (Mumbai - Trib.)- ITA Nos. 1381 (MUM) of 2017 & 564 (MUM) of 2018-November 6, 2018***

**1947.** The Tribunal upheld AO's order treating loans / advances received from the two lender companies (whose 99% shareholding was held by Sunjewel India Ltd. which also held 88% shareholding of asssessee) as deemed dividend u/s 2(22)(e), relying on the ratio laid down by Apex Court in the case of Gopal & Sons (HUF) vs CIT (2017) 391 ITR 1 (SC) wherein it was held that even a beneficial shareholder holding substantial interest in the lender company would come within the purview of section 2(22)(e). Since Sunjewel India Ltd. held more than 20% shareholding in assessee-company as well as the lender companies, it clearly had substantial interest in the assessee as well as lender companies.

***Asst CIT vs Sun Jewel International P. Ltd [2018] 53 CCH 0464 (MumTrib)- ITA Nos. 5549 & 5971/Mum/2014 dated August 21 2018***

**1948.** The Tribunal allowed assessee's (engaged in the business of 'speciality eye care hospital') appeal and deleted the addition made by the AO u/s 2(22)(e) with respect to a residential flat purchased by the assessee-company for use by its director (having 99% share of assessee-company). It was noted that the assessee-company had neither transferred the funds outside the company nor to the director, infact loan was taken for purchasing the flat. Accordingly, it was held that the provisions of section 2(22)(e) were not attracted in the present case. The Tribunal also relied on the decision in the case of Azadi Bachao Andolan 263 ITR 706 (SC) to hold that tax planning on the part of the assessee-company may be permissible so long as there is no violation of any provision of the Act.

***Aditya Jyot Eye Hospital PVt. Ltd v ITO – (2018) 54 CCH 115 (Mum Trib) - I.T.A. No.5325/Mum/2015 dated 24.10.2018***

**1949.** The Tribunal upheld deemed dividend addition u/s 2(22)(e) in the hands of assessee-shareholder in respect of loan given by closely-held companies to a concern in which assessee held substantial interest by relying on Bombay HC ruling in Universal Medicare (P) Ltd and Mumbai ITAT ruling in Bhaumik Colour (P). Ltd. It Rejected assessee's stand that since the loans were repaid during relevant year itself with interest, addition should not be made by relying on the Apex court rulings in Navnit Lal C. Javeri and Tarulata Shyam. Also it rejected assessee's reliance on SC ruling in Mukundray K. Shah for the proposition that since no benefit was derived by assessee as a result of loan, no addition u/s 2(22)(e) was warranted by holding that in the said case, applicability of a different limb of Sec 2(22)(e) (i.e any payment made by a company for the benefit of a shareholder) was examined which had not been invoked in assessee's case. The Tribunal also rejected assessee's argument that it was a case of inter corporate deposit ('ICD') and not loan in absence of any evidence.

Go to Index

***Namita V. Samant - TS-393-ITAT-2016(Mum) - I.T.A. No. 1065/Mum/2016***

**1950.** The Tribunal held provisions of TDS would not be applicable for dividend covered u/s/ 2(22)(d) and in case Assessee entered into deal that did not violate any provision applicable to a particular AY, deal could not be termed colourable device, if it resulted in non-payment or lesser payment of taxes in that year.
***Goldman Sacs (India) Securities (P)Ltd. vs. ITO - [2016] 46 CCH 0112 (Mum Trib).***

**1951.** Where the assessee-firm upon receipt of advance from group concern contended that it being a partnership firm could not be a registered shareholder in the group companies and thus could not attract provisions of section 2(22)(e), the Tribunal held that section 2(22)(e) gets attracted not only in case of registered shareholder but also in case of concern in which such shareholder is a member or partner having substantial interest. However, the Tribunal accepted that the assessee's contention that all advances received from group companies cannot be treated as deemed dividend within the meaning of section 2(22)(e) and that the initial onus is on the AO to demonstrate that excess payments received by assessee over and above the value of transaction of purchase and sale from group concerns constituted non-trade advances and not on account of current account to record business transactions between or among group concerns. It further held that the current year business profits could not be considered as part of accumulated profits for purpose of section 2(22). The matter was remanded to AO to decide the issue de novo in the light of above observations.
***Rajmal Lakhichand v JCIT – (2018) 92 taxmann.com 94 (Pune) – ITA Nos. 670 & 832 (PUN.) of 2015 dated 28.02.2018***

## *i. Unexplained income / expenses / investments*

*Unaccounted Sale / Receipts*

**1952.** Where High Court upheld Tribunal's order deleting addition made by Assessing Officer under section 69A on ground that there was no reliable or independent evidence to come to conclusion that assessee had accepted on-money for sale of constructed properties, SLP filed against decision of High Court was dismissed by the Apex Court.
***Pr. CIT v. Nishant Construction (P.) Ltd.- [2019] 101 taxmann.com 180 (SC) Special Leave Petition (CIVIL) Diary No(s). 42776/2018 dated December 14, 2018***

**1953.** Where High Court upheld Tribunal's order deleting addition made by Assessing Officer under section 69A on ground that there was no reliable or independent evidence to come to conclusion that assessee had accepted on-money for sale of constructed properties, SLP filed against decision of High Court was dismissed by the Apex Court.
***Pr. CIT v. Nishant Construction (P.) Ltd.- [2019] 101 taxmann.com 180 (SC)-SLP(Civil) Diary No(s). 42776/2018-December 14, 2018.***

Go to Index

**1954.** Where High Court upheld Tribunal's order to delete addition made under section 68 in respect of trade advances on ground that said advances were adjusted against sales made in subsequent years, SLP filed against said decision was dismissed by the Apex Court.
***Pr. CIT (Central-3) v. Montage Enterprises (P.) Ltd. - [2018] 100 taxmann.com 100 (SC)-Special Leave Petition (Civil) Diary No(s). 35272 of 2018-dated October 26, 2018***

**1955.** Where High Court upheld Tribunal's order confirming addition made to assessee's income in respect of unaccounted business receipts having regard to fact that gross profit declared by assessee was much lesser than profit in said line of business and, moreover assessee had failed to provide stock register despite several opportunities, SLP filed against said decision was dismissed by the Apex Court.
***Pradeep Kumar Biyani v. ITO- [2019] 101 taxmann.com 131 (SC)- SLA (C) No.28940 of 2017-SLA (C) No. 28940 of 2017-dated December 4, 2018.***

**1956.** The Court dismissed Revenue's appeal against the Tribunal's order wherein the Tribunal had deleted the addition made to assessee's income in course of proceedings u/s 153C on account of certain undisclosed cash payments received, noting that the said payments were received by the assessee during earlier assessment year and not in the relevant year. Further, it observed that in case there was any material on record pointing out that unexplained cash payments had been made to assessee in earlier assessment year, it was open to Revenue to initiate reassessment proceedings for said assessment year
***Pr.CIT vs Jayant K. Furnishers [2018] 98 taxmann.com 394 (Bombay)- IT Appeal No.142 of 2016 dated August 06 2018***

**1957.** The Court held that where the source of expenditure incurred by the assessee was the 'on money' received by it, the question of making addition under Section 69C on the said expenditure would not arise as the source of the money was duly explained. It held that only the amount received as 'on money' could be taxed and once it was considered as a revenue receipt, then any expenditure out of such money could not be treated as unexplained expenditure as it would lead to double addition in the hands of the assessee.
***CIT v Golani Brothers ITA No 17 of 2015 (Bom) dated 29.08.2017***

**1958.** Where assessee challenged addition made to its income under section 68 in respect of amount deposited in bank contending that said amount came from sale of wearing apparel and traditional silver utensils, since there was no evidence and material to establish sale or inheritance, etc. The Court upheld the order of the Tribunal confirming the addition made by authorities below.
***Rajiv Jain v. ITO-[2019] 101 taxmann.com 92 (DelhiHC)-ITA No. 1115 of 2017-dated November 13, 2018***

**1959.** The Court held that where the assessee had (i) made payment for purchase of property in cash without any explanation as to why such amounts were paid by cash (ii) the cash payments were not recorded in the books or record of the assessee (iii) the assessee had admitted in his statement under section 131 of the Act that the source of the cash payments was sale of unaccounted stock and then retracted the statement saying that the cash was received pursuant

to loans from three unrelated companies for which no evidence / documentation was provided and (iv) the transactions were carried on outside the books of accounts, the addition made by the AO was to be upheld.
***CIT v Harjeev Aggarwal – (2016) 95 CCH 0071 (Delhi)***

**1960.** The Court held that the AO was unjustified in making an addition based on a document found on the computer of one of the employees of the assessee which provided a working of anticipated sales revenue, particularly when the assessee offered a plausible explanation for the document and that the person from whose computer the document was taken was not even cross examined to understand the authenticity of the document.
***CIT v Vatika Landbase Pvt Ltd – (2016) 95 CCH 0052 (DelHC)***

**1961.** The AO made addition of undisclosed income u/s 68 on the basis of certain material seized and impounded during the survey proceedings carried out at the business premises of the assessee and statement of directors of the assessee-company, which the AO opined to have revealed certain cash transactions with respect to sale of land. The Tribunal deleted the said addition *inter alia* noting that the directors had retracted their statements during the assessment proceedings. Further, noting that neither any agreement to sell was executed nor did the assessee have the absolute right to sell the said property as the same was in litigation, the Tribunal held that it was unlikely that an unknown person would give sizable cash to assessee even before agreement to sell was executed. The Court thus held that since the Tribunal, based on appreciation of evidence, had concluded that the Revenue had failed to bring on record sufficient evidence to show that cash was received by the assessee, no question of law arose.
***Pr.CIT v Texraj Realty (P.) Ltd. - [2018] 95 taxmann.com 102 (GujaratHC) - R/TAX APPEAL NO. 612 OF 2018 dated June 12, 2018***

**1962.** The Court held that where in case of assessee engaged in business of real estate development, a search was conducted and certain documents were seized, addition could not be made in respect of those deals which fell through and documents themselves suggested that profits were shown on projected basis. Further, the Court held that where on basis of documents seized during search, AO made addition of premium in respect of commercial area which remained unsold in a mall, in view of fact that said shops did not command prime location and they were allotted to family members without charging any premium, impugned addition was to be deleted.
***PCIT v KamleshPrahladbhaiModi [2018] 94 taxmann.com 356 (Gujrat) – R/TAX APPEAL NOS. 331 TO 337 OF 2018 dated 18.04.2018***

**1963.** Where pursuant to a search carried out in the premises of the assessee (engaged in manufacturing and selling of polyester films etc) the Department recovered laboratory registers containing date wise samples of materials tested in the laboratory, which, as per the employees reflected every item produced and tested, which did not tally with the excise registers maintained by the assessee, the Court held that the Settlement Commission was justified in confirming an addition under Section 69A on account of unaccounted production. It further noted that the number of employees at the premises were far in excess of the number recorded in the books of the accounts of the assessee and that the registers of the earlier years were destroyed as

per the directions of the assessee and therefore held that the Settlement Commission had rightly estimated the addition for earlier years based on the actual data available.
***SUMILON INDUSTRIES LTD. vs.INCOME TAX SETTLEMENT COMMISSION (2017) 99 CCH 0112 GujHC SPECIAL CIVIL APPLICATION NO. 13218 of 2013 dated 05/07/2017***

**1964.** The Court upheld the order of the Tribunal deleting additions on account of suppressed sales which were made a) solely based on information received by AO from Central Excise Department b)without bringing any independent material on record to justify the same.
***PCIT v Vrundavan Ceramics (P.) Ltd. [2018] 95 taxmann.com 13 (Gujrat) – R/TAX APPEAL NOS. 78, 79, 82, 83 TO 91, 94 & 95 OF 2016 dated 25.04.2018***

**1965.** The assessee-hotel was purchasing 'Indian Made Foreign liquor' in wholesale from the State Corporation and selling same at higher price. During survey it was found that the assessee-hotel had sold 'IMFL' in excess of price shown in books of account and return. The Assessing Officer on basis of documents recovered made addition of income of the assessee on account of supressed sales. The Court held that it was noted that there was no restriction with respect to price for which liquor had to be sold by a person holding licence to run bars under the Aabkari Act. Since, the price was variable and sale suppression detected during survey was actual price for which liquor was sold, the addition made on account of sale suppression was to be sustained.
***CIT v. Archana Trading Co. [2018] 96 taxmann.com 339/257 Taxman 386 (Ker)- IT Appeal Nos. 226 & 229 OF 2013 dated July 10, 2018***

**1966.** Assessee was awarded a contract with HPCL for transportation of HPCL's petroleum product. On execution of contract, HPCL made payment to assessee firm after deducting Tax at Source. The assessee firm failed to show receipts out of contract in its account contending that the owner of the truck was one Mr. Lal and the entire income was transferred to Mr. Lal. However, the AO made addition under undisclosed profits and the CIT (A) and the Tribunal upheld AO's order. The Court, concurring with the lower authorities, held that as per s.198 all sums deducted in accordance with Chapter XVII for purpose of computing income of assessee shall be deemed to be income received and TDS by HPCL would be treated as payment of tax on behalf of assessee from whose income deduction was made. Also, as assessee had availed the benefit of deduction, the contract was between HPCL and the assessee and the entire payments were made in favour of the assessee, the addition was justified.
***Lal Prasad & Sons v CIT (2018) 101 CCH 0262 Patna HC - Miscellaneous Appeal No. 678 of 2010 dated 23.04.18***

**1967.** AO issued show-cause notice stating that amount of sales as estimated by Excise Department should be considered as unaccounted sales. AO proceeded to adopt figures of Excise Department as unaccounted sales and made additions for alleged unaccounted sales. CIT(A) deleted addition made by AO. The Tribunal held that, in case of Futura Ceramics Pvt. Ltd, Division Bench held that if Assistant Commissioner of Commercial Tax utilized material collected by Excise Department; including statements of Assessee and other relevant witnesses and had come to an independent opinion that there was in fact evasion of excise duty by clandestine removal of goods, then he would have been justified in making additions for the purpose of VAT Act.But in assessee's case no such exercise was undertaken. Nowhere AO

concluded that there was a case of clandestine removal of goods without payment of tax under the VAT Act.Merely because Excise Department issued a show cause notice, that could not be a ground to presume and conclude that there was evasion of excise duty implying thereby that there was also evasion of tax under the VAT Act. Asstt. Commissioner acted in a mechanical manner and passed final order of assessment merely on premise that Excise Department had issued a show cause notice alleging clandestine removal of goods. Order of Authority was not sustainable and Revenue's appeal dismissed.

***Dy. CIT vs. Belgium Glass & Ceramics P. Ltd.- (2018) 53 CCH 0359 AhdTrib-ITA Nos. 2783 to 2787/ Ahd/2015-Jul 11, 2018***

**1968.** During the course of survey proceedings, the assessee, engaged in the business of manufacturing Coils/Strips and Generation of Power, revealed that a maximum loss of 5.6% was incurred in the manufacturing process. The AO treated the excess loss claimed by the assessee above 5.6% as suppressed / undisclosed sales, thereby also rejecting the books of accounts of the Assessee. The CIT(A) deleted the addition made by the AO as the addition was solely made on the basis of the statement recorded during the survey proceedings and that the AO has not brought any other evidence suggesting that the assessee had suppressed the production leading to suppressed sale. The Tribunal observed that CBDT discouraged officers to make any addition merely on the basis of the statements recorded, without bringing any tangible material for such addition. The Tribunal upheld the order of the CIT(A) wherein the addition made by the AO was deleted in absence of any evidence for the same.

***DCIT vs. REAL STRIPS LTD. (AHMEDABAD TRIBUNAL) (ITA No. 2255/Ahd/2016) dated May 31, 2018 (53 CCH 0094)***

**1969.** The Assessee admitted unrecorded transactions relating to his real estate business and also offered additional income on being summoned under Section 131 of the Act post survey enquiries under Section 133A of the Act. Basis the same, the AO made an addition under Section 68 of the Act. The CIT(A) confirmed the order of the AO. However, the Tribunal observed that the addition was made merely on the basis of loose sheet entries and a power of attorney in the Assessee's name which did not co-relate with any investment made by him from undisclosed sources. Further, the Tribunal observed that such documents did not bear acknowledgement in any form or signature by/of the Assessee. Accordingly, the Tribunal held that in the absence of any corroborative evidences, the Assessee could not be subject to any addition under Section 68 of the Act only on the basis of admission/confession. Thus, the Assessee's appeals were allowed.

***DIDAR SINGH vs. DCIT (AMRITSAR TRIBUNAL) (ITA No. 542(Asr)/2016) dated May 29, 2018 (53 CCH 0116)***

**1970.** Based on the fresh evidence in form of copy of sale agreement of land produced by assessee and admitted by CIT(A) for sale of a piece of agricultural land with respect to which assessee had failed to submit any evidence before AO, CIT(A) had deleted the addition made u/s 69A after the AO accepted that the fresh evidence pertained to advance for sale of specific property in remand proceedings. Tribunal dismissed the frivolous appeal filed by Revenue against such CIT(A)'s order noting that evidence relied upon by assessee had not been rebutted by Revenue authorities and, thus, the occasion to file an appeal against consequential relief did not arise.

Go to Index

***ITO v Jagdev Singh - (2018) 91 taxmann.com 24 (Chandigarh ITAT) – ITA No. 424 of 2017 dated 04.01.2018***

**1971.** In the case of two assessees, one (MM) being the purchaser of the property i.e. agricultural land and other (MS) being seller of the said property, which were heard together, MS and MM claimed that the cash recovered by police from MS was received by him from MM on account of sale of his agricultural land to MM. Finding that there was a difference in value mentioned in sale deeds and cash recovered and not being satisfied by MM's explanation about the source of cash, the AO assessed the cash over and above the amount mentioned in the sale deeds as unaccounted income u/s 69 in hands of MM. In case of MS, the AO treated the value mentioned in the sales deed as sales consideration towards transfer of property and considered the remaining amount of cash recovered as unexplained cash u/s 69A. Noting that except his own statement, MM had failed to produce any other plausible evidence to rebut circumstantial evidences on file that MM had paid amount over and above sale consideration mentioned in registered deed, the Tribunal upheld the addition made in the case of MM. In the case of MS, the Tribunal held that the consideration in question could not be said to be amount received towards sale consideration of land, rather, the same constituted extra money paid as consideration for execution of registered deed of sale of land and not for sale of land itself, taxable as income from other sources since the amount received over and above sale consideration mentioned in registered document, partakes character of taxable gift.

***ACIT & ORS. v MOHINDER SINGH & ORS. – (2018) 52 CCH 55 (Chd Trib) – ITA No. 665/Chd/2016, 666/Chd/2016, 474/Chd/2017 dated 18.01.2018***

**1972.** Upon survey conducted in the business premises of the assessee, certain shortage of stock was found and the assessee had accepted the value representing deficit stock to be arising from sales outside the books. Accordingly, at the time of filing of return for the year under consideration, he filed the return declaring income inter alia including the entire amount representing the said deficit. However, subsequently, he revised the said return offering only 5% of the value of shortage of stock found at the time of survey as his income. The AO held that the revised return filed by the assessee was an afterthought and assessed the income admitted in the original return. The CIT(A) upheld the AO's order. The Tribunal noted that it was clear from the survey findings that the assessee had not maintained books of accounts for his purchases as well as sales and the assessee by a sworn statement had accepted the value representing deficit stock as his income. Further, it noted that original return filed was supported by a tax audit report, whereas the revised return was not supported by any tax audit report and the assessee had not pointed out any specific defects or omissions in the original return. Thus, the Tribunal held that the admission made by the assessee in the original return and the addition made by the AO on such admission had to be sustained. Accordingly, it dismissed the assessee's appeal.

***N. RAGOTHAMAN & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 52 CCH 0473 ChenTrib - ITA Nos. 216 to 220/Chny/2017, 112/Chny/2017 dated April 3, 2018***

**1973.** Assessee had shown in cash flow statement receipt of DD Rs.13.65 lakhs for which assessee had not shown identity of person from whom it had been received and could not prove identity of creditors/genuineness of transactions and thus the AO treated the same as unexplained

credit and made addition. CIT(A) upheld AO's order. The Tribunal observed that assessee was operating bank account in name of his employees which was admitted by assessee in his sworn statement recorded u/s. 132(4) which itself was an evidence. The assessee though agreed to treat account as suppressed receipts, only plea was that GP rate was to be considered on peak credit to estimate income. However the Tribunal held that whenever any unexplained deposits was found in name of assessee, then it was duty of assessee to explain source of same for which the assessee was not able to lead any evidence and thus whole deposit was to be considered as income of assessee since expenditure relating to receipts had already been taken care of by expenditure claimed in assessee's regular books of accounts.

***K. A. Rauf Shelter & Ors v ACIT (2018) 52 CCH 0460 CochinTrib - ITA 501/C/2015 dated 23.04.18***

**1974.** The Tribunal restricted the addition of suppressed sales to 2.54% of the said sales, accepting assessee's contention that only the income part of the sales was to be taxed and observing that GP as per audited accounts of assessee was 2.54%.

***Bhambra Service Centre vs ITO [2018] 53 CCH 0414 (Cuttak Trib)- ITA No.301/CTK/2017 and 13/CTK/2018 dated August 02 2018***

**1975.** AO observed that assessee was engaged in development of real estate by developing plots of land without carrying any construction of superstructure thereon and as per audited accounts company was following percentage completion method. AO found that assessee failed to provide details, despite statutory notices regarding basis for calculating sales accounted for on percentage completion method. AO on basis of transaction reported in AIR information made addition of Sales transaction. CIT(A) deleted addition made by AO. The Tribunal held that, assessee gave a detailed ledger account of all its projects which revealed that aforesaid receipts were on account of sale transactions in 'Hill Granage Project. Assessee produced a copy of sale deed in respect of all four sale transactions and mode of payment in relation to said sales. It was revealed that entire amount in relation to these sales transactions was received by cheque. Sales transactions reported in AIR information were duly reflected by Assessee in its books of accounts. AO erred in making addition against assessee and CIT(A) rightly deleted addition made by AO.

***Asst CIT vs. Tirupati Infrabuild P. Ltd.- (2018) 53 CCH 0302 DelTrib-ITA No. 6604/ Del/ 2014 & Cross Objection No.212/Del/2015-Dated Jul 9, 2018***

**1976.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO alleging suppression of value of sale of alumninium dross. The AO had made the addition on the basis of show cause notice issued by the Central Excise department to the assessee alleging that the assessee had suppressed the value of sales. It was noted that the CESTAT had set aside the order of Commissioner of Central Excise passed on the basis of the said show cause notice, holding that Revenue failed to bring out any corroborative evidences in form of any cash transaction or other evidences to support its finding. Accordingly, the Tribunal held that since the CESTAT had already decided the issue, the addition was rightly deleted by the CIT(A).

***ACIT v CENTURY METAL RECYCLING PVT. LTD. (2018) 53 CCH 0586 DelTrib - ITA No. 6657/DEL/2017 & C.O. NO. 36/DEL/2018 (IN ITA No. 6657/DEL/2017) dated July 19, 2018***

Go to Index

**1977.** The AO made an addition on account of difference in gross receipts as per P&L Account and billing amount (for which bill was raised) in view of understatement of billing amount, considering the same to be unexplained. The CIT(A) deleted the said addition accepting assessee's explanation that the difference between the billing amount and gross receipts was on account of receipts which had accrued during the instant year and accordingly offered as income in the instant year, though the bills were issued in the succeeding year (which was accepted in the assessment framed for subsequent year). The Tribunal upheld CIT(A)'s order holding that the AO had not disputed claim made by assessee, other than to state that no details/explanation were furnished during assessment proceedings. Accordingly, Revenue's appeal was dismissed.
***ACIT vs Crayons Advertising Ltd. and ANR [2018] 54 CCH 421 (Del Trib)- ITA No.4872/Del/2015 dated 27.11.2018***

**1978.** The Tribunal allowed assessee's appeal and deleted the addition made by the AO with respect to additional commission income allegedly earned by the assessee over and above the commission income offered tax tax by the assesssee based on seized document found during search. It was noted that the assessee had earned commission income from MCX dabba trading which he had offered to tax based on seized documents at the rate of Rs.500/- per crore trade value. Whereas, the AO had made an addition to the said income on the basis of statement of Mr.G who had deposed during search proceedings that commission was earned at the rate of Rs.2000/- per crore trade value. The Tribunal noted that there was no material on the basis of which additional commission income at the rate of Rs.1500/- was added and further the assessee was not given an opportunity to cross examine Mr.G. Thus, it held that not allowing the assessee to cross examine the witness by the adjudicating authority, though statements of those witnesses were made the basis of the impugned order, amounted to a serious lapse which made the order a nullity as it amounted to violation of principles of natural justice. Accordingly, it deleted the addition.
***HIMANSHU KOHLI vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 67 ITR (Trib) 0551 (Delhi) - ITA No. 6590-92/Del/2017 dated 05.09.2018***

**1979.** The Tribunal upheld the AO's estimation of turnover based on pencil entries made in register maintained by the assessee-company, engaged in real estate business, which were found in course of search proceedings, noting that the assessee had not brought any evidence to counter the AO's working of estimation and the assesssee's main contention was for reconciliation of the said working. It, however, directed the AO to exclude the advance amounts received with respect to 79 plots unsold as on date of search while quantifying the suppressed turnovers, subject to verification of the fact that such plots were actually not sold. Further, the Tribunal accepted assessee's contention that rate of profit estimation @ 40% of the suppressed turnover [as directed by CIT(A)] was high considering the fact that the assessee had accounted for 70% of the turnover and had declared 4% profit on such accounted turnover. It, accordingly, held that since the assessee is engaged in real estate business, end of justice would be met by estimating income @ 12.5% of the suppressed turnover. Accordingly, the assessee's appeal was partly allowed.
***SRI SRI GRUHANIRAMAN INDIA PVT. LTD. & ANR. v ACIT (2018) 67 ITR (Trib) 0178 (Hyd) - ITA Nos. 2237-2241 & 2273-2275/Hyd/17 dated July 27, 2018***

Go to Index

**1980.** Where the AO added as income the entire turnover determined by excise authorities as assessee's sales after excluding turnover already shown in books of account and the CIT(A) directed the AO to estimate income at 6.2% being the average profit on gross turnovers of the impugned years, noting that the assessee had no objection for adopting the excise turnovers in income-tax proceeding, the Tribunal directed the AO to adopt same profit ratio as offered by assessee on disclosed turnovers to undisclosed turnover as well, in each of assessment years. It deleted the addition made in respect of unaccounted purchases, since the Central Excise Authorities quantified turnover based on various inputs like fund flow into various bank accounts etc, once turnover was brought to tax, any unaccounted purchases pertaining to that turnover would get adjusted in same and, thus, there was no need to separately bring to tax unaccounted purchases.

***ALLADI DRILLING EQUIPMENTS PVT. LTD. & ANR. v DCIT – (2018) 52 CCH 31 (Hyd Trib) – ITA Nos. 881 to 884/Hyd/16 & 913 to 916/Hyd/16 dated 12.01.2018***

**1981.** The Tribunal confirmed the addition made by AO towards unaccounted purchases on the basis of bills found during the course of survey proceedings, noting that cost of goods sold emanating out of records filed by assessee was much more than total sale which clearly established that the assessee was engaged in making sales out of record not disclosed in the total turnover.

***Dinesh Kumar Choudhary vs. ITO - [2018] 53 CCH 0429 Indore Trib ITA No. 757/Ind/2016 dated August 02 2018***

**1982.** The Tribunal confirmed the addition made by the AO with respect to contract receipts shown in Form 26AS as unaccounted income, rejecting assessee's contention that they were a part of its sales and no contract work was executed / labour was supplied for which TDS u/s 194C had to be deducted. It was noted that the assessee had failed to produce books of accounts and supporting evidence to demonstrate that amount received was part of sales and not contract receipt.

***Sonu Khandelwal vs ITO [2018] 97 taxmann.com 431 (Jaipur Trib)- IT APPEAL NOs. 735 and 736(JP) of 2015 dated August 21 2018***

**1983.** The Tribunal remanded the issue of addition made in the hands of the assessee-society on account of difference in the amount of receipts shown by the assessee and the receipts appearing in Form 26AS back to the AO, noting that the AO and CIT(A) did not have the benefit of amended Form 26AS wherein the factual mistake of amounts mentioned was rectified. Accordingly, it directed the AO to consider the amended Form 26AS and then compute the difference, if any, to be added. Further, the Tribunal held that in case any addition was to be made on account of difference between the receipts shown in the books and the receipts shown in the Form No. 26AS, the said amount would be eligible for deduction u/s 80P in view of the coordinate bench decision in assessee's own case for an earlier year wherein it was held that income from FDRs made from operational funds of cooperative society while carrying out its activity of providing credit to its members was exempt u/s 80P.

***Japiur Pensioners Hitkari Sahakari Samiti Ltd. vs. ITO [2018] 53 CCH 0684 JaiTrib- ITA No.321/JP/2018 dated August 27 2018***

Go to Index

**1984.** The Tribunal deleted the addition made u/s 68 as unexplained cash credit with respect to certain amounts credited to the assessee's bank account representing advances received from four parties for sale of land. It noted that (i) the assessee, who was engaged in business of purchase and sale of lands, had had duly disclosed amounts received as advance towards sale of land from four parties stated as liability in the balance sheet prepared as on the end of the relevant year; (ii) identity and creditworthiness of the parties were never questioned / doubted; (iii) proposed lands to be bought by intending buyers were not registered, thereby it attains character of advance received towards sale of land and (iv) advance for sale of land were duly adjusted with sale proceeds of land during next financial year.
***AMAR DAS vs. ITO (2018) 53 CCH 0337 KolTrib – I.T.A No. 306/Kol/2017 dated 13th July, 2018***

**1985.** The assessee was engaged in business of manufacturing of commercial/ blasting explosives etc. In the AY under consideration, the assessee manufactured explosives and sold to its customers. The AO observed that average value of opening and closing stock was higher than sale price shown by assessee and difference of amount was treated by AO as under reporting of sales which was added to total income of assessee. CIT(A) deleted addition made by AO. The Tribunal upheld CIT(A)'s order on the following grounds : (1) The valuation of closing & opening stock could not be basis of making addition in hands of assessee on account of suppression of sales in view of fact these were two different accounting principles & couldn't be compared (2)The books of a/c were duly audited without defects in the audit report and Sales was made mainly to big institutional houses, public sector under takings through tender system thus in such scenario there remained no scope for manipulating sale price. (3)Assessee had declared value of opening and closing stock of goods after including element of Excise duty whereas sale price was net of excise duty, therefore both stock and sale price could not be compared for purpose of determining suppressed sale.
***DCIT & Anr vs Indian Explosives Ltd. & Anr (2018) 52 CCH 0416 KolTrib - ITA No. 58/Kol/2014 (C.O. No. 22/Kol/2015) dated 27.04.2018***

**1986.** The Tribunal allowed Revenue's appeal and remanded the matter back to the AO where the AO had found that the assessee did not maintain books of accounts properly, thereby making addition for unaccounted sources of income and the CIT(A) had deleted the addition holding that AO had not understood assessee's book keeping. The Tribunal held that if the CIT(A) believed that the AO had erred in understanding scheme of entry of assessee, he should have clearly brought on record rebuttal to AO's finding in his appellate order. Whereas the CIT(A) had summarily held that AO had misconstrued such entries and there was no description in CIT(A)'s order of appreciation of assessee's bookkeeping. Accorindgly, it remitted the matter back to AO to consider issue afresh in light of observations of CIT(A).
***Asst CIT vs Girish Matlani [2018] 54 CCH 0253 (Mum Trib.)- ITA No. 5105/Mum/2016 dated 20.11.2018***

**1987.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO with respect to unaccounted production and sale, noting that no evidence of purchases and sales outside the books of accounts were brought before the authorities below. The Tribunal followed its earlier order in the assessee's own case wherein it was held that

production loss depends on number of factors and in absence of any comparable to show that loss shown by the assessee was excessive, the appeal was decided in favour of the assesse.
***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. JOHNSON & JOHNSON LTD. & ANR. - (2018) 53 CCH 0174 (Mum Trib) - ITA Nos. 1776 & 1777/M/2017 (CO No. 242/M/2017) dated June 18, 2018***

**1988.** The Tribunal rejected assessee's appeal against addition made by AO as undisclosed income u/s 69A on basis of loose papers seized in respect of cash rental receipt where assessee claimed that she had already offered such cash rental receipts in return filed in response to notice u/s 153A and had asked the AO to telescope the same against other incomes disclosed. Tribunal noted that AO had clearly given a finding that income which the assessee wanted to be telescoped related to separate piece of loose paper and they had nothing to do with seized paper with reference to which this addition had been made. Tribunal further held that merely making such a statement would not support the case of the assessee when incriminating material had been found.
***Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 1 (Mum) – ITA Nos. 2771 (Mum) of 2015 dated 16.01.2018***

**1989.** Where assessee, in who cases search was conducted, had entered into an agreement with a company for a professional consideration of US $ 2,40,000 and the copy of ledger and bank statement showed receipts of only US $1,85,930 and subsequently, assessee explained that US $ 54,070 consisted of $ 4070 as tax and $ 50,000 was inadvertently included in list of receipts from unidentified parties, noting that the noting in the copy of loose sheets supported assessee's claim and that it was not case of Revenue that difference in amount which had been explained to be included in head of unidentified parties was any different amount, Tribunal held that assessee's explanation deserved to be accepted. Further, where the assessee submitted that she was not paid full but only half of the amount agreed from a party for participation in an international event without producing any evidence or any letter whereby she had demanded balance amount to be paid, Tribunal held that the impugned addition made u/s 69A was to be confirmed.
***DCIT v Ms. Priyanka Chopra – (2018) 89 taxmann.com 297 (Mum) – ITA No. 2523 (Mum) of 2015 dated 16.01.2018***

**1990.** The AO added certain amount to the total income of the assessee on the ground that, on perusal of AIR data there was discrepancy in income in AS-26. The AO required assessee to submit explanation as to why the alleged transactions were not appearing in Books of Accounts. The assessee claimed that at the first place, there were no such transactions and thus the same did not appear in Books of Accounts. However, AO rejected the claim and CIT(A) confirmed the addition. The Tribunal followed M/s. A.F. Ferguson & Co. v. JCIT and held that AO failed to make any enquiries with parties when assessee was denying any transactions with them and when assessee was denying any transactions with parties, onus was on AO to verify transactions with parties and to establish that assessee indeed entered into any transactions with said parties and had received income from them and since no such enquiries or effort was made by AO to find out whether assessee entered into such transaction with parties, the Tribunal deleted the addition.

Go to Index

***ACIT v Zee Media Corporation Ltd. & Anr (2018) 52 CCH 0322 MumTrib - ITA NO. 2166/MUM/2016, 2695/MUM/2016 dated 16.04.2018***

**1991.** A search was conducted at premises of one 'S' who was the employee of assessee's agent namely 'Matrix' during which certain computer printouts were seized which indicated that the assessee had received Rs. 2 lakhs for hosting ICC award function in Sydney. The AO, relying on the said print out added said amount to assessee's income. The Tribunal noting that a) the passport submitted by assessee clearly established fact that neither she had travelled to Sydney during relevant period nor hosted ICC event for which she was supposed to receive cash payment and b) that the employee from whose computer such printout was taken had stated before departmental authorities that she was not aware of fact mentioned in seized printout as it was relating to period prior to her appointment, held that the AO erred in simply relying upon an untested/unverified document and without any other corroborative evidence to demonstrate that assessee had actually received cash payment for hosting any event in Sydney. Accordingly, it held that the impugned addition was unsustainable.
***ACIT vs Katrina (Kaif) Rosemary Turcotte- ITA No. 3092 / mum / 2015 (Mumbai Tribunal) dated 11.10.2017***

**1992.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made on account of sale of scrap, where the AO, after considering market value of scrap, profit margin, transport charges, burning loss, opined that the sale of scrap was understated. It was held that the rates of scrap per Metric Tonne shown by assessee were within prescribed limits as per Metallurgical Guidelines issues by Ministry of Mines and further the examination of comparative chart on sale of scrap as well as comparative quotes of various scrap dealers, showed that assessee had not understated sale of scrap in any manner. The Tribunal thus held that the AO had made the additions only on surmises and conjectures.
***FORCE MOTORS LIMITED vs. DCIT (2018) 53 CCH 0593 PuneTrib – ITA Nos.1205 & 1206/PUN/2016, ITA Nos.1412 & 1413/PUN/2016 dated 18th July, 2018***

**1993.** The Tribunal held that where AO made addition to assessee's income under section 69A in respect of unaccounted receipts reflected in loose papers seized in course of search, in view of fact that assessee could not earn gross receipts without incurrence of expenditure, it was only net profit embedded in unaccounted receipts which deserved to be added to his taxable income.
***Dy. CIT, Central Circle 3, Surat v. Mehul T. Desai- [2019] 101 taxmann.com 234 (Surat-Trib.)-ITA No. 350 (AHD) of 2017 dated December 13, 2018***

**1994.** The AO made an addition under Section 69 of the Act in respect of allegedly unrecorded amount deposited in bank account in relation to sale of immovable property. After considering the submissions of assessee and the findings of AO, the CIT(A) dismissed the Assessee's appeal. Before the Tribunal, the Assessee reiterated that profits from sale of immoveable property were offered to tax and the said fact was submitted before the AO and the CIT(A). Thus, the Tribunal remitted the matter back to the file of the CIT(A) and held that if the assessee filed written submissions mentioning that he had offered profit for taxation, then the matter needed verification at end of the CIT(A).

Go to Index

***NAVITA SABLOK & ANR. vs. ITO & ANR. (Ranchi Tribunal) (ITA No. 166 & 167/Ran/2016) dated May 30, 2018 (53 CCH 0172)***

**1995.** The Assessee was an individual engaged in business of retail trade of timber / furniture wood and during assessment proceedings AO noted that during course of search and seizure operations u/s. 132 in group cases of M/s. L, certain incriminating material of assessee was found and seized and thereafter notice u/s. 153C was issued to assessee and addition made on account of unaccounted purchases and the same was partly allowed by CIT(A). The Tribunal noted that assessee submitted that certain purchases were made outside books of account and whenever he received payments, same were paid to suppliers, thus, there were unaccounted purchases and simultaneously unaccounted sales also. The Tribunal held that the assessee was not able to explain details of unexplained purchases, quantity of purchases and also details of unaccounted sales and source for unrecorded purchases, thus the request for GP addition for unaccounted sales only could not be considered and thus assessee's appeal was dismissed.
***Mugada Gopala Rao vs ACIT- (2018) 54 CCH 0093 Vishakapatnam Trib – ITA No 84,85/Viz/2018 dated 17.10.2018***

**1996.** The Tribunal allowed assessee's appeal and deleted the addition made u/s 68 on account of advances received in cash for sale of gold alleging that adjustment of customers account (advance) with sales was bogus and assessee had failed to establish capacity, credit worthiness and identity of customers who gave such advances. It held that the assessee had discharged its burden and duly accounted the advances received and issued necessary sales bills to the customers. It was noted that the assessee had maintained the stock register, purchase account and the sales account which were accepted by the AO in toto without pointing out any defects in the books of accounts. The Tribunal held that in case, the sales made to the customers who paid the advances in cash was bogus, the AO should have examined the issue and reduced the sales to that extent. Accordingly, having accepted the books of accounts and sales account, it held there was no reason to suspect the advances received in cash.
***Seeram Padmanabha Jewellers Pvt Ltd vs ITO [2018] 54 CCH 0227 (Vishakapatnam Trib.)-ITA No. 468/VIZ/2017 dated 14.11.2018***

*Bogus purchase*

**1997.** Where High Court upheld Tribunal's order rejecting assessee's application for rectification of order on ground that while making addition under section 68, assessee was not given an opportunity to cross examine person who allegedly gave accommodation entries, SLP filed against decision of High Court was to be dismissed by the Apex Court.
***R. L. Traders v. ITO, Ward 47(1) - [2018] 100 taxmann.com 332 (SC)-SLP (CIVIL) Diary No. 29085 of 2018-dated November 13, 2018***

**1998.** The Apex Court dismissed Department's SLP against order of the Court wherein it was held that where purchases made by assessee-trader were duly supported by bills and payments were made by account payee cheque, seller also confirmed transaction and there was no evidence to show that amount was recycled back to assessee, AO was not justified in treating said purchases as bogus under section 69C.

Go to Index

***PCIT v Tejua Rohitkumar Kapadia [2018] 94 taxmann.com 325 (SC) – SLP (CIVIL) DIARY NO. 12670 OF 2018 dated 04.05.2018***

**1999.** Where on basis of information received from sales tax authorities, AO found that assessee was beneficiary of bogus purchase bills and assessee could not produce any material purchased by it nor it could ensure presence of supplier, the Court held that AO was unjustified in limiting addition under section 69C on basis of GP ratio
***Shoreline Hotel (P) Ltd vs CIT- (2018) 98 taxmann.com 234 (Bom)- ITA No 332 of 2016 dated 11.09.2018***

**2000.** The Court admitted the appeal filed by the Revenue against the Tribunal's order on the question, "Whether the Appellate Tribunal has erred in law and on facts of the case in restricting the addition to 25% of the value of alleged purchases after categorically finding it to be bogus?"
***CIT v Aashadeep Industries - [2018] 95 taxmann.com 135 (Gujarat) - R/TAX APPEAL NOS. 606 TO 611 & 618 TO 620 OF 2018 dated June 18, 2018***

**2001.** Where assessee made purchases from two parties, in view of fact that as per Inspector's report, there was no concern existing at given address and, moreover, in bills of said parties, there were no sales tax number/TIN number or CIN number, the Court held that revenue authorities were justified in treating said purchases as bogus and making addition under section 69C to assessee's income in respect of amount in question.
***Shree Krishana Kripa Feeds v. CIT, Karnal- [2019] 101 taxmann.com 162 (Punjab & HaryanaHC) ITA No. 126 of 2018(O&M) dated November 1, 2018***

**2002.** The Tribunal upheld the CIT(A)'s order deleting the addition made on account of bogus purchases. During survey proceedings, the AO found that assessee firm was engaged in practice of issuing bogus bills to various parties and one of the partner had accepted that the payment on basis of these bogus bills were returned to other parties out of cash sales. The Tribunal noted that the assessee had made payment to party through banking channels and held that the statement of the said partner could not be accepted without such person being subjected to cross examination. Further, noting that the (seller) party itself had taken legal action for recovery of dues from assessee on purchases made for which it had issued bills and there had been amicable settlement of dues and payment had been made by assessee to said party, it held that the said statement itself lost its credibility and evidentiary value.
***ACIT v MEROFORM INDIA PVT. LTD. & ANR. (2018) 66 ITR (Trib) 0306 (Delhi) - ITA Nos. 4630 – 4635 & 4494/Del/2014 dated July 31, 2018***

**2003.** A search u/s 132 was carried out at M/s. D group of cases wherein, business premises of assessee was also covered. In reply, assessee filed its return of income and filed requisite details as called for by AO. During assessment proceeding, AO observed that assessee had purchased nickel from four parties. In course of post search enquiry, summons u/s 131 were issued to said four parties but same were returned unserved by Postal Authorities. AO asked Shri V, Director of assessee company to produce said four parties for his examination which he failed to do so. AO conducted enquiry through Inspector of Unit who reported that such concerns could not be located. AO found that said parties never existed at address provided by assessee.

Go to Index

AO noted that while routine payments were made to other entities from 7 to 30 days of date of issue of bills, however, in case of said four parties, payments were made on very next day of raising bill. AO recorded statement of Shri D and confronted him about discrepancies of non-existence of parties at given address as well as unusual manner of payments to those parties. Assessee furnished details like copy of Form No.C issued by Asstt. Commissioner, Commercial and copy of VAT return to prove purchases. AO held that said details did not prove existence of parties nor about their genuineness. AO held that assessee failed to prove identity and genuineness of parties from whom purchases were made thus, treated same as unexplained and made an addition to assessee's income. CIT(A) deleted such addition. The Tribunal noted that DR submitted that when concerned parties were not available at given address as found by Department during post search enquiries and since assessee failed to produce those parties to prove their identity, credit worthiness and genuineness, therefore, CIT(A) was not justified in deleting addition so made. Counsel for assessee submitted that merely because those parties were not traceable at given address, addition could not be made on account of such purchases, especially when such payments were made through banking channels and assessee had substantiated purchase by providing documents such as purchase invoices, copy of ledger accounts, evidences for having made payments through banking channels, C Form issued to suppliers, copy of VAT return duly reflecting said purchases, copy of Form No.XXXVIII issued by Commercial Tax Department containing name of seller of goods, details of transporter, truck number, name and address and licence number of driver. There was also no finding that raw materials purchased from said parties were not utilized in manufacturing process and sales were accepted by Revenue. It was an admitted fact that enquiries were conducted at a later stage and there might be a number of reasons for those parties to shift their place of business. The names of those parties were existing at website of Government of NCT, Delhi earlier, but, at relevant time of enquiry, status of concerns was shown as 'cancelled'. This indicated that at some point of time, those concerns were very much available in Government's website and, therefore, it could not be said that those firms were bogus when assessee purchased goods and made payments through banking channel and assessee substantiated all necessary documents which was required to be kept. Assessee had discharged initial onus casted on it. No such blank cheque books and vouchers of alleged four concerns were found. No infirmity was found in order of CIT(A) in deleting addition on account of purchase from four parties. Revenue's appeal was dismissed.

***Assistant Commissioner of Income Tax vs. Karam Chand Rubber Industries (P) Ltd.- (2018) 54 CCH 0409 DelTrib-ITA No. 6599/Del/2014-Dated Dec 12, 2018***

**2004.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by AO u/s 68 on account of bogus purchases pursuant to a statement of Mr.V who admitted that he used to provide bogus bills in lieu of commission. It was noted that (i) assessee had produced Gate Entry Register, stock register and production records which supported assessee's explanation that whatever material was purchased were entered into statutory registers and material had been used in production process (ii) no adverse views were taken either by the VAT Department or by the Excise Department against the assessee (iii) the AO did not rebut the documentary evidences filed by the assessee (iv) purchases were supported by Form D-3 issued by VAT Department (v) payment for all the purchases were made through banking

channel. Further, the Tribunal held that the statement of Mr.V was not admissible since he did not turn up for cross-examination to be done on behalf of the assessee.

***Dy.CIT vs Padmini VNA Mechatronics Pvt Ltd. [2018] 53 CCH 0410 (Del) (Trib)- IT(SS)A No. 2/Viz/2016 dated August 08 2018***

**2005.** The AO made an addition u/s 69C with respect to amount payable to the creditors for purchases made from them, opining that since most of the notices issued u/s 133(6) to the creditors were received back with remarks not available/wrong address etc, the creditors were not genuine. The Tribunal deleted the said addition noting that (i) purchases made by assessee were properly recorded in books of account (ii) payments were made through banking channels and (iii) sales against those purchases were not doubted. The Tribunal also rejected Revenue's contention of taxing the aforesaid amount u/s 41(1) holding that since amount was shown as payable in balance sheet of assessee, there was no cessation of liability.

***Smt. Sudha Loyalka v ITO [2018] 97 taxmann.com 303 (Delhi - Trib.) – ITA No. 399 (DELHI) OF 2017 dated July 18, 2018***

**2006.** Where assessee had claimed expenses towards purchase of machineries from several parties and had filed copies of PAN cards of these parties so as to establish their identity and had also furnished relevant details regarding payments made against bills raised by such parties by way of account payee cheque after deduction of TDS. The Tribunal held that Assessing Officer was unjustified in making additions under section 69C treating such purchase of machineries to be bogus.

***Pravesh Kejriwal v. ITO- [2019] 101 taxmann.com 170 (Kolkata - Trib.)-Ward-35(1), Kolkata-ITA No. 698 (KOL.) of 2018- dated December 19, 2018***

**2007.** The Tribunal held that the AO was not justified in making an addition on account of bogus purchases based on the statement of one Rajendra Jain wherein he stated that the one of the entities from whom the assessee had purchased diamonds was engaged in the business of providing accommodation entries noting that i) the statement of Rajendra Jain was subsequently retracted ii) the assessee maintained regular books of accounts including day to day stock register iii) the assessee proved the quantity and quality details of stock from which purchase, consumption and sale of stock by way of bills containing the name, address as well as sales tax numbers together with PAN and ledger accounts of those parties from whom goods were purchased and iv) the assessee had furnished a summary of diamonds movement indicating quantity and value in opening balance, purchases, sales and closing balance and v) the AO accepted the fact that purchases of diamonds indeed had been made by assessee, Noting that the payments were made through banking channels in the subsequent year, the Tribunal held that the AO erred in alleging that the assessee had received the cash back in lieu of account payee cheques (to make purchases in the grey market) in the year under review and held that since the payment was made by the assessee in the next year even assuming the AO's allegation that the supplier was an accommodation entry provider was correct, no cash could would be received by the assessee during the year under review and therefore the allegation that the assessee purchased the diamonds in the grey market was unsustainable. Accordingly, the addition was deleted.

Go to Index

***M.B. JEWELLERS & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0234 KolTrib - ITA No. 1/Kol/2017 dated Mar 28, 2018***

**2008.** The Tribunal deleted the addition made by the AO considering the purchases made by the assesse from one party to be bogus purchases (since the said party was involved in providing fake bills), following the Tribunal decision in assessee's own case for an earlier year wherein it was noted that –

- the assessee-company had discharged its onus by providing all relevant evidences in supporting of said purchases
- the books of accounts of the assessee were duly audited
- the assessee also maintained Stock Register which was evident from Tax Audit Report
- the sales shown by the assessee of very same goods that has been found to be bogus and disallowed by the AO, had been accepted as correct

***ALLOY STEEL EMPORIUM PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0205 KolTrib - I.T.A. No. 286/Kol/2017 dated June 20, 2018***

**2009.** The assessee, an individual was engaged in business of manufacturing and trading of ornaments and jewellery. On search and seizure, it was found that assessee had entered into one transaction of purchase of diamond from N and thus AO reopened assessment regarding the said transaction as bogus purchase on the basis that payment against diamonds purchased by assessee from N was made after period of 21 days and it was hard to believe that seller from Surat would give credit of 21 days to unknown buyer in Kolkata. The AO added the amount of payment to the total income of assessee and CIT(A) confirmed the addition. However, during the course of assessment proceedings, the assessee had explained that the purchase vide bill was genuine and payment was settled by cheque transaction and also the quantity of diamond purchased not only was entered in the stock register but also corresponding sale of the same was duly recorded. To support the explanation, relevant documentary evidence were also filed before the AO. The Tribunal held that the evidence was brushed aside by lower authorities only on the ground that there was some delay in payment and also that no enquiries were made by lower authorities to verify the claim which was supported by documentary evidence by assessee and thus, deleted the addition made by AO and CIT(A).

***Gautam Kumar Pincha v ITO (2018) 52 CCH 0301 KolTrib - ITA No. 2302/Kol/2017 dated 11.04.2018***

**2010.** The Tribunal allowed Revenue's appeal against the CIT(A)'s order wherein the CIT(A) had reduced the gross profit rate of 3.5% adopted by the AO to 1.77% (being the gross profit rate disclosed by the assessee for the relevant year) with respect to alleged bogus purchases discovered during survey proceedings by placing onus on AO to ascertain factual position. The Tribunal noted that the assessee could not conclusively substantiate delivery of material and had failed to produce any party to confirm transactions and thus held that the addition on account of bogus purchases was justifiable since the primary onus of proving purchase transactions was not discharged by assessee. It held that, in such a situation, the addition made had to factor in the profit earned by assessee against possible purchase of material in the grey market and undue benefit of VAT against such bogus purchases. Accordingly, the Tribunal increased the gross profit rate to 4% of the alleged bogus purchases.

Go to Index

***ACIT & ANR. vs. AMIT RAJENDRA SHETH & ANR. (2018) 53 CCH 0326 MumTrib – ITA Nos. 5835/Mum/2015, 753/Mum/2016, 755/Mum/2016 dated 13th July, 2018***

**2011.** AO noted that assessee was engaged in business of distribution of Dettol Liquid Soap and Dettol Antiseptic Liquid however, discrepancy in stock of Dettol soap fresh was noted. SCN was issued in reply to which, assessee filed copy of audited Balance Sheet, Management Certificate and Auditor's Certificate. Assessee explained conversion factor was erroneously applied by assessee and also filed details of actual opening stock, purchases, sales and closing stock and demonstrated same with documents. AO completed assessment without making any additions. Subsequently, CIT initiated revision proceedings u/s 263 and revised assessment directing AO to tax value of goods less 5% on account of breakages as unaccounted investment in purchases and directed to modify order u/s 143(3). ITAT quashed revision proceedings. High Court confirmed order of ITAT. When matter reached before Apex Court, same was restored back for fresh adjudication. AO during remand proceedings noted that assessee showed stock of Dettol Soap Fresh, whereas on considering opening stock, purchases and sales, quantity of closing stock worked out to a negative figure. Assessee had furnished detailed working of stock of Dettol Soap Fresh claiming that difference was caused due to application of conversion factor of 250 gms as against correct conversion factor of 75 gms. Assessee submitted that difference in quantity detail of stock was due to error and erroneous application of conversion factor but actually there was no difference in value of closing stock or profit of business. AO noted that reconciliation was submitted by assessee. AO concluded that there was no supporting documentary evidence to prove a bonafide claim of error and hence he added differential amount. CIT(A) affirmed AO's findings. The Tribunal held that, addition of 1737.46 MT was due to three factors i.e. error in conversion factor, total no. of boxes taken as 52,404 instead of 49,681 and breakages. Due to wrong multiplier factor of 48,000 adopted instead of 14,000, while opening stock of Dettol Fresh Soap was 72.25 MT and purchases was 666.74 MT, closing stock was 165.45 MT. Because of erroneous conversion factor adopted, assessee had negative stock at year end. CIT took 5% as breakages, whereas on a total stock of 11629.12 MT handled during year, breakage of 63 MT amounted to less than 1%. Though Soaps were hard and do not break easily, wrapper gets torn during transportation, storage. Assessee could not sell Soaps with torn wrapper, therefore in such cases also same was treated as breakage. Distribution arrangement with RBL came to an end in FY 2002-03 and assessee was not conducting any business, since then. Assessee also claimed that it had only skeleton staff, since its operations were currently negligible. It was relevant to mention that for filing of returns under Income Tax as well as filing before Registrar of Companies, there was no requirement of providing detailed working sheets, in relation to computation of stock and its conversion. Assessee was adopting calendar year, for purpose of internal accounting, in line with global practice of its parent. Computation of stock and its conversion was prepared for calendar year, instead of FY and same was filed before AO, in respect of previous 3 AYs; however, same were discarded by AO. Assessee made a mistake while preparing quantitative information for relevant AY, as concerned official of assessee instead of applying weight of Dettol soap fresh cake as 75 gms, applied as 250 gms. Assessee had filed complete data and Revenue could not controvert stated facts. Difference in stock of Dettol was entirely due to said errors, which was properly explained with re-conciliations supported by book entries. No difference in stock was found hence, addition was deleted.

Go to Index

***Reckitt Piramal Pvt Ltd vs DCIT- (2018) 54 CCH 0342 MumTrib- ITA No 1626/Mum/2017 dated Dec 12,2018***

**2012.** Based on admission of 'one' person during the search operation that the group from which the assessee purchased goods was issuing bogus bills, the AO made addition in the assessee's case on account of the alleged bogus purchase. The Tribunal deleted the said addition noting that (i) the three suppliers from whom purchases were made had not only appeared before the AO but also filed an affidavit confirming the sales made by them (ii) they had filed book entries, bills, bank statements in support of their claim of genuine sales (iii) the assesse had made only export sales and there was no doubt about genuineness of such sales.
***SHANTIVIJAY JEWELS LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0354 MumTrib - ITA No. 1045/Mum/2016 dated Apr 13, 2018***

**2013.** Where the assessee made purchases made from parties other than those mentioned in books of account and the assessee failed to prove with adequate evidence that the purchases were made from those parties, the Tribunal held that the AO was justified in making an addition on account of bogus purchases but could not make addition of the entire purchase price but only to the extent of the profit element embedded in such purchases. Accordingly, it directed the AO to make an addition at the rate of 12 percent of the value of purchases from these parties.
***ITO v Manish Kanji Patel & Anr – (2017) 50 CCH 0037 (Mum Trib) – ITA NOS. 7299/Mum/2014, 7154/Mum/2012 & 7300/Mum/2014, 7627/Mum/2014 dated 18.05.2017***

**2014.** Where i) the AO had not rejected the books of accounts of the assessee and only doubted the genuineness of the suppliers but not the genuineness of the purchases ii) the payments made by the assessee to the suppliers were through account payee cheques iii) there was no evidence that the suppliers had withdrawn cash immediately after the cheques issued by the assessee were deposited iv) the addition proposed to be made was on the basis of vague statements of alleged hawala dealers where no specific reference to the assessee was established for which no opportunity of cross examination was provided to the assessee, the Tribunal held that the AO was incorrect in making addition on account of bogus purchases under Section 69C of the Act. It held that the pre-condition for applying Section 69C is that the expenditure incurred by the assessee should be outside the books of account and would not apply where all purchase and sales transactions were a part of the regular books of accounts of the assessee.
***Fancy Wear v ITO - ITA No.1596/Mum/2016 dated 20.09.2017***

**2015.** The Tribunal held that where the AO had not disputed the genuineness of sales and the quantitative details and the day to day stock register maintained by the assessee, a trader, he could not make an addition in respect of peak balance of the bogus purchases. It held that at worst he could only make addition on account of the element of profit embedded in the bogus purchases. Considering the facts of the case, it restricted the addition to 2% of the bogus purchase.
***ACIT v Steel Line (India) - ITA No.1321/Mum/2016 dated 29/08/2017***

**2016.** The Tribunal held that assessing officer could not treat purchases as bogus (accommodation entries) merely on the basis of information received from the sales-tax department without

conducting independent inquires especially when the assessee has discharged its primary onus of showing books of account, payment by way of account payee cheque and producing bills for purchase of goods.
***DCIT vs. Shivshankar R. Sharma (ITAT Mumbai)***

**2017.** The Tribunal held that though Section 133(6) notices were returned unserved and the assessee could not produce the alleged bogus hawala suppliers, the entire purchases could not be added as undisclosed income and the addition had to be restricted by estimating Gross Profit ratio on the purchases from the alleged accommodation entry providers.
***Ashwin Purshotam Bajaj vs. ITO (ITAT Mumbai)***

**2018.** Where pursuant to information received from the Director General regarding beneficiaries in hawala transaction as detected under statement during investigation by the Sales tax department , the AO reopened the assessment proceedings for the year under review and made addition in the hands of the assessee on the ground that the assessee failed to produce original bills or copies of purchases made from alleged parties for verification, transport and octroi receipts and the CIT(A) reduced the addition to 25 percent of the value of purchases noting that this was not a case of bogus purchases but that of inflated purchases , the Tribunal held that since the assessee was not given an opportunity to cross examine the person whose statement was relied on for the purpose of reopening the assessment despite of its request, no addition on account of bogus purchases could be made.
***ANITA SANJAY AGRAWAL & ORS. vs. INCOME TAX OFFICER & ORS. - (2018) 52 CCH 0257 PuneTrib ITA Nos. 2622 to 2624/PUN/2016 dated Mar 28, 2018***

**2019.** The AO was of the view that purchase of brokerage stamps by assessee in cash were bogus as it was not supported by any evidence and accordingly he disallowed the expenses claimed with respect to the same. The Tribunal deleted the disallowance holding that merely on basis of non-furnishing of details of vendors, addition could not be made in case of purchase of stamps. It held that consumption of stamps was required to be considered based on volume of business and consumption account and once the Revenue had accepted settlements and mandatory requirement of affixing stamps there was no reason to suspect expenses incurred by assessee towards stamp duty merely based on surmises and conjunctures of AO without bringing any evidence to show that stamps account was incorrect. Accordingly, assessee's appeal was allowed
***Steel City Securities vs Asst.CIT [2018] 54 CCH 0232 (Vishakapatnam- Trib.)- ITA No.161/Viz /2017 dated 14.11.2018***

*Accomodation entries / Bogus billing*

**2020.** During search and seizure operation, it was found that the assessee was engaged in providing accommodation entries for issuing bogus bills. The addition made by the AO considering commission rate @ 2% charged by the assessee for such entries was upheld by the CIT(A). The Tribunal dismissed the assesse's appeal against the CIT(A)'s order, noting that the seized documents indicating that the assessee had minimum commission rates of 1.50% and maximum rate of 3.85%. It also rejected the assessee's claim for deduction on account of

expenditure against the said addition, holding that neither the assessee had shown any proof of such expenditure nor were the same found during the search proceedings.
***VAIBHAV JAIN vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0310 DelTrib - ITA No. 3770 to 3775/Del/2014 dated Apr 12, 2018***

**2021.** Survey operations were conducted on the assessee and bogus billing racket was found which was admitted by the Assessee. AO rejected the books of accounts under Section 145(3) of the Act as the assessee did not give any satisfactory explanation and also made addition to returned income which included the amounts surrendered by the assessee during assessment proceedings. The CIT(A) upheld order of the AO. Tribunal observed that assessee had offered explanation and also produced documentation during the course of assessment proceedings. Tribunal held that although AO rejected the books of accounts but accepted amount as surrendered by the assessee during course of survey, there was contradiction in statement of assessee and findings of AO and hence the matter required reconsideration by the AO. Accordingly, the ITAT restored the matter to the file of the AO fresh determination.
***VICHITRA PRESTRESSED CONCRETE UDYOG PVT. LTD. & ANR. vs. DCIT & ANR. (DELHI TRIBUNAL) (ITA No. 73, 74, & 75/Del./2015, 71/Del./2015) dated May 18, 2018 (53 CCH 0057)***

**2022.** The Tribunal remanded the issue of taxability of bogus accommodation entries with respect to the sum involved in assessee-company's bank account opened and operated by assessee's ex-director (Mr. Pradeep Jindal, who was the director till September, 2000), to the file of AO for AYs 2000-01, 2001-02 and 2002-03 noting that the AO made addition in the hands of the assessee based on the information from investigation wing and statement of Mr. Jindal (admitting that he was involved in providing accommodation entries). It took note of modus operandi and observed that all the transactions carried out by Mr Pradeep Jindal from the account of the assessee company or from the other companies named in the statement were all bogus transactions which had not at all been recorded in the books of accounts. It further noted that the AO had merely made the addition without identifying the real beneficiaries of the accommodation entries and that the banking transactions were carried out without proper KYC norms. The Tribunal held that unless the assessee came out with the clean hands before the Ld. assessing officer it could not escape the taxation of the whole amount and accordingly remitted matter back to AO and directed AO to make complete examination of the bank accounts and identify the beneficiaries with the discretion to also take into consideration the applicability of Prohibition of Benami Property Transaction Act, 1988 on such transactions and make necessary efforts to penalise the entry operator, the beneficiaries and the bankers, if found guilty.
***Precision Agencies Pvt. Ltd [TS-94-ITAT-2018(DEL)] - ITA No. 1814/Del/2013 dated 05/02/2018***

**2023.** The Tribunal reversed CIT(A)'s order and held that the assessee-company (allegedly engaged in the business of purchase and sale of fabric) introduced undisclosed income under the garb of purchases/ sales of fabric for AY 2009-10. It noted that the assessee transacted purchases of Rs.35 crore which were subsequently converted as loans and advances and opined that whole transaction had been carried out by the assessee company as a conduit for the

companies who have shown the loans and advances from the assessee and also got deduction of the purchase cost. Further, it observed that the parties to whom majority of the purchases and sales were recorded existed at the same address which created doubt over genuineness of the transaction. It held that the CIT(A) had miserably failed to look into these various allegations made by the AO. It rejected the CIT(A)'s view that since accounts were audited no addition could be made and held that the CIT (A) did not look into the facts of the case that the purchases had never been paid, the sales had never been realized, there was no bank account of the company and there were no expenditure incurred by the assessee for the purchases and sales entered into.

***Ganpati Hydro Power Pvt. Ltd - TS-579-ITAT-2017(DEL) - ITA No. 5629/Del./2012 dated 30.11.2017***

*Penny stocks / Bogus capital gains*

**2024.** The Court set aside the Tribunal's order reversing the CIT(A)'s order wherein the CIT(A) had allowed assessee's appeal against the addition made by the AO u/s 68 disbelieving the genuineness of the capital gains arising on purchase and sale of shares of a company. The Court held that the Tribunal had not considered all relevant and other material evidence existing on record such as contract notes/bills receipt, payments made through banking channel and copies of passbook of its demat account in support of assessee's claim of long term capital gain to be genuine and correct and that Tribunal had only based its decision solely on the fact that the purchase transaction was recorded late in the demat passbook. Accordingly, it remitted the matter to Tribunal for reconsidering the issue of genuineness of the transaction of purchase of shares.

***AMITA BANSAL v CIT - (2018) 400 ITR 324 (Allahabad HC) – ITA No. 326 of 2010 dated 30.03.2018***

**2025.** The Court held that since the assessee has not tendered cogent evidence to explain how the shares in an unknown company worth Rs.5 had jumped to Rs.485 in no time and there was no reasoning behind the sale price arrived at and there was no economic or financial basis to justify the price rise, it would be reasonable to conclude that the assessee had indulged in a dubious share transaction meant to account for the undisclosed income in the garb of long term capital gain. Accordingly it held that the AO was justified in making addition under section 68.

***SANJAY BIMALCHAND JAIN v CIT - INCOME TAX APPEAL NO. 18/2017 (Bom)***

**2026.** The Court held that the share transaction was genuine because it was supported by contract notes, bills, were carried out through recognized stockbroker of the Stock Exchange and all payments made to, and received from, the stockbroker, were through account payee instruments. Thus, it held that a transaction fully supported by documentary evidences could not be brushed aside on suspicion and surmises.

***CIT vs. Alpine Investments - ITA No. 620 of 2008 & GA No.2589 of 2008 (Cal HC) dated 26.08.2018***

**2027.** The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee's claim for speculation loss arising from off market commodity transactions, where the said

transaction were considered to be bogus by the AO on the ground that the broker through whom the transaction were undertaken was expelled by the commodity exchange for issuing forged and fraudulent contract notes and the commodity exchange had informed that the transactions were not done in the name of the assessee. The Tribunal had held that there was no law to inform the exchange about the off market transactions and the fact that the broker was expelled could not be criteria to hold transaction as bogus. Further, the Tribunal had also held that all transactions through broker were duly recorded in books of the assessee as well as the broker and thus the transactions of commodity exchanged had not only been explained but also substantiated from confirmation of party duly supported with books of accounts and bank transactions. Noting that the no material had been shown which negated the Tribunal's above findings, the Court held there was no scope of any interference with the order of the Tribunal.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. BLB CABLES AND CONDUCTORS PVT. LTD. - (2018) 102 CCH 0106 KolHC - ITAT No. 78 of 2017 GA No. 747 of 2017 dated June 19, 2018***

**2028.** The Court dismissed Revenue's appeal against the Tribunal's order upholding the deletion made by CIT(A) of the amount of long-term capital gains on sale of shares of company added by AO considering the share transaction as non-genuine transaction. It was noted that the assessee had sold shares through a SEBI registered Stock Broker, the payment for sale of shares was received through banking channels and all the documentary evidences in favour of the assessee were rejected by the AO merely on basis of some casual replies given by assessee to AO. It was also noted that the dividend received with regard to holding of the said shares was disclosed by assessee in his return of income and exemption was claimed accordingly. Thus, it held that the addition was made without any logical basis.
***PR.CIT v PREM PAL GANDHI – (2018) 401 ITR 253 (P&H HC) – ITA-95-2017 (O&M) dated 18.01.2018***

**2029.** The assessee had sold 5,000 shares of one M/s. Kappac Pharm Ltd and earned long term capital gains arising from such sale, which was claimed as exempt u/s.10(38).The AO disbelieved the sale of the shares, relying on reports of Directorate of Income Tax (Investigation) Kolkata and Delhi, which mentioned that M/s. Kappac Pharm Ltd was a penny stock company.The Tribunal following the judgement in case of Vimalchand gulabchand, Gatraj Jain & Sons held that transactions claimed by the assessee whether real or sham required re-visit by the AO and only after all the steps required under law are complete, it could be ascertained whether a transaction was bogus or not. Thus, the Tribunal set aside the orders and remitted the issue back to the AO.
***Deepak Bhatad (HUF) vs ITO- (2018) 54 CCH 0027 Chen Trib- ITA No 1287/2018 dated 19.09.2018***

**2030.** The Tribunal remitted the issue of disallowance of assessee's claim of long term capital gains exemption u/s 10(38) upon sale of share of 'penny stock' company back to the AO, noting that the AO had made the addition only based on the information from the investigation wing stating that the share price of the said company were inflated abnormally and the AO had not brought anything on record to establish assessee's role in promoting the company or in inflating its share price. It held that if the assessees were innocent investors, then they could not be faulted merely

because the investments were made in a penny stock company. The Tribunal directed the AO to (i) enquire as to - how a penny stock company was allowed to continue as a registered company, who were the promoters of the penny stock company, whether the IT Department's finding was brought to the notice of Ministry of Company Affairs and the action taken thereupon (ii) furnish the copy of investigation report to assessee and (iii) decide the issue afresh after giving a reasonable opportunity to assessee.

***Vandana Sankhala & other v ACIT [TS-647-ITAT-2018(CHNY)] - ITA No.1333 & 1334/Chny/2018 dated 14.11.2018***

**2031.** During assessment proceeding, AO noted that assessee was engaged in purchase and sale of shares of M/s. SRKIL.Assessee had claimed exemption u/s 10(38) in respect to LTCG earned on those transactions.AO found that company in which assessees had purchased equity shares had no creditability and no prudent investor would make such investment.AO received a report from Investigation Wing revealing that members who participated in trading of scrip during mid-2013 to mid-2014 were part of syndicate of brokers and brokering entities indulging in price rigging.AO completed assessment after denying assessee's claim and treated those transaction as unexplained cash credit u/s 68.CIT(A) confirmed AO's action. The Tribunal held that, AR could not justify any of their claims made before Revenue Authorities that transaction was genuine.Further AR could not successfully controvert any of findings of Revenue Authorities which were against assessee.Instead AR only come out with a plea that assessee were not provided with opportunity of cross-examining witness, investigation report was not furnished and proper opportunity was not provided of being heard.However such arguments were never alleged before Revenue Authorities when matter was before them.Thus, orders of Revenue Authorities was confirmed on ground that AO as well as CIT(A) had arrived at their respective decisions after considering issues in detail and there was nothing to disturb their findings.Assessee's appeal was dismissed.

***PANKAJ AGARWAL & SONS (HUF) AND ORS. vs. ITO & ORS. (2018) 54 CCH 0479 ChenTrib I.T.A. No.1413, 1414, 1415, 1416, 1417, 1418, 1419, 1420/CHNY/2018 dated 06.12.2018***

**2032.** The Tribunal remanded the issue of alleged bogus claim of LTCG back to the AO, where the AO disbelieved sale of shares by assessee in M/s. K (allegedly a penny company) on the basis of report received from DIT(Investigation), noting that the assessee was not provided the said report. It held that the rules of justice required that the reports of investigation wing relied on by the AO to be put before the assessee and seek its explanation, before deciding whether these were relevant in the assessment of the assessee.

***Jaishree Bomboly vs ITO [2018] 54 CCH 0190 (Chen Trib.)- I.T.A. No.1679 /CHNY/2018 dated 08.11.2018***

**2033.** The Tribunal deleted the addition made by the AO u/s 68 by treating the amount received on sale of shares of M/s K as unexplained cash credit where, on the basis of information received from investigation wing, the AO opined that long term capital gains earned by assessee were in nature of an accommodation entry and transactions in question were not genuine. It noted that the AO and CIT(A) failed to controvert assessee's copious evidences filed which clearly supported his case qua LTCG claimed as exempt u/s 10(38) on sale of shares. The Tribunal

relied on the in the case of CIT Vs Vishal Holding and Capital Pvt. Ltd (Del HC) wherein it was held that since the AO had made the addition with respect to long term capital gains without verying the details furnished by the assessee but only based on information received from Investigation Wing, the addition could not be sustained. Accordingly, it allowed assessee's appeal.

***Arun Kumar and Ors vs Asst CIT [2018] 54 CCH 0183 (Del Trib) - ITA Nos. 2825, 2826 & 457/Del/2018 dated 05.11.2018***

**2034.** The Tribunal allowed assessee's appeal and deleted the addition made by the AO on account of suspicious long term capital gains on shares on basis of statement of Sh.VK, holding that the addition made on the basis of a statement of a third party without providing any opportunity to the assessee to cross examine him, was unsustainable in law and against the law laid down in Apex Court in Andaman Timber vs CIT (Civil Appeal No. 4228 of 2006) wherein it was held that not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority was a serious flaw which made the order nullity in as much as it amounted to violation of principles of natural justice.

***Anubhav Jain vs ITO [2018] 54 CCH 0273 (Del- Trib.)- ITA No.4565/Del/2018 dated 26.11.2018***

**2035.** The Tribunal held that the fact that the assessee bought and sold shares of groups concerns with a view to book loss and off-set the capital gains from another transaction does not mean that the loss can be treated as bogus if the documentation is in order and thus it cannot be said that there was an attempt to evade taxes.

***ACIT vs. RJ Corp Ltd - ITA.No.3661/Del./2014 dated 01.10.2018***

**2036.** During assessment proceeding, AO noted that assessee had claimed an amount as LTCG which was earned through sale of shares of M/s. E and same was exempted u/s 10(38).In support of its claim, assessee had furnished details of mode of acquisition of those shares, bank A/c statements where sale proceeds were credited, depository participant statements and stock broker notes.AO found that exempt LTCG claimed by assessee was not genuine but was pre-arranged collusive transaction in form of accommodation entry without real substance.There was unrealistic returns on investment.DIT(Inv.) carried-out investigation to un-earth organized racket for generating bogus entries of LTCG which was exempt from tax.Statement of several entry operators were recorded including Shri S who admitted that M/s. E was a penny stock company whose shares were artificially manipulated to provide LTCG.Further, assessee contended that opportunity to cross-examine said statements were not given.Assessee's case was covered u/s 68.Section 115BBE was applicable and same was taxable @30%.AO completed assessment after making required additions.CIT(A) held that AO was not under obligation to allow cross-examination of any person. The Tribunal held that, assessee placed sufficient documentary evidences before AO to prove genuineness of transaction.Assessee purchased shares through banking channel and actually got shares transferred in his name.Purchase was made through cheque which was supported by bank statement.Transactions of sale was made through Demat account.Contract note along with other details were produced to show that purchase and sale of shares were made through banking channel through recognized Stock Exchange through Demat account on which Security

Transaction Tax was also paid.AO did not made any enquiry on documentary evidences filed by assessee.No materials were brought on record against assessee to disprove its claim.Assessee's claim of purchase and sale of shares were supported by documentary evidences.Statement of Shri S was recorded by Investigation Wing, Kolkata, but, same was not confronted to assessee and his statement was also not subjected to cross-examination on behalf of assessee.Therefore, his statement could not be read in evidence against assessee.AO did not mention any fact as to how claim of assessee was sham or bogus.Assessee satisfied conditions of s. 10(38).Broker through whom transactions were carried out had not denied transaction conducted on behalf of assessee.Addition was merely made on presumption and assumptions of certain facts which were not part of record.There was no other material available on record to rebut claim of assessee of exemption claimed u/s 10(38).Assessee's appeal was allowed.

***AMAR NATH GOENKA & ORS. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ORS. ((2018) 54 CCH 0344 DelTrib ITA No. 5882/Del./2018, 5883/Del./2018, 6457/Del./2018, 6458/Del./2018, 6459/Del./2018 dated 12.12.2018***

**2037.** Assessee filed return of income declaring LTCG and claimed as exempt u/s 10(38).During assessment proceeding, AO found few people were indulge in getting bogus LTCG from penny stocks and concluded that assessee was also one beneficiaries who took accommodation entry.Assessee had purchased and sold shares of M/s. C which amalgamated into M/s. K.AO held that scrips M/s. K were used by entry providers for providing bogus accommodation entries and also noted that in some other matter in course of proceedings u/s 131 before Investigation Wing, one CA had confirmed that he had provided accommodation entry in scrip of M/s. K and based on such statement, AO drew adverse inference that this was also same kind of accommodation entry.AO treated LTCG as he taxed same u/s 69.CIT(A) confirmed said addition mostly based on general observation. The Tribunal held that once purchase of shares were not doubted and sale was made through BSE routed through DMAT account then consideration received had to be treated from amount of sale of shares whether price was rigged or not.One factor which weighed heavily on lower authorities in present case was that share price had risen to more than 37 times.Once SEBI held that there was no adverse evidence or material that there was any violation of provision of PFUT regulation in respect of K and restrain order on trading was revoked, then it followed that share price of which was sold for genuine quoted price and therefore, sale proceeded had to be reckoned from sale of such shares and would be treated as explained credit or investment.LTCG shown by assessee was genuine and consequently liable for exemption u/s 10(38).Assessee's appeal was allowed.

***VIDHI MALHOTRA & ANR. vs. ITO & ANR (2018) 54 CCH 0429. ITA No. 93/Del/2018, 94/Del/2018 dated 20.12.2018***

**2038.** Pursuant to a survey conducted on a CA engaged in providing accommodation entries, it was found that he had provided accommodation entries to the assessee as well and the assessee had failed to produce any documentary evidence regarding nature and genuineness of transactions or credit worthiness of parties involved. The Tribunal reversed the order of the CIT(A) and held that the mere fact that the share transaction of the assessee were subjected to capital gains tax and were through a/c payee cheque, would not make the entries genuine.

Accordingly, it upheld the AO's order adding the impugned transaction as unaccounted income in the hands of the assessee.

***Esha Securities Pvt. Ltd vs DCIT-TS-402-ITAT-2017- ITA No. 3357 and 3358/Del/2013 dated 13.09.2017***

**2039.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO u/s 68 on account of consideration received on sale of shares to seven companies with respect to which deduction u/s 54F was claimed. The AO had held that the parties to whom shares had been sold were not having income to explain purchases of shares by them but the AO had not investigated genuineness of shares transfer due to paucity of time. The CIT(A) had deleted the addition noting that the assessee had discharged the onus of proving identity of parties to whom the shares were sold and the purchase of shares had been confirmed by all seven parties. The CIT(A) held that once the sale consideration was taxed u/s 45 (since it formed part of gross income), the same could not be taxed again u/s 68 and that addition u/s 68 was not called for since it was case where one asset got replaced by another asset and not of cash credit. It noted that the shares sold by the assesse were received by her as gift from her husband and the same was not doubted by the AO. Thus, the CIT(A) had assessed the income derived from transfer of shares in accordance of the provisions of section 64(1)(iv) and not section 68.

***INCOME TAX OFFICER & ANR. vs. SHIKHA KHANDEWWAL & ANR. - (2018) 53 CCH 0159 DelTrib - ITA No. 3513/Del/2014 (CROSS OBJECTION NO. 234/Del/2017) dated June 4, 2018***

**2040.** The Tribunal held where the assessee submitted various documentary evidences to prove genuineness of transaction of sale and purchase of shares which included copy of purchase bill, copy of share transfer form in favour of assessee, the AO was unjustified in ignoring the same and alleging that the sale of shares undertaken by the assessee on which it claimed exemption under Section 10(38) was a sham transaction and making consequent addition under Section 68 merely on the basis of report of the Investigation Wing. The Tribunal held that though the AO had given the entire modus operandi of bogus LTCG scheme he failed to bring any material on record to prove that the assessee was directly involved in such scheme. Accordingly, it deleted the addition made under Section 68 of the Act.

***MEENU GOEL vs. INCOME TAX OFFICER - (2018) 52 CCH 0232 DelTrib - ITA No. 6235/Del/2017 dated Mar 19, 2018***

**2041.** The Tribunal allowed the assessee's claim and deleted the amount added by the AO considering the sale of shares to be bogus transaction and rejecting exemption claimed u/s 10(38). The AO had opined the transaction to be bogus noting that the increase in the market price of the shares was abnormal and many fold and also on the basis of statement of an employee of the stock broker who said he had no knowledge of the above transaction. Noting that the sales of the shares were not in dispute as the same were sold from the demat account against the consideration which was received by the assessee through banking channel, the Tribunal held that once holding of the shares prior to the sale and the sale transaction itself were not in dispute then the same could not be held as bogus transaction. It held that the AO's opinion

Go to Index

was based on suspicion without any material evidence to controvert or disprove the evidence produced by the assessee.

***PRAMOD KUMAR LODHA vs ITO (2018) 53 CCH 0539 JaipurTrib – ITA No. 826/JP/2014 dated 16th July, 2018***

**2042.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made u/s 68 with respect to capital gains arising on sale of shares [and also consequent claim for exemption u/s 10(38)], noting that the AO had not controverted the evidence of purchase bills, payment of consideration through bank, DEMAT account, allotment of amalgamated shares, sale of shares through stock exchange at prevailing price, payment of STT etc. It also held that the reliance by AO on statements recorded by the Investigation Wing to conclude that the capital gains were bogus without giving an opportunity of cross examination was a complete violation of principles of natural justice as held in CCE Vs Andaman Timber Industries 127 DTR 241(SC).

***DCIT vs. Saurabh Mittal - ITA No. 16/JP/2018 dated 29.08.2018***

**2043.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the unexplained cash credit added u/s 68 by the AO by disbelieving the assessee's claim that the impunged amount was received on sale of shares which resulted in long term capital gains eligible for exemption u/s 10(38). The Tribunal relied on coordinate bench decision of Saurabh Mittal (ITA No.16/JP/2018) dealing with the identical transaction of sale and purchase of shares, wherein it was held that assessee had discharged its onus by providing all necessary details/evidences noting that (i) payment for shares were made through bank account (ii) AO had not brought any material to controvert supporting evidence of purchase bills, payment of consideration through bank, dematerialization of shares in DEMAT account, allotment of the shares, etc. It was thus held that the AO was unable to show that the assessee had introduced his own unaccounted money by way of bogus long term capital gain, hence share transaction could not be treated as sham and not genuine. Accordingly, share transaction resulting in capital gains was a valid transaction and eligible for exemption u/s section 10(38).

***ITO vs. Kapil Mittal [2018] 53 CCH 0532 JaiTrib- ITA No.17/JP/2018 dated August 30 2018***

**2044.** Where assessee's claim for deduction of long-term capital loss on issue of shares was rejected on ground that sale consideration had been grossly understated and that the assessee had not been able to prove that the sale consideration at which the shares were sold were the market value, the Tribunal held that since no enquiries whatsoever were conducted in hands of purchaser of shares, impugned disallowance made on basis of suspicion and conjectures was to be deleted.

***Electrocast Sales India Ltd. v DCIT - [2018] 92 taxmann.com 85 (Kolkata - Trib.) - IT APPEAL NO. 2145 (KOL.) OF 2014 dated MARCH 9, 2018***

**2045.** During assessment proceeding, AO found that assessee had claimed LTCG on sale of shares of M/s. UIL and M/s. NCL, which was claimed as exempt u/s 10(38).AO noticed that assessee bought purchased shares in name of M/s P from M/s. UDL.Thereafter, M/s. P was merged with M/s. UIL.Accordingly, said purchased shares were sold to M/s. UIL by assessee.AO received an information from DGIT(Inv.) in respect of 'Dissemination of intelligence regarding tax evasion by showing LTCGs perpetrated through accommodation entry operators'.Thereafter, AO

observed that name, address and PAN of assessee along with name of scrip.AO held that assessee had not purchased or sold any other share except impugned transaction and only made investment in those scrips anticipating a windfall and claimed a substantial amount of LTCG, which was totally exempt u/s 10(38).Assessee's share transaction was a kind of sham transaction to evade taxation and to channelize her own fund from unknown sources to a legitimate form of income.Assessee's claim in respect of exempt income under head LTCG was a bogus claim.AO completed assessment after making addition under head undisclosed income.CIT(A) confirmed action of AO. The Tribunal held that AO/ CIT(A) had not appreciated that transaction of sale of shares by assessee was duly backed up by material/evidence including contract notes, de-mat statement, bank account reflecting transactions, shares were sold on online platform of stock exchange and each trade of sale of shares were having unique trade number and trade time.AO had not brought any evidence on record to show that statutory agencies of Government had alleged any stock manipulation by assessee or brokers or Company's scrip in question at time when assessee made sale.Shares were sold on date mentioned in contract note at prevailing market price duly recorded in stock exchange.Evidence gathered by Director Investigation's office by way of unknown parties statements recorded which admittedly was recorded behind assessee's back was relied upon by Revenue to make any additions.When such actions were carried out, AO had to ensure to give copies of adverse material/statement given to assessee and allowed assessee an opportunity of cross examination, if AO was going to rely on any adverse statements of third party as evidence to draw adverse inference against assessee.If any material or evidence was sought to be relied upon by AO, he had to confront assessee with such material.Assessee's claim could not be rejected based on mere conjectures unverified evidence under pretentious garb of preponderance of human probabilities and theory of human behavior by Department.Nothing was brought on record to show that persons investigated, including entry operators or stock brokers, had named that assessee was in collusion with them—In absence of such finding how was it possible to link their wrong doings with assessee—In fact, investigation wing was a separate Department which was not assigned with assessment work and was delegated the work of only making investigation.Income Tax Act had vested widest powers on this wing—It was duty of investigation wing to conduct proper and detailed inquiry in any matter where there was allegation of tax evasion and after making proper inquiry and collecting proper evidences the matter should be sent to assessment wing to assess income as per law.No such action was executed by investigation wing as against assessee.Assessee could not be held to be guilty or linked to wrong acts of persons investigated.AO at best could have considered investigation report as a starting point of investigation.Said report only informed AO that some persons might have misused scrip for purpose of collusive transaction.AO was duty bound to make inquiry from all concerned parties relating to transaction and then to collect evidences that transaction entered into by assessee was also a collusive transaction.Assessee's claim of exempt income on LTCG on sale of scrips of M/s. NCL was allowed.

***MINU GUPTA vs. ITO (2018) 54 CCH 0343 KolTrib ITA No. 731/Kol/2018 dated 12.12.2018***

**2046.** Assessee, an individual, had claimed to have received Long Term Capital Gain (LTCG) on sale of shares of a company (NFGL). However, Assessing Officer noted that assessee had purchased these shares off market and doubted receipt of astronomical gain by selling of these shares. After having taken note of reports of SEBI and Investigation Wing of department that

there was such an adverse admission made by an accommodation provider against NFGL, he was of opinion that entire transaction was bogus and, therefore, he added entire sale consideration under section 68 as income of assessee. Assessee had furnished all primary evidences in form of bills, contract notes, demat statements and bank accounts to prove genuineness of transaction relating to purchase and sale of shares resulting in LTCG. Further, transaction was made by assessee through registered stock broker through Bombay Stock Exchange, after remitting STT and all payments were transacted through bank and shares were held in Demat account. Further, no attempt had been made by Assessing Officer to issue summons to parties involved in all these transactions to record any adverse inference against assessee. In light of the aforesaid facts the Tribunal deleted the addition.

***Smt. Madhu Killa v. Asst. CIT, Circle-36, Kolkata-[2018] 100 taxmann.com 264 (Kolkata - Trib.)- ITA No. 834 (KOL.) of 2018-November 2, 2018***

**2047.** Assessee, an individual and in his return of income had claimed exemption on account of Long-Term Capital Gains on purchase and sale of shares of M/s. UNNO Industries Ltd and M/s. NCL Research & Financial Services Ltd. However, during assessment, AO on basis of a general report and modus operandi adopted generally in those cases and on general observations had concluded that assessee had claimed bogus long term capital gain.Therefore, he made an addition of entire sale proceeds of shares as income and rejected claim of exemption made u/s 10(38).Evidence produced by assessee in support of genuineness of transaction was also rejected.On appeal, CIT(A) upheld decision of AO. The Tribunal held that, in a number of cases bench of Tribunal had consistently held that decision in all such cases should be based on evidence and not on generalisation, human probabilities, suspicion, conjectures and surmises. Therefore, in all such cases additions were deleted. Revenue could not controvert claim of Counsel for assessee that issue in question was covered by such decisions of High Courts and ITAT. Consequently, addition made by AO was deleted.

***Neeraj Gupta vs ITO- (2018) 54 CCH 0238 KolTrib- ITA No 863/Kol/2018 dated 05.10.2018***

**2048.** Assessee was Association of Persons (AOP) and had filed its return declaring income. It derived income from commodity trading, long term capital gains on account of sale of shares, dividend income on investments in shares and received interest income from non-convertible debentures and deposits. Assessee claimed exempt income u/s 10(38) on account of long term capital gains (LTCG in short) on sale of listed equity shares of Sharp Trading & Finance Ltd (STFL in short) which was also subjected to Securities Transaction Tax (STT) and transactions routed through recognized stock exchange. AO sought to treat LTCG reported by assessee as bogus as according to him, scrip did not justify such huge increase in its sale price and that increase in share price thereon was only artificial and due to price rigging carried out by some persons in market. AO held that LTCG claimed exempt as bogus and added same as unexplained cash credit u/s 68 and added same to total income of assessee. CIT(A) set aside order of AO. The Tribunal held that, CIT(A) had given categorical finding in his appellate order that concerned scrip was not suspended by SEBI either at time of transaction of allotment of shares to assessee or sale of shares by assessee. He also observed that AO had disallowed claim of assessee and treated long term capital gain as unexplained cash credit solely on basis of general report of investigation wing, Kolkata and accordingly action of AO was based purely on surmises and

suspicions. There was no finding by AO that transactions were between related parties. CIT(A) had rightly deleted addition made u/s 68 in respect of LTCG on sale of shares.
***ITO vs Stuti Welfare Trust- (2018) 54 CCH 0119 Kol Trib- ITA No 1508/Kol/2017 dated 24.10.2018***

**2049.** The assessee had earned long-term capital gain from sale of shares of one, CSL and claimed the same as exempt. Based on investigation carried out by DIT (Investigation), it was found that CSL was a scrip which was identified to be involved in scheme of bogus LTCG/STCG to more than 60,000 beneficiaries and that assessee was also part of list of such beneficiaries. Thus, sale consideration received by assessee on sale of shares was added to his income as unexplained cash credit u/s 68. The Tribunal deleted the said addition noting that the observations of Investigation wing were general in nature and were applied across board to all 60,000 assessees who fell in this category and there was no specific evidences produced against assessee. It also noted that nothing was brought on record to show that persons investigated, including entry operators or stock brokers, had named that the assessee was in collusion with them.
***Navneet Agarwal v ITO [2018] 97 taxmann.com 76 (Kolkata - Trib.) - IT APPEAL NO. 2281 (KOL.) OF 2017 dated July 20, 2018***

**2050.** The assessee had purchased off market scrips and derived profits @ 6163% and 1201%. The AO had opined that such astronomical rise in shares had reasons attributable to something suspicious rather than flowing from normal market trends and thus believed share price movement was a pre-arranged trading pattern revealing artificial price rigging in these two scrips as per details right from the date of acquisition. The AO treated assessee to have engaged in bogus long-term capital gain arrangements and in collusion with entry operators. Further AO on reference to DIT's investigation report assesseed long term capital gain as unexplained cash credits and also made commission disallowance/addition @ 2.5% as unexplained expenditure, which was upheld by CIT(A). The Tribunal on appeal held that AO as well as CIT(A) had been guided by report of investigation wing prepared with respect to bogus capital gains transactions, however, AO as well as CIT(A) had not brought out any part of investigation wing report in which assessee had been investigated and /or found to be part of any arrangement for purpose of generating bogus long term capital gains and the report only informed AO that some persons might have misused script for purpose of collusive transaction. Thus, as AO had not brought on record any evidence to prove that transactions entered by assessee which were otherwise supported by proper third-party documents were collusive transactions, the addition in terms of bogus long-term capital gain as well as unexplained commission was deleted.
***Jignesh Desai vs ITO- (2018) 54 CCH 0045 Kol Trib- ITA No 1263/2018 dated 26.09.2018***

**2051.** AO noted that assessee had claimed an exempt income received on account of shares sold.AO received an information from Investigating Unit, Kolkata which indicated that assessee entered into a transactions that was merely accommodation entries taken for the purpose of bogus LTCG made during PY.In garb of alleged LTCG, assessee earned exempt income and huge amounts were brought into books without payment of any taxes.AO completed assessment after making addition u/s 68.CIT(A) held that payment through Banks, performance through stock exchange and other such features were only apparent features.Real features were manipulated

and abnormal price of off load and sudden dip thereafter.Said transactions as discussed by AO would fall in realm of "suspicious" and "dubious" transactions.AO had therefore necessarily to consider surrounding circumstances, which he did in a very meticulous and careful manner. The Tribunal held that assessee's paper book comprised of all details of its LTCG, copy of its bill in connection with purchase of shares of M/s S and M/s. P, bank statement.Said entities amalgamated with M/s K, contract notes in respect of sale of share of M/s S.Similar contract notes regarding M/s K shares sold, bank statement reflecting payment receipts along with corresponding demat statements stood perused.Once assessee had discharged his onus, then onus shifted to shoulders of AO then AO had to examine veracity of documents produced by assessee and if it was found to be correct and valid then in all fairness AO should accept claim of LTCG.In case if AO on verification finds that documents produced by assessee was false or fabricated, then AO should bring his adverse findings to notice of assessee and confront her with adverse material/findings.Then again onus would shift to assessee to prove genuineness of transaction.Though AO/CIT(A) were swayed by report of SEBI/Investigation Wing of Department, both authorities could not point out what was role of assessee in any wrong doing which was prohibited by law.AO merely carved out certain features/modus-operandi of companies indulging in practices not sanctioned by law.Neither any investigation were carried out against assessee, nor against brokers to whom assessee dealt with or companies in which assessee dealt with purchase and sale of shares in question were done by AO.Action of AO and CIT(A) was not justified in rejecting claim of assessee based on theory of surrounding circumstances and human conduct and preponderance of probability against assessee. Impugned addition made u/s 68 on account of bogus LTCG was to be deleted.
***UDIT AGARWAL vs. Dy. CIT (IT) [2018] 54 CCH 0424 (Kol- Trib.)- ITA No. 1839/Kol/2017 dated 26.12.2018***

**2052.** The AO disallowed the assessee' claim for exemption u/s 10(38) and made addition accordingly with respect to LTCG derived from transfer of shares held in M/s K. on the basis of report received from Investigation wing stating that M/s.K was engaged in providing accomadation entries and also alleging that assessee was part of the scam. The Tribunal deleted the said addition, holding that neither the AO nor the CIT(A) had brought out any part of the investigation wing report in which the assessee has been investigated and /or found to be a part of any arrangement for the purpose of generating bogus LTCG. It held that the AO was duty bound to make inquiry from all concerned parties relating to the transaction and then to collect evidences that the transaction entered into by the assessee was also a collusive transaction. Acccordingly, since the Revenue had failed to indicate any specific evidence against the assessee with respect to her LTCG, the Tribunal allowed assessee' appeal.
***Aruna Bansal and Ors. vs ITO [2018] 54 CCH 0226 (Kol Trib.)- ITA No.946/Kol/2018 dated 14.11.2018***

**2053.** The Tribunal deleted the addition made by the AO u/s 68 treating the amount received on sale of shares of a company 'U' listed on recognized stock exchange (the price of which had increased 3100% in 24 months) to be unaccounted income. It held that the addition was made merely on suspicion and in a routine and mechanical manner. It noted that the AO had referred to a company 'S' as being the manipulated company, whereas the assesse had sold shares of 'U' company. Further, the AO had made general statements about various enquiry been carried

out by the Directors of Income-tax which had resulted in unearthing of a huge syndicate of entry operators, share brokers and money lenders involved in providing of bogus accommodation entries. Noting that neither any report nor any evidence collected by DIT had been brought on record, it held that the evidence collected from third parties could not be used against the assessee without giving a copy of same to assessee and thereafter giving him an opportunity to rebut same. Thus, the Tribunal allowed the assessee's appeal holding that the assessee's submissions were backed by evidence whereas the revenue had not based its finding on any evidence.

***PRAKASH CHAND BHUTORIA vs. INCOME TAX OFFICER - (2018) 53 CCH 0275 (Kol Trib) - ITA No. 2394/Kol/2017 dated June 27, 2018***

**2054.** The Tribunal held that the fact that the stock is thinly traded and there is unusually high gain is not sufficient to treat the long-term capital gains as bogus when all the paper work is in order. It held that the revenue had to bring material on record to support its finding that there has been collusion / connivance between the broker and the assessee for the introduction of its unaccounted money.

***Dolarrai Hemani vs. ITO (ITAT Kolkata)***

**2055.** On basis of information from DGIT (Inv.), Kolkata that some companies were engaged in business of issuing penny stocks for which there were large number of beneficiaries claiming bogus long- term capital gain/short-term capital loss/business loss/speculation loss, Assessing Officer found that assessee was one of beneficiaries of said racket and had earned profit on sale of investments in equity shares of a company, (Rutron) and claimed same as exempt under section 10(38). The Tribunal held that assessee had produced relevant records to show allotment of shares by company on payment of consideration by cheque and he dematerialized shares in D-mat account which was also an independent material and said evidence could not be manipulated. It held that Assessing Officer had not brought any material on record to show that assessee had paid over and above purchase consideration and that therefore in absence of any evidence, it could not be held that assessee had introduced his own unaccounted money by way of bogus long-term capital gain.

***Ramprasad Agarwal v. ITO 2(3)(2), Mumbai- [2018] 100 taxmann.com 172 (Mumbai - Trib.)- ITA Nos. 1228 & 4843 (MUM.) of 2018 dated November 30, 2018***

**2056.** The Tribunal held that when the person/entities who have sold shares to assessee have accepted that the share transactions were bogus and they had provided accommodation entries only on commission basis, it could not be held as genuine in assessee's hand as they are two sides of the same coin. Accordingly, it confirmed the addition made on capital gain as undisclosed sources and commission payment thereon as undisclosed expenditure.

***Rabindu N Shah vs ITO-(2018) 54 CCH 0152 Mum Trib- ITA No 997 & 998/Mum/2018 dated 31.10.2018***

**2057.** The assessee had disclosed long term capital gains exempt under section 10(38) of the Act in its return of income. The AO alleged that the said long term capital gains was merely a fall out of an accommodation entry taken by the assessee from the share broker for converting unaccounted funds into accounted funds and therefore treated the long term capital gains as

income from unexplained and undisclosed sources under section 68 which he assessed under the head 'Income from Other Sources'. The Tribunal noting that the assessee had submitted documentary evidence reporting the entire chain of events of purchase and sale which was not rebutted by the AO on the basis of any concrete evidence held that the assessee had discharged its onus. Accordingly it held that the adverse inferences drawn by the lower authorities could not be accepted to dislodge the genuineness of the transaction and therefore deleted the addition made by the AO / CIT(A).

***Kamala Devi Doshi v ITO – (2017) 50 CCH 0053 (Mum Trib) – ITA No 1957 / Mum / 2015, 3018 / Mum / 2015, 3019 / Mum 2015 dated 22.05.2017***

*Foreign Bank Account*

**2058.** Assessee had filed his tax return which was processed under section 143(1). Subsequently, an information was received by Government of India from French Government under DTAA in form of a document known as 'base note' that some Indian nationals and residents had foreign bank accounts in HSBC Bank, Geneva, Switzerland which were not disclosed to Indian Taxation department.On basis of 'base note', Investigation Wing of Income-tax department conducted a survey under section 133A at premises of one, KBSC in which it was found that assessee had also deposited money in a foreign bank account which was opened by an overseas discretionary trust known as 'B' trust set up by MDBS, an NRI. Assessing Officer after initiating proceedings under section 147 made addition in hands of assessee in respect of amount deposited in bank account. Assessee had filed sworn affidavit stating that he was not aware of existence of any of such foreign bank account.He further stated that he never carried out any transaction in relation to said foreign bank account nor received any benefit from said account.Assessee had also filed a clarificatory letter taken from HSBC Bank, Geneva stating that assessee had neither visited nor opened or operated bank accounts and that no payments was received from him or made to in relation to said account. Further, revenue had also failed to bring any cogent and convincing materials on record which proved that assessee was owner of money in HSBC bank account. Since money in question in foreign bank account was owned and held by MDBS and he had also admitted that he was owner of said money, impugned addition in hands of assessee was to be deleted by the Tribunal.

***Deepak B Shah v. Asst. CIT 16(2), Mumbai- [2018] 100 taxmann.com 43 (Mumbai - Trib.)- IT Apeal Nos. 6065 to 6068 (MUM.) of 2014 dated Ooctober 30, 2018.***

**2059.** The Tribunal held that where additions were made to income of assessee, who was a non-resident since 25 years, since, no material was brought on record to show that funds were diverted by assessee from India to source deposits found in foreign bank account and assessee had filed necessary evidences to prove that same had been acquired / sourced out of foreign income which which had not accrued / arisen in India impugned additions were unjustified.

***Dy. CIT(IT), Mumbai v. Hemant Mansukhlal Pandya- [2018] 100 taxmann.com 280 (Mumbai – Trib.)- ITA Nos. 4679 & 4680 (MUM) of 2016-C.O. 58 & 159 of 2018-November 16, 2018***

**2060.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO in case of non-resident assessee towards deposits made in his foreign bank account maintained with HSBC Bank Geneva on the allegation that the said deposit was sourced out of

income derived in India. It held that the assessee being a non-resident, having money in a foreign country could not be called upon to pay income tax on that money in India unless it satisfied the tests of taxability of non-resident under the provisions of the Act, which in the instant case was not getting satisfied. Thus, the bank account of HSBC Bank, Geneva was outside the purview of the Act. Further, the Tribunal held the circumstantial evidences relied on by the AO including the news paper report nowhere conclusively established that the source of the deposits, since the inception (i.e.1997), in the bank account was from India.

***Dy.CIT vs Hemant Mansukhlal Pandya [2018] 54 CCH 0236 (Mum Trib.)- I.T.A No.4679 & 4680/Mum/2016 (C.O.58 & 59/Mum/2018) dated 16.11.2018***

**2061.** The AO made additions to the income of the (two) non-resident assessees, American citizens, for AYs 2003-04, 2004-05 & 2006-07 to 2008-09 with respect to deposits made to the HSBC Bank Account opened with the Geneva (Switzerland) Branch in Joint Name of the (two) assessees and sister of one of the asssessee. The CIT(A) had deleted the said addition on the premise that it was a foreign bank account of a non-resident and the deposits therein could not be added in the hands of the assessee individual. The Tribunal allowed the Revenue's appeal noting that –

- though the assessee had given up Indian citizenship in 2002 and accepted the citizenship of US, he had given his invalid Indian Passport to open the said bank account in 2002
- the assessee had not given any cogent response to the AO's query as to whether the assessee**e**s had disclosed these bank accounts to the US authorities
- other than for two remittances made, the assessees had not provided any details of the source of the amount credited to the said account

However, the Tribunal remitted the matter to the file of the AO to make further investigation into the source of the deposits in the bank accounts. Further, noting that addition of the same amount had been made in the hands of both the assessees (though the account was held in three joint names), it also directed the AO to apportion the amounts in the name of the account holders.

***DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) vs. RAHUL RAJNIKANT PARIKH & ANR. - (2018) 53 CCH 0342 (Mum Trib) - I.T.A. No. 5889, 5568, 5890, 5891, 5892, 5893, 5567, 5569, 5570, 5897, 5572/Mum/ 2016 dated June 1, 2018***

**2062.** The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the addition made u/s 68 on account of money deposited in the foreign bank account [with HSBC Bank, Geneva, Switzerland] of the non-resident assessee, which was claimed by the AO to be sourced from India based on information received from the office of DIT (Inv.). It noted that the assessee had retired from a partnership firm in India in 1978 and became non-resident in 1979 and that he did not have any business operations in India. Further, noting the CIT(A)'s observation that a circumstantial evidence whenever used had to be conclusive in nature and the circumstantial evidences relied on by the AO nowhere led to the conclusion that the amounts in the alleged foreign bank account were sourced from India, the Tribunal held that there was no income which had deemed to accrue or arise to assessee in India and bank deposits of assessee in foreign country could not be taxed in India.

***DCIT v Dipendu Bapalal Shah - [2018] 95 taxmann.com 171 (Mumbai - Trib.) - IT APPEAL NOS. 4751 & 4752 (MUM.) OF 2016 dated June 19, 2018***

Go to Index

*Share Capital / Share Application Money received*

**2063.** The Apex court dismissed Revenue's SLP against High Court ruling that where in order to prove genuineness of share transactions, assessee brought on record all relevant facts such as names, address and PAN of `share applicants, it was thereupon duty of Assessing Officer to obtain separate confirmation from concerned parties if required, and, where he failed to do so, it could not be a ground to reopen assessment
***Dy. CIT, Circle-3(1)(1) v. Orient News Prints Ltd.- [2018] 100 taxmann.com 69 (SC)-SLP(Civil) Diary No(s). 36260 of 2018-dated November 2, 2018***

**2064.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that where assessee-company received certain amount as share capital from various shareholders, in view of fact that summons to shareholders under section 131 could not be served as addresses were not available, and, moreover, those shareholders were first time assessees and were not earning enough income to made deposits in question, addition made by Assessing Officer under section 68 was to be confirmed.
***Konark Structural Engineers (P.) Ltd. v. Dy. CIT [2018] 96 taxmann.com 255/257 Taxman 262 (SC). SLP (Civil) Diary No. 17215 of 2018 dated July 6, 2018***

**2065.** The Apex Court dismissed the SLP filed against the High Court's order wherein the High Court had deleted the addition made u/s 68 on account of receipt of share application money where then the assessee had expressed its inability to produce all persons/share applicants for examination but the share applicants were identifiable persons having capacity and creditworthiness of making share application.
***CIT v Jalan Hard Coke Ltd.[2018] 95 taxmann.com 331 (SC) – SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 16078 OF 2018 dated 15.05.2018***

**2066.** Where High Court upheld Tribunal's order confirming addition under section 68 in respect of share capital on ground that documents pertaining to share applicants produced by assessee did not demonstrate that such alleged applicants had invested in assessee's share capital, SLP filed against said decision was dismissed by the Apex Court.
***J.J. Development (P.) Ltd. v. CIT, Kolkata- [2018] 100 taxmann.com 102 (SC)-SLA (C) No(s). 28056 of 2018 dated October 29, 2018***.

**2067.** During search proceedings, 'T', accommodation entry provider submitted that he received cash from assessee & in return gave entry of share capital in form of cheque and thus, the AO concluded that the share premium and share application money was unexplained credit u/s 68. However, it was found that T's statement was recorded behind assessee's back without giving assessee an opportunity to cross-examine. Further, assessee had also furnished the declaration of director of share applicant company, share application form, certificate of incorporation from Registrar of Companies as well as income-tax return of share applicant-company and AO did not make any verification about the said documents. Thus, the High Court had held that the addition u/s 68 was uncalled for. The Department's SLP filed against the High Court's order was admitted by the Supreme Court.

Go to Index

***PCIT v Best Infrastructure (India) (P.) Ltd [2018] 94 taxmann.com 115 (SC) – SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 14821 OF 2018 dated 14.05.2018***

**2068.** The Court upheld the Tribunals order making addition u/s 68 in the hands of assessee- company during AY 2007-08 with respect to share capital subscribed by investors. Noting that the assessee was private limited company and alleged investors were close friends and business associates of its directors and shareholders, it held that the burden to prove genuineness and credit worthiness rested squarely on the assessee. It noted Tribunal findings that the investors either did not exist or effectively denied the fact of making investment and that the PAN details of investors also did not etablish their identity and therefore held that the finding of the Tribunal that the assessee failed to discharge its burden was based on evidence and application of the correct principle/rule of evidence. Accordingly, it held that once identity of investors could not be established there could be no question of establishing genuineness of transaction or credit worthiness of the parties.
***Prem Castings (P) Ltd - TS-580-HC-2017(Allahabad HC) - INCOME TAX APPEAL No. - 34 of 2016 dated 29.11.2017***

**2069.** The Court dismissed Revenue's appeal against the Tribunal's order deleting the addition made u/s 68 by the AO alleging introduction of share capital as unexplained cash credit. It was noted that (i) the persons who invested in shares of assessee had PAN numbers allotted to them which was made available by assessee to AO (i) shareholders also filed affidavits before AO pointing out that they had invested in shares of assessee out of their own bank accounts and (iii) Copies of acknowledgement of return of income of shareholders was also filed. The Court held that the identity of shareholders was established, investment made by shareholder in assessee-company was genuine and thus investment made by shareholders was not hit by section 68. It held that the entire basis of Revenue's case was based on surmise that assessee was taking bogus purchase bills and cash was introduced in form of share capital without any evidence in support.
***PR.CIT v ACQUATIC REMEDIES PVT. Ltd (2018) 171 DTR 0426 (Bom) – ITA NO. 83, 84, 85, 463 & 465 OF 2016 dated July 30, 2018***

**2070.** The Court held that companies which invest share capital cannot be treated as bogus if they are registered and have been assessed. Once the assessee had produced documentary evidence to establish the existence of such companies, the burden shifted to the Revenue to establish their case. Reliance on statements of third parties who have not been cross examined is not permissible. Accordingly, it dismissed Revenue's appeal and confirmed the order of CIT(A) deleting the addition of share capital made u/s 68 of the Act.
***Pr.CIT vs Paradise Inland Shipping Pvt. Ltd Tax Appeal No. 66 of 2016(BombayHC) dated 10.04.2017***

**2071.** The Court upheld Tribunal's order deleting unexplained cash credit addition u/s 68 of the Act with respect to share premium received by the assessee during A.Y 2008-09. The Court held that the assessee had satisfied the three essential tests under the pre-amended sec.68, namely genuineness of the transaction, identity and capacity of the investor. It further held that the Revenue wrongly invoked proviso to Sec.68 inserted vide Finance Act,2012 and disbelieved

assessee's justification (being future business prospects) for charging share premium as the said proviso was prospective in nature.
***Gagandeep Infrastructure Pvt. Ltd. [TS-132-HC-2017 (BOM)] (ITA No. 1613 of 2014)***

**2072.** The AO made addition u/s 68 in the hands of the assessee on the ground that the parties to whom the assessee had issued shares did not appear before the AO and the summons could not be served on parties since the addresses were not traceable. The Court observed that the assessee had produced before AO the entire record regarding issuance of share i.e. PAN of all creditors along with their bank statements and books of accounts, share certificates etc.. Accordingly, it held that no addition u/s 68 could be made merely on the ground that the parties to whom the share certificates were issued had not appeared before the AO where the assessee had discharged his onus by submitting adequate evidence to substantiate the genuineness of the transaction.
***CIT vs. ORCHID INDUSTRIES PVT. LTD. (2017) 99 CCH 0108 BomHC ITA No. 1433 OF 2014 dated 05/07/2017***

**2073.** The Court dismissed Revenue's appeal filed against the Tribunal's order deleting the addition made u/s 68 by the AO's on account of share subscription money received by the assessee-company from its shareholder. The Revenue contended that the nature, source and genuineness of the funds invested by the shareholders not established by the assessee. The Court noted that the proviso to section 68, requiring an assessee to explain the source of funds in respect of amounts credited in the books of a company in which the public are not substantially interested was introduced in the Act vide the Finance Act, 2012 w.e.f. 01.04.2013 whereas the relevant AY was 2008-09 and thus, the said proviso had no application. The Court relied on its decision in the case of CIT v Gagandeep Infrastructure Pvt. Ltd. [ITA No. 1613 of 2014 (Bom)] wherein it was held that the said proviso was neither introduced with retrospective effect nor did it indicate that it was introduced for removal of doubts.
***Pr.CIT v SDB Estate Pvt. Ltd. – ITA No. 1356 of 2015 (Bom) dated 27.03.2018***

**2074.** The Court held that where AO made addition under section 68 in respect of increase in share capital of assessee-company, in view of fact that addresses of most of purported shareholders were identical and they could not be traced out despite notice issued under section 131, Tribunal was justified in confirming impugned addition.
***DRB Exports (P.) Ltd v CIT [2018] 93 taxmann.com 490 (CalcuttaHC) – ITAT NO 218 OF 2016 dated 07.05.2018***

**2075.** The Court, upholding the order of the Tribunal, upheld the order of the Commissioner u/s 263 directing the AO to carry out thorough and detailed enquiry about the various layers through which the share capital had been rotated to the Assessee (source of source), even without going into the question as to the retroactivity of the proviso to section 68 inserted by Finance Act 2012. The Court followed the decision of the division bench in the case of Rajmandir Estrate Pvt. Ltd. vs. PCIT (GA No. 509 of 2016) wherein the Court rejected the argument of the Assesse that no further enquiry is required as the sum was received on capital account and held that the unamended section 68 of was wide enough and the AO was not precluded from making enquiries as to the true nature and source even if the sum was credited share application money.

Go to Index

The Court further held that though the Tribunal had decided that proviso to section 68 is retrospective in nature and held against the Assessee the said question need not be decided upon in view of the division bench decision of Rajmandir Estate.
***Pragati Financial Management Pvt. Ltd. & Ors. vs. CIT (2017) 98 CCH 0109 – Cal HC (ITA No. 178 of 2016 dated March 7, 2017)***

**2076.** AO not being satisfied with materials furnished by the assessee with respect to certain amounts received as share application money from a company, held that assessee did not discharge onus/burden of proving genuineness of identity of applicant, genuineness of transactions or creditworthiness of investor and made addition u/s 68. CIT(A) set aside the addition and the Tribunal confirmed the CIT(A)'s order. The Court dismissed Revenue's appeal against the Tribunal's order noting the existence of company as income tax assessee and that it had furnished audited accounts and bank details was not in dispute, irrespective of the fact of lone circumstance of Director of the said company disowning the document per se. It held that if the AO were to conduct his task diligently, AO ought to have at least sought material by way of bank statements etc. to discern whether in fact amounts were infused into shareholder's account in cash at any point of time or that amount were such as to be beyond the means of share applicant and in absence of any such enquiry, the findings that assessee had not discharged onus placed upon it by law was unreasonable.
***PR.CIT v ORIENTAL INTERNATIONAL CO. PVT. LTD. – (2018) 101 CCH 4 (Del HC) – ITA 9/2018 dated 08.01.2018***

**2077.** The assessee a public limited company reported receipt of sum as share premium and call in arrears pertaining to offering in public issue made by assessee in 1994-95. The AO for the impugned year AY 2005-06 made an addition under Section 68 on the ground that the assessee failed to explain mode of receipts of money received as share premium and calls in arrears and also failed to furnish address of all such persons, despite sufficient time and several opportunities provided. The Court upheld the order of the CIT(A) and Tribunal wherein it was held that the assessee being public limited company could not be expected to keep track of its individual shareholders and their details. It noted that the assessee had more than 50,000 shareholders and its shares were quoted at Bombay and Delhi Stock Exchanges and that its trading results had been accepted year after year and accordingly held that, there was no reason to suspect that assessee was having funds outside account books. Moreso it held that no addition had been made in the earlier years and accordingly dismissed Revenue's appeal.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. RATHI ISPAT PVT. LTD. - (2018) 101 CCH 0039 DelHC - ITA 151/2018 dated Feb 9, 2018***

**2078.** The Court dismissed assessee's appeal against the AO's order making addition u/s 68 on account of share application money received by the assesse-company from an HUF and another company, noting that the assesse could not establish the identity of the both the entities. It was noted that apart from the fact that the two alleged share applicants did not show up before the AO and the documents pertaining to the share applicants which were produced by the assessee did not demonstrate that such alleged applicants had invested in the share capital of the assessee, in the case of the HUF when some additional documents or information were sought, the stock excuse was that the relevant person was "out of station". Further, with respect

to the investor company, the AO made enquiries and discovered that the registered address of the said company was in a residential complex and none of the neighborhood knew about such company. The Court held that upon the identity of the person who has put in the money being established by the assessee, the onus is on the Revenue to discredit the explanation offered in terms of section 68, however, in the present case, the identities of the alleged share applicants could not be established. It thus held that since the AO had found on facts that there was no plausible explanation justifying the cash credits and the Tribunal accepted the same, no substantial question of law was raised.

***J. J. DEVELOPMENT PVT. LTD. vs. COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0120 (Kol HC) - ITAT No. 329 of 2016 & GA No. 2631 of 2016 WITH GA No. 1308 of 2018 dated June 27, 2018***

**2079.** The Court held that where Assessing Officer had specific information from DIT (Investigation) that assessee company was merely a dummy concern of a person who allegedly used dummy companies for routing his unaccounted money and, further, assessee also had certain amount ofbogus share application, it could be said that there was material on basis of which notice under section 148 could be issued. At this stage, this Court does not find any reason to interfere with the notice as well as within the order passed by the respondents.

***Etiam Emedia Ltd. v. ITO-2(2) – W.P. No. 28177 of 2018(Madhya Pradesh HC) – December 19, 2018***

**2080.** The Court set aside the addition made by the AO towards amount of share premium and share capital received for fresh allotment of shares (in lieu of settlement of the pre-existing liability) by treating them to be unexplained cash credits u/s 68. It held that the credits towards share capital were only by way of book adjustment and no cash was involved in the said transaction of allotment of share as the pre-existing liability was converted into share capital and share premium and hence could not be considered as share subscription money.

***V. R. Global Energy (P.) Ltd. vs ITO [2018] 96 taxmann.com 647 (MadrasHC)- TAX CASE (APPEAL) NO. 246 OF 2017dated August 06 2018***

**2081.** The Tribunal held that when assessee has amply established the identity of its share subscribers, their creditworthiness and genuiness of the transaction, there is no justification on part of the AO to invoke section 68 to make addition, especially, without undertaking any investigation with regard to the objection of the AO that assessee failed to produce the Directors of the subscriber company, in this regard it is submitted that if on the face of the evidences the examination of Directors was required, in that eventuality the AO ought to have summoned the Directors either by issuing summons or could have got them examined by appointing a commission.

***ACIT vs Nitesh Chains- (2018) 54 CCH 0113 AgraTrib- ITA No 412/Agr/2015 dated 10.10.2018***

**2082.** The Tribunal upheld addition u/s 68 made in the hands of the assessee-company with respect to unexplained share application money. The Tribunal rejected assessee's claim that it had discharged the initial burden cast upon it u/s 68 by providing name and addresses of share applicants, on the ground that the assessee received cheques from the same cheque book

which was impossible seeing that there were different applicants residing in different villages. Also the fact that the alleged share applicants who were agriculturists were not going to derive any benefits in the future by appreciation in the market value of shares of an unlisted company, made it clear that the said money was nothing but the unaccounted income of the assessee.
***Deepak Petrochem Ltd. [TS-101-ITAT-2017 (Ahd)] (ITA No: 739/AHD/2011) dated 02/03/2017***

**2083.** The Tribunal deleted the addition made by the AO on account of unexplained cash credit vis a vis share application money received by assessee (a private limited company) from one of its shareholder (who was daughter of one of the assessee's directors). Rejecting Revenue's stand that the source of funds in the hands of shareholder and creditworthiness was not proved, the Tribunal held that the assessee's had submitted earning statements and bank account details of the shareholder and her husband which was prima facie evidence of the credit worthiness of the shareholder. Further, noting that the amounts were received through banking channels, it held that receipts from shareholder could not be treated as unexplained cash credit.
***Namision Powertech Pvt Ltd vs ACIT-TS-432-ITAT-2017(AHD)-ITA No. 218/ahd/2015 dated 21.09.2017***

**2084.** Where the assessee failed to prima facie demonstrate that the intrinsic value of shares was at par with the exorbitant premium of Rs. 90 per share received, the Tribunal, in the second round of proceedings, held that share premium received by assessee amounted toan unexplained cash credit and accordingly made an addition u/s 68 of the Act. It held that since the assessee was unable to produce even a single party out of 13 subscribers despite them being based locally, it had not made any effort in discharging its initial onus so as to satisfy the basic conditions of identity, capacity, genuineness and creditworthiness of the parties in question.
***Umiya Pipes Pvt. Ltd vs ACIT-TS-393-ITAT-2017(Ahd)-ITA No. 1679/ahd/2014 dated 12.09.2017***

**2085.** The AO held that the share application money received by assessee company from company G was unexplained and sham in as much as the said company was not in de-factor existence and thus added same u/s 68. CIT(A) deleted the addition of share application/premium made by the AO noting that it was assessee's group company (having common director) who had made impugned investment. CIT(DR) concurred with the AO holding that the investor company had adopted cash deposit root to reinvest same in assessee's stake holding (i.e infusing cash into the accounts and within a short while withdrawing the same to pay for the shares). The Tribunal held that the Revenue had failed to bring on record any such cogent material indicating G to have first deposited cash sums followed by its reinvestment in assessee's share holding and also any material to indicate any misappreciation of evidence by the CIT(A).It held that since the assessee had produced its common director before AO with all necessary details viz certificate of incorporation, return of income, computation, tax audit report, audited account, bank statement, etc and also was able to prove all three components of identity, genuineness and creditworthiness of impugned share application/premium amount to have come from its group company G,the same could not be added to assesse's income as 'Unexplained cash credits' u/s 68. Accordingly, the Tribunal dismissed the Revenue's appeal.

Go to Index

***DCIT v Gyscoal Alloys Ltd. (2018) 52 CCH 0307 AhdTrib - ITA No. 102/Ahd/2014 dated 06.04.2018***

**2086.** Where in order to prove genuineness of share transactions, assessee submitted confirmation, bank statements, copies of returns, PAN of share applicants, the Tribunal held that the assessee had discharged the primary onus cast upon it by section 68 and thereupon it was incumbent upon AO to carry out investigation for falsifying evidence submitted by assessee and, since, he failed to do so, impugned addition made under section 68 was to be set aside.
***Deem Roll Tech Ltd. v DCIT - [2018] 92 taxmann.com 72 (Ahmedabad - Trib.) - IT APPEAL NO. 3619 (AHD.) OF 2015 dated MARCH 1, 2018***

**2087.** The Court directed fresh investigation into Kalaignar TV's 2G matter involving Rs 200 cr 'unexplained cash credit' addition under section 68, where the assessee had submitted that it received 25 cr towards share application money from Cineyug Media Entertainment Rs. 175 cr towards inter-corporate deposits ('ICDs') from the same concern, and despite producing supporting documents, Revenue had disbelieved the same and made addition u/s 68 based on CBI investigation in 2G spectrum case; ITAT observes that lower authorities simply relied on CBI charge sheets /Enforcement Directorate report in 2G case and failed to examine the officials from Cineyug and the signatories to the share application/ICDs agreements; Similarly, ITAT observes that instead of examining the bank statements of Cineyug, AO simply relied on the assessment done on Cineyug to hold that they had no sufficient funds for giving credits to assessee, further limited time was given to assessee for producing voluminous details. ITAT remarked that ''No doubt the assessee can always say that it need not prove source of source", however this cannot be so extrapolated to mean that source cannot be a farce. The onus is always on the assessee to show the genuineness of transactions and AO can always go into trail of transactions for accepting/rejecting claim of genuineness.
***Kalaignar TV Pvt. Ltd [TS-689-ITAT-2016 (CHNY)***

**2088.** The Tribunal held that the share premium received by the assessee was to be taxed as undisclosed income under Section 68 considering that (a) the directors were allotted shares at par while others are allotted at premium, (b) the high premium was not justified by a valuation report, (c) the high premium was not supported by the financials, (d) based on financials the value of shares was less and no genuine investor would invest at the premium.
***M/s. Cornerstone Property Investments Pvt. Ltd v ITO - I.T. A. No.665/Bang/2017 dated 09.02.2018.***

**2089.** The Tribunal upheld Revenue's plea that the assessee (a private limited company & engaged in real estate business) received high share premium as a conduit to route the funds involved as a 'layering' process and held that the share-premium of Rs.49.5cr was taxable u/s 68 as unexplained cash credit considering the facts that i) there was no proper valuation report to justify high premium ii) the financials were relatively weak compared to high valuation iii) issue of shares to directors was at par and therefore in light of the discrepancies / abnormal features held that the share issue was "made up" to camouflage the real purpose/intention of routing money.

Go to Index

***Cornerstone Property Investments Pvt. Ltd. - TS-97-ITAT-2018(Bang) - I.T. A. No.665/Bang/2017 dated 09.02.2018.***

**2090.** The Tribunal upheld the CIT(A)'s order deleting the addition made u/s 68 of unexplained cash credit by the AO on protective basis on account of share application money received from two shell companies, noting that investigations had revealed the names of persons who were 100% shareholders of two companies which had introduced share application money in the assessee-company and the Apex Court in the case of CIT v. Lovely Exports P. Ltd. [2009] 319 ITR (St.) 5 (SC) has held that if share application money was received by assessee company from alleged bogus shareholders, whose names were given to the AO, then Department was free to proceed to re-open their individual assessments in accordance with law.
***RANJITPURA INFRASTRUCTURE PVT. LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0309 BangTrib - ITA No. 1104 & 1105/Bang/2015, 1110 & 1111/Bang/2015 dated Apr 10, 2018***

**2091.** The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO as unexplained cash credits u/s 68 on protective basis in respect of share application money received by the assessee-company from two companies whose 100% shareholding was ultimately held by two individuals, noting that an addition was made u/s 69 on substantive basis in the hands of the those two individuals in respect of their investment in the said two companies. It relied on the decision of the Hon'ble Apex Court in the case of CIT v. Lovely Exports (P.) Ltd. [2018] 216 CTR 195 (SC) wherein, while dismissing the SLP filed by the revenue, it was held that, "*if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to re-open their individual assessments in accordance with law*".
***BMM Ispat Ltd. v DCIT - [2018] 93 taxmann.com 76 (Bangalore - Trib.) - IT APPEAL NOS. 911 & 912 (BANG.) OF 2015 & OTHERS dated April 10, 2018***

**2092.** The Tribunal held that in the absence of any specific allegation and evidence that investment in share capital of the assessee by contributors was bogus transaction, addition made merely on the basis of assumption was not tenable in law especially when the assessee has discharged the primary burden of proving by evidences of the genuineness of the transactions and creditworthiness of the alottees. It further held that addition made on the basis of the statements recorded by the Investigation wing of an individual who admitted that he was indulged in providing accommodation entries for commission to various persons and entities, without supplying the copies of the said statements to the assessee was not tenable.
***Pooja Industries Pvt Ltd vs ITO- (2018) 54 CCH 0318 ChdTrib- ITA No 1016/CHD/2016 dated 08.10.2018***

**2093.** Where the assessee had failed to discharge onus cast upon it under section 68 of the Act, to prove the creditworthiness and genuineness of the cash credits (i.e share capital and share premium) and accordingly the assessing officer made an addition, the Tribunal observed that though the assessee had submitted the basic details of parties, it was apparent that none of them were shown to be creditworthy of depositing the sums in cash with the assessee and that how CIT (A) got satisfied with the existence of cash in the books of the companies when they are known entry providers was unknown. Also there was not a single word in the order of CIT

(A) about the source of such cash and reasons for depositing them with the assessee at huge premium when they did not have any other sources of income. Tribunal not agreeing with the casual manner in which CIT(A) dealt with the whole issue when the nature of transactions, shareholders creditworthiness and genuineness of the share issued were of dubious nature, held that CIT(A) should have looked at the totality of the facts instead of deleting the addition on flimsy grounds and accordingly set aside the whole matter back to the file of the CIT (A).
***Income Tax Officer v. Onflow Agro Pvt Ltd - (2017) 49 CCH 0152 DelTrib (ITA No. 5458/Del/2012)***

**2094.** During assessment proceedings, various documents were filed to prove identity and creditworthiness of shareholders and also to prove genuineness of transactions. AO required assessee to provide directors. AO rejected explanation/evidences furnished by assessee to discharge initial onus u/s 68 by lifting corporate veil. AO made addition in respect of share application money. CIT(A) deleted addition made by AO. The Tribunal held that, it could not be concluded that share applicant companies did not exist or that transactions were not established. Only in two case, copies of ITRs could not be furnished by Assessee. Even in these cases, copies of balance sheets filed indicated that companies had funds / sources to make investment in share application towards Assessee company. Revenue could not be taking two different stands. On one hand revenue was accepting and admitting compliance to its own laws and procedure by way of filing of ITR, payment of taxes, processing and issue of refunds, and also tax scrutiny of cases. On other hand, revenue could not take stand that share applications were unexplained as some of share applicant companies could not be physically located by Inspector at given address. When assessee was not confronted with Inspector's report, it could not be alleged by revenue that assessee failed to establish transactions. Order of CIT(A) was upheld and Revenue's appeal was dismissed.
***Asst. CIT vs. Superb Developers (P) Ltd.- (2018) 53 CCH 0301 DelTrib-ITA No. 54 & 56/DEL/2014 & 403/DEL/2015-Dated Jul 9, 2018***

**2095.** The Tribunal allowed the assessee's appeal and deleted the addition made by the AO u/s 68 on account of share application money received by the assesse-company from another company, where the assesse had submitted all the relevant documents but the assesse could not produce the director of the investor company. It held that once all important and crucial documents were filed by the assessee to prove its case qua share capital received u/s 68, then simply harping on non-production of director in person before the AO could not be justified ground to draw adverse inference without adequate discharge of secondary burden lying on AO u/s 68. The Tribunal held that even if there was any doubt regarding the creditworthiness of the share applicants, then the AO should have made enquiries from the AO of the share subscribers as held by Hon'ble High Court in CIT vs Dataware Private Limited [ITAT No. 263 of 2011 (Cal HC)], in absence of which no adverse view could have been drawn. It held that the assessee had discharged its onus to prove the identity, creditworthiness and genuineness of the share applicants, thereafter the onus had shifted to the AO to disprove the documents furnished by assessee and the same could not be brushed aside by the AO to draw the adverse view.
***MOTI ADHESIVES PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0249 DelTrib - ITA No. 3133/Del/2018 dated June 25, 2018***

Go to Index

**2096.** The Tribunal set aside order of the CIT(A) deleting addition made by the AO on account of unexplained cash credits u/s 68 and remitted the matter to the file of AO for fresh considerationobserving that the assessee failed to give satisfactory explanation about nature and source of amount credited in its bank accounts and therefore did not discharge its onus of proving genuineness of transactions and creditworthiness of parties from whom amount had been received.

***ITO vs Lokesh Secfin Pvt Ltd (2017) 51 CCH 0005 Delhi Trib. ITA no. 460 / del / 2011 dated 01.09.2017***

**2097.** During course of assessment, Assessing Officer noticed that assessee had invested his share application money in two companies. He further noticed that aforesaid shares were subsequently sold by assessee. After analysing sale transaction, Assessing Officer concluded that amount of Rs. 6 crores that had been introduced as sale of shares was nothing but assessee's own unaccounted money and invoking provisions of section 68, made addition to assessee's income. The Tribunal deleted the addition by holding that in view of fact that Assessing Officer had accepted purchase of shares by assessee as genuine transaction, in such a situation, he could not make impugned addition by taking a view that sale of shares was nothing but assessee's own unaccounted money.

***Asst. CIT, Central Circle-3, New Delhi v. Navneet Kumar Sureka-[2018] 100 taxmann.com 439 (Delhi - Trib.)-ITA Nos. 5573, 6660 & 6661 (DELHI) of 2016 dated November 29, 2018.***

**2098.** AO noticed that assessee was listed company which during previous year increased its share capital. Increase was not through public issue but by way of investment in equity share directly through fully convertible warrants. AO noted that assessee was merely showing bogus sale and purchase, hence, addition was made u/s 68. CIT(A) Set aside AO's order. The Tribunal held that, it was clear that assessee produced sufficient documentary evidences before A.O. at assessment as well as appellate proceedings to prove ingredients of s 68. A.O however, did not make any further inquiry on documents filed by assessee. Thus, A.O. failed to conduct scrutiny of documents at assessment stage and merely suspected transaction between investor companies and assessee on irrelevant reasons which were disproved in findings of Ld. CIT(A). Therefore, assessee discharged its initial onus to prove identity of investor companies, their creditworthiness and genuineness of transaction in matter. No material was produced to rebut finding of fact recorded by CIT(A). Hence, no justification was found to interfere with order of Ld. CIT(A) in deleting addition and Revenue's appeal dismissed.

***ITO vs. XO Infotech Ltd.- (2018) 53 CCH 0297 DelTrib -ITA No. 3342/Del/2013-Dated Jul 9, 2018***

**2099.** The Tribunal deleted the addition made u/s 68 with respect to unexplained cash credit holding that the assessee at assessment stage had produced sufficient evidences before AO so as to discharge its initial onus to prove identity of shareholders from whom the assessee had received share application money, their creditworthiness and genuineness of transactions, where it was noted that (i) to prove identity and creditworthiness of applicants and genuineness of transactions, assessee furnished copies of their certificates of incorporation, copy of ITR, bank statements, balance sheet and payment details (ii) assessee produced all replies filed by these investors in response to inquiry notice issued to them u/s 133(6) before AO in which these

investors had confirmed making investments in assessee company and (iii) assessee's request to issue summons against said investors u/s 131 for their production at assessment stage was not considered by AO.

***Prinku landfin (P.) Ltd. v ITO – (2018) 91 taxmann.com 120 (Delhi Trib) – ITA Nos. 6004 (delhi) of 2013 dated 02.02.2018***

**2100.** The Tribunal held that the AO was not justified in making addition under Section 68 of the Act on the ground that assessee failed to produce attendance of the directors of companies who subscribed to the share capital of the assessee and that the income of the companies who invested in the company was meagre. The Tribunal held that income of the concern could not be the basis to disbelieve the creditworthiness of the concern if it had sufficient capital and free reserves and also noted that the assessee had provided the affidavits of the directors of the companies confirming the investment in the assessee. It noted that the assessee had duly filed the Form 2, board resolutions, certificate of incorporation, MOA, PAN Card, bank statements and ITR copies of the all the investee companies and accordingly held that it had discharged its duty. Accordingly, it deleted the addition made under Section 68 of the Act.

***ZION PROMOTERS & DEVELOPERS PVT. LTD. vs. ADDITIONAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0137 DelTrib - ITA No. 679/Del/2015 dated Feb 28, 2018***

**2101.** The Tribunal held that the AO was not justified in making addition under Section 68 merely on the ground that 4 of the 19 parties to whom the assessee had issued shares had not responded to the AO's notice under Section 133(6) of the Act. It held that no adverse inference could be drawn against the assessee merely because the replies had not been received by the AO more so when the assessee had furnished name, address, PAN, etc supporting evidences in respect of each of the shareholder which included confirmation, copies of bank statements of each of the shareholder, copy of share application form, copy of income tax return, copy of audited balance sheet and profit and loss account.

***UMBRELLA PROJECTS PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0154 DelTrib - ITA No. 5955/DEL/2014 dated Feb 23, 2018***

**2102.** The AO during proceedings noticed that during years under consideration, share capital of assessee-company was substantially increased as compared to preceding years and assessee had issued substantial volume of equity shares and thus beleiveing it to be accommodation entries, the AO made additions appearing in books of assessee in form of share capital and share premium, as unexplained credits u/s. 68, which was however deleted by the CIT(A). The Tribunal observed that the assessee during the proceedings before lower authorities had submitted details such as names and present addresses of the investor companies, their PANs, bank statements, balance sheets and its annexures to prove their identity, creditworthiness and genuineness of the transaction.The Tribunal noted that the AO had miserably failed to point out any defects in documents submitted and thus held that once, all documentary evidences were produced, assessee had discharged onus cast upon him u/s 68, the Tribunal also held that low profit declared by investor companies, would not be reasonable basis to treat credit entries as fictitious or accommodation entries and concluded that in view of aforesaid facts and plethora of evidences submitted by assessee, on which no reasonable doubts had been created by AO,

Go to Index

onus that lay on assessee u/s 68, was completely discharged and it upheld the order of CIT(A) deleting addition u/s 68.

***DCIT vs Sutlej Agro Products- (2018) 54 CCH 0008 Del Trib- ITA No 289 to 293/Del/2015 dated 14.09.2018***

**2103.** The assessee was engaged in trading of plots, agricultural land and minor development work. During the year its authorized capital of assessee company had increased pursuant to allotment of shares of Rs.10 face value at a premium of Rs. 90 per share to the five companies, for which the assessee filed confirmation from parties along with their memorandum of articles, permanent account number and ciopy of their bank statements as evidence. AO found that bank statement submitted by assessee was totally different from bank account statement submitted by banker of share subscribers and therefore made addition u/s 68 holding that assessee failed to prove creditworthiness of depositors as well as genuineness of transaction. The Tribunal observed that the bank accounts submitted by assessee along with confirmation of depositor were forged and not correct statements and dismissing the claim of assessee that it was not required to prove source of credit and noted that the bank accounts of depositor companies clearly showed that cash was deposited of huge amounts subsequent to which it issued cheques. Further, it noted that the investment shown in balance sheet of the depositor companies did not tally with the balance sheet of the assessee. Accordingly, it confirmed the addition.

***SHAAN CONSTRUCTION PVT. LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0243 DelTrib - ITA No. 4520/Del/2009 and 613/Del/2013 dated Mar 28, 2018***

**2104.** The Tribunal held that if the balance sheets and other details of the investor companies as submitted by assessee did not show that companies had made investment in assessee company, then the share capital issued by assesse was to be considered as unexplained and addition u/s.68 was required to made.

***COMMISSIONER OF INCOME TAX & ANR. vs. DIAMOND HUT INDIA PVT. LTD. & ANR. - (2018) 52 CCH 0263 DelTrib - ITA No. 3428 & 3425/Del/2013, 3427/Del/2013 dated Mar 5, 2018***

**2105.** The Tribunal dismissed the Revenue's appeal against the CIT(A)'s order deleting the addition made u/s 68 on account of fresh share capital received along with share premium from a company. The AO had opined that the said company was not having sufficient sources of income. The Tribunal noted that from the bank account it was evident that the amount was transferred from such account on various dates and that the assessee had filed copy of return of income and confirmation of the said company for having paid money for share capital and share premium. It held that nothing adverse was brought on record by the AO, which could prove that money received from the said company was not its own money rather an accommodation entry and that the documentary evidences filed by the assessee before the AO satisfactorily established that the said company had applied for share capital and share premium out of its own money which was realized from sale of its investments reflected in balance sheet.

***DCIT v DRS ROOF-TECH & INFRASTRUCTURAL PVT. LTD. – (2018) 52 CCH 7 (Del Trib) – ITA No. 4355/DEL/2012 dated 04.01.2018***

Go to Index

**2106.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 68 as unexplained cash credit on the ground that the assessee had not proved the creditworthiness of the Investor Company, noting that the assessee-company had produced sufficient documentary evidence before the AO to prove the ingredients of section 68, however, the AO had failed to conduct any enquiry and scrutiny of documents at assessment stage and merely suspected transaction between the Investor Company and the assessee-company because Investor Company was from Kolkata. It held that the assessee-company had discharged its initial onus to prove identity of the Investor Company, its creditworthiness and genuineness of transaction.

***ACIT & ANR. vs. TRN ENERGY PVT. LTD. & ANR. – (2018) 52 CCH 23 (Del Trib) – ITA No. 453/Del./2016 (C.O.No.96/Del./2016) dated 01.01.2018***

**2107.** Pursuant to search operations conducted u/s 132/133A in case of the assessee, the AO issued notice u/s 153A and noting that in the relevant year, the assessee-company had received share capital and share premium from a Mauritian company, called for assessee's explanation to verify the genuineness of the transaction and also to verify the identity and creditworthiness of the said company. The AO had also received information through FT & TR Division stating that the said investor company had shown income of only 3 US $ and accordingly, he added the amount of share capital and share premium received as unexplained cash credit u/s 68. The CIT(A) deleted addition noting that on date of search original assessment was completed and subsequently no incriminating material was found during course of search against assessee so as to prove that assessee had received any bogus share capital/share premium so as to warrant addition u/s 68 and the AO had not made any enquiry on documentary evidence filed by the assessee which included the details of its turnover, net profit, net worth and dividend declared by the said company which in total were sufficient reasons for foreign investor to make investment in the assessee-company. The Tribunal upheld the CIT(A)'s order and held that the assessee had discharged its initial onus to prove the identity of the investor company, its creditworthiness and genuineness of the transaction, noting that the reply received from Mauritius Revenue Authorities proved identity of investor, its creditworthiness and genuineness of transaction and that it was not reported if any, cash was found deposited in account of investor before making investment in assessee company and the fact that not only in AY under appeal but in earlier years also, the said company had made investment in assessee-company through banking channel supported by documentary evidence.

***ACIT & ORS v SPECTRUM COAL & POWER LIMITED & ORS. – (2018) 52 CCH 72 (Del Trib) – ITA Nos. 6103-6104, 5585-5587 & 3221-3222/Del./2016 (Cross Objection Nos. 15-16, 210 & 1/Del./2017 & 247-248 & 355/Del./2016) dated 17.01.2018***

**2108.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 68 during assessment proceedings initiated pursuant to search conducted at assessess's premises on account of share application money received from some parties, noting that no adverse material was found during course of search to prove that share application money received by assessee was bogus or was an arranged affair of assessee. The AO had not brought any evidence on record that investments made by investor companies actually emanated from coffers of the assessee-company so as to enable it to be treated as undisclosed income of assessee. Further, it held that the AO could not ask assessee to prove

source of source and thus the assessee had discharged initial onus to prove identity of investor companies, their creditworthiness and genuineness of transaction.

***ACIT & ORS. v GARUDA IMAGING & DIAGNOSTICS PVT. LTD. & ORS. – (2018) 191 TTJ 0765 (Del Trib) – ITA Nos. 449, 450 & 451/Del./2016, 446 & 447/Del./2016, 449 & 447/Del./2016 (C.O.No.163, 164 & 165/Del./2016, 121 & 122/Del./2016)dated 05.01.2018***

**2109.** The Tribunal held that a private limited co cannot say that it has no clue about the subscribers to its share capital. The genuineness of the transaction has to be determined by ground realities and not by documents like PAN cards, board resolutions, share certificates etc. Even shell cos have these documents. If the assessee is not able to produce the brains behind these companies and the documents with respect to their financials, the transaction cannot be regarded as genuine.

***Pee Aar Securities Ltd vs. DCIT - ITA No. 4978/Del/2014 dated 23.08.2018***

**2110.** The Tribunal held that where the identity of the shareholders wasn't in question and the credit worthiness was also proved since the shareholders had liquidated its investment in shares of another company to acquire shares of the assessee company, no addition under section 68 of the Act could be made.

***Anshika Investments Pvt Ltd v CIT – (2016) 48 CCH 0005 Del Trib – ITA No 2262 / Del /2013, 3440 / Del / 2013, 2263 / Del / 2013, 6968 / Del / 2014, 6969 / Del / 2014, 3438 / Del /2013***

**2111.** The Tribunal allowed the assessee's appeal and deleted the addition made u/s 68 on account of unexplained share application monies holding the assessee had proved the identity, creditworthiness of investors and genuineness of transaction. It was noted that the assessee had produced complete details (name, CIN No. PAN No and Registered Address, Master Data of the Investor Company) during the course of assessment proceedings and it was the AO who did not conduct any enquiry from the banker of the Investor and Income Tax record of the Investor Company. Further, the valuation report filed by the assessee supported explanation of assessee that though shares were issued at premium (FV-Rs.10/- and premium of Rs.1190/-) it was still below the fair market value per share of Rs.1221/-.

***PRIYATAM PLASCHEM PVT. LTD. vs. INCOME TAX OFFICER. [2018] 53 CCH 0448 DelTrib- ITA No.2534 /Del /2018 dated August 10 2018***

**2112.** The CIT(A) noting that the assessee had received an amount as security premium and had taken unsecured loan prior to the commencement of its business held that the credits could not be treated as income of the assessee as it's business had not commenced in the first place. Accordingly, the Tribunal held that the receipts were capital receipts not subject to tax.

***INCOME TAX OFFICER vs. WAII INFRA PRIVATE LIMITED - (2018) 52 CCH 0224 GauhatiTrib - ITA No. 126/GAU/2017 dated Mar 8, 2018***

**2113.** The AO brought to tax the share capital received by the assessee-company by issuing 0% convertible preferential shares in a private placement to three investors namely, Dalmia Cements Ltd., India Cements Ltd. and Suguni Constructions Pvt. Ltd. as business income u/s 28(iv) [i.e. any benefit or perquisite arising in business or profession] on the allegation that the

directors (also major shareholder) of the assesee-company had influence in the State Govt. of Andhra Pradesh and the aforesaid amount was received on account of various concessions received by the three investors from the Govt. of AP. The CIT(A) sustained the taxation of the said amount but held it to be in nature of "Income from Other Sources" assessable u/s 56. The Tribunal remanded matter back to AO with a direction to redo the assessment observing that in order to lift corporate veil for purpose of determining whether any benefit is passed on to shareholders/directors, they have to bring on record proper evidence/cogent material, no such evidence was brought on record rather circumstantial evidence and test of human probabilities were applied to convert capital transaction as per Companies Act into revenue transaction under Income-tax Act.

***Bharathi Cement Corporation Pvt Ltd vs. Asst CIT[2018] 53 CCH 0612 HydTrib- ITA Nos. 696 & 697/Hyd/2014 dated August 10 2018***

**2114.** Where the Assessee was not able to substantiate the creditworthiness of the four parties from whom it had received share application money and there were discrepancies in the submissions made by the said four parties, the Tribunal held that the AO's addition u/s 68 was to be sustained.

***Sumadhura Technologies vs. ACIT (2017) 50 CCH 0247 Hyd Trib (ITA No. 380/Hyd/2014 dated August 11, 2017)***

**2115.** The Tribunal held that share premium could not be brought to tax invoking the provisions of section 68, where the assessee had issued shares at substantial premium and the genuineness, credit worthiness and amount of share capital was not in dispute and only the amount of share premium was doubted.

***Hario Concast & Steel Pvt. Ltd. vs. ITO (2016) 48 CCH 0109 (HydTrib) (ITA No. 1775/HYD/2014)***

**2116.** The Tribunal directed the AO to delete the addition of Rs.55,27,500/- out of the total addition u/s 68 of Rs.65,27,500/- on account of unexplained share application money, as identity, genuiness and creditworthiness of share applicant of Rs.55,27,500/- was proved and it was only two person (relating to the remaining amount of Rs.10,00,000/-) whose identity were not proved. Further, noting that the AO had the address of those two person [but no enquiry was initiated by issuing notice u/s 133(6)], it remanded the matter to the file of the AO for carrying out necessary enquiry and verification with the assistance of documents to be filed by the assessee after providing it a proper opportunity of being heard.

***AJIT & AJAY ESTATE & RESORTS PVT. LTD. vs. INCOME TAX OFFICER [2018] 53 CCH 0494 IndoreTrib- ITA No.762/Ind/2016 and 763/Ind/2016 dated August 30 2018***

**2117.** The assessee had raised share capital and share premium during the year under consideration and the AO sought to verify the veracity of such share capital and share premium as he believed that if there was no substantial business activity carried on by assessee, it could not command huge share premium.Further, notice u/s 133(6) were issued to all shareholders which were duly replied and further summons u/s 131 were issued to directors which remained partially complied and assessee failed to produce directors of investor companies, thus the AO concluded that share premium raised by assessee was unexplained cash credit u/s 68. The CIT(A) deleted

such addition made on account of share premium. The Tribunal observed that the assessee had furnished complete details of share subscribers to prove their identity, genuineness of transaction and creditworthiness of share subscribers and were duly supported by documentary evidences. Further, all share subscribers were assessed to income tax and transaction with assessee company were routed through banking channels. Thus, the Tribunal held that once receipt of share capital had been accepted as genuine within the ambit of section 68, there was no reason for AO to doubt share premium component received from the very same shareholders as bogus. Thus, the Tribunal concluded that when all the necessary ingredients of section 68 had been duly complied with by assessee there could not be any addition u/s 68 merely because assessee could not produce directors of share subscribing companies.

***ITO vs Trend Infra Developers Ltd – (2018) 54 CCH 0128 Kol Trib- ITA No 2270,2273/Kol/2016 dated 26.10.2018***

**2118.** The assessee had filed its return which was selected for scrutiny wherein the AO noted that assessee had raised share capital against allotment of equity shares and that most of share subscribers had petty income in form of interest or commission and they did not declare any substantial income. Thus, the AO held that assessee had failed to establish evidences furnished by share applicants by not producing them and accordingly added share capital along with share premium as unexplained cash credit u/s 68, which was later deleted by the CIT(A). The Tribunal held that both nature & source of share application received was fully explained by assessee and it had discharged its onus to prove identity, creditworthiness and genuineness of share applicants by submitting PAN details, bank account statements, audited financial statements and Income Tax acknowledgments before AO. Thus, the Tribunal concluded that no addition was warranted u/s 68 where assessee has discharged its onus to explain nature and source of sum credited in the year under consideration.

***DCIT vs Jagannath Banwarilal Texofabs Pvt Ltd- (2018) 54 CCH 0126 Kol Trib- ITA No 1762/Kol/2016 dated 26.10.2018***

**2119.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO u/s 68 on account of share subscription money received by the assesse-company, noting that PAN details, bank account statements, audited financial statements and Income Tax acknowledgments were placed on the AO's record whereas the department was unable to bring any material to show that share application was in nature of accommodation entries. It held that the material with respect to the conditions as required u/s. 68 i.e. identity, creditworthiness and genuineness of transaction were placed before the AO and onus had shifted to the AO to disprove materials placed before him and the addition made by the AO, without doing so, was based on conjectures and surmises, hence, could not be justified.

***INCOME TAX OFFICER vs. WIZ-TECH SOLUTIONSL PVT. LTD. - (2018) 53 CCH 0155 KolTrib - ITA No. 1162/Kol/2015 dated June 14, 2018***

**2120.** Where the assessee issued share capital during the year under review, but the shareholders were not traceable and the assessee could not produce them before the AO or the CIT(A), Tribunal upheld the order of the AO and the CIT(A) and held that addition under Section 69 of the Act was sustainable as the assessee was not able to prove genuineness of transactions and the creditworthiness of the investing companies. While doing so, Tribunal observed that

merely submitting the copies of return of allotment in form no 2 filed with MCA or the resolutions passed by the assessee / investing companies have CIN was not sufficient as these are merely ministerial / administrative functions which needs to be done in any case by all the companies allotting shares.

***ITO vs. Krishnav Construction P. Ltd. – [2018] 53 CCH 0004 (Kol ITAT) – ITA No 1942/Kol/2016 dated May 4, 2018***

**2121.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made u/s 68 on account of share premium, noting that (i) there was no dispute to the identities of share applicant who were companies having PAN and were regulary filing their returns of income (ii) the share applicants had sufficient funds in form of capital and reserve and surplus to invest (iii) the transaction was made through banking channels and duly recorded in books of accounts and reflected in audited financial statements (iv) there were no instances of cash deposit in any account (v) even the share applicant companies were regularly assessed to tax and scrutinized. Accordingly, it held that the impugned addition could not be made since the identity, creditworthiness and genuiness of transactions were proved by assessee.

***ITO vs Goldstar Tracom Pvt Ltd [2018] 54 CCH 0191 (KolTrib.)- ITA No. 1215/Kol/2015 dated 09.11.2018***

**2122.** The Tribunal held that where assessee company had received share premium and filed sufficient evidences such as share allotment details, annual return, details including name, address and PAN of shareholder who had subscribed to its shares and same was not negated by Assessing Officer, merely because Assessing officer felt that share premium received by assessee was high, genuineness of transaction could not be doubted for purpose of section 68.

***Dy. CIT, Circle 7(3)(2), Mumbai v. Piramal Realty (P.) Ltd. [2018] 100 taxmann.com 294 (Mumbai - Trib.) - ITA No. 2317 (MUM) of 2017-November 16, 2018***

**2123.** Where the AO treated the amount received by the assessee from Singapore based viz. Biometrix Marketing Pvt. Ltd as consideration for issue of CCPS as unexplained cash credit u/s 68 and subsequently in his remand report conceded that the source of Biometrix investment was loan from ICICI bank, the Tribunal rejected the claim of the Revenue that Biometrix was a shell company and deleted the addition made in the hands of the assessee. It further held that the subsequent sale of CCPS by Biometrix at lower than market value disclosed to ICICI Bank was not relevant for determining source, nature and genuineness of transaction.

***Dy.CIT vs. Reliance Utilities Ltd. TS-41-ITAT-2017(Mum) ITA No.223 & 224/Mum/2016 dated 03.02.2017***

**2124.** The assessee company was engaged in business of manufacturing, trading and exporting pharmaceutical items and had received share application money during the year under review. The AO noting that the assessee received share application money from 3 parties but the cheque deposits in Bank of Baroda were made by single person held that the assessee failed to discharge genuineness of transactions and creditworthiness of parties and accordingly treated the amount received as undisclosed income and same was brought to tax u/s 68. The Tribunal upheld the order of the CIT(A) deleting addition and held that since the i) share applicants had paid share application money to assessee through bank accounts also disclosed

investments in their financial statements for relevant financial year ii) the assessee had furnished necessary evidence to prove identity of share applicants and their PAN details to AO, and the AO had brought noting on record to refute the same, the department could not make addition in the hands of the assessee and was free to proceed to reopen the individual assessments in hands of the investors, if permissible in law.
***DEPUTY COMMISSIONER OF INCOME TAX vs. ALCON BIOSCIENCES PVT. LTD. - (2018) 52 CCH 0231 MumTrib - ITA No. 1946/Mum/2016 dated Feb 28, 2018***

**2125.** Where the AO made an addition on account of bogus purchases in the hands of the assessee and made addition at the entire value of purchases [which was reduced to 12.50 percent by the CIT(A)], the Tribunal noted that Assessee was neither able to produce any of parties nor was able to provide evidence as to the transportation of goods but also noted that the sales were not disputed. Accordingly, it upheld the order of the CIT(A).
***RAMNIKLAL BROTHERS vs. INCOME TAX OFFICER - (2018) 52 CCH 0083 MumTrib -ITA No. 3155/Mum/2017 dated Feb 6, 2018***

**2126.** The Tribunal held that where assessee-company received share application monies from four farmers and one company and had given complete details about share applicants which clearly established their identity and creditworthiness and also source of their income, no addition could be made under section 68 on account of share application.
***Britex Cotton International Ltd. v. Dy. CIT, Mumbai- [2019] 101 taxmann.com 232 (Mumbai - Trib.)-ITA No. 2831 (MUM.) of 2016- dated December 12, 2018***

**2127.** The Tribunal held that conjoint reading of proviso to section 68 and section 56(2)(viib) divulges that where a closely held company receives, inter alia, some amount as share premium whose genuineness is not proved by the assessee company or its source etc. is not proved by the shareholder to the satisfaction of the AO, then the entire amount including the fair market value of the shares, is chargeable to tax under section 68 of the Act and if however, the genuineness of the amount is proved and the shareholder also proves his source, then the hurdle of section 68 stands crossed and the share premium, to the extent stipulated, is chargeable to tax under section 56(2)(viib) of the Act.
***Royal Rich Developers Pvt. Ltd vs. DCIT - I.T.A. No. 1835/Mum/2014 (ITAT Mumbai)***

**2128.** The Tribunal held that where the assessee had furnished details to prove identity of the share applicant company, its credit worthiness and genuineness of transactions, no addition could be made on account of unexplained cash credits.
***Kainya and Associated Pvt Ltd v DCIT - (2015) 45 CCH 0021 Mum Trib***

**2129.** AO noted that assessee had received share application and premium from company run by one MC, whose admission was that these entities were utilized by him only in business of providing bogus share application money. AO noted that assessee had utilized their own resources but through MC operated company for routing back its undisclosed and unaccounted income in form of share application money and share premium. AO added receipts of share application money and share premium as cash credit u/s. 68. CIT(A) upheld order of AO. The Tribunal held that assessee had furnished Name, Address, PAN no and Share Application Form to prove that

shares were allotted to applicants.Assessee had also furnished its bank statement to show that money was received through banking channels and there were no immediate withdrawals from banks which showed that share application amounts have not been returned back to these parties in cash.Thus, assessee had discharged primary onus cast upon it to prove identity, capacity and genuineness of transactions. Thus, addition made by AO on account of share application money and share premium was deleted.

***Sunshine Metals & Alloys Industries Pvt Ltd vs ITO- (2018) 54 CCH 0105 MumTrib- ITA No 3212/Mum/2014 dated 12.10.2018***

**2130.** A Mauritius based company named M/s NSR had invested in assessee by way of Compulsory Convertible Preference Shares (CCPS) and the assessee received a premium and same was credited to Securities premium account in the Balance sheet.The AO noted that assesse had allotted shares to management entities at par whereas, allotted CCPS to such investor at premium and was of the view that difference amount of premium per share was to be treated as unjustified premium amount and could not be considered as "Share premium amount" and held that assessee had only proved "source" and not "nature of receipts" in respect of unjustified premium and thus made addition of the same u/s 68, which was later deleted by the CIT(A). The Tribunal observed that Share premium amount worked out in Valuation Certificate submitted by assessee was minimum amount that could be collected by assessee and hence, there was no bar on collecting higher amount as share premium and the CIT(A) had rightly observed that, there were several factors that are taken into consideration while issuing equity shares to shareholders/investors and the AO was not entitled to sit on arm chair of a businessman and regulate manner of conducting business.Thus, the Tribunal concluded that once the AO was satisfied with identity and credit worthiness of an investor and genuineness of transactions, assessee could be said to have proved "nature and source" of cash credits and further the AO himself had accepted share premium to an extent as Capital receipt, thus excess share premium amount could not be considered as income.

***DCIT vs Varsity Education Management P Ltd- (2018) 54 CCH 0156 Mum Trib- ITA No 6991/Mum/2016 dated 24.10.2018.***

**2131.** The Tribunal allowed Revenue's appeal for statistical purposes and remanded the matter to the file of AO for fresh adjudication where additions were made to assessee's income u/s 68 in respect of share capital. The Tribunal noted that CIT(A) had deleted the addition on the basis of additional evidence provided by the assessee but without providing opportunity to the AO. The Tribunal held that the CIT(A) neither sought remand report from the assessing officer nor gave an opportunity to rebut additional evidence to the AO and there was a clear-cut violation of Rule 46A, thus the CIT(A) order was set aside and matter was remanded back to the AO for fresh disposal.

***ACIT vs R&B Infra Projects (P) Ltd. (2018) 98 taxmann.com 456 (Mumbai-Trib)- ITA No 5347 of 2016 dated 24.09.2018***

**2132.** In the previous year relevant to AY in dispute , the assessee had received certain unsecured loan and share capital investment and the same were routed through banking channel, but the AO doubted the creditworthiness and genuiness based on the interim order of SEBI which was later reversed by the CIT(A).The Tribunal held that where assessee had furnished several

documentary evidences to prove genuineness of unsecured loans and share capital investment and creditworthiness of parties, no additions u/s 68 could be made in respect of such loan and share capital by merely relying upon the order of SEBI that some of shareholders of assessee were part of several entities who were linked to money laundering. Thus, the Tribunal held that the SEBI report was not in the case of the assessee but in case of persons, who were share applicants of assessee and assessee was required to prove source of funds at its hand and could not be called upon to prove source of source.

***ITO ward 15(2)(1) vs Iraisaa Hotels (P) Ltd – (2018) 97 taxmann.com 623(Mum- Trib)- MA no 29 of 2017 dated 10.09.2018***

**2133.** The Tribunal upheld CIT(A)'s order deleting the addition made by treating share premium monies as unexplained cash credit, noting that the relevant documentary evidence in the form of Annual Reports, Bank statements, copies of PAN Card, of the shareholder companies were produced before the AO in order to establish the identity as well as creditworthiness of the said shareholder companies. Further, the notices issued by the AO were also duly responded by the said shareholder companies by filing their replies. The AO, however, doubted their creditworthiness as well as the genuineness of the share premium amount mainly on the ground that assessee failed to produce the Directors of the shareholder companies for examination. The Tribunal relied on the ratio laid down in case of coordinate bench in ITO vs. M/s. Trend Infra Developers Pvt. Ltd [ITA No. 2270/KOL/2016] wherein it was held that additions u/s 68 was not called for merely because assessee could not produce the directors of the share subscribing companies and accordingly, dismissed Revenue's appeal.

***ITO vs BSNL Commercial Pvt Ltd. [2018] 54 CCH 0254 (Mum Trib.)- ITA No. 686/Kol/2017 dated 20.11.2018***

**2134.** The Tribunal deleted the addition made u/s 68 on account of share premium received by assesee-company from two parties, noting that (i) complete details of financial statements of the two parties from whom share application money and share premium received were furnished by assessee (ii) even the bank account statements of the said parties clearly showed that the amounts received by the assessee from these parties were received further from third parties (iii) the assessee had filed copies of assessment orders of both the shareholders where the AO had accepted share capital part which further proved that he had not doubted transaction per se being genuine. Accordingly, it held that the assessee had established the genuineness of the transaction.

***IB Commercial Ltd vs Dy.CIT [2018] 54 CCH 0192 (MumTrib.)- ITA No. 3268/Mum/2016 dated 09.11.2018***

**2135.** The assessee company allotted equity shares of face value of Rs. 10 each at premium of Rs. 10 each. The AO made an addition under Section 68 as the premium charged was in excess of the intrinsic valuation of shares and since the assessee could not offer satisfactory explanation. Relying on the ruling of the jurisdictional High Court in Vodafone India Services Pvt. Ltd. (368 ITR 01) and the ruling of the coordinate bench in Green Infra Ltd. (ITA No. 7762/Mum/2012 dated 23.08.2013) and the CBDT Instruction No. 2/2015 dtd. 29.01.2015, the CIT(A) held that share premium could not be treated as income of the assessee. The Tribunal upheld deletion made by the CIT(A) and held that the since the AO had made disallowance by relying on the of

facts which were not supported by incriminating material / evidences on record, disallowance under Section 68 could not be made

***DCIT vs. Finproject India Private Ltd – [2018] 53 CCH 0001 (Mum ITAT) – ITA No 4860/Mum/2016 dated May 2, 2018***

**2136.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting addition made u/s 68 on account of excess share premium received by assessee on issue of Compulsory Convertible Preference Shares to a Mauritius based Venture Capital Fund over their discounted cash flow (DCF) valuation. The AO contended that the assessee had failed to prove the genuiness of the excess premium. The Tribunal relied on the decision in the case of CIT v Green Infra Limited (2017) 392 ITR 7 (Bom HC) and Gagandeep Infrastructure P. Ltd. (2017) 394 ITR 680 (Bom HC) wherein it was held that once the assessee had discharged burden placed upon him u/s 68, no addition could be made on account of share premium collected. In the instant case, the AO was otherwise satisfied with the identity and creditworthiness of the investor and that the transactions were carried out through banking channels. The Tribunal also accepted assessee's contention that share premium amount worked out as per DCF valuation in the Valuation Certificate for FEMA purpose was the minimum amount that could be collected by the assessee and there was no bar on collecting higher amount as share premium.

***DCIT v Varsity Education Management Pvt. Ltd [TS-628-ITAT-2018(Mum)] - ITA No. 6991/Mum/2016 - dated 14.11.2018***

**2137.** Where the assessee-company had only submitted a copy of acknowledgment of filing return of income of the NRI from whom share application money was received, wherein she had shown a meager income as compared to the money advanced by way of share application and the assessee had neither submitted copies of her capital a/c, balance sheet, bank statement, etc. nor filed any details/evidence as to her activities in Dubai and her source of income in Dubai to substantiate her financial capacity and her permanent address of residence/office of NRI in Dubai, the Tribunal upheld the addition made by AO u/s 68 holding that the assessee had not discharged onus of proving creditworthiness. The Tribunal didn't give credence to a CA certificate submitted by assessee showing the NRI's net worth since in the said certificate the net worth was allegedly based on information available though the said information had not at all been specified and also because Dubai/UAE had no financial regulatory network.

***ITO v Spartacus Farms (P.) Ltd. – (2018) 91 taxmann.com 15 (Mum) – ITA No. 3073 (mum.) of 2014 dated 13.02.2018***

**2138.** The assessee had raised share capital during the year from six shareholders, out of whom three were the 'original shareholders' of the company. The AO observed that the onus to prove the identity, genuineness and creditworthiness of the three 'new shareholders' was on the assessee and since he failed to do so, the AO treated the said amount received from the new shareholders as unexplained cash credit under Section 68. The Tribunal upheld the order of the CIT(A) wherein it was held that since the new shareholders, who contributed to 89% of the total share capital of the company, were not traceable, the sanctity of their confirmations, documents filed by the assessee was lost. The Tribunal also held that merely saying that return of allotment in Form no 2 was filed with the MCA or that resolutions were passed by the assessee or these

companies have CIN, was not sufficient as these were merely ministerial/administrative functions.

***PRATIK SYNTEX PRIVATE LTD. vs. INCOME TAX OFFICER – [2018] 53 CCH 0042 (Mumbai ITAT) – ITA Nos. 6690/Mum/2016 dated May 11, 2018***

**2139.** The Assessing Officer had made an addition on account of share premium/share application money / unexplained cash credit u/s 68 holding it to be mere accommodation entries, based on the statement of Praveen Kumar Jain (who accepted that he had provided accommodation entry to various parties). The Tribunal noted that since the details of share applicants along with their ITR acknowledgement, Audited accounts report, PAN cards and relevant extract of bank account of share applications and held that once the assessee had produced documentary evidence to establish the existence of such companies, the burden shifted to the Revenue to establish their case. It held that mere reliance on statements of third parties who had not been subjected to cross examination was not permissible. Accordingly, it held that since the AO had failed to demonstrate with specific evidence that the assessee has obtained accommodation entries, the addition made u/s 68 was not sustainable.

***ITO vs Shreedham Construction Pvt Ltd-ITA No. 3754 / mum / 2017 dated 14.11.2017***

**2140.** The Tribunal deleted the addition made by the AO under Section 68 of the Act with respect to share capital received by the assessee from an entity based in Mauritius noting that the AO had relied on the initial communication from the Mauritius Revenue Authority which did not indicate investment in the assessee without appreciating that subsequently the Authorities provided details (viz. return filed by the Mauritian company, address and citizenship of the directors, copy of share certificate issued by the assessee, bank statement and financial statements) which established the identity and genuineness of share capital.

***Majari Stud Farm Pvt Ltd – TS-528-ITAT-2017 (Mum) - I.T.A No.3842/Mum/2012 dated 10.11.2017***

**2141.** The Tribunal held that where in respect of share capital and share premium received from investing companies, assessee brought on record all necessary evidence such as their address, PAN, confirmation letters etc., merely because it failed to produce directors of investing companies personally for confirmation, amount in question could not be added to assessee's income under section 68.

***Asst. CIT, Circle-4, Nagpur v. Swiftsol (I) (P.) Ltd.- [2018] 95 taxmann.com 286 (Nagpur – Trib.) ITA Nos. 407 (NAG.) of 2016 & Others-dated July 2, 2018***

**2142.** Assessee had received share application money. Assessee company submitted details showing name of companies who had given share application money. AO held that assesssee failed to establish Identity, Creditworthiness and genuineness of transaction done with investor companies. AO treated share application as cash credit appearing in books of assessee and u/s. 68 made additions to income of assessee. CIT(A) deleted addition made by AO. The Tribunal held that, assessee had duly submitted all necessary details in respect of share application received. Assessee had duly discharged its onus and no onus was cast on assessee in impugned assessment year to produce persons or books from investment companies. AO

was not justified to take up issue of obtaining explanation from Directors/promoters of investing companies. Revenue's appeal was dismissed.
***Asst. CIT & ORS. vs. Swiftsol (I) Pvt. Ltd. & ORS.- (2018) 53 CCH 0282 NagTrib- ITANo.407/Nag/16- Dated Jul 2, 2018***

**2143.** Assessee received certain amount from 35 individuals and share certificates were issued to them. AO held that assessee failed to establish identity of shareholders, genuineness of transaction and credit worthiness of share applicants and held share application money as unexplained cash credit u/s. 68 and accordingly made addition. The CIT(A) deleted addition observing that share application money was allotted to respective shareholders and further held that share application money could not be taxed in hands of company and AO was free to assess same in hands of individuals. The Tribunal held that having filed confirmations and share applications, assessee had discharged its burden and all share applicants were having substantial land holdings to make contribution to share capital, therefore, there was no reason for doubting creditworthiness of subscribers. Having received confirmations, it was for AO to make further enquires and to prove whether contribution to share capital was bogus or genuine.No such effort was made by AO and it simply scrutinized confirmations furnished by assessee and made addition holding that share applicants did not have sufficient means.Since assessee had filed confirmations it was for revenue to discharge onus that share capital introduced by assessee was bogus.All share applicants were agriculturists and had no taxable income, therefore, there was no case for submission of PAN details. The Tribunal concluded that as the assessee had explained source of capital contribution, established identity of creditor and also creditworthiness, hence there was no case for making addition u/s. 68 and since no such effort was made by AO, onus of revenue was not discharged.
***ACIT vs Mulpuri Foods and Feeds P Ltd- (2018) 54 CCH 0044 Vishakapatnam Trib- ITA No 292/Viz/2017 dated 26.09.2018.***

*Capital Account*

**2144.** The Assessing Officer made addition to assesee-firm's income under section 68 in respect capital introduced by one partner of firm. The High Court had held that in view of fact that amount received by assessee-firm had been duly reflected in books of account maintained by concerned partner and he had also confirmed such contribution; impugned addition was to be deleted. SLP filed by Revenue against the High order is dismissed by the Supreme Court.
***Pr.CIT v. Vaishnodevi Refoils & Solvex [2018] 96 taxmann.com 469/257 Taxman 440(SC) Special Leave Petition (Civil) Diary No. 22842 of 2018 dated July 9, 2018***

**2145.** During the course of scrutiny proceedings, the AO noted that assessee was sole proprietor of his proprietorship concern (Jay Jewellers) and his capital account showed credit of Rs. 1,85,64,955 but capital account of assessee, in his personal accounts, reflected closing balance of only Rs. 43,16,557. Thus, the difference in credit entry was treated as unexplained, and added to the income of assessee u/s 68 and the same was confirmed by CIT(A). The Tribunal observed that the assessee had one set of accounts for himself, as an individual, and other set of accounts for his sole proprietorship concern. Further, the Tribunal held that maintenance of such separate books of account was allowable and an assessee may have his own capital of

'x' amount, and yet his capital contribution in capital account of a proprietorship concern can be more than 'x' amount because funding of capital could be not only out of own capital but out of other available funds as well. The AO should have compared the capital account of the Jay Jewellers with the account of Jay Jwellers in the hands of assessee, its's propritor. These two accounts are actually mirror images of each other.Thus the Tribunal concluded that capital introduction stood explained in books of Jay Jewellers and addition made under section 68 was deleted.

***Ajay Jaysukhlal Mehta vs ACIT- (2018) 99 taxmann.com 155 (Ahd- Trib)-ITA No 1329 of 2014 dated 28.09.2018***

**2146.** The AO made an addition of amount introduced as capital by the assessee in her proprietary firm on the ground that the said amount was received from a partnership firm where the assessee was a partner and the said amount was not shown as payable in the balance sheet of the assessee. The CIT(A) deleted the addition noting that the amount received from the partnerhisp firm was repaid in cash during the year by the assessee and same was reflected in the cash book of the assessee and, therefore, it was not shown in the balance sheet of the assessee. The Tribunal dismissed Revenue's appeal against CIT(A)'s order noting that Revenue could not point out any error in the aforesaid findings of CIT(A) by bringing any positive material on record.

***BHAWANIPATNA WARD vs. SEEMA SACHDEVA. [2018] 53 CCH 0480 CuttakTrib- ITA No.67/CTK/2018 dated August 23 2018***

**2147.** During the assessment proceedings, the AO observed that the capital account of assessee showed drawings of Rs. 1,20,000/- only and further observed that the assessee had 3 school going children and had directorship in 3 companies and was a partner in firm, thus concluded that assessee could not survive at Rs. 8,000/- p.m. and added Rs. 4,80,000/- to income of the assessee on account of lower withdrawals. The CIT(A) gave partial relief of Rs. 62,500 considering withdrawals of wife & HUF. The Tribunal observed that the authorities made addition purely on estimation basis and noted that school fees were shown separately in capital account and assessee contented that they lived in a joint family and huge expenses have been debited in the family account. Thus, the Tribunal concluded that when assessee had proved the reasonableness of household expenses claimed by him, no addition was called for on adhoc basis, which was not based on any evidence, thus restricted the disallowance to the extent of Rs 2 lakh.

***Sunil Sojatia vs ACIT- (2018) 54 CCH 0110 Indore Trib- ITA No 310,312/Ind/2015 dated 23.10.2018***

**2148.** Where assessee was a partner in a firm and the AO had made addition in income of assessee under section 69B on ground that during relevant assessment year there was a difference of amount in capital account balance of assessee in his account books vis-à-vis account books of firm. The Tribunal concluded that since the assessee had explained difference by stating that his share of profit from firm for assessment year was not included in his account books, impugned difference stood duly and fully explained and, therefore, addition was not justified.

***DCIT vs Hrishikesh Desai- (2018) 98 taxmann.com 305 (Mum-Trib.)- ITA No 2766 of 2017 dated 26.09.2018***

Go to Index

*Gift received*

**2149.** The Court upheld the Tribunal's order confirming addition u/s 68 on account of certain amount claimed by the assesse to be gift received from father-in-law. Rejecting assessee's reliance placed on the decision of co-ordinate bench in the assesse own case for an earlier year wherein the Court had decided in favour of the assesse w.r.t. gift received from Maternal Aunt, the Court held that it could not have been simply said that what applied to a gift from the aunt would have equally applied to a gift from the father-in-law, irrespective of the circumstances, suspicious or otherwise, surrounding the gift. It also rejected the assessee's contention that genuineness of gift could not be questioned when the identity of the donor is established, payment is through banking channels and a letter of confirmation is also available, by holding that these three facts could establish the truth of the transaction, but not genuineness. It noted that the lower authorities had suspected that that undisclosed income earned by the assessee could have been used for round tripping and routed through father-in-law to bring it back as gift. The Court also rejected submission that round tripping was not possible as he had no source of income, observing that the assessee was a director of real-estate company. Acccordingly, the Court dismissed the asssessee's appeal in this regard and decided in favour of Revenue.
***Pendurthi Chandrasekhar v DCIT - [TS-411-HC-2018(AP)] - I.T.T.A.No.703 / 2016 (Telangana & AP) dated April 26, 2018***

**2150.** Where the assessee had received certain amount as gift from his maternal aunt and the AO had made addition u/s 68 on the ground that the assessee could not show on what 'occasion' such gift was received, noting that the donor had given a confirmation letter clearly stating therein that she gave the said gift out of her natural love and affection towards her nephew and further, in view of section 56(2)(v) which provides that no occasion needs to be proved for accepting a gift from a relative, the Court held that the gift received by the assessee from his relative i.e. maternal aunt, could not be added as unexplained credit u/s 68. With respect to the loan received by assessee from a friend in U.K whose identity and capacity to lend were established, it was held that addition of loan amount to assessee's income as unexplained cash credit u/s 68 was not justified. Similarly, where the copy of bank account statement of one 'JV' from who certain amount of loan was received showed that the said sum was withdrawn from his account and transferred to assessee's account, also establishing the identity of JV and the said sum was repaid by bank transfer, the Court held that the addition of said loan to assessee's income as unexplained cash credit u/s 68 was not justified. Further, where the assessee had received loan from his wife which were out of gift received by her from her father and the assessee's father-in-law had given confirmation letter that he had given amount towards gift to her daughter out of love and affection, it was held that AO could not have raised doubt about capacity of assessee's wife to lend money and, thus, no addition could be made u/s 68 as unexplained cash credit.
***Pendurthi Chandrasekhar v DCIT – (2018) 91 taxmann.com 229 (AP&T HC) – ITA Nos. 701 & 702 of 2016 dated 23.02.2018***

**2151.** The Court held that where the AO had rejected the evidence produced by the assessee and based his conclusion that the sum received was not a gift and was indeed income of the assessee only on surmises, the addition made under section 68 of the Act was not sustainable.

Go to Index

The Court noted that the AO had not identified any material that was available with the assessee or should have been available with the assessee that was withheld by the assessee.
***CIT v Sudhir Budhraja – (2015) 94 CCH 0048 Del HC***

**2152.** The Court reversed the order of the Tribunal and confirmed the addition made u/s 68 r. w S.158BB where in course of block assessment proceedings, AO made addition to assessee's undisclosed income in respect of gift, in view of fact that assessee did not even know donor personally and, moreover, he himself in presence of his Chartered Accountant had made a statement under sec. 132(4) admitting that said gift was bogus.
***CIT v M. S. Aggarwal [2018] 93 taxmann.com 247 (DelhiHC) – ITA NOS. 169 OF 2005 dated 23.04.2018***

**2153.** During year, assessee received huge amount as gift from his nephew, who was a resident of USA. Assessing Officer opined that donor did not have adequate creditworthiness and treated gift received by assessee as unexplained credits under section 68. Before Commissioner (Appeals), assessee contended that income was earned by donor by functioning as a consultant of a company at UAE and gift was received through banking channels. Commissioner (Appeals) allowed assessee's appeal and deleted addition under section 68. However, Tribunal restored additions made by Assessing Officer. The Court noted that assessee did not place on record any sufficient cause before Commissioner (Appeals) as to why alleged additional income earned by donor by doing consultancy work for a company in UAE was not offered by him before Assessing Officer. Further, so called transfer through a bank account was also self-serving because amount was transferred through telegraphic transfer and source of transfer was not established as to how it was relatable to donor. It held that whether, on facts, Assessing Officer and Tribunal rightly concluded that probability of a salaried donor giving, a gift of huge cash amount to assessee, his uncle, who was an affluent businessman, was hard to believe and, therefore, impugned addition made by Tribuanl was justified.
***Narendra Kumar Sakaria v. Asst. CIT, Circle XI, Chennai-[2019] 102 taxmann.com 473 (MadrasHC)-Tax Case Appeal No. 1600 of 2008 dated December 14, 2018***

**2154.** The Tribunal held that where assessee was not able to bring on record any material evidence to prove credit worthiness and capacity of his father to advance huge amount of cash gift of Rs.10.50 Lacs from any known source/income, impugned addition made under section 68 by authorities below was to be confirmed more so since the father did not even operate even a regular bank account.
***Sunil Ramakrishna v. Dy. CIT [2018]99 taxmann.com 221/173 ITD 468(Bang. Trib.)- IT Appeal No. 2463 (BANG.) of 2018 -October 12, 2018***

**2155.** Assessee, was engaged in business of retail trade in rice bran and husk. Survey u/s 133A was conducted at assessee's business premised and AO made addition of amount credited to Capital Account being gift received from her husband who was also an income tax assessee, assessed to tax.In view of the Additional evidence viz gift deed and ITR of the husband filed by the assessee, the Tribunal restored the matter to the file of the AO for examination of the veracity of the assessee's claim.
***C.I Indira vs ITO- (2018) 54 CCH 0080 BangTrib- ITA No 2439/Bang/2018 dated 12.10.2018***

Go to Index

**2156.** The Assessee had received a gift of Rs.15 lakhs from his mother and the AO after the remand proceedings had also accepted the same, however, the CIT(A) noted that before giving gift, cash of Rs. 15,00,000 was deposited by the assessee's mother and thus CIT(A) held that cash was deposited by assessee and thus made addition for the same. The Tribunal held that there was no evidence to demonstrate that cash of Rs.15 lakhs was deposited by assessee and also observed that mother of the assessee was a regular income tax payee and it could not be inferred that she was not having any source of income. Thus, the Tribunal concluded that since, donor was having sufficient source to donate and was duly assessed to income tax, finding of CIT(A) could not be sustained and gift made could not be taxed in the hands of donee.
***Sunil Sojatia vs ACIT- (2018) 54 CCH 0110 Indore Trib- ITA No 310,312/Ind/2015 dated 23.10.2018***

**2157.** Where the assessee could not produce documents relating to agricultural land received as gift from his mother, the Tribunal held that it was not denied by the revenue that parents of assessee were owning agricultural land and therefore, it could not be completely brushed aside that there was no creditworthiness of the donor to make such gift. It observed that both parents of assessee had passed away and therefore, assessee might not be able to establish fact that the parents were cultivating land during their life. Therefore, taking in account the totality of facts and circumstances, it held that the gift could not be held to be non-genuine. Accordingly, the addition made by treating the gift to be non-genuine was deleted.
***Anandasayanam P. J Pillai vs. CIT (2016) 48 CCH 0187 (Mum Trib) (ITA No. 4905/Mum/2016)***

**2158.** The Tribunal allowed assessee's appeal and deleted the addition which was made by the AO by taxing amount received by the assessee in her bank account as gift from her mother. The assessee claimed that the said gift was given by her mother out of the agricultural income received on sale of crops. The AO, however, noted that there were cash deposits in the mother's (donor's) bank account on the same day on which the amount was transfered to the assessee's bank, which neither the assessee nor her mother (donor) was able to explain. Accordingly, he made addition. The Tribunal noted that the assessee had filed a confirmation letter from her mother (donor) giving details of the agricultural land owned by her and the income derived from the same and also confirming that she had gifted the income to her daughter (the assessee). Thus, the Tribunal held that when all surrounding factors suggest that gift was genuine simply because assessee was not able to establish cash in hand, the addition could not be made without making enquiry, in view of the fact that the assessee's had discharged burden cast upon her by submitting the land details as well as details of her mother's (donor's) annual income.
***ITO v GOGINENI SARADA (2018) 53 CCH 0597 (VishakapatnamTrib) ITA Nos. 152/VIZ/2017, 122 & 152 /VIZ/2017 dated July 31, 2018***

*Investment in immovable property*

**2159.** Where High Court upheld Tribunal's order deleting addition in respect of undisclosed sales of flats on ground that sale was infact carried out by developer and sale proceeds never came into possession of assessee, SLP filed against said decision was dismissed by the Apex court.

Go to Index

***CIT v. Sadiq Sheikh- [2018] 100 taxmann.com 10 (SC)-SLP (Civil) Diary No. 32566 of 2018- dated October 22, 2018***

**2160.** The Court held that where Tribunal deleted addition to assessee's income on account of unexplained investment in-house property on basis of facts on record, same did not require any interreference.
***SLP granted in CIT v. Nirmal Kumar Agarwal [2018] 99 taxmann.com 292/259 Taxmann 320 (SC). SLP (CIVIL) Diary No(s). 33282 of 2018 dated October 12, 2018***

**2161.** The Apex Court dismissed Revenue's SLP against the HC decision wherein the Tribunal's order deleting addition in respect of alleged undisclosed investment made in certain properties was upheld noting that the order passed by Tribunal was based on evidence on record.
***CIT vs Lodha Builders [2018] 98 taxmann.com 430 (SC) - SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 27571 OF 2018 dated August 20 2018***

**2162.** The assessee was doing real estate business. Search was conducted at the assessee's premises and certain advance receipts found which the assessee claimed to have received from prospective plot owners. The assessee submitted that said sums were reflected in diaries found during search but it had not linked entries on these pages with cash flow summary submitted by him to explain source of money invested in land. Accordingly, the Assessing Officer treated said sum as unexplained investments. The High Court had held that amounts were received from bulk purchasers as per agreement. Further, the assessee had also filed cash flow statement and looking to modus operandi of business said sums were verifiable; thus, no addition was required to be made on this account. SLP filed by Revenue against the High Court order is dismissed by the Supreme court.
***CIT v. Ranjeet Singh Yadav [2018] 95 taxmann.com 237/257 Taxman 29(SC) Special Leave Petition (Civil) Diary No(S). 19580 of 2018 dated July 3, 2018***

**2163.** The Court remitted the issue pertaining to addition made by the Department based on loose documents seized from the assessee's premises to the file of the Tribunal and held that where the AO tried to correlate the loose sheets seized from the premises of the assessee and the scribblings on them to the transaction of purchase of property and concluded that the assessee had some undisclosed income / investments, the Tribunal was incorrect in stating that the assessee had not discharged its onus, without considering the assessee's rebuttal against the allegations of the AO. Considering the fact that the purchase of property had taken place 1 year prior to the search and the assessee had rebutted all allegations of the AO viz. that the property purchased had no relation to the documents seized, which had not been considered by the Tribunal, it decided to remit the issue back to the Tribunal to consider this aspect with directions to decide the matter within 3 months from the date on which this order was served upon the Tribunal.
***Jaswant Singh v ACIT – (2016) 97 CCH 0155 (Allahabad HC) – ITA No 200 of 2010***

**2164.** During course of search in premises of the assessee-company, a diary was seized from office premises of sister concern wherein it was written '100 crores divided into 70-30 for 167.112 acres". The Assessing Officer found that assessee had entered into an agreement to purchase

entire shareholdings of company ATPL for total consideration of Rs.70 crores. The Assessing Officer came to conclusion that actually assessee had purchased 167.112 acres of land from ATPL as mentioned in seized diary for consideration of Rs.70 crores while Rs.30 crores were paid in cash. Concequently, he bought to tax an amount of Rs.30 crores holding it to be cash paid. The Court held that during search, no other evidence was recovered to prove that in fact any payment outside books of account was made by the assessee to ATPL. Even person against whose name notings of diary was made was not examined during assessment proceedings. Since sold basis of an addition was entirely hinging upon interpretation of certain figures in a diary, no addition could be made in hands of the assessee purely on assumption and presumptions.

***CIT v. Ansal Properties & Industries [2018] 98 taxmann.com 398/259 Taxman 103(DelhiHC)- IT Appeal No. 599 of 2004 dated September 18, 2018***

**2165.** The Court held that the AO was unjustified in making addition in the hands of the assessee alleging that he had contributed to purchase of property by his wife and not disclosed the same as an investment in his books. The Court observed that the agreement to sell property was duly registered in the name of the assessee's wife, the assessee's wife was separately assessed to income-tax and had declared acquisition of the property in her books of accounts. It further noted that the AO did not make any specific adverse observations against the assessee to suggest his contribution towards the purchase of property and accordingly deleted the addition made.

***Pr CIT v SHRI OM PRAKASH CHANDNA - (2017) 100 CCH 0157 DelHC - ITA 1164/2017, CM APPL.46236/2017 dated 19.12.2017***

**2166.** The Petitioner had purchased a bungalow for consideration of Rs.60 lakhs and while registering the sale deed paid an additional stamp duty. In the order of assessment u/s 143(3), the AO did not make any addition. However, he made reference to the District Valuation Officer (DVO) u/s 142A for his opinion on the fair market value of the property in question. The DVO estimated the fair market value as on the date of the sale at Rs.1.71 crore. After receipt of the valuer's report, the AO issued the notice u/s 148 for re-opening the assessment with the reason to believe that the assessee had undervalued the property and had made investment in excess of the amount declared. Accordingly, he held that the assessee had unaccounted investment as per the provisions of section 69 of the Act. The Court based on the judgment of Division Bench of the Court (wherein the reference to the DVO was held as invalid) held that the report of the DVO was also invalid. Further, it observed that the same information was available with the AO at the time of original assessment which was noticed by the AO, but which did not prompt him to make any addition except for calling of DVO's report which by itself could not form a ground for reopening of the assessment.

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

**2167.** The Court held that the addition made by Revenue under section 69 of the Act by treating the difference in value of property purchased by the assessee as per the sale deed and the valuation as per the stamp duty authority (on which additional stamp duty was paid) as unexplained investments was not sustainable in light of the Delhi HC rulings in Sadhna Gupta and Puneet

Sabharwal wherein it was held that District Valuation Officer's report cannot be a sole basis for assessment of income. It noted that that apart from valuation report by stamp duty authority, there was no independent or corroborative material for consideration paid or received in addition to that mentioned in the sale deed.
***SS Jyothi Prakash v ACIT – TS-335-HC-2016 (KarHC)***

**2168.** A search was conducted in business premises of the assessee wherein certain loose slips were recovered, which showed several entries pertaining to cash and cheque transactions in respect of purchase of a property. The assessee accepted in his statement that slip represented on money payment made for purchase of property in question. Later on, the assessee retracted from his statement and claimed that loose slips were only dumb slips. The Tribunal however, rejected claim of the assessee and confirmed addition. The Court held that since notings in loose slips were clear, retraction made by the assessee after period of two years was rightly rejected as an afterthought. Thus, the impugned order could not be interfered.
***Thiru S. Shyam Kumar v. Asstt.CIT [2018] 99 taxmann.com 39 (Mad.HC) Tax Case (Appeal) No. 1371 of 2008 dated October 10, 2018***

**2169.** The Tribunal held that where the AO conducted a survey on March 6, 2009 and made an addition on account of undisclosed investments since an amount towards advance for property had not been recorded therein, but assessee had recorded the said amount as advance for property in its balance sheet ended March 31, 2009 no addition under section 69 of the Act could be made since the assessee was not obligated to complete entries until March 6, 2009 when the books of accounts were to be closed on March 31, 2009. Therefore since the investment was duly recorded in the balance sheet the addition could not be made.
***Sanjay R Shah v ITO – (2016) 48 CCH 0004 Ahd Trib – ITA No 492 / Ahd / 2016***

**2170.** The AO made an addition on account of alleged unexplained investment (being cash payment for purchase of land) based on the extract of documents seized from premises of GM of Finance of assessee's group. The AO submitted a remand report before the CIT(A), wherein it was submitted that companies were barred from owning land in Karnataka and accordingly the assessee had purchased the land in the name of an individual who had dealings with the assessee group. However, the CIT(A) deleted the addition. The Tribunal set aside CIT(A)'s order holding that though the AO had stated in his remand report that the person in whose name the land was purchased belonged to the assessee's group but this aspect was not examined by the CIT(A). The Tribunal held that more investigation was required from the sub-registrar's office to find out as to whether the persons in whose name the land was registered by sub-registrar's office was in a position to buy the land and in fact whether they belonged to the assessee group. If it was proved that the persons in whose name the land was registered belonged to the assessee, the entries found in the seized materials were correct entries and the addition could be made in the hands of the assessee. Accordingly, it restored the matter to the AO to readjudicate the issue in terms indicated above.
***Asst CIT vs P Shyamaraju and Ors [2018] 53 CCH 0442 BangTrib- ITA No.1147/Bang/2012 dated August 14 2018***

Go to Index

**2171.** The assessee had purchased a land to set up factory and office building. AO found that land was purchased at rate of Rs.1550 per sq meter and total cost came to Rs.41,34,051 while as per cash flow statement cost of land was shown at Rs.12,63,773 and thus added difference of two to total income by treating it as undisclosed investment in land. CIT(A) upheld order of AO. The Tribunal observed that there was reference of statement of one K.C Thomas in assessment order and adopted value of property at Rs.1550 per sq meter on basis of statement of K C Thomas in whose favour power of attorney was obtained. Further, land was purchased in AY under consideration from 16 different owners and enquiry was not made with these persons regarding extra payment. Thus the Tribunal remitted the issue to the AO with a direction to the AO to furnish a copy of the statement of Shri K.C. Thomas and also to enquire with the respective seller and decide with fresh consideration. Thus the ground of appeal was allowed for statistical purpose.

***K. A. Rauf Shelter & Ors v ACIT (2018) 52 CCH 0460 CochinTrib - ITA 501/C/2015 dated 23.04.18***

**2172.** The Tribunal deleted that addition made by AO u/s 69C on the basis of papers seized during the course of search at business premises of assessee as per which certain amounts for purchase of land from various sellers had been paid in cash and had not been recorded in books of account, noting that the assessee had not purchased any land from persons mentioned in papers. Tribunal held that neither AO had made any independent inquiry from such persons nor had he brought any adverse material on record or given a finding with cogent evidence contrary to that of the assessee.

***Saamag Developers (P.) Ltd. v ACIT – (2018) 168 ITD 649 (Del Trib) – ITA Nos. 3559 of 2017, 3582-3617, 3618-3638 & 3655-3689 of 2014 dated 12.01.2018***

**2173.** Where the assessee failed to offer any explanation vis-à-vis the source of investment made by him in agricultural land and had failed to respond to the notices issued by the AO under Section 143(2) and 142(1) of the Act, the Tribunal upheld the order of the AO making addition on account of unexplained investments in the hands of the assessee pursuant to search proceedings. It observed that the balance sheet submitted by the assessee did not disclose any investment in agricultural land and that the contention of the assessee that the source of the funds was the sale proceeds arising out of sale of land by its HUF was unsubstantiated.

***Sekhar Reddy v ACIT – (2018) 52 CCH 0140 Hyd Trib – ITA No 1392 / Hyd / 16 – dated Feb 28, 2018***

**2174.** The Tribunal deleted the adhoc addition with respect to amount invested in construction of hotel building which was made by the CIT(A) on the ground of absence of complete set of bills and vouchers for the material purchased for construction. It was noted that the CIT(A) had accepted the assessee's contention to consider State PWD rate instead of Central PWD rate for valuing the contructed area and the value arrived by applying the State PWD rate to the plinth area of construction for each floor as per DVO's methodology of valuation (instead of Central PWD rate applied by DVO) is almost same as the cost of construction appearing in the books of account. Accordingly, the Tribunal held that in view of the above, there was no justification in sustaining adhoc disallowance on the ground of absence of complete set of bills and vouchers for material.

Go to Index

***GOPAL KUMAR DEEWAN & ORS. V ITO (2018) 53 CCH 0440 JaipurTrib – ITA No. 498/JP/2017, 617/JP/2017, 02/JP/2017, 178/JP/2017, 499/JP/2017, 618/JP/2017 dated July 26, 2018***

**2175.** The Tribunal held that addition u/s 69 could not be made on basis of documents being found from premises of third party where neither name of assessee was mentioned nor any document was found evidencing fact that assessee had paid any cash as on-money to said party for purchase of any property
***Regency Mahavir Properties v ACIT - (2018) 169 ITD 35 (Mum) – ITA No. 682 & 683 of 2016 dated 04.01.2018***

**2176.** Where assessee as well as her mother gave statements accepting investment of Rs.10 lakhs out of books in purchase of property to clear encumbrances, Tribunal held that the additions so made by AO u/s 68 based upon incriminating material found during search in case of assessee were to be upheld.
***Ms. Priyanka Chopra v DCIT – (2018) 89 taxmann.com 288 (Mum) – ITA No. 2770 (Mum.) of 2015 dated 16.01.2018***

**2177.** On the basis of a document seized during search, seizure and survey operations carried out on the premises of the Assessees, the AO issued notice under Section 148 in respect of land purchased by the Assessee alongwith 11 other buyers and made an addition under Section 69 of the Act. The CIT(A) upheld the order of the AO. The Tribunal observed that there was no evidence or material available in the seized document, as per the order of the AO or the CIT(A)'s order to show that the Assessees had paid the consideration over and above the consideration registered in the purchase document. Further, since the Revenue failed to prove that excess consideration had passed on in the said transaction, Tribunal deleted the addition made under Section 69 of the Act as unexplained investment. Thus, the Assessee's appeal was allowed.
***SATHI SURYANARAYANA REDDY & ORS. vs. DCIT & ORS. (VISHAKAPATNAM TRIBUNAL) (ITA No. 178 to 189 of 2017) dated May 30, 2018 (53 CCH 0173)***

*Jewellery*

**2178.** Pursuant to a search and seizure operation carried out at the premises of assessee, the AO made addition in the hands of the assessee on the ground that receipts of purchase of gold ornaments in name of assessee were found, but purchases were not entered in cash books of assessee. The Court appreciating the assessee's explanation i.e. that though receipts were in assessee's name but they were in respect of jewellery belonging to his wife and amounts in receipts related to disclosed income of his wife, held that the Tribunal was justified in deleting the addition made by the AO under Section 69B of the Act.
***CIT v Dilip Singh - [2018] 89 taxmann.com 4 (CalcuttaHC) - IT APPEAL NO. 222 OF 2000 dated 07.12.2017***

**2179.** The Tribunal deleted the addition made by the AO pursuant to seizure of unexplained jewellery found at the premises of the assessee. It held that as per the CBDT instruction No 1961 dated 11.05.1994, considering that the assessee's family consisted of 5 members, the permitted levels

of jewellery was 1450 gms whereas the amount of jewellery found at the premises was only 847 gms. Accordingly, it held that the jewellery possessed by the assessee was reasonable and therefore deleted the addition made by the AO.

***RITU BAJAJ vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0166 DelTrib - ITA No. 4101/DEL/2017 dated Mar 9, 2018***

**2180.** During search at assessee's husband residential premises, unexplained jewellary weighing 1748.8 gms was found from locker of assessee which was treated as unexplained by the AO. The CIT(A) held that out of total jewellery found, jewellery weighing 833.10 gms was almost identical to description and weight to the items disclosed in the probate case records of assessee's (deceased) husband and thus it was proved that these items were acquired long ago and could not be brought to tax for the relevant year in the hands of assessee. Further, he held that as per CBDT instruction gold ornaments weighing of 500 gms per married woman and 250 gms per unmarried woman were to be treated as customary and not seized. Therefore, he gave credit of another 750 gms of gold. Thus, he sustained the addition of the balance jewellery of 165.70 gms. The Tribunal held that there was no infirmity in CIT(A)'s order and accordingly upheld the same.

***Asst CITvs. Padmarani Kapala and Ors[2018] 53 CCH 0490 DelTrib- ITA No.3612/Del/2014 dated August 30 2018***

**2181.** During search at assessee's residential premises, Jewellery of 2531.5 gms was found. AO had given assessee benefit of 950 gms. on account of wife and two children and balance was added as unexplained investment under section 69A. The Tribunal held that since assessee belonged to a wealthy family and jewellery was received on occasions from relatives, excess jewellery was very much reasonable and, thus, no addition under section 69A was called for.

***Vibhu Aggarwal v DCIT [2018] 93 taxmann.com 275 (Delhi – Trib.) – ITA NO. 1540 OF 2015 dated 04.05.2018***

**2182.** Pursuant to search conducted in the premises of the assessee, the assessee's explanation was that the gold jewellery was gifted to his family members on various occasions and family get-together, such as marriages, birthdays etc for which he produced photographs taken on family occasions. The AO however rejected the explanations and made an addition on account of unexplained investments alleging that the gold, silver and jewellery found at his premises was excessive. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) deleted the addition observing that the assessee's submission was reasonable considering the societal pattern in India and also that the jewellery was claimed to be belonging to other family members of the assessee who were also Income Tax Assessees. The CIT(A) estimated that out of the total jewellery, 30 percent could be reasonably attributed to the assessee (amounting to Rs.39 lakh) and accordingly held that considering the assessee's returned income in his individual capacity from AY 2005-06 to AY 2011-12 aggregated to a little under Rs 4 crores, the assessee could reasonably explain the source of his individual investment. Accordingly, the Tribunal dismissed Revenue's appeal.

***ASSISTANT COMMISSIONER OF INCOME TAX vs. KANDULA VISVESWARA RAO - 2018) 52 CCH 0240 HydTrib - ITA No. 55/Hyd/2016 dated Mar 28, 2018***

Go to Index

**2183.** The Tribunal allowed assessee's appeal against CIT(A)'s order and deleted addition made with respect to unexplained silver utensils found in the locker of assessee (a married lady) during the course of search for AY 2015-16, relying on the CBDT instruction No.1916 dated 11.5.1994 which directs the income tax authorities conducting the search not to seize the 'jewellery ornaments' found during the course of search of 500 grams per married lady. It accepted the contention that as per Indian customs and traditions, at the time of marriage silver utensils are also given to the bride and held that it is quite possible that the word silver utensils were not included in the CBDT instructions because at that point of time silver utensils were not coming under the category of capital assets. It held that CIT(A) should have taken a liberal approach.
***Smt. Rashmi Mujumdar v DCIT [TS-773-ITAT-2018(Indore)] - IT(SS) No.227 to 232/Ind/2017 & ITA No.592/Ind/2017 dated 10.12.2018***

*Deposits received*

**2184.** Where High Court upheld Tribunal's order deleting addition under section 68 in respect of amount received by assessee from various depositors on ground that necessary enquiries relating to identity and creditworthiness of said depositors had not been done by AO, SLP filed against decision of High Court was granted by the Apex Court.
***Pr. CIT, Delhi v. DLF Commercial Project Corporation- [2018] 100 taxmann.com 309 (SC)- SLP(Civil) Diary No. 40497 of 2018 dated November 19, 2018.***

**2185.** Where the assessee an AOP had received deposits from its constituents on the first day of its business and had furnished copies of confirmation of accounts of the constituents, their PAN numbers, copies of their assessment orders, ITRs etc, the Court upheld the order of the Tribunal and deleted the addition made by the AO under Section 68. It specifically noted that since the entries occurred on the first day of business of the assessee, the same could not have been unaccounted money of the assessee.
***CIT v Lal Mohar – (2017) 100 CCH 0106 (Allahabad HC) – ITA NO 9 of 2015 dated 28.11.2017***

**2186.** The Court allowed Revenue's appeal against the Tribunal's order wherein the Tribunal had deleted the addition made by the AO u/s 68 as cash credit with respect to certain deposits received from its dealers/agents and also from general depositors. The Tribunal had deleted the addition on the finding that the assessee had accepted deposits from public as permitted by Companies Act, 1956 and that since majority of the deposits received from the public and the agents had been proved by the assessee, the ones in which proof was not offered also had to be taken as being sourced from the public or agents. The Court held that merely because there was a permission granted under Companies Act to accept deposits from public, it did not necessarily follow that deposits shown by assessee were really those received from members of public or from agents, therefore, deletion of addition by Tribunal was erroneous. It held that the Tribunal also erred in applying rule of probability as against the provision of section 68 and deleting the addition with respect to deposits which were not proved before the AO. However, noting that the assessee had produced proof with respect to some deposits, it remanded the issue to the AO to verify the veracity of the said proof, only with respect to those deposits. Thus, the Court held with respect to the remaining deposits the assessee had to satisfy the tax due.

Go to Index

***CIT v Mathrubhumi Printing & Publishing Co. Ltd - [2018] 96 taxmann.com 617 (KeralaHC) – ITA No. 107 & 135 OF 2010 dated July 24, 2018***

*Unexplained / Excess Stock*

**2187.** During the course of search proceeding carried out at the assessee's premises on 18-12-2008, a valuation report of the site engineers of the project work-in-progress (WIP) as on 31-11-2008 was found, as per which the value of WIP was higher as compared to the value appearing in the assessee's books of account as on 31-11-2008 and accordingly, the assessee agreed to offer to tax the said difference in value of WIP while filing return of income for the relevant year i.e. AY 2009-10. However, the assessee did not offer the said income claiming that the valuation done as on 31-11-2008 was only on provisional basis. The AO, however, made an addition u/s 69C on account of the said difference. The Tribunal upheld CIT(A)'s order deleting the additon by holding that the AO had not disputed the valuation of closing work-in-progress appearing in the books as on 31-3-2009 which was arrived on actual verification. The Court dimissed Revenue's appeal noting that the Revenue could not challenge the Tribunal's finding of fact that there was no excess work-in-progress than that declared by the respondent-assessee as on 31-3-2009 and the valuation done of the work-in-progress as on 31-11-2008 was only on provisional basis. Thus, it held that there was no occasion to apply section 69C.
***CIT vs B.G. Shirke Construction Technology (P.) Ltd [2018] 96 taxmann.com 608 (BombayHC)- IT APPEAL NO. 199 OF 2016 dated August 08 2018***

**2188.** In a case where the AO added the difference between the closing stock shown in the books of accounts and the stock statement submitted to bank for availing cash credit facility against hypothecation of stock as undisclosed income of the assessee, the Court dismissed the Revenue's appeal against the Tribunal's order deleting the said addition, holding that since the CIT(A) and the Tribunal had recorded concurrent finding of fact that there was no difference in quantity of stock as reflected in books of account and in statement submitted to bank, it was not possible to state that conclusion arrived at by Tribunal suffered from any legal infirmity. While deciding the case, the Tribunal had noted that it was common practice to give inflated valuation to bank to avail cash credit facilities which were invariably given on hypothecation of stock and the price as shown in books of account was in terms of cost price whereas in the statement submitted to bank the same was at market price and hence, there was a difference. Further, there was nothing on record to show that bank officials had physically verified stock as on 31.3.2010.
***PR.CIT v GLADDER CERAMICS LTD. – (2018) 401 ITR 205 (GujHC) – TAX APPEAL NO. 1032 of 2017 dated 16.01.2018***

**2189.** Following a search proceeding, the assessee declared certain excess stock. The Commissioner (Appeals) treated such excess stock failing under section 69B and disallowed claim of business expenses. The Court held that, considering the proviso to section 69B, since the assessee had not fully disclosed the stocks in the books of account, the Assessing Officer as well as the Commissioner(Appeals) have rightly observed that the case of the assessee would fall under the proviso to section 69B.
***Krishnamegh Yarn Industries v. Asstt. CIT[2015] 376 ITR 561(Guj.HC)***

Go to Index

**2190.** The assessee was earning rental income by way of cold storage of products in its premises. On survey, the AO found boxes of apples in the assessee's business premises and held that the assessee failed to provide the details of parties to whom the apple boxes belonged and thus, made addition to the total income of undisclosed income treating the boxes to be the stock-in-trade lying in the premises. The CIT(A) deleted the addition. The assessee contended that its business was just to store the products given by the owners of the products and collect rent from them for storing and if assessee demanded details like addresses, PAN etc information for mere storage, the assessee would've lost business to some other cold storage. The Tribunal held that since assessee was only interested in rent received from persons who delivered goods for storage and then took these back on payment of rent as per gate pass, it could not be said that the products were stock of assessee and that there was any scope of undisclosed source of income. Thus, it upheld CIT(A)'s order deleting the addition.
***ITO v C.C. Cold Storage (2018) 52 CCH 0545 Chandigarh Trib - ITA No. 1137/Chd/2016 dated 09.04.2018***

**2191.** The Tribunal allowed Assessee's (engaged in export, import and manufacture of precious stones and jewellery) treatment of excess stock / investment found in search as 'business income' and rejected Revenue's stand that the excess stock surrendered during search was to be treated as undisclosed investment u/s. 69B against which no set off of business loss would be available while computing tax liability u/s 115BBE. The Tribunal noted that the excess stock/investment was part of assessee's business and nothing was brought on record to suggest that it was not a regular item of stock.It held that there was no specific provision which restrict set off of business losses against income brought to tax u/s. 69B and observed that the amendment to Sec. 115BBE denying set-off was introduced by Finance Act, 2016 with effect from April 1, 2017 and hence was not applicable to the subject AY 13-14.
***ACIT vs. Sanjay Bairathi Gems Ltd. TS-332-ITAT-2017 (ITA No. 157/JP/2017 dated August 8, 2017)***

**2192.** The Tribunal held that the addition made by the AO based on the admission of the assessee was not sustainable as the admission was made under pressure and mistaken belief and was subsequently retracted as the assessee had reconciled the alleged difference in stock. Therefore, in the absence of some corroborative evidence found in support of such admission, the addition was to be deleted.
***Tribhovandas Bhimji Zaveri (Delhi) Pvt Ltd v ACIT – (2015) 45 CCH 0183 Mum Trib***

**2193.** The Tribunal deleted the addition made u/s 69B by the AO on account of excess stock found in the stock statements filed during assessment proceedings vis-à-vis quantity of stocks in books of account of assessee and added the cost of such stock as income of assessee from undisclosed investment. The Tribunal noted that the assessee had filed reconciliation statement justifying such difference in quantity of stock which was accepted by the District supply officer and thus deleted the addition.
***ACIT vs Overseas trading- (2018) 99 taxmann.com 136 (Rajkot-Trib)- ITA No 211 of 2017- dated 28.09.2018.***

Go to Index

**2194.** Where pursuant to survey conducted in the business premises of assessee, assessee was queried on discrepancy of cash and the assessee submitted a reconciliation statement of stock along with original records before AO but the AO made addition on unexplained stock on basis of statement of one director wherein he allegedly admitted to pay tax thereon on unexplained stock, the Tribunal observing that in fact i) the director made no statement admitting to pay tax thereon on unexplained stock ii) that there was no difference between quantitative details in stock register and physical stock taken iii) the assessee offered proper explanation to alleged stock verification iv) the valuation in books of accounts of assessee was on basis of historical costs, the Tribunal deleted the addition on account of unexplained stock.
***STEEL CITY FOOD PRODUCTS PVT. LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR - (2018) 52 CCH 0141 RanchiTrib dated Feb 28, 2018***

*Cash found*

**2195.** During search operations conducted in case of the assessee (medical practitioner), cash and jewellery were found, which the assessee claimed to belong to his family members. The AO observing that the assessee's family members did not have any source of income to justify discovery of such large amounts of cash found, made additions in the hands of the assessee on account of undisclosed income, which was deleted by the Tribunal on the ground that lack of the capacity to possess cash could not be a reason to discard the ownership. The Court held that such finding of Tribunal was erroneous as there was a complete lack of any plausible explanation as to the source of acquisition of money by the assessee's family members.
***Commissioner of Income Tax Vs. Dr. G.G.Dhir (2017) 98 CCH 0127 AllahabadHC (ITA No. 55 of 2010)***

**2196.** The Court dismissed Revenue's appeal against the Tribunal's order deleting the addition made of of peak of negative cash balance found during the course of assessment pursuant to search proceeding, accepting the assessee's contention that since he had offered to tax entire unaccounted income found during search, the negative cash balance could not be added in total income as undisclosed investment.
***Pr.CIT v Aliasgar Anvarali Varteji [2018] 96 taxmann.com 231 (GujaratHC) - R/TAX Appeal No. 827 OF 2018 dated July 17, 2018***

**2197.** The Tribunal deleted addition made u/s 69A with respect to foreign currency found during search with respect to which the assessee had claimed that foreign currency was savings out of foreign tours to various countries after noting that the assessee was regularly travelling abroad to the countries where these currencies were used, that the assessee had purchased reasonable quantities of these foreign currencies for his use and the quantities of these currencies found in possession of the assessee were of small amounts. However, the Tribunal upheld the addition made u/s 69A with respect to foreign currency found during search with respect to which the assessee had claimed he had received it as gifts from donors, noting that the source of earning of donors and their bank statements was not available, there were no contemporaneous evidence in support of these gifts and amount being huge, explanation offered by assessee about gifts was unacceptable.

Go to Index

***Samir S. Sheth v ACIT – (2018) 92 taxmann.com 275 (Ahmedabad Trib) – ITA No. 1310 (Ahd.) of 2009 dated 27.02.2018***

**2198.** The Tribunal upheld CIT(A)'s order confirming the addition on account of unexplained cash noting that the assessee made voluntary surrender during course of assessment proceedings on account of cash found and seized during course of search. It rejected asessee's conention that the surrender was made under duress or under influence of threat or pressure noting that (i) search was conducted on 01.03.2007 and voluntary surrender was made vide letter dated 20.08.2008 and (ii) Objection to surrender was filed 2 days before date of assessment order. Thus, the Tribunal did not find any infirmity in CIT(A)'s order.
***P Shyamaraju and Ors vs Asst CIT. [2018] 53 CCH 0442 BangTrib- ITA No.1147/Bang/2012 dated August 14 2018***

**2199.** The Tribunal held that where Assessing Officer made addition to assessee's income under section 69A on basis of documents seized in course of search carried out in case of 'M' group, in view of fact that assessee was never found to be in possession of any real money and, moreover, there was no mention of assessee's name in seized document, impugned addition merely based on presumption and surmises, was to be deleted.
***Asst. CIT, Central Circle-3, New Delhi v. Navneet Kumar Sureka-[2018] 100 taxmann.com 439 (Delhi - Trib.)-ITA Nos. 5573, 6660 & 6661 (DELHI) of 2016 dated November 29, 2018***

**2200.** The Tribunal dismissed assessee's appeal against CIT(A)'s order confirming addition of income from undisclosed sources on account of cash found in assessee's bank locker, in absence of proper explanation or evidence for the same. It was noted that though the assessee in her statement stated that cash found in lockers during search and seizure u/s 132A represented money received on various occasions like birthday of her children and also represented her past savings over years out of cash withdrawn, the assessee had not withdrawn any cash from her bank accounts during last 7 years and thus, her statement was false and incorrect.
***Rupinder Dhanoa Sidhu vs ACIT [2018] 54 CCH 0272 (Del- Trib.)- ITA No.146/Del/2016 dated 28.11.2018***

**2201.** The Tribunal upheld CIT(A)'s order wherein the CIT(A) had (i) deleted the addition on account of unexplained cash to the extent of Rs.5.5 crores as the fact remained that aforesaid income had been taxed in the hands of Dr.MV Rao (assessee's husband) and (ii) confirmed the addition to the extent of Rs.49 Lakhs as undisclosed income of assessee since no evidence was placed before the authorities to show the correlation between the respective dates of deposits of the said cash in the bank lockers vis-a-vis withdrawal from bank accounts.
***Asst CITvs. Padmarani Kapala and Ors [2018] 53 CCH 0490 DelTrib- ITA No.3612/Del/2014 dated August 30 2018***

**2202.** The Tribunal dismissed assessee's appeal and upheld CIT(A)'s order confirming the addition made u/s 69A on account of amount surrendered during course of survey which was not recorded in the books, rejecting assessee's contention that the Revenue had not brought on record any other source of income and therefore, the investments were out of the receipts of the hospital. It held that there was no logic in not recording the said amount as receipts from

hospital as assessee could have claimed deduction u/s 80IB(11C). Further, the Tribunal held that merely stating that the amount pertained to the receipts from hospital would not absolve the assessee from the burden to prove that the said amounts were part of the receipts from the hospital based on evidence.

***PATIDAR HOSPITAL & RESEARCH CENTRE vs. INCOME TAX OFFICER. [2018] 53 CCH 0588 IndoreTrib- ITA No.1007,1008 and 1541/Ind/2016 dated August 21 2018***

**2203.** AO made addition in respect of cash found at residence and hospital chamber of assessee during course of search proceedings as the assessee could not prove genuineness of source of cash. CIT(A) deleted the addition and held that cash found during search and seizure operations was part of amount of professional receipt and the same was accounted by the assessee. Tribunal held since the CIT(A) gave categorical finding that cash found during course of search was already disclosed in return of income, no separate addition could be made. Thus, Revenue's appeal was dismissed.

***ACIT vs. K. RADHA KRISHNA (Vishakapatnam Tribunal) (ITA No. 65/Vizag/2014) dated May 18, 2018 (53 CCH 0058)***

*Loans taken*

**2204.** The Apex Court dismissed the SLP filed by the Revenue against the High Court order wherein the High Court had deleted the addition made u/s 68 holding that assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors as well as lenders, irrespective of the fact that the assessee was not able to produce any of director, shareholders or principal officer of companies to whom shares were allotted and lenders from whom unsecured loans was taken

***PCIT v Hi-Tech Residency (P.) Ltd [2018] 96 taxmann.com 403 (SC) - SLP (Civil) Diary No(S). 18123 of 2018 dated July 19, 2018***

**2205.** Where during assessment/investigation, it was observed that crop loans were raised in the names of 37 planters within the family and assessee alleged that those 37 persons had advanced loan to it, however, the loan application/transactions were handled by assessee and such loan amounts were not reflected in the returns of 37 persons and accordingly, additions were made by the revenue as it was case of name-lending, the Apex Court set aside the order of the High Court wherein it had remitted the matter to the AO observing that the 37 persons who advanced loan to assessee ought to have been given notice without which no addition could be made. The Apex Court held that in view of the categorical finding that the loan amounts were not reflected in the returns of the 37 persons in question, the High Court erred in taking the aforesaid view and in remanding the matter to the Assessing Officer.

***Karn. Plamters Coffee Curing Work(P)Ltd [TS-593-SC-2016]***

**2206.** The Apex Court upheld the additions confirmed under section 68 of the Act by the order of the High Court wherein it was held that genuineness of a transaction (loan from Russian entity) was not established merely because there were clearances from statutory authorities or that the amounts were received through normal banking channels since the assessee did not satisfactorily explain the identities of the Russian creditors and whether it had genuinely

loaned the amount. It further held that the onus to prove genuineness of the transaction was on the assessee.
***Velocient Technologies Ltd v CIT [SPL Nos 23307 and 23308 of 2015] - TS-486-SC-2015***

**2207.** The Apex Court dismissed the Department's SLP against order of the Court wherein it was held that where AO had made addition to income of assessee by way of unexplained cash credit only on presumption that loan was not found to be reflected in balance sheet of donor, since assessee had demonstrated genuineness of transaction as well as reliability and creditworthiness of donor, said addition was unjustified.
***PCIT v Bhanuprasad D. Trivedi [2018] 94 taxmann.com 114 (SC) – SLP (CIVIL) DIARY NO. 11011 OF 2018 dated 04.05.2018***

**2208.** Where the assessee had taken loan and the amount was credited to bank account, which was not denied by department and there was no allegation of any fraudulent dealing made by the department, the Court held that provisions of section 69 would not apply.
***CIT v. Mahavir Sahkari Awas Samiti Ltd. (2016) 97 CCH 0113 AllahabadHC (ITA No.312 of 2008)***

**2209.** The AO made addition to assessee's income u/s 68 (Unexplained cash credit) opining that the alleged loan transaction from one LFPL was not genuine and stating that the assessee failed to prove the creditworthiness / source of the fund. CIT (A) upheld AO's order. The Tribunal observed that the issue pertained to AY 2010-11 whereas the amendment to S.68 (w.r to source of funds) introduced by Finance Act,2012 was applicable from AY 2013-14 i.e. not in the instant case(relying CIT v Gagandeep Infrastructure Pvt Ltd). Further, it held that assessee showed the necessary details to prove the genuineness and creditworthiness & thus the revenue's contention of assessee to explain the source of funds stood dismissed. Further, relying on Lovely Exports (supra) which provided that the Revenue, if aggrieved must proceed against the creditor/shareholder according to law, the Tribunal held that the AO was not entitled to invoke S.68 and accordingly deleted the addition u/s 68. The Court concurred with Tribunal's order and dismissed the Revenue's appeal.
***PCIT v Veedhata Tower Pvt. Ltd (2018) 302 CTR 0490 (BomHC) - INCOME TAX APPEAL NO. 819 OF 2015 dated 17.04.18***

**2210.** Section 68 addition was made in hands of the assessee-company since the assessee was not able to produce any of the director, shareholders or principal officer of companies to whom shares were allotted and lenders from whom unsecured loans was taken. However, the Tribunal considered said issue in detailed manner and deleted said addition holding that the assessee had discharged its onus of establishing identity, genuineness and creditworthiness of both investors as well as lenders. The Court held that on facts, there was no infirmity in the impugned order.
***Principal CIT v. Hi Tech Residency (P). Ltd. [2018] 96 taxmann .com 402/257 Taxman 390 (DelhiHC)- IT Appeal No. 628 of 2016 dated July 7, 2018***

**2211.** The Court upheld the order of the Tribunal wherein it was held that the addition under section 68 of the Act could only be made where the assessee failed to offer an explanation for credit in

its book or the explanation was unsatisfactory. Where the assessee established the identity of source of funds as well as creditworthiness along with the explanation of the transaction leading to the credit entries, the onus to provide reasons for doubting the explanation would lie with the AO.

***Pr CIT v Matchless Glass Services Pvt Ltd – (2015) 94 CCH 0151 Del HC***

**2212.** The Court held that as per section 68 of the Act, the assessee is liable to disclose only the source from where he has himself received credit and it is not the burden of the assessee to show the source of his creditor nor is it the burden of the assessee to prove the credit-worthiness of the source of the sub-creditors.

***CIT v Shiv Dhooti Pearls & Investment Ltd – [2015] 64 taxmann.com 329 (DelHC)***

**2213.** The Court reversed the order of the Tribunal and restored unexplained credit addition u/s. 68 in respect of loans/advances received from four parties as assessee failed to discharge the 'initial' onus of establishing creditworthiness and genuineness qua the creditors. The Court clarified that merely establishing creditors' identity and routing the transaction through cheque, could not by itself mean that the transactions were genuine. The Court observed that the Tribunal ignored evidence on record and did not even examine the genuineness of the transaction or the financial strength of the creditor as required in law and further held that none of those four individuals had the financial strength to lend such huge sums of money to Assesse. The Court further remarked that the transactions in the present appeal were yet another example of the constant use of the deception of loan entries to bring unaccounted money into banking channels.

***Pr. CIT vs. Bikram Singh TS-355-HC-2017(DelhiHC) (ITA No. 55/2017 dated August 25, 2017)***

**2214.** The Court confirmed the addition made by the AO u/s 68 on account of loan received from a company, noting that the lender company did not have tangible or intangible fixed assets and, moreover, it had declared a meagre income of few thousand rupees and, thus, it was not in a position to give such a huge loan to assessee. It also observed that merely because the loan transaction was squared in the next financial year, it would not establish that the transaction was genuine and not bogus.

***Seema Jain v ACIT [2018] 96 taxmann.com 307 (DelhiHC) – ITA No. 723 OF 2018; CM NO. 26947 OF 2018 dated July 11, 2018***

**2215.** The Court dismissed assessee's appeal against the Tribunal's order wherein the Tribunal had upheld the addition made by AO u/s 68 on account of certain sum received as loan from two companies found to be shell entities by AO, in view of the fact that the bank statement of lender companies revealed high transactions during day and a consistently minimal balance at end of working day and the day assessee was given loan there were credit entries of almost similar amounts, and balance after these transactions was a small amount and the assessee had failed to produce these lenders for verification. It held that the Tribunal had given elaborate reasons to come to conclusion that entire loan transaction was not genuine.

***Pavankumar M. Sanghvi v ITO – (2018) 301 CTR 265 (GujaratHC) – Tax Appeal No. 1037 of 2017 dated 12.02.2018***

Go to Index

**2216.** The Court dismissed assessee's appeal filed against the Tribunal's order confirming the addition made by the AO as cash credit u/s 68 on account of certain deposits received in the bank account of the assessee, where the assessee had claimed that the said amount represented unsecured loans/ gifts received from various parties. It was noted that the Tribunal had recoded the finding that the assessee had not been able to prove that the source of the gifts were from agricultural income and past savings of the donors as the assessee had neither produced any bank statement (rather it was claimed that the donors were not maintaining any bank account) nor any bills, receipts, etc for sale of agricultural produce. The Court held that though all the concerned persons had given confirmations about giving the alleged gifts/ unsecured loans, the confirmations were required to be decided and/or considered along with the capacity / financial capacity of the concerned persons and that mere confirmation alone was not sufficient.
***Sitaram Ramchanddas Patel v ITO - [2018] 95 taxmann.com 290 (GujaratHC) - R/TAX Appeal No. 641 of 2018 dated June 26, 2018***

**2217.** The Court observed that i) the bank statement of the lender had a meagre balance of Rs.7,000 to Rs.8,000 rupees and only when the lender lent money to the assessee of Rs 10 – 15 lakh was there a corresponding credit of the same amount in the bank statement ii) the lender had a turnover of Rs.122.92 crores but had no closing stock, and declared a profit of only 0.09% on the turnover leading to a tax payment of Rs.1,96,138 iii) the lender made purchases of Rs.123.04 crores but all that the lender spent on salaries was Rs.2,26,000, office expenses of Rs.8,560, office rent of Rs.27,600 and printing and stationary of Rs.8,560. iv) the lender conducted its business without a rupee spent of telephones and accordingly held that the addition made in the hands of the assessee under Section 68 was justified as the lenders were not genuine.
***PAVANKUMAR M. SANGHVI vs. INCOME TAX OFFICER - (2018) 101 CCH 0156 GujHC - TAX APPEAL NO. 1037 of 2017 dated Feb 12, 2018***

**2218.** The Court, reversing the Tribunal's order, upheld addition u/s 68 made in the hands of the assessee-company with respect to unexplained credits from its sister concern in Nepal. The Court observed that the three conditions required to be established by the assessee u/s 68 viz i) the identity of the creditor ii) genuineness of the transactions and iii) credit worthiness of the creditor were not examined by the Tribunal and that the Tribunal had erroneously assumed that the assessee had produced audited accounts (where it actually had not). Further, it held that the mere fact that the transactions were routed through a bank account was not conclusive proof of the genuineness of a transaction and the Tribunal was not correct in concluding so. Thus the Court concluded that the Tribunal erroneously deleted addition u/s 68 by putting the burden of proof entirely on the Revenue.
***Universal Empire Educational Society [TS-104-HC-2017 (KER)] (ITA No. 104 of 2013) dated 25/01/2017.***

**2219.** Where assessee accepted unsecured loans from three parties, in view of fact that assessee failed to prove creditworthiness of said parties and, moreover, cash had been deposited to bank accounts of those parties on same day when cheques were issued to assessee. The Court held that impugned addition made under section 69A in respect of loan amount was to be confirmed.
***Shree Krishana Kripa Feeds v. CIT, Karnal- [2019] 101 taxmann.com 162 (Punjab & HaryanaHC) ITA No. 126 of 2018(O&M) dated November 1, 2018***

Go to Index

**2220.** The Tribunal confirmed the addition made by the AO under section 68 where the assessee received unsecured loans, but could not produce lenders for verification. It held that since the said lenders were found to be shell companies, said loan transactions could not be said to be genuine merely because assessee filed loan confirmations, copies of ledger account and other supporting evidences to justify transactions at fag end of assessment proceedings.
***Pavankumar M Sanghvi v ITO [2017] 81 taxmann.com 308 (Ahmedabad - Trib.) - IT APPEAL NO. 2447 OF (AHD.) 2016 dated May 17, 2017***

**2221.** The Tribunal held that where the assessee had proved the genuineness of the transactions and the identity and creditworthiness of the depositors by filing PANs, addresses, etc. for demonstrating that depositors were assessed to tax, no addition could be made under section 68 of the Act in respect of the said loans.
***Mahalaxmi Housing & Finstock Pvt Ltd v ACIT - (2015) 44 CCH 0500 Ahd Trib***

**2222.** The Tribunal held that where Assessing Officer added an amount in income as unexplained payment made by assessee on basis of a VCD found in famous 'Best Bakery case' without corroborating it with any other evidence, action of Assessing Officer was not justified.
Further, it held that where creditor stated that amount of loan given to assessee was out of savings of seven-eight years of agricultural income but did not produce proof of any agricultural activity, creditworthiness of such creditor was not established and the addition u/s 68 was justified.
***Mahendrabhai B. Shrivastav v ITO - TS-196-ITAT-2016(AHD)***

**2223.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting addition made u/s 68 on account of unexplained loans received noting that the CIT(A) had emphasized that assessee had produced basic details of creditors and their confirmations and their existence was not in doubt and how they procured funds.Thus, assessee had not only proved source of funds but also source of source, which was not otherwise required under law.
***Dy.CIT vs Torque Holdings LLP [2018] 53 CCH 0411 (Ahd) (Trib)- ITA No.1743/Ahd/2015 dated August 01 2018***

**2224.** Where, over and above the fact that the assessee furnished copy of Income-tax Returns, balance-sheet, profit and loss account as well as bank statement of lender, apart from copy of annual return filed by lender with Registrar of Companies etc, the assessee paid interest on the loan and had in fact repaid the loan, the Tribunal held that the AO was not justified in treating the loan as an unexplained cash credit in the hands of the assessee merely because the lender was not produced before the AO. Accordingly, it dismissed Revenue's appeal.
***DEPUTY COMMISSIONER OF INCOME TAX vs. JBR NIRMAN PVT. LTD. - (2018) 52 CCH 0274 AhdTrib - ITA No. 2694/Ahd/2014 dated Feb 28, 2018***

**2225.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting addition by the AO on account of unsecured loan obtained and interest paid thereon as Revenue could not point out any error in CIT(A)'s order that the unsecured loans having been obtained in FY 2004-05, no addition could be made treating the same as not genuine in AY 2013-14, when genuineness

of loans had not been questioned in the earlier years, and accordingly interest on same also had to be allowed.

***BHAWANIPATNA WARD vs. SEEMA SACHDEVA. [2018] 53 CCH 0480 CuttakTrib- ITA No.67/CTK/2018 dated August 23 2018***

**2226.** The Tribunal upheld the CIT(A)'s order deleting the addition made on account of unsecured loan / cash credit with respect to which the assessee had not proved the genuineness of liability, noting that the assessment was completed by the AO u/s 144 by estimating net profit @ 12% [reduced by the CIT(A) to 8%]. It relied on the decision in the case of CIT Vs. G.K.Contractor [ITA No.13 of 2009 (Raj)] wherein it was held that even if assessee had failed to discharge his onus of proof in explaining cash credits shown in books of account, the AO having estimated higher profit rate on total contract receipts after rejection of books of account, no separate additions could be made on account of unexplained cash credit u/s 68.

***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. CLASSIC SUPPER CONSTRUCTION & ANR. - (2018) 52 CCH 0483 CuttackTrib - ITA NO. 57/CTK/2015, 180/CTK/2017 dated Apr 11, 2018***

**2227.** The Tribunal upheld CIT(A)'s order confirming the addition on account of unexplained income u/s 68 on ground that assessee had not furnished compelling reasons for accepting loans in cash in contravention of provisions of section 269SS and further noting that for none of creditors, assessee had filed evidence to show that creditors had credit worthiness and capacity to advance such huge sums. In case of K, amounts were withdrawn in small amounts from ATM and said sums being advanced to assessee was not believable and acceptable.In case of B, assessee had not filed any evidence to show that creditor had capacity to advance sum of Rs.5 lakhs.In case of A, amounts were advanced out of gifts received from various donors on occasion of the birthday, but no supporting evidence was submitted to AO.In case of KVS , though he had stated that advance was given out of personal savings of his wife and father, no supporting evidence was furnished and the credit worthiness was not established.In case of R, assessee was an agriculturist, but no evidence was furnished with regard to cultivation of agricultural land and earning of income. In case of S, transaction appearing in bank passbook appeared to be an accommodation entry and no evidence was filed by assessee with regard to credit worthiness of the person.

***Dr. SUGNAM BHARATHI vs. INCOME TAX OFFICER [2018] 53 CCH 0480 CuttakTrib- ITA No.67/CTK/2018 dated August 23 2018***

**2228.** The Tribunal deleted addition made u/s 68 by the AO on the basis of investigation/enquiry conducted by Investigation Wing in case of some companies whose business activities were suspicious and which were indulging in entry operation, wherefrom it was revealed that assessee had received money through those companies. AO had noted that the assessee-company had received unsecured loan and share application money from these companies but failed to submit documentary evidences in respect of share allotment made to these companies and opined that these transactions were sham. Tribunal, however, noted that assessee had furnished names and addresses of share applicants, their PAN and confirmation with their bank account and Income-tax returns and that the AO had not at all carried out any investigation to show that those companies did not exist but were paper company or they were not having worth

of investing and transaction lacked genuineness. It further noted that the investigation wing report was not shown to assessee and held that the assessee had discharged initial onus cast upon him u/s 68.

***ACIT v Shyam Indus Power Solutions (P.) Ltd. – (2018) 90 taxmann.com 424 (Del) – ITA Nos. 3223 & 3224 of 2016 CO Nos. 249 & 250 (Delhi) of 2016 dated 29.01.2018***

**2229.** The Tribunal held that where the assessee had filed all details such PAN, election card, receipts details of creditors in relation to the unsecured loan received by it, but the CIT(A) failed to consider the same, the matter was to be remanded for fresh adjudication and the assessee was to be afforded full opportunity of being heard.

***Golden Time Services Pvt Ltd v DCIT – (2015) 45 CCH 0175 Del Trib***

**2230.** The assessee had obtained an unsecured loan of Rs. 23 Lakhs from 3 parties but could not furnish any proof except ITR and statement of affairs of only 1 creditor (pertaining to loan of Rs.10 Lakhs) and accordingly, the AO treated these loans as unexplained cash credit. The Tribunal held that to the extent of loan of Rs. 13 Lakhs, genuineness of the loans could not be established since the loans were neither reflected in the return of the donor nor in the return of the assessee. However, in respect of loan of Rs. 10 Lakhs, where the ITR and statement of affairs of creditor was produced, the Tribunal deleted the addition on the ground that these documents were sufficient to establish the genuineness of the transaction and the creditworthiness of the loan creditor.

***Vimal Kumar vs. ITO (2017) 50 CCH 0066 Del Trib ITA No. 2839/DEL/2012***

**2231.** The AO had rejected the books results and estimated the net profit at 10% of turnover. He also made additions for unexplained sundry creditors and unexplained unsecured loan (as the identity, genuineness and creditworthiness of the creditors / lenders were not proved by the assessee). The CIT(A) adopted a net profit rate of 8% of turnover however he did not adjudicate on the two issues of unexplained sundry creditors and unexplained unsecured loans, taking a view that since the profits were estimated as such no other addition was called for. The Tribunal, however, held that unexplained sundry creditors and unexplained unsecured loans credited in the books of accounts need to be explained by the assessee else he may have to face provisions of section 68 since they may not have necessary been used for purchase of goods but also for purchase of capital asset or services. Accordingly, it set aside the issues of identity, genuineness and creditworthiness of the sundry creditors and unexplained unsecured loan to the file of the CIT(A) for fresh adjudication.

***Asst CIT vs Sanjay Bagdi [2018] 54 CCH 0225 (Indore Trib)- ITA 327/Ind/2017 dated 14.11.2018***

**2232.** The AO had disallowed the interest paid on unsecured loan on the ground that the loan itself was unexplained (addition was made u/s 68 in the earlier year) and therefore, the claim of interest being consequential to the claim of loan had to be disallowed. The Tribunal remanded the issue noting that it was a consequential issue and directed the AO to quantify the amount of disallowance of interest, if any, after considering if the addition made u/s 68 attained finality in the earlier assessment years.

Go to Index

***Sonu Khandelwal vs ITO [2018] 97 taxmann.com 431 (Jaipur Trib)- IT APPEAL NOs. 735 and 736(JP) of 2015 dated August 21 2018***

**2233.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the unexplained cash credit u/s 68 made by AO on account of amount received by the assessee-company from its director for meeting its day to day expenses, noting that genuineness, creditworthiness and identity of the assessee's director was nowhere in issue. Further, it rejected Revenue's contention that the CIT(A) should have called for a remand report from the AO, noting that all the details were filed with AO during assessment and accordingly there was no material indicating admission of additional evidence.
***ITO vs. C.D. Steel Pvt Ltd[2018] 53 CCH 0495 KolTrib- ITA No.1360/Kol/2017 dated August 29 2018***

**2234.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO by treating loan received by assessee from BMPL as unexplained credit u/s 68 on the basis of information received from DCIT stating that BMPL had indulged in providing bogus entries. It was noted that the allegation that BMPL was involved in providing bogus entries did not survive since BMPL was absolved of the said charge by CIT(A) in its own case against which Revenue had not preferred an appeal. Further, as the loan was received through bank transaction, it held that genuiness stood proved. Thus, it held that when 'nature' and 'source' of credit amount appearing in the 'books of accounts' was established by the assessee beyond doubt, same could not be held as an unexplained cash credit u/s 68.
***Dy.CIT vs Udaipur Properties and Finance Ltd.[2018] 54 CCH 0213 (MumTrib.)- ITA No. 6449/Mum/2017 dated 09.11.2018***

**2235.** Where the assessee received a loan from an HUF via account payee cheque, the source of which was the repayment of loan received by the HUF from another third party which was reflected in the HUFs bank statements, the Tribunal held that the creditworthiness and genuineness of loan had duly been proved on record by assessee and that the CIT(A) had rightly deleted addition u/s 68.
***ITO v Subosh Nemlekar – (2016) 47 CCH 0426 (Mum Trib)- ITA No. 6260 & 6453 /M/13***

**2236.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made u/s 68 on the alleged ground that the assesse had obtained accommodation entries in form of unsecured loans from entities. It was held that the AO had made addition only based on presumption and the statement of one of the concerned party which was also retracted later, noting that he did not make any efforts to conduct independent enquiries with the lender companies. It noted that nothing was placed on record to suggest that the information furnished by the assessee [in the form of copy of affidavit, establishing identify of the lender, copy of the ledger giving details of loans confirmation taken and also repayment in subsequent years, copy of bank statement highlighting the natures of loan taken and repayment in subsequent years to establish the genuineness of the transactions and copy of ITR -V filed establishing creditworthiness of the lender] were non-genuine. Further, it noted that the interest was paid through banking channel by the assessee on such loans and no cash was found even during the survey. It thus held that the assessee had discharged its onus as provided u/s 68.

Go to Index

***Assistant Commissioner Of Income Tax vs. Shreedham Builders - (2018) 53 CCH 0212 MumTrib - ITA No. 5589/Mum/2017 dated June 22, 2018***

**2237.** The AO made an addition in the hands of the assessee, AOP on the ground that it had not substantiated the identify of the party which provided it an advance. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) observing that the party who provided the assessee with the advance was a member of the AOP, directed the AO to examine the source of funds in the hands of that said party. Accordingly, it upheld the deletion of the addition made by the AO.
***DEPUTY COMMISSIONER OF INCOME TAX vs. SUDHIR KR. SINGH - (2018) 52 CCH 0291 Patna Trib - ITA No. 35/Pat/2015 dated Mar 7, 2018***

**2238.** When assessee had received advances from prospective buyers but he failed to give any names and details, the Tribunal held that amount should be treated as unexplained investment and same should be brought to tax under head "income from other sources".
***S. SANYASI NAIDU vs.INCOME TAX OFFICER - (2017) 51 CCH 0063 VishakapatnamTrib - ITA No. 40/Vizag/2015 dated 13.09.2017***

*Deposits in bank account*

**2239.** The Apex Court dismissed the assessee's SLP against Delhi HC ruling striking down the Tribunal order wherein the addition made as undisclosed income in the block assessment proceedings was deleted on the ground that bank account deposit became disclosed when Revenue became aware of the same and it ceased to be undisclosed income. HC had remanded matter back to Tribunal for examination of the case on merits and granted liberty to Tribunal to make additions by resorting to Sec.147 in case additions could be made in block assessment proceedings.
***Shibu Soren vs CIT - TS-138-SC-2016***

**2240.** The HC of Madras set aside the writ petition on the grounds that since no opportunity was given to the assessee to explain as to how the amount stood to his credit with Indusind bank
***Lakshmanan Magendrian [(2017) 98 CCH 0015 Chen HC]***

**2241.** The Court dismissed assessee's appeal and held that addition made u/s 69A on account of amount deposited in the bank as unexplained cash deposits was justified, rejecting the assessee's contentions that he withdrew certain amount of cash from his bank account for construction of a building and surplus money, when not required, was redeposited in same bank account. It was noted that the asessee had failed to provide any details of cost of construction (in form of bills of purchase of construction material or any payment to contractor) incurred by him on being asked by the AO and accordingly, he had failed to justify substantial cash withdrawals and the so claimed re-deposits. The Court held that though the assessee had conveniently claimed that entire construction expenditure was incurred without bank transaction or bill, vouchers, etc. but the same was not plausible.
***Dinesh Kumar Jain. vs Pr.CIT [2018] 97 taxmann.com 113 (DelhiHC)- IT APPEAL NO. 468 OF 2018 dated August 08 2018***

Go to Index

**2242.** The Court reversed the order of the Tribunal and held that the benefit of restricting addition u/s 68 to the extent of peak credit could only be granted to the Assessee who provided clear details of all the facts within its knowledge concerning the credit entries in its accounts with sufficient details of the source of all the deposits as well as the corresponding destination of all payments. Noting that the Assessee was unable to explain the source of all deposits and ultimate destination, it held that the benefit of peak credit could not be granted. Accordingly, it upheld the order of the AO.
***CIT vs. D K Garg TS-334-HC-2017(Delhi) (ITA 115/2015 dated August 4, 2017)***

**2243.** The assessee withdrew certain amount of cash from her bank account to buy property for which earnest money in cash was to be paid. As the deal could not be fructified, a part of such amount was re-deposited in same bank account after more than 7 months. The AO, treated the same as unexplained cash credit and addition was made under section 68. The Court held that since the explanation given by assessee that deposit was made out of sum withdrawn earlier was not fanciful and sham story and it was perfectly plausible, the impugned additions under section 68 were to be deleted.
***Jaya Aggarwal v ITO - [2018] 92 taxmann.com 108 (DelhiHC) - IT APPEAL NO. 315 OF 2005 dated MARCH 13, 2018***

**2244.** The Court confirmed the order of the AO making addition on account of peak cash credit in the hands of the assessee noting that a sum of Rs. 33 lakh had been deposited in the bank account of the assessee and his minor sons which the assessee claimed as receipt of advance towards sale of property (total consideration of 45 lakh). The Court upheld the order of the Tribunal and noted that i) the assessee had failed to provide the agreements to sell to the AO and only did so belatedly before the CIT(A) ii) it seemed unbelievable that the purchaser of the property would pay 75 percent of the consideration wholly in cash iii) the cash advance was not deposited in the assessee's bank account on a single date but was deposited on different dates and iv) the buyers had declared income of Rs.1.48 lakh, 1.54 lakh and 0.69 lakh respectively and therefore the financial capacity of the buyers had not been established. Accordingly, it dismissed assessee's appeal and upheld the addition stating that the agreement to sell and the receipt of Rs. 33 lakh was sham and make belief.
***KRISHAN KUMAR SETHI PROPRIETER vs. COMMISSIONER OF INCOME TAX & ANR. - (2018) 101 CCH 0109 DelHC - ITA 101/2017 dated Mar 14, 2018***

**2245.** The Court held that, where an addition has been made u/s 68 on account of unexplained cash credit in bank account, in order to avail of the theory of "peak credit", the assessee has to make a clean breast of all facts by explaining each of the sources of the deposits and the corresponding destination of the payment without squaring them off. The ITAT cannot proceed merely on the basis of accountancy and overlook the settled legal position.
***CIT vs. JRD Stock Brokers Pvt Ltd (Delhi High Court) - ITA 544/2005 dated 12.09.2018***

**2246.** The Court dimissed assessee's appeal against Tribunal's order upholding addition made u/s 68 on account of unexplained cash deposit in bank account noting that the assessee had failed to discharge the burden of explaining the source of cash deposit. The Tribunal had rejected assessee's explanation / contention that the deposits were made from the earlier cash

withdrawals, noting the time gap between withdrawals and deposits. The Court held that assessee's explanation was duly considered and not ignored. Accordingly, it held that since the factual findings of Tribunal were based on cumulative effect of all facts covering all essential points, it would not interfere with the same.

***Shashi Garg vs Pr. CIT [2018] 103 CCH 0134 (Del HC)- ITA No. 1235/2018 dated 02.11.2018***

**2247.** Where 25% of cash deposited in the assessee's bank account (which was discovered in course of survey operation u/s 133A) was considered to be the unaccounted income of the assesse and the lower authorities had given a finding that the business in which the appellant was engaged involved mostly cash and credit card payments, the Court dismissed the assessee's appeal against the said findings, holding that these were factual issues and thus no substantial question of law arose.

***PINAKI RANJAN DAS vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0107 (Kol HC) - GA NO. 115 OF 2017 WITH ITAT NO.15 OF 2017 dated June 20, 2018***

**2248.** Where the assessee did not earn any business income as a result of which no books of accounts were maintained by it, the Tribunal held that no addition under Section 68 of the Act could be made on the basis of the assessee's pass book as the pass book could not be considered as its books of accounts.

***NANOOMAL GUPTA vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0249 AgraTrib - ITA Nos. 275 to 278/Agra/2013 dated Mar 26, 2018***

**2249.** Where the assessee could not could the produce the party who had deposited cash in his bank account, the AO treated such amount as unexplained cash credit under Section 68 of the Act by holding that the assessee could not prove the genuineness of transaction and creditworthiness of the party. The Tribunal deleted the said addition made by the AO and confirmed by CIT(A) by holding that assessee had discharged his onus by producing evidences (i.e. name, address, PAN, bank account, accounts statements, Income Tax Returns, affidavits and confirmations regarding / from the creditor) and that the assessee could not be faulted for non-appearance of its creditors as it was well within the AOs powers to ensure their presence.

***B. R. Oil Industries vs. DCIT – [2018] 53 CCH 0030 (Agra ITAT) – ITA No 171 of 2016 dated May 10, 2018***

**2250.** Certain credit entries were reflecting cash deposit in bank account of assessee. Assessee submitted that said sum was loan taken from some parties. Said parties claimed to have generated agricultural income, but such agricultural income was not declared in their income-tax return. It was treated as undisclosed income of assessee. In absence of disclosure of agricultural income in income-tax return the Tribunal held that, it cannot be believed that parties had generated agricultural income. It further held that bank statement is not considered as books of account and, therefore, any sum found credited in bank pass book cannot be treated as an unexplained cash credit and in interest of justice and fair play, matter was to be restored to file of Assessing Officer for fresh adjudication in accordance with provisions of law.

***Smt. Ramilaben B. Patel v. ITO, Ward-3, Gandhinagar- [2018] 100 taxmann.com 325 Ahmedabad - Trib.)- ITA No. 3393 (AHD.) of 2014-dated December 11, 2018***

Go to Index

**2251.** Assessee, a Kenyan national, was maintaining a bank account with Indian Bank which showed a credit entry which represented foreign remittance received from Barclays Bank, UK. Assessing Officer treated said sum as unexplained investment of assessee. Details revealed that said sum was received by assessee as a beneficiary of family trust set up by her father in 1974 in UK. The Tribunal held that as investment was reasonably explained, application of section 69 was out of question.

***Dy. CIT, Ahmedabad v. Pratibha Pankaj Patel- [2018] 100-taxmann.com 48 (Ahmedabad - Trib.)- IT (SS) Appeal No. 278 (AHD.) of 2016-dated October 18, 2018***

**2252.** AO noted that assessee had deposited cash in his saving bank account.Assessee claimed that such deposits were made out of past saving as well as income earned by his wife.AO found certain defects in assessee's submission.AO treated said sum as unexplained cash credit u/s 68.AO completed assessment after making addition.CIT(A) contended that said cash was deposited out of past savings and salary income.There was also income in hands of assessee's wife which she earned from her source of tuition and beauty parlor work. The Tribunal held that assessee just explained source of cash deposited in bank but failed to substantiate same by documentary evidence.Onus lied on assessee to explain source of cash deposited which assessee failed.There was no dispute regarding sale consideration of immovable property.Assessee had also not challenged sale consideration of property either before AO or CIT(A).Assessee 1st time took a plea that cash deposited represented part of sale proceeds of immovable property.AR submitted that cash deposited in bank account was representing sale proceeds of immovable property thus, same would be considered as part of sale consideration and accordingly same would be subjected to tax under head LTCG. The Tribunal held that there was no merit found in argument raised by Counsel for assessee and Assessee's ground was dismissed.

***AMIT SUBHASCHANDRA ACHARYA vs. ITO (2018) 54 CCH 0367 AhdTrib ITA NO. 1138/AHD/2015 dated 13.12.2018***

**2253.** The Tribunal held that the assessee failed to substantiate the source of Rs. 20 lakhs deposited in its bank account which was claimed to be receipts from family partition arrangement and therefore confirmed the addition made by the AO under section 68 of the Act since the explanation offered by the AO was not satisfactory.

***Minalben Dipakbhai Mehta v ITO – (2015) 45 CCH 0178 Ahd Trib***

**2254.** Based on the fresh evidence produced by assessee and admitted by CIT(A), showing that (i) amount deposited in savings bank account (with respect to which assessee had failed to explain source during assessment) actually came from sale of agricultural land, (ii) that population of village where land was situated, was less than 10,000 people and (iii) that land was being used for growing of crops, CIT(A) had deleted the addition made u/s 68 after the AO could not rebut such evidences in remand proceedings. The Tribunal dismissed the frivolous appeal filed by revenue against such CIT(A)'s order noting that the revenue authorities had accepted additional evidence brought on record by assessee.

***ITO v Kulwinder Singh – (2018) 91 taxmann.com 177 (Chandigarh Trib.) – ITA No. 1193 (Chd.) of 2017 dated 12.01.2018***

Go to Index

**2255.** The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had upheld the addition of cash deposited in assesse's saving bank, rejecting asessee's explanation that had sufficient amount with him out of savings / cash withdrawals of earlier years which was the source of making deposit in cash. The Tribunal noted that the assessee had submitted the cash book in support of his explanation and neither the AO nor the CIT(A) had brought any material to show that assessee did not have the amount to deposit. Accordingly, it held that the plausible explanation of assessee could not be rejected by AO without examining same and bringing any material on record to show why said explanation was not acceptable and thus, deleted the addition made.

***AJAY MORE vs. INCOME TAX OFFICER - (2018) 54 CCH 0003 CuttackTrib - ITA No. 273/CTK/2018 dated 12.09.2018***

**2256.** The Tribunal remanded the matter back to the file of AO for disposal afresh after taking into consideration evidences produced by assessee, noting that the AO had made addition u/s 69A disregarding the assessee's explanation that cash deposited in bank account represented sale proceeds of sagwan trees grown on agricultural land gifted to her by family members. It was noted that income from sale of Sagwan trees was supported by gift deed, pratilipi from tehsil depicting existence of 'Sagwan Trees' and, photographs showing trees had been cut down.

***Poonam Pandey v ACIT [2018] 97 taxmann.com 175 (Delhi - Trib.) - IT APPEAL NO. 7660 (DELHI) OF 2017 dated July 20, 2018***

**2257.** The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order deleting addition made u/s 68 on account of unexplained cash deposits made in the assessee-company's bank account, noting that the assessee had declared the said cash deposits as part of its total/gross income and such fact was not disputed by the AO. It was noted that the assessee had discharged its burden by furnishing the invoices and addresses of the parties from whom payments were received through both account payee cheques as well as cash and the AO had not brought any evidence on record to prove that assessee's transactions were not genuine. Accordingly, the Tribunal held that there was no infirmity in the CIT(A)'s order since the assessee had made full disclosure and veracity of documents had not been challenged by the AO.

***ACIT vs Crayons Advertising Ltd. and ANR [2018] 54 CCH 0421 (Del- Trib.)- ITA No.4872/Del/2015 dated 27.11.2018***

**2258.** The Tribunal allowed the appeal of the Assessee and held that where the Assessee had submitted complete details before the AO for substantiating that she had sufficient cash in hand generated out of her trading business and the same was only deposited in here bank by furnishing Cash Flow Statement, copies of invoices of purchases in cash alongwith corresponding cash sales as well as confirmations from various parties from whom cash was received no addition could be made by the AO u/s 69A (unexplained money) by merely relying upon AIR statement. The Tribunal noted that the Assessee had explained source of complete cash deposits made during the year and, therefore,no addition could be made on the ground of unexplained cash deposit.

***Kanika Rathi vs. ITO (2017) 50 CCH 0258 Del Trib (ITA No. 6628/Del/2013 dated August 22, 2017)***

Go to Index

**2259.** The AO made addition u/s 68 of cash deposited in the assessee's bank account, which the assessee claimed were on account of travel cheques and gift from father, but the AO didn't accept the said explanation. The Tribunal noted that generally after lapse of time, the details of traveler cheques are not available with the assessee but the assessee was not given credit also with respect to the amount withdrawn from his NRE A/c, which was evidenced by Bank entries. The amount gifted by his father was also withdrawn from his bank account and the father had given confirmation for such gift. It held that just because the confirmation was not dated, it could not be rejected. Further, it was noted that when the matter was remanded to AO by the CIT(A), the AO didn't make any enquiries and without rejecting the evidences filed by the assesse, simply disbelieved them. Noting that the assessee was a**n** NRI having substantial withdrawals from US and was also globe trotter being a senior employee, the Tribunal held that the explanation given by the assessee could not be simply rejected when he stated that he had encashed traveler cheques and deposited cash in bank account. It thus held that the amounts were explained and hence addition was not warranted.
***VENU MYNENI vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) - (2018) 53 CCH 0216 (Hyd Trib) - ITA No. 2094/HYD/2017 dated June 22, 2018***

**2260.** Assessee's case was reopened wherein, AO made addition on account of cash deposits in SB account in banks as no source of deposit was explained. Before CIT(A), assessee contended that a sum was received as a sale consideration which was deposited in bank account. CIT(A) found that agreement to sale was executed subsequent to receipt of sale consideration and thus, rejected assessee's contentions. The Tribunal held that, in assessee's own case, submissions were accepted on ground that AO had not carried out any verification from buyer of land to ascertain actual date of payment of sale consideration. In AY under consideration, AO also failed to verify said facts hence, it was unable to affirm findings of lower authorities. AO was directed to delete impugned addition.
***Chandravati Kaithwas ANR vs. ITO & ANR. -(2018) 54 CCH 0341 IndoreTrib-ITA No. 506/ Ind/2016, 508/Ind/2016-Dated December 11, 2018***

**2261.** The Tribunal deleted the addition made by the AO towards unexplained cash deposits in bank account disbelieving the assessee's explanation of source being earlier cash withdrawals (alleging that the cash withdrawn would have been utilized by it), relying on the ratio laid down in the case of S.R. Ventakaratnam vs CIT & Others [127 ITR 807 (Kar)] wherein it was held that once the assessee discloses the source as having come from the withdrawals made on a given date from a given bank, it was not open to the Revenue to examine as to what the Assessee did with that money and could not choose to disbelieve the plea of the Assessee merely on the surmise that it would not be probable for the Assessee to keep the money unutilized.
***Vinatha Madhusudan Reddy vs. Asst.CIT [2018] 54 CCH 0151 MumTrib- ITA No.257 /Bang/2018 dated August 24 2018***

*Bogus liability*

**2262.** Where the AO, pursuant to search proceedings conducted in the premises of the assessee and its group concerns, concluded that the payments by the assessee and other concerns to its

other group concern viz. M/s Swastic Corporation as commission was sham, the Court noting that the assessee had explained that the group had streamlined its activities and appointed Swastic Corporation Ltd as the sole selling agent for the group and had provided several communications to establish that the customers had placed orders on Swastic Corporation, held that the AO was unjustified in making a disallowance of the payments. It held that the AO had merely proceeded on the basis of suspicion and had not brought any material on record to prove that the transaction was in fact sham.
***CIT v L Parameswari – (2017) 98 CCH 0073 Chen HC – TCA Nos 700, 701, 702***

**2263.** Where Assessing Officer made addition to assessee's income in respect of unconfirmed trade creditors and expenses, in view of fact that assessment order did not refer to and elucidate whether or not assessee had produced invoices, bills, manner and mode of payment to trade creditors and, moreover, details and nature of expenses incurred were not elucidated, impugned addition was deleted by the Tribunal. The High Court upheld the order of the Tribunal.
***Pr. CIT, Delhi-17 v. Rajesh Kumar-ITA No. 1173 of 2018- [2018] 100 taxmann.com 267 (DelhiHC)-CM No. 44972 of 2018-dated October 29, 2018***

**2264.** The Tribunal held that where the assessee surrendered additional income pursuant to seach proceedings, which related to sundry creditors, repairs to building, advances and stock which related to business carried on by it, it was to be included in income from business and not deemed income under section 69A of the Act.
***Dev Raj Hi-Tech Mechines Ltd v DCIT – (2015) 45 CCH 0106 Amritsar Trib***

**2265.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting the addition made by the AO alleging certain outstanding liability to be bogus liability, noting that the AO did not bring any evidence on record to hold that such liability had ceased to exist or remitted by the creditor. Further, the said liability was shown as payable by the assessee in his balance sheet and confirmation was also received from the creditor which proved that such sum was not remitted by the creditor.
***ITO vs Satish Kumar [2018] 54 CCH 0186 (DelTrib.)- ITA.No.3698/Del./2010 dated 06.11.2018***

**2266.** The assessee, engaged in manufacturing and export of stainless steels etc, incurred business expenditure by way of Polishing Charges. The AO asked the assessee to furnish complete details along with confirmation of persons who had done polishing work to which the assessee submitted names of all 18 parties/persons along with their addresses, PAN and amount paid along with quantitative details of polishing. Thereafter, AO issued notice u/s 133(6) to the said parties [power to call for information from other persons] and since some letters returned unserved and some of the parties' reply was not received, the AO disallowed 50% of total polishing charges. The CIT(A) confirmed AO's order. The Tribunal dissented with the lower authorities and held that merely because the parties failed to respond to notices u/s 133(6) it could not be used against assessee to disallow those expenses, when the PAN of those persons were provided and also assessee had deducted tax at source on those payments. However, noting that on identical issue the Tribunal in earlier year had upheld the disallowance upto 15%, it held that some disallowance was to be made based on the history in earlier year and facts of

present year. Accordingly, the Tribunal directed the AO to limit the disallowance only to the extent of 5% of total expenses.

***Punjab Stainless Steel Industries & Anr v ACIT & Anr (2018) 52 CCH 0296 DelTrib - ITA No. 6043/Del/2014, 5997/Del/2014 dated 09.04.2018***

**2267.** The Tribunal held that addition on account of unexplained sundry creditors was not sustainable where there was a minor difference in the ledger account of assessee and creditor in respect of some commission charged by assesee which was not acknowledged by the other party.

***ITO & ANR. vs. Kishore Hariram Paryani (HUF) & ANR.- (2018) 54 CCH 0306 IndoreTrib- ITA No. 233/ Ind 2017, 234/Ind/2017-Dated December 6, 2018***

**2268.** During assessment proceeding, AO noted that assessee had purchased goods from sundry creditors and same were reflected in books of accounts. AO completed assessment after making addition u/s 68 in respect of unexplained five sundry creditors. CIT(A) deleted such addition. The Tribunal held that, while deleting alleged addition, CIT(A) noted that there was no difference in accounts which called for such addition. Confirmation of amounts of all alleged five creditors were examined by CIT(A) and there was no dispute to fact that payment to those creditors were made through proper banking channel in succeeding FY. No interference was called for in finding of CIT(A) deleting impugned addition and same was upheld and Revenue's ground was dismissed.

***ITO & ANR. vs. Kishore Hariram Paryani (HUF) & ANR.- (2018) 54 CCH 0306 IndoreTrib- ITA No. 233/ Ind/2017, 234/Ind/2017-Dated December 6, 2018***

**2269.** The Tribunal sustained disallowance made by AO u/s 69C for want of confirmation letters and difference in balances of sundry creditors and sundry debtors to the extent of 20% of the amount noting that assessee had proved majority of expenses and furnished primary details for all expenditure but there was failure on part of assessee to reconcile difference and obtain confirmation letters from certain parties since they had closed business or were not traceable.

***Everest Industries Ltd. v JCIT – (2018) 90 taxmann.com 330 (Mum) – ITA Nos. 3804 & 3849 (Mum.) of 2015 dated 31.01.2018***

**2270.** The Tribunal deleted the addition made on account of unexplained cash credit accepting assessee's contention that the amount pertained to purchase of jewellery which was returned subsequently and at the time of return of such jewellery, assessee had failed to make necessary entries immediately in stock book as well as creditors ledger and hence there was a difference which was alleged to be unexplained cash credit. Further, noting that the liability as well as the stock were declared and continued in the books of accounts, the Tribunal held that it was not a case of under assessment, and there was no bogus liability to make the addition.

***GRANDHI SRI VENKATA AMARENDRA vs. ASSISTANT COMMISSIONER OF INCOME TAX [2018] 53 CCH 0587 (VishakapatnamTrib)- ITA Nos. 23/Viz/2018 dated August 21 2018***

**2271.** The AO made an addition on account of assessee's failure to prove credit worthiness of sundry creditors and genuiness of transaction. It was assessee's contention that the said outstanding was advance received from customers which was adjusted against sales in subsequent year for which it produced invoices before CIT(A). The Tribunal deleted the addition holding that

receipt of advances from customers is a starting point and conclusion of transaction is the relevant sales and hence there was no justification for making the addition of advances received from the customers in view of the fact that (i) the sales in subsequent year were accepted by the AO (ii) advance was received in cheque and not cash and (iii) assessee had produced invoices for the said sales before the CIT(A). Accoridngly, it allowed assessee's appeal.
***Madhava Hi-Tech Cold Storage Pvt Ltd vs Dy.CIT [2018] 54 CCH 0240 (Vishakapatnam Trib.)- ITA Nos. 480/Viz/2016 dated 16.11.2018***

*Others*

**2272.** The Apex Court dismissed Revenue's SLP filed against the High Court order where the High Court had confirmed the Tribunal's order holding that the provisions of section 69B were not applicable to the assessee's case as the assessee had not maintained any regular books of account, which is essential to invoke the said section.
***COMMISSIONER OF INCOME TAX (CENTRAL) vs. GAURAV KUMAR SHARMA (SINCE DECEASED) THROUGH LEGAL HEIRS – (2018) 102 CCH 0355 (SC) – SLP Civil Diary Nos. 24708/2018 dated July 30, 2018***

**2273.** The AO based upon the search conducted in the premises of a third party, initiated reassessment in case of the assessee and made additions under section 68 as cash credit. The CIT(A) as well as the Tribunal deleted the said addition holding that relevant enquiry based upon materials furnished by assessee had not been made and the AO had only relied on one report and not made any further findings. The High Court also noted that the assessee had discharged the onus initially casted upon it by providing basic details like bank accounts etc. which were not suitably enquired by AO. Thus, the Supreme Court dismissed Revenue's SLP
***PCIT vs Adamine Constructions (P) Ltd – (2018) 99 taxmann.com 45 (SC)- SLP (Civil) 33542 of 2018 dated 28.09.2018***

**2274.** The Court dismissed Revenue's appeal and upheld Tribunal's order which restricted unexplained expenditure addition u/s. 69C to 5% of amount incurred on purchases. The Court rejected Revenue's stand that in terms of Sec. 69C, where no explanation was provided by assessee, the entire amount was liable to be taxed u/s. 69C. It clarified that use of the word 'may' in Sec. 69C makes the deeming provision discretionary and not mandatory.The Court further observed that as explanation could not submitted within the time allowed due to the death of the Assessee and the fact that the legal heirs were unable to explain the same as they had no knowledge of their deceased father's (Assessee's) business, there was sufficient good cause for not submitting explanation.
***Pr. CIT vs. Late Rama Shankar Yadav TS-351-HC-2017(Allahabad HC) (ITA No. 195/2016 dated August 18, 2017)***

**2275.** The Court dismissed the appeal of the Assessee and confirmed the addition made by the AO u/s 68 on certain sum received by it as the Assessee offered no explanation / unsatisfactory explanation about the nature and source of the credits in the books of account.The Court rejected the argument of the Assessee that since it was not maintaining BOA, the amounts so received could not be brought to taxand held that when Assessee was doing business, then it

was incumbent on him to maintain proper BOA and if the Assessee had not maintained it, then it could not be allowed to take advantage of its own wrong. It held that the burden to explain the source & nature of amount received lay on the Assessee.

***Arunkumar J. Muchhala vs. CIT (2017) 99 CCH 0206 Bombay HC (ITA No. 363/2015 dated August 24, 2017)***

**2276.** The Court upheld the order of the ITAT and CIT(A) wherein it was held that section 69C of the Act was applicable only where there is some expenditure and the assessee was unable to explain the source from which such expenditure has been incurred and since the assessee had accounted for all the purchases made in cash in its books of accounts, the source of expenditure could not be considered as unexplained. Further it relied on the decision of CIT v RRJ Securities Ltd [(2015) 94 CCH 0069 Del HC], wherein it was held that merely because valuable article or document belonging to the assessee was seized from possession of person search under section 132 of the Act, it would not mean that concluded assessments of the assessee were to be reopened under section 153C of the Act.

***CIT v Refam Management Services Pvt Ltd – (2015) 94 CCH 0079 Del HC***

**2277.** The Court held that no addition could be made under section 68 of the basis of loose papers found during search in assessee's case indicating assessee's transaction with a company when assessee not only clearly denied having any dealing with said company but also produced all necessary details for Assessing Officer to make necessary inquiries and also furnished a letter from director of that said company stating that it did not have any transaction with assessee.

***Pr CIT v Delco India (P) Ltd - [2016] 67 taxmann.com 357 (DelhiHC)***

**2278.** During search in premises of the assessee company, seven slips reflecting amounts of Rs.45.08 lakhs were seized from wallet of one, SA who explained that slips pertained to cash received from the assessee.The Assessing Officer held that there was nothing to establish a link between assessee's cash reflected in its books with said cash slips. Therefore, he concluded that amounts were given to SA outside books of account and, accordingly, added back said amount to income of the assessee. The Court held that the Commissioner (Appeals) noted and analysed manual cash book which showed certain cash balance amounts and same was verified to be correct. Further, there was no other material to substantiate assumption that slips denoted amounts outside cash book in documents which were also subject matter of assessment, since amounts reflected in seized slips were fully explained in relevant cash balances found in books of account and bank statements of the assessee, impugned additions was to be deleted.

***CIT v. Ansal Properties & Industries [2018] 98 taxmann.com 398/259 Taxman 103(DelhiHC)- IT Appeal No. 599 of 2004 dated September 18, 2018***

**2279.** The assessee received discounted value of advance lease rental from MGPL for leasing of gas cylinders. The AO doubted the entire transaction and treated such sum as income of the assessee from undisclosed sources and made addition under Section 68 of the Act. CIT(A) upheld order of AO. The Tribunal deleted the addition made by AO and held that in context of cash credit in books of accounts, it was primarily liability of assessee to establish identity, genuineness of transaction and credit worthiness of donor. And that the Assessee was not

required to establish source of source. However, the Court observed that MGPL virtually paid 80% of cost of equipment for taking it on rent. Since neither the assessee nor MGPL provided full details of payments made to assessee and that MGPL avoided producing its books of account citing reason of their incompletion, the Court held that the assessee could not prove the genuineness of the transaction. Thus, the revenue's appeal was allowed.
***CIT vs. LABH LEASE & FINANCE LTD. (HIGH COURT OF GUJARAT) (R/TAX APPEAL No. 1242 of 2007) dated May 10, 2018 (102 CCH 0090)***

**2280.** The Tribunal upheld the addition made by AO u/s 69 on account of some loose papers/documents seized during search proceedings which indicated investments of huge amount made by assesse, even though the assessee's MD had denied making such investments as he could not explain nature of transactions found in said documents to satisfaction of AO. It held that since assessee merely denied said investments without tendering any credible explanation, assesse didn't discharge the initial burden of proof to show that investments transactions in loose sheets were not in nature of income.
***DCIT v Geneva Industries Ltd. – (2018) 90 taxmann.com 406 (Bang) – ITA No. 1560 & 1628 (Bang) of 2013 dated 19.01.2018***

**2281.** Where assessee failed to furnish satisfactory explanations towards excess gold found from employees of assessee, the Tribunal held that addition under section 69 justified.
***FUSION JEWELS OF SOUTH & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. -(2017) 51 CCH 0097 BangTrib - ITA No. 198/Bang/2015 dated 20.09.2017***

**2282.** The assessee company supplied high carbon ferro chrome to T company, assessee' sister concern, and as per agreement between T company and assessee-company, if chrome contents in materials offered by assessee-company was less than minimum percentage indicated in product quality/norms, pro rata deduction would be made on charges payable to assessee. Based on such understanding, T company made some reduction in the charges payable to assessee on account of low recovery of chrome and the assessee claimed deduction of such amount reduced. The AO was of the view that the aforesaid expenses were being claimed with an intent to reduce total taxable income of assessee and suspected the understanding between T company and assessee. The CIT(A) deleted addition made on account of expenses for low recovery of chromium. The Tribunal upheld CIT(A)'s order holding that there was no material brought on record by Revenue to show that agreement between assessee and T company for manufacture / supply of high carbon ferro chrome was sham and the AO was conclusion was based on suspicion and conjectures and without any proof.
***ACIT vs. T.S. ALLOYS LIMITED [2018] 53 CCH 0433 (CuttackTrib)- ITA Nos. 404 and 405/CTK /2017 dated August 09 2018***

**2283.** Search operation was carried out at business premises of one of the directors of Assessee-Company and pen-drive was found from his possession and it contained debits of certain amount in respect of expenses made on various heads which were apparently not entered in books of account nor declared in return of income. The AO held that the pen-drive represented accounts of unaccounted transactions which were being kept and maintained by assessee. Further, peak credit of all credit entries maintained in each and every ledger account had been

worked out and AO made addition u/s.68 on account of unexplained cash credit. The CIT(A) held that amount clearly represented expenses thus, confirmed the addition u/s 69C. The Tribunal observed that the assessee was a fund manager for 148 persons for which moneys were frequently withdrawn or deposited. The assessee had discharged its onus in explaining entries by filing details before AO, CIT(A) and in remand proceedings. Further, the assessee also demonstrated details of entries from where the funds were managed. Thus, the Tribunal held that if assessee discharged its primary burden in explaining entries in terms of section. 68, then no addition u/s.69C could be made against assessee.

***RL Travels Pvt Ltd vs DCIT- (2018) 54 CCH 0018 Del Trib- ITA No 893/Del/2015 dated 18.09.2018***

**2284.** The assessee formed a subsidiary company in Netherlands viz. NNBV and subsequently formed another subsidiary viz. NNIH wherein 68.6 percent of its capital was held by NNBV and the balance by another company viz. USBV, which had been acquired at a premium of 642.54 crores. Noting that i) NNIH had paid dividend of Rs.642.54 crores out of its premium account to NNBV and that no premium was paid to USBV ii) NNHI merged with another subsidiary company of the assessee which in turn merged into NNBV which was ultimately liquidated within 2 / 3 years of formation iii) the subsidiary companies did not have any business activity / operations iv) USBV's source of funds was from Bermuda (a questionable jurisdiction) v) the directors of USBV did not object to the fact that it did not receive any dividend vi) there was no justification of the valuation based on which USBV invested in NNIH, the Tribunal upheld the addition made by the AO in the hands of the assessee under Section 69A. It held that the AO had correctly made addition of the amount invested by USBV in the assessee's subsidiary as the same was merely routed to the coffers of the assessee who entered into a series of mergers and liquidation by payment of extra-ordinary dividend.

***M/s New Delhi Television Ltd. vs. ACIT TS-283-ITA-2017 (ITA No. 1212 /Del/2014 dated July 14, 2017)***

**2285.** The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO applying higher Gross Profit (GP) rate as compared to the GP rate declared towards profits in respect of trading in bullion carried on by assesse, relying on the decision given by the Tribunal in the case of the Father- in-law of the assesse [ITA No. 4241-4243/Del/2014]. In that, on identical facts, the issue was decided in favour of the assessee, noting that the AO had accepted the opening stock, purchases, closing stock and cash deposits in bank accounts which were recorded by the assessee in his books of accounts maintained in regular course of business and sale was duly declared by assessee in his VAT returns filed and that no inflated sale was pointed out by the AO. In that case, it was thus held that the ad-hoc addition made by the AO, by applying the GP rate was not justified, particularly when no comparable case was brought on record wherein such a profit was earned.

***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. SUMEDHA PATHAK & ANR. - (2018) 53 CCH 0104 (Del Trib) - ITA No. 6082/Del/2014 (CROSS OBJECTION NO. 207/Del/2015) dated June 04, 2018***

**2286.** The Tribunal held that section 68 of the Act only seeks to tax cash credits where the source of receipts was not established. In the case of the assessee, the source of receipts was duly

established and therefore could not be taxed as there was no provision in statute to tax amount, the source of which has been explained.

Likewise, with respect to expenditure / investments, it held that only when the source of expenditure / investment was not established could it be brought to tax under section 69C of the Act.

***DCIT v Sanjeev Nanda – (2015) 45 CCH 0287 Del Trib***

**2287.** Where the assessee received a sum as advance against the sale of its property from U and the assessee filed a confirmation from U along with its bank statement, acknowledgment of filing ITR and balance sheet, and the fact that the assessee was owner of the property was undisputed, the Tribunal upheld the CIT(A)'s order and held that the AO was unjustified in making an addition under Section 68 merely because the agreement to sell was made on plain paper as against stamp paper. It held that the evidences filed by the assessee evidenced the creditworthiness and genuineness of U and also noted that the entire transaction was duly recorded in the books of accounts.

***INCOME TAX OFFICER vs. NECLEUS STTL PRIVATE LIMITED - (2018) 52 CCH 0221 DelTrib - ITA No. 369/Del./2015 dated Mar 23, 2018***

**2288.** The Tribunal allowed assessee's appeal and deleted the addition made u/s 68 by the AO. During search proceedings, the AO had found a pen drive in possession of a director of the assessee-company wherein the director maintained unaccounted money of various persons / entities. The AO added the peak credit balances of different accounts as income in hands of the assessee. The Tribunal, however, noted that one of the director had accepted the income arising from the peak credit balances to be his income and accordingly, held that once the said peak credits had been added in hands of Director, same could not be again added in hands of assessee.

***R.L. AGENCIES PVT. LTD. v. DCIT (2018) 53 CCH 0541 (DelTrib) – ITA No. 2196/Del/2015 dated July 30, 2018***

**2289.** Assessee sold a house property including furniture in house. Assessee purchased another residential house and claimed deduction under section 54. To ascertain genuineness of sale consideration towards furniture, Assessing Officer conducted necessary enquiries and summons were issued to parties with whom agreement of sale of furniture was executed - All parties admitted that exchange of some furniture was involved but cost involved was much lesser than amount shown by assessee. These persons also admitted that main purpose of agreement for sale of furniture was to reduce stamp duty involved in transaction. Assessee did not dispute statement of these persons with whom agreement to sale was executed. List of items for sale of furniture also supported fact that value of furniture was of much lesser amount. No evidence was produced by assessee to explain that value of items under sale was more than what was determined by Assessing Officer. On facts the Tribunal held that, Assessing Officer was justified in holding that transaction of sale of furniture was sham and was to inflate value of furniture so as to evade stamp duty involved in sale transaction and also to evade proper payment of long-term capital gains and, thus, treating excess amount shown on sale of furniture as unexplained cash credit under section 68 in hands of assessee.

***Devinder Kumar v. ITO, Ward- 68 (2), New Delhi- [2018] 96 taxmann.com 169 (Delhi – Trib.)-IT Appeal No. 7104 (DELHI) of 2017-dated July 6, 2018.***

Go to Index

**2290.** The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the addition made by the AO as unexplained investment on account of investment made by assessee along with other family members in a company promoted by them from amounts received on sale of gold and borrowings, noting that –

- no enquiry was conducted in assessee's case and those enquiries conducted in some of other promoters cases could not be relied upon, in absence of cross-examination
- Observations of the CIT(A) did not state that sources were totally bogus and since no enquiries worth were made, the CIT(A)'s order could not be relied on for denying genuineness of credits
- affidavits from the creditors in support of borrowals furnished were not disproved

***N. SRINIVAS v JCIT – (2018) 52 CCH 34 (Hyd Trib) – ITA No. 1400/HYD/2012 dated 12.01.2018***

**2291.** Assessee Company was engaged in activity of civil construction and development and AO on perusing Profit & Loss Account & CIB information on ITD model generated through system, conducted enquiry about fixed deposits made by assessee as well as increase in cash in hand during year. However, due to lack of enough information, AO could not examine issues but completed assessment after making additions which were later deleted by CIT(A). The Tribunal on revenue's appeal held that AO made addition on basis of CIB information generated through system as per which details of various FDRs made by assessee during year were reflected, further in absence of necessary submissions and reply by assessee, AO added all FDRs made during year. Further, AO estimated interest accrued on these FDRs were also calculated and added to the income of assessee. The Tribunal upheld CIT(A)'s order and held that as the fixed deposit receipts were not unaccounted and necessary transactions relating thereto had been passed through books of accounts which were also verified by AO, it could be deduced that as the amount of fixed deposit receipt had been explained, there remained no basis for addition of interest computed there on and addition on account of unexplained investment in FDR's on basis of CIB information was not sustainable.

***DCIT vs KBG Life Infra Pvt Ltd- (2018) 54 CCH 0037 Indore Trib- ITA No 951/Ind/2016 dated 12.09.2018***

**2292.** The AO made an addition of amount advanced and interest charged promissory notes found during survey proceedings and allegedly not incorporated in books of accounts. The Tribunal deleted the addition observing that (i) amounts indicated in promissory notes were actually part of money lending business of assessee and this business was consistently carried out by assessee along with business of retail trade of GC sheets and PVC pipes (ii) sundry debtors figures shown by assessee in his statement of facts was actually the promissory notes issued to various person during the course of money lending business (iii) Assessee had also given the detailed working of the promissory notes with the year of the issue of the promissory notes, interest received year by year, amounts returned back by the borrowers along with dates and amount of such receipts.

***Dinesh Kumar Choudhary vs. ITO - [2018] 53 CCH 0429 Indore Trib ITA No. 757/Ind/2016 dated August 02 2018***

Go to Index

**2293.** The Tribunal partly allowed assessee's appeal and held that the AO as well the CIT(A) erred in not giving set off of the unexplained debit entries appearing on the very same impounded document on the basis of which addition of unexplained credit entries (which contained name of persons along with amount shown as credit receipt) was made by the AO. It relied on the decision of Tirupati Construction Company wherein it was held that "only peak of debit and credit entries of the seized papers/diary could be assessed as undisclosed income in the hands of the assessee, and there was no justification for adding the entire receipt side of the seized papers". The said decision was upheld by the High Court. Accordingly, the Tribunal confirmed addition to the extent of peak credit.
***Patidar Dinesh Kumar and Company. vs ITO [2018] 54 CCH 0214 (Indore- Trib.)- ITA No.32/Ind/2017 dated 13.11.2018***

**2294.** Survey operations u/s 133A was conducted upon assessee wherein, evidence regarding sales & purchases made outside books was found. Based on same material, assessee declared an additional income which was subsequently revised declaring profit derived from sales made outside books and circulating capital involved in such business. AO noted that assessee had credited a sum by way of capital introduction in his personal balance sheet. Assessee submitted that his balance sheet was prepared post survey thus, same formed part of additional income offered during survey. Assessee had also furnished detailed reconciliation statement along with an explanation. AO added back said amount by holding that assessee was unable to substantiate its source.CIT(A) deleted said addition. The Tribunal held that, assessee had duly reconciled and explained introduction of capital in his personal balance sheet and that it indeed formed part of additional income disclosed during survey. Since Assessee was able to explain entries in his balance sheet, addition made by AO was unwarranted and deleted.
***ACIT vs Shiv Binod Gupta- (2018) 54 CCH 0134 Kol Trib- ITA No 964/Kol/2015 dated 29.10.2018***

**2295.** With respect to the addition made by the AO under section 69C pursuant to transactions noted in a diary found during the search proceedings, the Tribunal held that since the AO himself has stated that the transactions dealt with the trading activities of the assessee it could not represent unexplained investments under section 69C. Further, since the assessee had not discharged any presumption and the authorities had not furnished any evidence, the Tribunal inferred that the entries in the diaries were not reflected in the books of accounts and accordingly made an addition of the gross profit on the quantum of the transactions.
***Tribhovandas Bhimji Zaveri (Delhi) Pvt Ltd v ACIT – (2015) 45 CCH 0183 Mum Trib***

**2296.** The assessee was providing lockers without verification of KYC details, various lockers were given on rent to Hawala operators involved in illegal transfer of cash. Based on the cash found and seized documents, the AO made addition of undisclosed income. CIT(A) upheld order of the AO. Tribunal held that it was not necessary that details of undisclosed income of each day of financial year was unearthed; rather details of certain part of the year which were detected could be extrapolated for the entire year. Thus, Tribunal held that since assessee could not substantiate his income from business and since details of unaccounted income were unearthed in a diary found during search, fair estimation of undisclosed income based on entries found on seized documents was justified. Thus, the assessee's appeal was dismissed.

Go to Index

***KALURAM MALI vs. DCIT (Mumbai Tribunal) (ITA No. 392/Mum/2018) dated May 1, 2018 (53 CCH 0089)***

**2297.** The Tribunal allowed Revenue's appeal against CIT(A)'s order wherein the CIT(A) had deleted the addition made by the AO u/s 69B towards unexplained investment in respect of loan advanced by assessee-company through its bank account, but not reflected in the balance sheet. It rejected assessee's submission that in anticipation of an amalgamation, it had arranged the funds to pay one party (JTPL) on behalf of the proposed amalgamating co. 'W' and all the payments (debits) and receipts (credits) were entered into the ledger account of 'W'. It also rejected CIT(A)'s view that once the transactions were recorded in the ledger accounts but did not appear in the balance sheet at the year end as the account was squared off (since the said loan given to JTPL was debited to W's account and the account was credited by amount received from four parties on behalf of 'W'), it could not be said that the investment was not recorded in the books of account. It held that there was no reason whatsoever as to why these sums were routed through account of the assessee except for the scheme of layering of entries which fall under the realm of money laundering. The Tribunal also took note of Revenue's stand that assessee's explanation of amalgamation proposal was merely an afterthought since the application for amalgamation was submitted to the High Court in 2013 (which was still pending) after the initiation of enquiry by the AO. Accordingly, it upheld the addition made u/s 69B.
***ITO v Ved Investment & Trading Co. Pvt Ltd [TS-490-ITAT-2018(Mum)] - I.T.A. No.5376/Mum/2016 dated 21.08.2018***

**2298.** The AO, on the basis of AIR database of Revenue, had added certain undisclosed income (on which TDS was deducted u/s 194H) to the assessee' income u/s 69. The assessee contended that no income was earned by it and merely because the income was reflected in AIR database, the same could not be added to the income. The CIT(A) directed the AO to verify contentions of assessee as to factual aspect of matter and grant relief on merits. The Tribunal rejected assessee's contention that issuance of the said direction by the CIT(A) was prejudicial to interest of assessee, holding that no prejudice was caused to assessee in undergoing such verifications process more so when said income was reflected in AIR database of Revenue pertaining to assessee.
***DCIT v Credila Financial Services (P.) Ltd. – (2018) 192 TTJ 511 (Mum) – ITA No. 1491 (mum.) of 2016 co no. 305 (Mum) of 2017 dated 16.02.2018***

**2299.** Where the assessee failed to explain the source of the funds which he used to granted an advance to a film producer in India (which was repaid during the year), the Tribunal held that the AO was justified in making an addition in the hands of the assessee. It dismissed the assessee's submission that he had received the funds from a US based company and noted that the AO on inquiry with the US tax authorities had found out that the said company had stopped operations. Accordingly, it held that the explanation provided by the assessee was not sufficient.
***SYED SERWAT SEVY ALI vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) - (2018) 52 CCH 0211 MumTrib - ITA No. 1638/Mum/2015 dated Mar 9, 2018***

Go to Index

**2300.** The Tribunal held that where on transfer of an employee to assessee company from its group company, transferor company had transferred a cheque in respect of amount payable to said employee on account of gratuity and leave encashment and claimed same as an expenditure but assessee did not pay said amount due to employee even on his retirement but showed it as 'current liability' payable in its balance sheet, addition under section 68 of such amount to assessee's income on mere suspicion that assessee might also claim it as an expense in future was unjustified.
***ACIT v Cyrus Investments (P.) Ltd [2018] 93 taxmann.com 493 (Mumbai – Trib.) – ITA NO. 5414 OF 2016 dated 09.05.2018***

**2301.** The AO made an addition in the hands of the assessee under section 69C of the Act contesting that the assessee had made payment to American Express Banking Corporation [AEBC] against credit card payment which was not reflected in the books of accounts. The Tribunal, noting that the discrepancy in the payment occurred due to erroneous reporting by AEBC which had been subsequently confirmed by AEBC, deleted the addition made under section 69C stating that the assessee had discharged its obligation and there was no basis for such addition.
***Empire Industries Ltd v Add CIT - (2017) 50 CCH 0036 MumTrib - ITA No. 4065/Mum/2013 dated May 17, 2017***

**2302.** The assessee, engaged in the manufacture and sale of gold ornaments of different sizes, shapes and models with different designs, paid making charges to the local goldsmiths depending on item ranging from Rs. 82/- to Rs. 166/- per gram. However, based on certain deficiencies found in the vouchers, the AO adopted the minimum rate of Rs. 82/- per gram as making charges for the entire gold manufactured and disallowed the excess amount paid. The Tribunal held that if the AO found some defective vouchers, the amount involved on the said vouchers should have been disallowed, but the AO should not have made universal application of minimum rate of making charges to the entire gold ornaments manufactured and sold by the assessee. Accordingly, it directed adoption of the rate of Rs.150/- per gram considering it to be fair and reasonable.
***GRANDHI SRI VENKATA AMARENDRA vs. ACIT [2018] 53 CCH 0587 (VishakapatnamTrib) - ITA Nos. 24/Viz/2018 and 50/Viz/2018 dated August 21 2018***

### *j. Exempt Income*

*Income not forming part of Total Income – Section 10*

**2303.** The Apex Court held that New Okhla Industrial Development Authority (NOIDA) is not a Municipality as contemplated in clause (e) of article 243P of Constitution; nor is it covered by definition of local authority as contained in Explanation to section 10(20) and thus it is income is not eligible for exemption under section 10(20).
***New Okhla Industrial Development Authority (NOIDA) v. Chief CIT {2018] 95 taxmann.com 58 /256 Taxmann 396(SC)- Civil Appeal Nos. 792 & 793 of 2014 dated July 2, 2018***

**2304.** The Apex Court reversing the High Court ruling granted exemption under section 10(19A) to assessee-individual on rental income derived from letting out the portion of his palace to the

defence ministry. It also rejected revenue's contention that exemption would not be available for the entire palace but be confined only to that portion of palace which was in the actual occupation by the ruler as residence. It observed that section 23 uses the term annual value of such house or part of the house, however, such distinction is absent in section 10(19A) and held that this significant departure of the said words in section 10(19A) of the Income-tax Act also suggest that the legislature did not intend to tax portion of the palace by splitting it in parts.
***Maharao Bhim Singh [TS-641-SC-2016] (Civil Appeal No. 2812 of 2015)***

**2305.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that section 14A cannot be invoked where no exempt income was earned by assessee in relevant assessment year.
***CIT V. Chettinad Logistics (P.) Ltd. [2018] 257 Taxman 2 (SC) - Special Leave Petition (CIVIL) Diary No. 15631 of 2018 dated July 2, 2018***

**2306.** The Apex Court dismissed the review petition filed by the assessee against its earlier order dated April 22, 2016 and denied exemption u/s 10(23C)(iiiab) to the assessee on the ground that it did not satisfy the condition of being an institution 'wholly or substantially financed by the Government' for AYs 2004-05 to 2009-10. It rejected the contention of the assessee that fees of all kinds collected from the Government must be regarded as receipts from the Government and held that funds received from the Government as contemplated under section 10(23c)(iiab) of the Act must be direct grants / contributions from governmental source and not fees collected under the statute. Further, it held that if collection of fees was understood to be Govt. funding then all such receipts by way of fees may become eligible to claim exemption under Section 10 (23c) (iiiab) and such an interpretation would render the provisions of Sec. 10 (23c) (iiiad)/ (vi) "nugatory".
***Visvesvaraya Technological University vs ACIT [TS-465-SC-2016] - R.P.(C) NOS. 2968-2973/2016***

**2307.** The Apex Court held that to claim exemption, funds received from the Government contemplated u/s 10(23C)(iiiab) of the Act must be direct grants/contributions from governmental sources and not merely fees collected under the statute. Since Entitlement for exemption under Section 10(23C) (iiiab) is subject to two conditions viz (i) the educational institution or the university must be solely for the purpose of education and without any profit motive. (ii) it must be wholly or substantially financed by the government.
***Visvesvaraya Technological University v ACIT - TS-221-SC-2016***

**2308.** AO passed assessment order rejecting contention of assessee that its income was exempted u/s. 10(20). CIT (A) passed order holding that assessee was local authority within meaning of section. 10(20). Tribunal accepted Revenue's claim that assessee was not covered within definition of Clause (iii) of Explanation to sec. 10(20). Appellate Tribunal allowed appeal and restored back matter to CIT (A). High Court held that assessee to be local authority within meaning of sec. 10(20) Explanation. After answering issue in favour of assessee, High court held that other issues had become academic. Consequently, appeals filed by Revenue were dismissed and that of assessee were allowed. Issue was whether Urban Improvement Trust constituted under Rajasthan Urban Improvement Act, 1959 was local authority or not within

meaning of Explanation to sec. 10(20). The Apex Court held that, sec. 10(20A), which existed prior to amendments made by Finance Act, 2002 exempted any income of authority constituted in India by or under any law enacted either for purpose of dealing with and satisfying need for housing accommodation or for purpose of planning, development or improvement of cities, towns and villages or for both. Rajasthan Urban Improvement Act, 1959 was enacted for improvement of Urban Areas in Rajasthan. Perusal of Scheme of Rajasthan Urban Improvement Act, 1959 as well as Rajasthan Municipalities Act, 1959 indicated that Urban Improvement Trust undertakes development in urban area included in municipality/municipal board. Urban Improvement Trust was not constituted in place of municipality/municipal board rather it undertakes act of improvement in urban areas of municipality/municipal board under Rajasthan Urban Improvement Act, 1959. It might also perform certain limited power of municipal board as referred to in sec. 47 and 48 but on strength of such provision Urban Improvement Trust did not become municipality or municipal board. Prior to deletion of sec. 10(20A), sec. 10(20A) was provision which exempted income of authority constituted in India by or under any law enacted for purpose of planning, development or improvement of cities, towns and villages or for both. There could not be any dispute that Urban Improvement Trust, i.e. assessee was fully covered by definition of authorities as contained in sec. 10(20A) prior to its deletion. When there was specific deletion of sec. 10(20A), said deletion was for object and purpose that Income of certain Housing Boards etc. to become taxable. Deletion of authorities, which were enumerated in sec. 10(20A) was clear indication that such authorities, which were enjoying exemption u/s. 10(20A) should no longer be entitled to enjoy exemption henceforth. Scheme of Rajasthan Urban Improvement Act, 1959 did not permit acceptance of contention of assessee that Urban Improvement Trust was Municipal Committee within meaning of sec. 10(20) Explanation (iii). High Court based its decision on fact that functions carried out by assessee were statutory functions and it was carrying on functions for benefit of State Government for urban development. Said reasoning could not lead to conclusion that it was Municipal Committee within meaning of Section 10(20) Explanation Clause (iii). High Court had not adverted to relevant facts and circumstances and without considering relevant aspects had arrived at erroneous conclusions. Judgments of High Court deserved to be set aside and Revenue's appeal was allowed.

***ITO vs Urban Improvement Trust- (2018) 103 CCH 0034 ISCC- CIVIL APPEAL NO. 10577 OF 2018 (arising out of SLP (C) No. 16836 of 2018), CIVIL APPEAL NO. 10578 OF 2018 (arising out of SLP (C) No. 16837 of 2018), CIVIL APPEAL NO. 10579 OF 2018 (arising out of SLP (C) No. 16838 of 2018), CIVIL APPEAL NO. 10580 OF 2018 (arising out of SLP (C) No. 16839 of 2018), CIVIL APPEAL NO. 10581 OF 2018 (arising out of SLP (C) No. 18076 of 2018), CIVIL APPEAL NO. 10584 OF 2018 (arising out of SLP (C) No. 23293 of 2018), CIVIL APPEAL NO. 10582 OF 2018 (arising out of SLP (C) No. 18662 of 2018), CIVIL APPEAL NO. 10586 OF 2018 (arising out of S.L.P. (C) No. 28107 OF 2018) (Diary No. 24603 of 2018), CIVIL APPEAL NO. 10585 OF 2018 (arising out of SLP (C) No. 23294 of 2018) & CIVIL APPEAL NO. 10583 OF 2018 (arising out of SLP (C) No. 22987 of 2018)- dated 12.10.2018***

**2309.** The Court allowed benefit u/s 10(23C)(iiiab) to assessee-trust having multiple education institutions under common umbrella even though some of the individual institutions did not fulfill requirements u/s 10(23C)(iiiab). It rejected Revenue's contention to deny exemption to the 3

institutions run by the assessee trust which did not receive Government grant and whose total receipts exceeded Rs. 1 Cr, holding that section 10(23C)(iiiab) is not relatable to the individual institution run under the common umbrella of a trust, it exempts the income received by a person on behalf of the institutions specified in the said clause and if the assessee trust satisfies the statutory requirement, the exemption provision would apply, irrespective of the fact that in isolated cases of a few institutions runs by such trust, the requirement may not be seen to have been fulfilled.

***The Commissioner of Income Tax (Exemptions) v Deccan Education Society - ITA No 400 of 2016 -[TS-682-HC-2018(BOM)] – dated 26.11.2018***

**2310.** The Court dismissed the Revenue's appeal against the Tribunal's order wherein relying on the Apex Court decision in the case of CIT v. Ponni Sugars & Chemicals Ltd. (2008) 306 ITR 392 (SC), Tribunal had held that grant received by assessee from State Govt. in shape of allotment of land for purpose of generating employment for over 3000 people was to be regarded as capital receipt and, thus, same could not be brought to tax. It also considered the decision in the case of CIT v. Chaphalkar Bros Pune (2017) 400 ITR 279 (SC) wherein the Apex Court had approved the decision of J&K High Court in Shree Balaji Alloys v. CIT (2011) 333 ITR 335 (SC). [The year under consideration was AY 2009-10 i.e. prior to amendment of definition of 'income' vide the Finance Act, 2015 w.e.f. 01.04.2016 inter alia to grant received from Central & State Govt.]

***Pr.CIT v Capgemini India (P.) Ltd. – (2018) 90 taxmann.com 409 (Bom) – ITA No. 721 of 2015 dated 15.01.2018***

**2311.** The Court held that where assessee was holding more than 10 per cent of equity shares of lending company and also having substantial interest in borrowing company, amount of loan given by lender company to borrower company was rightly added to assessee's taxable income as deemed dividend.

***Shri. Sahir Sami Khatib v. ITO [2018] 98 TAXMANN.COM 453/259 Taxman 160 (Bom.) IT AL Nos. 722 & 724 of 2015 dated October 3, 2018***

**2312.** The assessee was engaged in the business of turnkey plantation [i.e. to create and develop plantations for Western Coal fields Ltd (WCL)] whereby it sowed seeds and developed nurseries on its own land and then transplanted the grown plants in the areas identified by WCL post which it also maintained the plants for 2-3 years using its own men and material. The Court upheld the Tribunal's order wherein it held that the entire activity was divisible into two stages viz., 1. where the assessee sowed seeds and developed the plants on lands belonging to it and 2. where the trees/plants were transplanted on lands belonging to WCL and the assessee maintained the plants for 2-3 years using its own men and material. It held that only income arising from the 1st stage was exempt u/s 10(1) and income from Stage 2 was taxable. However, since there was no bifurcation between first and second stage, it held that the gross income earned after reducing the entire amount expended at stage I was taxable.

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

Go to Index

**2313.** The Court held that a Private Limited company could be registered under section 25 of Companies Act, 1956 and therefore such company was eligible institution for exemption under section 10(22A)

***CIT v Apeejay Medical Ltd - [2016] 68 taxmann.com 10 (CalcuttaHC)***

**2314.** The Court held that reimbursement of medical expenses incurred by the donors of the welfare fund for advancing medical facility to their employees, could not be treated as an act beneficial to the humanity at large, for obtaining benefit of exemption u/s 10(22A) of the Act and that existence of a hospital or other institution solely for philanthropic purposes, was mandated for purpose of qualifying exemption u/s 10(22A). It also held that exemption under section 10(22A) of the Act could not be granted to an institution, whose predominant objective in the relevant year was to earn profit and not to render any act of philanthropy.

***CIT v Apeejay Medical Research & Welfare Association Pvt Ltd – (2016) 95 CCH 0083 (Calcutta)***

**2315.** The assessee, an employee of ICICI Bank, claimed exemption u/s 10(10C) under the revised return filed after the original return was processed u/s 143(1) with respect to Early Retirement Optional Scheme opted by him. The AO rejected the said claim on the ground that the original return was already processed u/s 143(1) and that amount received under the said scheme was not eligible for exemption u/s 10(10C). On writ petition filed by the assessee, the Court noted that in various decisions dealing with the eligibility of employees of RBI and even ICICI Bank to claim exemption u/s 10(10C) have decided in favour of the asseessee. It held that the Circular No.14(XL35) of 1955, dated 11.04.1955 mandates that the tax payers have to be guided by the AO in the matter of claims and reliefs and, thus, when an assessee files a return and pays excess tax, it is incumbent on the officials of the Income Tax Department much less the Assessing Authority to inform the reliefs entitled to the assessees. It thus set aside the AO's order and directed the Revenue to refund the excess amount, which the assessee was entitled to, as per section 10(10C).

***R. BANUMATHY vs. COMMISSIONER OF INCOME TAX & ANR. - (2018) 102 CCH 0156 ChenHC - W.P(MD) No. 10602 of 2011 dated June 05, 2018***

**2316.** The Court allowed exemption u/s 10(46) in respect of grants received from government, lease, rent and fees, etc. by the assessee-authority, engaged in undertaking works relating to housing schemes and land development schemes along with various municipal functions like roads, water supply, street lighting, etc., noting that the income received by assessee was intrinsically, immediately and fundamentally connected and formed part of its role, functions and duties and the funds received by assessee were to be used for planned development and municipal services which were for general public good. It further held that the expression 'any commercial activity' used in sub-clause (b) of section 10(46) to exclude certain authorities from eligibility of exemption, would not include within its ambit and scope any activity for which fee, service charges or consideration was charged and paid, if the same was intrinsically associated, connected and had immediate nexus with object of regulating and administering activity for benefit of general public.

***Greater Noida Industrial Development Authority v Union of India – (2018) 91 taxmann.com 352 (Del HC) – Writ Petition (Civil) No. 732 of 2017 dated 26.02.2018***

Go to Index

**2317.** The Court quashed the order of Director of Income Tax denying exemption u/s 10(23) to the assessee by holding that only when it was found that the assessee had been carrying on its activities for the purpose of profit, contrary to its objects of providing education and medical care, the prescribed authority would be justified in rejecting the application for approval of exemption u/s 10(23C)(vi) of the Act. Merely because the assessee charged fees for educational courses or that it entered into arrangements with other charitable institutions to set up satellite centres to give medical treatment etc, would not justify rejection of its application. Accordingly, it directed the Revenue to consider the petitioner's application, process it and pass necessary orders in accordance with the law.
***Venu Charitable Society and Anr. Vs. Director of Income Tax (2017) 98 CCH 0100 DelHC (W.P.(C) No. 7147/2012)***

**2318.** The Court held that depreciation is neither a loss, expenditure or a trading liability and is therefore, not to be deducted while computing quantum of exempt income from operating warehouse u/s 10(29) (which provides that any income derived from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities was exempt) relying on the Apex Court ruling in Nectar Beverages Pvt. Ltd. [TS-110-SC-2009]
***Central Warehousing Corporation [TS-327-HC-2017(DEL)] ITA No. 584-589/2017 dated 01/08/2017***

**2319.** Where the Petitioners residing in Jonai Circle in Assam and earning salary income from Murkong Selek College, Jonai, filed a Petition claiming that both the aforesaid areas were included within the defined area notified by Assam Governor on 23-2-1951, and therefore their salary earnings were exempt under section 10(26) of the Act, and the AO denied benefit on the ground that the Murkong Selek area was declared to be Tribal Belt area under Assam Land Revenue Regulation,1886 by a subsequent notification of 13-3-1951, and therefore was not an area mentioned in section 10(26) and accordingly directed the college Principal to deduct tax at source from salary of petitioners, the Court held that the AO had to verify whether the Petitioners were residing in / earning income from Tribal areas based on the areas specified in notification dated 23-2-1951 issued by Governor of Assam, without being influenced by the subsequent notification dated 13-3-1951. Accordingly, it remanded the issue to the AO for verification.
***Hara Kanta Pegu & Ors. Vs.Union Of India & Ors.(2016) 97 CCH 0087 GauhatiHC (Writ Petition (C) No. 4089/2013)***

**2320.** The Court held that accumulated balance lying in provident fund of assessee upto retirement is eligible for exemption under section 10(12)
***Principal Commissioner of Income-tax, Bengaluru v. Dilip Ranjrekar-[2019] 101 taxmann.com 114 (KarnatakaHC) – ITA No.217 of 2018-date December 5, 2018***

**2321.** The Court held that the exemption under section 10(34) was available only for amount, which had suffered tax under section 115-O and, since, in case of deemed dividend under Section 2(22)(e) (which was not covered under 115-O for AY 2005-06), there was no payment of additional tax under section 115-O, same was not exempted.

Go to Index

***Dr. T.J. Jaikish P.V.S. Hospitals (P.) Ltd. v CIT - [2018] 92 taxmann.com 351 (Kerala) - IT APPEAL NO. 191 OF 2013 dated MARCH 8, 2018***

**2322.** The Court held that the assessee, who had retired from ICICI Bank under Early Retirement Option Scheme, was entitled to benefit of exemption u/s 10(10C), even though he had filed revised return u/s 139(5) beyond the prescribed time period, relying on the decision in the case of S. Sevugan Chettiar v. Pr. Chief CIT [2017] 392 ITR 63 (Mad.) decided in favour of the assessee on identical issue.
***N. Annamalai v Pr.CIT [2018] 96 taxmann.com 183 (Madras) – WP NO. 16748 OF 2018 dated July 11, 2018***

**2323.** The Court held that where assessee had multiple objectives in impugned assessment year and did not exist solely for educational purpose, the assessee would not qualify for benefit under section 10(23C)(vi) of the Act.
***B.S. Abdur Rahman Institute of science & Technology v CCIT - [2016] 95 CCH 74 (Madras).***

**2324.** Where the assessee filed a revised return to claim exemption under section 10(10C) in respect of amount received under the early retirement scheme and where revenue objected that assessee's revised return cannot be accepted as it was beyond the timeline stipulated under section 139(5),t he Court relying on SC ruling in S. Palaniappan [wherein it was held that a person who has opted for VRS shall be entitled to exemption u/s 10(10C)] and CBDT Circular dated April 13, 2016 (directing Revenue to grant relief to retirees of the ICICI Bank under VRS in view of the SC judgment) and), allowed writ filed by assessee and granted VRS exemption under section 10(10C) and held that the technicality should not stand in the way while giving effect to the order passed by the Hon'ble Supreme Court..
***S. Sevugan Chettiar [TS-655-HC-2016(MAD)] (W.P. No.42385 of 2016)***

**2325.** The Court granted exemption u/s 10(10B) on VRS payment receivable by employees of Hindustan Photo Film Manufacturing company Ltd. ('HPF')] and accordingly held that the payment was not subject to TDS. It noted that HPF, a wholly owned company of the Central Government, was declared sick and a decision was taken to close down the company in 2013, and, to overcome the financial crisis of the employees, the Cabinet sanctioned the VRS package for HPF employees as a non-plan budgetary support vide Govt. notification dated March 20, 2014 and rejected the Revenue's stand that since it was a VRS package, it would fall within Sec.10(10C)(viii) ambit and accordingly, taxable if the receipt exceeded the exempted limit, observing that the nomenclature of the package was irrelevant, but what had to be considered was the purpose for which the package has been sanctioned. It noted that the VRS package was specially designed for the benefit of HPF employees and therefore as the purpose of the Scheme was to rehabilitate the employees, the monetary benefit accruing to the employees was in the nature of compensation and it undoubtedly fell within the parameters laid down under sub- section (10B) of Section 10 of the Income Tax Act. Further, it held that the exemption was not subject to ceiling of Rs. 5 lakhs under clause (2) of the first proviso to Section 10(10B) as the compensation would fall under second proviso to Sec. 10(10B) according to which no such ceiling would apply in respect of any scheme approved by Government having regards to need for extending special protection to workmen.

Go to Index

***Hindustan Photo Film Workers' Welfare Centre vs. UOI and others - TS-121-HC-2017(MAD) - WP.Nos.18566, 18788, 18608 to 18610, 18789 of 2015 dated 17.03.2017***

**2326.** The Court allowed the writ petition filed by the assessee, an employee of ICICI Bank, against the notice of demand issued by the income-tax department asking to pay tax payable with respect to a consolidated payment received by the assessee as per the Voluntary Retirement Scheme of the said bank, claimed as exempt u/s 10(10C) by the assesssee. The department had opined that the said scheme was not in conformity with rule 2BA and thus the amount received under the said scheme was not eligible for exemption u/s 10(10C). The Court, however, held that the demand raised by the department was not sustainable, following the decision in the case of Chandra Ranganathan v. CIT [2010] 326 ITR 49 (SC) and CIT v. KoodathilKallyatanAmbujakshan [2009] 309 ITR 113 (Bom.) wherein it was held that the employees of RBI were eligible for exemption u/s 10(10C).
***A. Kumarappan v CIT - [2018] 95 taxmann.com 194 (Madras) - W.P. (MD) NO. 8436 OF 2013, M.P. (MD) NO. 2 OF 2013 dated April26, 2018***

**2327.** The Court allowed assessee's claim for exemption u/s 10(10C) for VRS payment received by the assessee, an employee of ICICI Bank. The assessee's claim was denied by the Income-tax authorities holding that the scheme was not in consonance with Rule 2BA. The Court relied on Bombay HC ruling in Koodathil Kallyatan Ambujakshan and SC ruling in Chandra Ranganathan & Ors wherein it was held that merely because the scheme may not expressly set out that the posts (of the retiring employee) will not be filled, it could not result in the scheme not being a scheme falling under s.10(10C) r/w r.2BA. The Court noted that Bombay HC had held that Rules being procedural in nature have to be read in harmonious construction with substantive provision. It further noted that pursuant to the Bombay HC ruling, the Income Tax Department had issued a circular stating that the retiring employees of RBI (having similar scheme) would be eligible for exemption u/s 10(10C). Thus on similar lines it allowed assessee's claim for exemption.
***A.Thenappan vs ITO ward no 1(3) & ACIT Circle II Madurai – TS- 252-HC-2018 (Mad)- W.P (MD) No. 9001 of 2010 & MP (MD) No. 1 of 2010.***

**2328.** Where pursuant to closure of a Government company, Central Government sanctioned a scheme for payment of compensation to its employees for their rehabilitation, the Court held that since it was a severance package and not a VRS package rolled out by company itself, amount of compensation would fall within the parameters of section 10(10B) and, thus, would be exempt from deduction of tax. The Writ petition filed by the assessee was thus allowed.
***Hindustan Photo Film Workers v. Governemnt of India, New Delhi - [2017] 79 taxmann.com 298 (MadrasHC) (WP Nos. 18566, 18788, 18608 to 18610, 18789 of 2015)***

**2329.** The Court upheld the Tribunal's order quashing the order passed by CIT(E) by which the CIT(E) had withdrawn the approval granted to the assessee-society u/s 10(23C)(vi) on the ground that the assessee had invested / deposited funds in mode other than the ones prescribed u/s 11(5). It was noted that 13th proviso to section 10(23C)(vi) of the Act provides powers/ jurisdiction to withdraw the approval to the Govt. or the prescribed authority and the prescribed authority is CIT(E) whereas in the present case, the show cause notice issued prior to the CIT(E)'s order

was signed by DCIT(Hqr). Further, it was noted that the language of the said notice also did not exhibit any thought process of / application of mind by CIT(E) rather it revealed that the same was issued and signed by DCIT(Hqr) as per instructions and directions of CIT(E). Accordingly, the Tribunal held that since the notice was not issued by the prescribed authority, the same was invalid and consequently the order passed by the CIT(E) was also invalid for want of jurisdiction.
***CIT v MODERN SCHOOL SOCIETY - (2018) 407 ITR 0228 (Raj) - D.B. Income Tax Appeal No. 172/2018 dated July 31, 2018***

**2330.** Assessee company was engaged in business of manufacturing drugs and pharmaceuticals. Assessee had claimed deduction u/s 10A. AO sought justification from assessee for not excluding forex income earned from export turnover and profits of business of assessee for purpose of calculating exemption u/s 10AA of Act. AO, however, found submissions of assessee unacceptable, and held that gain or profit arising out of exchange fluctuations nothing to do with sale/export of goods and not part of profit of business of an undertaking, and same was to be treated as separate income for claiming deduction u/s 10AA of Act. AO accordingly disallowed claim of assessee and recomputed eligible deduction. CIT(A) set aside AO's order. The Tribunal held that, appellant had reduced gains due to foreign exchange rate fluctuation from export turn over nut not from profit and business income as per provisions of s 10AA(7) of Act but AO in his working had reduced such gain from business profit also. This working of AO where he has completely excluded said gain from deduction u/s. lOAA was not justified under provision of income tax Act nor was supported by legal position interpreted by various judicial pronouncement which are discussed in detailed by CIT(A).
***Dy.CIT vs. Zydus Hospita Oncology P.Ltd.-(2018) 53 CCH 0306 Ahd.Trib -ITA No.81/Ahd/2016-dated Jul. 9, 2018***

**2331.** The Tribunal allowed exemption to assessee-employee u/s 10(10B) in principle considering the ex-gratia compensation received from the employer as 'retrenchment compensation', where the employee had invoked provisions of Industrial Disputes Act 1947 against his employer for his inter-city transfer, and after losing the case before the Industrial Tribunal, the employer agreed to an 'out-of-court' settlement under which employee received such 'ex-gratia' amount. It rejected revenue's claim that the amount was a mere 'ex-gratia' and ruled that amount was in the nature of compensation under the Industrial Disputes Act, 1947 as the employee's termination falls within the definition of 'retrenchment' under Industrial Disputes Act.
***Vishnu Mohan T Nair v ITO - TS-4-ITAT-2018(Ahd) - ITA No. 1472/Ahd/2014 dated 02.01.2018***

**2332.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order accepting the assessee's claim that interest awarded to assessee u/s 28 of Land Acquisition Act, 1894 on enhanced compensation paid for acquisition of agricultural land would be eligible for exemption u/s 10(37) as the said interest partakes the character of compensation.
***ITO v Sangappa S. Kudarikannur [2018] 96 taxmann.com 541 (Bangalore - Trib.) – ITA No. 1748 (Bang.) of 2017 dated July 20, 2018***

**2333.** The Court held that interest awarded on enhanced compensation paid by Government for acquisition of agricultural land of assessee under section 28 of Acquisition Act would partake of

character of compensation and would be eligible for exemption under section 10(37) ITO, Ward-2(2),

***Hubballi v. Vinayak Hari Palled- [2018] 99 taxmann.com 90 (Bangalore - Trib.)-ITA No. 05 (BANG.) of 2017-dated Ooctober 12, 2018***

**2334.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that amendment to section 2(14)(iii)(b) of Income Tax Act vide Finance Act, 2013 (amending the definition of agricultural land) is not retrospective in operation and the same could not be relied upon by the AO in connection with assessee's wealth tax assessment for AYs 2007-08 & 2009-10. The AO had relied on the amended section 2(14)(iii)(b) to contend that the land in question was urban land on the ground that when aerially measured, the land would come within the distance of 8 kms from municipality limits. Tribunal noted that the Finance Act, 2013 has amended section 2(14)(iii)(b) w.e.f. April 1, 2014 (to state that the distance was to be aerially measured) and the same could not be given retrospective effect. It relied on SC ruling in Vatika Township Pvt. Ltd (367 ITR 466) which states that "if the amendment Act expressly states that the substituted provision shall come into force from the date the amendment comes into force, then the said provision is prospective in nature and it would not be open to any Court to give retrospective operation to such provision."

***Assistant Commissioner of Wealth Tax v Mr Jayaram; Mr Anandaram; Mr Janakiram; Mr Kodandaram & Mr. Seetharaman – WTA Nos. 49, 117,118,122,123/BANG/2018 -[TS-669-ITAT-2018(BANG)] –; dated 05.11.2018***

**2335.** The Tribunal upheld the CIT(A)'s order allowing the assessee's claim for exemption u/s 10(37) with respect to interest awarded to him u/s 28 of Land Acquisition Act, 1894, on enhanced compensation paid for compulsory acquisition of agricultural land. As per section 10(37), any income chargeable under the head "Capital gains" arising from the compensation / enhanced compensation received for compulsory acquisition of agricultural land is exempt from tax. The Tribunal followed the decision in the case of Movaliya Bhikhubhai Balabhai v. ITO [2016] 388 ITR 343 (Guj) wherein it was held that interest u/s 28 of the said Act, partook the character of compensation and it did not fall within the ambit of the expression "interest".

***ITO v Basavaraj M Kudarikannur - [2018] 95 taxmann.com 106 (Bangalore - Trib.) - IT APPEAL NOS. 1747 AND 1750 (BANG.) OF 2017 dated June 1, 2018***

**2336.** The Tribunal held that the assessee was not eligible to claim exemption under Section 10(12) of the Act on interest accrued on accumulated balance in the Employee Provident Fund account from the date of retirement (2002) to date of withdrawal (2011) as the assessee ceased to be an employee from April 2002 onwards and the PF amount was withdrawn after a period of 9 years. It held that as per Section 10(12) of the Act exemption is only available to a person who being an employee withdraws the accumulated fund from the PF account as on the date of retirement and therefore held that accumulated interest post retirement was not eligible for exemption.

***Shri Dilip Ranjrekar v ACIT – TS-522-ITAT-2017 (Bang)***

**2337.** The Tribunal upheld CIT(A)'s order denying exemption u/s 10(1) with respect to certain receipts claimed to be agricultural income by the assessee, noting that the assessee had failed to prove

that the receipt was out of agricultural operation and that she did not produce any materials whatsoever as to give details of the nature of crop grown, expenditure incurred thereof, etc.
***Urmila Ramesh vs Asst CIT [2018] 54 CCH 0269 (Bang Trib) - ITA No.2505 and 2506/Bang/2018,84/Ind/2013,231/Ind/2013 and 315/Ind/2013 dated 30.11.2018***

**2338.** Where assessee had claimed exemption u/s 10(38) in respect of LTCG on purchase and sale of units (arising on account of its investment in) a Venture Capital Fund (VCF) contending that transactions giving rise to LTCG had suffered STT and AO denied such exemption on the ground that STT liability was borne by concerned Venture Capital Fund and not by assessee, the Tribunal held that section 115U(1) clearly indicates that income accruing or arising or received by any person out of investments made by him in a VCF has to be treated on par with investments directly made by such Venture capital undertaking and once the deeming provision comes into play, it has to be given full effect. Further, with respect to Revenue's contention that compliance with SEBI (VCF) Regulations, 1996 had not been established, the Tribunal held that Form No. 64 specified in Rule 12C which is to be furnished by the VCF was filed by the assessee and the said Form by necessary implication meant that the VCF had complied with the conditions set out in Explanation (1) to section 10(23FB) and the AO had not found anything wrong in the said Form.
***Gopal Srinivasan v DCIT – (2018) 91 taxmann.com 33 (Chen) – ITA Nos. 948 and 1423 (Chennai) of 2016 dated 11.01.2018***

**2339.** The Tribunal accepted Assessee's claim u/s 10(26B) noting that the Assessee had satisfied the conditions stipulated in the said section viz. it was formed primarily for the development and upliftment of the members of the scheduled tribe community in the Union Territory of Lakshwadeep and was wholly financed by the Government.
***Lakshadweep Development Corporation Ltd. vs. ACIT (2017) 84 taxmann.com 238 (Coch. Trib.) (ITA No. 18-19/2017 date August 1, 2017)***

**2340.** During assessment proceeding, AO noted that assessee sold a land for a certain consideration on which it claimed exemption u/s 10(37). Assessee submitted that said property was an agricultural land and was compulsorily acquired by Government of Kerala and hence, it was entitled to provisions of s. 10(37). AO held that transfer of said land was within limits of Trivandrum Municipal Corporation and assessee's claim was not acceptable as it was not a compulsory acquisition but a sale through negotiated settlement. AO completed assessment after determining LTCG. CIT(A) granted relief to assessee. The Tribunal held that, Assessee's 70 cents of land was notified for compulsory acquisition by Government of Kerala for developing VIS. Though acquisition proceedings were taken under Land Acquisition Act, final price was fixed upon negotiated sale agreement. AO had allowed assessee's claim for deduction u/s 54B. Section. 54B provides for a deduction on account of transfer of land used for agricultural purpose and for purchase of another agricultural land. Therefore, when deduction was granted u/s 54B, AO also categorically admitted that land sold was an agricultural land. AO noticed that land was within Trivandrum Municipal Corporation, and therefore, would be an urban agricultural land falling within provisions of s. 2(14)(iii). Only reason for AO to deny benefit of s. 10(37) was that impugned land was acquired by executing a sale deed in favour of VIS and it was not a case of compulsory acquisition. Entire procedure prescribed under Land Acquisition Act was followed,

only price was fixed upon a negotiated settlement. Thus, acquisition of urban agricultural land was a compulsory acquisition and same would be entitled to benefit enumerated in section 10(37)

***ITO vs Girijakumari- (2018) 54 CCH 0224 CochinTrib- ITA No 236/Coch/2018 dated 10.10.2018***

**2341.** The Tribunal held that where gross receipts of the society exceeded. One crore and society had not taken prior approval from Ld. CCIT, u/s 10(23C) (vi)of the Income Tax Act, 1961 which was mandatory for claiming exemption, assessee would not be entitled for exemption u/s. 10(23C)(iiiad) of Act.

***SATLUJ SHIKSHA SAMITI vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2017) 51 CCH 0136 DelTrib - ITA No. 777/DEL/2016 dated 29.09.2017***

**2342.** The Tribunal held that where the assessee received dividend income on account of investment in a Venture Capital Fund, which further invested in a company, which at the time of payment of dividend paid additional tax under section 115U of the Act, the said dividend income was exempt in the hands of the assessee under section 10(34) of the Act.

Further it held that venture capital funds / companies were given pass through status and therefore the assessee, who received interest income from a VCF, was entitled to deduct expenditure income incurred by the VCF as if it had been incurred by the assessee itself and that the net interest received was taxable as income from other sources.

Additionally, where the VCF had made a distribution out of its capital, the said amount received was not taxable.

***Japan International Cooperation Agency v DDIT (IT) – TS-59-ITAT-2016(DEL)***

**2343.** Where in order to grow mushrooms, instead of horizontal use of soil, vertical space is used, still growth of mushrooms would not stand apart from agricultural operations and [Income from production and sale of mushrooms had to be regarded as agricultural income]. The Tribunal held that 'Soil' is a part of the land. Land is also part of earth. The upper strata of the land is soil and this is cultured and made fit for production of crops, vegetables and fruits etc., by enriching the soil. When such soil is placed on trays, it does not cease to be land and when operations are carried out on this 'soil', it would be agricultural activity carried upon land itself.

***Dy. CIT v. Inventaa Industries (P.) Ltd. [2018] 95 taxmann.com 162/172 ITD 1(Hyd. -Trib) (SB)- IT Appeal Nos. 1015 to 1018(HYD.) of 2015 C.O. Nos. 53 to 56 (HYD) of 2015 [Assessment Years 2008-09 TO 2012-13] dated July 9, 2018***

**2344.** The Tribunal upheld CIT(A)'s order confirming the addition made by AO on account of proportionate decrease in the agricultural expenses incurred during the relevant year as compared to the same expenses incurred for the preceding year, holding that no plausible reasons with documentary evidences were placed for such decrease. It was noted that the assessee carried commercial (taxable) as well as agricultural (not taxable) activities and nothing concrete had been placed on record to show as to why the agricultural expenses had decreased during the year even when other expenditure on commercial activities had increased in comparison to preceding years.

Go to Index

***Krishidhan Seeds Pvt Ltd vs Dy.CIT [2018] 54 CCH 0280 (Indore- Trib.)- ITA No.37/Ind/2013,84/Ind/2013,231/Ind/2013 and 315/Ind/2013 dated 30.11.2018***

**2345.** The Tribunal denied the assessee exemption under section 10(10B) of the Act which deals with exemption of compensation received by a workman under the Industrial Disputes Act at the time of retrenchment since the assessee's employment was terminated on account of cessation of temporary work which did not amount to retrenchment.
***Ambika Jyoti Datta v ITO – TS-156-ITAT-2016 (JPR)***

**2346.** The Tribunal quashed CIT's order for revision u/s 263 observing that (i) the CIT had not pointed out in the impugned order as to what was the kind of enquiry that AO ought to have made but failed to make and that (ii) there were two views possible on the issue as to whether the assessee-partners would be entitled to exemption u/s 10(2A) on the share of profits credited in the partner's capital account or the share of total income of the firm declared in the firm's return of income (where both are not same).
***Shri Vinod Agarwal & other v Pr.CIT - TS-17-ITAT-2018(Kol) - I.T.A No. 1895 to 1898/Kol/2017 dated 03.01.2018***

**2347.** The Tribunal held that the AO was incorrect in assuming that the definition of 'corpus' for the purpose of investment in venture capital funds literally meant the actual contribution made by the investors where the SEBI (Alternative Investment Funds) Regulation, 2012 specifically providedt that corpus meant the amount committed by the investors and therefore incorrect in denying the assessee exemption under section 10(23FB) on the ground that the investment made by it was in excess of 25 percent of the corpus contribution.
***DHFL Venture Capital Fund v ITO – TS-68-ITAT-2016(MUM)***

**2348.** The Tribunal held that voluntary contributions/donations received by assessee from various companies for industrial dispute settlement having a direct nexus with negotiation and settlement arrived at between parties could not be treated as professional income and thus was exempt under section 10(24) of the Act.
***Mumbai Mazdoor Sabha vs. ACIT[2016] 75 taxmann.com 134 (Mumbai - Trib.)***

**2349.** The Tribunal allowed assessee's claim for exemption u/s 10(17A)(ii) of one time receipt / award received by the assessee (foremer cricketer) from BCCI and other associations in recognition of his past achievement in Indian cricket, relying on the CBDT Circular No.447 of 1986 dated 22/01/1986 (which provides that awards received by a sportsman, who is not a professional, will not be liable to tax in his hands as the award will be in the nature of a gift and/or personal testimonial). It noted that the assessee was in employment elsewhere and thus held that the receipt was not received for professional reasons but in the capacity of a 'sportsman'. Section 10(17A) (ii) provides for exemption in respect of the payments made as a reward by the Central Government or any State Government for the specified purposes in public interest.
***Chandrakant Gulabrao Borde v ITO [TS-641-ITAT-2018(PUN)] - ITA No.104/PUN/2018 dated 05.10.2018***

Go to Index

**2350.** The Tribunal held that where assessee-firm, in view of partnership deed (which clearly laid down that no interest on capital and remuneration was payable to partners), did not pay any interest and remuneration to its partners, such interest on capital and remuneration were not to be excluded from amount of profit eligible for exemption under section 10AA.
***Asst. CIT, Circle-1 (2), Surat v. Mukta Enterprise-[2018] 100 taxmann.com 44 (Surat-Trib.)-ITA No. 294 (SRT.) of 2017-October 26, 2018***

*Charitable Trust*

**2351.** The Apex Court allowed Revenue's SLP against order of High Court where order of Commissioner cancelling registration of assessee- foundation was set aside on ground that at time of initiation of proceedings for cancellation of registration in year 2008, Commissioner did not have such a power in terms of sub-section (3) of section 12AA which was brough in by Finance Act, 2010, w.e.f. 1-6-2010.
***Pr.CIT vs JIS Foundation [2018] 96 taxmann.com 611(SC) SPECIAL LEAVE PETITION (CIVIL) DIARY NOS. 24831 OF 2018 dated August 06 2018***

**2352.** The Apex Court dismissed revenue's special leave petition challenging High Court order wherein the Court had held that in case of violation under section 11(5) and 13(1)(d), exemption granted to the assessee shall not be withdrawn for the entire income but only income arising from investment which is the subject matter of violation.
***Karnataka Industrial Area, Development Board [TS-598-SC-2016] (SLP No.4568/2015)***

**2353.** The Apex Court held that where the assessee society filed an application under section 12A of the Act for grant of registration and same was not responded to within stipulated period of six months, application for registration was to be deemed to have been allowed.
***CIT v Society for Promn.of Edn - [2016] 67 taxmann.com 264 (SC)***

**2354.** The Apex Court dismissed the appeal of the Revenue and approved the decision of the Bombay High Court in Institute of Banking Personnel Selection wherein it was held that the income of the trust was to be computed on commercial principles after providing for allowance of normal depreciation from the trust's gross income despite the full expenditure being allowed as an application of funds in the year of acquisition of assets. Further, it noted the amendment to Section 11(6) vide Finance Act, 2014 (which provides that depreciation would not be allowed as a deduction) was retrospective in application and could not apply to AYs prior to AY 2015-16. Further, it clarified that once the assessee was allowed depreciation, it would be entitled to carry it forward as well.
***Rajasthan and Gujarati Charitable Foundation Poona – TS – 596 – SC-2017 CIVIL APPEAL NO. 7186 OF 2017 dated 13.12.2017***

**2355.** The Apex Court held that if an assessee being a charitable trust exercised claim of accumulation of income through its income tax return it would be treated as in conformity and in compliance with section 11 of the Act. It further held that a charitable trust could accumulate only upto 25 percent of its total receipts and not more as allowed by the Court and lower authorities in the given case.

Go to Index

***CIT v GR Govindarajulu & Sons (CIVIL APPEAL NO(S).4916/2006) – TS-552-SC-2015***

**2356.** The Apex Court granted SLP to the Revenue against the High Court order wherein the High Court had held that since at time of initiation of proceedings for cancellation of registration u/s 12AA, i.e. in year 2008, the CIT did not have such power of cancellation (which was brought in sub-section (3) of section 12AA by Finance Act, 2010, with effect from 1-6-2010), the order passed by the CIT cancelling registration was to be set aside.
***Pr.CIT v JIS Foundation - [2018] 96 taxmann.com 257 (SC) - SLP (CIVIL) DIARY NO.(S) 22373 OF 2018 dated July 23, 2018***

**2357.** The Apex Court dismissed Revenue's SLP against HC ruling where the Court had held that assessee sociey was entitled to exemption u/s.10(23C)(vi) as it was using the franchise fee received under the franchise agreements with satellite schools for furtherance of educational purposes which was its main object.
***CIT vs The Delhi Public School Society [2018] 103 CCH 0281 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 40502/2018 dated 26.11.2018***

**2358.** The assessee, a charitable trust entitled to exemption u/s 11 of the Act, received voluntary contributions (corpus donation) from the donors. The donors instructed that the interest would also form part of the corpus donation and thus the assessee claimed exemption u/s 11(1)(d) on the interest earned on the said corpus donation. The AO rejected assessee's claim for exemption. However, the Tribunal allowed the assessee's claim and the High Court concurred with the Tribunal's finding that the interest earned on voluntary contribution would also partake the character of voluntary contribution as the instructions issued by the donors were undisputed . The Department's SLP filed against the High Court's order was dismissed by the SC.
***CIT(Exemption) v Mata Amrithanandamayi Math Amritapuri [2018]94 taxmann.com 82 (SC)SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 11590 OF 2018 dated 14.05.2018***

**2359.** The Apex Court granted SLP to the Revenue against the High Court order wherein the High Court had held that registration of a trust does not involve enquiry into actual activities or application of funds, etc. and at that stage only enquiry required to be conducted is with respect to object of trust alone and if the assessee is found to have been engaged in any non-charitable activity, benefit of exemption may be denied during assessment.
***CIT v Babu Ram Education Society [2018] 96 taxmann.com 607 (SC) - SLP (CIVIL) DIARY No.(S) 22641 OF 2018 dated July 23, 2018***

**2360.** The Apex Court reversed the Madhya Pradesh HC ruling in case of State Government Undertaking (established for development of industrial growth centres/areas) and held that prior to 2004 amendment (enactment of Sec. 12AA(3) with prospective effect from October 1, 2004), the CIT had no power to cancel registration certificate granted u/s 12A for charitable purpose. It held that the functions exercisable by CIT u/s 12A are neither legislative nor executive, but are quasi-judicial in nature and held that the order u/s 12A could not be rescinded or modified applying provisions of Section 21 of General Clauses Act as order mentioned therein must be in the nature legislative or executive order. Moreover, it held that quasi-judicial orders could be varied or reviewed when obtained by fraud or when such power was conferred by the Act or

Rules under which it was made and noting that the express power to cancel registration was granted to CIT only by way of enactment of Sec. 12AA(3) with prospective effect from October 1, 2004; held that the CIT was not empowered to cancel it in the instant case (in 2002).
***Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd. [TS-64-SC-2018] - CIVIL APPEAL No.6262 OF 2010 dated February 16, 2018***

**2361.** The Apex Court dismissed the SLP filed by the Revenue on the substantial question of law as to whether any excess expenditure incurred by the trust/charitable institution in earlier assessment year could be allowed to be set off against income of subsequent years by invoking section 11.
***COMMISSIONER OF INCOME TAX (EXEMPTION) vs. SUBROS EDUCATIONAL SOCIETY - (2018) 166 DTR 0257 (SC) - MISCELLANEOUS APPLICATION NO. 941/2018 IN CIVIL APPEAL NO(s). 5171/2016 dated Apr 16, 2018***

**2362.** The Assessee was registered society under Rajasthan Societies Act, 1958 for charitable and general public utility services. The Assessee filed an application for registration under section 12AA. The Commissioner (Exemptions) rejected said application on ground that in order to decide matter of seeking registration under section 12AA, genuineness of activities being undertaken by the assessee were to be examined but in spite of granting sufficient opportunity, the Assessee failed to produce details and documents in support of its claim for registration. The Tribunal opined that stage for consideration of relevance of object of trust and application of its fund would arise at time of assessment when benefits were claimed by the Assessee in terms of sections 11 and 12. However, at time of registration of trust, what has to be looked into is whether trust is genuine one or it is a sham institution floated only to avail benefits of exemption under Act. The Tribunal thus allowed appeal filed by the Assessee and passed order to grant registration under section 12AA to the Assessee. The Court Held that order of the Tribunal was justified.
***SLP granted in CIT v. Dali Bai Sewa Sansthan [2018] taxmann.com 290/259 Taxmann 346(SC)-Special Leave Petition (Civil) Diary No. 32465 of 2018 October 12, 2018***

**2363.** The Apex Court granted SLP to the Revenue against the High Court's order wherein the High Court had held that mere non-communication of changes in objects clause to authority will not automatically cancel the assessee's registration u/s 12AA, rather, it would be open for department, while making assessment, to follow provision of section 11(5) and section 13 to disallow expenses or income, as the case may be, if same was not as per approved bye-laws.
***CIT(E) v Rajasthan Cricket Associatio [2018] 98 taxmann.com 426 (SC) - SLP (Civil) Diary No.(S). 24269 OF 2018 dated July 30, 2018***

**2364.** The Commissioner (Appeals) passed an order whereby he cancelled registration of the assessee under section 12A retrospectively with effect from 1-4-2005 on ground that activities of the assessee were not being carried on in accordance with provisions of section 12A retrospectively with effect from 1-4-2005 on ground that activities of the Assessee were not being carried on in accordance with provisions of section 12A. The Tribunal after examining matter at length, recorded a finding of fact that since there was no cogent material or evidence to establish any violation of provisions of section 12AA (3), cancellation of registration of

assessee-society retrospectively was not justified. The Court held that no question of law arose out of impugned order.

***SLP granted in CIT v. Rama Educational Society [2018] 99 taxmann.com 282/259 Taxman 368 (SC). SLP (Civil) Diary No(s). 29841 of 2018 dated October 1, 2018***

**2365.** Where High Court upheld Tribunal's order that rent paid by assessee-trust to a trustee for using land and building was not excessive and, thus, exemption could not be denied to assessee under section 11 by invoking provisions of section 13(1)(c), SLP filed against said order was to be dismissed by the Apex Court.

***CIT, (Exemptions) v. Bholaram Educational Society- [2019] 101 taxmann.com 193 (SC)- SLP(CIVIL) Diary No. 44677 of 2018-dated December 14, 2018***

**2366.** Where High Court upheld Tribunal's order holding that activity carried on by assessee to advance computer communication in India in all aspects with a view to promote rapid nationwide development of sector and to promote technological growth of country was charitable in nature, SLP filed against said decision was granted by the Apex Court.

***CIT (Exemption) v. Ernet India-[2019] 101 taxmann.com 60 (SC)- SLP(CIVIL) Diary No (S). 41159/2018-December 3, 2018***

**2367.** The Apex Court dismissed SLP against High Court ruling that where assessee society was set up with object of imparting education and it had entered into franchise agreements with satellite schools and also used gains arising out of these agreements in form of franchisee fees for furtherance of educational purposes, it fulfilled requirements to qualify for exemption under section 10(23C)(vi)

***Dir. of IT (Exemptions) v. Delhi Public Schools Society- [2018] 100 taxmann.com 80 (SC)- SLP(CIVIL) Diary Nos. 38347 of 2018-dated November 12, 2018***

**2368.** The Apex Court dismissed SLP dismissed against High Court ruling that where assessee society was set up with object of imparting education and it had entered into franchise agreements with satellite schools and also used gains arising out of these agreements in form of franchisee fees for furtherance of educational purposes, it fulfilled requirements to qualify for exemption under section 10(23C)(vi).

***Dir. of IT (Exemptions) v. Delhi Public Schools Society- [2018] 100 taxmann.com 370 (SC)- SLP(CIVIL) Diary No. 41122 & 42797 of 2018 – December 4, 2018***

**2369.** The assessee, Urban Improvement Trust constituted under the Rajasthan Urban Improvement Act, 1959 claimed that it was a local authority within the meaning of clause (iii) of Explanation to section 10(20) and was thus entitled for exemption under section 10(20). The Assessing Officer rejected the claim of the assessee that its income is exempted under section 10(20). CIT(A) passed an order holding that assessee is a local authority within meaning of section 10(20). The Tribunal accepted the revenue's claim that assessee is not covered within definition of clause (iii) of Explanation to section 10(20). The High Court held the assessee to be local authority within the meaning of section 10(20) Explanation. On appeal by revenue before the Supreme Court, the Apex Court held upon perusal of Scheme of Rajasthan Urban Improvement Act as well as Rajasthan Municipalities Act, it was evident that though assessee undertook development in urban area included in municipality/municipal board, it was not constituted in

place of municipality/municipal board. Further, scheme of Rajasthan Urban Improvement Act, 1959 did not permit acceptance of contention of assessee that it was a Municipal Committee. Moreover, fact that functions carried out by assessee were statutory functions carried out for benefit of State Government for urban development also did not lead to conclusion that assessee was a Municipal Committee within meaning of clause (iii) of Explanation to section 10(20). Thus, assessee not being a Municipal Committee within meaning of clause (iii) of Explanation to section 10(20) would not be entitled to tax exemption under said provision.
***Income Tax Officer v. Urban Improvement Trust-[2018] 98 taxmann.com 237 (SC)-CA Nos. 10577 to 10586 of 2018- date October 12, 2018***

**2370.** Where the assessee was engaged in preparing and supplying mid-day-meals to students at primary schools in various villages, against a contract awarded by State Govt and the assessee received food preparation and distribution charges, on per child, per month basis from State Govt, the Court upheld the Tribunal's order allowing registration u/s 12AA to the assessee, holding that since assessee was engaged in an activity that was inseparably linked to and performed in continuation of charitable scheme of Government. Noting that total excess of income over expenditure was Rs.2,432/- only and that the assessee appeared to have acted merely as an agent of the State, it held that merely because some money had been paid to it to defray expenses met to perform task of cooking and supplying meals, restriction created by first proviso to section 2(15) did not operate and, thus, activity carried out by assessee would fall within ambit of general public utility.
***CIT v Shri Balaji Samaj Vikas Samiti – (2018) 91 taxmann.com 26 (AllahabadHC ) – ITA No. 49 (All) of 2014 dated 09.02.2018***

**2371.** The Court allowed Revenue's appeal against grant of exemption under section 11 on the ground that after the amendment of section 12A and introduction of section 12AA w.e.f 01.04.1997, grant of registration was a condition necessary to avail exemption under section 11 and trust and societies. Until and unless registration was granted no exemption could be claimed on the basis that application had been submitted for registration. In the present case, despite the fact that admittedly no registration certificate had been issued to Respondent till date, still exemption had been granted by authorities below. This was not consistent with requirement of Section 12A(1), as was applicable for relevant assessment year.
***Maharishi Institute of Creative Intelligence U.P [(2017) 98 CCH 0012 ALLHC]***

**2372.** The assessee was a charitable trust registered u/s 12AA(3). A search and seizure was carried out at the registered office of the assessee and based on this operation, assessment proceedings were carried out u/s 153-A/143(3) for the relevant year. Further, the Commissioner issued a show cause notice for the cancellation of registration with retrospective effect on the ground that the assessee was not carrying out charitable activities. A writ petition was filed by the assessee challenging the retrospective effect of cancellation of registration. The Court dismissing the writ petition held that all pleas including the plea that the registration could not be cancelled with retrospective effect could be raised by the Petitioner before the Principal Commissioner, who shall necessarily consider all the relevant pleas and take a decision thereon after recording his satisfaction in terms of section 12AA(3) and there was no reason for the Court to believe that he wouldn't have done so.

Go to Index

***Hind Charitable Trust v. PCIT - [2018] 93 taxmann.com 483 (AllahabadHC) - MISC. BENCH NO. 7201 OF 2018 dated APRIL 11, 2018***

**2373.** The Court allowed Revenue's appeal and reversed the order of the Tribunal granting the assessee registration from 2000 onwards, noting that when the assessee originally applied u/s 12AA in 2000, the application was rejected and it was only in 2004 where the representation were filed before CIT was the registration granted. It held that the date of filing the original application for registration had no relevance as the said application was rejected, and the subsequent application/representation moved in September, 2004.
***CIT vs Gyan Deep Shiksha Bharti-TS-396-HC-2017(ALL)-ITA No. 534 of 2009 dated 19.08.2017***

**2374.** The Court upheld the Tribunal's decision of allowing deduction of depreciation to the assessee Trust and dismissed the Revenue's contention that the entire cost of capital expenditure had already been allowed as deduction u/s 11 of the Act in the AYs 2006-07, 07-08 & 08-09 and that consequently allowing depreciation as expenditure would amount to double deduction. The Court observed that the income of the assessee was exempt u/s 11 and hence assessee was not claiming any deduction and thus when depreciation was claimed, assessee in effect was claiming that the depreciation should be reduced from the income for determining percentage of funds which had to be applied for the purpose of trust. It further clarified that the amendment to Section 11 by inserting sub-section (6) which provided that. 'income shall be determined without any deduction or allowance by way of depreciation' vide Finance Act (No.2) Act,2014, was prospective in nature and not applicable to the subject AYs.
***Commissioner of Income Tax & Ors. Vs Seth Anandram Jaipuria Edu. Society Contonment & Ors. (2107) 98 CCH 0106 AllHC (ITA No. 102 of 2015, 94 of 2015, 41 of 2016)***

**2375.** The Court held that at the time of registration of a charitable institution u/s 12AA, the CIT is not required to look into the activities, where such activities have not been initiated or are in the process of its initiation and registration cannot be refused on the ground that the trust has not yet commenced the charitable or religious activity. It held that the registration stage, only the genuineness of the objects was to be tested and not the activities, unless such activities have commenced.
***CIT v Shreedhar Sewa Trust - INCOME TAX APPEAL No. 33 of 2017 – Allahabad High Court dated 07.09.2017***

**2376.** Where the CIT – Exemptions had accepted the activities of the assessee, a charitable trust viz. providing education via a degree college, but he rejected the genuineness of the activities merely on the basis that the asseessee failed to submit the documents for the purchase of land for the establishment of degree college under section 12(1)(a), the Court held that since there was no other objection other than the non-filing of documents, non-granting of registration to assesse was not justified.
***CIT Vs.Shivbachan Singh Samajothan Charitable Trust (2016) 97 CCH 0079 AllHC (ITA No.117 of 2016)***

Go to Index

**2377.** The Court held that the mere fact that the assessee was making profit did not indicate that it was carrying on an activity solely for the purpose of making profit and that it ceased to be for educational purposes.
***Manas Sewa Samiti & Ors v CCIT – (2015) 94 CCH 0081 Allahabad HC***

**2378.** Where assessee did not include value of land owned by him in taxable wealth on ground that he had entered into a joint development agreement with a builder and, thus, said land constituted stock-in-trade, the Court held that in view of fact that land was reflected as capital asset in assessee's books of account and, no development took place after executing agreement with builder, land in question was to be treated as an 'asset' includible in net wealth under sec. 2(ea)
***Devineni Avinash v. Pr. CIT, Vijayawada- [2018] 100 taxmann.com 75 (Andhra Pradesh and TelanganaHC)- W.T.A. No. 2 of 2017 & 1, 2 & 3 of 2018-dated October 11, 2018***

**2379.** The Court upheld granting of charity registration u/s. 12AA to assessee-institution engaged in training and guiding Government officials/farmers in the field of water and land management for a fee by categorising the assessee as being engaged in 'preservation of environment including water-sheds, forests' which is one of the charitable activities specified u/s. 2(15). The Court noted that the Revenue had denied Sec. 12AA registration by categorizing assessee's activity as that of 'advancement of any other object of general public utility' and invoking the turnover criteria of Rs. 25L as per proviso to Sec. 2(15). It noted that the Tribunal had allowed the relief relying on Delhi HC ruling in India Trade Promotion Organisation holding that assessee's dominant purpose was not 'profiteering'. The Court upheld Tribunal's final conclusion, however, opined that both Revenue and Tribunal committed 2 mistakes namely, (a) that of overlooking the 5th activity covered by Sec. 2(15) i.e. 'preservation of environment including water-sheds, forests' and wrongly invoking the proviso by focusing on the 7th activity i.e. 'advancement of any other object of general public utility' and (b) is of looking at gross receipts even before grant of registration.
***CIT (E) vs. Water and Land Management Training & Research Institute TS-258-HC-2017(AP HC) (ITTA No. 56 of 2017 dated March 15, 2017)***

**2380.** Where funds of assessee-trust were utilized for purchase of car in name of its trustee and there was violation of section 13(2)(b), read with section 13(3), the Tribunal held denial of exemption under section 11 should be limited only to amount which was diverted in violation of section 13(2)(b). The Court dismissed the Department's appeal and upheld the order of the Tribunal.
***CIT(Exemptions), Pune v. Audyogik Shikshan Mandal- [2019] 101 taxmann.com 247 (Bombay) ITA No. 764 of 2016- dated December 18, 2018***

**2381.** The Court held that the Revenue did not have the jurisdiction to cancel registration under section 12AA(3) of the Act whenever the assessee's receipts from commercial activities exceeded Rs.25 lakhs and that registration could only be cancelled if there was a change in nature of activities of the institution or if the activities were not genuine.
***Khar Gymkhana – TS-323-HC-2016 (Bom)***

Go to Index

**2382.** The Court held that where the purpose of a trust or institution is relief of the poor, education or medical relief, it will constitute charitable purpose even if it incidentally involves the carrying on of commercial activities(Letting out of auditorium). Test to determine as to what would be charitable purpose within meaning of Section 2(15), is to ascertain what the dominant object of the activity was. Since educational activity was dominant activity of Assessee-trust benefit of exemption u/s 11(4A) could not be denied.
***DIT v Lala Lajpatrai Memorial Trust - TS-204-HC-2016(BOM)***

**2383.** Where the CIT had revoked registration of charitable trust u/s 12AA(3) on the ground that the activity carried on by the assessee was in the nature of trade, commerce or business and the Tribunal reversed the order of CIT cancelling registration on the ground that the CIT had not given any finding that activity of the trust was not genuine activity or it was not being carried out in accordance with the object of the institution, the Court upheld the order of the Tribunal.
***CIT vs. MUMBAI METROPOLITAN REGIONAL IRON AND STEEL MARKET COMMITTEE (2017) 99 CCH 0122 BomHC ITA No. 43 OF 2015 dated 17.07.2017***

**2384.** The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee-charitable trust, running a hospital, deduction claimed (under the nomenclature 'additional depreciation') with respect to write-off of the written down value of hospital equipments in the books of accounts which the assessee could neither sell as scrap nor it could use them, relying on the ratio laid down in the case of Institute of Banking Personnel Selection (IBPS) v. CIT (2003) 264 ITR 110 (Bom) wherein it was held that the income of Trust has to be computed on commercial principles, rejecting the revenue's argument that there is no provision in the Act to allow such additional depreciation. It held that the CIT(A) as well as the Tribunal had after placing reliance upon Institute of Personnel Banking Selection (IBPS) (supra) had implicitly upheld the application of the principle laid down in section 32(1)(iii) which provides that where a plant and machinery is discarded/destroyed in previous year, the amount of money received on sale as such or as scrap or any insurance amount received to extent it falls short of written down value is allowable as depreciation, provided same is written off in books of account. With respect to Revenue's objection against the nomenclature 'additional depreciation', the Court held that nomenclature cannot decide a claim. Further, it held that in any case, the impugned amount could also be allowed as an expenses u/s 37 as it was an expenditure incurred wholly and exclusively for carrying out its activity as a hospital (on application of commercial principles).
***CIT(E) v Bhatia General Hospital – (2018) 91 taxmann.com 361 (BomHC) – ITA No. 846 of 2015 dated 26.02.2018***

**2385.** The Court dismissed Revenue's appeal against Tribunal's order allowing assessee's (a charitable trust) claim for carry forward of deficit (i.e. excess of application of money over receipt) and setting off the same against the income of the subsequent years, relying on the decision in the case of CIT v. Institute of Banking Personnel Selection (IBPS) (2003) 131 Taxman 386 (Bom HC) decided against the Revenue on identical issue.
***CIT(E) v Somaiya Vidyavihar – ITA No. 456 of 2016 (Bom HC) dated 22.11.2018***

**2386.** Assessee was a charitable trust enjoying registration under section 12AA. During relevant years assessee had incurred expenditure, some of which was paid to one SBC towards

advertisements in various magazines and souvenirs. Assessing Officer noticed that said SBC was a partnership firm consisting of three partners who happened to be trustees of assessee trust. Assessing Officer opined that firm i.e. SBC, was a firm covered under section 13(3)(e) vis-a-vis trust and thus denied benefit under section 11 relying upon provisions of section 13(2)(c). Commissioner (Appeals), however, took a view that payments made by assessee were not in excess of what may be reasonably paid for services in question and deleted disallowance made by Assessing Officer. Tribunal upheld order passed by Commissioner (Appeals). The Court held that in order to invoke provisions of section 13(2)(c), essential requirement is that amount paid to person referred to in sub-section (3) of section 13 is in excess of what may be reasonably paid for services rendered and since, in instant case, Commissioner (Appeals) and Tribunal had elaborately examined accounts of assessee, payments made to SBC, payments made to other agencies for similar work, comparative rates of payments etc. and came to conclusion that no excess payment was made to related person, impugned order passed by them did not require any interference.

***CIT, (Exemption) Pune v. Sri Balaji Society-[2019] 101 taxmann.com 52 (BombayHC)- ITA Nos. 762 & 782 of 2016-December 11, 2018***

**2387.** The Court upheld the Tribunal order holding that even if payer company had not paid tax on dividend distribution under section 115-O, exemption would be allowed to receiver in terms of section 10(34).

***Pr. CIT v. Smt. Kayan Jamshid Pandole-[2018] 100 taxmann.com 284 (Bombay)- [2018] 100 taxmann.com 284 (Bombay)-ITA No. 387 of 2016-November 19, 2018***

**2388.** Where the assessee claimed exemption under section 11 in respect of surplus earned by it by organising exhibition, which was a well-organized and regular activity incidental to assessee's business but assessee had not maintained separate books of account in respect of the said activity, as mandated under section 11(4A), the Court held that the exemption under section 11 could not be granted.

***Indian Machine Tools & Manufacturers Association v DIT(E) - [2018] 91 taxmann.com 465 (Bombay) - IT REFERENCE NO. 104 OF 2000 dated MARCH 9, 2018***

**2389.** Where assessee, a charitable trust, made repayment of loan to its trustee, the Court held that the Assessing officer without bringing any relevant material and evidence on record, could not draw an adverse inference that it was a case of transfer of funds to trustee in violation of provisions of Section 13(1)(c). The matter was, accordingly, remanded back to the Assessing Officer for fresh adjudication.

***Devi Kamal Trust Estate V. Director of Income-Tax (Exemption) , Kolkata - [2017] 79 taxmann.com 212 (Calcutta) (ITAT No. 181 of 2016)***

**2390.** The Court held that where the assessee had purchased a plot of land for the purpose of starting a medical college and old age home but due to the inability to obtain requisite approvals, the assessee sold the same and earned a substantial income out of the sale, the AO was incorrect in denying benefit under Section 11 of the Act, by treating the income as business income / income from commercial activity and alleging that the assessee had motive to earn profits from the said transaction, thereby not satisfying the requirements of Section 2(15). The Court held

that mere sale of an immovable property of the trust could not be the sole factor to conclude that the income earned should be taxed as business income and that in the case of a trust whose predominant activity was not business, incidental activity of sales, carried out in furtherance of and to achieve the main objectives of the trust could not be construed as business activity.

***CIT v Magunta Raghava Reddy Charitable Trust – (2016) 96 CCH 0082 (Chen) - T.C.A.Nos.451 and 452 of 2016 & C.M.P.No.9327 of 2016***

**2391.** The Court held that where concealment of income was discovered in the case of charitable trusts such as the assessee (in whose case large amounts of cash had been discovered), the Department was entitled to follow a logical procedure which involved providing the assessee an opportunity to offer an explanation against such allegations and in the event that such explanation was not found to be conclusive, to communicate the same to the approval granting authority for the purpose rescinding the approval granted resulting in the denial of exemption and imposition of penalty. However, it held that the procedure adopted by the Department would be subject to the assessee's statutory appeals remedies including remedy before the Court.

***Jawaharlal Shanmugam Vs.Director General Of Income Tax (Investigation)(2016) 97 CCH 0058 ChenHC (W.P. No. 22955 of 2016)***

**2392.** Assesee, a society registered u/s.12A was the apex body for Indian automobile manufacturers and worked for sustainable growth of automobile industry in India. The Ministry of Road Transport and Highway (Ministry) had sanctioned certain sum to the assessee for setting up model inspection & certification centres. Assessee was to execute project for and on behalf of Ministry and amount received was in form of a financial sanction and not a grant. The AO made addition on account of un-utilized funds, for overseeing project and held that amount received from Ministry was income/revenue receipt. The CIT(A) deleted the addition and the same was uphled by the Tribunal. The Court observed that on completion of project, unutilised amount was to be returned to Ministry. Further even though funds were routed and kept in a separate bank account in name of assessee it did not belong to assessee but belonged to Ministry. Thus, the Court concluded that, there was no reason upsetting the the finding of the Tribunal and it did not find any merit in submission made by Revenue that amount received from Ministry belonged to assessee and was their income.

***CIT vs Society for Indian Automobiles Manufactures- (2018) 103 CCH 0014 Del HC- ITA No. 976/2018 dated 07.09.2018***

**2393.** The Court held that Assessee would not be entitled to exemption under section 11 if its activities are outside scope of its objects, even if its activities are charitable in nature. Further, notwithstanding that an assessee has been granted registration under section 12A, it would be necessary for assessee to comply with conditions of section 11 in order to claim any benefit under provisions of that section.

***Mool Chand Khairati Ram Trust v. Dir. of Income-tax (Exemptions), [2015] 59 taxmann.com 398 (Delhi), IT Appeal No. 141 of 2013, dated July 27, 2015***

Go to Index

**2394.** The Court held that where a political party is unable to maintain its accounts for any reason whatsoever, or satisfy pre-conditions set out in proviso to section 13A, exemption cannot be granted to it from payment of tax.
***CIT v Janta Party - TS-151-HC-2016(DEL)***

**2395.** The Court held that where a political party failed to submit audited accounts within period stipulated by mandatory requirement of proviso to section 13A, it would not be entitled to tax exemption under section 13A.
***CIT v Indian National Congress (I) All India Congress committee - TS-152-HC-2016(DEL)***

**2396.** The Court held that the assessee viz. Vishwa Hindu Parishad (assessee, 'VHP') was eligible to claim exemption under section 11 of the Act despite its failure to comply with mandatory condition u/s. 12A(b) of filing of audit report. It noted that pursuant to demolition of Babri Masjid in 1992, the assessee was declared as an unlawful organisation under the Unlawful Activities (Prevention) Act, 1967 ('UAPA'), and thus, its books of accounts were seized as a result of which it could neither file its income tax return nor its audit report. It further noted that the assessee filed the audit report along with revised return in March 1996 (after completion of assessment) once the ban imposed under UAPA was lifted in June, 1995. Accordingly, it distinguished Revenue's reliance on co-ordinate bench rulings in Indian National Congress [TS-152-HC-2016(DEL)] and Janata Party [TS-151-HC-2016(DEL)], wherein exemption u/s. 13A was denied for flouting the mandatory condition of filing audit report alongwith return of income and observed that the delay in filing of audit report in the instant case was for bonafide reasons. It also observed that the assessee's audited accounts were not doubted. Accordingly, it held that there was no failure to comply with mandatory condition u/s. 12A(b) of the Act.
Further, it also rejected the Revenue's ground for rejection of exemption on the ground that the assessee was not registered u/s. 12A and noted that for relevant AY, the condition as to registration was not mandatory and mere filing of application for registration was sufficient which was done so by the assessee in 1973.
***DIT(E) vs. Vishwa Hindu Parishad - TS-184-HC-2017(DEL) - ITA 14/2004 dated 08.05.2017***

**2397.** The Court held that Where establishment of an allopathic hospital assisted assessee in its object of improving auyrvedic system, activities of assessee could not be held to be ultra vires its objects so as to deny exemption under section 11 to it.
***Mool Chand Khairati Ram Trust v. Dir. of Income-tax (Exemptions), [2015] 59 taxmann.com 398 (Delhi), IT Appeal No. 141 of 2013, dated July 27, 2015***

**2398.** The assessee was a registered society who had established 11 schools and had also permitted societies with similar object to open schools under the name of 'Delhi Public School'. The main objective of the assessee was to establish progressive schools without any distinction of caste or creed. The assesseee had been enjoying exemption in respect of its income u/s 10(22) since assessment year 1977-78 till assessment year 2007-08 but in view of change in law, section 10(22) was substituted by section 10(23C)(vi) and the assessee's application for exemption u/s 10(23C)(vi) for assessment year 2008-09 onwards was denied by the ADIT on the grounds that the franchisee fee received by assesseee from the satellite schools in lieu of its name, logo and motto amounted to a 'business activity' with a profit motive and no separate books of account

had been maintained by assesseee. A writ petition challenging the decision of the ADIT was filed by the assessee wherein the Court noted that the assesseee had maintained accounts which had been audited in detail for the relevant years. The Court further observed that the surpluses accrued by assesseee society in form of franchisee fee from satellite schools were fedback into maintenance and management of assesseee schools which was in furtherance of charitable purposes and accordingly held that the assessee society qualified for exemption u/s 10(23C)(vi).

***DIT v. Delhi Public School Society - [2018] 92 taxmann.com 132 (DelhiHC) - W.P. (C) NO. 5340 OF 2008 dated APRIL 3, 2018***

**2399.** The assessee was set up as a charitable society (duly registered under Section 12A of the Act) engaged in ensuring time supply of prescribed textbooks at fair prices to school students and to improve the quality of primary and secondary education in schools. The AO denied the assessee benefit under section 11 of the Act observing that the assessee earned huge profit margins of 35.15 percent and that the activity of publishing and selling books could not be considered as a charitable activity. The Tribunal set aside the order of the CIT(A) who provided relief to the assessee and upheld the order of the AO. On appeal the Court noted that the textbooks provided by the assessee to its students were at a subsidized rate and some study material was being distributed free of cost as well and held that the preparation and distribution of books certainly contributed to the process of training and development of mind and character of the students. It also held that the Tribunal had failed to notice that the surplus amounts realized by the assessee was ploughed back into the main activity of education and accordingly held that the Tribunal was incorrect in denying exemption to the assessee under section 11 and 12 of the Act. It also held that the Tribunal erred in upholding the order of the AO and concluding that the activites carried out by the assessee fell under the 4 th limb of Section 2(15) i.e. advancement of any other object of general public utility as it was clear that the activities of the assessee were solely for the purpose of education.

***Delhi Bureau of Text Books v DIT – (2017) 99 CCH 0005 (Del HC) – ITA 807, 810, 811, 812/ 2015 dated 03.05.2017***

**2400.** The Court, reversing the Tribunal order, granted exemption to the assessee u/s 11 for AY 2009-10 and held that the activity of the assessee was not in the nature of trade, commerce or business to trigger rigours for section 2(15) proviso. Referring to the provisions of Gujarat Town Planning Act (under which assessee was constituted), it noted that the assessee was subject to the control of the State Government and the entire amount realized by the assessee either by selling plots or by recovery of some fees/charges was to be utilized only for the purpose of urban development. Accordingly, it rejected Tribunal's view that assessee was involved in profiteering.

***Ahmedabad Urban Development Authority vs ACIT-TS-383-HC-2017(GUJ)-ITA No. 425 of 2016 dated 02.05.2017***

**2401.** The Court held that where assessee-society was providing latest information and training to those persons who were already in relevant filed of advertising communication, etc. and in such process if certain persons became super-specialists in particular field and institution was

charging fee, case would not fall under proviso to section 2(15) exemption certificate could not be denied to assessee.

***Mudra Foundation for Communications Research & Education v. Chief CIT [2015] 64 taxmann.com 275(Guj.), Special Civil Application No.6086 of 2015, dated July 29, 2015***

**2402.** The Court reversed Tribunal's order and granted exemption under section 11 to assessee, an educational trust running a school. It clarified that assessee charging higher fees compared to other schools would not establish that the school was running for profit making and the trust. In the course of running an educational institution, it was entitled to make a reasonable surplus and setting apart a surplus after expenditure incurred, by itself, would not mean that the purpose is profit making. It further rejected revenue's contention that vide lease-rentals and interest payments to trustees and their relatives, the assessee-trust diverted its income in favour of trustees in violation of Sec 13(1)(c) on the ground that revenue did not bring any evidence to suggest that assessee paid rentals /interest to trustees at the rate higher than the normal market rate.

***Kamdar Education Trust [TS-599-HC-2016(GUJ)]***

**2403.** Assessee had claimed deduction u/s 11(2). Assessee submitted that it was engaged in providing medical facilities at various centers. At time of setting apart of funds, two hospital projects were coming up and modern amenities were required to be provided in existing hospitals. Board of trustees passed resolution to set apart such amount to finance future requirement of trust's projects. AO held that neither there was no such specification in declaration in Form 10 nor in resolution of board of trustees contained any such specification. CIT(A) confirmed AO's action. However, ITAT granted relief to assessee. Held, section. 11(2)(a) provided that such person furnishes statement in prescribed form and in prescribed manner to AO staying purpose for which income was being accumulated or set apart and period for which income had to be accumulated or set apart which should in no case exceed 5 years. Statement of purpose for which income was accumulated or set apart was one of requirements which must be satisfied before assessee could avail benefit u/s 11(2). However, that by itself would not mean that any inaccuracy or lack of full declaration in prescribed format by itself would be fatal to claimant. Prime requirement of said clause was of stating of purpose for which income was accumulated or set apart. In present case, AO called upon assessee to explain position in response to which, assessee pointed out background under which board of trustees had met, considered material and eventually passed a formal resolution setting apart the funds for ongoing hospital projects of Trust and for modernization of existing hospitals. There was a clear statement made by assessee setting out purpose for which income was being set apart. The Court held that ITAT had rightly allowed assessee's appeal. Consequently, Revenue's appeal was dismissed by the Court.

***CIT(Exemptions) vs Bochasanwasi Shri Akshar Purshottam Public Cable Trust- (2018) 103 CCH 0225 GujHC- R/Tax Appeal No 1260,1261 of 2018***

**2404.** The Court dismissed Revenue's appeal against the Tribunal's order allowing exemption u/s 11 to the assessee -society, established with a view to undertake and promote activities connected with development of cattle and buffaloes covered by section 2(15), with respect to income earned by it from sale of semen, relying on the decision in the case of DIT(E) v. Sabarmati Ashram Gaushala Trust [2014] 362 ITR 539 (Guj) wherein it was held that merely because while

carrying out activities for purpose of achieving objects of trust, certain incidental surpluses were generated, the same would not amount to activity in nature of trade, commerce or business.
***Pr.CIT v Animal Breeding Research Organisation (India) - [2018] 95 taxmann.com 226 (Gujarat) - R/TAX APPEAL NO. 522 OF 2018 dated June 11, 2018***

**2405.** The AO brought to tax the income which was claimed to be exempt u/s 80G(5C) by the assessee-trust, registered u/s 12A and also approved u/s 80G(5), created for a specific object of providing relief to earthquake victims of Gujarat before 31-3-2004. The AO opined that the assessee had neither applied the sum before 31-3-2004 nor transferred same to Prime Minister's National Relief Fund, as required by section 80G(5C). The Tribunal granted benefit of the said exemption to the extent the assessee had spent on construction of a school but with respect to the remaining amount, which had not been actually spent, the said benefit was not granted. However, noting that though total sum was not applied for earthquake relief before 31-3-2004, but was transferred by the assessee to the Prime Minister's National Relief Fund on 31-12-2004, the Court held that the assessee had fulfilled terms of section 80G and thus, said sum was not taxable.
***Amul Relief Trust v ADIT(E) - [2018] 95 taxmann.com 111 (GujaratHC) - R/TAX APPEAL NO. 1391 OF 2007 dated June 12, 2018***

**2406.** The Court, applying the principle of mutuality, held that premium received by the assesseee (a cooperative housing society) on transfer of plot by its outgoing member was not taxable in the hands of the society as the premium received was utilized for the common facilities and amenities for the members of the society.
***CIT v Prabhukunj Co-op Hsg Society Ltd – TS-521-HC-2015 (Guj)***

**2407.** Where assessee, a Wakf duly registered with State Wakf Board, had applied for registration u/s 12AA producing certain documents along with application for registration including an order passed by State Wakf Board recognising assessee trust as registered under said Board, the Court held that the assessee application could not be rejected only because the assessee could not provide a registered trust deed, noting that the order of State Wakf Board provided full details of objects and functions of assessee-wakf including manner of appointment of Mutawalli, etc. and accordingly, the fact of existence of assessee-trust was established by the said order. It held that where a religious trust is not created under an instrument, factum of existence of trust could also be established by producing documents evidencing creation of trust.
***Pr.CIT(Exempt) v Dawoodi Bohra Masjid – (2018) 402 ITR 29 (Guj) – Tax appeal no. 852 of 2017 dated 06.02.2018***

**2408.** The Court allowed the exemption claim u/s 10(23C) of the assessee-society which was running two educational institutions as the aggregate annual receipts for each institution did not exceed Rs. 1 crore cap ‘individually’ and clarified that if it had been the intention of the legislature to have limited the scope of the provision, it could easily have said that, if the aggregate annual receipts of any person from all institution(s) do not exceed Rs. 1 crore, instead of saying that the aggregate annual receipts of the ‘educational institution' (and not the person) do not exceed Rs.1 crore.

Go to Index

***Vivekanand Society of Education and Research - TS-620-HC-2017(J & K) - ITA No. 23/2014; MP No. 01/2016 dated 29.12.2017***

**2409.** The Court held that Section 11(6) inserted by Finance (No.2) Act, 2014 denying depreciation while computing income of charitable trust, is prospective in nature and operates with effect from April 1, 2015.
***DIT (Exemptions) v Al Ameen Charitable Fund Trust - [2016] 67 taxmann.com 160 (Karnataka)***

**2410.** Assessee-trust was granted registration under section 12AA. Subsequently, Commissioner cancelled assessee's registration on ground that assessee had not carried out charitable activities during relevant period. Tribunal set aside order passed by Commissioner on ground that whether assessee was involved in a charitable activity or not, could be considered in assessment proceeding. The Court held that whether the assessee was involved in any charitable activities or not and whether income so derived had been apportioned towards any other purpose, could be considered only during course of assessment proceedings and not at time of considering application for registration under section 12A and upheld the order of the Tribunal.
***Dir. IT, Exemption v. D.R. Ranka Charitable Trust-[2018] 100 taxmann.com 371 (KarnatakaHC)- ITA No. 44 of 2014-November 20, 2018***

**2411.** The Court dismissed the writ filed by assessee-trust, running various educational institutions and also registered u/s 12AA, against the order passed by Director General (Inv.) withdrawing exemption/ approval granted to assessee-trust under section 10(23C)(vi), noting that it had collected huge amount of capitation fee from students for admission to medical colleges under innocuous name of 'anonymous donations', huge payments of honorarium and lease rent to the trustees and amounts were transferred to trustees for building their personal assets.
***Navodaya Education Trust v Union of India – (2018) 253 Taxman 412 (KarnatakaHC) – Writ Petition Nos. 3468 to 3472 of 2018 (T-IT) dated 05.02.2018***

**2412.** The Court held that provisions of section 12AA which provide that registration is mandatory to claim exemption would come into force with prospective effect from 1-4-1997.
***PCIT v Poorna Prajana Vidya Peetha Prathisthana [2018] 94 taxmann.com 297 (Karnataka)- ITA NOS. 187 TO 190 AND 9 OF 2018 dated 05.04.2018.***

**2413.** The Court allowed the assessee, a charitable trust, depreciation on assets purchased by it, in spite of the fact that the cost of acquisition was allowed as an application of income on the ground that while in the year of acquiring the capital asset, what is allowed as exemption is the income out of which such acquisition takes place and when depreciation deduction is allowed in the subsequent years, it is for the losses or expenses representing the wear and tear of such capital asset. Further, it held that the amendment to section 11(6) of the Act inserted vide Finance Act 2014 with effect from April 1, 2015 (which bars the allowability of depreciation where the acquisition of the asset has been claimed as an application of income in any previous year) was prospective in nature.
***DIT v Al-Ameen Charitable Fund Trust – (2016) 95 CCH 0130 (Karnataka)***

Go to Index

**2414.** Where Assessing Officer disallowed a part of remuneration paid to trustee by assessee -trust taking a view that it was excessive. The Court held that in view of fact that assessee -trust earned income and paid remuneration to trustee who had also offered tax on remuneration received by her, impugned disallowance was to be deleted.
***CIT, Mangaluru v. Swadeshi Internationals-[2019] 102 taxmann.com 373 (KarnatakaHC)-IT Appeal No. 244 of 2010 dated December 11, 2018***

**2415.** The Court held that the Tribunal was justified in law in allowing carry forward and set off of excess application of income/ expenditure of the current year to next year even when there was no provision in the Act to allow carry forward of such deficit, relying on the decision in case of CIT(E) Vs. Ohio University Christ College [ITA.No.312 & 313 of 2016 (Kar HC)]. In the case it was held that income derived from the trust property had to be computed on commercial principles and if commercial principles were applied, then adjustment of expenses incurred by the trust for charitable and religious purposes in the earlier years against the income earned by the trust in the subsequent year would have to be regarded as application of income of the trust for charitable and religious purposes in the subsequent year.
***Pr.CIT vs THE NEW CAMBRIDGE EDUCATIONAL TRUST [2018] 102 CCH 0230 (Kar HC) ITA No. 319 OF 2018 dated August 14 2018***

**2416.** The Court held that where one of trustees had gone abroad for promoting business of assessee. Trust, mere fact that he went on a tourist visa could not be a ground to conclude that no business was transacted and, thus, impugned disallowance of 50 per cent of foreign travel expenditure was to be deleted.
***CIT, Mangaluru v. Swadeshi Internationals- [2019] 102 taxmann.com 373 (KarnatakaHC)-IT Appeal No. 244 of 2010, dated December 11, 2018***

**2417.** The Court held that the assessee, a trust carrying out activities for the benefit of milk producer societies could not be denied registration under section 12A on the ground that since it provided benefit to a small section of society, it could not be considered to exist for the benefit of the general public. It held that an object beneficial to a section of public was an object of general public utility and to serve a charitable purpose, it was not necessary that the object should benefit
the whole of mankind or all persons in a particular country or state.
***Bangalore Urban & Rural District Co-operative Milk Producers Societies Members and Employees Welfare Trust v DIT – (2016) 95 CCH 0059 (Karnataka)***

**2418.** Where the assessee-society filed an application u/s 12A for grant of registration and same was responded only after nine months, the Court held that the registration was deemed to be granted automatically on expiry of six months period specified in section 12AA(2) for disposal of said application.
***CIT v TBI Education Trust [2018] 96 taxmann.com 356 (Kerala) – ITA No. 54 of 2009 dated July 20, 2018***

**2419.** The Court upheld the CIT's order cancelling the registration granted to the assessee-trust u/s 12AA, noting that the assessee had departed from charitable objectives and was carrying on

business as sub-contractor, implementing the welfare schemes of various State Governments of supplying food to the poor school children, with the funds of the State Government, received by the assessee as contract amounts.

***CIT v Annadan Trust - [2018] 96 taxmann.com 207 (KeralaHC) - IT APPEAL NO. 213 OF 2013 dated July 23, 2018***

**2420.** The assessee-trust was formed with object of promotion of interests of non-resident Keralites and filed an application seeking registration under section 12AA. On examination of the application, the Commissioner found that under the cover of promoting interests of non-resident Keralites, assessee was in receipt of income from certification, bank interest, project identity card but there was no expenditure for charitable purpose made from such income generated and therefore held that though technically, the objects of assessee came within ambit of advancement of objects, of general public utility, as described in section 2(15) (as it existed prior to assessment year 2009-10). Accordingly, observing that it had not carried out any such charitable activity he rejected the application for registration, which was upheld by the Tribunal. The Court upheld the order of the Tribunal noting that the findings recorded by the lower authorities being findings of fact, did not require any interference. Accordingly, it dismissed assessee's appeal.

***Norka Roots v CIT - [2018] 89 taxmann.com 181 (KeralaHC) - IT APPEAL NO. 246 OF 2015 dated 07.12.2017***

**2421.** The Court dismissed Revenue's appeal against the Tribunal's order directing the CIT(E) to grant registration u/s 12AA, holding that non-disposal of the assessee's application for the said registration within six months from date on which application was received results in deemed registration. It relied on the Apex Court decision in the case of CIT v Society for the Promn.of Education (2017) 11 SCC 480 wherein it upheld the High Court decision allowing deemed registration u/s 12AA but applicable only from the date of expiry of the six month period as mandated in section 12AA(2) and not from the date of filing of application.

***CIT vs. EDUCATION TRUST ENANALLOOR - (2018) 102 CCH 0154 KerHC – ITA No 54 of 2009 dated July 20, 2018***

**2422.** Where the assessee, being a charitable trust, made certain payments without deducting TDS, the AO made a disallowance under Section 40(a)(ia) of the Act in respect of such expenditure. On appeal, relying on the rulings of the Bombay High court in Bombay Stock Exchange Ltd. (365 ITR 181) and other Tribunal rulings, CIT(A) observed that since disallowance under Section 40(a)(ia) could only be made in respect of a taxpayer whose income was assessable under Section 28, such provisions of section 40(a)(ia) were not applicable in case of the assessee trust as income and expenditure was computed in terms of section 11. The Tribunal upheld the speaking order passed by the CIT(A) and sustained relief granted to the assessee.

***ITO vs. Army Wives Welfare Association – [2018] 53 CCH 0013 (Kol High Court) – ITA No 160 of 2016 dated May 3, 2018***

**2423.** The Court held that where assessee-trust was established pre-dominantly with an object of providing education to all sections of society, mere fact that it spent a meagre amount of its

total income on some allied charitable activities such as providing food and clothing to relatives of poor students, would not stand in way of denying benefit to it under section 10(23C)(iiiad)
***Sri Sai Educational Trust v. CIT (Exemption), Chennai-[2018] 100 taxmann.com 50 (Madras)- W.P. No. 11301 of 2018- WMP No. 13199 OF 2018-dated October 10, 2018***

**2424.** The Court held that where an assessee-trust filed application for registration under section 12AA with a delay of 18 years contending that the founder of trust was an elderly person who was under bona fide impression that trust had been registered under Act, reason so assigned by the assessee was held not sufficient for condonation of delay and, thus, registration granted to assessee-trust could only be from prospective effect.
***CIT-I vs Hemla Trust-(2018) 98 taxmann.com 293 (Madras)- Tax Case No 637 of 2009 Dated 03.09.2018***

**2425.** The Court disposed of the writ petition filed by the assessee against the reassessment notice issued u/s 148, holding the petition to premature in the sense that the petitioner had not sought for the reasons for reopening of the assessment. It directed the AO and assessee to follow the guidelines prescribed in the case of GKN Driveshafts (India) Ltd v ITO (2003) 259 ITR 19 (SC) laying the procedure to be adopted adopt on being served with a notice u/s 148.
***ANNAMALAI UNIVERSITY v ITO – (2018) 401 ITR 0080 (Mad) – W.P.Nos.11735 to 11740 of 2006 and WPMP Nos.13352 to 13357 of 2006 dated 02.01.2018***

**2426.** The assessee, a charitable institution had applied for grant of registration u/s 12AA, which was rejected by CIT. It filed an appeal before the Tribunal after a delay of 1631 days along with application for condonation of delay. It submitted that the delay was due to the fact the CA of the assessee was not aware of the fact that an appeal could be filed against CIT's order rejecting assessee's registration application u/s. 12AA. The Tribunal refused to condone the delay since the delay was caused due to the negligence of the assessee. The Court observed that the CA engaged by the assessee was unaware of the fact that an appeal could be filed against CIT's order rejecting assessee's registration application u/s. 12AA and the assessee did not have the legal assistance. Accordingly, it set aside the Tribunal's order and condoned delay in filing the appeal by the assessee & remitted the matter back to the Tribunal for decision on merits on grant of registration u/s. 12AA to the assessee.
***United Christmas Celebration [TS-250-HC-2017(MAD)] Tax Case Appeal No.886 of 2016 dated 07.03.2017***

**2427.** The Court allowed assessee's writ and quashed assessment order and demand notice passed by ITO (Exemptions), Muzaffarpur on the ground that there was absence of jurisdiction and order passed by ITO (Exemptions) was in violation of the CBDT Notification No.52/14 since he was only vested with the jurisdiction to make assessment u/s 11 and the assessee had neither claimed exemption under section 11 nor registered itself under section 12AA of the Act.
***Gurukul [TS-596-HC-2016(PATNA HC)]***

**2428.** The Assessee filed an application u/s 12AA for grant of registration in office of CIT (E) and the same was rejected by noticing that AO had not recommended case for grant of registration u/s 12AA as assessee had failed to furnish information/documents as desired by AO and no work of charity was done by assessee. The Tribunal had allowed assessee's appeal by holding that

CIT(E) had refused to grant registration without disclosing complete contents of report and without confronting same to assessee on Revenue's appeal,the Court noted that both CIT(E) and Tribunal had passed a non-speaking order and held that orders passed by them were in violation of principles of natural justice, thus the Court remitted the matter to CIT(E) to pass a fresh speaking order after affording an opportunity of hearing to the assessee.

***CIT (exemptions) vs Tara Ripu Damanpal Trust- (2018) 103 CCH 0144 PH HC- ITA No 196/2016 dated 22.10.2018***

**2429.** In case of a trust registered u/s 12AA and engaged in imparting education and educational activities, the Court dismissed the appeal filed by Revenue against Tribunal's order allowing assessee's claim of depreciation, rejecting Revenue's contention that claiming both depreciation as well as application of income with respect to purchase of capital tantamounted to double deduction.

***CIT(E) v SHYAM LAL PANWAR ANANDI DEVI MEMORIAL CHARITABLE TRUST – (2018) 400 ITR 0393 (Raj) – D.B. Income Tax Appeal No. 337, 344, 388, 339 / 2017 dated 02.01.2018***

**2430.** The Court admitted the Department's writ against the order of the Single Judge directing the AO to grant the assessee educational institution exemption under Section 10(23C)(vi) of the Act and held that the said exemption would be granted to educational institutions who existed solely for the purpose of education. Noting that the objects of the assesse also included eradication of untouchability, dealing with environmental pollution, plantation, AIDS Education, achievement of communal harmony, over all local development, promotion of fruit bearing trees and plantation in the hill areas, it held that the order of the Single Judge was incorrect. Accordingly, it directed the Department to take a decision afresh after considering the decisions of the Apex Court in American Hotel & Lodging Association Educational Institute v. CBDT reported in (2008) 10 SCC 509 and Queen's Educational Society vs. Commissioner of Income Tax reported in (2015) 8 SCC 47.

***CHIEF COMMISSIONER OF INCOME TAX vs. J.B. MEMORIAL MANAS ACADEMY MANAGEMNET SOCIETY - (2018) 101 CCH 0111 Uttarakhand HC - CLMA DELAY CONDONATION APPLICATION NO. 991 OF 2018 IN SPECIAL APPEAL No. 64 of 2018 dated Mar 19, 2018***

**2431.** Where in the case of assessee-society engaged in imparting education, application for exemption under section 10(23C)(vi) was allowed by the order of the Single Bench without considering Revenue's objection that assessee had disproportionate fee structure which was devised to earn maximum money for purpose of expansion of institution which did not fall within ambit of charitable activity, the Court held that the impugned order was to be set aside and, matter was to be remanded back for disposal afresh.

***Chief Commissioner of Income-tax v J.B. Memorial Manas Academy Management Society - [2018] 92 taxmann.com 305 (UttarakhandHC) - SPECIAL APPEAL NO. 64 OF 2018 dated MARCH 19, 2018***

**2432.** Where the assessee, a body corporate, was formed under U.P. Urban Planning and Development Act, 1973, to promote and secure development of local area and for said purpose it had power to acquire, hold, manage and dispose of land, to execute works in connection with supply of water and electricity, to dispose of sewage and to provide and maintain other services

and amenities, the Tribunal held that it could be concluded that assessee had been created with object of general public utility which was a charitable object within meaning of section 2(15) and, thus, its application seeking registration u/s 12AA was to be allowed.
***Firozabad Shikohabad Development Authority v CIT – (2018) 169 ITD 202 (Agra Trib) – ITA No. 55 (Agra) of 2015 dated 07.02.2018***

**2433.** The Tribunal held that when the CIT granted registration u/s 12AA after examining genuineness of activities of Trust, it was not proper for CIT to reject application of trust for benefit of exemption u/s 80G(5) by holding that activities of trust were not genuine.
***DR. GYANENDRA GOEL FOUNDATION vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0284 AgraTrib - ITA No. 173/AGR/2017 dated Mar 8, 2018***

**2434.** The Tribunal held that under section 12AA, the Commissioner is entitled to see as to whether the objects of the trust are charitable in nature, and also to see whether the activities are genuine or not and the scope of such enquiry does not extend beyond that point. It held that the registration granted by the Commissioner would not extend any exemption to an institution under section 11 though such registration is mandatory for claiming exemption under section 11 and that exemption under section 11 can be availed of by institutions which are genuinely engaged in 'charitable activities'. However as the benefit of section 11 is subject to application of income for charitable activities the Assessing Officer is well entitled to see whether such application had been done and the other conditions of section 11 have been complied. The Assessing Officer has to see whether exemption under section 11 is barred by application of section 13. Therefore, it held that the Commissioner was not justified in denying registration to the assessee Trust on the ground that the assessee also earned profits for augmenting its business which was not as per Section 11 read with Section 2(15) of the Act.
***BSA College v CIT(E) - [2018] 92 taxmann.com 39 (Agra - Trib.) - IT APPEAL NO. 408 (AGRA) OF 2017 – dated MARCH 13, 2018***

**2435.** The Tribunal held that registration granted to a trust or institution u/s 12A could not be cancelled where the activities of trust or institution were genuine and were carried out in accordance with objects of trust or institution. Accordingly, it held that the CIT was not justified in revoking the registration on the ground that there was an addition in the objects of the trust without communication to the Department when the additions made (i.e. establishment of diagnostic center) was in line with the original objects of the trust i.e. relief to the poor. Accordingly, it set aside the order of the CIT.
***PARAMOUNT CHARITY TRUST vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0272 AhdTrib - ITA No. 3119/Ahd/2014 dated Feb 27, 2018***

**2436.** The Tribunal set aside the AO's order denying the claim of assessee-trust of exemption u/s 11 on the ground that the assessee's activity of running hostel and providing lodging facility to students did not fall within ambit of charitable purpose u/s 2(15). It held that providing hostel facility is an essential component of an educational institution and it is an aid for attaining educational objects and thus, the said activity would fall under purview of 'education' as provided u/s 2(15). The Tribunal therefore restored the issue to the file of the AO to re-determine taxable income of the assessee after providing benefit u/s 11.

Go to Index

***Shree Ahmedabad Lohana Vidyarthi Bhavan v ITO(E) [2018] 96 taxmann.com 251 (Ahmedabad - Trib.) – ITA No. 993 (AHD.) OF 2017 dated July 12, 2018***

**2437.** The assessee trust was registered u/s.12AA and engaged in field of educational activities and claimed deprecation and also claimed capital expenditure as application towards objects of Trust. The AO held that since assessee claimed capital expenses as application towards objects of Trust, claim of depreciation would amount to double deduction and accordingly disallowed the claim of depreciation made by assessee. The Tribunal upheld the order of the CIT(A) deleting disallowance made by AO and held that the Bombay High Court, in case of CIT vs. Institute of Banking Personnel Selection [264 ITR 110 (Bom)], held that normal depreciation could be considered as legitimate deduction in computing real income of assessee on general principles or U/s.11(1)(a).

***DEPUTY COMMISSIONER OF INCOME TAX vs. AMC MEDICAL EDUCATION TRUST - (2018) 52 CCH 0080 AhdTrib - ITA No. 3089/AHD/2015 dated Feb 2, 2018***

**2438.** The Tribunal directed the DIT(E) to grant registration u/s 12AA to the assessee, a private university engaged in imparting education, which the DIT(E) had rejected on the reasons that the assessee was fully controlled by a Sponsoring Body trust and was not independent and that there were intermingling of the funds, as some of it was received by the assessee and the rest by the sponsoring body trust. With respect to the independence of the assessee, it held that the objects of the university are to impart education and whether such education is being imparted in a controlled manner, financially or administratively, those objects would not change and, hence this aspect was not relevant to test genuineness of objects of the university. Further, with respect the observation of the DIT(E) that funds had been paid to sponsored body trust or by the sponsored body trust to university, the Tribunal held that even if the assessee had taken funds from sponsored body trust it would not affect its objects and if it had extended some undue benefits to sponsored body trust then safeguards were already provided u/s 13.

***Indus University v ACIT – (2018) 91 taxmann.com 41 (Ahmedabad Trib) – ITA No. 2934 (Ahd.) of 2014 dated 20.02.2018***

**2439.** The Tribunal directed the AO to allow assessee's claim for exemption u/s 11 and held that merely because the assessee had constructed and sold dwelling units, it did not make the assesssee a business venture as long as its predominant object (for which it was set up by State Government) was implementation of provisions of trust (i.e. providing affordable accomodation) through various schemes. It held that the objects of assessee were covered by objects of general public utility and registration granted to assessee was still valid. Further, it held that lawful statutory schemes could not be considered as business activity and as a corollary exemption u/s 11(2) could not be declined by invoking proviso to section 2(15) which would only come into play only where assessee was pursuing activities in nature of trade, commerce or business.

***Gujarat Housing Board (GHB) vs Dy.CIT [2018] 54 CCH 0247 (Ahd Trib.)- ITA No. 3297/Ahd/2016 dated 16.11.2018***

**2440.** The Tribunal upheld CIT(A)'s order granting exemption u/s 11 to the assessee engaged in charitable activities. It held that where the main object of the assessee (a charitable trust) was

for providing clean environment to society, maintenance of garden, plantation, horticulture etc, which were accepted by the Revenue in the previous years, the objects were clearly in the nature of charitable purpose and specifically fell within the ambit of 'preservation of environment' and therefore the exemption u/s 11 of the Act was valid. Accordingly, it dismissed Revenue appeal against CIT(A)'s order.

***ITO vs Gujarat Environment Service Society (2017) 51 CCH 199 AhdTrib. ITA 1233 and 2520/ahd/2015 dated 25.10.2017***

**2441.** Where the CIT cancelled the registration of assessee-trust u/s 12AA(3) (i) only on the basis of information received from Investigation Wing that assessee-trust was receiving bogus donation from various parties and (ii) where there was no other material with CIT to assume that assessee had indulged in such activity and also (iii) where the said information was not even supplied to assessee, Tribunal held that the cancellation of registration in the matter was merely on presumption. Accordingly, it set aside the cancellation order and restored the registration u/s 12AA

***Bioved Research Society v CIT – (2018) 91 taxmann.com 268 (Allahabad Trib) – ITA No. 109 (Alld.) of 2017 dated 08.01.2018***

**2442.** The Tribunal allowed assessee's appeal for statistical purposes whose registration had been denied by Commissioner u/s 12A and held that where a trust/institution that did not function in conformity with its objects, could not claim genuineness of its activities and profit-making per se could not be regarded as detrimental as long as it feeds a charitable purpose. Further, the Tribunal held that education is a charitable purpose per se and activities, of an educational trust would not necessarily have to be targeted to serve or educate the poor.Thus, the Tribunal, remanded the matter back to the AO and gave assessee an opportunity to exhibit its' activities as being undertaken toward and in satisfaction of its stated object/s, and in line with the intention of its' founder/promoter's exhibited while forming the Trust.

***Lord Shiva Education Welfare Society vs CIT(Exemption)- (2018) 97 taxmann.com 501 (Amritsar- Trib)- ITA No 605 of 2017 dated 10.09.2018***

**2443.** The assessee-society(charitable trust), providing education by running a school, applied for registration u/s 12AA and its gross receipt being below Rs.100 lacs, claimed exemption on its' entire income u/s. 10(23C)(iiiad).The CIT( E) held that financial statements of assessee-society revealed it to have sources of income other than from school and it was also charging, apart from tuition fee, fees under various heads, viz. admission fee, registration fee, development fund, transport charges, etc. and indicated it to be for profit. Thus, the registration was denied on the ground that charge of hefty fees undermined and violated very basis or notion of charity and regarded it to be a non-profit society. The Tribunal observed that the school was running on CBSE pattern and thus reasonableness was to be considered with reference to cost of providing education and maintaining quality. The Tribunal further noted that there was nothing to suggest of costs being inflated and surplus, by itself would not render society as not a non-profit society. However, noting that the CIT(E) did not comment adversely on the objects of the society as well as genuineness of its activities and also didn't express satisfaction, the Tribunal assumed it to be overlooked by the CIT(E) and held that the order was to be set aside and restored to the file of CIT(E) for fresh adjudication.

Go to Index

***Swami Vivekanand Educational and Welfare Society v CIT (2018) 52 CCH 0418 AmritsarTrib - ITA No. 422/(Asr)/2017 dated 20.04.2018***

**2444.** The assessee society was registered under section 12AA whose main object was to promote efficiency in the functioning of the Government in its various departments responsible for providing benefits/amenities to citizens. The assessee in addition to the statutory fee (fixed by the Government) also charged service fee for acting as an interface between the concerned Department of the Government and the citizens through better coordination and induction of technology. The assessee claimed exemption u/s 11 which was denied by AO on the grounds that the assessee was hit by the provisions of section 2(15) and the nature and scope of assessee's activities fell within the ambit of 'business'. The Tribunal dismissed the appeal of the assessee and held that the service fee charged, in addition to the statutory fee, could be increased at any time by the assessee. This explained the ability of the assessee to produce profit from the services and therefore it was concluded that the assessee has undertaken business as per section 2(15).
***Sukhmani Society for Citizen Services v. ACIT – [2018] 93 taxamnn.com 292 (Amritsar – Trib.) – IT Appeal Nos. 52 (ASR.) of 2014 & 594 (ASR.) of 2017 dated April 24, 2018***

**2445.** The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had denied exemption u/s 11 to the assessee-trust for AY 2011-12 on the ground that it had received registration u/s 12AA only w.e.f. 01/04/2011. It held that the proviso added to section 12A(2) [which provides that the exemption u/s 11 shall to be available with respect to AY with respect to which assessment proceedings are pending before the AO as on the date of registration u/s 12AA] was retrospectively in operation because the legislators in its wisdom had brought the said proviso to prevent genuine hardship which could be caused on the assessee due to non-registration u/s 12A. Further, noting that the assessment order was passed on 29/01/2014, it held that the said proviso was applicable to the assessee's case and thus it was eligible for benefit of section 11. Thus, the Tribunal remanded the matter back to AO for fresh consideration in light of the above observations.
***SAI WIRAN WALI EDUCATIONAL TRUST vs. INCOME TAX OFFICER - (2018) 305 TTJ 0956 (Amritsar) dated 11.09.2018***

**2446.** The Tribunal held that where the assessee an educational trust filed affidavit to effect that trust was created with main object of educating public by establishing schools, technical colleges and other educational institutes and it was not doing any activities other than educational services, registration under section 10(23C)(vi) could not be denied merely because aims and object of assessee-trust included some clauses which were not for purposes of education.
***St Mary's Education Trust vs CIT(Exemption)- (2018) 97 taxmann.com 639 (Amritsar-Trib)- ITA No 710 of 2017 dated 06.09.2018***

**2447.** The Tribunal granted exemption under section 11 to assessee trust despite the fact that the registration under section 12A was granted subsequently and held that the amendment made in first proviso to section 12A(2) (which provides for roll-back of registration for earlier years) is applicable retrospectively as the amendment made in section 12A(2) is curative in nature with the intention to remove hardship.
***St. Jude's Convent School [TS-654-ITAT-2016(AMRITSAR)] (ITA No. 749/(Asr)/2013)***

Go to Index

**2448.** The Tribunal allowed assessee-trust's appeal and held that application of income in subject AY i.e. AY 2012-13 should be first considered as having been made out of the accumulation u/s 11(2) of preceding AY 2011-12 and only the remainder should be considered as application of income of current AY 2012-13. It rejected Revenue's contention that entire amount applied during current year should be considered as amount applied from the current year's income, acknowledging the fact that if assessee's stand was accepted it would get one more year to apply the accumulated income of AY 2012-13. The Tribunal also found merit in assessee's contention that the identity of the monies as accumulation of AY 2011-12 or the income of AY 2012-13 was not possible since accumulations for preceding year as well as current year income were deployed in the form of bank FDs.

***Infosys Science Foundation v ITO [TS-453-ITAT-2018(Bang)] - ITA No.2163/Bang/2017 dated 08.08.2018***

**2449.** Where the assessee, a charitable society registered u/s 12A, claiming exemption u/s 10(23C) was not allowed depreciation as application of income by the AO since the cost of asset was already allowed as application of income in the year of purchase of asset and granting depreciation again would amount to double deduction, the Court relying on the decision of the Co-ordinate Bench in the case of CIT vs. Karnataka Reddy Janasangha (389 ITR 229)(Kar), held that grant of the claim of depreciation as application of income did not amount to double deduction was allowable and that the amended provisions of section 11(6) (which do not allow deduction of depreciation) were prospective in nature [operative effective from 01.04.2015 would not apply to the impugned AY i.e. AY 2006-07 Accordingly, it held that while in the year of acquiring the capital asset, what was allowed as exemption was the income out of which such acquisition of asset was made and when depreciation deduction was being allowed in the subsequent years, it was on account of the losses or expenses representing the wear and tear of such capital asset incurred.

***DCIT vs. CBCI Society for Medical Education (2017) 50 CCH 0256 BangTrib ITA No. 892/Bang/2016 dated 04/08/2017***

**2450.** The Tribunal relying on CIT v. Institute of Banking Personnel Selection [2003] 264 ITR 110/131 Taxman 386 (Bom.) and Govindu Naicker Estate v. Asstt. DIT [2001] 248 ITR 368/[1999] 105 Taxman 719 (Mad.) allowed exemption u/s 11 to an assessee trust and held that expenditure incurred for religious and charitable purposes by assessee in an earlier year could be adjusted against income of the succeeding year while computing taxable income.

***ITO ward 1 vs Namma Sangha (2018) 98 taxmann.com 307 (Banglore-Trib)- ITA No 1562 of 2018 dated 24.09.2018***

**2451.** Tribunal allowed Revenue's appeal and held that the assessee was not eligible for exemption u/s 11 noting that the major income of assessee in year under consideration was on account of Stall space charges and major expenses was also on Hall Rent and nothing else was brought on record in support of contention that assessee had carried out any activities in connection with its main objective (i.e. promoting, training and diffusion of knowledge to standards in manufacture of Tools and Gauges). It held that at the stage of granting registration u/s 12A, only the objects as per the relevant Trust Deed were required to be seen and if the objects were charitable, such registration had to be granted but granting of such registration was not final and

binding for granting exemption u/s 11 in assessment proceedings. Accordingly, it disallowed assessee's claim for exemption u/s 11.

***ITO vs Tool and Gauge Manufacturers Association of India [2018] 54 CCH 0235 (Bang Trib.)- ITA No. 2864/Bang/2017 dated 16.11.2018***

**2452.** The application filed by the assessee on 25-5-1999 requesting for grant of registration u/s 12A with effect from 1-4-1998 (alongwith the request for condonation of delay in filing of application for registration of less than 2 months) was not disposed by the CIT(E) for long. On being persuaded by the Revenue to file another application for registration, the assessee filed other applications on different dates which were rejected by the CIT on technical grounds despite the fact that at the relevant point of time, assessee was enjoying the recognition u/s 80G. Finally, the registration was granted only with effect from 1-4-2016 after making a detailed verification of the records and enquiry. Noting that the revenue could not answer the query as to why said application was not disposed off, the Tribunal held that the CIT(E) had failed to dispose of the application within the prescribed period of 6 months from end of month in which application was received, as per section 12AA(2) and accordingly, it set aside the CIT(E)'s order grant registration only with effect from 1-4-2016. Further, taking note of the assessee's request for condonation of delay in filing the said application, it directed the CIT(E) to grant registration with effect from 1-4-1998.

***Visvesvaraya Technological University v CIT(E) - [2018] 94 taxmann.com 431 (Bangalore - Trib.) - IT APPEAL NO. 8 (BANG.) OF 2016 dated June 4, 2018***

**2453.** The Tribunal upheld the order of the CIT cancelling the assessee trust's section 12A registration with retrospective effect by invoking powers under section 12AA(3) on the ground that he assessee's activities were not as per the object clause. It rejected the contention of the assessee that the power to cancel registration under section 12AA(3) of the Act only applied to trusts registered under section 12AA and not to trusts registered under section 12A (which was replaced by Section 12AA).

***VIdyaranya Seva Sangha v CIT – TS-338-ITAT-2016 (Bang)***

**2454.** The Tribunal held that first proviso to Sec 12A(2) inserted vide Finance Act, 2014 (which provides for roll-back of registration for earlier years) as retrospective and remedial in nature and allowed assessee-trust exemption under section 11 for years prior to grant of registration under section 12A.

***Shushrutha Educational Trust [TS-561-ITAT-2016(Bang)] (ITA NosA18 to 421IBang/2012)***

**2455.** The assessee-trust had claimed cost of the asset purchased towards application of income and had also claimed depreciation on the cost of the asset which was disallowed by the AO on the ground that double deduction could not have been claimed by the assessee. The CIT(A) relied on the decision of DIT(E) Vs. Al Ameen Charitable Fund Trust [(67 taxmann.com 160) (Karnataka)] wherein it was held that while acquiring the capital assets, what was allowed as exemption was the income out of which such acquisition of asset was made and when depreciation deduction was allowed in the subsequent years, it was for the losses or expenses representing the wear and tear of such capital amount that was incurred and further, the term 'income' u/s 11 would mean receipts net of expenses and depreciation being expenditure

towards wear and tear of the asset would be allowed as deduction. Accordingly, he deleted the disallowance made by the AO and allowed the claim of the assessee. The Tribunal upheld the order of CIT(A) and allowed the claim of the assessee.

***ACIT vs. Karnataka State Cricket Association (2017) 50 CCH 0077 BangTrib ITA No.1615/Bang/2016***

**2456.** The Tribunal held that where Commissioner (Exemptions) had a valid and reasonable apprehension that in case of dissolution, properties of trust created and constituted out of 100 per cent grants given by Government, may be distributed amongst private individual members of trust, application of trust for registration under section 12A had been rightly rejected

***Sri Dashmesh Academy Trust v. CIT, (Exemptions), Chandigarh-ITA No. 1257 (CHANDIGARH) of 2017-October 30, 2018***

**2457.** The Tribunal upheld CIT(Exemption)'s order and rejected the assessee's application for grant of approval for exemption u/s 10(23C)(vi) observing that the assessee generated huge surplus running into hundreds of crores from year to year from funds parked in FDRs instead of being redeployed into education. On perusal of financial data for past years, it observed that as on March 31, 2017, out of the total funds available of Rs. 1486 cr., over Rs. 1100 cr. were lying in term deposits and savings account and accordingly noted that a major portion of the funds available were applied in current assets more specifically in the form of cash and FDRs and very little funds were utilized for investing in fixed assets for the purpose of imparting education. It further observed that the applicant was spending on an average only 60% of its receipt / income on its stated charitable activities of imparting education, instead of 85% prescribed by Sec. 10(23C)(vi) and also that the Auditor's report highlighted that grants were not utilized for the purpose for which they were received. Accordingly, it held that the parking funds in FDRs continuously for the last so many years showed that the assessee had neither any intention nor any vision or plan to spend the huge funds so generated and accumulated, for achieving the stated objects of imparting education and accordingly held that the assessee was rightfully denied approval under Section 10(23C).

***I. K. Gujral Punjab Technical University - TS-102-ITAT-2018(CHANDIGARH) - ITA No. 910/Chd/2017 dated 23.02.2018***

**2458.** The Tribunal held that where an assessee educational trust was engaged in running, managing and developing school to provide educational facilities along with scholarships to poor and disabled children, registration under section 12A could not be denied on ground that assessee claiming exemption under section 10(23C) (iiiad) should have sought approval under section 10(23C) (vi) and not under section 12A.

***Swami Vivekanand Education Society vs CIT (Exemption)- (2018) 98 taxmann.com 232 (Chandi-Trib)- ITA No 388 of 2018 dated 06.09.2018***

**2459.** The Tribunal held that since the predominant object of assessee society was advancement of general public utility (i.e. object of promotion of game of tennis) and the same involved incidental or ancillary activity in nature of trade, commerce or business and generating income therefrom (i.e. commercially exploiting rights of hosting 'Davis Cup Match'), the receipt of incidental business (i.e. income from organizing of Davis Cup) would be treated as income from 'charitable purposes' and thus exempt u/s 11 to the extent of limit prescribed by second proviso to section

2(15), i.e. Rs.25 lakhs for the relevant year. However, the income from such incidental business exceeding the said limit prescribed as per second proviso to section 2(15) would be treated as 'business income' liable to be included in total income.

***Chandigarh Lawn Tennis Association v ITO(E) - [2018] 95 taxmann.com 308 (Chandigarh - Trib.) - ITA No. 1382 (CHD.) OF 2016 dated July 26, 2018***

**2460.** The assessee had filed application for grant of approval u/s 10(23C)(vi) within prescribed time limit w.e.f AY 2016-17. The CIT(E) granted approval w.e.f AY 2016-17 but later on shifted to AY 2017-18 on finding that the assessee had in the meanwhile filed its return of income for AY 2016-17 claiming exemption u/s. 10(23C)(vi) though it had still not been granted approval under said section. The Tribunal held that the assessee's act of filing return claiming exemption was justified as the grant of approval was delayed on the part of CIT(E),and moreover the assessee was granted approval thereafter. It held that there was no justifiable reason for shifting grant of approval to AY 2017-18 when otherwise assessee was eligible for approval from AY 2016-17. Thus, the Tribunal directed the CIT(E) to grant approval to assessee from AY 2016-17 onwards and allow the claim of exemption.

***C.M. Public School v CIT(E) (2018) 52 CCH 0580 ChdTrib - ITA No.1540/Chd/2017 dated 06.04.2018***

**2461.** The Tribunal held that though it is permissible for charitable trusts to donate for charitable or religious purposes and apply its income for said purpose, it held that where assessee had given donations to various societies, but had neither established user of donations for charitable purposes, nor demonstrated that said donee society was a charitable society registered under section 12A, the benefit of application of income could not be claimed. Considering that the assessee indulged in the activity of giving donations to other non-charitable institutions which was not in consonance with the approved objects of the assessee-society, it upheld the action of the Commissioner in cancelling the registration granted under section 12A.

***Winsome Foundation v CIT - [2018] 89 taxmann.com 131 (Chandigarh - Trib.) - IT APPEAL NO. 397 (CHD.) OF 2013 dated 04.12.2017***

**2462.** Consultancy fees were paid by the assessee trust to a Company whose two directors were also trustees of the assessee. The AO denied exemption claimed by the assessee trust under Section 11 of the Act by applying the provisions of Section 13(1)(c). The Tribunal observed that the AO had neither shown how the said Company satisfied the requirements of Explanation 3 to Section 13(1)(9), nor had he demonstrated that such payments were excessive viz-a-viz services rendered. Thus, distinguishing the ruling of the Kerala High Court in Agappa Child Centre vs. CIT (226 ITR 211), the Tribunal held that there was nothing to show that any of trustees had unduly benefited from payments made to such Company and hence exemption under Section 11 was held to be allowable.

***DCIT vs. St. Xavier Educational & Charitable Trust – [2018] 53 CCH 0092 (Chennai ITAT) – ITA No 1192/CHNY/2017 dated May 3, 2018***

**2463.** The AO found that administrative expenses claimed by assessee worked out to 95.40% of total expenses and hence, in violation of Foreign Contribution Regulation Rules,2011 wherein, it was defined that not more than 50% of foreign contribution should be defrayed to meet administrative

expenses of association. The CIT(A) disallowed assessee's claim. The Tribunal confirmed the disallowance by relying on Maddi Venataraman & Co P ltd vs Apex Court wherein it was held that it was against public policy to allow benefit of deduction under one statue of any expenditure incurred in violation of provisions of another statue.

***Avvai Village welfare society vs ITO- (2018) 54 CCH 0205 ChenTrib-dated 08.10.2018***

**2464.** In the case of an assessee Trust, the CIT(A) allowed claim of assessee that deficiency in one year could be set off against excess application of earlier year. However, according to Revenue, excess application of income, in particular year could not be adjusted with deficiency in another year. The Tribunal concurred with the CIT(A)'s finding relying on Jurisdictional High Court decision of CIT v. Maharana of Mewar Charitable Foundation wherein it was held that assessee was entitled to set off excess application of earlier year against deficiency in next year. The Tribunal also concurred with the CIT(A)'s finding that though the assessee earned rental income, since it was utilised and applied for the object of the trust, the activity of letting out property was not a commercial activity. Thus, it dismissed Revenue's appeal against the said finding of the CIT(A). The Tribunal also dismissed assessee's appeal against the CIT(A)'s order upholding the AO's order wherein the AO had brought to tax, as per section 11(3), the amount accumulated by the assessee-trust u/s 11(2) for specified purpose, noting that the same was not applied for such specified purpose and the application of income during the year was made from the income which was received as donation. The Tribunal held that since the income accumulated for specific purpose u/s 11(2) was not used for the purpose for which same was accumulated, the assessee was not eligible for exemption u/s 11 in respect of such accumulated income.

***DCIT & Anr v The Willingdon Charitable Trust & Anr (2018) 52 CCH 0349 ChenTrib - TA Nos. 2984, 2985, 2986, 2987 & 2988/Chny/2016 dated 19.04.2018***

**2465.** During assessment proceedings, AO observed that Assessee trust had paid an amount as rent to its own accountant Shri A, which was disallowed by the AO as the Trust was already having its own building in address and said programme was carried out basically in costal areas and there was no need for a separate rental building to be maintained as office. The Tribunal held that assessee made provision for office rent and electricity charges and in order to maintain separate records and personnel pertaining foreign aided GIZ project, assessee had opened separate office and paid rent. Since owner of building insisted rent in cash, Financial controller of society drew a cheque in his own favour, enchased the same and paid to building owner. Moreover, the said rent was not paid from resources of society but out of foreign fund.

***Avvai Village welfare society vs ITO- (2018) 54 CCH 0205 ChenTrib-dated 08.10.2018***

**2466.** The Tribunal allowed assessee's (public religious temple/institution) claim for exemption u/s 10(23C) for AY 2015-16 which was disallowed by the AO on the ground that there was no approval for that AY. It was noted that when the assessee filed application for renewal with CIT(A) in 2016, he granted approval from AY 2016-17 instead of AY 2015-16, holding that the application was not filed in time. The Tribunal noted that (i) the assessee was granted approval u/s 10(23C) first time in 1989 and it was renewed subsequently from time to time till AY 2014-15 (ii) what was sought for by the assessee was renewal of approval granted earlier. Accordingly, it directed the CIT(E) to grant approval u/s 10(23C)(v) to the assessee from AY 2015-16 so that exemption could be continued without any break.

Go to Index

***Arulmigu Devi Karumariamman Thirukoil vs ITO (Exemptions) [2018] 54 CCH 0255 (Chen Trib)- ITA No.1090/Chny/2018 dated 16.11.2018***

**2467.** The Tribunal allowed Revenue's appeal and denied exemption under Section 11 to assessee, an institute formed with an objective to promote Indian Composites Industry through collaboration and exchange of information relating to Fibre Reinforced Plastics or other composites, which was promoted through conferences, publication of journals, books, bulletins, etc.. The Tribunal rejected assessee's stand that it's objectives would be covered under 'education' for the purposes of Sec 2(15) since it disseminates useful information and that 'education' cannot be confined to class room teaching i.e. formal school/college education alone. The Tribunal held that the word 'education' may assume different forms, not necessarily confined to class room study, as open universities have come about in recent times, but it had to have elements of scholastic education, discipline, and accreditation, i.e., carried out in an organized manner, which stands recognized in the field of education. The Tribunal observed that assessee did not carry out educational courses, where education was imparted in a systematic and formal manner, duly accredited, The Tribunal further concluded that assessee's objectives fall under the ambit of advancement of general public utility and since its receipts exceeded Rs. 25 lakh threshold no charity exemption was to be granted.
***ITO (E) vs. FRP Institute TS-307-ITAT-2017 (ITA No. 1385/Mds/2015 dated March 30, 2017) Chennai ITAT***

**2468.** The Tribunal granted exemption u/s 11 to the assessee (a Christian Religious Society) and held that publication and distribution of Christian literature & religious books amounted to a religious activity eligible for exemption u/s 11. It clarified that the dis-entitling provision u/s. 13(1) (b) (which denies Sec. 11 exemption to a charitable trust which benefits a particular religious community or caste) was not attracted as it talks about 'charitable institution' and not religious institutions and that a 'religious purpose' had wider meaning than 'charitable purpose'.
***The Christian Literature Society [TS-163-ITAT-2017 (CHNY)]***

**2469.** The Tribunal denied Sec 11 exemption to assessee (an educational trust) with respect to income earned from renting of auditorium hall during AY 2010-11, by holding that even though exemption u/s 11(4) is available on income derived from business held under trust and the words 'property held under trust' includes business undertaking but the auditorium business was not held under trust, and it was commenced/carried on by assessee subsequent to the formation of the trust. It further held that merely carrying on the business for and on behalf of trust and applying profits for the object of trust would not entitle assessee for exemption u/s 11(4), unless the business was incidental to the attainment of the objects of the Trust.
***Suguna Charitable Trust [TS-364-ITAT-2016(CHNY)] - I.T.A.No.2172/Mds./2014***

**2470.** The Tribunal held that where nursing school was located within hospital's premises and students of nursing school got training in hospital, assessee's activities of running hospital and nursing school were intricately connected and dependent on each other and thus, was one inseparable activity entitling to exemption under section 11(1)
***MAJ Hospital v. Dy CIT (Exemption), Kochi- [2018] 100 taxmann.com 1 (Cochin - Trib.)- ITA No. 499 (COCH.) of 2017-November 12, 2018***

Go to Index

**2471.** During scrutiny assessment, AO noted that assessee had advanced a sum to M/s. VUB Timbers which was a proprietary concern of wife of the Managing Trustee of assesse.The AO held that there was violation of provisions of section 13(1)(c) as money was advanced to person specified u/s 13(3) and concluded that assesse was liable to be taxed for further amount @18% interest on advance and since there was a violation of provisions of s. 13(1)(c), exemption u/s 11 was denied by AO and the same was further upheld by the CIT(A). However, the CIT(A) directed to allow exemption for balance amount thereby restoring exemption u/s 11.The Tribunal observed that the timber is normally purchased only subsequent to construction of building but here even without constructing any building, assessee had made advance for purchase of timber and further, no wood was received by assessee, hence, the Tribunal concluded that in the garb of purchase of timber, advance amounts were diverted for personal benefit of an interested party and thus there was clear violation of provisions u/s 13(1)(c). Further, the Tribunal also held that assessee was paying interest on borrowings, and therefore, notional interest @ 18% on advance amount was rightly brought to tax by AO.

***Ilahia Trust vs ACIT (exemption)- (2018) 54 CCH 0131 Cochin Trib- ITA No 313/ Coch/ 2018 dated 29.10.2018***

**2472.** The Tribunal held that where objective of Trust was not to conduct money lending business, but to do relief to poor, benefit given to assessee in this regard was justified.

***DCIT v Society for Rural Improvement - (2016) 47 CCH 0172 CochinTrib***

**2473.** The Tribunal held that insertion of proviso to section 12A(2) with effect from 1-10-2014 is retrospective in operation where registration is granted in subsequent year, benefit of same has to be applied in earlier assessment years for which assessment proceedings are pending before Assessing Officer. Also appeal before appellate authority should be deemed to be 'assessment proceedings pending before Assessing Officer' within meaning of that term as envisaged under proviso to section 12A(2). Therefore Sec. 11 relief cannot be denied to a trust if it had obtained registration during pendency of appeal before CIT(A).

***SNDP Yogam v ADIT (Exemption) - [2016] 68 taxmann.com 152 (Cochin Trib.)***

**2474.** The Tribunal held that amendment to section 11 denying depreciation to trust is prospective in nature.

***MAJ Hospital v. Dy CIT (Exemption), Kochi- [2018] 100 taxmann.com 1 (Cochin - Trib.)- ITA No. 499 (COCH.) of 2017- November 12, 2018***

**2475.** The Tribunal held that where State Government accredited Nirmithi Kendra, formed with objectives of generating and propagating innovative housing ideas, carried out construction activities in lieu of supervisory charges and said activity became its principal activity, exemption could not be allowed.

***Nirmithi Kendra v. Dy. CIT, Esemption- [2018] 100 taxmann.com 293 (Cochin - Trib.)- ITA Nos. 45 (COCHI) of 2017 & 111 (COCH.) of 2018-October 26, 2018***

**2476.** The Tribunal held that where assessee was engaged in microfinancing especially for poor women and collected interest at rate much higher than banks and NBFCs and levied penal interest even on poors, it was not entitled to benefit of section 11.

Go to Index

***Shalom Charitable Ministries of India v ACIT [2018] 94 taxmann.com 266 (Cochin – Trib.) – ITA NOS. 79 & 80 (COCH) OF 2017 dated 25.04.2018***

**2477.** The Tribunal allowed the assessee's claim for exemption u/s 11 with respect to income derived from training and consultancy, which was disallowed by the AO on the ground that the same was not incidental to the object of the assessee-institution for which registration u/s 12A was given and that the assessee did not maintain separate books of account as envisaged in section 11(4A). The Tribunal held that the training and consultancy fee was charged in course of attainment of main object, i.e. education, and thus was incidental activity and not any independent activity. Further, income realized from training and consultancy fee was not significant keeping in view total revenue of assessee. Accordingly, it held that provisions of section 11(4A) were not applicable.
***XAVIER INSTITUTE OF MANAGEMENT vs. ITO - (2018) 53 CCH 0398 CuttackTrib - ITA Nos. 98, 99, 100 & 101/CTK/2016, 266, 267 & 320/CTK/2017 dated July 27, 2018***

**2478.** Where the assessee, educational society, had filed application to seek approval u/s 10(23C)(vi) for AY 2015-16 beyond the time limit prescribed in the Act i.e. six months from end of previous year, the Tribunal held that it could not be taken that the CIT(E) had condoned the delay in filing the application for AY 2015-16 since there is no provision in the Act which empowers the CIT(E) to condone the delay. However, since the CIT(E) had disposed of the application on 17.11.2016 which was after 30.09.2016 thus, preventing the assessee from making fresh application for AY 2016-17 within prescribed time of 30.09.2016, the Tribunal held that the very same application should be deemed as application for AY 2016-17. Further, with respect to the CIT(E)'s other reason for rejection of approval i.e. objects in Memorandum of Association showed that the society was not existing solely for educational purposes, the Tribunal relied on the decision in the case of Yuvodaya Charitable Trust v CIT(E) [ITA No.389/CTK/2016] wherein it was held that even though objects of society contained other objects which constituted purpose other than educational purpose but as there was no dispute to fact that society carried on object of conducting school only, it could not be denied exemption u/s 10(23C)(iiiad). Accordingly, it directed the CIT(E) to grant approval to assessee society u/s 10(23C)(vi) for AY 2015-16.
***VINERINI SISTERS EDUCATIONAL SOCIETY v CIT – (2018) 52 CCH 228 (Cuttack Trib) – ITA No. 52/CTK/2017 dated 23.01.2018***

**2479.** The assessee was registered under Society Act, 1860 and filed application for registration u/s.12AA. CIT rejected the same on ground that there were only very little activity carried out in previous year. Further, for holding some event, the assessee society looked for donors and thus the CIT assumed that there would be huge commercial consideration by way of advertisement, selling ticket, broadcasting rights over game thereby violating the ambit u/s 2(15) of 'charity'. However, the Tribunal followed CIT vs. Red Rose School wherein it was decided that with regard to genuineness of activities of trust, whose objects did not run contrary to public policy and were, in fact, related to charitable purposes, CIT was empowered to make enquiries as he thinks fit and in case activities were not genuine and they were not being carried out in accordance with objects of trust/society or institution, of course the registration could be refused. The Tribunal held that, CIT could not presume that the income derived by trust/institution were not used in proper manner without making any enquiry. Further, it was clarified by CBDT that if cut-off

specified was exceeded acc to proviso to S.2(15), that amount would be out of scope of exemption and would be chargeable to tax but the exemption u/s 12AA could not be completely eroded and registration could not be refused and thus the Tribunal set aside the order of CIT.
***Cuttack District Tennis Association v CIT (2018) 52 CCH 0314 CuttackTrib - ITA No. 454/CTK/ 2013 dated 12.04.2018***

**2480.** The Tribunal held that where assessee-society was formed with an object to build, maintain and run hospitals, dispensaries and provide and other medical reliefs mere fact that it charged certain nominal fee for providing said services, it could not be concluded that assessee's case fell under proviso to section 2(15) and, thus, exemption of income claimed by assessee was to be allowed.
***ITO (E), Trust ward-1(1), New Delhi v. Escorts Cardiac Disease Hospital Society-[2018] 99 taxmann.com 86 (Delhi - Trib.)- ITA No. 6439 (DELHI) of 2015 October 5, 2018***

**2481.** The Tribunal deleted the addition made by the AO denying the assesse benefit of exemption u/s 11 where on the ground that the assesse-society had violated the provisions of section 13(1)(c) since the office bearers where related to each other and that the Executive President and the Director General were staying on the 4th and 5th floor of the building of the Institute/ society. The Tribunal followed its own decision in the assesse's own case for another year wherein it was held that as per section 13, the benefit u/s 11 could be denied if some advantage or benefit had been taken by the persons who were in the governance of the institution, however there is no condition specified, that the persons in governance should not be relatives. It was also held that the Executive President and the Director General were occupying the premises in the capacity as Executive President and the Director General and in terms of provisions of section 13(2)(c) salary allowance or otherwise could be paid to such person for services rendered by such person, wherein the only condition was that the amount so paid should not be in excess of what may have been reasonably paid for such services, which was not so in the present case.
***TAX OFFICER vs. INSTITUTE OF MARKETING & MANAGEMENT - (2018) 53 CCH 0227 (Del Trib) - ITA No.:- 4444/Del/2015 dated June 28, 2018***

**2482.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing the claim of assesse (carrying on activity to promote, coordinate, guide, implement and maintain act addition system for laboratories) for exemption u/s 11 and 12 which was denied by the AO for the reason that since assessee's activity fell under the sixth limb i.e. 'advancement of any other object of general public utility' and was capable of generating profit, in view of proviso to section 2(15) [which provides that activities falling under sixth limb shall not be considered for charitable purpose if it involves carrying on activity in nature of trade, commerce or business, unless the receipts do not exceed Rs.10 lakhs], the activity could not be considered for charitable purpose. The Tribunal held that the CIT(A) had rightly held that assessee's primary objective was to ensure general public prescribing of standards, and enforcing those standards, through accreditation and continuing supervision through inspection which could not be considered as trade / commercial activity, merely because testing procedures, or accreditation involved charging of fees. It held that the expressions "trade", "commerce" and "business", as occurring in first proviso to section 2(15) must be read in context of intent and and where the dominant object of

an organization was charitable any incidental activity for furtherance of the object would not fall within the expression “business”,“trade” or “commerce.

***Dy.CIT vs National Accreditation Board for Testing and Caliberating Laboratories [2018] 54 CCH 0277 (Del- Trib.)- ITA No.3872/Del/2015 dated 28.11.2018***

**2483.** Where the assessee, being a charitable trust, advanced loans to another trust, CIT(A) upheld the action of the AO in denying benefit of exemption to the assessee under Section 11 by invoking provisions of Section 13(1)(d) on ground that there was violation of mode of investment in terms of Section 11(5) by advancing loan to another charitable trust. Relying on the rulings of the Bombay High Court in Sheth Mafatlal Gagalbhai Foundation Trust (249 ITR 533) and Delhi High Court in Agrim Charan Foundation (253 ITR 593), the Tribunal held that as per section 13(1)(d), only the income from such investment or deposit which had been made in violation of section 11(5) of the Act was liable to be taxed. Relying on the Ruling of the Gujarat High Court in Sarla Devi Sarabai Trust (40 Taxman 388), The Tribunal held that Sec.11(5) could not be applied to present facts as the money advanced was not an investment but a loan.

***Puran Chand Dharmarh Trust vs. ITO – [2018] 53 CCH 0069 (Delhi ITAT) – ITA No 1994/Del/2011 dated May 4, 2018***

**2484.** The Tribunal remanded the matter back to the CIT(E) for re-examining and reconsidering the asesseess’s application for registration u/s 12AA, noting that the CIT(E) had rejected the said application solely on the ground that the President and the Managing Trustee of the assessee-trust were to be chosen from two families, which as per the CIT(E) was in the nature of revocable transfer not permissible in view of section 63, and that the CIT(E) had not examined assessee's application for registration in light of the genuineness of the objects of the Trust.

***MAA SARASWATI MANDIR NYAS V CIT(E) - (2018) 53 CCH 0387 DelTrib – ITA No. 3514/Del/2015 dated July 24, 2018***

**2485.** The Commissioner rejected assessee's application under section 12AA mainly on ground that it was charging hefty fee from students. In view of fact that though hefty fees were being charged by assessee-society at same time, it was also providing free education to needy students and free medical aid to needy patients, the Court held that the aforesaid fact could not change its nature from charitable society to profit making society. Accordingly, the impugned order passed by Commissioner was set aside.

***B.B. Educational Society v CIT - [2018] 92 taxmann.com 300 (Delhi - Trib.) - IT APPEAL NO. 4994 (DELHI) OF 2014 dated MARCH 16, 2018***

**2486.** Where the assessee was carrying out activities in relation to ‘propagation of yoga’ and had claimed exemption of its activities being in the nature of medical relief, education & relief to the poor, the Tribunal held that the assessee’s activities qualified as providing ‘medical relief ’and ‘imparting of education’, thus falling under the definition of charitable purpose u/s 2(15). It further held that voluntary contributions made with specific directions viz. donations received from Divya Yog Mandir Trust for construction of Patanjali Yogpeeth-II, in relation to Vanaprastha Ashram, disaster relief fund and in the University of Patanjali did not constitute the trust’s income as it was to be treated as part of the corpus. Further, with respect to corpus donation received

in the form of immovable property, it rejected Revenue's action of adding the market value of such property as the same did not constitute income of the assessee.
***Patanjali Yogpeeth vs. ADIT TS-57-ITAT-2017(DEL) ITA No.2267/Del/2013 dated 09.02.2017***

**2487.** The CIT(A) had denied exemption/benefit of section 11 to the assessee on the ground that there was a separate provision under the Act i.e. 10(23C)(iv), (v) and (vi) under which the assessee could have claimed the exemption and since assessee had not availed the exemption u/s 10(23C), it was debarred from claiming exemption u/s 11. The Tribunal held that there was no bar or disharmony between the said sections and exemption u/s 11 could not be denied even when there is a specific provision u/s 10(23C). It further held that once all requisite conditions for exemption u/s 11 had been met and even if conditions u/s 10(23C) had not been complied with, then there should be no bar to seek exemption u/s 11. Further, the Tribunal held that the fees charged by assessee from its students, not being capitation fee at all, which had been applied for its dominant purpose/object of carrying out educational activity was neither for profiteering nor for carrying any activity beyond its dominant object and had to be seen as an application of income for charitable purpose.
***Adarsh Public School v JCIT – (2018) 90 taxmann.com 356 (Del Trib) – ITA No. 3782 (Delhi) of 2017 dated 31.01.2018***

**2488.** The Tribunal held that where the assessee held four conferences for the purpose of the promoting the automobile industry, without the prior object of earning income, merely because it generated some excess receipts over expenses, it could not be characterized as a business activity and therefore such activities would fall within the ambit of first proviso to section 2(15), eligible to benefit under section 11 and 12 of the Act.
***Society of Indian Automobile Manufacturers v ITO - (2016) 47 CCH 0196 DelTrib***

**2489.** The Tribunal held that ICAI is an educational institute and its coaching activities fall within meaning of charitable purpose under section 2(15), hence entitled to exemption under section 11.
***DDIT v Institute of Chartered Accountants of India - [2016] 70 Taxmann.com 54 (Delhi-Trib.)***

**2490.** The Tribunal held that the AO was unjustified in denying the assessee (charitable society registered u/s 12AA with object to open school, colleges, orphanage and destitute home) exemption under Section 11 on the alleged ground that it had applied its income to particular community as it allegedly operated under the motive to evangelize. The Tribunal upheld the order of the CIT(A) and held that imparting religious education along with recognized education was a part of Indian heritage and any society/trust could not be barred from claiming exemption u/s 11 merely because of fact that it is imparting Theological courses to its students. Further, it observed that there was no evidence on record to prove that the assessee had had converted Indians into Christianity. Accordingly, it dismissed the Revenue's appeal.
***INCOME TAX OFFICER vs. BHARAT SUSAMCHAR SAMITI - (2018) 52 CCH 0198 DelTrib - ITA No. 235/Del./2015, 236/Del./2015 dated Mar 16, 2018***

Go to Index

**2491.** The Tribunal, relying on the decision of the Hon'ble Supreme Court in case of CIT Vs. Rajasthan and Gujarati Charitable Foundation in Civil Appeal NO. 7186/2014 dated 13.12.2017 wherein it has been held that up to the assessment year 2015-16 the assessee was entitled to claim the cost of acquisition of fixed assets as application of income and further deprecation thereon in subsequent years, directed the AO to delete the disallowance of depreciation claimed by the assessee charitable trust.

***SOCIETY FOR EDUCATIONAL EXCELLENCE vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0197 DelTrib – ITA No. 6957, 6960 and 3606/Del/2017 dated Mar 19, 2018***

**2492.** Where Revenue denied exemption u/s 11 to assessee-town development authority based on dismissal of SLP by the Supreme Court filed against the ruling of a non-jurisdictional High Court which had denied such exemption to another such authority, Tribunal held that summary dismissal of SLP cannot be construed as a declaration of law by the Hon'ble SC under Article 141 of the Constitution and, thus, it was bound to follow decision of jurisdictional High Court allowing the exemption to the assessee in it own case. Further, noting that the issue before the non-jurisdictional High Court was about cancellation of registration u/s 12AA(3) and not denial of exemption u/s 11 as in the case under consideration and that assessee was allowed exemption u/s 11 consistently in the past, Tribunal upheld assessee's exemption claim

***Moradabad Development Authority v ACIT - TS-9-ITAT-2018(DEL) - ITA Nos.4631 & 4632/Del/2017 dated 04.01.2018***

**2493.** The Tribunal held that as per Section 12AA of the Act, for the purpose of granting registration as a charitable institution, the DIT(Exemptions) was to grant registration once he was satisfied about the genuineness of activities of the trust and about the objects of the trust and was not empowered to deny exemption by contending that the activities of the trust were in the nature of business activities as per proviso to Section 2(15) of the Act. Further, the Tribunal noted that merely because the assessee was receiving service charges from various organizations for conducting training programmes, the activities of the trust could not partake the character of business. As regards the genuineness, the Tribunal observed that the assessee had received service charges from well reputed companies and therefore the genuineness of its activities could not be doubted.

***Institute of Road Safety & Fleet Management Society v DIT – (2016) 48 CCH 0003 (Del Trib) – ITA No 596 / Del / 2014***

**2494.** The assessee paid honorarium to doctors outside India for attending a seminar conducted for benefit of its parent body. The Tribunal held that in view of fact that even though said payments were covered under FEMA, yet assessee did not obtain approval of RBI, there was violation of section 11(1)(c) and, consequently, assessee's claim for application of income in respect of payments in question was to be rejected.

***ITO (E), Trust ward-1(1), New Delhi v. Escorts Cardiac Disease Hospital Society-[2018] 99 taxmann.com 86 (Delhi - Trib.)- ITA No. 6439 (DELHI) of 2015 Ooctober 5, 2018***

**2495.** The Tribunal deleted the addition made by the AO considering the donation received by the assessee-society as unexplained cash credit u/s 115BBC / section 68, noting that (i) assessee

Go to Index

had disclosed the donation in its books of accounts (ii) produced a confirmation letter signed by the Secretary of the donee-sansthan who had also signed the cheque and (iii) the said donation was utilized for construction of the building.

***SHREE BANKEY BIHARI EDUCATIONAL SOCIETY (REGD.) vs. ADDITIONAL COMMISSIONER OF INCOME TAX [2018] 53 CCH 0421 (DelTrib) ITA No. 2497/Del/2013 dated August 03 2018***

**2496.** The Tribunal held that even if the amount spent on purchase of capital asset by charitable institution was treated as application of income, it was also entitled to claim depreciation on same capital asset utilised for business for AY 2010-11 & AY 2011-12, in view of the decision in the case of DIT (E) vs. Indraprastha Cancer Society (2015) 53 taxmann.com 463 (Del HC) wherein it was held that insertion of subsection (6) to section 11 (prohibiting such double deduction) is prospective w.e.f. 01.04.2015 and, hence, no disallowance on account of depreciation can be made in years prior to AY 2015-16.

***ACIT vs. ESCORTS HEART INSTITUTE & RESEARCH CENTRE LTD. (2018) 53 CCH 0327 DelTrib – ITA Nos. 5660 & 5661/Del/2015 dated 12th July, 2018***

**2497.** The assessee-association, an Apex sports body for selecting athletes to represent India at Olympic Games, Asian Games and other international athlete meets at these events, claimed exemption u/s 11. The AO rejected the claim opining that proviso to section 2(15) [which provides that the advancement of any other object of general public utility shall not be a charitable purpose if it involves carrying on of an activity in the nature of trade, commerce or business for a cess or fee] was squarely applicable to the assessee on the only ground that it received some sponsorship from a private company in respect of Asian games and Youth Olympic games. The Tribunal held that the assessee was engaged in multi level activities of diverse nature but primary and dominant activity was promoting sports activities not only in India but also in international forum and that it would not lose its character of charitable purpose merely because some sponsorship was accepted from a private company in respect of Asian games and Youth Olympic games. It held that the proviso to section 2(15) would be attracted only if the real object was to make / earn profit.

The Tribunal also held that even though expenditure incurred for acquisition of capital assets was treated as application of income for charitable purposes u/s 11(1), yet depreciation would be allowed on assets so purchased.

***DCIT v India Olympic Association [2018] 96 taxmann.com 184 (Delhi - Trib.) – ITA No. 1130 (DELHI) of 2016 dated July 19, 2018***

**2498.** Assessee Trust was established for benefit of humanity which were charitable in nature and had applied for registration u/s 12AA before CIT and also an application was filed for exemption u/s 80G.The CIT rejected assessee's grant of registration and application for exemption and noted that there were five initial trustees, and all were non-residents. Further, inn terms of Explanation 1 to section 60 and 73 of Indian Trust Act, a non-resident could not be a trustee of an Indian resident trust unless they are domiciled in India. The Tribunal on appeal held that, section. 73 of Indian Trust Act, 1882 does not forbid appointment of NRI, and such provision per se could not invalidate a Trust, but rather provided bar for appointment of non-resident as a trustee. Further, the Tribunal noted that, before CIT in application filed in 'Form 10A', assessee had

already given list of trustees and one of the trustees was citizen of India and domiciled in India. Thus, it held that simply because other four trustees were non-resident it would not make the assessee an invalid trust. Further, the Tribunal held that CIT had not examined objects and genuineness of activities of assessee which were required to be examined while considering registration u/s 12AA, and therefore, the Tribunal restored back to CIT the matter of registration and directed to examine 'objects' of Trust as well as genuineness of its activities.

***Global academy of emergency medicine vs CIT- (2018) 54 CCH 0125 Del Trib- ITA No 6291/Del/15 dated 14.09.2018***

**2499.** Assessee, registered society u/s. 12AA was engaged in imparting education through running school. AO noted that Assessee made investment in purchase of land and farm houses during year out of sale proceeds of land sold in AY 2007-08, which were not used for purpose of education. AO issued show cause notice giving reference to substantial profits generated year after year, rejection of approval u/s. 10(23C)(vi) and investment in purchase of farm houses and land not used for purpose of education. AO denied benefit of exemption u/s. 11(1) and computed income under chapter-IVD, by treating surplus amount as income mainly on ground that assessee-society was not engaged in providing education but for earning profits only. AO held that sale consideration of land was utilised in purchase of any asset during previous year relevant to AY 2007-2008 and disallowed deduction u/s. 11(1A)(a) for capital gain. CIT(A) applied s 11(1B) and directed to enhance income. The Tribunal held that, assessee had purchased land and used accumulated amount for charitable and educational purposes. No evidence had been brought on record by Revenue to prove that land at Gopalpura and Lohari were used for non-educational and non-charitable purposes. CIT(A) made reference to two properties which had got no bearing on issue, as said two properties according to explanation of assessee, were not utilised for accumulated profits u/s. 11(2) because accumulation had been made u/s. 11(2) in respect of three properties only. CIT(A) wrongly applied sec. 11(1B) as assessee accumulated its income u/s. 11(2) and in that situation sec. 11(1B) was not applicable. Accumulation was u/s. 11(2) and not under explanation to sub-section 11(1) as was clear from order passed by CIT(A) and Tribunal in AY 2007-2008 and it was clearly noticed that Form-10 had been filed in AY 2007-2008 which was applicable for accumulation of income u/s. 11(2) only. Findings of CIT(A) that sec. 11(3) was applicable was also not correct because income accumulated u/s. 11(2) was applied for educational purposes. Considering totality of facts and circumstances of case no addition could be made against assessee of such nature. Order of CIT(A), therefore, could not be sustained in law for enhancing income of assessee and that too by invoking sec. 11(1B) and 11(3), which were not applicable to case of assessee.

***ACIT vs The Scientific and Educational Advancement Society- (2018) 54 CCH 0096 DelTrib- ITA No. 4944,4430/Del/2012 dated 15.10.2018***

**2500.** During assessment proceeding, AO noted that assessee in its computation of income had claimed, excess application made during year and excess application of income of earlier year to be carried forward and to be set off against future income receipts.AO stated that even though capital expenses in case of a charitable institution were allowable as application of income, no claim for carry forward of loss on account of capital expenses was allowable.AO disallowed carry forward of either current year loss or of earlier year loss.CIT(A) confirmed AO's action. The Tribunal held that coordinate Bench in assessee's own case for AYs 2008-09 and 2009-10 held that in case of a charitable trust, their income was assessable under self contained code

mentioned in Ss 11 to 13 and income of charitable trust was not assessable under head “profit and gains of business” u/s 28 in which provision for carry forward of losses was relevant.Income derived from trust property has also got to be computed on commercial principles and if commercial principles are applied then adjustment of expenses incurred by trust for charitable religious purpose in earlier years against income earned by trust in subsequent year will have to be regarded as application of income of trust for charitable and religious purpose.Thus, carry forward of current year's loss was allowed to be set off in future years

***KSD CHARITABLE TRUST vs. ASSISTANT COMMISSIONER OF INCOME TAX. (2018) 54 CCH 0347 DelTrib- ITA No. 3033/Del/2015 dated 13.12.2018***

**2501.** Where the assessee had provided scholarship given to Ms. Aarti Rai in foreign currency and had been paid in UK i.e. the application of funds had taken place outside India, the Tribunal held that the AO was correct in denying the assessee Exemption u/s 11 on the ground that the said exemption would only be granted if the application of funds had taken place within India or the approval of Board was obtained granting specific exemption.

***IILM FOUNDATION & ORS. vs.ADDITIONAL DIRECTOR OF INCOME TAX (EXEMPTION)-(2017) 51 CCH 0294 DelTrib - ITA No. 1142/Del/2011 dated 08.11.2017***

**2502.** Assessee was aggrieved by cancellation of registration granted u/s 12AA and was also aggrieved by enhancement of its income by CIT(A) from NIL income to Rs. 4,88,140/- even knowing that said amount of contribution was received by assessee from members for reimbursement of expenses. The Tribunal held that Bombay High Court in Trustees of Shri Kot Hindu Stree Mandal Vs. CIT held that membership and subscription amounts received by assessee from its members could not be characterized as "voluntary contribution".CIT(A) declined to recognize said judgment only on ground that assessee was assessed in status of an AOP and its registration as member was cancelled.Since registration u/s 12AA was protected till 01.10.2014, therefore, action of CIT(A) was uncalled for.Assessee’s ground was allowed.

***LORDS DISTILLERY LIMITED & ORS. vs. DEPUTY COMMISSIONER OF INCOME TAX & ORS. (2018) 54 CCH 0370 DelTrib- ITA No. 2576/Del/2010 dated 14.12.2018***

**2503.** The assessee paid honorarium to doctors outside India for attending a seminar conducted for benefit of its parent body. The Tribunal held that in view of fact that even though said payments were covered under FEMA, yet assessee did not obtain approval of RBI, there was violation of section 11(1)(c) and, consequently, assessee's claim for application of income in respect of payments in question was to be rejected

***ITO (E), Trust ward-1(1), New Delhi v. Escorts Cardiac Disease Hospital Society-[2018] 99 taxmann.com 86 (Delhi - Trib.)- ITA No. 6439 (DELHI) of 2015 Ooctober 5, 2018***

**2504.** Where assessee-trust was formed for complying Corporate Social Responsibility (CSR) requirement under Companies Act and its objects were eradicating hunger and poverty, promotion of education etc. and other activities as prescribed by Govt., the Tribunal directed the CIT(Exemption) to grant registration u/s 12AA and approval u/s 80G(5)(vi) to the assessee, noting that CIT(Exemption) had not doubted genuineness of activities of assessee-trust nor doubted its charitable object, but had denied registration/ approval on other reasons such as the trust was created for the purpose of carrying out CSR activities, no activities in sync with the requirement of the Companies Act had taken place in the trust so far, activities so far further

showed that the trust had relinquished its function as the primary implementation agency by the transferring its funds to other society, social enterprises cannot be a direct recipients of money from corporate, etc. It held that the CIT 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 and such powers do not extend to the eligibility of the trust for exemption u/s 11 r.w.s. 13 which falls in the domain of the AO. It further held that the issue that CSR expenditure is allowable expenditure u/s 37(1) or not, is relevant only for taxability of company incurring such expenditure and was not relevant for granting the said registration.

***Nanak Chand Jain Charitable Trust v CIT(Exempt) – (2018) 169 ITD 534 (Delhi Trib) – ITA Nos. 6527 & 6528 (Delhi) of 2016 dated 09.02.2018***

**2505.** The Tribunal following its order in the assessee's own case for the prior AY held that the activities carried out by the assessee viz., holding of periodical meetings/conferences of the members and the medical profession in general, to publish and circulate official journals, conduct educational campaigns in India, encourage medical research etc was covered within the definition of charitable purpose for medical relief contained u/s 2(15) and did not involve any trade, commerce or business and accordingly held that the AO erred in denying the assessee exemption u/s 11(1) on the ground that the assessee was engaged in a commercial activity.

***Assistant Commissioner of Income Tax vs. Indian Medical Association [I.T.A. No.6076 (2017) 51 CCH 0016 DelTrib]***

**2506.** The Tribunal reversed the order of the CIT(E) and granted Sec. 12A registration to assessee-society involved in the upliftment of farmers and protection of farmers' interests. The Tribunal rejected the contention of the Revenue that Assessee was not carrying out charitable activities and it was merely conferring benefit to a particular section and not public at large by holding that the section of public to whom benefit was intended to be allowed to were farmers which constitute approx. 60% - 70% of population of the country and the protection of interests of farmers would invariably confer several benefits. It further clarified that at the stage of granting registration u/s 12A, CIT(E) was only required to see the objects of society and was not required to examine the application of income.

***Bhartiya Kisan Sangh Sewa Niketan vs. CIT(E) TS-372-ITAT-2017 (ITA No. 6721/Del/2015 dated August 25, 2017)***

**2507.** The AO denied the assessee's claim for exemption u/s 11 on the ground that the assessee had not incurred any expenditure relating to charitable activity for the cause of education, medical aid or relief to poor and even not incurred any expenditure for the general public utility since the assesse only provided services towards water quality testing and had incurred expenditure with reference to the said services. The Tribunal held that the assessee's activity came within the purview of exceptions provided u/s 2(15)(i) for the reason that the assessee's activity of testing water quality monitored quality in reservoirs and slum areas and almost the entire fee charged for the same was spent towards testing activity. It held that the testing of water and thereby supplying good quality of water contributes to health of the people and to take care of health of the people was one of the objects of the assessee. Thus, the Tribunal held that the activity of

the assessee was to be considered as advancing of general public utility eligible for exemption u/s 11 of the Act.

***INSTITUTE OF HEALTH SYSTEMS vs. INCOME TAX OFFICER - (2018) 53 CCH 0262 (Hyd Trib) - ITA No. 1783/Hyd/2017 dated June 28, 2018***

**2508.** The Tribunal held that the DIT(E) was not justified in cancelling registration of the assessee, a society registered for charitable purpose, with the object of promoting cricket for men, on the ground that the assessee derived income from various commercial sources and therefore lost its character as the charitable society as per first proviso to section 2(15) and also that it had conducted cricket match for women which was against the objects of the trust. It held that even if the assessee did carry on commercial activities for advancement of any other object of general public utility and its turnover was less than prescribed limit, it did not lose its charitable nature as per first proviso to section 2(15). It noted that to claim exemption under section 11, assessee had to be carrying on charitable activities and had to prove that it applied its income for charitable purposes and there was no limitation that assessee should not make any profit out of its activities. Even if it was held that conducting matches for women was against the object of trust only the exemption could be denied in respect of such income but registration could not be cancelled.

***Hyderabad Cricket Association vs. Commissioner Of Income Tax(2016) 48 CCH 0119 (HydTrib) (ITA No. 649/Hyd/2015)***

**2509.** The Tribunal held that trusts are allowed to accumulate funds for creating long term assets to carry out its main objects but they must specify clearly as to why they were accumulating huge funds.

***Presentation Social Service Centre v DDIT – (2015) 45 CCH 0198 Hyd Trib***

**2510.** The Tribunal set aside the CIT(E)'s order rejecting the assessee-society's request for grant of approval u/s 80G. The CIT(E) had declined to grant approval u/s 80G in the absence of the details related to other chapters of the assessee-society. The Tribunal held that the CIT(E) ought to have made enquiries from the Jurisdictional Assessing Authority, where other chapters of society were registered and assessed. Further, it directed the assessee to furnish complete details of other chapters of the society and its financial and administrative relations with such chapters

***GLAUCOMA SOCIETY OF INDIA vs. CIT(E) (2018) 53 CCH 0360 IndoreTrib – ITA No. 92/Ind/2018 dated 18th July, 2018***

**2511.** The Tribunal held that where assessee, a trust registered under section 12AA, was running various educational institutions, in view of fact that it collected huge amount of capitation fee from students for admission to medical colleges, impugned order passed by Commissioner (Exemption) cancelling registration granted to assessee under section 12AA as well as withdrawing exemption granted to it under sections 10(23C)(vi) and 10(23C)(via) was justified.

***Indian Medical Trust v. Pr CIT(Central) Jaipur-[2018] 99 taxmann.com 273 (Jaipur -ITA Nos. 736 (JP) of 2017 & 252, 253 & 545(JP) of 2018- October 12, 2018***

Go to Index

**2512.** The Tribunal held that where assessee trust engaged in running various educational institutions was denied registration under section 12AA merely on ground that some part of land on which assessee had setup a university was not in ownership of said university as per certain Government notification, same was unjustified.
***Indian Medical Trust v. Pr CIT(Central) Jaipur-[2018] 99 taxmann.com 273 (Jaipur - Trib.)-ITA Nos. 736 (JP) of 2017 & 252, 253 & 545(JP) of 2018- October 12, 2018***

**2513.** Assessee company was formed with charitable objects and was registered u/s 8 of the Companies Act, 2013 (corresponding to Section 25 of the Companies Act, 1956). The ld. CIT (Exemption) had granted registration u/s 12AA(1)(b) of the Act to the assessee company. However, it denied deduction u/s 80G(5)(vi) pointing out that the assessee primarily intended to carry out the activities outside India and Section 80G(5)(vi) only provided deduction with respect to donations to any charitable institutions or funds if it was established in India, unless approval had been received under section 11(1)(c)(i) of the Act, which was not so in the instant case. Further the CIT (Exemption) also contended that the applicant had simply collected funds and had not carried out any significant charitable activities and therefore was not eligible for deduction u/s 80G. The Tribunal concurred with the view of the CIT(E) and held that since the activities of the institution included activities intended to be carried outside of India, its income would be liable to inclusion in its total income under the provisions of sections 11 and 12 of the Act unless it had the necessary approval obtained under section 11(1)(c) of the Act. Since the assessee had not obtained the requisite approval, the Tribunal held that it was not entitled to deduction under section 80G.
***Barefoot College International v CIT - (2017) 50 CCH 0024 JaipurTrib - ITA No. 795/JP/2016 dated 11.05.2017***

**2514.** Assessee-trust had advanced certain amount without interest to two independent trusts. Trustee of assessee-trust was also President of those two independent trusts. Assessing Officer was of opinion that assessee-trust had utilized funds for benefit of its trustee and thus, denied claim of assessee under section 11. However, as Assessing Officer had not verified that said trustee of assessee-trust held more than 20 per cent share of profit in those two trusts. matter was remanded by Tribunal to be remanded back for said factual verification.
***Asst. CIT (Exemptions), Cir.-1, Kolkata v. Hooghly Engineering & Technology College Society-[2018] 96 taxmann.com 14 (Kolkata - Trib.)-ITA No. 1579 (KOL.) of 2016-dated July 4, 2018***

**2515.** The Tribunal held that where the main objection of the Institution was charitable in nature, then the activities carried out towards the achievement of the said activities, being incidental or ancillary to the main object would be considered as charitable in nature even if it resulted in a profit and even if it was carried out with non-members. It therefore held that the assessee, a non- profit organization, set up for the purpose of promotion and protection of the Indian business Industry could not be denied exemption under section 2(15) of the Act merely because it had receipts from environment management centres, meetings, conferences and seminars organized for the promotion of the Indian business industry.
***DCIT v Indian Chamber of Commerce – (2016) 47 CHH 0549 (KolTrib)- ITA Nos. 415 & 416/Kol/2016***

Go to Index

**2516.** The Tribunal held that the assessee could not be denied deduction on account of depreciation even though the purchase of capital assets was allowed as an application of funds earlier year. It held that the amendment denying such depreciation was applicable with prospective effect from 01.04.2015. Accordingly, it dismissed Revenue's appeal.
***INCOME TAX OFFICER vs. SURYA BUX PAL CHARITABLE TRUST - (2018) 52 CCH 0117 LucknowTrib - ITA No. 193/Lkw/2016 dated Feb 23, 2018***

**2517.** The Tribunal held that removal and disposal of trees and exploitation of forest resources is in the nature of preservation of environment and thus, such activities are held to be Charitable in nature. Thus, the order of the CIT(A) granting registration u/s 12A was upheld and Revenue's appeal was dismissed.
***Dy. CIT vs. U. P. Forest Corpn-(2018) 54 CCH 0369 LucknowTrib-ITA Nos. 352 to 356/Lkw/2017-Dated Dec 13, 2018***

**2518.** During assessment proceeding, assessee was denied registration u/s 12AA as activities carried on by it involving carrying on of business and trade did not fall within definition of preservation of environment as it was inserted in s. 2(15) w.e.f. 01/04/2009. Later on, assessee's application for registration u/s 12AA was granted by CIT(A) as it was held to be doing charitable activity. CIT(A) also allowed exemption u/s 11. The Tribunal held that CIT(A) found that phrase "not involving activities for profit", was deleted by way of Finance Act 1983 w.e.f. 1-4-1984 and same was reintroduced in Act by way of Finance Act 2008 w.e.f. 1-04-2009. During period 1-4-1984 to 31-3-2009 there was no provision in Act which qualified charitable activities by "not involving activities for profit". AO had interpreted a meaning while framing assessment of a term which was not part of Act for period under consideration. Said findings of CIT(A) were crystal clear and did not require any interference. Revenue's ground dismissed.
***Dy. CIT vs. U. P. Forest Corpn-(2018) 54 CCH 0369 LucknowTrib-ITA Nos. 352 to 356/ Lkw/2017- Dated Dec 13, 2018***

**2519.** The Tribunal held that where assessee educational institution existed solely for purpose of education and its receipts were applied only for educational purpose and Assessing Officer also did not dispute the same, assessee could not be denied exemption under section 10(22) merely on ground that it was receiving fees from foreigner students in foreign exchange abroad by way of an arrangement with an educational organisation abroad.
***Dy. Dir. IT- (E), Mumbai v. American School of Bombay Education Trust -[2018] 100 taxmann.com 338 (Mumbai - Trib.)- ITA No. 5581 (MUM) of 2014- CO No. 16 (MUM.) of 2016-November 28, 2018***

**2520.** The Tribunal held that where receipts of assessee-association, (formed with an object to promote and afeguard rubber industries), from non-members and other sources was utilised/applied solely towards promotion of objects of association and no portion was paid or transferred directly or indirectly to its members, proviso to section 2(15) would not be attracted and the exemption u/s 11 could not be denied.
***All India Rubber Industries Association v. Addl. Dir. IT (E), Mum-[2018] 100 taxmann.com 7 (Mumbai - Trib.)-[2018] 100 taxmann.com 7 (Mumbai - Trib.)- ITA Nos. 1368, 3994 (MUM.) of 2016 & 247 (MUM.) of 2017-October 12, 2018.***

Go to Index

**2521.** The Tribunal held that contribution made by assessee-association, (formed with an object to promote and safeguard rubber industries), to corpus of Rubber Skill Development Centre, a section 25 company formed under Prime minister Sector Skill development programme, was not a case of investment as envisaged under section 11(5) read with 13(1)(d), and, thus, assessee could not be denied exemption under section 11.

***All India Rubber Industries Association v. Addl. Dir. IT (E), Mum-[2018] 100 taxmann.com 7 (Mumbai - Trib.)- ITA Nos. 1368, 3994 (MUM.) of 2016 & 247 (MUM.) of 2017-October 12, 2018.***

**2522.** The Tribunal held that (i) where assessee charitable trust was engaged in promotion of cricket and Assessing Officer denied its entire claim for exemption under section 11 on grounds that a part of expenditure incurred by assessee was not for object of trust, since assessee had not violated any of conditions of section 13, assessee's claim for exemption could not be disallowed fully but it had to be disallowed only to extent of such part of expenditure which was not incurred for object of trust.

(ii) Where application of assessee charitable trust for issuance of notification under section 10(23) impugned assessment year was still pending before appropriate authority, Assessing Officer was to be directed to consider assessee's claim of exemption under section 10(23) in case a notification under section 10(23) was issued for impugned assessment year by appropriate authority.

(iii) Where assessee trust claimed expenditure towards travel expenses of its office bearer claiming that he had gone to Delhi to pursue application of assessee under section 10(23) before CBDT, since assessee had not furnished details along with corresponding invoices and vouchers in respect of such visit of its office bearer and, thus, failed to justify such travel expenditure, Assessing Officer had correctly disallowed same.

(iv) Where assessee trust, engaged in promotion of cricket, claimed expenditure on account of purchase of complementary tickets for different international matches for VIPs so as to popularise game of cricket amongst VIPs, since assessee had furnished details of tickets purchased with supporting evidence and Commissioner (Appeals) had also given a factual finding that amount spent for purchase of tickets was very small having regard to operations of assessee, expenditure claimed by assessee was to be allowed.

(v) Where assessee trust, engaged in object of promotion of cricket, claimed expenditure towards foreign travel of its office bearers for purpose of attending a meeting, since Commissioner (Appeals), after perusing material on record, was convinced that there was a definite purpose for which foreign visits were undertaken by concerned persons, foreign travel expenditure claimed by assessee was to be allowed.

(vi) Entertainment expenditure for wine, food and gift incurred by assessee-charitable trust, engaged in promotion of cricket, for Government officials and other persons during a meeting was not to be allowed.

Go to Index

***Board of Control for Cricket in India v. ITO(Exemp.) Ward-1(1), Mumbai -[2018] 100 taxmann. Com 246 (Mumbai - Trib.)- ITA Nos. 9272 (MUM.) of 2004, 616, 1443, 2244, 6705, 7066 (MUM.) of 2005-October 31, 2018***

**2523.** During relevant years, the revenue authorities denied exemption under section 11 to assessee and made addition of corpus donations to the assessee's taxable income. The Tribunal held that it was an admitted fact that assesee had failed to file necessary evidences to prove that corpus donations were made with specific direction that they would form part of corpus of trust. In aforesaid circumstance, the impugned addition was to be confirmed.

***Free Trade Union Multipurpose Project Trust v. ITO (E) [2018] 95 taxmann.com 297 (Mum. – Trib.)- ITA Nos. 3080 to 3084 (MUM.) of 2016 & Othrs [Assessment Years 2005-06 to 2009-10 & 2012-13 to 2014-15] dated July 4, 2018***

**2524.** The assessee was a charitable trust engaged in various charitable activities as per objects of trust deed. It filed return for relevant years claiming exemption of income. The Assessing Officer noted that trustees had siphoned off money by booking expenditure on repairs of building which was not owned by trust. He, thus, rejected the assessee's claim by invoking provisions of section 13(1)(c) and 13(2). The Tribunal held that it was noted that co-ordinate Bench of the Tribunal in the assessee's own case in earlier assessment years, had upheld order of the Assessing Officer in invoking provisions of section 13(1)(c) and 13(2). In absence of any change in circumstances, following aforesaid order of the Tribunal, the impugned order passed by the Assessing Officer was to be confirmed in assessment years in question as well.

***Free Trade Union Multipurpose Project Trust v ITO (E) [2018] 95 taxmann.com 297(Mum. – Trib.) ITA Nos. 3080 to 3084 (MUM.) of 2016 & Othr [Assessment Years 2005-06 to 2009-10 & 2012-13 to 2014-15] dated July 4, 2018***

**2525.** The Tribunal held that without verifying claim of assessee trust that it was occupying third and fourth floor of building without paying any rent and trustee was required to repay expenditure incurred by assessee, AO could not have disallowed expenditure incurred towards repairs and renovation of building owned by trustee on ground that it was in contravention of provisions of section 13(1)(c) as a benefit had accrued to the trustee through such payment. Accordingly, matter was to be restored to AO for verifying assessee's claim.

***Children Welfare Education Trust vs ITO(Exemptions) Thane [2018] 97 taxmann.com 427( Mum-Trib) ITA Nos.4979 to 4981 of 2016 dated August 31 2018***

**2526.** The Tribunal held that receipt of subscriptions from members, sale of publications, Fafai Journal, holding of workshops & conferences, directory receipts etc., were provided for facilitating dominant object of assessee-trust, viz., providing knowledge, information, awareness, demonstrations, etc., to members of Fragrance and Flavours industry and thus it fell within realm of section 2(15) and the assessee was eligible to claim exemption under Section 11 of the Act.

***Fragrance & Flavours Association of India v DDIT(E) - [2018] 92 taxmann.com 325 (Mumbai - Trib.) - IT APPEAL NO. 6545 (MUM.) OF 2016 dated MARCH 22, 2018***

**2527.** The Asessee an industrial development corporation formed under Maharashtra Industrial Development Act, 1961 registered u/s 12AA was engaged in development of industrial assets by providing basic infrastructure facilities like land, roads, street lights, water supply, drainage

etc and Industrial plots were allotted by assessee on receipt of lease premium, rent. The Assessee, filed its return claiming exemption under section 11. However, the AO rejected assessee's claim, holding that activities carried on by assessee were covered under proviso to section 2(15) i.e advancement of any other object of general public utility shall not be charitable purpose if it carries on any activity/ service in nature of trade, commerce or business. The Tribunal in the present case noted that from scheme of MIDC Act, the land owned by State Government was only placed at disposal of assessee for furtherance of objects of MIDC Act i.e. to promote, growth and development of industries in State of Maharashtra and there was no evidence on record that ownership of land under consideration had been transferred to assessee, thus the Tribunal held that on facts, assessee was not the owner of land and, thus, amount received by it in form of rent and lease premium was not liable to tax.

***MIDC Udyog Sarathi vs DCIT (Exemption)- (2018) 99 taxmann.com 5 (Mum- Trib)- ITA No 4474 of 2017 dated 07.09.2018***

**2528.** The assessee-company, registered u/s 12A, was incorporated with a dominant object to secure accurate figures of circulation of newspapers and periodicals published in country through a standard process of independent audit to assist advertisers in estimating value of any publication for reaching consumers. It was continuously allowed exemption u/s 11 since registration. However, during the relevant assessment year, assessee was denied the said exemption on ground that in view of amendment in section 2(15), activity of assessee was to be considered as a commercial activity. The Tribunal held that if the dominant purpose is charitable, the incidental activities are not required to be treated as business in nature. It held that objects of the company were for the ultimate benefit of the public and since there was no change in activity of assessee since past years, amendment by insertion of proviso to section 2(15) could not make activity of assessee as trade, business and commerce in nature specifically in circumstances when there was not a single instance of any business on record carried on by assessee. Thus, the Tribunal allowed the assessee's claim for exemption u/s 11.

***Audit Bureau Circulations Wakefield House v ADIT(E) - [2018] 96 taxmann.com 421 (Mumbai - Trib.) – ITA Nos. 5681 (MUM.) of 2015 & 6393 (MUM.) of 2016 dated July 31, 2018***

**2529.** Where the assessee charitable trust had earned income of Rs 4.41 crore and applied 4.78 crore (leading to deficit of Rs.36.51 lakh) and claimed accumulation at 15 percent of gross receipts as per Section 11(1)(a) of the Act, which was denied by the AO as there was no income remaining after deducting the application of funds, the Tribunal held that as per the provisions of the Act, the 15 percent accumulation was to be claimed on the real income and not assessed income and since there was no express provision in the Act preventing the assessee from claiming the said benefit in cases where the assessee had in fact made losses, the AO could not deny the assessee the claim. Accordingly, it upheld the assessee's claim (for accumulation as well as carry forward and set off of the losses + accumulation).

***LALJI VELJI CHARITABLE TRUST vs. INCOME TAX OFFICER (EXEMPTION) - (2018) 52 CCH 0330 MumTrib - ITA No. 5322, 5323/Mum/2016 dated Feb 28, 2018***

**2530.** The Tribunal allowed Section 11 exemption on profits earned by the assessee from pharmacy business. It noted that the pharmacy business was an integral part of the hospital business and

run by the hospital itself and not a private contractor and the pharmacy profits were expended on the object of the trust. It held that the Revenue was incorrect in denying exemption on the basis of non-fulfillment of conditions of Section 11(4A) (viz.(i) such business been incidental to the attainment of the objectives of the Trust and (ii) separate books of account are maintained by such trust or institution in respect of such business) since the conditions of maintenance of books of account in respect of the business activity of trading of medicines, which is an integral part of the hospital activities, is not the requirement of the law on the facts of this case.
***Hiranandani Foundation – TS-350-ITAT-2016 (Mum)***

**2531.** The Tribunal held that the restriction imposed under the first proviso to section 2(15) of the Act viz. exemption under section 11 would be available to a charitable trust carrying on the activities in the nature or trade, commerce or business only if the receipts did not exceed Rs. 10 lakhs, was relevant only for the purpose of granting exemption udner section 11 and not for cancellation of registration under section 12AA(3). Therefore, it held that merely because the assessee receipts exceeded Rs.10 lakh, the DIT(E) was not justified in proceeding to cancel its registration, more so when the DIT(E) failed to establish that there was a change in the objects of the institution on the basis of which registration was granted or that the activities carried out were not in accordance with its stated objects.
***Bombay Chamber of Commerce & Industry v ITO (Exemption) – (2016) 67 taxmann.com 153 (Mum)***

**2532.** The Tribunal held that excess of expenditure over income in one year could be set off against the income earned in the subsequent year by way of application of income under section 11 of the Act since the word 'applied' did not necessarily mean spent and that application of income for the purposes of section 11 takes place in the year in which income is adjusted to meet expenses and therefore even if expenses for charitable and religious purposes were incurred for an earlier year, they could be adjusted against income of the subsequent year.
***ACIT v KJ Somiaya Trust – (2016) 68 taxmann.com 9 (Mum)***

**2533.** The Tribunal held that the CIT(E) erred in denying the assessee registration under section 12AA of the Act merely because the trust deed was not registered under Indian Registration Act. It held that that as per the Act and Rules it was not mandatory for a trust to be registered under the Indian Registration Act for it to be eligible for registration under Section 12AA of the Act. Noting that the CIT (E) had not examined objects of trust, it held that the CIT(E) had not carried out duty enjoined upon him with regard to grant of registration u/s12AA and accordingly restored the matter to file of CIT (E) to adjudicate on assessee's application for registration de novo.
***NURTURE-A DEVELOPMENT INITIATIVE vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0217 Patna Trib - ITA No. 102/Pat./2016 dated Mar 16, 2018***

**2534.** The assessee-trust, registered u/s 12AA owning hospital including building and plant machinery, entered into MOU with company wherein the company was to manage/run the hospital on principle of revenue sharing formula, strictly for charitable objects/purpose of Trust. The AO, on considering arrangements outlined in MOU qua objects of assessee trust, considered the same as colorable device in nature and also invoked provision of section 13(1)(c) thereby withdrawing claim of exemption u/s.11. The CIT(A) allowed benefit of exemption claimed by assessee. The

Tribunal observed the MOU had bound the company to follow the charitable objects of the trust. Further, various MOU clauses clearly mentioned endeavour to utilize poor and indigent patients funds for objects of scheme and also that the share of revenue received by trust for purpose of poor and indigent patients as well as other needy patients. Thus, the Tribunal held that the AO had not brought any solitary instance to demonstrate irregular diversion of trust funds or exploitation of property trust for benefit of trustees or company. With respect to the AO's contention that the certain amount paid by the assessee to an individual doctor, who also happened to be the ex-trustee and shareholder/ director was against the charitable purpose thus attracting provision of section 13(1)(c), the Tribunal held that consulting fees paid by assessee to Dr. was in normal course of medical professionals and there was no question of any benefit flowning directly or indirectly from Trust to doctor thereby upheld the CIT(A)'s order and dismissed Revenue's appeal.

***ACIT & Anr. v Mallikarjun Health Care & Research Centre & Anr (2018) 52 CCH 0467 PuneTrib - ITA No. 117/PUN/2015, 1248/PUN/2015 dated 06.04..2018***

**2535.** The assessee (Charitable Trust registered u/s12AA qualifying for exemption) was a local authority engaged in the business of buying, developing and selling of lands, plots, flats and developed properties and also received rent from commercial properties and other places. The AO opined that nature of activities carried on by assessee were not covered by the definition of 'charitable purpose' u/s 2(15) as they were hit by the proviso to the said section which bars exemption claimed u/s 11 w.r.f activities in nature of trade, commerce or business. He thus treated entire surplus as income taxable for year, disallowing the said exemption. However, the CIT(A) deleted the addition holding that the proviso to S.2(15) was not applicable to assessee's case. On Revenue's appeal, the Tribunal held that the test for carrying on of any activity in nature of trade, commerce or business as mentioned in first proviso to Sec. 2(15) would be satisfied if profit making was not real object. Accordingly, noting that there was no material suggesting that assessee was conducting its affairs solely on commercial lines with a motive to earn profit and that no material was brought on record which suggested that the assessee deviated from its objects for which it had been constituted, the Tribunal held that proviso to s. 2(15) was not applicable to assesee's case and dismissed revenue's appeal.

***DCIT v Raipur Development Authority (2018) 52 CCH 0529 RaipurTrib - ITA No. 212/RPR/2014 dated 16.04.2018***

**2536.** The Tribunal held that the assessee, imparting education including pre-schooling education, could not be denied registration as a charitable institution on the ground that pre-schooling did not fall under the gamut of education as per Section 2(15) and that it was a commercial activity since it was charging a fee. The Tribunal held that pre-schooling was a mandatory prelude to school education and therefore was very much part of the term education. Further, it held that Section 11 and 12 did not stipulate that the charitable activity was not to be carried out for free and therefore the DIT was incorrect in denying registration on that ground.

***ACIT v Jindal Power Ltd – (2016) 70 taxmann.com 389 (Raipur- Trib)***

**2537.** The assessee, an educational institute filed an application for grant of approval u/s 10(23C) as (a) for the grant of approval under section 10(23C)(vi), the institution must exist 'solely' for educational purpose and not for profit which is clear from the plain reading of the section, (b)the

objects in the MOA of the assessee not only included educational objects but also other non-educational objects. The Tribunal upheld the order of the CIT which rejected the application of the assessee.

***Desales Educational Society v PCIT(Exemptions) [2018] 94 taxxman.com 206 (Vishakhapatnam – Trib) / [2018] 171 ITD 170 (Vishakhapatnam – Trib.) – ITA NO 389 OF 2016 dated 30.05.2018***

**2538.** The Tribunal held that where assessee, a society registered under section 12A, was formed with main object of imparting education, since Assessing Officer neither doubted genuineness of activities carried on by assessee nor pointed out any violation of section 13(1)(d), assessee's claim for exemption of income under section 11 could not be rejected merely on the ground that assessee's activities were akin to any commercial activity since its receipts had increased over a period of time. It further held that when income is computed under section 11, provisions of sections 40(a)(ia) and 43B are not applicable.

***ITO v Mother Theresa Educational Society - [2016] 68 taxmann.com 320 (Viskhapatnam-Trib)***

### *k. Set off and carry forward of losses*

**2539.** The Court accepted assessee's petition to receive refund along with interest and to set aside the order of Revenue authorities. The Revenue authorities had against refund due to assessee adjusted demand relating to subsequent years, whereas the assessee filed petition contesting that no demand was raised for subsequent years. The Court noted that though demand notice u/s 156 were found from revenue's official records, there was no evidence of the same being served to the assessee. Thus, the court concluded that, there was nothing in records which could attribute knowledge of tax demand to assessee and in view of negligent approach adopted by revenue authorities, the order adjusting refund was set aside and a direction was issued to grant refund to assessee along with applicable rate of interest.

***Nu tech Corporate Services Ltd vs ITO (2018) 98 taxmann.com 454 (BombayHC)- WP no 1730 of 2018 dated 24.09.2018.***

**2540.** The Court held that deemed short term capital gains arising out of sale of depreciable assets that were held for a period to which long term capital gains could apply, the assessee was entitled to claim set off of the said gains against brought forward long-term capital losses and unabsorbed depreciation.

***CIT v Parrys (Eastern) Pvt Ltd – (2016) 66 taxmann.com 330 (Bombay)***

**2541.** The assessee claimed set off of loss arising on bullion trading against profit from consultancy business, which was disallowed by the AO holding that the bullion trading loss was speculative loss since no actual delivery of the gold had taken place. The Court dismissed Revenue's appeal observing that the CIT(A) and Tribunal had given concurrent finding of fact that actual delivery of bullion had taken place, noting that (i) parties with whom trading was done were produced before the AO and none of them denied actual delivery (ii) assessee had produced delivery not for each transaction (iii) assessee had paid VAT @1% which is applicable to delivery based transactions.

***Pr.CIT v Mobile Trading & Investment P. Ltd - ITA No. 509 of 2016 (Bom HC) dated 24th November, 2018***

**2542.** Where assessee ventured into the business of banking and money lending and advanced loans to various parties , without having a banking licence and the RBI asked assessee to wind up its business and permitted it to continue it only for the purpose of realization of its assets, the Court, rejected the Tribunal's view (that since during relevant AYs, assessee did not advance any loans and it continued its existence only for the purpose of winding up, its income should be considered as income from other sources) and held that the moneys received by the assessee during the relevant AYs were fruits of the activity of money lending and that since the assessee was engaged in advancing moneys in an organised manner it ought to be categorised as a business activity. Accordingly, set-off of business losses of earlier years was also allowed as deduction in the relevant A.Y.
***Central Provinces Manganese Ore Company Ltd Vs CIT [TS-111-HC-2017 (BOM)] (ITR Nos. 4 to 6/02, 7/95 & 18/98) dated 08/03/2017.***

**2543.** The Court held that explanation to section 73 is not applicable, where gross total income of assessee company mainly consisted of income from 'other source' and, consequently, loss incurred by assessee in share transaction could not be said to be a speculative loss.
***CIT v. Madona Commercial (P.) Ltd [2018] 96 taxmann.com 16/257 Taxman 116 (Bom)- IT Reference No. 19 of 2002 dated July 2, 2018***

**2544.** The Court held that where assessee had transacted in shares only on two occasions and there was no material on recort to hold that assessee was in business of buying and selling of shares, assessee's claim for set off loss from sale of shares from one transaction against gain from second transaction could not be disallowed on the alleged ground that both the transactions were business transactions and that the assessee had purposely entered into the second transaction resulting in loss to set off the same against profit from the first transaction.
***Pr.CIT (Central) v. Adar Cyrus Poonawala-[2018] 100 taxmann.com 227(BomHC) – ITA (IT) No.226 of 2016-dated November 19, 2018***

**2545.** The Court, setting aside the order of the order of the Tribunal, remanded the matter back to the AO to decide Assessee's claim of carry forward and set off of losses afresh even though the ROI was not filed within the time limit prescribed. The Court held that the Assessee, a PSU, was liable to get its accounts audited by the CAG and without such exercise being carried out it was unable to file its ROI with requisite documents. The Court opined that the embargo in sec.80 i.e. that ROI had to be filed in accordance to sec 139(3) which inturn provided that ROI was to be filed within time limit prescribed u/s 139(1) could not be treated as a straitjacket one which could be applied without reference to different provisions included in sec. 139 and other sections in the Act which provided for a larger time limit for filing return. The Court allowed the Assessee to take recourse to the powers of the CBDT in obtaining clarifications/ directions /orders which would enable to seek leniency where the returns were not filed in time for bonafide reasons.
***M/s. Chhattisgarh State Civil Supplies Corporation vs. CIT TS-261-HC-2017(Chattisgarh HC) (Tax Case No.33 of 2015 dated May 12, 2017)***

Go to Index

**2546.** Assessee had also claimed long term capital loss on sale of shares, claiming that its share broker had bought and sold shares on behalf of assessee and such loss was claimed after deducting sale value of shares. However, AO doubted nature of such agreement and proceeded to disallow such losses claimed. On appeal, CIT(A) upheld findings of AO. Further, Tribunal also upheld decision. The Court held that, AO found that assessee had not filed proper details.AO gathered some information from M/s.Aditya Securities u/s 133(6), but what was furnished was only a ledger account. In absence of any evidence produced by assessee to indicate that there were, indeed, transactions of purchase and sales of shares by it, AO held that purported loss of sale of shares was a speculation loss and could not be set off against other gains except gains, if any, on any other speculation business as envisaged under s.s. (1) of s. 73. Thus, reasons assigned by AO as confirmed by CIT (A) as well as Tribunal were perfectly legal, valid and did not call for any interference. Assessee's ground was dismissed.
***Jaidayal Prannath Kapur vs ITO- (2018) 103 CCH 0081 Chen HC- Tax Case appeal No 143 of 2009 dated 18.09.2018***

**2547.** The Court dismissed Revenue's appeal against the Tribunal's order remanding the matter to the file of the AO for examining the assessee's explanation, on how was the brought forward loss and unabsorbed depreciation directly relatable to units transferred by the assessee-demerged company to the resulting company under the scheme of demerger approved by the High Court, on merits. The AO had rejected the benefit of provisions of section 72A(4)(a), which provides that in the case of a demerger, the accumulated loss and the allowance for unabsorbed depreciation of the demerged company shall be allowed to be carried forward and set off in the hands of the resulting company, where such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting company, on the ground that assessee had not maintained separate accounts. The Court held that the Tribunal had rightly concluded that statutory provisions did not command that in order to avail benefit of section 72A(4)(a) separate books of account were to be maintained.
***Pr.CIT v Adani Retail Ltd - [2018] 95 taxmann.com 153 (Gujarat) - R/TAX APPEAL NO. 521 OF 2018 dated June 11, 2018***

**2548.** The Court held that the High Court in CIT v. Shipla Dyeing and Printing Mills(P.) Ltd.[2013] 219 Taxmann 279 (Guj.) held that the amount of excess stock would fall under one of head of income as per section 14 and, therefore, the assessee would be entitled for set off under proviso to section 71. Therefore, the Commissioner (Appeals) as well as the Tribunal have committed an error in refusing to grant set off to the assessee under section 71.
***Krishnamegh Yarn Industries v. Asstt. CIT[2015] 376 ITR 561(Guj.)***

**2549.** The Court held that for the purposes of section 79 of the Act only voting power was relevant and not the shareholding pattern. Accordingly it held that despite transfer of shares, the holding-company still held effective control over the assessee-company and therefore allowed the losses to be carried forward and set off since the effective control over the assessee company was unchanged.
***CIT v AMCO Power Systems Ltd – [2015] 62 taxmann.com 350 (Kar)***

Go to Index

**2550.** The Court held that for the purpose of section 72A(2)(a)(i) of the Act, the term commencement of business would be different from engaged in business. It held that a party engages in business from the day it gets involved in setting up of the business and therefore it would be incorrect to say that a party is engaged in business only from the date on which it commences production. Since the business had been set up for more than 3 years, the Court allowed the carry forward post amalgamation.
***CIT v KBD Sugars & Distilleries Ltd – TS-630-HC-2015 (Kar)***

**2551.** The Court set aside the Tribunal's order wherein the Tribunal had directed the AO to allow the assessee's claim for set off of speculation loss arising on purchase and sale of shares. The AO as well as the CIT(A) disbelieved the assessee's claim that dealing in shares resulted in speculation loss of Rs.84.74 crores noting that the assesse didn't respond to a number of notices issued by the AO and subsequently when it responded, it submitted a a rectified set of profit and loss accounts together with an auditor's certificate which showed speculation loss of Rs. 84.74 crores as against the income from share dealing of Rs.50.28 crores. Noting the above findings of the AO and the CIT(A), the Court held that the Tribunal's order was exceptionable in the perfunctory manner in which a matter of some importance was dealt with. However, it also held that the CIT(A)'s order would also not be given effect to, subject to deposit of Rs.25 lakhs by the assessee, and on such deposit being made by the assessee, the AO would look into the matter afresh including any explanation that the assessee may have to furnish.
***COMMISSIONER OF INCOME TAX vs. DOE JONES INVESTMENT AND CONSULTANTS (PVT.) LTD. - (2018) 99 CCH 0405 (Kol HC) - ITAT No. 4 of 2015 & GA No. 526 of 2015 dated Jun 19, 2018***

**2552.** The assessing officer rejected assessee's application of refund for the current AY by adjusting the refund due against previous year demand and further raising demand notice for the balance outstanding. The Court remitted the matter back to the AO accepting assessee's contention that the demand raised for previous year was erroneous as advance tax paid was not considered by the AO. The Court gave specific directions to consider assessee's claim of payment of advance tax substantiated by bank certificate and to then recompute tax arrears, if any.
***T.V Ramanathan (HUF) vs ACIT- (2018) 98 taxmann.com 451 (MadrasHC)- WP No 9544 of 2016 dated 24.09.2018***

**2553.** The Court reversed the order of the Tribunal and held that the assessee had rightly characterized the loss arising on sale of foreign cars as business loss which was eligible to be set off against business income. The AO held that the foreign cars being capital assets would be covered under section 50 of the Act and therefore the loss arising from its sale would be capital loss which could only be set off against capital gains and not against income from any other head of income. On appeal, the CIT(A) reversed the order of AO and held that since the assessee had not claimed any depreciation on the foreign cars they would not fall under a block of assets and section 50 of the Act would not apply. He also affirmed the fact that assessee used cars in his business. On further appeal, the Tribunal reversed the order of CIT(A) on the basis that assessee was not a dealer in foreign cars. The Court held that Section 50 of the Act applies to capital assets forming part of block of assets w.r.t. which depreciation is allowed. However, the Court observed that, in the given transaction the foreign cars did not form part of

a block of assets due to which depreciation was not claimed on them for the given period and therefore Section 50 was inapplicable. Accordingly, it upheld the CIT(A)'s view and concluded that the loss on sale of foreign cars amounting to Rs 5 lakhs was rightly claimed as business loss by the assessee.
***K D Madan vs. ITO- TS-177-HC-2017(MAD) - T.C.A.Nos.613 and 614 of 2008 dated 27.04.2017***

**2554.** Where the assessee had suffered loss in trading of derivatives carried through Multi Commodity Stock Exchange, the Court held that the derivative transactions being separate from trading in shares, provisions of Explanation to section 73 (which deem the business of certain specified companies consisting of purchase and sale of such shares to be speculative business for the purpose of section 73 dealing with set off & carry forward of loss from speculative business) will not be applicable to such transactions and hence, the loss incurred by assessee in derivative transactions through recognised stock exchange will have to be set off against other business income as per provisions of Act. It further held that since the transaction carried out by assessee was a non-speculative transaction, section 43(5) was not attracted.
***CIT v Sri Vasavi Gold & Bullion (P.) Ltd. – (2018) 92 taxmann.com 290 (MadHC) – T.C.A. No. 853 of 2017 dated 20.02.2018***

**2555.** The Court held that where the assessee company was not regularly dealing with shares but indulged in purchase and sale of shares due to certain financial problems of its sister concern, there was no systematic or organized course of activity or regularity in transactions and the purchase being a one-time activity could not be considered as a speculative transaction. It held that where the purchase of shares could not come within the definition of business, it could not be contended that the assessee was carrying out a speculative business and therefore the AO ought to have allowed short term capital loss incurred by the assessee and set off of the same against other business income.
***Rajapalayam Mills Ltd v DCIT – TS-229-HC-2016(MAD)***

**2556.** The Court held that where delay of a day in filing return was only due to technical snags of website of department on last date of filing return, such delay was to be condoned and claim of carry forward of losses could not be denied.
***Regen Infrastructure & Services (P.) Ltd v CBDT - [2016] 68 taxmann.com 93 (Madras)***

**2557.** The Tribunal held that loss incurred on account of derivatives would deemed business loss under proviso to section 43(5) and not speculation loss and, hence, Explanation to section 73 could not be applicable; and such loss would be set off against income from business.
***Magic Share Traders Ltd. v Dy. CIT, Circle-2(1)(2), Ahm.- [2018] 100 taxmann.com 42 (Ahm-Trib)-ITA No.770(AHD) of 2016-dated October 31, 2018***

**2558.** The Tribunal held that where holding company of assessee transferred its entire shareholding in assessee company to another subsidiary company, in view of fact that in such a case beneficial ownership of assessee-company continued to vest in its ultimate holding company, provisions of sec. 79 placing restrictions in respect of carry forward and set off of losses incurred in previous years against profits of subsequent years would not apply to assessee's case.

Go to Index

***CLP Power India (P.) Ltd. v DCIT [2018] 93 taxmann.com 326 (Ahmedabad – Trib.) – ITA NO 1123 of 2016 dated 23.04.2018***

**2559.** The Tribunal allowed set-off of foreign exchange derivative loss against normal business profits of assessee-company and rejected Revenue's stand that since the contract was settled otherwise than through delivery, Sec. 43(5) was attracted, and accordingly loss was to be treated as speculative loss, which could not be set off against normal business income. The Tribunal noting that all the derivative transactions were specific hedging transactions against assessee's foreign exchange transactions and were integral part of assessee's business, held that Explanation 2 to Sec. 28, clarified that it was only when speculative transactions are of such a nature as to constitute business on standalone basis, the income and losses from such transactions were to be treated as distinct and separate from any other normal business and that speculative transactions which were incidental to assessee's main business could not be treated as speculation loss. It, accordingly, directed the AO to delete the disallowance and allow deduction u/s 37(1).
***Soma Textiles & Industries Ltd [TS-151-ITAT-2017 (Ahd)] (ITA No. 472/Ahd/2014)***

**2560.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO wherein the AO had treated the derivative losses arising on future & options trading to be speculative loss u/s 73. The Tribunal took the view favourable to the assessee, noting that though the Delhi High Court had taken a different view on this matter, the Calcutta High Court in the case of Asian Financial Services Ltd. v. CIT [2016] 240 Taxman 192 (Cal.) has held that loss incurred on account of derivatives would be deemed business loss under proviso to section 43(5) and not speculation loss and, accordingly Explanation to section 73 could not be applied.
***ITO v Upkar Retail (P.) Ltd. - [2018] 94 taxmann.com 450 (Ahmedabad - Trib.) - IT APPEAL NO. 2237 (AHD.) OF 2014 dated June 18, 2018***

**2561.** The assessee had business loss of Rs. 3.04 crores, whereas, the assessee had earned short-term capital gains of Rs. 8.80 lakh. The assessee in the return of income did not set off the business loss against the short-term capital gain. However, after adjusting the capital gains of the year against the brought forward short-term capital loss and claiming deduction under section 80 returned the taxable income at 'nil' with carry forward business loss of Rs. 2.91 crores. The lower authorities, however adjusted the current year capital gains against the current year business loss and accordingly computed the income of the assessee. The Tribunal held that a perusal of the Legislative history reveals that the assessee has always been given an option to set off his losses against the income from capital gains. However, as per the provisions of sub-section (3) of section 71, the assessee is not allowed to set off capital loss against income under any other head. [Para 6]. In view of this, there was no justification on the part of the lower authorities in making the impugned adjustment and, therefore, the same is set aside.
***Ajay Kumar Singhania v. Dy. CIT, CPC, Bangalore-[2018] 99 taxmann.com 335 (Chandigarh – Trib.)-ITA No. 1650 (CHD) of 2017 dated October 4, 2018***

**2562.** The Tribunal allowed assessee's plea that the short-term capital gain derived during the current year should (first) be set off against short-term capital loss brought forward from earlier years

and not against the business income earned during the current year, holding that as per provisions of section 71, assessee has the option to set off business loss against capital gains, however, it is not mandatory to do so. It took support from the decision in the case of Coated Fabrics (P.) Ltd. v. Jt. CIT' [2006] 101 ITD 297 (pune Trib) wherein assessee claim that loss suffered by it under head 'Business' should be set off against 'Income from other sources', in first instance, and only surviving loss should be set off against 'income from capital gains' was accepted.

***Ajay Kumar Singhania v DCIT - [2018] 173 ITD 474 (Chandigarh - Trib.) – ITA No. 1650 (CHD) OF 2017 dated 04.10.2018***

**2563.** The Tribunal held that while computing total taxable income of EOU, depreciation loss of non-eligible units could not be set off against income of eligible units involved in activity of export.

***Sharadha Terry Products Ltd v ACIT - [2016] 68 taxmann.com 282 (Chennai-Trib)***

**2564.** The Tribunal allowed the assessee set off of losses from derivative trading transactions against its other income earned. It noted that apart from the losses, assessee only earned dividend and interest income falling under income from other sources and therefore Explanation to Section 73 of the Act, deeming losses as speculative was not applicable as the assessee's case fell under the exception prescribed viz. gross total income mainly consisting of income from other sources or house property).

***AK Capital Markets Ltd v DCIT (ITA No. 6859/Del/2014) – TS-694-ITAT-2015 (Del)***

**2565.** The Assessee filed return of income which was selected for scrutiny and order was passed as per direction of DRP. Subsequently, a demand notice u/s 156 was attached with assessment order showing assessee's net tax payable and the AO also added back refund which was already paid. The Tribunal observed that the AR had submitted that amount of refund was wrongly added as no refund was actually received by assessee and it would require verification at the end of AO as it would have an impact on calculation of interest u/s 234D. The Tribunal further noted that the D.R. did not have objection for verification of same at level of AO, thus the order of AO were set aside and matter was restored to AO with a direction to verify assessee's claim and pass consequential order.

***Global Construction Mauritius Services Ltd vs ADIT- (2018) 54 CCH 0145 Del Trib- ITA No 5341/Del/2011 dated 04.09.2018***

**2566.** The Tribunal held that once net result of computation under any head of income, other than 'Capital gains', is a loss and assessee's income is assessable under head 'Capital gains', assessee shall be entitled to set off such loss against his income, under any other head including income assessable under 'Capital gains'.

***Opus Reality Development Ltd v ACIT - (2016) 47 CCH 0204 (Del Trib)***

**2567.** The Tribunal allowed Revenue's appeal and denied assessee-company's claim for set-off of long term capital loss arising on sale of shares against long term capital gains arising on sale of property ruling that the share transaction was a sham transaction, a colourable device to generate loss to avoid tax payable for capital gains on sale of property. It noted that the assessee had entered into sale agreement for a property and received part consideration

thereof, immediately thereafter assessee entered into collaboration agreement with group co. (CRPL) to develop the same property and received earnest money Rs 9 Cr, out of which Rs. 7.5 cr. was transferred to the account of another group co. (VBPL) towards share allotment at a premium of Rs. 190 per share; then assessee cancelled the collaboration agreement during same year and returned the earnest money by way of selling VBPL shares at book value of Rs. 82.5, The Tribunal remarked that once the property was agreed to be sold then why for the same property collaboration agreement was entered into with CRPL. It also held that though the premium was justified by a valuation report but the same appeared to be a selfserving document since no prudent person would pay a hefty premium of Rs. 190/- hold it for one year, and then sell the same shares at book value of Rs.82.5.

***Dy. CIT v B.S. Infosolution Pvt Ltd. [TS-491-ITAT-2018 (DEL)]- ITA No. 2989/DEL/2016 dated 23.08.2018***

**2568.** The Tribunal held that loss arising on purchase and sale of shares cannot be treated as "speculation loss" under the Explanation to section 73 where the shares were held as investments.

***ACIT vs. RJ Corp Ltd - ITA.No.3661/Del./2014 dated 01.10.2018***

**2569.** The Tribunal held that as per Section 32(2) unabsorbed depreciation of earlier years was to be treated as the depreciation of the current year and thus it would partake the nature of current year's business loss and therefore as per Section 71(1) read with section 71(2A) since current years business loss could be set off against any income except the income under the head salary, it dismissed Revenue's contention and held that brought forward depreciation could be set off against income from other sources of the current year.

***Nanak Ram Jaisinghani v ITO - [2018] 92 taxmann.com 86 (Delhi - Trib.) - IT APPEAL NO. 6729 (DELHI) OF 2014 dated MARCH 7, 2018***

**2570.** Since the assesse had filed belated return u/s 139, its claim for carry forward of business loss was not allowed during the original assessment completed as per section 80. Assessee's said claim was not allowed also while completing the assessment u/s 153A (as well rectification order passed u/s 154 relating thereto) during which, the assesse had filed the same return which it had filed u/s 139. On appeal against the assessment order passed u/s 153A r.w. 154, the assessee contended that return under section 153A is deemed to be return under section 139(1) and as such provisions of section 80 do not apply. Tribunal accepted the assessee's contention holding that when the AO had accepted the return filed by the assessee u/s 153A, no occasion arose to refer to the previous return filed u/s 139 and for all purposes of the Act, the return that has to be looked at is the one filed u/s 153A. Relying on the decision in the case of Sanjay Nandlal Vyas v ITO [ITA No. 771 to 774/PN/2010] wherein it was held that the return of income filed in response to the notice u/s 153A on the basis of which assessment had been framed had replaced the original return for determining the net income in the assessment u/s 153A and the return u/s 153A was to be considered for allowability of carry forward of loss rather than the original return u/s 139 and thus the restrictive provisions of section 80 were not applicable. Thus, it held that the assessee was eligible for carry forward of business loss.

Go to Index

***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. SPLENDOR LANDBASE LIMITED & ANR. - (2018) 53 CCH 0118 (Del Trib) - ITA NO. 2461/DEL/2016 (C.O. NO. 215/DEL/2016) dated Jun 6, 2018***

**2571.** The Tribunal held that where the demerger satisfied all conditions under section 2(19AA) of the Act, the assessee company was eligible to carry forward losses and unabsorbed depreciation under section 72A(4) of the Act. The Tribunal held that the reasoning adopted by the AO in deeming the demerger as non-compliant with section 2(19AA) of the Act viz. transfer of properties and investments to other entities via the same SPA, did not impact the conditions in section 2(19AA) of the Act and therefore the benefit of carry forward could not be denied.
***DCIT v Maana Sugar Ltd – (2015) 45 CCH 0286 Del Trib***

**2572.** The Tribunal held that business loss incurred in earlier year could not be set-off against income under head income from other sources during relevant year.
***GVK Airport Developers Ltd. v. ITO [2018] 96 taxmann.com 236/172 ITD 109 (Hyd. – Trib.) IT APPEAL NO. 488 (HYD.) of 2017 [A.Y. 2012-13] dated July 5, 2018***

**2573.** The Tribunal held that CIT(A) was justified in disallowing assessee's claim of set off of notional trading loss (by valuing shares at lesser amount without any basis) against other business income and thereby making addition to assessee's income, rejecting the assessee's contention that the CIT(A) had no power to enhance assessment by discovering new sources of income which was not mentioned in return or considered by the AO. It held that the CIT(A) had not unearthed a new source of income but only on basis of annual report/statements enclosed to return of assessee found that assessee had claimed the set off of trading loss and the AO had not examined the said claim. Accordingly, the Tribunal held that the CIT(A) had power to enhance income u/s 251 by directing AO to disallow loss claimed in trading account.
***Fincity Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 616 (Hyd Trib)- IT APPEAL NOS. 591 & 732 HYD. OF 2006, 616 HYD. OF 2008 AND 119 (HYD.) OF 2010 dated August 03 2018 - appeal***
***Veeyes Investments (P.) Ltd.. vs ACIT [2018] 96 taxmann.com 545 (Hyd- Trib) IT APPEAL NO. 588 (HYD.) OF 2006 dated August 03 2018***
***Elem Investments (P.) Ltd. vs ACIT [2018] 96 taxmann.com 272 (Hyderabad - Trib.) IT APPEAL NOS. 589, 731 (HYD.) OF 2006, 617 (HYD.) OF 2008, 121 (HYD.) OF 2010 dated August 03 2018***

**2574.** The Tribunal held that assessee was entitled to set off loss incurred by it in 100% EOU unit against profits of other units run by it. It placed reliance on Hon'ble Bombay High Court in the case of DCIT vs Hindustan Unilever (2012) 343 ITR 108 (Bom)
***Heg Ltd vs ACIT-(2018) 54 CCH 0050 Indore Trib- ITA No 583/Ind/2012 dated 28.09.2018***

**2575.** The Tribunal held that short term capital loss arising from STT paid transactions could be set off against the capital gain arising from non STT transactions and that merely because the two set of transactions were liable for different rate of tax, it would not be said that income from these transactions did not arise from similar computation as computation in both the cases were made under the same provisions.

Go to Index

***Neelima Maheshwari vs. JCIT (2016) 48 CCH 0123 (Jaipur Trib) (ITA No. 473/JP/2015)***

**2576.** During assessment proceeding, assessee had claimed long term capital loss in AY 2010-11. Assessee while filing return of income clearly mentioned a sum representing long term capital loss to be eligible to be carried forward to subsequent years. Assessee had incurred long term capital loss in respect of sale of equity oriented mutual funds on which security transaction tax was paid. AO held that such long-term capital loss was not eligible to be carried forward to subsequent years for future set off. CIT(A) affirmed AO's findings. The Tribunal held that, assessment was made u/s 143(3) wherein no mention was made by AO with regard to eligibility of assessee for carry forward of long-term capital loss. Assessee had not claimed any set off of long-term capital loss against LTCG. Eligibility of loss brought forward from earlier year for set off had to be examined by AO only in year in which such loss was sought to be set off against any income. Eligibility to claim set off of long-term capital loss pertaining to AY 2010-11 should be looked upon by AO only in year in which loss is sought to be set off against income. Assessee's ground was allowed.

***Asst. CIT & Anr. vs. Tata Steel Processing & Distribution Ltd. & Anr. - (2018) 54 CCH 0304 KolTrib- ITA No. 2237/Kol/2016 (C.O. No. 96/Kol/2016)- December 5, 2018***

**2577.** The assessee for A.Y. 1998-99 had claimed set off of unabsorbed depreciation after 8 years. The AO did not allow the set off beyond eight (8) years taking into consideration the amendment made in Finance (No.2) Act, 2006 introducing the time limit of 8 years. CIT(A) deleted the AO's disallowance following the decision of the Hon'ble Gujarat High Court in the case of General Motor (I) Pvt. Ltd 354 ITR 244 wherein it was held that if any unabsorbed depreciation or part therein could not be set off till AY 2002-03, it would be carried forward till the time of set off against profit and gains of subsequent years without any limit whatsoever. The Tribunal upheld the CIT(A)'s order.

***DCIT vs. ORIENT PAPER & INDUSTRIES LTD – 50 CCH 0140 - ITAT KOLKATA ITA Nos. 1936 & 1937/Kol/2014 dated 09.06.2017***

**2578.** The Court dismissed Revenue's appeal against the Tribunal's order allowing the assessee to set-off business loss against the income voluntarily disclosed pursuant to search operation and taxable as income from other sources where the AO contended that the loss incurred by assessee was speculative loss in view of Explanation to section 73 (which deems certain companies to be carrying on speculation business to extent to which business consists of purchase and sale of such shares) and thus not allowable to be set-off against income from other sources. The Court noted that the CIT(A) and the Tribunal had concurrently found the assessee to be excepted out of the application of the said Explanation (since the assessee's main income after considering the income disclosed voluntarily was 'Income from other sources', that being one of the condition for exception). It thus held that the loss incurred by assessee would be business loss entitled to be set off same against its income from other sources u/s 71.

***PR.CIT v JANKI TEXTILE & INDUSTRIES LIMITED – (2018) 101 CCH 11 (Kol HC) – G.A No. 755 of 2016 ITAT No. 131 of 2016 dated 17.01.2018***

Go to Index

**2579.** Where assessee suffered speculation loss and carried forward the same to succeeding A.Y for setting off against speculation profit and AO denied claim of assessee for impunged loss on ground that no prudent businessman would indulge in such loss, the Tribunal observed that the Revenue had not pointed out any defect in documents for purchase and sale of shares and the assessee was amalgamated in subsequent year and the impunged loss was not carried forward and thus had lapsed. Further, on similar facts, the Apex Court in Union of India v. Azadi Bachao Andolan had held that transaction of sale of shares could not be considered as sham or device to avoid tax. In view of the aforesaid facts the Tribunal reversed the order of CIT(A) and allowed the claim of the assessee.
***Sudera Services Pvt Ltd v. Income Tax Officer - (2017) 49 CCH 0176 KolTrib (ITA No. 724/Kol/2015)***

**2580.** The Tribunal allowed the assessee set off of loss arising from derivative transactions against profit on sale of property and held that the Revenue was incorrect in denying the set off on the ground that the loss arising out of derivative transactions was a tax avoidance scheme against all human probabilities, since there was no clinching evidence to arrive at such conclusion. Following the ruling of the Apex Court in McDowell & Co Ltd, it held that all tax planning was not illegal and that where transactions or arrangements were evidenced by a written agreement it was not possible to rewrite the arrangement without any incriminating adverse evidence.
***ITO v PKS Holdings – TS-308-ITAT-2016 (Kol)***

**2581.** The Tribunal held that where there has been amalgamation of a company owning an industrial undertaking with another company then, in view of provisions of section 72A, notwithstanding anything contained in any other provisions of Act, accumulated loss and unabsorbed depreciation of amalgamating company shall be deemed to be loss of amalgamated company for previous year in which amalgamation was affected, irrespective of the fact that BIFR order (in pursuance of which amalgamation was effected) did not direct any such relief.
***Hindustan Engineering & Industries Ltd. v DCIT – (2018) 90 taxmann.com 230 (Kol Trib) - ITA Nos. 146 to 152 (Kol) of 2017 dated 24.01.2018***

**2582.** The Tribunal held that there is no bar in adjustment of unabsorbed business losses from speculation profit of current year, provided speculation losses earlier years has been first adjusted from speculation profit.
***Edel Commodities Ltd. v DCIT [2018] 92 taxmann.com 133 (Mumbai – Trib) – ITA Nos. 3426 AND 3576 (MUM.) OF 2016 dated 06.04.2018.***

**2583.** The assessing officer while passing the assessment order disallowed the set off of loss on account of long-term capital loss suffered by assessee on sale of shares against the profit of long term capital gain earned on sale of immovable asset contending that the transaction was designed to avoid tax. The Tribunal noted that the assessee sold shares held by it for a period of 15 years at market value (supported by a valuation report) and that the AO had not doubted the genuineness of the transaction. Accordingly, it held that merely because the assessee had claimed set-off of capital loss against the capital gain earned during the same period, the transaction could not be said to be a colourable device or method adopted by assessee to avoid the tax.

Go to Index

***Mrs. Madhu Sarda v ITO - ITA No. 7410//Mum/2012 dated 09.03.2018***

**2584.** The AO denied the set off of brought forward house property losses against the current year's house property income in view of provisions of section 79 since the during the current year more than 51% of the shareholding pattern of the assessee-company had changed. The assessee submitted that the two persons who held the shares of the assessee-company on the last day of the previous year when the loss was incurred continued to remain the beneficial owner of the same and exercised the voting powers through two companies, the Tribunal accepted assessee's contention and held that as per section 79 test to be satisfied is not whether 51 % shares should be held by same persons on last day of previous year in which loss is incurred and on last day of previous year in which loss so incurred was to be set off but the test is whether 51 % of 'voting power' is beneficially held by same persons on aforesaid two days. Thus, it held that the ownership of shares with same person was not contemplated for denying set off of loss.
***Wadhwa & Associates Realtors (P.) Ltd. v ACIT – (2018) 92 taxmann.com 37 (Mum) – ITA No. 967 (mum.) of 2016 dated 14.02.2018***

**2585.** The Tribunal rejected assessee-company's plea to grant relief against AO's action in denying set off of carry forward of losses for AY 2007-08 to 2010-11 against the income of AY 2012-13 in view of provisions of section 79, noting that the assessee-company's shares which were initially held by two persons both holding 50% shares each were transferred to a listed company in which public were substantially interested to the extent of 25.64% of shareholding in AY 2010-11 and further a fresh allotment of shares was made to the said listed company during the previous year relevant to the AY 2011-12 so as to increase its shareholding to 62.28%. It rejected the assessee's contention that since it had become a subsidiary of the listed company HDFC and thus, a company in which the public were substantially interest, the provisions of section 79 were not applicable to it, holding that though the listed company held more than 51% shares but it did not hold same for entire year and, thus, the conditions for becoming a public company in which public were substantially interested as stipulated in section 2(18)(b)(B)(c) were not met. The Tribunal, however, allowed the set off or carry forward of losses arising in AY 2011-12 for the AY 2012-13 since there was no change in shareholding pattern in AY 2012-13. Further, it held that section 79 does not speak about carry forward and set off of unabsorbed depreciation and bar created by provisions of said section would not be applicable so far as carry forward and set off of unabsorbed depreciation was concerned.
***DCIT v Credila Financial Services (P.) Ltd. – (2018) 192 TTJ 511 (Mum) – ITA No. 1491 (mum.) of 2016 co no. 305 (Mum) of 2017 dated 16.02.2018***

**2586.** Where the assessee was carrying on business of trading in commodity derivatives on various exchanges like NSE, BSE, MCX, ICEX etc. and the AO, applying the provisions of sections 43(5)(d), bifurcated the earnings from trading for the recognized stock exchanges and non-recognized stock exchanges and treated the loss booked from trading in derivatives from unrecognized exchange as speculative loss not allowed to be set off against business profit from trading in derivatives on recognised exchanges, the Tribunal held that for the relevant assessment year i.e. AY 2012-13 commodity derivative transactions were speculative transactions since clause (d) of section 43(5) only excluded transactions in respect of the trading in derivatives referred to in section 2(ac) of Securities Control (Regulation) Act, 1956 from the

definition of 'speculative business' and commodity derivative trading is not covered by the said Act and further the clause (e) of section 43(5) excluding commodity derivative transaction from the said definition was inserted by the Finance Act, 2013 to be effective from 01.04.2014. Accordingly, it held that assessee's business being only and only derivatives trading in commodity, the loss incurred or profit earned should be speculative loss/profit irrespective of whether the transactions were carried on recognised or unrecognised exchanges and, hence, should be allowed to set off against each other.

***Kunal G. Kataria v ACIT – (2018) 91 taxmann.com 345 (Mum) – ITA No. 5179 (mum.) of 2016 dated 23.02.2018***

**2587.** Assessee had incurred short term capital loss on sale of shares in the prior assessment year which it had carried forward to the relevant year and set off the same against short term capital gains earned during the relevant year which was chargeable to tax at 30 percent. Noting that the assessee had also earned short term capital gains chargeable to tax at 10 percent, the AO contended that the assessee ought to have set off the brought forward losses against the STCG chargeable to tax at 10 percent as opposed to 30 percent as done by the assessee. The Tribunal held that there was no provision providing for the sequence in which different categories of short term capital gains had to be adjusted while setting of brought forward losses and therefore held that the preference of assessee would prevail. Accordingly, it allowed the appeal of the assessee.

***Action Financial Services India Ltd v ACIT – (2017) 50 CCH 0008 (Mum Trib) – ITA NO 1823/ Mum / 2012 dated 03.05.2017***

**2588.** During the relevant AY, AO ignored the manual return filed by assessee within section 139(1) due date and denied carry forward of losses on the ground that the return filed electronically was belated return. Relying on the decision in the case of Nicholas Applegate South East Asia Fund Ltd [117 ITD 299], the Tribunal allowed assessee's claim of carry forward and set-off of business losses and unabsorbed depreciations for AY 2011-12. It held that as the original return was filed within the due date u/s 139(1) of the Act, it was a valid return as per the provisions of section292B of the Act. It rejected Revenue's stand that the assessee was mandatorily required to file return of income electronically and held that the claim for set off and carry forward of losses could not be denied on a too technical reason. Noting that the assessee was unable to file the return online due to problem of login password, it held that it was a curable defect.

***Luxury Goods Retail Pvt. Ltd vs DCIT-TS-231-ITAT-2017(Mum)-ITA No. 3508/mum/2016 dated 05.05.2017***

**2589.** The Tribunal held that Section 80 requires that return be filed as per section 139(3) to carry forward losses within due date, as envisaged under section 139(1), but section 32(2) is not included within ambit of section 80 for carry forward losses. It accordingly allowed the set of and carry forward of unabsorbed depreciation against the profit and gains of business of the succeeding year even though for the relevant year, assessee filed its return after the due date by holding that under section 32(2) a legal fiction has been created that unabsorbed depreciation of the earlier year shall form part of current year's disallowance and therefore it shall have to be dealt with accordingly subject to the provision of section 72(2) and 72(3).

***ACIT v Anil Printers Ltd - [2016] 68 taxmann.com 365 (Mumbai-Trib)***

Go to Index

**2590.** The assessee, a member of BSE, engaged in business of shares and stockbroking, purchase /sale of shares, suffered loss on sale of shares held by it as an investment which the AO held to be speculation loss as against short term capital loss as claimed by the assessee. The Tribunal held that since assessee was not covered by exclusions contemplated under provisions of Explanation to section 73 (excluding companies whose Gross Total Income mainly consisted of income from securities, income from house property, capital gains, IFOS or a company engaged in banking), assessee-company would be deemed to be carrying on a speculative business to extent to which assessee's business consisted of purchase and sale of shares of other companies and, therefore, loss on sale of shares held by it as an investment would be speculation loss eligible to be set off against speculation profit only as per provision contained in section 73 and not a short term capital loss.
***Amol Capital Markets Pvt [TS-461-ITAT-2017(Mum)] - I.T. APPEAL NO. 1974 (MUM.) of 2016 dated 21.08.2017***

**2591.** The Tribunal held that losses in Futures & Option derivative trading business could be set off against short term gains from sale of shares and other income earned by assessee except salary income by virtue of Section 71(2A) of the Act.
***Deepak Sogani v DCIT - [2016] 68 taxmann.com 332(Mumbai-Trib)***

**2592.** The Tribunal held that as per section 32(2) of the Act, the assessee was entitled to set off unabsorbed depreciation against the income computed under the head 'long term capital gain'.
***Sunshield Chemicals Pvt Ltd v ITO – (2015) 45 CCH 0320 Mum Trib***

**2593.** The assessee set off brought forward losses from earlier year against the additional income disclosed by the assesse in its revised return pursuant to a survey conducted wherein certain incrimination papers indicating cash receipts and cash payments were found and impounded. The AO denied the assessee's claim for such set off treating the additional income as unexplained money, taxable as "income from other sources" and not as "eligible business income". The CIT(A) upheld the AO's order. The Tribunal reversed the CIT(A)'s order and held that the entries available on impounded material suggested business nexus of additional income and thus the income in question was derived from business activities of assessee although they were outside books of account of the assesse. It held that there was no law to automatically tax each and every 'unaccounted income' disclosed during search / survey actions as 'income from other sources'. Therefore, it held that the income was to be treated as the 'business income' of the assessee and consequently, the benefit of set off/carry forward was granted to the assessee
***CONSTRUCTION PORTAL PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0312 PuneTrib - ITA Nos. 1607 & 1608/PUN/2014 dated Jun 06, 2018***

## *I. Withholding tax*

*Section 192*

Go to Index

**2594.** The Apex court held that were assessee engaged in business of owning, operating, and managing hotels were paying tips to its employers without deducting tax at source, the assessee could not be treated as assessee in default since there was no vested right in the employee to claim any amount of tip from his employer tips being purely voluntary amounts that may or may not be paid by customers for services rendered to them would not, therefore, fall within Section 15(b) of the Act.
***ITC Limited Gurgaon vs. CIT (TDS) - TS-225-SC-2016***

**2595.** The Court held that under the provisions of Section 10(15A) of the Act, payments made for acquisition of aircrafts or an aircraft engine on lease were exempt from taxation and that the amendment inserted on April 1, 1996 excluded payments made for providing spares, facilities or services in connection with the operation of leased aircraft from the exemption provided under section 10(15A) of the Act. It held that supplemental rent paid by the assessee did not fall under the exclusion to 10(15A) of the Act and therefore the assessee was not liable to deduct tax at source on such payments.
***Jet Lite (India) Ltd v CIT – [2015] 63 taxmann.com 62 (Delhi)***

**2596.** The Court allowed the assessee's appeal and held that the assessee could not be said to be a defaulter u/s 201(1) for non-deduction of TDS on payment made to an education society for making good the deficit in tuition fees of employees' children since the said payment did not amount to perquisite u/s 17 for the relevant AYs i.e. AY 2000-01 and 2001-02 as the Rule 3(e) prior to amendment in 2001 provided only for valuation of perquisites/ benefit resulting from provision of 'free' educational facility and the word 'concessional' was inserted by the amendment in 2001 only for subsequent period.
***GUJARAT CO.OPERATIVE MILK MARKETING FEDERATION LTD - TS-246-HC-2018(GUJ) - R/TAX APPEAL No. 894 & 895 of 2007 dated May 9, 2018***

**2597.** The Court held that the assessee was in default under section 201(1) / (1A) for not deducting TDS on payment of uniform allowance to its employees since the dress code at work place of the assessee did not qualify as uniform and therefore the exemption under section 10(14)(i) with respect uniform allowance was not applicable. It held that if the assessee's interpretation of uniform was to be accepted, any dress worn by employees in any office would qualify as uniform and therefore upheld the order of the ITAT treating the assessee as assessee in default.
***Oil and Natural Gas Corporation Ltd v ACIT – TS-525-HC-2016 (Guj)- Tax Appeal No. 368 of 2016 to 371 of 2016***

**2598.** The Court held that the assessee was not liable to deduct taxes at source under section 192 of the Act on per diem allowance paid to employees for overseas business trips as the same was exempt under section 10(14) of the Act and dismissed the contention of the revenue that the since the allowance was paid without verification of expenses incurred by the employee considered it could not be treated as reimbursement exempt under section 10(14) and that the payment was taxable as perquisites. It held that merely because the actual expenses were not verified, the character or nature of payment would not be changed to make it a perquisite under section 17(2) of the Act.
***CIT (TDS) v Symphoy Marketing Solutions India Pvt Ltd – TS-312-HC-2016 (Kar)***

Go to Index

**2599.** Where Kerala State Electricity Board (KSEB) entered into a contract of consultancy with a Canada based Consultant for carrying out a project in site of KSEB, and as per terms of an agreement, entered into between KSEB and Consultant, liability to pay salary of the assessee deputed by the Canadian Consultant to project site was of Consultant itself whereas tax component had to be satisfied by KSEB, the Court held that in view of fact that salary of employees deputed by Consultant was included in consultancy charges, both salary and tax both were borne KSEB, in whose project assessees were employed and, therefore, provisions of section 195A would be applicable to assessee's case since both salary and tax was paid by the same person. Accordingly, it dismissed assessee's contention that the tax element was not liable to Section 195A and that it was taxable as income from other sources.

***Horace Dansereau v ACIT - [2017] 88 taxmann.com 228 (Kerala) IT APPEAL NOS. 7, 9, 11 TO 16, 19 AND 20 OF 2007 dated 12.12.2017***

**2600.** Where an Indian company had sent its employee on an expatriate assignment to an US company and the during relevant period, the employee was on payroll of the US company and had received salary and certain allowances in USA for meeting his cost of housing, transportation etc. and had also received a part of salary, based on a monthly basis, and certain bonus in India to meet certain obligations in India such as housing loans repayments etc., AAR ruled that the salary paid by the Indian company to the said employee could not be considered as chargeable to tax in India, since the employee was a non-resident in India during the relevant period rendering services in USA and, thus, the salary would accrue to him in USA. It further ruled that as per terms of Article 16 of India-USA DTAA, income earned by the employee from services rendered in USA would be chargeable to tax in USA, and not in India. With respect to the taxation in the hands of the said employee after his return to India, AAR ruled that once the employee became resident on return to India and the nature of payments made to him by applicant-employer was in nature of salaries, provisions of TDS u/s 192(2) would apply. However, the Applicant could give credit to the employee for taxes deducted during his deputation outside India in view of article 25 of India-USA DTAA.

***Texas Instruments (India) (P.) Ltd., In re vs – (2018) 301 CTR 1 (AAR) – A.A.R. No. 1299 of 2012 dated 29.01.2018***

**2601.** The Tribunal held that the assessee, a statutory corporation, was liable to deduct TDS u/s 192 from payment made to its retired employees towards unutilized leave period since the employees of the assessee-corporation, could not be regarded as State or Central Government employees so as to to be entitled to exemption u/s 10(10AA)(i). However, since the assessee was under bona fide belief that its employees were entitled to the said exemption and the Revenue had accepted in the past the manner in which TDS was deducted by the assessee, it held that the assessee had discharged its obligation u/s 192 and, hence, proceedings u/s 201(1) and 201(1A) were quashed.

***KPTCL v ITO(OSD)(TDS) - [2018] 93 taxmann.com 89 (Bangalore - Trib.) - IT APPEAL NOS. 2223 TO 2300 (BANG.) OF 2017 dated May 2, 2018***

**2602.** The Tribunal dismissed assessee's appeal and held it to be assessee-in-default u/s 201(1), thereby levying interest u/s 201(1A), on account of non-deduction of TDS on amount paid as

leave travel consession (LTC) to assessee's employees and claimed by the employees' to be exempt u/s 10(5), though the same pertained to ineligible foreign travels. It followed the co-ordinate bench decision in the assessee's own case for earlier year wherein it was held that assessee was well aware of fact that its employees had travelled in foreign countries by availing LTC for which they were not entitled for exemption u/s 10(5) and thus the assessee could not plead that it was under bona fide belief that amounts claimed were exempt u/s 10(5).
***STATE BANK OF INDIA vs. ACIT (2018) 53 CCH 0336 BangTrib – ITA No. 1141/Bang/2017 dated 13th July, 2018***

**2603.** Where the assessee was aware of the fact that its employees had visited foreign countries by availing LTC/LTF concession and hence were not entitled for exemption of reimbursement of LTC u/s 10(5) of the Act (as section 10(5) exemption is available only in case of travelling within India), the Tribunal held that the assessee was under an obligation to deduct tax at source treating such an amount as not exempt and since the assessee failed to enforce its duty to deduct tax at source as envisaged u/s 192, it was an 'assessee in default' u/s 201(1) of the Act. The appeal of the assessee-bank was, accordingly, dismissed.
***Syndicate Bank v. Assistant Commissioner of Income Tax (TDS) - [2017] 80 taxmann.com 179 (Bangalore-Trib.) (ITA Nos. 1398 to 1403 and 1435 to 1477 (Bang.) of 2016)***

**2604.** The Tribunal upheld the CIT(A)'s order confirming the AO's order passed u/s 201(1)/ 201(1A) holding the assessee to be in default for non-deduction of TDS u/ 192 while making payment of Leave Travel Concession (LTC) to its employees, noting that the travel destinations were outside India and the provisions of section 10(5) exempting the LTC from tax was introduced to motivate employees and encourage tourism 'in India'. Accordingly, the assessee's appeal against the CIT(A)'s order was dismissed.
***State Bank of India & Ors v ACIT & Ors (2018) 52 CCH 0298 BangTrib dated 06.04.2018***

**2605.** The Tribunal, following the decision of the Apex Court in the case of ITC Ltd. (384 ITR 14), held that since the contract of employment was not the proximate cause of receipts of TIPS by the employees from a customer, no TDS was to be deducted u/s 192 by the Assessee (Hotel Employer) while disbursing to TIPS its employees since TIPS were collected from the customer s in a fiduciary capacity.
***EIH Ltd. vs. ITO (2017) 78 taxmann.com 242 (Del. Trib.) (ITA No. 2642-2645/Del/2015 dated 14.02.2017)***

**2606.** The Tribunal held that the Employees Providing Fund Organization governed by Employees Provident Fund, 1952 was liable to deduct tax under section 192 of the Act in respect of settlement / withdrawals of accumulated balances by employees within 5 years of rendering continuous service. It rejected the stand of the assessee that it was covered under section 10(11) of the Act and therefore exempt since Section 10(11) of the Act covered only funds set up under the PF Act, 1925 or set up by the Central Government and the assessee was a recognized provident fund not covered under the said section. The Tribunal also dismissed the contention of the assessee that it did not have to deduct tax at source since Section 192A of the Act was introduced with effect from June 1, 2015 and held that section 192A merely clarified the liability to deduct tax which existed prior to its introduction.

Go to Index

***Employees Provident Fund Organization v DCIT – TS-422-ITAT-2016 (Del) – ITA Nos 4214/Del/2015, 4215/Del/2015, 4216/Del/2015***

**2607.** The Tribunal held that where assessee collected tips from customers by charging it in their bills and gave the same to its employees, it formed part of their salary liable for deduction of TDS under section 192.
***C.J.International Hotels Ltd v ACIT - [2016]68 taxmann.com 27 (Delhi-Trib)***

**2608.** In case of the assessee-company which had deducted TDS on perquisite received by its employee on account of ESOP on the date of allotment of shares, the AO had taken a view that TDS should have been deducted on the date of exercise of option and held assessee as assessee-in-default for late deduction/deposit of TDS and accordingly levied interest under section 201(1A). The AO's opinion was based on the contention that Explanation (c) to section 17(2)(vi) requires the FMV of the shares as on the date of exercise of option to be considred for determining the perquisite value and thus, TDS should also deducted on the date of exercise of option. The Tribunal held that section 17(2)(vi) was only to determine the value of ESOP transaction and the obligation for withholding tax accrued only when the shares were allotted after completion of commitments on the part of the person who exercised the option and thus, TDS was deposited by assessee on correct due dates.
***Bharat Financial Inclusion Ltd. vs Dy.CIT [2018] 96 taxmann.com 540 (Hyd) - ITA No. 237 (HYD.) of 2017dated August 03 2018***

**2609.** The Tribunal held that LTC paid by assessee to employees involving foreign travel as well would not qualify for exemption under section 10(5) and, therefore, assessee would be liable for TDS on payment of such LTC.
***State Bank of India vs. DCIT - [2016] 67 taxmann.com 81 (Lucknow - Trib)***

**2610.** The Tribunal held that the Assessee could not be treated as Assessee in deafut for non - deduction of tax on retrenchment payment. The Tribunal noted that the Assessee had retrenched 69 employees out of those 69 employees five employees approached the Assessee for out of court settlement, that an MOU was entered into with the said employees, however, it was not acted upon by the Assessee since approval of HO was not obtained, that said five employees then filed an application before Regional Labour Commissioner ("RLC"), that the matter, thereafter, travelled to the Hon'ble Bombay High Court and the Hon'ble Bombay High Court directed the RLC to decide the matter on merits, that the RLC, subsequently, decided the issue in favour of the ex-employees and issued a certificate of recovery to the Collector Mumbai for recovery of the dues as land revenue dues and that pursuant to such order the bank account of the Assessee was attached and the money was forcefully recovered. The Tribunal based on such facts held that there was no employer employee relationship in between the Assessee and its ex-employees. The Tribunal noted that the Assessee was under a bonafide belief that such payments are capital receipts in the hands of the ex-employees and no TDS deduction was required and that the said ex-employees had paid due taxes on the same. The Tribunal further, by following the decision of Arun Bhai R. Naik (379 ITR 511), held that there was no obligation cast upon the employer to make retrenchment payments and the same would not fall within the

purview of 17(3)(i) (i.e. profit in lieu of salary) since ex-employees had no vested right to receive the said payments.
***ITO vs. Kuwait Airways Corporation (2017) 78 taxmann.com 187 (Mum. Trib.) (ITA No. 3303/Mum/2012 dated 15.02.2017)***

**2611.** The Tribunal held that section 206AA of the Act could not be applicable in respect of TDS on salary payments since TDS on salary could not be deducted by applying a flat rate of tax on gross payments considering section 192 of the Act provides that TDS would be deducted after allowing basic exemption limited and deduction for expenses. It also noted that the correct amount of TDS had been deducted and deposited with the Government.
***Rashtriya Ispat Nigam Ltd v ACIT – TS-24-ITAT-2016 (VIZ)***

*Section 194A*

**2612.** The Apex Court upheld the order of High Court holding that New Okhla Industrial Development Authority (NOIDA) is a Corporation established by a State Act and is, therefore, entitled to exemption of payment of tax at source under section 194A(1)
***CIT(TDS), Kanpur v. Canara Bank- [2018] 95 taxmann.com 81 (SC)- [2018] 95 taxmann.com 81 (SC)-Civil Appeal No. 6020 of 2018-dated July 2, 2018***

**2613.** The Apex Court dismissed the SLP against High Court ruling that where assessee, a co-operative society, carrying on banking business, paid interest income to members on time deposits, it was not required to deduct tax at source under section 194A by virtue of exemption granted vide clause (v) of sub-section (3) of section 194A.
***Com. of IT v. Bijapur District Central Co-operative Bank Ltd. - [2019] 101 taxmann.com 159 (SC)- Special Leave Petition (Civil) Diary No(s). 41156 of 2018- December 14, 2018***

**2614.** The Apex Court disposed Revenue's SLP against High Court following the Apex Court ruling in case of CIT(TDS) v. Canara Bank [Civil Appeal No. 6020 of 2018] wherein it was held that New Okhla Industrial Development Authority (NOIDA), being a Corporation established by a State Act, was entitled to exemption of tax deducted at source on payment of interests by the banks to the State Industrial Development Authority in terms of section 194A(3)(iii)(f).
***CIT(TDS) vs Vijaya Bank [2018] 103 CCH 0251 (ISCC)- Special Leave to Appeal (C) No(s). 28062/2017 dated 12.11.2018***

**2615.** Assessee was banker of NOIDA (Authority). Assessee made payment as interest to Authority in form of FDs/Deposits for financial year 2005-06. AO found that assessee did not deduct tax at source u/s. 194A towards interest paid to Authority on its deposits. AO passed order u/s. 201(1)/201(1A) read with Section 194A declaring assessee Bank as assessee in default. CIT(A) set aside order of AO—Tribunal held that payment of interests by assessee to State Industrial Development Authority did not require any deduction at source in terms of Section 194A(3)(iii)(f). High Court held that NOIDA was constituted by State Act and entitled to exemption of payment of tax at source u/s 194-A(1). The Apex Court held that High Court did not commit any error in dismissing the appeal filed by the Revenue. NOIDA, an Authority, established by the Uttar

Pradesh Industrial Area Development Act, 1976 is entitled to exemption of payment of tax at source u/s 194-A(1).
***CIT vs. Canara Bank- (2018) 102 CCH 0114 ISCC- Civil Appeal No.6020 of 2018-Dated Jul 2, 2018***

**2616.** The Court held that the Greater Noida Industrial Development Authority is entitled for benefit of section 194A(3)(ii)(f) and, therefore, interest received by it would be exempt under section 194A(3).
***New Okhla Industrial Development Authority v. CIT [2018] 95 taxmann.com 80/257 Taxman 3 (SC)- Civil Appeal No. 15613 of 2017 & Others dated July 2, 2018***

**2617.** The Court held that NOIDA, being an industrial development authority, was eligible to exemption under section 194A(3)(iii))(f) and, thus, banks were not entitled to deduct TDS on interest payment.
***Canara Bank v. CIT (Appeals) - [2019] 101 taxmann.com 188 (Allahabad)- WT No. 394 of 2016 dated December 3, 2018***

**2618.** The Court upheld the order of the Tribunal holding that In terms of section 194A(1), time of deduction of tax is undisputedly time at which interest is to be credited to account of payee or when it is paid incash/cheque or draft therefore, deduction of tax at source on interest income before close of financial year concerned as provided under section 194A(4) would not absolve assessee bank from penalty for not deducting tax at source at time of credit of said income in payee's account
***Union Bank of India v. Addl. CIT (TDS), Kanpur - [2018] 100 taxmann.com 231 (Allahabad)- ITA Nos. 225 & 230 of 2017 dated November 20, 2018***

**2619.** The Court held that where the assessee made provision towards contingent payment of interest on belated payment to its suppliers but subsequently noticing that said interest would never be paid to suppliers, it made corresponding reversal entries in books of account, there would be no liability to deduct tax under section 194A on such amount as no income accrued to suppliers.
***Karnataka Power Transmission Corpn.Ltd v DCIT - TS-51-HC-2016(KAR)***

**2620.** The Court, relying on the decision of the Apex Court in the case of CIT v Ghanshyam, held that interest under section 28 of the Land Acquisition Act is an accretion to compensation and formed part of compensation taxable under section 45(5) of the Act and does not fall within the ambit of interest envisaged under section 145A(b) of the Act (which provides interest received by an assessee on compensation or enhanced compensation shall be deemed to be income of the year in which it is received). Therefore, the said interest was not liable to TDS under section 194A of the Act.
***Movaliya Bhikhubhai Balabhai v ITO – TS-248-HC-2016 (Guj)***

**2621.** Assessee debited Letter of Credit (LC) discount charges to its profit and less account without deducting tax at source under section 194A and, thus, same were disallowed by AO. In view of fact that said charges were merely in nature of reimbursement of cost incurred by suppliers

under agreed arrangement and no interest payments had been made to suppliers. The Court upheld the Tribunal order deleting the impugned disallowance.

***Principal Commissioner of Income Tax, Central, Ahmedabad v. Plastene India Ltd.-[2018] 100 taxmann.com 414 (Gujarat)- R/TA No. 1284 of 2018 dated November 19, 2018***

**2622.** The Court held that the assessee, a cooperative society engaged in the banking business was not liable to deduct tax at source under section 194A on interest paid to its members for AYs 2008-09 to 2014-15, acknowledging the difficulty in identifying cooperative societies that fall under the category of 'co-operative societies engaged in carrying on the business of banking' since the category was not defined under the Act. It held that prior to the amendment to section 194A(3)(v), the Act provided for a general exemption to all cooperative societies from deducting tax on interest payments to its members and that the Finance Act, 2015 amended with prospective effect, denying the said exemption to cooperative banks, would be applicable only from AY 2015-16 onward and thus allowed exemption on deduction of tax for prior assessment years.

***The Coimbatore District Central Co-operative Bank Ltd v ITO – TS-757-HC-2015 (Mad)***

**2623.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made u/s 40(a)(ia) with respect to interest paid to NBFCs without deducting TDS u/s 194A. The assessee submitted that since the NBFCs had already paid tax on the impugned amount of interest received from assessee by filing return of income, the said amount could not be disallowed in assessee's hands u/s 40(a)(ia) in view of insertion of second proviso to section 40(a)(ia) vide the Finance Act, 2012 which provides that no disallowance needs to be made if the recipient has included the payment made by the assessee in its receipts and has paid the taxes thereon. The Tribunal rejected Revenue's claim that the said amendment vide the Finance Act, 2012 is effective only from 1-4-2013, relying on the decision in the case of CIT v. Ansal Land Mark Township (P.) Ltd. [2015] 234 Taxman 825 (Del HC) wherein it was held that the said proviso is declaratory and curative in nature and thus has retrospective effect from 1-4-2005 [i.e. the date when section 40(a)(ia) was inserted].

***DCIT v Esaote India (NS) Ltd. - [2018] 96 taxmann.com 624 (Ahmedabad - Trib.) – ITA No. 55 (AHD.) OF 2016 dated July 31, 2018***

**2624.** Assessee was co-operative society registered as co-operative bank and had obtained licence from RBI to carry out banking operations as co-operative bank. AO held that interest on deposits paid by assesee in excess of Rs. 10,000/- to its members was liable for tax deduction at source. AO u/s.40(a)(ia) made disallowance of interest on deposit paid by assesee. CIT(A) held that interest on deposits paid in excess of to its members was liable for tax deduction at source u/s. 194A. Assessee contended that assessee was not liable to deduct tax as assessee was exempt from TDS as per provisions of s. 194A(3)(v). The Tribunal held that, case of assessee squarely fell within provision of 194A(3)(v) being a specific provision. Section 194A(3)(i)(b) should not be applicable being general in nature. Specific provision i.e s 194A(3)(v) should override general provision, i.e s 194A(3)(i)(b), in case of over lapping or conflict, hence s.194A(3)(v) was applicable to facts of said case. Assessee's appeal was allowed.

***Chikmagalur Jilla Mahila Sahakara Bank Niyamitha vs. Asst CIT-(2018) 53 CCH 0284 BangTrib-ITA No. 1384/Bang/2018-Dated Jul 4, 2018***

Go to Index

**2625.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the disallowance made by the AO for non-deduction of TDS u/s 194A in respect of interest payment on time deposits during the AY 2012-13. It was noted that in the case of CIT v. Bijapur District Central [(2018) 93 taxmann.com 211 (Kar)] and Sri Basaveswara Sahakari Bank Ltd [(2016) 74 taxman.com 21 (Kar)] it was held that the provisions of the section 194A(3)(v) which had been amended to expressly provide that the exemption provided from TDS from payment of interest to members by a co- operative society under section 194A(3)(v) shall not apply to the payment of interest on time deposits by the co-operative banks to its members was effective from the prospective date of 1st June, 2015 and, thus, a cooperative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before 1st June, 2015.

***ASSISTANT COMMISSIONER OF INCOME TAX vs. BELLARY DIST. CO-OPERATIVE CENTRAL BANK LTD. - (2018) 53 CCH 0290 BangTrib - ITA No. 2016/Bang/2016 dated June 1, 2018***

**2626.** The assessee paid interest to NBFCs without deducting tax contending that as per section 194A(3)(a)(b), NBFCs fell in the exclusionary clause and accordingly no TDS was to be deducted. The AO disallowed the amount u/s. 40(a)(ia). CIT(A) upheld the order of the AO. Before the Tribunal, the assessee contended that in view of second proviso to section 40(a)(ia) no disallowance could be made when recipients of amount have offered the same as income and paid tax thereon. However, the Tribunal observed that the assessee did not file relevant material before the AO in this regard but the details were available with revenue regarding income offered by these NBFCs. Accordingly, it remitted the matter to the AO for verification of fact that recipient NBFCs had already taken into account amount of interest received by them for computing income in their return of income and in case the AO was satisfied then no disallowance was called for u/s. 40(a)(ia).

***AZMAH ULLA vs. ACIT (2017) 50 CCH 0085 BangTrib ITA No. 144/Bang/2017 dated 07.06.2017***

**2627.** The Assessee, a registered co-operative housing society and also a listed scheduled bank, paid interest to its members and non-members without withholding TDS under Section 194A of the Act. The AO made an addition under Section 40(a)(ia) of the Act in respect of such interest payments. The CIT(A) deleted the disallowance as it was observed that the assessee was not a co-operative society but a co-operative bank. Tribunal observed that since the assessee was a co-operative bank, carrying on banking business with approval of RBI, the assessee was not liable to withhold TDS under Section 194A of the Act on interest paid to its own members. However, in respect of interest payment to non-members, the Tribunal held that the assessee was liable to withhold / deduct TDS under Section 194A of the Act. Thus, the Revenue's appeal was partly allowed.

***ACIT vs. KODUNGALLUR TOWN CO-OPERATIVE BANK LTD. (CHENNAI TRIBUNAL) (ITA Nos. 527-529 & 526/Coch/2015) dated May 31, 2018 (53 CCH 0105)***

**2628.** The Tribunal allowed asseessee's appeal filed against the CIT(A)'s order wherein the CIT(A) had confirmed the AO's action in disallowing the assesse claim for deduction of discounting

charges paid due to non-deduction of TDS u/s 194A requiring TDS deduction on interest payments. Referring to the definition of the term 'interest' as given u/s 2(28A), the Tribunal held that discounting charges are outside the purview of interest expenses and, therefore, the question of making any disallowance on account of non-deduction of TDS on such discounting charges did not arise. It also relied on the decision in the case of PCIT vs. M. Sons Gems N. Jewellery Pvt. Ltd. [69 Taxmann.com 373 (Del HC)] wherein it was held that TDS was not to be deducted u/s 194A on payment of "factoring/discounting charges".

***DEPUTY COMMISSIONER OF INCOME TAX vs. STERLING ORNAMENT (P) LTD. - (2018) 53 CCH 0252 (Del Trib) - I.T.A. No. 4395/DEL/2014 dated June 27, 2018***

**2629.** The assessee- broker had paid borrowing fee to NSCCL (SEBI approved intermediary), for opting in Securities Lending Scheme, 1997 formulated by SEBI. It was noted that SEBI was just an intermediary between lenders and borrowers and the borrowing fee wasn't their income but it was beneficial to the lenders. Since the entire transaction was strictly to be carried out through NSCCL, assessee-broker obviously was not aware of the identity of the lender and thus Tribunal held that the assessee could not be fastened with liability of TDS u/s 194A (TDS on interest other than on securities) and the provisions became unworkable on the ground that assessee had no contact with the lender and they were completely unknown to each other. Further, as there was no enquiry (regarding the said transaction and acquaintance of the lenders and borrowers) held by AO nor the CIT(A), the matter was remanded back and to be restored for fresh adjudication by AO.

***JM Financial Services v DCIT [2018] 95 taxmann.com 129 (Mumbai – Trib.) – ITA NO. 3041 OF 2016 dated 23.05.2018***

**2630.** The Tribunal dismissed Revenue's appeal and upheld CIT(A)'s order holding that assessee being a primary agricultural cooperative society within meaning of section 2(19) was exempted from deduction of TDS u/s 194A on interest paid to its own members and thus disallowance u/s 40(a)(ia) for such no-deduction of TDS could not sustain. The AO had held that the assessee was not a primary agricultural cooperative society since it was engaged in business of banking. However, the Tribunal noted that the assessee was registered under the Kerala State Co-operative Societies Act and no approval was obtained from the RBI for carrying out the banking activities and accordingly, held the assessee to be a primary agricultural cooperative society

***ITO vs Kuthannur Service Co-operative Bank Ltd. [2018] 54 CCH 0278 (Coch- Trib.)- ITA No.467/Coch/2018, 468/Coch/2018, 469/Coch/2018, 470/Coch/2018 (CO No.77/Coch/2018, 80/Coch/2018, 78/Coch/2018, 79/Coch/2018) dated 29.11.2018***

**2631.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order deleting disallowance u/s 40(a)(ia) on account of non-deduction of TDS u/s 194A on payment of interest on loan taken from bank, noting that (i) the assessee had taken agricultural loans from the bank as a tie up arrangement with the farmers for holding the agricultural commodities and stocks in cold storage and to avail the facilities of cold storage (ii) it had made the payment of interest directly to bank on behalf of farmers since the bank had sanctioned the loans to the farmers (iii) entire loan was utilized by assessee for cold storage plant. It thus, held that the interest payment made to bank did not attract TDS as per section 194A.

Go to Index

***Dy.CIT vs Madhava Hi-Tech Cold Storage Pvt Ltd [2018] 54 CCH 0278 (Coch Trib) - ITA No.467-470/Coch/2018 (CO No.77-80/Coch/2018) dated 29.11.2018***

*Section 194C*

**2632.** The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had held that TDS was not to be deducted u/s 194C while making payment of licence fee by the assessee to IRCTC for granting contract of catering service since the payment of licence fee was made by the assessee-contractee to the contractor (IRCTC) whereas the said section is attracted where the payment is made by contractor to contractee.
***Pr.CIT v Hakmichand D & Sons - [2018] 97 taxmann.com 584 (SC) - SLP (Civil) Diary No.(S). 24740/2018 dated July 30, 2018***

**2633.** The Apex Court dismissed the Department's SLP filed against the order of the High Court wherein the High Court had deleted the disallowance made u/s 40(a)(ia) with respect to freight payment made directly by the company(from whom the assessee-contractor received transportation charges) to the assessee's sub-contractor without deducting TDS. The HC noted that since the freight payment wasn't made by the assessee and also, there was a direct agreement between the company and the sub-contractor the assessee had no role/liability.
***CIT v Daulat Enterprises [2018] 94 taxmann.com 262 (SC) – SLP (C) DIARY NOS 15537 & 15542 OF 2018 dated 17.05.2018***

**2634.** The Apex Court held that landing and parking charges payable by Airlines in respect of aircrafts are not for the 'use of land' per se but for a number of facilities provided and therefore would attract section 194C of the Act (TDS on contract) and not section 194I of the Act (TDS on rent) and consequently the assessee could not be treated as assessee in default under section 201(1) of the Act.
***Japan Airlines Co Ltd v CIT - (2015) 60 taxmann.com 71 (SC)***

**2635.** The assessee received transportation charges as contractor of various companies. It then made payment to various persons/truck owners for carrying out work as sub-contractor. The Assessing Officer found that, the assessee contractor did not deduct tax on payments made for carrying out work of one company, and therefore, the addition was made by way of disallowance under section 40(a)(ia) for non-deduction of TDS. The High Court held that section 194C, read with section 204(ii), will come into operation only on payment made by the assessee-contractor and here was an agreement between the said company and the assessee that freight payment would be made by said company directly to truck owners and TDS deduction as applicable would be made by said company; since payment was not made by the assessee, default in TDS was that of other company and not that of the assessee. SLP filed by Revenue against the High Court order is dismissed by the Supreme Court.
***CIT v. Daulat Enterprises [2018 95 taxmann.com 142/256 Taxman 422(SC) Special Leave Petition (Civil) Diary No. 18240 of 2018 dated July 2, 2018***

**2636.** Assessee was responsible for executing the contract of transportation/carriage of goods on behalf of the Principals and besides using its own trucks and lorries, it also hired trucks and

lorries from other owners or directly from the drivers available in the market or through brokers on random basis as and when required, on freight to freight basis. The AO made an addition observing that Section 194-C was applicable in case in hand on the ground that the Assessee was a Transporter and failed to deduct tax at source u/s.194-C. The Court upheld the order of the CIT(A) and Tribunal and held that the payments made to lorry hire charges by assessee was direct expense which was allowable under Section 28 and no disallowance under section 40(a) (ia) could be made especially when there was no contract between the assessee and the persons from whom it hired trucks and lorries. It held that in the absence of any evidence to prove contentions of AO on which the addition was based, even if, there was regular pattern and continuous transportation, it could not be said that those individual truck owners/drivers of transporters were contractors or sub-contractor of assessee company.

***CIT v Shark Roadways Pvt Ltd - (2017) 99 CCH 0018 AllahabadHC - INCOME TAX APPEAL No. 9 of 2013 dated 01.05.2017***

**2637.** The Court dismissed Revenue's appeal against Tribunal's order holding that TDS had to be deducted u/s 194C (payment made to contractors) and not u/s 194J (fees for professional or technical services) for payments made by assessee in respect of maintenance contracts which related to minor repairs, replacement of some spare parts and greasing of machinery, etc. since these services did not required any technical expertise.

***CIT vs MUMBAI METROPOLITAN REGIONAL DEVELOPMENT AUTHORITY & ORS [2018] 102 CCH 228 (Bom HC)- IT No.309,311,312,314 and 373 of 2016 dated August 23 2018***

**2638.** The Court dismissed Revenue's appeal and held that payment of carriage fees / placement fees by the assessee to cable operators for placing its TV channels in the prime band was subject to withholding tax under Section 194C and not 194J of the Act. It held that by agreeing to place the channel in a particular brand or frequency, the cable operators do not render any technical services. Further, it held that the payment would be covered under the definition of 'work' contained under Section 194C and also rejected the Revenue's alternate argument that the placement fee was in the nature of commission subject to TDS under Section 194H of the Act.

***UTV Entertainment Television – TS-523-HC-2017 (BOM) INCOME TAX APPEAL NO. 525 OF 2015 dated 10.10.2017***

**2639.** The Court upheld Tribunal's order deleting the disallowance made u/s 40(a)(ia) on account of channel placement fees paid to cable operations by the assessee during AY 2009-10 on which tax was deducted @ 2% u/s 194C and the Revenue contended that tax was to be deducted @ 10% u/s 194J in view of the amended 'royalty' definition vide the Finance Act, 2012 by virtue of retrospective insertion of Explanation 6 to section 9(1)(vi). It held that a party cannot be called upon to comply with a provision not in force at the relevant time but introduced later by retrospective amendment. Further, noting that the meaning of royalty for the purposes of section 40(a)(i) was that as provided in Explanation 2 to Section 9(1)(vi) and not Explanation 6 to Section 9(1)(vi), it held that no disallowance could be made u/s 40(a)(ia) since the channel placement fee was not royalty in terms of Explanation 2 to Section 9(1)(vi).

***CIT v NGC Networks (India) Pvt. Ltd [TS-41-HC-2018(BOM)] – ITA No. 397 of 2015 dated 29.01.2018***

Go to Index

**2640.** The Court dismissed revenue's appeal against the Tribunal's decision with respect to the certain issues relating to TDS wherein the Tribunal had held that –

- Placement fees/carriage fees paid by assessee-entertainment/TV company to cable operators and MSO/DTH operators were payment for work contract so as to be covered u/s 194C and not u/s 194J as fees for technical services
- Tax is not to be deducted u/s 194H on reimbursement of commission expenses, which was paid by another company on behalf of assessee
- Commission paid to non-executives/independent directors could not be treated as salary and, thus, there would be no occasion to deduct tax u/s 192

However, it admitted the revenue's appeal with respect to the certain other TDS issues wherein–

- the Tribunal had held payments made by assessee entertainment/TV company to production house for programme software purchase, equipment hire charge and other production related expenses excluding dubbing and processing charges were payments for works contract u/s 194C and the Revenue contended same to be fees for technical service u/s 194J
- assessee had deducted tax u/s 194C on payments to event managers and the Revenue contended that as per CBDT's Notification No. 188 of 2008, sport related event managers would be liable u/s 194J

***CIT, TDS v Zee Entertainment Enterprises Ltd. – (2018) 92 taxmann.com 30 (Bom) – ITA Nos. 1107, 1117, 1174 of 2015 & 126 of 2016 dated 28.02.2018***

**2641.** The Court deleted Sec.40(a)(ia) disallowance in respect of non-deduction of tax at source u/s 194C on freight charges reimbursed to the suppliers on the ground that the supplier was bound to pay the freight charges to the goods transport agency under the contract of sale.
***Hightension Switchgears Pvt. Ltd - TS 375 HC 2016 (Cal) - ITA 8 of 2011***

**2642.** The Court held that transportation of electricity through equipment, required statutorily to be maintained by technical personnel using technical expertise, did not result in provision of technical services and payment for the same was not taxable as FTS under section 194J of the Act and that tax was correctly deducted under section 194C of the Act and consequently the assessee could not be treated as assessee in default under section 201(1) of the Act.
***CIT vs Delhi Trans Co Ltd [ITA No 384 / 2012, ITA 566 / 2013, ITA No 570 / 2013, ITA 323/ 2015, ITA 324 / 2015, ITA 325 / 2015 & ITA 341 / 2015] - TS-453-HC-2015(DEL)***

**2643.** The Court dismissed the revenue's appeal against the Tribunal's order deleting disallowance made u/s 40(a)(ia) on ground that TDS was not deducted on hired vehicles, holding that hiring of vehicles does not fall within ambit of section 194C and it was only with effect from 1-6-2007 that TDS for hiring of vehicles was to be deducted u/s 194-I, whereas the year under consideration was AY 2007-08
***CIT v Pioneer Peresonalised Holidays (P.) Ltd. – (2018) 92 taxmann.com 107 (Ker) – ITA Nos. 138 & 176 of 2013 dated 26.02.2018***

**2644.** The Court dismissed Revenue's appeal against the Tribunal's order deleting the disallowance made by the AO u/s 40(a)(i) for non-deduction of TDS u/s 194C in respect of packaging materials purchased and u/s 194H in respect of target incentives given to the distributors. The

Tribunal had held that section 194C was not attracted in the present case since a “work” does not include supply of a product according to a customer’s requirements / specification by using materials purchased from a person other than the customers and consequently there was no application of provisions of section 40(a)(ia). With respect to target incentives, the Tribunal held that the only relationship between the appellant and the dealers and distributors was of seller and buyer and all the transactions took place on a principal to principal basis and hence the payment of target incentives made by the appellant company through credit notes could not be termed as ‘commission or brokerage' as stipulated in section 194H. The Court held that the reasoning given by the Tribunal was based on factual analysis of the transactions and there was no perversity in such analysis.

***PRINCIPAL COMMISSIONER OF INCOME TAX vs. SHALIMAR CHEMICAL WORKS LTD. - (2018) 102 CCH 0153 KolHC - ITAT No. 18 of 2017 With GA No. 181 of 2017 dated June 12, 2018***

**2645.** The Court dismissed Revenue’s appeal and held that domestic payments made by the assessee towards erection, testing, commissioning and trial operation of the equipment to contractors did not involve provision of professional / technical services within the meaning of Section 194J. It rejected the contention of the Revenue that the assessee was an assessee in default since section 194J was applicable on the impugned payment as against section 194C applied by the assessee. It noted that the agreement entered into between the assessee and the contractors was not for the supply of any technical services and that the inputs / services of the technical personnel were engaged entirely for an on behalf of the contractor and not on behalf of the assessee and therefore held that the deployment of personnel was not under a contract for supply of services / technical services but to ensure the due and proper execution of the work by the contractor.

***Bharat Heavy Electrical Ltd – TS-666-HC-2016 (P&H)***

**2646.** The Court held that where the assessee-company engaged in refining crude oil, storing and selling of petroleum products, entered into an agreement with a carrier for providing trucks for transportation of products so manufactured, it being a case of 'works contract', the assessee was required to deduct tax at source under section 194C while making payment of transporting charges and not under section 194-I as contended by the AO. Accordingly, it dismissed Revenue’s appeal.

***CIT (TD) v Indian Oil Corporation Ltd - [2018] 92 taxmann.com 281 (Uttarakhand) - IT APPEAL NOS. 37 & 38 OF 2014 dated MARCH 6, 2018***

**2647.** The assessee (a Govt. company, engaged in transmission of electricity) sought a ruling from the AAR on the question as to whether it was liable to deduct TDS u/s 194C or 194J on payment of transmission and wheeling charges to RVPN under transmission service agreement (for maintaining transmission lines) and on payment made to State Load Dispatch Centre (SLDC) for SLDC charges. The AAR held that from perusal of the duties and obligations of RVPN viz-a-viz the applicant, it could be seen that it was not a mere case of RVPN maintaining its system with the help of its professional and technical personnel but also a case of such personnel ensuring regular and consistent transmission of electrical energy at the grid voltage at the distribution point of the applicant. It, accordingly, held that the consideration paid towards

transmission charges partook the character of fees for technical services and thus the applicant was obliged to withhold tax thereon u/s 194J. As far as SLDC charges were concerned, it held that the SLDC were constituted for the purpose of exercising the powers and discharging the functions under Part V of the Electricity Act, which deals with the Transmission of electricity and considering the nature of its obligations and the role it performed, it appeared to be more of a supervisory charge with a duty to ensure just and proper generation and distribution in the state as a whole. The AAR thus held that TDS was not required to be deducted u/s 194J or 194C on payment of SLDC charges.

***AJMER VIDYUT VITRAN NIGAM LIMITED, IN RE - (2013) 353 ITR 0640 - AAR No. 1012 of 2010 dated April 27, 2018***

**2648.** The AO made disallowance u/s 40(a)(ia) with respect to payments made to the transporters without deducting TDS u/s 194C. Section 194C(6) *inter alia* provides that TDS is not to be deducted from any payment made to a contractor during the course of business of plying, hiring or leasing goods carriages who furnish a declaration stating that he owns 10 or less than 10 goods carriages and aslso furnishes his PAN. Section 194C(7) further provides that the person making such payment shall furnish particulars of persons referred in section 194C(6) to the prescribed authority. In the instant case, it was noted that though all the transporters had furnished their PAN and the same were also furnished in the TDS return, the AO made the aforesaid disallowance opining that the provisions of Section 194C(6)/ 194C(7) had not been complied with. The Tribunal dismissed revenue's appeal against the CIT(A)'s order deleting the said disallowance, following the decision in the case of Le Modulor Pvt. Ltd. [ITA No.693/Ahd/2016] wherein it was held that section 194C(6) and 194C(7) are independent of each other and cannot be read together to attract disallowance u/s. 40(a)(ia) r.w.s. 194C of the Act

***ASSISTANT COMMISSIONER OF INCOME TAX vs. EAGLE STEEL INDUSTRIES PVT. LTD. - (2018) 53 CCH 0265 (Ahd Trib) - I.T.A. No.431 & 432/Ahd/2018 dated June 28, 2018***

**2649.** Where the assessee merely purchased residential sites from the developer/contractors for the allotment to its residents, the Tribunal held that the AO erred in invoking Section 194C alleging that the work carried out by developer/contractor on behalf of assesse was in nature of works contract. It held that the assessee was not required to deduct tax at source towards payment of advance sale consideration as it was for seller of sites to pay capital gains depending upon tax payable by him.

***INCOME TAX OFFICER vs. REMCO (BHEL) HOUSE BUILDING CO-OPERATIVE SOCIETY LTD. - (2018) 52 CCH 0074 BangTrib - ITA Nos. 1372 to 1377/Bang/2017 dated Feb 2, 2018***

**2650.** The assessee society entered into agreements with developers / contractors for identifying suitable lands and forming residential layout for allotment of residential sites to its members and did not withhold TDS on the payments made to them. The AO held that since the said agreements were in the nature of works contracts, the provisions of Section 194C were applicable and thereby held that assessee to be assessee in default under Section 201(1) for failure to withhold TDS. The CIT(A) observed that the scope of the agreements had to be treated as whole and not in piece meal manner and thus allowed the assessee's appeal by holding that the provisions of Section 194C were not applicable on payments made to developers /

contractors, as the payments are made for purchase of land and the same could not constitute works contract merely because the developers were required to lay out roads and undertake other activities before delivery of completed sites. Relying on the ruling of the jurisdictional High Court in Karnataka State Judicial Department Employees House Building Co-operative Society Ltd (ITA No. 1275 of 2006), Tribunal held that since assessee was only a purchaser, the provisions of Section 194C were not applicable and that the assessee was not required to withhold TDS.

***ITO(TDS) vs. Bangalore City KSRTC Employees Housing Co-operative Society Ltd. – [2018] 53 CCH 0102 (Bangalore ITAT) – ITA No 6 to 17/Bang/2017 dated May 4, 2018***

**2651.** The Tribunal upheld disallowance for TDS default under section 40(a)(ia) and held that payment made to each lorry owner /driver in excess of Rs. 50,000 for transporting iron-ore was subject to TDS under section 194C. It rejected assessee's contention that the payment against each bill/GR to each truck has to be considered as a separate contract and therefore no TDS was applicable on individual payment for each GR less than Rs. 50,000 on the ground that nature of hiring of transporters/contractors was on a permanent and continuous basis throughout the year and not on a task-basis and held that even though payment had been split by separate invoices as the basis of payment was per M.T. of iron ore and therefore per trip per truck became irrelevant for the purpose of payment and accordingly payment had to be aggregated for the purpose of section 194C(3) of the Act.

***Sri Shivamurthy [TS-565-ITAT-2016(Bang)] (I.T.A. No.553/Bang/2014)***

**2652.** The Tribunal held that no disallowance could be made u/s 40(a)(ia), where the assessee-bankhad paid interest to depositors who deposited Form 15G/15H without deducting TDS even though the assesseehad failed to submit the said Forms before the prescribed authoritysince the requirement of filing of Forms 15G and 15H with prescribed authority viz., Commissioner is only procedural, relying on the decision in the case of CIT v Sri Marikamba Transport Co [2015] 379 ITR 129 (Karnataka) wherein it was held that non-filing of Form No. 15-I/J (required for non-deduction of TDS u/s 194C while making payments to sub-contractors) is only a technical defect and provisions of section 40(a)(ia) were not attracted.Further, the Tribunal held that interest paid by bank on deposits held by its customer, though may not strictly fall within ambit of section 36(1)(iii), yet thesame wouldfall within ambit of section 37(1) and, thus, in case of payment of interest without deducting tax at source, provisions of section 40(a)(ia) would apply

***JCIT v vs. Karnataka VikasGrameena Bank - [2018] 93 taxmann.com 256 (Bangalore - Trib.) - IT APPEAL NOS. 673 & 674 (BANG.) OF 2014 dated 25.04.2018***

**2653.** The Tribunal held that where assessee procurement agency which procured paddy entered into an agreement with a miller for milling paddy for consideration of certain cash amount and as per agreement, by-product arising from process of milling was property of miller, such by-product retained by miller did not constitute a payment of consideration for work of milling of paddy and, thus, assessee was only liable to deduct TDS on cash consideration paid for milling work

***ITO, TDS Patiala v. Distt. Manager, Punjab State Warehousing Corporation- [2018] 100 taxmann.com 28 (Chandigarh - Trib.)-ITA Nos. 162, 685, 1241, 1242, 1309 & 1310, 1312-1314 (CHD.) of 2016 669, 1424, 1425 (CHD.) of 2017 & 77, 78, 316-325 & 336 (CHD.) of 2018 dated October 30, 2018***

Go to Index

**2654.** Assessee during the year had engaged labour force of S company in his unit and made payment to labourers through bank account of S company and booked expenditure in his account. The AO during proceedings held that payment of expenditure was shown in order to reduce profit in order to avoid payment of legitimate tax and further assessee had failed to produce primary evidence such as provident fund and ESI subscription made for labours of S company. Thus, the AO inferred that payment was bogus and by applying section 40(a)(ia) disallowed same which was upheld by CIT(A). The Tribunal on appeal held that, labour of S company was engaged for work of assessee and the assessee paid wages to labourers through said party and no income element of S was involved in this transaction. Further, labour wages alone were reimbursed to S company by assessee. Thus, the Tribunal also concluded that when amount paid was merely reimbursement and no income was embedded in payment made to payee, there was no obligation to deduct TDS u/s 194C out of such payment. Thus, Tribunal deleted the disallowance u/s 40(a)(ia).
***Dilip Kumar Nayak vs JCIT- (2018) 53 CCH 0519 Cuttack Trib- ITA No. 86/CTK/2017 dated 06.09.2018***

**2655.** The Tribunal held that where assessee entered into agreement with BEL, a government of India Defence undertaking for providing assembly services of raw material in respect of small component called, since no technical consultancy had been offered by BEL, assessee was justified in deducting tax at source under sec. 194C while making payments to BEL. The AO had erred in holding that activities carried out by BEL involved technical staff and qualified enginners and therefore, payments made for providing technical assistance would be covered by provisions of section 194J.
***ITO vs Akon Electronics India (P.) Ltd [2018] 97 taxmann.com 176 (Delhi Tribunal )- IT Appeal No.1281 (Delhi) of 2016 dated August 14 2018***

**2656.** Where the supplier viz. HCL, under contract awarded by the assessee, supplied the assessee equipment as per the specifications mentioned in the contract and the materials used in supplying such equipment were sourced from other third parties (and not the assessee). The Tribunal held that the assessee was not be liable to deduct tax u/s 194C on payment made to to HCL as it did not constitute 'work' for a contract under the said section.
***ITO (OSD) vs Mahanagar Telehone Nigam Ltd [2017] 85 taxmann.com 191 (Delhi Trib.) ITA No. 4715 (delhi) of 2015 dated 01.09.2017***

**2657.** The Tribunal held that where a singer rendered live performance in assessee's hotel, deduction of TDS under section 194C and not 194J was justified since such singer had not been engaged in his professional capacity in production of a cinematograph film.
***C.J.International Hotels Ltd v ACIT - [2016]68 taxmann.com 27 (Delhi-Trib)***

**2658.** The Tribunal held that the AO was incorrect in making disallowance under section 40(a)(ia) of the Act for non-deduction of tax under section 194C on payments made to contractors for carriage of goods by rail and in holding that the assessee was not entitled to the benefit of exception provided for in Section 194C (which excluded within its purview payments made for the purpose of rail carriage) on the ground that the payment was made to a contractor and not

directly to the Railways. It held that if it was the intention of the legislature to ensure that payments were directly made to the Railways, the exception provided in Section 194C would be redundant as 194C of the Act dealt with payment to contractors and that even if payments were made to an Agent it would be exempt under section 194C as long as the payment was meant for meeting expenditure in the form of payment to the Railways. Therefore, it deleted the disallowance made and upheld the contention of the assessee that payments made to contractors for the purpose of railway travel were not within the purview of Section 194C of the Act.

***Ras Polybuild Products P Ltd v DCIT – (2016) 48 CCH 0254 (Hyd Trib) – ITA No 221 / Hyd /2016***

**2659.** The Tribunal held the assessee not to be an assesse-in-default u/s 201(1) with respect to payment made to Gujarat Enviro Protection and Infrastructure Limited (GEPIL) without deducting TDS u/s 194C, following the Tribunal's order in the assessee's own case for an earlier year wherein it was noted that the assessee had acted only as a custodian for disbursement of funds for earmarked purposes, i.e. as nodal agency of Government for smooth implementation of the Municipal Solid Waste Management in designated areas and though funds continued to remain with the assessee, ownership or utilization did not vest in it. Thus, it was held that with respect to the funds disbursed to GEPIL, there could not be any obligation to deduct TDS as the payment was effectively made by Government to GEPIL through the assesse. Accordingly, the assessee's appeal was allowed.

***ASANSOL DURGAPUR DEVELOPMENT AUTHORITY vs. ITO (TDS) - (2018) 53 CCH 0314 (Kol Trib) - I.T.A No. 1494, 2185, 1452& 1453 & 1439 & 1440, 2155/Kol/2016 dated June 29, 2018***

**2660.** Where the assessee , an exporter of goods, had incurred transport charges in relation to purchase referred to as carriage inward and carriage outwards without deducting TDS, the Tribunal held that payment could not be disallowed under section 40(a)(ia) of the Act as under section 194C of the Act, a payer availing carriage services would be exempt from TDS provided the payee furnishes its PAN to the payer. It dismissed the contention of the Revenue that Section 194C(6) would not apply to payments made by a person who himself is not a transporter to another sub-contractor and held that the benefit shall be available to all payers by virtue of 194C(6), in relation to all Goods Transport Charges irrespective of the fact, whether it was under a Contract or a Sub-contract noting that the distinction between contractor and sub-contractor had been done away with by virtue of clause (iii) of Explanation 194C(7) wherein the term contract included sub-contract.

***Soma Rani Ghosh v DCIT – TS-497-ITAT-2016 (Kol) - I.T.A. No. 1420 /KOL/ 2015***

**2661.** The assessee-company, had entered into an agreement with one pharmaceuticals company (PC) according to which the PC would manufacture the pharmaceutical products in the brand name "Sorbiline" by using materials from its own source and sell the same to the assessee on "principal to principal" basis. The deduction claimed for payment made to the PC was disallowed by the AO for non-deduction of TDS u/s 194C. However, the said deduction was allowed by the CIT(A) holding that section 194C was not applicable in the instant case, since clause (e) of Explanation (iv) of section 194C itself excludes manufacture/supply of product to a customer by

using material purchased from person other than such customer from the ambit of the said section. Thus,the Tribunal upheld the order of CIT(A) giving concurrent finding as above.
***DCIT v Laboratories Griffon (P.) Ltd. [2018] 93 taxmann.com 29 (Kolkata – Trib.) – ITA NO 133 OF 2016 dated 11.04.2018***

**2662.** The Tribunal held that the payments made by assessee (a nodal agency) to GEPIL an environment infrastructure company entrusted with the job of municipal solid waste management by way of disbursement of grant provided by state government under Jawaharlal Nehru National Urban Renewal Mission (JNNURM) was not liable to TDS as the said payment was not a payment which the assessee was obliged or responsible to make and therefore the primary requirement of section 194C or 194J failed as admittedly the assessee was not the person responsible for payment within the meaning of provisions of chapter XVIIB of the Act. It noted that the assessee was merely acting as an agent of the state government and thus was only a pass through agency of these funds.
***Asansol Durgapur Development Authority vs ITO(TDS)-TS 389 -ITAT-2(KOL) I.T.A Nos. 279 & 280/Kol/2016 dated 08.09.2017***

**2663.** The Tribunal held that where the assessee had paid a sum towards supply of machines and another amount towards product service contract without deducting tax at source under section 194C of the Act, the assessee could not be considered as an assessee in default for the purpose of making disallowance under section 40(a)(ia) in respect of the purchase of machinery as 194C was inapplicable to such payments. As regards, the payment towards product service contract, the assessee had fairly conceded that the disallowance was rightly made.
***Yofoodies v ACIT – (2016) 48 CCH 0213 (Kol Trib) – ITA No 838 / Kol / 2016***

**2664.** The Assessee was provider of Direct to Home (DTH) services. The assessee entered into agreement with third party Installation Service Providers (ISP'S) for installation of dish antenna and incidental hardware at premises of subscribers. For this service, the assessee paid installation charges after deducting TDS as per provisions of section 194C. The Assessing Officer was pf view that work involved professional services by technical manpower and, therefore, same was within ambit or section 194J. The Tribunal held that in view of decision in case of Jt.CIT v. Bharat Business Channels Ltd. [2018] 92 taxmann.com 216/170 ITD 628 (Mum. – Trib.), installation of dish antenna and incidental hardware by installation service providers amounted to work contract under section 194C and no technical expertise was required so as to make the assessee liable under provisions of section 194J. Therefore, the assessee had correctly deducted tax under section 194C.
***Tata Sky Ltd. v Asst. CIT [2018] 99 taxmann.com 272(Mum. – Trib.) -ITA Nos. 6798, 6799, 6803, 6804 & 6923 to 6926 (MUM.) of 2012-dated October 12, 2018***

**2665.** The Tribunal held that installation of set-top box by installation services providers amounted to works contract for which no technical expertise was required. Accordingly, it held that the assessee was not liable to deduct tax under Section 194J and had rightly deducted TDS under section 194C. Accordingly, it held that the AO had incorrectly held the assessee to be an assessee in default under Section 201 of the Act.

Go to Index

Further, it held that trade discount granted to principal distributor for distribution/sale of set-top boxes (STB), sale of recharge vouchers, prepaid vouchers etc could not be considered as commission and, hence was not liable for deduction of tax at source under provisions of section 194H

***JCIT v Bharat Business Channels Ltd - [2018] 92 taxmann.com 216 (Mumbai - Trib.) - IT APPEAL NOS. 7047, 7048, 7200 & 7201 (MUM.) OF 2012 dated MARCH 20, 2018***

**2666.** Where the assessee deducted tax under Section 194C of the Act on payments made for the purpose of marine geotechnical investigation for rock excavation but the AO alleged that the assessee ought to have deducted tax under Section 194J, the Tribunal directed the AO to verify the tender / contracts under which the payment was made and held that i) if the payment was made for construction of retaining wall against the Mithi river, Section 194C would apply and ii) if the payments were made for rock excavation, Section 194J would apply.

***Mumbai Metropolitan Region Development Authority v ACIT – (2018) 52 CCH 0082 MumTrib – ITA No 5186 / Mum / 2016 dated Feb 7, 2018***

**2667.** Where assessee engaged third-party contractors to carry out non-technical work and made payments after deducting TDS under Section 194C of the Act, the AO held that assessee was liable to withheld TDS under Section 194J and not under Section 194C. Accordingly, the AO made disallowance under Section 40(a)(ia), which was deleted by the CIT(A). The Tribunal held that since payments made to semi-skilled personnel did not involve any technical or professional knowledge on their part, the same was liable to TDS under Section194C and not under Section 194J. Accordingly, it dismissed the Revenue's appeal.

***ACIT vs. WTI Advance Technology Ltd. – [2018] 53 CCH 0029 (Mum ITAT) – ITA No 1656/Mum/2016 dated May 11, 2018***

**2668.** The Tribunal held that where the contract for supply of material was distinct and separate, section 194C of the Act would not be applicable towards supply of equipment in light of Explanation to Section 194C which states that no TDS was to be deducted on the supply portion of a contract.

***Maharashtra State Power Generation Co Ltd v ACIT – TS-30-ITAT-2015 (Nagpur)***

**2669.** The Tribunal held that payments to clearing and forwarding agents represented services unless otherwise proved to be reimbursements and therefore were liable to TDS under section 194C of the Act. It further rejected the contention that disallowance under section 40(a)(ia) of the Act was applicable only to the amounts payable at the end of the year.

***ACIT v Zephr Biomedical [ITA No 121 & 309 / PNJ / 2014 & ITA No 122 / PNJ / 2014] -TS-481-ITAT-2015(PANAJI)***

**2670.** The Tribunal held that lower TDS under section 194C of the Act was applicable to payments towards use of containers which was incidental to transportation of cargo by sea route and not section 194I since it was to be considered as incidental to the whole process of transportation of goods between ship and shore and could not be considered as a standalone transaction in its own character.

***ACIT v Pushpak Logistics Pvt Ltd – TS-53-ITAT-2016 (Rajkot)***

Go to Index

**2671.** The Tribunal held that since the supplier transported goods to assessee through its own transport agency and the assessee made payment as per bill issued by supplier, it could not be said that the assessee had engaged the services of transporter as there was no express or implied contract between assessee and transporter and, thus, the assessee was not liable to deduct TDS u/s 194C with respect to the said payment.
***K.V. Satyanarayana Murthy v ITO - [2018] 96 taxmann.com 252 (Visakhapatnam - Trib.) – ITA No. 428 (VIZ.) OF 2014 dated July 25, 2018***

**2672.** The Tribunal held that the payments made to the labourers through maistries could not be construed as payment for a contract of supply of labour between the assessee and maistries and did not attract TDS u/s 194C. It accepted assessee's submission that maistries were first among four to five persons of a group of labourers and for sake of convenience, it had made payment to group leader who in turn paid amount to remaining labourers in group.
***ACIT v A. KASIVISWANADHAM - (2018) 173 ITD 0478 (Visakhapatnam-Trib.) – I.T.A. No. 138/Viz/2017 & Cross Objection No. 48/Viz/2017 dated July 20, 2018***

**2673.** The Tribunal held that payment made by the assessee, National Highway Authority of India to toll collection entities was subject to TDS under section 194C and not 194H since the contract was in the nature of contract for supply of labour for execution of work contract and could not be considered as a contract of agency representing commission income as defined under section 194H of the Act since there was no principal agency relationship. Further, it held that normally commission was paid in terms of value of transaction whereas in the instant case, consideration was paid in terms of remuneration payable to the personnel deployed plus service charge of 14 percent on the total remuneration.
***DCIT v Project Director NHAI – TS-329-ITAT-2016 (Viz)***

*Section 194H*

**2674.** The assessee functioning under the Ministry of Information and Broadcasting was engaged in the running of the TV Channel 'Doordarshan' and had been regularly telecasting advertisements of several consumer companies. It had entered into an agreement with several advertising agencies to enable them to do business of telecasting advertisements of several consumer products on its channel which contained the mode and time within which agency would make payment to assessee and assessee would pay 15 percent by way of commission to the agencies. The AO during assessment proceedings held that the provision of Section 194H would be applicable to the assessee as the payment made to the agencies were made in the nature of 'commission' and further the provision of section 201(1) would also be applicable as the assessee had failed to deduct tax at source from the amount paid to various agencies. The Supreme Court held that once the provisions of Section 194H were held to be applicable to the transactions in question, it was obligatory on part of the assessee to have deducted the tax and the non-compliance of the same attracted the rigour of section 201(1) which provides for consequence of failure to deduct the tax as provided u/s 194H. The Apex Court dismissed the appeal of the assessee and held that Section 194H would be applicable because payment made by the assessee to the agencies were to secure more business and in the nature of commission.

Go to Index

***Director, Prasar Bharati v. CIT – [2018] 92 taxmann.com 11 (SC) – Civil Appeal Nos. 3496-3497 of 2018 dated April 3, 2018***

**2675.** The Court held that Bank guarantee commission is not in nature of commission paid to an agent but it is in nature of bank charges for providing one of banking service and, thus, while making payment of bank guarantee commission, requirement of deduction of tax at source under section 194H would not arise.
***CIT (TDS)-1 v. Larsen & Toubro Ltd. - [2019] 101 taxmann.com 83 (Bom)- ITA No. 769 of 2016 dated December 4, 2018***

**2676.** The Court dismissed Revenue's appeal against Tribunal's order deleting the disallowance made u/s 40(a)(ia) for non-deduction of TDS u/s 194H on commission paid by the assessee (engaged in business of booking air tickets) to her various agents, accepting the assessee's contention that the travel agents booking air tickets through assessee made payment of tickets at concessional rates (considered as commission by the AO) and they were assessee's customers and not her agents. It relied on the decision in the case of Ahmedabad Stamp Vendors' Association v. UOI (2002) 257 ITR 202 (Guj HC) wherein it was held that the principal-agent relationship was essential for applying section 194H
***Pr.CIT v MANISHABEN N MASHRU - TAX APPEAL No. 1104 of 2018 (Guj HC) dated 10.09.2018***

**2677.** The Court held that the AO was not justified in disallowing the discount granted by the assessee to advertisement agencies by erroneously characterizing it as commission under Section 194-H. It held that the AO had not made any enquiries and had made a general allegation that the discount was in the nature of commission, ignoring the books of accounts and credit notes issued by the assessee and therefore held that his basis was unjustified. Further, it held that the discount to advertisement agencies sprung from a relationship on principal to principal basis and therefore did not constitute commission under Section 194H.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. SHAILENDRA GARG - (2018) 101 CCH 0061 RajHC - D.B. Income Tax Appeal No. 6/2018 dated Feb 15, 2018***

**2678.** The Tribunal held that where sale is made on the basis of a credit card, it is clearly a transaction of merchant establishment and credit card company only facilitates electronic payment, for a certain charge. Thus, the commission retained by credit card company is in the nature of normal bank charges and not in nature of commission/brokerage for acting on behalf of merchant establishment. Thus, the Tribunal concluded that payments to banks on account of utilization of credit card facilities would be in the nature of bank charge and not in nature of commission within the purview of section 194H. Consequently, it held that there was no requirement for deducting TDS on the Commission retained by the credit card companies and there was no merit in the appeal filed by Revenue.
***Velankani Information Sysytems Ltd vs DCIT- (2018) 97 taxmann.com 599 (Bang- Trib)- ITA No 218 & 283 of 2017 dated 12.09.2018***

**2679.** Airline operators collected passenger service fees (PSF) from passengers at the time of booking of tickets, on behalf of the assessee-airport. While paying the same to the assessee, the Airlines

operators retained certain percent of invoice value on account of cash discount or collection charges. The Tribunal held that the said collection charges or cash discount retained by the airline operators assumed the character of commission paid by principal to its agents and thus, the assessee being the principal was required to deduct TDS u/s 194H on such payments to airlines operators.

***Delhi International Airport (P.) Ltd. – DCIT - [2018] 93 taxmann.com 228 (Bangalore - Trib.) - IT APPEAL NOS. 581, 596, 622 & 636 (BANG.) OF 2017 dated April 19, 2018***

**2680.** The Tribunal held that the law in Idea Cellular (2010) 325 ITR 148 (Del HC) that there is a principal-agent relationship between the telecom company and the dealers does not mean that a similar relationship can be inferred between the dealers and the sub-dealers. Accordingly, the incentive paid by the dealers to sub-dealers cannot be equated with commission as stipulated u/s 194H and so there is no requirement for deducting TDS.

***Rakesh Kumar vs. CIT - I.T.A. No.3386/DEL/2014 dated 13.08.2018***

**2681.** The Tribunal held that the discount i.e. difference between MRP and the selling price, allowed by the assessee (engaged in the business of providing telecommunication services) to its distributors against advance payment made by the distributor was in the nature of commission and accordingly held that the assessee was liable to deduct taxes under section 194H of the Act. Accordingly, it held that the assessee was an assessee in default under Section 201 of the Act.

***TATA TELESERVICES LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0186 DelTrib - ITA Nos. 3328 to 3332/Del./2015 dated Mar 15, 2018***

**2682.** The Tribunal held that when co-ordinate benches of Tribunal decided that discount provided to distributors on sale of prepaid vouchers by assessee-telecom company was not commission and, thus, did not warrant deduction of TDS; disallowance for said expense for want of non-deduction of TDS was not justified.

***Bharti Hexacom Ltd v ACIT - [2016] 68 taxmann.com 357 (Delhi-Trib.)***

**2683.** The Tribunal held the assessee to be assessee-in-default u/s 201(1) for non-deduction of TDS on commission paid by the assessee-telecom operator to its distributors. The assessee had claimed that there was no principal to agent relationship between itself and its distributors and thus the margin earned by the distributors could not be considered as commission so as to attract section 194H requiring TDS on commission payments. The Tribunal followed the decision of coordinate bench in the case of Vodafone Mobile Services Ltd. [ITA Nos. 1189/Hyd/104 and 1401 to 1405/Hyd/2015] wherein, on identical issue, it was held that distributor was merely link between assessee and ultimate consumer / subscriber and distributor could at best enforce obligation on part of assessee to provide connection / talk-time to subscriber which itself would not change characteristic of transaction from ‘principal to agent' to ‘principal to principal'.

***IDEA CELLULAR LTD. vs. ACIT - (2018) 53 CCH 0379 HydTrib - ITA Nos. 1445 & 1446/Hyd/2015 dated July 20, 2018***

Go to Index

**2684.** The Tribunal dismissed assessee's appeal against CIT(A)'s order treating the assessee as assessee in default u/s 201(1) and held that where the assessee (engaged in business of providing cellular mobile telephone services to its customers through network of distributors) paid commission to its distributors for rendering distribution services of its pre-paid SIM cards, the relationship between assessee and its distributors was that of principal and agent and TDS u/s 194H had to be deducted. Further, noting that the assessee had itself deducted tax on payments to its distributors for the post-paid SIM cards, it held that the service being same in respect of post paid SIM cards/ e coupons supplied, TDS was applicable to pre paid services as well. Accordingly, it dismissed assessee's appeal.
***Tata Teleservices Limited vs DCIT (2017) 51 CCH 200 Hyd Trib. ITA NO. 755 to 757/H/2012, 153/H/2013 dated 25.10.2017***

**2685.** The Tribunal allowed assessee's (distributor of Idea Cellular Limited) appeal against CIT(A)'s order and deleted addition u/s 40(a)(ia) with respect to commission paid to retailers/dealers, rejecting Revenue's contention that the commission paid was liable to TDS u/s 194H. It noted that the assessee had received commission income from the principal, Idea Cellular Limited which was already subjected to TDS and as per the agreement between the Idea Cellular Limited and the assessee as well as the dealers/retailers, the said commission received by the assesse was then shared with dealers/retailers. Accordingly, it held that the retailers/dealers were not agent of assesse since the commission was originally paid by the Idea Cellular Limited who was acting as a principal and all other parties being distributor, dealers and retailers were receiving the commission from Idea Cellular Limited. The Tribunal also clarified that only for the sake of completeness of the entries in the books, the commission was routed through the assessee's books of account.
***Shri Rahul Singhal v ITO [TS-746-ITAT-2018(Jaipur)] - ITA No. 1029/JP/2018 dated 20.12.2018***

**2686.** The Tribunal held that the AO failing to appreciate that the distributor of the assessee was not its agent, erroneously invoked the provisions of Section 194H to contend that the assessee ought to have deducted tax on the discount extended to the distributors on its pre-paid sim cards. Further, it noted that no payment had been made by the assessee and the discount was a mere arrangement. Accordingly, it held that the assessee was not liable to deduct TDS under Section 194H of the Act and therefore held that the assessee could not be considered as an assessee in default under Section 201 of the Act.
***VODAFONE DIGILINK LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0261 JaipurTrib - ITA No. 67/JP/2015 dated Mar 8, 2018***

**2687.** The Tribunal held that where assessee-logistic company did not deduct TDS on payment made to overseas organizations for availing their logistic services, since transaction was on principal to principal basis and merely word 'agency' was used in agreement did not mean that there existed relationship of agency TDS was thus not required to be deducted.
***Balmer Lawrie & Co. Ltd v ITO (IT) - [2016] 68 taxmann.com 384 (Kolkata-Tribunal.)***

**2688.** Where the AO opined that the expenses claimed by assessee under the head 'trade discount and cash discount' which were given by it to its customers/ dealers on account of bulk quantity

of goods purchased by them were nothing but commission expenses liable for deduction of TDS u/s 194H, the Tribunal held that since the assessee supplied goods to its dealers on principal-to-principal basis and there was no relationship between assessee and its customers as of principal and agents, the discount offered could not be termed as commission u/s 194H.
***EPCOS India (P.) Ltd. v ITO – (2018) 169 ITD 541 (Kol Trib) – ITA Nos. 2553, 2758 (Kol.) of 2013 & 688, 1325, 1718 & 1895 (Kol.) of 2014 dated 02.02.2018***

**2689.** The Assessee was provider of Direct Home (DTH) services. It entered into agreement with distributor for sale of Set Top Box (STB) and recharge coupon vouchers. As per agreement products were sold to distributor at discounted price. The assessee also provided festival/seasonal discount to distributors. The Assessing Officer held the assessee to be in default as per section 201(1) for non-deduction of tax at source under section 194H in respect of discount offered to distributor and, consequently, made the assessee liable for interest under section 201(A). The Tribunal held that discount granted to distributor could not be considered as commission and, hence not liable for deduction of tax at source under provisions of section 194H.
***Tata Sky Ltd. v Asst. CIT [2018] 99 taxmann.com 272(Mum. – Trib.) ITA Nos. 6798, 6799, 6803, 6804 & 6923 to 6926 (MUM.) of 2012-dated October 12, 2018***

**2690.** The assessee, engaged in the business of providing providing basic & mobile telecommunication service and internet service, filed its returns declaring loss for the relevant AY under consideration. The AO re-opened assessment as the AO found that assessee had not deducted tax at source on alleged commission paid to distributors on sale of prepaid sim cards and recharge coupon vouchers. The AO rejected assessee's claim that the relation between assessee & distributors was on principal-to-principal basis and held that the discount on MRP by assessee to distributors was in nature of commission as per S.194H(on which tax was not deducted at source) and thus made disallowance u/s 40(i)(ia). The CIT(A) deleted the disallowance. The Tribunal upheld CIT(A)'s order and accepted assessee's contention that the relation between assessee & distributors was on principal-to-principal basis and further held that the distributors could not be treated as agents of assessee and thus the said sale to the distributors was outside the ambit of S.194H
***ACIT & Ors v Tata Teleservices (M) Ltd. & Ors (2018) 52 CCH 0397 MumTrib - ITA No.T 5031/Mum./2016, 5032/Mum./2016, 5033/Mum./2016 dated 27.04.18***

**2691.** The Tribunal held that that payment made by the assessee, engaged in business of trading in foreign exchange to Restricted Money Chargers (RMCs) for buying foreign currency and travelers cheques was not subject to TDS under section 194H since the contract was in the nature sale of goods whereby RMCs held these foreign currency/travellers cheques as their stock in trade and sold them to the assessee making it a direct sale transaction on principal to principal basis and not a contract of agency representing commission income as defined under section 194H of the Act since there was no principal agency relationship. Accordingly, it held that no disallowance u/s 40(a)(ia) could be made.
***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs.COX & KINGS (I) LTS. & ANR. ITA No. 5583/Mum/2015, 5440/Mum/2015 (CO No. 117/Mum/2017) DATED Oct 6, 2017-(2017) 51 CCH 0161 MumTrib***

Go to Index

**2692.** The Court held that payment made by assessee-company to its non-executive directors for giving suggestions for better performance of company, did not amount to 'commission or brokerages' requiring deduction of tax at source under section 194H and consequently the assessee could not be treated assessee in default.
***DCIT (TDS) v Kirloskar Oil Engine Ltd - [2016] 68 taxmann.com 204(Pune –Tribunal)***

**2693.** The Tribunal held that the amount paid by the assessee to a credit company towards 'authority to guarantee' whereby assessee agreed to share percentage of losses suffered by the credit company while extending credit to the assessee's customers did not amount to commission under section 194H as there was no service rendered by the credit company to the assessee and the agent to principal relationship was absent. Accordingly, it held that sections 201(1) and 201(1A) were not triggered.
***John Deere India Pvt Ltd v CIT(A) (ITA Nos.390 to 392/PN/2014)– TS-648-ITAT-2015(Pun)***

**2694.** The Tribunal held that since there was no direct connection between assessee and retail dealers and no principal-agent relationship existed, the payments representing 'trade scheme and discounts' forming part of the 'sales promotion scheme' could not be classified as 'commission' so as to attract TDS under section 194H of the Act and consequently the assessee could not be treated as assessee in default under section 201(1) of the Act.
***United Breweries Ltd vs. ITO [I.T.A. Nos.103, 104 & 105/Viz/2014] - TS-452-ITAT-2015(VIZ)***

*Section 194-I*

**2695.** The Court held that TDS is to be deducted under section 194-I on payment of lease rent to Greater Noida Development Authority for a plot taken on lease.
***New Okhla Industrial Development Authority v. CIT [2018] 95 taxmann.com 80/257 Taxman 3 (SC)- Civil Appeal No. 15613 of 2017 & Others dated July 2, 2018***

**2696.** The Court held that no TDS u/s 194-I had to be deducted on lease premiums, bi-annual or annual for limited/ specific period, paid towards the acquisition of lease hold rights as the same were capital in nature. The Court noted that amounts constituting annual lease rents (generally 1% of the total consideration) were in the nature of rent and TDS had to be deducted u/s 194 I and Interest on overdue payments or other such amounts could not be treated as capital in nature and TDS had to be deducted on the same.
The Court, further rejected the plea of GNOIDA i.e. GNOIDA is a Municipal Authority and eligible for benefit of section 10(20)] and held that GNOIDA was not a Municipal Authority as defined u/s 10(20) since it did not have a "self-governing structure" as mandated by Article 243P and 243Q of the Constitution of India.
***Rajesh Projects (India) (P.) Ltd. vs. CIT (2017) 78 taxmann.com 263 (Delhi) (W.P (C.) Nos. 8085 of 2014 dated 16.02.2017)***

Go to Index

**2697.** The Court dismissed writ petitions filed by assessees (a five star hotel and Federation of Hotel & Restaurant Associations of India) seeking a declaration that TDS provision u/s 194I TDS does not apply to Hotel Industry with respect to hotel room charges pursuant to administrative Circular No. DEL/056/99 clarifying that the tour operators/travel agents were required to deduct TDS u/s 194I while making payments to hotels on behalf of foreign tourists, and rejected the assessees' stand that (i) room tariff payment cannot be termed as 'rent' as it was not under any 'lease/sub-lease/tenancy', and that it was a 'composite' payment and not merely for occupying room and (ii) a distinction was being sought to be drawn between Indian and foreign guests when the provision itself did not envisage it. The Court held that the word 'rent' u/s 194I has to be interpreted widely as is evident from the words "any other agreement or arrangement" used in the definition of rent in Explanation (i).

***Apeejay Surrendera Park Hotels Ltd. & Anr, Federation of Hotel and Restaurant Associations of India & Or v Union of India -TS-153-HC-2016(DEL)***

**2698.** The Court, reversing the order of the Tribunal, held that royalty payment made by the assessee to the Airport Authority of India ('AAI') for use of lounge premises, constituted 'rent' under the expanded definition u/s. 194-I. The Court observed that in each case the agreement in question has to be examined to ascertain if the payment is predominantly for the use of space. The Court held that the in the instant case question of being able to operate lounge without the actual use of the space simply did not arise. Since the payment for use of space was inseparable from the payment of royalty for the right to operate the lounge. It held that the payment of the sum by the Assessee to AAI fell within the definition of rent. It also rejected ITAT's conclusion that interest u/s. 201(1A) (for TDS default) could not be charged once the payee had paid the tax and directed the Revenue to compute interest u/s. 201(1A) till the date of payment of taxes by the deductee in terms of SC ruling in Hindustan Coca Cola Beverage (P) Limited (293 ITR 355). However, the Court confirmed ITAT's order on deleting penalty u/s. 271C and opined that the question of whether the payment of royalty for the right to operate the executive lounge was infact 'rent' u/s. 194-I was a debateable issue and, therefore, no penalty could not be levied as it was a debateable issue.

***CIT vs. ITC Ltd. TS-274-HC-2017 Delhi (ITA No. 73/2005 dated July 4, 2017)***

**2699.** The Court upheld the Tribunal's order deleting the disallowance made u/s 40(a)(ia) with respect to provision for expenses pertaining to lease rental payments, operating and maintenance charges and repairs and maintenance charges, which was disallowed by the AO as no TDS was deducted at time of credit of these liabilities. It was noted that aforesaid provision was contingent liability for which bills were not received during year under consideration and TDS was deducted as and when final bills were received. The Court also held that the assessee was not liable to deduct TDS u/s 194-I while making payment of reimbursement of lease rent charges to 'S', which were paid by 'S' on behalf of the assessee (lessee) to the lessor, noting that 'S' had deducted TDS on the same.

***Pr.CIT v Sanghi Infrastructure Ltd [2018] 96 taxmann.com 370 (Gujarat) - R/TAX APPEAL NO. 404 OF 2018 dated July 16, 2018***

**2700.** The Court held that where one time Non-refundable Upfront Charges paid by the assessee was not a) under the agreement of lease and (b) merely for the use of the land and the payment was

made for a variety of purposes such as (i) becoming a co-developer (ii) developing a product Specific SEZ (iii) for putting up an industry in the land and both the lessor as well as the lessee intended to treat the lease virtually as a deemed sale, the upfront payment made by the assessee for the acquisition of leasehold rights over an immovable property for a long duration of time say 99 years could not be taken to constitute rental income in the hands of the lessor and hence the lessee was not obliged to deduct TDS u/s 194-I. Consequently, there was no question of levy of interest under Section 201(1A) of the Act.
***Foxconn India Deceloper (P) Ltd v ITO - TS-189-HC-2016(MAD)***

**2701.** The Court held that payment of over Rs. 1400 crore by assessee (a JV company of TIDCO) to TIDCO (Tamil Nadu Industrial Development Corporation Limited) for executing 99 years land lease deed was not rent liable for TDS under Sec 194I since the amount was paid by assessee mainly for two things, namely (a) to be conferred with the benefit of being a JV Partner, and (b) to be conferred with the benefit of 99 years lease. It further held that as determination of amount paid preceded even the birth of JV company and creation of lease deed; the same would never form part of the rental income.
***TRIL Inforpark Ltd v ITO -TS-209-HC-2016(MAD)***

**2702.** The Tribunal upholding the CIT(A) order held that where lease line charges were paid by assessee-company to internet service provider for faster internet access on dedicated lease line, said payment had been made for use of telecommunication services/connectivity for transmission of voice/data facility and not for use of any asset involved in provision of such facility/service covered in section 194-I. Thus, the assessee was not liable to deduct tax at source from the payment in question under section 194-I and it could not be treated as the assessee in default under section 201 (1)/201(1) A.
***ACIT Circle (3) vs SDV International Logistics- (2018) 97 taxmann.com 573 (Kol-Trib)-ITA No 510 of 2016 dated 12.09.2018***

**2703.** The assessee paid last mile charges for use or hire of optical fibres to provide connectivity at customers' premises through which the assesse carried its own Bandwidth / Internet bandwidth. Where such fibres were hired on requirement basis and were returned once the services discontinued, the AO held that the assessee was liable to withhold TDS under Section 194J. The CIT(A) held that payment of such last mile charges was analogous to payment of rent and hence the assessee was liable to withhold TDS under Section 194I. Relying on the ruling of the co-ordinate bench in Standard Chartered Bank (ITA 3824/Mum/2006), the Tribunal held that the impugned payments were not in the nature of royalty since the charges were paid in lieu of availing standard facilities, without any control on corresponding hardware. Thus, the order of the CIT(A) was upheld.
***ITO & Anr. vs. RCIL (Eastern Region) Railtel Corporation of India & Anr. – [2018] 53 CCH 0045 (Kolkata ITAT) – ITA No 700-701,734-735/Kol/2016 dated May 17, 2018***

**2704.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that the assessee was not liable to deduct TDS u/s 194I on lease premium paid to MMRDA for acquiring lease rights on immovable property, relying on the co-ordinate bench rulings in Wadhwa Associates Realtors (P) Ltd. [36 taxmann.com 526 (Mum Trib)] and Enam Financial Consultants Pvt Ltd. [ITA.Nos.

4421 & 4422/MUM/2015] wherein it was held that lease premium paid by the assessee to MMRDA for acquisition of lease hold rights on the property is not in the nature of rent as contemplated u/s 194-I. It also noted that CBDT Circular No. 35/2016 itself clarified that lump sum lease premium or one-time upfront lease charges paid by the assessee for acquiring long term leasehold rights over land or any other property were not in the nature of rent u/s 194-I.
***DCIT vs Bank of India [TS-758-ITAT-2018(Mum)] - ITA Nos. 6039 & 6040/MUM/2016 dated 20.12.2018***

**2705.** The Tribunal held that as per CBDT circular 715 dated 8-8-1999, a contract for putting up a hoarding was in the nature of advertising contract and provisions of section 194C would be applicable. However, if a person had taken a particular space on rent and thereafter sub-lets the same, fully or in parts, then such payments would be liable for tax deduction at source u/s 194-I and not u/s 194C. Accordingly, the matter was remanded to the AO.
***Accord Advertising (P.) Ltd. v. ITO – [2018] 93 taxmann.com 398 (Mumbai – Trib.) – IT Appeal Nos. 3528 to 3530 (MUM.) of 2014 dated April 13, 2018***

**2706.** The Tribunal held that where the assessee builder entered into contract for development of SRA project (Slum Rehabilitation), since assessee had to pay certain compensation to slum developers due to its failure to provide alternative accommodation during period of construction, said payment not being in nature of 'rent', did not require deduction of tax at source under section 194-I.
***Sahana Dwellers (P)Ltd v ITO - TS-127-ITAT-2016(MUM)***

**2707.** The Tribunal held that lease premium paid by the assessee was capital expenditure to acquire land with substantial right to construct and could not be considered as rent under section 194I and therefore no TDS was deductible.
***ITO(TDS) v Progressive Civil Engineers Pvt Ltd – (2015) 45 CCH 0137 Mum Trib***

**2708.** The Tribunal allowed assessee's appeal against CIT(A)'s order and held that the assessee could not be treated as assesse-in-default u/s 201(1) for non deduction of TDS u/s 194-I on demurrage charges paid to foreign shipping companies, rejecting AO's contention that since the demurrage charges were paid for the delay of loading/unloading of the goods, therefore, the demurrage charges were like rent paid by the assessee to other companies and hence the provision of section 194-I was attracted. Further, noting that the non-resident shipping companies were subjected to tax u/s 172, it relied on the decision in the case of Dempo & Company Pvt. Ltd [95 CCH 30 (Mum HC)] wherein it was held that Chapter XVI of the Act in respect of deducting tax at source would not apply in respect of payment made towards demurrage charges in cases where section 172 is applicable since the said section is a charging as well as machinery provision in respect of non-resident shipping companies.
***Jindal Saw Limited v ITO [TS-751-ITAT-2018(Rajkot)] - ITA No. 220/Rjt/2014 dated 03.12.2018***

*Section 194-IA*

Go to Index

**2709.** The Court held that the assessee could not be denied registration of sale certificate on the ground of failure to deduct tax under section 194IA at the time of payment of sale consideration for the said property, since the entire sale consideration was paid in March 2012, prior to the insertion of section 194 IA and therefore Section 194IA was not applicable.
***Shubhankar Estates Pvt Ltd – TS-767-HC-2015 (Kar)***

**2710.** The Tribunal held that where assessee purchased an immovable property alongwith three other members of family for Rs. 1.50 crores, in view of fact that share of each co-owner came to Rs. 37.50 lakhs which was under threshold limit prescribed by section 194-IA, assessee was not required to deduct tax at source while making payment in question
***Vinod Soni v. ITO, TDS-Ward, Faridabad-[2019] 101 taxmann.com 190 (Delhi - Trib.)- ITA Nos. 2736 to 2739 (DELHI) of 2015-December 10, 2018***

*Section 194J*

**2711.** The Apex Court dismissed Revenue's appeal against Bombay HC order holding that payment for transmission/ wheeling charges neither qualify as rent (u/s 194I) nor as FTS (u/s 194J) and thus no TDS is required to be withheld. The Court held that the said payments were not in the nature of rent since they were not made only to utilize any identified machinery or equipment. It further held that no 'service' was provided & wheeling charges merely represented charge for permitting use of the State Transmission Utility for distribution of electricity.
***CIT (TDS) v Maharashtra State Electricity Distribution - TS-220-SC-2016***

**2712.** The Apex Court dismissed Revenue's SLP against Delhi HC order holding that payment towards "wheeling charges" was not taxable as FTS u/s 194J. The HC had accepted assessee's plea that payment was towards transportation of electricity and nothing more and thus, the process was automatic through network / equipment without any human intervention. Drawing analogy with distribution of water,the HC had further held that the equipment and pipes have to no doubt be maintained by technical staff but that does not mean that a person to whom the water is distributed through using the pipes and equipment is availing of any technical service as such.
***CIT-TDS v Delhi Transco Ltd - TS-212-SC-2016***

**2713.** The Apex court held that service made available by Bombay stock exchange [BSE Online Trading (BOLT) System] for which transaction charges are paid by members of BSE are common services that every member of stock exchange is necessarily required to avail of to carry out trading in securities in stock exchange. It held that such services did not amount to 'technical services' provided by stock exchange, not being services specifically sought for by user or consumer and therefore, no TDS was deductible under section 194J on payments made for such services.
***CIT v Kotak Securities Ltd - [2016] 67 taxmann.com 356.(SC)***

**2714.** Assessee-University conducted examinations through various colleges affiliated to it. In absence of any material to establish that affiliated colleges/centres were rendering services of professional or technical nature in matter of conducting University's examination. The Court held

Go to Index

that the Tribunal did not commit any error in holding that tax was not deductable on such reimbursement of expenses incurred by colleges/centres under section 194J

***Pr. CIT (Central), Kanpur v. M.P. Biscuits (P.) Ltd.- [2019] 101 taxmann.com 189 (AllahabadHC)- ITA No. 82 of 2018 dated December 5, 2018***

**2715.** A survey under section 133A conducted by Department revealed that assessee, a third-Party Administrators (TPA) had made payments to various hospitals during the year without deducting tax at source under section 194J which invited a disallowance under section 40(a)(ia). The CIT(A) and Tribunal had deleted the disallowance and a Division Bench of High Court in Income Tax Appeal No. 1797 of 2013 (CIT v. Health India TPA Services (P.) Ltd.) had already dealt with a similar question proposed by revenue and by a detailed judgment, dismissed revenue's appeal holding that assessee was only facilitating payment by insurer to insured for availing medical facilities and was not rendering any professional services, and, would not attract section 40(a)(ia) disallowance .Thus the Court dismissed revenue's appeal as it had been earlier dealt with by High Court.

***CIT vs Dedicated Healthcare Servives (TPA) India P Ltd – (2018) 98 taxmann.com 7 (Bombay)- ITA No 1313 & 1315 of 2015 dated 17.09.2018***

**2716.** The Court held that where assessee made payments in respect of maintenance contracts which included and were related to minor repairs, replacement of some spare parts, greasing of machinery, and other ancilary services did not require any technical expertise. Thus, the same could not be categorized as 'technical services' and provision of section 194J could not be invoked.

***CIT (TDS) vs MMRDA- (2018) 97 taxmann.com 461 (Bom)- ITA No 308 of 2016 dated 06.09.2018***

**2717.** Where the assessee had made payment to a company for managerial and technical services rendered on cost to cost basis without deducting TDS u/s 194J, the Court held that section 194J was not attracted since no income was reflected in Balance Sheet and Profit & Loss Account of the Recipient company towards payment made by the assessee and it was reimbursement of expenses incurred on cost to cost basis by assessee. Thus, it held that if no income was attributable to the payee, there was no liability to deduct TDS in the hands of the tax deductor, as TDS is only an alternative method of collection of taxes.

***CIT v Kalyani Steels Ltd. – (2018) 91 taxmann.com 359 (Karnataka HC) – ITA No. 260 of 2013 dated 12.02.2018***

**2718.** The Court allowed Revenue's appeal against Tribunal's order wherein the Tribunal had restored the issue of non-deduction of TDS u/s 194J (fees for technical services) while making payment of backhaul link usage charges back to the AO with a direction to examine a technical expert to ascertain as to whether there was a human intervention in the services for which the said charges were paid. The Tribunal relied on the Apex Court decision in CIT v.Bharati Cellular Ltd. (2010) 234 CTR 146 (SC) wherein it was held that if there was no human intervention, there could be no fees for technical services. The Court held that the Tribunal being the fact finding authority ought to have looked into facts and could not adopt the directions given by the Honourable Supreme Court in the said case without looking into the distinction on facts on which

the directions were issued as against the facts available in the case before it. Accordingly, it directed the Tribunal itself to examine a technical expert and decide the issue.
***COMMISSIONER OF INCOME TAX vs. JEEVAN TELECASTING CORPORATION [2018] 102 CCH 0217 (Ker HC) - ITA Nos.100, 104, 105, 106 and 107 of 2011 dated August 10 2018***

**2719.** The Court dismissed Revenue's appeal for AY 2011-12 and held that domestic software purchase payments by assessee (an Indian Company engaged in buying and selling software) was a case of outright purchase and hence did not amount to royalty. Consequently, section 194J would not be applicable. The transaction was one of purchase and sale of a product and nothing more. The provisions of section 9(1)(vi) would get attracted in the case of sale of copyright and not in a transaction of sale of copyrighted article.
***Vinzas Solutions India Private Limited [TS-28-HC-2017(MAD)]***

**2720.** The Court held that payment made to an Indian parent company by its Indian subsidiary company towards purchase of technical data could not be treated as fees for technical services under section 194J of the Act since no services were rendered by the parent company who received the technical data from a UK company and merely supplied the same to its subsidiary who compensated the parent company by reimbursing the cost of such data. Accordingly, it held that the assessee could not be treated as an assessee in default under section 201(1A) of the Act.
***CIT (TDS) v Heramec Ltd – TS-750-HC-2015 (Tel & AP HC)***

**2721.** The Tribunal held that the assessee-telecom operator was not liable to deduct TDS u/s 194J with respect to payment of roaming charges to other telecom operator (for service provided by them to the subscribers of assessee's network), holding that roaming services were in the nature of use of standard facilities, which do not require any human interface, and did not involve rendering of managerial, technical or consultancy services and thus, the said services could not be construed as 'fees for technical series' as defined u/s 194J. Further, following the coordinate bench decision in the assessee's own case for another year, the Tribunal held that the provisions of section 194H were not applicable with respect to discount offered to pre-paid distributors since the arrangement between the appellant and its prepaid distributors was on a 'principal to principal basis' and the assessee neither booked nor paid any commission to its prepaid distributors.
***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. VODAFONE WEST LTD. & ANR. - (2018) 52 CCH 0304 AhdTrib - ITA Nos. 1317 & 1318/AHD/2016 (Cross Objection No.89/AHD/2016) dated Apr 4, 2018***

**2722.** The Tribunal held that port charges paid to carrying and forwarding agents were not subject to withholding tax under section 194J of the Act, since C&F agents were nowhere remotely indicated in the explanation to section 194J of the Act and therefore, the assessee could not be treated as an assessee in default under section 201 / 201(1A) for non-deduction of tax.
***DCIT v Gujarat Ambuja Exports Ltd – (2016) 46 CCH 0065 (Ahd)***

Go to Index

**2723.** The Tribunal held that payments made by the assessee to retainer doctors would be subject to withholding tax under section 194J of the Act and not under section 192 of the Act, as there was no master-servant relationship between the assessee and retainer doctors. It noted that with regard to employed doctors, there were conditions with regard to salary revision and retirement age which was not so with the retainer doctors and that retainer doctors were not entitled to LTC, PF and retirement benefits as opposed to salaried doctors. Further, the retainer doctors were not debarred from taking up any other work for remuneration as was the case with the employed doctors.
***ACIT v Fortis Healthcare Ltd – (2016) 67 taxmann.com 106 (Chandigarh)***

**2724.** Though the assessee had made provision for audit fees and claimed the same as deduction, it contended that the provisions of section 194J would not apply to audit fees, as question of payment to auditor would arise only after signing of accounts which took place after year end. Noting the provisions of section 194J, requiring deduction of tax at source either at time of credit of expenditure to account of payee or at time of payment whichever is earlier, the Tribunal held that since assessee had made provision for audit fees to account of payee, provisions of section 194J were clearly attracted and non-deduction of tax at source would automatically invite disallowance u/s 40(a)(ia)
***Citadel Fine Pharmaceuticals (P.) Ltd. v ACIT – (2018) 92 taxmann.com 79 (Chen) – ITA Nos. 2027 & 2028 (CHNY) of 2017 dated 08.02.2018***

**2725.** The Tribunal held that Third Party Administrator (TPA), who were responsible for making payment to hospitals for rendering only medical services to policy holders under various medical insurance policies issued by several insurers, were liable to deduct tax at source under section 194J from payments made to hospitals. It concluded that only professional services relating to medical services alone would be liable for deduction of TDS under section 194J and not payment towards bed charges, medicines used on patients, transportation charges, implants, consumables etc. which are reimbursements and thus the issue was squarely covered vide CBDT Circular No 8/2009.
***Vipul Medcorp TPA vs ACIT- (2018) 97 taxmann.com 670 (Delhi-Trib)- ITA No 4398 of 2013, 3234 of 2014 & 4756 of 2015 dated 04.09.2018***

**2726.** The Tribunal held that no TDS under Section 194J of the Act was to be deducted on transmission / wheeling charges paid by the assessee. It held that Section 194J would apply only when technology or technical knowledge, experiences/skills of person was made available to others which could be further used by him for its own purpose and not where by using technical systems, services were rendered to other, which was not so in the case of the assessee. Further, relying on the decision of Hon'ble Delhi High Court in the case of CIT vs. Bharati Cellular Limited [175 Taxmann 573 (Del)] affirmed by the Hon'ble Supreme Court in 193 Taxman 97(SC), it held that technical services for the purpose of section 194J would mean those technical services which involve human interface/element. Since the Department failed to prove that the services received by the assessee involved human interface, it held that the payment would not be subjected to Section 194J. Accordingly, it deleted the disallowance made under Section 40(a)(i) of the Act.

Go to Index

***NOIDA POWER COMPANY LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0196 DelTrib - ITA No. 4878/DEL/2016 dated Mar 19, 2018***

**2727.** The Tribunal upheld the CIT(A)'s order deleting the addition made by the AO with respect to professional charges paid by the assessee to 80-90 professionals on different dates, without deducting TDS. The AO had alleged that the said payments were made entirely in cash and on the same date, thus exceeding the prescribed limit for attracting the TDS on payment made to professionals. It was noted that the AO's finding that all professional charges were made in cash was factually wrong as payments were made to various temporary professional staff by cheque. It was thus held that the AO's findings were merely based on doubts, surmises and conjectures without bringing any concrete material against the assessee and the professional charges was incurred wholly and exclusively for purpose of business of assessee (being provision of IT/ BPO services).
***ASSISTANT COMMISSIONER OF INCOME TAX vs. SHRUTI NANDA - (2018) 65 ITR (Trib) 0189 (Delhi) - ITA.No.5914/Del./2014 dated April 3, 2018***

**2728.** The Tribunal held that where a consultant rendered advisory and entertainment consultancy services for promotion of assessee's restaurant, TDS was to be deducted under section 194J and not 194C since payment for performance by the actual entertainers and their stay arrangements was the sole responsibility of the assessee hotel and the consultant had nothing to do with it as it was simply concerned with their fixed monthly fee, which was not dependent on the successful sourcing of a particular entertainment from worldwide resources.
***C.J.International Hotels Ltd v ACIT - [2016]68 taxmann.com 27 (Delhi-Trib)***

**2729.** The Tribunal held that the provision of roaming services do not require any human intervention and accordingly could not be construed as technical services under section 194J of the Act. Further, 194C of the Act was also not applicable as the said section is applicable only where works contracts are being carried out requiring the presence of manpower which was not the case. Further, it was held that the payment was not covered by section 194I of the Act as the assessee was a mere facilitator between its subscriber and the service provider providing the equipment and never used the equipment involved in providing roaming facility.
***Vodafone East Ltd v ACIT – (2015) 61 taxmann.com 263 (Kolkata – Trib)***

**2730.** The Tribunal held that document management services was not a technical or professional work which required special skills, thus, provision to section 194J could not be applied.
***Tata Sky Ltd. v Asstt. CIT [2018] 99 taxmann.com 272(Mum. - Trib.) ITA Nos. 6798, 6799, 6803, 6804 & 6923 to 6926 (MUM.) of 2012 dated October 12, 2018***

**2731.** The Tribunal noted that CUTE i.e Common Utility Terminal Charges paid by the assessee (a Foreign Airline Compnay) were for providing the airline with technical infrastructure, telecommunication facilities and telecommunication infrastructure and held that the said payments made by the assessee, constituted a payment for 'facility' and not fees for technical service (FTS), hence TDS u/s 194J was not applicable. Further, relying on SC ruling in Japan Airlines, it held that charges paid for Passenger Service Fees (PSF) were not in nature of rent and thus TDS u/s 194I was also not applicable.

Go to Index

***Singapore Airlines Ltd. [TS-697-ITAT-2016(Mum)]***

**2732.** The Tribunal held that section 194J of the Act would not apply to payments in kind made by the assessee and therefore where the actors working in the assessee's film were gifted certain items, the assessee could not be considered as an 'assessee in default' under section 40(a)(ia) of the Act for non-deduction of tax at source. It held that the expression 'any sum' used ins ection 194J of the Act would only relate to payments made in money terms.
***Red Chillies Entertainment Pvt Ltd v ACIT – TS-336-ITAT-2016 (Mum)***

*Section 194L / 194LA*

**2733.** The Court held that where land belonging to State Government was encroached upon, and such encroachment was removed by assessee, and such encroaching squatters/hutment dwellers were rehabilitated, there was no question of land being acquired by assessee and, therefore, provisions of section 194L i.e payment of compensation on acquisition of a capital asset would not be applicable.
***CIT (TDS) vs MMRDA- (2018) 97 taxmann.com 461 (Bom)- ITA No 308 of 2016 dated 06.09.2018***

**2734.** The Court dismissed Revenue's appeal against the Tribunal order holding that section 194L / 194LA (dealing with payment of compensation on acquisition of immovable property) had absolutely no application in the case where the assessee made payment to the illegal / unauthorized persons who were squatters/hutment dwellers for the purpose of implementing scheme of Government relating to road widening near railway track. It opined that the Revenue had totally misunderstood the law by assuming that the squatters / hutment dwellers were deemed owners of the land on which they squat or encroach upon and therefore the compensation paid to them was for compulsory acquisition of land either under the Land Acquisition Act, 1894 or any other enactments. The Court held that the squatters / hutment dwellers had absolutely no title in the land on which they squat or build their illegal and unauthorized hutments.
***CIT vs MUMBAI METROPOLITAN REGIONAL DEVELOPMENT AUTHORITY & ORS [2018] 102 CCH 0228 (Bombay HC) - ITA No. 308, 309, 310, 311 of 2016 dated August 23 2018***

**2735.** The Court held that no TDS was liable to be deducted under section 194LA of the Act on land acquired through voluntary surrender by land owners in lieu of development rights on the ground that the section contemplates payment of a sum of money which was not satisfied as development rights did not constitute monetary consideration.
***CIT v Bruhat Bangalore Mahanagar Palike (I.T.A.NO.94 OF 2015 AND I.T.A.NO.466 OF 2015) – TS-596-HC-2015 (KAR)***

*Reimbursements*

Go to Index

**2736.** Where the assessee's holding company (BDAL) had incurred certain expenses on behalf of the assessee, being in the nature of travelling and accommodation charges of crew members and deducted tax at source wherever required, and the AO disallowed the claim of the assessee on the ground that assessee should have deducted tax at source while reimbursing the amount to M/s BDAL, the Tribunal, relying on the decision in the case of Ask Wealth Advisors (P) Ltd vs ACIT (2014) [51 taxmann.com 128] held that no disallowance could be made in hands of subsidiary company on reimbursements made by it to Holding Company, if holding company had already deducted tax at source from the payments.

***DHL AIR LIMITED vs.DEPUTY COMMISSIONER OF INCOME TAX (INTERNATIONAL TAXATION) BOMBAY HIGH COURT***

**2737.** The Court upheld the order of the CIT(A) and Tribunal wherein it was held that where the assessee was reimbursing payments to another company viz. HSL absent any income element no TDS the AO was incorrect in classifying the assessee as an assessee in default on account of non-deduction of TDS under Section 194-J.

***COMMISSIONER OF INCOME TAX & ANR. vs. KALYANI STEELS LTD. – (2018) 101 CCH 0181 KarHC - ITA No. 260/2013 c/w ITA No. 289/2014, 263/2013, 265/2013, 2008/2014 & 262/2013 dated Feb 12, 2018***

**2738.** Assessee was public limited company engaged in business of trading of mobile phones handsets, manufacturing trading, servicing, maintenance of computer hardware. AO held assessee as "assessee in default" u/s. 201(1) and also levied interest u/s. 201 (1A), in respect of failure to deduct tax at source in respect of payments made to various distributors/dealers. CIT(A) upheld order of AO. The Tribunal held that the, assessee during previous year paid certain amount to regional distributors on account of reimbursement of expenses against third party bills, incurred by them for advertisement in relation to assessee's products sold by them on their own account. From records it was seen that these expenses included manpower reimbursement to RDS, Salesman incentives and other reimbursement to RDS. Thus, assessee raised bill in name of payee and assessee also produced evidences before AO to establish that parties to the reimbursement had been made had actually complied with Provisions of Chapter XVII-V. CIT(A) had not looked into evidences produced before AO as well as before CIT(A). Assessee's ground was allowed.

***Spice Mobility vs ACIT- (2018) 54 CCH 0025 Del Trib- ITA No 2289, 2286, 2288 & 2287/Del/2016 dated 19.09.2018***

**2739.** The assessee, a member of a co-operative society, did not withhold TDS while making payment of monthly maintenance charges levied by such society. The AO held that such payments were under an implied contract and since no taxes were withheld under Section 194C or 194I, disallowance under Section 40(a)(ia) was made in respect of such monthly maintenance charges paid. The CIT(A) held that the provisions of Section 194C were not applicable as no contract existed between the assessee and the society. The CIT(A) further held that the provisions of Section 194I were also not applicable as the maintenance charges was merely a reimbursement to the society for expenses incurred on behalf of its members. The Tribunal confirmed the order of the CIT(A) and upheld the deletion of such disallowance.

Go to Index

***ACIT vs. vs. Modi Rubber Limited – [2018] 53 CCH 0044 (Del Tribunal) – ITA No 1952 of 2014 dated May 15, 2018***

**2740.** Where the assessee had incurred and paid management charges to its Holding company and not deducted tax at source u/s 194J on the ground that it was in the nature of reimbursement of expenses incurred by the holding company on behalf of the assessee and TDS was not applicable, the Tribunal reversing the CIT(A) order, upheld the disallowance u/s 40(a)(ia) and held that once nature of payment was such that provisions of Sec. 194J were attracted the mode of payment would not alter the TDS obligation and that even if the said payment was on account of reimbursement of expenses incurred by the holding company the provisions of Section 194J could not be circumvented by modus operandi of payment routing through the holding company. Accordingly, it allowed Revenue's appeal.
***ACIT vs Tungabhadra Steel Products Ltd-TS-485-ITAT-2017(bang)-ITA No. 984/bang/2017 dated 27.10.2017***

**2741.** The Tribunal held that the amounts paid by way of reimbursement of expenses do not constitute income in the hands of the recipient. Consequently, the payer is under no obligation to deduct TDS u/s 194C and no disallowance of the expenditure can be made u/s 40(a)(ia). It further held that CBDT Circular No. 715 dated 08.08.1995 was applicable only where consolidated bills were raised inclusive of contractual payments and re-imbursement of actual expenditure but not when separate bills were there for reimbursement of expenditure received.
***ACIT vs St. Mary's Rubbers Private Ltd [2017] (Cochin ITAT) dated 15.06.2017***

**2742.** The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the AO's order wherein the AO had disallowed the assesses' claim for deduction for certain payment made to custom house agent for reimbursement of custom duty paid by it on behalf of the assesse, without deducting TDS. The Tribunal held that payment of custom duty to Government on import of goods even if paid through agent by way of reimbursement could not warrant deduction of income-tax at source within provisions of Act. It was also noted that the agent had raised separate invoices for its service charges and the assesse had claimed that it had deducted TDS on all such service charges paid to the agent.
***LION MERCANTILE P. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0248 (MumTrib) - ITA No. 5998/Mum/2014 dated June 27, 2018***

*Section 197 – Low / No TDS Certificate*

**2743.** The Court held that no functionary other than the officer referred to in the relevant statutory provision, namely section 197 and Rule 28AA of the Income Tax Rules, 1962 (dealing with issuance of lower or nil TDS deduction certificate), is permitted to take over the jurisdiction or interfere in the exercise of the discretionary power envisaged by this statutory provision. It held that the concerned official has to record his satisfaction while issuing the TDS certificate.
***TLG India Private Limited v. JCIT - WRIT PETITION(L)NO. 2764 OF 2018 (Bom HC) dated 08.10.2018***

Go to Index

**2744.** Where the certificate issued for deduction of tax at lower rate u/s 197 was cancelled on the ground that at the time of issuance, aspect of rule 28AA (providing for procedure to be followed for issue of certificate for deduction at lower rates) was not considered in context of pending demands and that financial condition of Petitioner was such that any future tax payable may not be recoverable from Petitioner, the Court quashed the order cancelling the certificate granted on the ground that the impugned order did not indicate any material to show any change in circumstances which would warrant cancellation of certificate and further it did not deal with Petitioner's contention that entire demand could be adjusted against refundable deposit arising consequent to order of Tribunal in its favour. Petitioner had also submitted that the accumulated losses were so huge that there was no likelihood of any tax becoming payable in the subject assessment year and that the huge financial loss was one of considerations which weighed with the Revenue while granting certificate u/s 197.

***Tata Teleservices (Maharashtra) Ltd. v DCIT – (2018) 90 taxmann.com 1 (Bom) – Writ Petition No. 2701 of 2017 dated 25.01.2018***

**2745.** Assessee-company was engaged in trading and financing activities. It applied to Assessing Officer for granting a certificate of exemption u/s 197 from deduction of tax at source. Assessing Officer on tentative re-working of assessee's accounts formed a prima facie opinion that loss of assessee would come to Rs. 26.57 crore, and he therefore suggested collection of tax at reduced rate of 1 per cent. Commissioner noticed that losses projected by assessee-company did not appear to be genuine as only business of assessee was obtaining loans from outside agencies and advancing loans or making investments in group companies, and accordingly, during relevant year also large amount of interest were paid to outside parties on loans but similar charges were not collected from them. The Tribunal held that the, projected accounts were not acceptable, and hence, application was to be rejected. Further, it held that, since Assessing Officer by suggesting collection of tax at reduced rate of 1 per cent had not expressed his final decision, his opinion would not be binding on department and, thus, assessee's application to deduct tax at reduced rate could not be accepted, particularly when assessee had option to claim refund of tax deposited with Government.

***OPJ Trading (P) Ltd vs ITO- (2018) 98 taxmann.com 117 (GujHC)- Special Civil Application No 6088 of 2018 dated 11.09.2018***

**2746.** The Tribunal deleted interest u/s 201(1A) levied for alleged short deduction of TDS u/s 194A on interest payments made by assessee-company during AY's 2008-09 and 2009-10 noting that the parties to whom assessee paid interest had obtained lower tax deduction certificates u/s 197 from their respective AO's. It rejected the Revenue's view that the lower TDS rate specified in the certificate u/s 197 was valid only in respect of the amount specified in the certificate and the assessee ought to have deducted TDS at the normal applicable rate in respect of the remaining sum and referring to Section 197(2) along with relevant Rule 28AA(2), clarified that once the certificate u/s 197(2) is issued for lesser/no TDS deduction, the person making the payment is at liberty to deduct tax at rates specified in the certificate and that it did not make any reference to any income specified in such certificate, it held Section 197 was "person specific" and cannot be extended to the amounts specified by the recipient of the payment while making an application for grant of certificate u/s 197 of the Act.

Go to Index

***Twenty First Century Securities Ltd. vs. I.T.O. TS-43-ITAT-2017(Kol) ITA No.s 464 & 465/Kol/2014 dated 03.02.2017***

**2747.** The Tribunal held that once certificate had been issued by revenue authorities under section 197, then assessee would be liable to deduct TDS only as per said certificate not on any higher rate and thus the assessee could not be treated as 'assessee in default' u/s 201(1) for short deduction.
***Kribhco Shyam Fertilizers Ltd. v ITO(TDS) – ITA Nos. 79 ,80 (LKW.) OF 2013 AND 723 & 724 (LKW.) OF 2015 dated July 27, 2018***

*Disallowance u/s 40(a)(i) / (ia)*

**2748.** Assessee was engaged in the manufacture and export of casting material. The AO disallowed the export commission paid by the assessee on the ground that the tax deducted at source on said charges had not been deposited with the Government before the end of the relevant financial year even though the same was deposited after five months from the end of the relevant financial year. The Apex Court decided in favour of the assessee and held that the amendment made by the Finance Act, 2010 to the provisions of section 40(a)(ia) was curative in nature and should be given retrospective operation on the ground that the amended provisions should be interpreted liberally so that an assessee should not suffer unintended and deleterious consequences beyond what the object and the purpose of the provision mandates.
***CIT v. Calcutta Export Company – [2018] 93 taxmann.com 51 – Civil Appeal Nos. 4339-4340 of 2018 dated April 24, 2018***

**2749.** The Apex Court held that the disallowance under section 40(a)(ia) could be made on any amounts paid or payable during the year without deduction of tax at source and dismissed the contention of the assessee that it would apply merely to amounts which were left 'payable' at the end of the year. Therefore, it held that where the assessee had made payments to sub-contractors for transportation of LPG without deduction of tax under section 194C of the Act, the disallowance under section 40(a)(ia) was rightly made by the AO.
***Palam Gas Service v CIT – (2017) 81 taxmann.com 43 (SC) – Civil Appeal No 5512 of 2017 dated 03.05.2017***

**2750.** The Court reversed the Tribunal order and allowed deduction for contractor payments made by assessee without deducting TDS during AY 2005-06, since Section 40(a)(ia) was not applicable to subject AY viz AY 2005-06. It observed that clause (ia) received presidential assent on September 10th, 2004 hence the assessee could not have foreseen prior to the assent and that any amount paid to a contractor without deducting tax at source was likely to disallowed u/s 40. It further rejected Revenue's stand, that the amended Sec 40(a)(ia) was applicable from AY 2005-06, and held that though the amendment Act provided that law shall be deemed to have come into force on April 1, 2004 except as otherwise provided, Sec 11 of Finance Act, 2004 stated that that it shall become effective from April 1st , 2005 and any other interpretation would amount to punishing the assessee for no fault of his.
***Piu Ghosh [TS-452-HC-2016(CAL)] - ITA 191 OF 2009***

Go to Index

**2751.** The Court reversed the order of the Tribunal for AY1996-97 and deleted the disallowance made u/s 40(a)(i) towards non-deduction of TDS on interest paid by assessee (a domestic company) on machinery imported from supplier based in Canada, pursuant to benefit u/s 10(15) (iv)(c) [which provides that interest payable by an industrial undertaking in India on moneys borrowed/ debt incurred by it in a foreign country in respect of purchase outside India of raw materials / capital plant and machinery, etc to the extent to which such interest does not exceed the amount of interest calculated at the rate approved by the Central Govt. in this behalf, having regard to the terms of the loan or debt and its repayment is exempt], considering the fact that the Department of Economic Affairs which was part of the Central Government had approved the interest rate at which the transaction took place in 1995. It held that the Department of Economic Affairs was also a part of the Central government and also noted that the interest rate at which the transaction was undertaken was also subsequently approved by the Department of Revenue in 1999.

***Tej Quebcor Printing Ltd v JCIT – (2017) 98 CCH 0053 Del HC – ITA 385 / 2004***

**2752.** The Court held that where assessee had deducted tax at source from salary paid overseas to its non-resident employees and had paid same to Government account, merely because tax was not paid within time-limit prescribed under section 200(1) of the Act, said payment could not be disallowed by invoking section 40(a)(iii) of the Act.

***ANZ Grindlays Bank vs. DCIT - TS-105-HC-2016(DEL)***

**2753.** The Court, following the legal position which states that a curative amendment to avoid unintended consequences was to be treated as retrospective in nature even though it may not state so specifically, held that the second proviso to section 40(a)(ia) would be applicable to the assessee as the payee had filed its returns and offered the sum received to tax consequent to which the assessee could not be treated as an assessee in default under section 201(1) of the Act.

***CIT v Ansal Land Mark Township Pvt Ltd [ITA No 160 / 2015] - TS-495-HC-2015(DEL)***

**2754.** The Court held that section 40(a)(ia) of the Act is a machinery section and therefore where tax was deducted under the incorrect section at a lower rate, disallowance could be made for short deduction of tax under section 40(a)(ia) of the Act.

***CIT v PVS Memorial Hospital Ltd [ITA No 16 of 2014] - TS-439-HC-2015(KER)***

**2755.** The Tribunal deleted the addition made by the AO in the case of the assessee, a civil contractor firm which worked for various government departments, on the ground the assessee had not disclosed tax receipts from two government divisions in its profit and loss account, rejecting assessee's explanation that the two works were sub-let to sub-contractor and entire amount was passed on to sub-contractor on 'no profit and no loss' basis. It held that when the AO did not dispute assessee having passed on amount to sub-contractor and that the assessee did not receive any amount, the addition was unsustainable. Further, with respect to Revenue's argument that no TDS had been deducted by the assessee on payment made to the sub-contractor, the Tribunal held that there is no violation of the provisions of section 40(a)(ia) where the assessee had merely passed on the amount to the sub-contractor and TDS had been deducted by govt. department while making payment to the assessee.

Go to Index

***SAI CONSTRUCTION v ITO – (2018) 52 CCH 48 (Agra Trib) – ITA No. 54/Agra/2017 dated 08.01.2018***

**2756.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing the assessee's claim for depreciation on computers and softwares acquired from foreign vendors and capitalized by the assesse disallowed by the AO u/s 40(a)(i) for non-deduction of TDS u/s 195 on payment made for such acquisition. The Tribunal followed the decision in the case of Kawasaki Microelectronics Inc - India Branch V. DDIT(IT) [IT(IT)A No.1512/Bang/2010] wherein it was held that once the amount paid for software was capitalized (forming part of the block of asset) and not claimed as expenditure, depreciation on the same could not be disallowed even if TDS was not deducted while making the said payment.
***DEPUTY COMMISSIONER OF INCOME TAX vs. SANGEETHA MOBILES PVT. LTD. - (2018) 53 CCH 0176 (Bang Trib) - ITA No. 715/Bang/2017 dated June 15, 2018***

**2757.** Where the assessee had made provision for payment for overseas expenses, payment to contractors, professional or technical services, commission and rent without deducting tax at source u/s 195, 194J, 194C, 194H and 194I and made a disallowance u/s 40(a)(ia), the Tribunal, relying on the decision in the case of IBM Ltd [TS-305-ITAT-2015(Bang)] held that the assessee would be liable to deduct tax on reversal provision for expenses created in books of accounts and when the assessee had admitted his default u/s. 40(a)(i) and 40(a)(ia), then in the proceedings u/s. 201 and 201(1A), the assessee cannot argue that there was no liability under chapter XVII-B. Accordingly, it upheld CIT(A)' s order treating the assessee as assessee in default.
***Toyota Kirloskar Motors Pvt. Ltd vs The Income Tax Officer (TDS)-TS-487-ITAT-2017-ITA No.1185/Bang/2014 dated 31.10.2017***

**2758.** Where the assessee withheld TDS in respect of management and license fees @ 20% instead of 20.6% (TDS 20% plus Surcharge 3% on TDS) and the CIT(A) confirmed the action of the AO in making disallowance under Section 40(a)(ia) of a proportionate sum to the extent of such short deduction, Tribunal relied on the decision of the Kolkata Tribunal in SK Tekriwal (48 SOT 515) (affirmed by Kolkata High Court) and held that disallowance under Section 40(a)(ia) cannot be made for short deduction of taxes.
***Skylark Hospitality India Pvt. Ltd. vs. DCIT – [2018] 53 CCH 0019 (Delhi ITAT) – ITA No 6431/Del/2014 dated May 3, 2018***

**2759.** Where the assessee withheld TDS in respect of management and license fees @ 20% instead of 20.6% (TDS 20% plus Surcharge 3% on TDS) and the CIT(A) confirmed the action of the AO in making disallowance under Section 40(a)(ia) of a proportionate sum to the extent of such short deduction, Tribunal relied on the decision of the Kolkata Tribunal in SK Tekriwal (48 SOT 515) (affirmed by Kolkata High Court) and held that disallowance under Section 40(a)(ia) cannot be made for short deduction of taxes.
***Skylark Hospitality India Pvt. Ltd. vs. DCIT – [2018] 53 CCH 0019 (Delhi ITAT) – ITA No 6431/Del/2014 dated May 3, 2018***

Go to Index

**2760.** The Tribunal reversed the order passed by the CIT(A) for AY 2010-11 and held that the provisions of Sec. 40(a)(ia), meant for computing business income, were inapplicable to the assessee-trust not engaged in any business activity and having exempt receipts. It held that even if assessee's income was to be considered as "income from other sources" ('IOS'), Section 40(a)(iia) and not Section 40(a)(ia) could be invoked.
***Astral Height Owners Association [TS-604-ITAT-2016(HYD)]***

**2761.** The Tribunal held that second proviso to section 40(a)(ia) inserted by Finance Act, 2012 to provide that when recipient of interest had included interest amount in their return of income and offered the same to tax then no disallowance was called for u/s 40(a)(ia) is effective retrospectively as it was inserted to remove hardship faced by assessee. However, the matter in the present case was remanded back to the AO for limited purpose to verify fact that as to whether interest income had been included in the return of income by the recipients and offered to tax.
***ACCME (Urvashi Pumps) Eng. (P.) Ltd. v JCIT – (2018) 90 taxmann.com 189 (Jaipur) – ITA Nos. 561 (JP) of 2014 and 1111 & 1112 (JP) of 2016 dated 23.01.2018***

**2762.** The Tribunal held that no disallowance of expenditure can be made on account of non-deduction of TDS on such expense where the assessment was made computing income based on the estimated net profit rate on the ground that estimation of net profit would take care of every addition related to business income.
***Rakesh Construction Co vs. ACIT (2016) 48 CCH 0081 (Jaipur Trib)-ITA No.274/JP/14***

**2763.** Where the assessee made payment of rent on which it deducted tax at source only in April and May 2006 as opposed to the deadline prescribed under Section 40(a)(ia) prevalent during the year under consideration i.e. March 31, 2006, the Tribunal held that since tax was deducted before the due date of filing of return, the amendment to Section 40(a)(ia) vide Finance Act, 2010 (which provided for TDS before the due date of filing of return) had retrospective application as it was introduced with a view to remove the unnecessary hardship caused to the assessee by the earlier provision. Accordingly, it deleted the disallowance under Section 40(a)(ia) of the Act.
***DCIT v Saraf Services P Ltd - [2018] 89 taxmann.com 312 (Kolkata - Trib.) – IT APPEAL NO. 456 (KOL.) OF 2016 dated 01.12.2017***

**2764.** Where the assessee incurred interest expenditure and after adjusting the same against interest income, claimed the balance amount against directors' remuneration, CIT(A) upheld the AOs order wherein it was held that since assessee did not withheld TDS under Section 194A while making payment of said interest, the same would be disallowed under Section 40(a)(ia). Setting aside the order of the CIT(A), Tribunal held that since the since provisions of Section 40(a)(ia) could be invoked only while computing income under the head 'business and profession', no disallowance could be made in the hands of the assessee under Section 40(a)(ia) since the interest expenditure was claimed by him under the head 'income from other sources'.
[Section 58(1A) is amended to cover such disallowance on account of provisions of Section 40(a)(ia) wef. 01-04-2018]

Go to Index

***Rajesh Pagaria vs. ITO – [2018] 53 CCH 0028 (Kolkata ITAT) – ITA No 464 of 2014 dated May 11, 2018***

**2765.** The Tribunal upheld the CIT(A)'s order deleting the disallowance made u/s 40(a)(ia) by the AO on account of short deduction of tax at source, following the Tribunal's decision in the assessee's own case for earlier year wherein the Tribunal had followed the decision in the case of S.K. Tekriwal [361 ITR 432 (Cal)] and Prayas Engineering Ltd. [Tax Appeal No. 1237/2014 (Guj)] wherein it was held that no disallowance can be made u/s 40(a)(ia) if there is any shortfall due to any difference of opinion as to the taxability of any item or the nature of payments falling under various TDS provisions since the said section refer only to the duty to deduct tax and pay to the Govt. account.
***DCIT v Morgan Stanley (India) Capital Pvt Ltd [TS-100-ITAT-2018(Mum)] – ITA No. 5289, 5290, 4962 & 4963/Mum/2015 dated 29.01.2018***

**2766.** The Tribunal dismissed the assessee's appeal for AY 2009-10 against the CIT(A)'s order upholding the AO's order with respect to disallowance u/s 40(a)(ia) on the ground of delay in payments of TDS, noting that the assessee itself had submitted before the CIT(A) that it had claimed these expenses on which income-tax was deducted at source which was paid late beyond period prescribed u/s 40(a)(ia), in subsequent year i.e. AY 2010-11 and thus, claim of expenses could be allowed in A.Y 2010-11 after verification by the AO.
***PEARL FREIGHT SERVICES PVT. LTD. v ACIT – (2018) 52 CCH 2 (Mum) – ITA No. 4014/Mum/2014 dated 02.01.2018***

**2767.** The Tribunal allowed Revenue's appeal and reversed the CIT(A)'s order to the extent the CIT(A) had deleted the disallowance made by the AO u/s 40(a)(i) for non-deduction of TDS while making payment for purchase of software (considering the same as royalty payment). For the said disallowance, the AO had placed reliance on the decision in the case of CIT vs. Samsung Electronic Company Ltd (2012) 345 ITR 494 (Kar) [dated 15/10/2011] wherein it was held that the consideration paid for purchase of software is 'royalty'. The CIT(A) agreed with the decision of the AO to the extent that the consideration paid for purchase of software is in the form of royalty and therefore non-deduction of tax at source attracted the provisions of Section 40(a)(i), relying on the aforesaid decision. However, it granted relief to the assesse on the ground of impossibility of performance, accepting the assessee's contention that the aforesaid decision was rendered on 15.10.2011 i.e. after the end of the relevant previous year and thus it was not possible for the assessee to deduct the tax at the time of making the payment. The Tribunal held that since the assessee even in the subsequent years had not deducted TDS otherwise it would have produced record for deduction of tax in subsequent years and since the assessee was continuing its business in subsequent year and TDS could be deducted in subsequent year, the conclusion recorded by the CIT(A) was wrong as there was no impossibility of performance. Further, it held that the Courts only interpret the law and do not lay down a new law and thus it was not impossible for the assessee to deduct TDS at the time of making the payment (as the law interpreted by the High Court in the aforesaid case was holding the field at the relevant time)
***DEPUTY COMMISSIONER OF INCOME TAX vs. ALLEGIS SERVICES INDIA LTD. - (2018) 53 CCH 0143 (Mum Trib) - ITA No. 325/Bang/2018 dated June 13, 2018***

Go to Index

**2768.** The Tribunal remitted the matter back to the AO to verify the truthfulness of contentions of the assessee and genuineness of additional evidences, in a case where the AO had disallowed certain expenses u/s 40(a)(ia) on account of non-deduction of TDS on payments towards labour/ contract charges and lack of supporting evidences. For the first time, before the Tribunal, the assessee had submitted large number of evidences to contend that he had not entered into any contract/sub-contract and consequentially no TDS was required to be deducted. The Tribunal admitted the additional evidences in interest of justice, noting that the assessee was prevented to produce these evidences due to medical emergencies.
***SHRINIWAS SHRITEJU SHARMA vs. INCOME TAX OFFICER - (2018) 52 CCH 0260 MumTrib - ITA No. 2058/Mum/2014 dated April 2, 2018***

**2769.** Where the Assessing Officer made a disallowance u/s 40(a)(ia) as the assessee had deducted TDS in respect of expenditure on customer support services under section 194C by applying a rate of 2 per cent and not u/s 194J at rate of 10 per cent as those expenses were incurred mainly for purpose of solving customer grievances and technical issues raised by such customers, the Tribunal held that there was no infirmity or illegality in order of Commissioner (Appeals) in holding that provisions of section 40(a)(ia) would not be applicable in case of assessee as there was nothing in section to treat assessee as defaulter where there was shortfall in deduction of TDS. Accordingly, it deleted the disallowance made u/s 40(a)(ia) of the Income Tax Act.
***Dish TV India Ltd. v. Assistant Commissioner of Income-tax, Range-11(1), Mumbai2017] 86 taxmann.com 177 (Mumbai - Trib.)***

**2770.** Where the assessee had incurred expenses on account of legal and professional charges and deducted tax at rate lower than what was prescribed under section 194J of the Act, the Tribunal deleted the disallowance by relying on the decision in the case of S.K Tekriwal wherein it was held that no disallowance under section 40(a)(ia) can be made for short deduction of tax.
***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs.COX & KINGS (I) LTS. & ANR. ITA No. 5583/Mum/2015, 5440/Mum/2015 (CO No. 117/Mum/2017) DATED Oct 6, 2017-(2017) 51 CCH 0161 MumTrib***

**2771.** The CIT passed revision order u/s 263 on finding that the assessee had made two payments towards computerizing records but failed to deduct tax at source u/s 194C and thus directed the AO to examine the said issue. The AO passed order u/s 143(3) r.w.s 263 and made addition in assessee's income u/s 40(a)(ia). The CIT(A) deleted the addition made by the AO, following Merilyn Shipping and Transports v. Addl. CIT (2012) 136 ITD 23 (Visag)(SB) wherein it was held that section 40(a)(ia) is applicable only to expenditure which is payable as on 31st March of every year and cannot be invoked to disallow the amounts which have already been paid during the previous year, without deducting tax at source. The Tribunal reversed the CIT(A)'s order noting that the Apex Court in the case of Palam Gas Service. V CIT [2017] 81 taxmann.com 43 (SC) has held that the word 'payable' occurring in section 40(a)(ia) not only covers cases where amount is yet to be paid but also those cases where amount has actually been paid.
***ACIT v Guntur Co-operative Central Bank (2018) 52 CCH 0551 VishakapatnamTrib - I.T.A.No.75/Vizag/2016 & C.O. No.36/Vizag/2016 dated 06.04.2018***

Go to Index

*Proceedings u/s 201*

**2772.** The Apex Court dismissed the SLP filed by the Revenue against the judgement of Delhi High Court wherein the Court had quashed section 201(1)/(1A) proceedings initiated against the assessee in respect of TDS default on pre-paid cards payments by rejecting the Revenue's action of invoking extended time limit u/s 153(3)(ii) for giving effects to findings/ directions issued by Court for issuing notice u/s 201. The High court had also accepted assessee's contention that the proviso to Section 201(3) has to be read in consistency with the law laid down by Delhi HC ruling in NHK Japan Broadcasting Corporation and that prior to March 31, 2011, the Department was not permitted to initiate Section 201 proceedings for a period more than four years.
***ACIT vs. M/s Tata Teleservices TS-42-SC-2017 SLP 2420/2017 dated 06.02.2017***

**2773.** The Apex Court dismissed the SLP filed against the order of the Court quashing the notice issued under section 201 of the Act on account of it being time barred since the revenue attempted to make use of the benefit of the amendment to Section 201(3) of the Act introduced vide Finance Act 2014, extending the time limit to issue notice to 7 years, by issuing a notice in January 2015 which was based on the same information in respect of which its original notice was issued. It held that the amendment to Section 201(3) of the Act was not retrospective and that since the original notice was time barred, the same could not be salvaged by issuance of a subsequent notice on the same grounds.
***DCIT vOracle India Pvt Ltd – TS-446-SC-2016 - CC No.12701/2016***

**2774.** The Court dismissed Revenue's SLP filed against the High Court's decision allowing the assessee's writ to quash section 201(1)/(1A) proceeding for AY 2001-02, which were initiated by the Revenue consequent to the adverse High Court ruling rendered in 2010 with respect to another assessee, relying on the proviso to sub-section(3) of Sec 201 inserted vide the Finance Act, 2009 w.e.f. April 1, 2010 (stipulating that order u/s 201 for FY commencing on or before April 1, 2007 may be passed at any time on or before March 31, 2011). High Court had accepted assessee's stand that proviso to Sec 201(3) has to be read consistently with the law laid down by NHK Japan ruling (laying down four years limitation period for initiation of Sec 201 proceedings) and should not permit Department to initiate Sec 201 proceedings after a period more than four years prior to March 31, 2011. Further, with respect to reliance placed by the Revenue on the extended time-limit available u/s 153(3)(ii) [for giving effect to findings/ directions issued by Court], the High Court had held that the extended time-limit u/s 153(3)(ii) could be applied only to the assessee in whose case such order was made by the Court.
***ACIT v Tata Teleservices Ltd [TS-154-SC-2018] - Special Leave to Appeal (C) NO. 3766/ 2017 dated April 2, 2018***

**2775.** The Court upheld initiation of proceedings u/s. 201(1)/201(1A) and rejected assessee's stand that the notice initiating the said proceeding was issued after almost 10 years and therefore was barred by limitation. The Court held that where limitation to pass an order was not provided under the statute then the order had to be passed with a reasonable time and not beyond that. The Court remarked that a reasonable period would depend on the facts and circumstances of each case and no straightjacket period could be applied. The Court noting the facts of the case

held that the assessee did not deduct TDS u/s. 195 on payment of sale consideration to an NRI relating to sale of land. Further, re-assessment proceedings were initiated against the NRI (deductee), and Revenue first explored possibility of recovering entire tax from the person ultimately liable to pay tax (i.e. NRI). However, the Revenue had failed to do so as the Tribunal decided against the revenue (in the case of the NRI) on reassessment proceedings, but, allowed the Revenue to initiate action against the deductor pursuant to which the Revenue thereafter exercised power u/s. 201(1)/(1A) against the Assessee. The Court further disagreed with the view taken by Delhi HC in NHK Japan Broadcasting Corporation (305 ITR 137) that period of limitation of 4 years, as applicable for making assessment u/s. 147, should be made applicable for exercising power u/s. 201(1)/(1A). Accordingly, it held that the initiation of proceedings u/s 201(1)/(1A) was done within a reasonable time.

***M/s Mass Awash Pvt. Ltd. vs. CIT (IT) TS-289-HC-2017(Allahabad HC) (Misc. Bench No. 1088/2016 dated July 10, 2017)***

**2776.** The Court upheld the order of the Tribunal and held that merely on basis of complaints filed by few pilots against assessee airlines that assessee had deducted higher TDS amounts from their salaries but paid lesser amount to authorities, liability u/s 201 could not be thrust upon assessee. The Court held that the Tribunal's reasoning that revenue's findings were essentially based upon conjectures and complaints rather than evidence or material was reasonable and sound. Accordingly, it dismissed the appeal filed by the Revenue.

***CIT vs. Modiluft Ltd. (2017) 83 taxmann.com 269 (Delhi) (ITA No. 240/2004 dated July 3, 2017)***

**2777.** The Court held that those proceedings which had ended and attained finality with passing of order by High Court could not now be sought to be revived on the basis of retro-amendment to section 201 by the Assessing Officer.

***Oracle India (P.) Ltd. v. Dy. CIT [2015] 63 taxmann.com 24/235(Delhi HC) Taxman 227/376 ITR 411 (Delhi)***

**2778.** The Court held that Circular 5 of 2010 of CBDT clarifying that proviso to section 201(3) was meant to expand time limit for completing proceedings and passing order in relation to 'pending cases' cannot be interpreted, to enable department to initiate proceedings for declaring an assessee to be an assessee in default under section 201 for a period earlier than four years prior to 31-3-2011.

***Vodafone Essar Mobile Services Ltd v Union of India - [2016] 67 taxmann.com 124 (Delhi)***

**2779.** The Court allowed the assessee's writ petition and held that even though no express time limitation for the purpose of issue of show-cause notice was provided for in Section 201 of the Act, the show-cause notice issued ought to have been issued within a reasonable time i.e.. 4 years. Accordingly, it quashed show-cause notices issued under section 201 of the Act in March 2011 and 2012 for default in payment of TDS on interconnect usage charges paid to non-resident in FYs 2001-02 and 2006-07 since the same were issued beyond reasonable time. It rejected the Revenue's argument that in the absence of any period of limitation prescribed in respect of non-residents, no time limit could be imported.

***Bharati Airtel Ltd & Anr – TS-667-HC-2016 (Del)***

Go to Index

**2780.** The Court held that the amendment to Section 201(3) vide Finance Act, 2014, increasing the limitation period under section 201 of the Act to 7 years was not retrospective in nature and therefore shall not apply retrospectively to orders which were time barred under the old time limit set by erstwhile section 201(3) of the Act.
***Tata Teleservices v Union of India – (2016) 66 taxmann.com 157 (GujHC)***

**2781.** The Court observed that prior to April 1, 2010 there was no limitation period for initiating action on TDS default and accordingly held that it was well settled that where there was no period of limitation prescribed for taking action under any provision of law, the same should be taken within a reasonable period which would depend on the facts of the case and provisions of the relevant Act. In the given case, the period of 4 years was held as reasonable for initiating action under section 201 of the Act.
***CIT v Bharat Hotels Ltd – [2015] 64 taxmann.com 325 (Karnataka HC)***

**2782.** Where assessee paid lease rent to Kerala State Co-operative Hospital Complex without deducting tax at source, in view of fact that said resident receiver filed its return belatedly and did not pay tax on rent received, the Court held that the assessee could not be absolved from consequences flowing from sections 201(1) and 40(a)(ia).
***Academy of Medical Sciences v CIT - [2018] 91 taxmann.com 293 (KeralaHC) - IT APPEAL NOS. 232 TO 236 OF 2014 AND 152 OF 2015 dated MARCH 7, 2018***

**2783.** The Court held that no demand as envisaged by section 201(1) of the Act can be enforced against deductor if the deductee has made payment of tax on amounts on which tax was to be deducted at source, by deductor
***Nai Rajdhani Path Pramandal v CIT - [2016] 67 taxmann.com 317 (Patna)***

**2784.** The assessee was a research institute in dairy development, established as society under Societies Registration Act,1860.The assessee was providing rent-free accommodation to its employees and failed to deduct tax at source u/s 201(1) for the perquisite value of rent-free accommodation. The Commissioner (TDS) issued a show cause notice as to why the assessee shouldn't be treated as assessee-in-default u/s 201(1) for not deducting tax at source. The assessee contended that the employees of the said society, for the purpose of evaluating perquisites of rent free accommodation, were to be treated as the employees of the Central Govt. and thus clause (i) of Sub Rule 1 of Rule 3 was applicable. The Tribunal held that the employees of assessee-society were not to be treated as employees of Central Govt making clause(ii) of Sub Rule 1 of Rule 3 (employees other than Central Government) applicable to the assessee thereby making the assessee-society liable to deduct tax at source.
***National Dairy Research Institute v ACIT [2018] 94 taxmann.com 19 (Bengaluru – Trib.) – ITA NOS 1759 TO 1761 OF 2017 dated 31.05.2018***

**2785.** The Tribunal dismissed assessee's appeal and upheld CIT(A)'s order holding the assessee to be assessee-in-default u/s 201(1) [thereby levying interest u/s 201(1A)] on account of non-deduction of TDS while making payment of consideration to NRI for purchase of property. It rejected assessee's plea that that non-resident seller had declared capital gain arising on sale of property in his return and paid taxes thereon, thus, in view of the above, assessee was not

liable to pay interest. The Tribunal held that provisions of section 201(1A) clearly provide that a person who was bound to make a deduction of tax at source as per statute, if does not deduct, or after deducting fails to pay the tax, then such a person is liable to pay simple Interest on the amount of tax not deducted and such liability of the tax deductor is absolute.

***Harpal Singh vs Dy.CIT (IT) Chd [2018] 97 taxmann.com 429 (Chandigarh Trib)- IT APPEAL NO. 37 (CHD.) OF 2016 dated August 08 2018***

**2786.** Assessee company made provision for recruitment expenses, where TDS had been deducted at time of actual payment or credit to party. AO treated assessee as "assessee-in-default" w.r.t recruitment expenses and levied interest u/s. 201(1A). CIT(A) upheld order of AO. The Tribunal held that if TDS has been deducted at time of actual payment or credit to party, then assessee cannot be called as assessee in default.

***Spice Mobility vs ACIT- (2018) 54 CCH 0025 Del Trib- ITA No 2289,2286,2288 & 2287/Del/2016 dated 19.09.2018***

**2787.** The Tribunal held that where no provision mandated filing of separate appeals against order under section 201(1) for assessee-in-default and under section 201(1A) for interest, filing of one consolidated appeal was justified. It further heldthat where Assessing Officer initiated proceedings against assessee for default in deducting TDS under section 201 within four years from end of relevant financial year although he passed order after said period, proceedings were justified.

***C.J.International Hotels Ltd v ACIT - [2016]68 taxmann.com 27 (Delhi-Trib)***

**2788.** The Tribunal allowed assessee's appeal against CIT(A)'s order and deleted the interest levied u/s 201(1A) for depositing TDS through online banking channel for the quarter ending June on the due-date i.e. 7th July, though it was debited from the assessee's bank account the next day (i.e. 8th July), holding that date of TDS payment has to relate back to the date of online payment and not the date of credit into account of Revenue. Similarly, it deleted interest levied u/s 201(1A) with respect to TDS remitted by depositing a 'cheque' on the due-date for quarter ending June, 2007, i.e. 7th July and which was cleared in the normal banking channel (into Revenue's account) on 10th July, holding that the payment has to relate back to the date of presentation of the cheque and not to the date of its realization. It inter alia relied on the co-ordinate bench decision in the case of Sandip Bhagat v. ACIT (2017) 88 taxmann.com 356 (Delhi Trib.) wherein it was held that when the cheques issued have not been dishonoured the payment is to relate back to the date of receipt of the cheque.

***Interocean Shipping (India) Pvt. Ltd v DCIT [TS-752-ITAT-2018(DEL)] - ITA No.3637 & 3638/Del./2016 dated 21.12.2018***

**2789.** The Tribunal, relying on the decision of the Court in NHK Japan Broadcasting Corporation held that where no limitation was prescribed in Section 201 of the Act, action ought to have been initiated within a period of 4 years, which constituted reasonable time. Accordingly, it held that the AO erred in initiating proceedings under Section 201 on March 1, 2006 with respect to assessment years 2000-01 and 2001-02 and accordingly directed the AO not to treat the assessee as an assessee in default for the impugned years.

Go to Index

***SMS Iron Technology Pvt Ltd – TS-555-ITAT-2017 (Del) ITA No. 4480 to 4486 / Del / 2014 dated 25.10.2017***

**2790.** The Assessee, a cellular service provider, did not withhold TDS on commissions paid to agents on prepaid SIM cards and recharge coupons which were sold through agents. AO held that TDS should have been deducted under Section 194H of the Act and hence the assessee was treated to be in default under Section 201(1) of the Act. The CIT(A) upheld the order of the AO. On appeal, the assessee challenged the order of the AO and the CIT(A) as they were issued in the wrong name, despite intimation of the Assessee company's merger and change in name thereon to the AO and the CIT(A). Relying on the ruling of the Supreme Court in *Skylight Hospitality LLP Vs ACIT in (SLP (L) No. 7409/2018 dated 06.04.2018),* the Tribunal held that wrong name stated in the notice/ order was merely a clerical error which could be corrected u/s 292B of the IT Act. On merits, the Tribunal followed the Assessee's own case of the jurisdictional High Court which was decided in favour of the Revenue. Accordingly, the Assessee's appeals were dismissed.
***VODAFONE MOBILE SERVICES LTD. vs. ACIT (HYD TRIBUNAL) (ITA Nos. 40 & 41/Hyd/2018) dated May 30, 2018 (53 CCH 0136)***

**2791.** The Tribunal held that the amendment to section 201 of the Act vide Finance Act, 2009 inserting time limits therein was curative in nature and that since the section 201 proceedings were pending at the time of the insertion of new provisions, the amended provision would be applicable to the assessee. Further, it noted the subsequent amendment in the section vide Finance Act, 2010 which was applicable to residents and therefore distinguished the reliance placed by the assessee on the Special Bench decision of Mahindra and Mahindra which was applicable to non-residents.
***Vodafone Digilink Ltd v ITO (ITA No. 75 to 80/JP/2013) – TS-726-ITAT-2015 (JPR)***

**2792.** The Tribunal held that if no limitation is provided for initiating action by AO and passing order under particular provisions of act (sec 201), then reasonable time limit for such action is 4 years from end of relevant financial year.
***Gupta & Mahindra Tractors vs ITO(TDS)- (2018) 54 CCH 0116 Jaipur Trib- ITA No 397/JP/2017 dated 24.10.2018***

**2793.** The Assessee, a cellular service provider, issued its recharge vouchers/ starters packets to its distributors at discounted rates without withholding TDS thereon. The AO held that the discount offered was to be construed as commission and TDS should have been deducted thereon. Accordingly, the AO treated the assessee to be in default under Section 201(1)/201(1A) of the Act. The CIT(A) upheld the order of the AO. On appeal, the Tribunal relied on the ruling of *Bharati Cellular Ltd. V. ACIT (2013) 354 ITR 507 (Cal.)(HC)* and held that the AO should have examined whether distributors offered such commission to tax in their return and that the AO could resort to collection mechanism of section 201 of the Act only in cases of failure to pay taxes on part of the deductees. Thus, the Tribunal partly allowed the assessee's appeal and directed the AO to verify payment of taxes by distributors of assessee.
***IDEA CELLULAR LTD. & ORS. vs. ACIT & ORS. (KOLKATA TRIBUNAL) (ITA No. 1204 &1302/ Kol/ 2016, 2490/Kol/2016 & 22/Kol/201)7dated May 31, 2018 (53 CCH 0158)***

Go to Index

**2794.** Where the Assessing officer passed order under Section 201 of the Act in the case of the assessee after a period of 2 years from the end of the financial year in which the assessee filed its TDS statements, the Tribunal upheld the assessee's contention that the order was time barred in light of the provisions of Section 201(3) [as amended by Finance Act 2012] wherein it was provided that no order under Section 201(1) would be passed at any time after the expiry of two years from the end of the financial year in which the statement is filed in a case where the statement referred to in section 200 has been filed. Relying on the decisions of the Courts in CIT v. Vatika Township (P.) Ltd. [2014] 367 ITR 466/227 Taxman 121/49 taxmann.com 249 (SC), Tata Teleservices v. Union of India [2016] 385 ITR 497/238 Taxman 331/66 taxmann.com 157 (Guj.), Troikaa Pharmaceuticals Ltd. v. Union of India [2016] 68 taxmann.com 229 (Guj.) etc, it dismissed the Revenue's contention that the amendment to Section 201(3) in Finance Act 2014 (which extended the time limit to a period of 7 years) was retrospective and held that there was no mention that the amendment was to be applied retrospectively. Further, it noted that the legislature while amending the impugned section in 2014 stated that the same would be applicable w.e.f. 1/10/2014. Considering the order under Section 201(1) of the Act was passed beyond the two year time limit as provided in the pre-amended section, it held that the order was time barred and therefore was null and void.

***Sodexo SVC India (P.) Ltd. v DCIT - [2018] 92 taxmann.com 260 (Mumbai - Trib.) - IT APPEAL NO. 980 (MUM.) OF 2018 dated MARCH 28, 2018***

***Vodafone Cellular Ltd v DCIT – (2018) 91 taxmann.com 466 (Pune – Trib) – ITA NO 1961 / Pune / 2013 dated March 12, 2018***

**2795.** The Tribunal held that the assessee-corporation could not be considered as assessee-in-default u/s 201(1) for the alleged delay of 5 days in deposit of cheque for payment of TDS to the Government, noting that (i) assessee had admittedly tendered cheque with bank well within stipulated 'due date' and the delay was on part of bank / clearing house in making remittance to Government Account and (ii) the CBDT vide its Circular No. 261 dated 08.08.1979 had clarified that the date of tendering of cheque for payment of government dues would be deemed to be the date of payment of such taxes. It held that the aforesaid circular was binding on Revenue. Accordingly, the Tribunal deleted interest levied u/s 201(1A) and allowed asssessee's appeal.

***Oil and Natural Gas Corporation Ltd. vs Dy.CIT [2018] 54 CCH 0298 (Mum Trib) - ITA 5394 to 5398/Mum/2017 dated 30.11.2018***

**2796.** Where the assessee bank had made interest payments to Vishveshvaraya Technological university during AY's 2011-12 to 2015-16 without deducting TDS u/s 194A in light of the fact that, VTU was granted Section 12AA registration for AY 2016-17 and that it had applied to CBDT u/s 119(2)(b) praying for retrospective recognition of registration u/s12AA, which was pending , the Tribunal directed the AO to await the CBDT's decision on it in respect of application filed u/s 119, before initiating proceedings, u/s 201(1)/(1A), since, if the CBDT accepted VTU's application, the assessee's liability to deduct TPS would efface. In the event CBDT doesn't consider VTU's application favorably, the Tribunal directed the AO to re-adjudicate the impact of form 26A furnished by VTU and also held that interest u/s 201(1A) would be computed from the date which tax was deductible to the date of filing of return by deductee-VTU. Accordingly, it restored the matter back to the file of AO.

Go to Index

***State Bank Of Mysore vs. The Income Tax Officer(TDS) TS-61-ITAT-2017(PAN) ITA NO. 207-210/PAN/2016 ITA NO. 211-215/PAN/2016 dated 03.02.2017***

**2797.** The Tribunal held that as per section 4 of the Act it was the recipient of interest who was liable to pay tax and that the TDS provisions made it easier to facilitate collection of tax and therefore unless it could be shown that the due tax could not be recovered from the recipient of interest, the payer could not be treated as an assessee in default.
***RBL Bank Ltd v ITO (TDS) – (2015) 45 CCH 0244 Panaji Trib***

**2798.** Where the assessee bank was held as assessee in default u/s 201(1) & 201(1A) of the Act due to late filing of TDS statements and failure to furnish necessary forms, the Tribunal held that assessee being a public sector bank , its TDS was automatically deducted as per provisions of the Act by a centralized core banking system and though there were some technical issues like non submission of declaration forms within due date, same could not be a valid ground for treating assessee as an assessee-in-default u/s 201(1), particularly when assessee had explained reasons for such mistakes and furnished all details and requested for one more opportunity to explain the case. The Tribunal, accordingly, remitted the matter back to the file of the Assessing officer.
***State Bank of India v. Income-Tax Officer (TDS) - [2017] 80 taxmann.com 195 (Vishakhapatnam-Trib.) (ITA No. 444 (Vizag.) of 2016)***

*TDS Credit*

**2799.** The Court held that where the contractual obligation to execute work for Government was that of assessee joint venture alone and not that of the constituent member and any action which Government could have taken for breach of terms and conditions of first contract was only against assessee and not its constituent sub-contractor and the sub-contractor executed work only in terms of second contract entered into between them and assessee, assessee would be entitled for refund of tax deducted at source from their bills by Government, especially where the sub- contractor had not made any claim for such refund.
***IVRCL-KBL(JV) v ACIT - TS-146-HC-2016(AP)***

**2800.** The Court dismissed assessee-company's writ, holding that TDS under the Income Tax Act,1961 cannot be adjusted against the tax payable on the undisclosed income declared by the assessee under the Voluntary Disclosure of Income Tax Scheme of 1997 (VDIS) as VDIS is a part of the Finance Act,1997 and is a self- contained code and is different and distinct from the 1961 Act and hence TDS and/or any other mode of payment of tax under the 1961 Act cannot be used to discharge the obligation to pay Tax under the scheme of 1997 Act on undisclosed income.
***Earnest Business Pvt. Ltd v CIT [TS-93-HC-2017(BOM)] (WP No. 616 of 1998) dated 10/03/2017***

**2801.** The Court held that the assessee was entitled to TDS credit without offering corresponding income to tax as per section 199 of the Act read with Rule 37BA since the corresponding income was assesseable in the sister concern's hand who had not availed of such TDS.

Go to Index

***CIT v Relcom (ITA 26/2015) – TS-618-HC-2015 (Del)***

**2802.** The Court held that if the deductor has deducted TDS and issued Form 16A, the deductee has to be given credit even if the deductor has defaulted in his obligation to deposit the TDS with the Government revenue.
***Devarsh Pravinbhai Patel vs. ACIT - SPECIAL CIVIL APPLICATION NO. 12965-12966 of 2018 (Guj HC) dated 24.09.2018***

**2803.** The Petitioner HUF had invested in RBI taxable bonds but had inadvertently furnished the PAN of its Karta and the RBI had accordingly, deducted tax on the PAN of the Karta. However, the Petitioner had offered income from bonds to tax and the Karta had not claimed any TDS credit in his return of income. The AO did not accept the request for TDS credit made by the Petitioner. The CIT rejected the revision application of the Petitioner holding that on account of mismatch of PAN reflected in the TDS certificate and that of the Petitioner, the credit could not be granted. On a writ petition being filed, the Court observed that as per Rule 37BA where whole or part of the income on which tax had been deducted at source is assessable in the hands of a person other than the deductee, credit could be given to such other person provided the deductee files declaration with the deductor in this respect containing the details of person to whom credit should be granted along with the reasons and the deductor issuing the TDS certificate in name of that other person. It observed that the Petitioner had not filed any declaration with RBI. However, the Petitioner HUF had offered the income to tax and the TDS was not claimed by Karta in his return of income. Accordingly, it directed the Department to grant TDS credit to the Petitioner HUF.
***NARESH BHAVANI SHAH vs. CIT (2017) 99 CCH 0129 GujHC SPECIAL CIVIL APPLICATION NO. 9352 of 2015 dated 18/07/2017***

**2804.** The assessee was following cash system of accounting and had received certain amount as professional receipts after payer deducted tax at source under section 194J. He claimed credit for prepaid taxes on account of TDS, even in respect of those professional receipts appearing in Form 26AS which were not shown by assessee as professional receipts in return of income for relevant year. During assessment, the AO made addition which had resulted because of mismatch between gross professional receipts as per Form 26AS and receipts shown by assessee in return of income and the same was confirmed by CIT(A) relying upon Rule 37BA, on ground that assessee had taken credit of corresponding tax deducted at source. The Tribunal held that the approaches of both assessee and revenue are wrong. It further held that provisions under Rule 37BA did not authorize revenue to bring such amounts to tax which are not assessable during relevant year on basis of regular method of accounting followed by assessee. The Tribunal also concluded that revenue could not, merely because credit for tax deducted at source was erroneously claimed by assessee, bring corresponding professional receipts to tax, if such receipts were otherwise not assessable as income in accordance with law. Thus, the Tribunal set aside the order of CIT(A) and the matter was remanded back to recompute income of assessee in accordance with cash system of accounting followed and to give credit for prepaid taxes on account of tax deducted at source, as per law, having regard to section 199, read with rule 37BA of Income Tax rules.

Go to Index

***Dhruv Sachdeva vs ACIT- (2018) 100 taxmann.com 150 (Del- Trib)- ITA No 6261 of 2015 dated 18.09.2018***

**2805.** The Tribunal, following the order of the Hon'ble Bombay High Court in Yashpal Sahni (165 Taxman 144), held that the Assessee could not be made to pay a tax upon denial of credit of TDS on the ground that TDS was not getting reflected in Form 26AS. The Tribunal noted that the Assessee received lease rentals net of TDS which was discernible from its Bank Statements, which implied that tax had been duly deducted and, therefore, when TDS had been already deducted, though not paid to the credit of the Central Government, the Assesse could not be held liable to pay tax and credit of such TDS had to be allowed to the Assessee in view of section 205. The Tribunal further noted that recovery could be initiated against the person who had deducted the TDS but not paid the same to the credit of the government.
***Shetbro Hotels and Resorts Pvt. Ltd. vs. ITO (2017) 49 CCH 0048 Mum Trib (ITA No.2205 / Mum/2016 dated 15.02.2017)***

**2806.** The Tribunal held that credit for tax deducted at source has to be given in assessment year in which income has actually been assessed/offered to tax and not in year of deduction itself.
***Surendra S. Gupta v ACIT [2018] 93 taxmann.com 456 (Mumbai – Trib.) – ITA NO 4791 OF 2014 dated 09.05.2018***

**2807.** The assessee had earned rental income and offered realized as well as unrealized rent under the head "income from house property". It claimed deduction of the amount of unrealized rent u/s 23(1) r.w.r 4 and claimed TDS credited on both, realized as well as unrealized rent. The AO restricted the TDS credit to the amount of rent received. The CIT(A) confirmed the action of AO. The Tribunal observed that the assessee offered the total rental income (realized as well as unrealized) and then claimed deduction of unrealized rent under section 23(1) r.w.r 4. It further observed that the taxes were duly deducted by the deductor and paid to the account of the Government and also the assessee had produced the TDS certificates for the tax deducted. Accordingly, it held that as total rental income (including unrealized rent) was duly offered to tax under head 'Income from House Property', corresponding TDS credit was to be allowed.
***RANGJI REALTIES PVT. LTD. vs.ITO (2017) 50 CCH 0094 MumTrib ITA No. 6119/Mum/2016 dated 09.06.2017***

*Others*

**2808.** Where the assessee received payments for testing products received by it from third party suppliers and the AO incorrectly held that the assessee was liable to deduct tax at source on payments made by it (without realising that the assessee was earning income and not making payments), which was correctly reversed by the CIT(A), the Court held that the Tribunal was unjustified in confirming the AOs order which misunderstood the facts of the case and in reversing the order of the CIT(A) without making any findings or even referring to it. Accordingly, it set aside the issue to the file of the Tribunal for fresh hearing.
***Thyocare Technologies Ltd v ITO – ITA No 53 of 2016 (Bom) dated 11.09.2017***

Go to Index

**2809.** The Court, relying on judgment of Gujarat Reclaim & Rubber products Ltd, held that before effecting deduction at source one of the aspects to be examined is whether such income is taxable in terms of the Income Tax Act. Since this aspect had not been considered by the Tribunal while concluding that the Appellant has committed a default in not deducting the tax at source on payments of commission made by the assessee to non-resident sales agents the matter was remanded back to the tribunal for fresh examination.
***Sesa Resources Ltd v DCIT - [2016] 95 CCH 89 - (Bombay).***

**2810.** Where the assessee, an advertising agent, deducted tax @ 2 percent under Section 194C on payments made to Star India but had made an inadvertent error / mismatch in the PAN of the deductee while furnishing its TDS returns (vis-à-vis the actual PAN of the deductee), which it was unable to correct on the CPC system as the system only accepted correction of typographical errors upto 2 aplha and 2 numeric fields as opposed to 5 changes proposed to be made by the assessee, the Court held that the AO was unjustified in invoking Section 206AA alleging non- furnishing of PAN, requiring deduction of tax @ 20 percent. Noting that Section 200A makes reference to a statement of TDS or a correction statement, it held that no where did the Act or Rules provide that a correction of PAN was to be restricted to 2 alpha and 2 numeric fields and that the Department was unjustified in suggesting that corrections were to be limited only to the aforesaid fields. Accordingly, it directed the Department to verify whether the PAN sought to be corrected by the assessee belonged to the respective deductee and delete addition made under Section 206AA.
***Purnima Advertising Agency (P.) Ltd. vs. DCIT (2017) 83 taxmann.com 205(Guj HC) (Special Civil Application No. 18631/2014 dated July 10, 2017)***

**2811.** The Tribunal held that where assessee had claimed an expenditure towards labour & fabrication charges paid by it and furnished requisite evidences to prove that payee had duly considered such charges paid by assessee in its return of income, no disallowance under section 40(a)(ia) could be inflicted in respect of such charges in hands of assessee payer.
***Jashojit Mukherjee v ACIT [2018] 93 taxmann.com 366 (Kolkata – Trib.) – ITA NO. 403 OF 2017 dated 04.05.2018***

### *m. Procedures – Return, Assessment, Re-assessment, Rectification, Revision, Appeals, Refund, Recovery, Stay of Demand, Search, Settlement Commission, Prosecution*

*Filing of return of income*

**2812.** The Court held that the provisions of section 139(9) contemplate that assessee might be given opportunity of removing defect in the return of income filed within 15 days, hence it was open to assessee to place such material and evidence before authority concerned that it might have to justify its claims and authority might thereafter, pass fresh orders.
***Greater Noida Industrial Development Authorty Vs. ACIT (2016) 97 CCH 0095 AllHC (Writ Tax No. - 795 of 2016)***

**2813.** The Court granted interim relief to the assessee-petitioners' by directing the Revenue/ State to accept the assessees' income-tax returns for AY 2018-19 without indicating Aadhaar no. /

Aadhaar enrolment no. and / or linking with PAN, if uploaded before June 30th 2018 and in case the system does not accept the Returns in absence of Aadhaar details, to file the returns in physical form with the jurisdictional AO, following recent decisions of Punjab and Haryana High Court in case of Pradeep Kumar Vs. UOI [C.W.P. 7672 of 2018] and Delhi High Court in case of Mukul Talwar Vs. UOI [WP No. (C) 3212 of 2018] granting similar relief in view of PAN-Aadhaar linking deadline extended to June 30, 2018. The Court observed that it was not open to the State to take a stand that the orders passed by the Punjab & Haryana High Court and Delhi High Court were contrary to the statute and/or made on incorrect concession made by the counsel for the State, without even attempting to have the same set aside either in appeal and/or recalled/varied. It however clarified that the above directions were without prejudice to the rights and contentions of the Revenue/ State that such returns without quoting Aadhaar numbers are contrary to the provisions of the Act and the above directions were only applicable in the case of the petitioners involved.

***Hussain Indorewala and Ors v UOI & Ors. - [TS-369-HC-2018(BOM)] - WRIT PETITION NO. 1709 OF 2018 dated June 29, 2018***

**2814.** Where the assessee's brother was swept away in a river due to flood a month before date of filing return i.e. 31-10-2007 and the assessee had repeatedly visit the site of the accident from time to time with a hope of tracing his brother as a result of which the audit of books as prescribed under section 44AB was delayed and was ultimately completed only on 20-2-2008 pursuant to which return was filed by assessee, the Court held that the Board was not justified in refusing to condone the delay in filing of return of income. It held that state of mind of assessee due to tragic event had to be appreciated by Board and mere fact that Revenue had found that business income of assessee grew during relevant year was no ground at all to deny relief to assessee. Considering that the circumstances were beyond control of assessee, it set aside the previous order of the Board and held that the application made by assessee seeking relief under sub-section (2) of section 119 for condonation of delay in filing return of income was to be reconsidered.

***Babulal Mohanraj Jain v CBDT - [2018] 89 taxmann.com 158 (Bombay) - WRIT PETITION NO. 8022 of 2012 dated 08.12.2017***

**2815.** The Court held that omission to file certified copy of the re-constituted partnership deed along with the return, which was filed during assessment proceedings, would not attract disallowance of interest, commission, remuneration etc paid to partners under section 185 of the Act. The Court further held that according to section 139(4) of the Act, an assessee was permitted to file its return any time before the expiry of 1 year from the end of the relevant assessment year or before the completion of assessment, whichever was earlier, and therefore the assessee could have filed its return along with the reconstituted partnership deed validly without attracting any disallowance under section 184 and further held that section 185 read with section 184 was emphatic but not mandatory. It further noted that the AO had refused to treat the return as defective so as to enable the assessee to cure the defect under section 139(9) of the Act.

***CIT v SR Batliboi & Associates (ITA No 190 of 2009) – TS-645-HC-2015 (Cal)***

**2816.** The Court held that once an authority (i.e. CBDT) had been conferred discretion to condone delay in filing return, application seeking condonation of delay of one day could not be rejected,

particularly when assessee encountered certain hardship / difficulty in uploading his return, due to technical snags in website of Income-tax Department due to last hour rush of filing of returns.
***Central Board Of Direct Taxes & Ors. Vs.Regen Infrastructure & Services Pvt Ltd.(2016) 97 CCH 0057 ChenHC (Writ Appeal No. 1314 of 2016)***

**2817.** Where the assessee faced a delay of 37 days in filing of its return of income owing to the fact that its erstwhile auditors refused to complete the audit due to a qualification vis-à-vis the valuation in a business transfer, which was communicated to the assessee on the last date of filing of return, pursuant to which the assessee obtained an NOC and got its accounts audited by another auditor, the Court held that the CBDT was unjustified in refusing to condone the delay (application for which was made under Section 119 of the Act). The Court held that the assessee had satisfactorily explained reasons for the delay in filing of its return and that the CBDT was incorrect in refusing to condone the delay on the ground that the assessee failed to prove that the delay was caused due to the professional misconduct of the auditor. Accordingly, the Court set aside the order refusing to condone delay issued by the CBDT.
***REGEN POWERTECH PRIVATE LTD. vs. CENTRAL BOARD OF DIRECT TAXES - (2018) 101 CCH 0117 ChenHC W.P. No. 24273 of 2016 dated Mar 28, 2018***

**2818.** The Court allowed the writ petition filed by two assesses claiming that they should be allowed to file Income-tax returns for AY 2018-19 without complying with condition of providing Aadhaar number, in view of the fact that the deadline for PAN-Aadhaar linkage having been extended to 31-3-2019. It directed the CBDT to amend digital form to enable assessees to 'opt out' of mandatory requirement of PAN-Aadhaar linkage till deadline of 31-3-2019.
***Shreyasen v UOI - [2018] 95 taxmann.com 256 (Delhi) - W.P. (C) NO. 7444 OF 2018; C.M. APPL. NO. 28499 OF 2018 dated July 24, 2018***

**2819.** Where assessee filed its return after five months, and nearly after a period of four years filed an application before CBDT to condone delay in filing return, for sole reason of illness of auditor, the Court held that since the details of illness and any respective proof, namely, doctor's prescription, was not given, delay could not be condoned.
***B.U. Bhandari Nandgude Patil Associates v CBDT - [2018] 91 taxmann.com 241 (Delhi) - WRIT PETITION (CIVIL) NO. 6537 OF 2017 dated MARCH 12, 2018***

**2820.** The Court directed the CBDT to Consider Petitioners' representation seeking extension of due date for filing income tax return and Tax Audit report to 31-12-2018 (though the said due date had already been extended to 31-10-2018 from 30-09-2018) noting that the same involves various processes and information to be obtained by the concerned assessees including information relating to GSTR-9.
***TAX BAR ASSOCIATION AND SRI AMIT PAREEK vs. UNION OF INDIA AND ANRS AND CBDT [TS-593-HC-2018(GAUH)]- WP(C) 7361/2018 dated 12.10.2018***

**2821.** The assessee, non-resident Indian, filed a Petition before the CBDT for condonation of delay of 1232 days in filing of return of income on the ground that the delay occurred as there was severe financial crises in the USA and also that she had been injured in an accident (for which she filed a medical report). The CBDT rejected the petitioner vide order under Section 119(2)(b) of the

Act wherein it dimissed the assessee's explanation and held that since the assessee had a professional advisor, she should have filed the returns on time. The Court in Writ Proceedings held that the explanation offered by the assessee was acceptable and genuine and accordingly remanded the matter to the CBDT directing it to condone the delay in filing of return.

***Smt. Dr. Sudha Krishnaswamy v Chief, Commissioner of Income-tax, (Intl. Taxation - [2018] 92 taxmann.com 306 (Karnataka) - WRIT PETITION NOS. 15891-15893 OF 2016 dated MARCH 27, 2018***

**2822.** The Court held that general direction for extending due date for filing returns under section 139(1) could not be issued as that would be contrary to scheme of Act, however, CBDT was to consider applications under section 119(2)(a)/(b) by assessees in Kerala towards claim of deductions/exemptions/refunds or waiver of interest/penalty, taking note of flood situation that affected State of Kerala.

***Alwaye Chartered Accountants Association v. Union of India- [2018] 100 taxmann.com 458 (Kerala) WP (C) No. 35382 of 2018-dated December 19, 2018***

**2823.** The Court admitted the Writ petition filed by an individual-Petitioner on linkage of Aadhaar-PAN required before filing return of income and issued interim direction to Income-Tax officer to allow the Petitioner to manually file Income tax return without insisting for Aadhaar/Enrolment number since the hearing was pending before the Apex Court on the challenge to constitutional validity of Aadhaar on grounds of privacy.

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

**2824.** Where the assessee was under severe financial crisis and had to close down his business, cancel his registration under Kerala VAT Act and was involved in cases for dishonor of cheques as a result of which he could not file its return on time, the Court condoned delay in filing of return where the assessee made application to the Commissioner to condone the delay in accepting the returns under Section 119 (2) (b), within six years.

***M. Rajan vs. Principal CIT (2016) 97 CCH 0033 (Ker HC) (WP (C) No. 14424 of 2016)***

**2825.** The Assessee filed a writ petition seeking permission for filing income tax return without aadhar number and prayed to direct tax authorities not to initiate any coercive steps against assessee under Income-tax Act, in lieu of any obligation flowing from section 139AA. The Court held that in view of decision in case of Thiagarajan Kumararaja v. Union of India [W.P. No. 28181 of 2017 dated 6-11-2017], section 139AA makes it compulsory for assessees to give Aadhaar number and that all income tax assessees had to necessarily enroll themselves under Aadhaar Act and obtain Aadhaar number, which would be their identification number, as that had become a requirement under Income tax Act. Accordingly, the assessee's writ petition was dismissed.

***Preeti Mohan v Union of India – [2018] 89 taxmann.com 343 (MadrasHC) - W.P. NO. 7826 OF 2017 dated 20.12.2017***

**2826.** The Court upheld the Single Judge order and set-aside the CBDT order rejecting assessee's condonation application u/s 119 with regards to a day's delay in filing return of income for AY 2010-11. It observed that the return filing due-date for relevant AY was extended for a period of

15 days owing to floods, yet assessee filed return belatedly by a day due to technical snags on Income tax website on last day and moved an application u/s 119(2)(b) before the CBDT seeking condonation of return filing delay which was rejected. The Court held that if the assessee had encountered certain hardship or difficulty in uploading his return, as alleged by him due to technical snags in the website of Income Tax department due to last hour of rush of filing of returns, the delay deserved to be condoned. Noting that the CBDT rejected the assessee's petition on the ground that assessee could have easily filed its return in the normal period running up to 30th September or at least any time up to the extended period of 15th October as there were no floods in the area where assessee was based, the Court opined that the application seeking condonation of delay could not be rejected for such reasons as are assigned by the Board and that the Board did not exercise its discretion properly in the matter. Accordingly, it condoned the delay and directed the AO to process the assessee's return.
***Regen Infrastructure & Services Pvt. Ltd. [TS-592-HC-2016(MAD)] (Writ Appeal No.1314 of 2016)***

**2827.** The Court, dismissed assessee's (individual) writ petition seeking permission for filing income-tax return without Aadhaar number and also the plea to direct the tax department not to initiate coercive action against the assessee. Rejecting assessee's stand that by virtue of partial stay from operation of Sec. 139AA proviso, granted by SC in Binoy Viswam, assessee should be permitted to file returns without production of the Aadhaar number either manually or through appropriate e-filing facility, it held that petitioner's plea was a mis-reading of the SC judgment, which infact upheld the validity of Sec. 139AA and the limited stay granted by the SC was only with respect to certain other transactions mentioned in Rule 114B of Income tax Rules (transactions, in relation to which, PAN is to be quoted in all documents for the purpose of Clause (C) of Sub-Section (5) of Section 139A of the Act). Accordingly, it dismissed Assessee's appeal.
***Mr.Thiagarajan Kumararaja vs UOI-TS-505-HC-2017(MAD) W.P.No.28181 of 2017 &WMP.No.30311 of 2017 dated 06.11.2017***

*Assessment*

» *Person to be assessed*

**2828.** Where High Court upheld order passed by Tribunal holding that in case of assessee's merger with nother company, subsequent assessment order passed in name of assessee company was a nullity, the Apex court dismissed SLP filed against said decision.
***Principal Commissioner of Income-tax v. BMA Capfin Ltd. [2018] 100 taxmann.com 330 (SC) SLP(Civil) Diary No.40486 of 2018-dated November 19, 2018***

**2829.** The assessee had requested for transfer of tax files from the jurisdictional office of the erstwhile company (which got merged vide the High Court order made during the course of assessment proceedings into the assessee-company) to the assessee-company's jurisdictional officer. However, the AO had framed the assessment in the name of the non-existing erstwhile company. Since the assessee had taken an additional/ fresh ground objecting to such framing of assessment, the Tribunal remitted the matter to the DRP for examination of this issue,

pursuant to which the DRP directed the AO to frame the assessment in the name of the assessee-company. Assessee filed another appeal against the order passed by the AO in the name of the assessee-company, following DRP's direction. The Tribunal held the assessment to be nullity relying on the decision in the case of Spice Entertainment Ltd. v. CIT (2012) 247 CTR 500 (Delhi) wherein it was held that, if the assessment is concluded in favour of a non-existing entity, then notwithstanding section 292B (which *inter alia* deems an assessment to be not invalid merely by reason of any mistake, defect or omission in such assessment), the position does not improve. The Court upheld the Tribunal's (second) order, holding that the DRP was not directed to require the AO to "better" the original incurable illegality.
***Pr.CIT v Nokia Solutions & Network India (P.) Ltd. – (2018) 253 Taxman 409 (Del HC) – ITA No. 135 of 2018 dated 06.02.2018***

**2830.** The Court held that where Assessee's succession to estate of Ruler was not governed by principle of primogeniture general law of succession, i.e. rules applicable to HUF, would apply and, thus after his death, assessment was to be completed by taking status of deceased assessee as that of HUF.
***CIT v. Bhawani Singh ji [2018] 99 taxmann.com 338(Delhi) ITA Nos. 152 of 2001 & ORS. IT Ref. Nos. 297-98 of 1981 & ORS. WTA Nos. 2 of 1999 & ORS. Dated October 5, 2018***

**2831.** The Court held that where an AOP could not be taxed on capital gains income due to the fact that it neither filed its return nor was assessed for the purpose of taxation, the Department could not seek to tax a member of an AOP at a time when the AOP was dissolved and no longer in existence.
***Pr CIT v Ind Sing Developers Pvt Ltd – TS-154-HC-2016 (KAR)***

**2832.** The Court held that where notice issued in name of deceased assessee was served upon legal heir who, then, participated in proceedings, the said legal heir could not be deprived of right to challenge service of notice. It further held that since the notice was issued in name of deceased assessee, such proceedings was a nullity being initiated against a dead person.
***CIT v M. Hemanathan – [2016] 68 taxmann.com 22 (Madras)***

**2833.** The Tribunal held that the income of the AOP could not be taxed in the hands of the assessee(one of the members of AOP) merely due to non-filing of PAN card and IT return of AOP. It noted that the AOP was in existence as per deed executed and that though the return of the AOP was not made available during the assessment, that could not be ground to disregard its existence. Regarding AO's objection that the bank account of the AOP did not have all names of the AOP-members, it held that even if no bank account was maintained by the AOP but the AOP was in existence and the income was earned by the AOP, then such income had to be taxed in the hands of the AOP only. Further, it held that if the return was not filed by AOP, action could at best be taken against AOP and income could not be taxed in the hands of the individual members.
***ITO v Shri B.V. Ashok Kumar - TS-134-ITAT-2018(Bang) - ITA No. 291/Bana/2017 dated 23.02.2018***

Go to Index

**2834.** The Tribunal accepted assessee's contention that since the notice u/s 153C and 143(2) as well as assessment order passed pursuant to such notices were in the name of the non-existing entity (being the amalgamating company) and the amalgamation was approved by the High Court long before the issue of the said notices, the said assessment order was not valid. It relied on the decision in the case of CIT v. Intel Technology India (P.) Ltd. [2016] 380 ITR 272 (Kar) wherein it was held that framing an assessment against a non-existing entity is not a procedural irregularity, but a jurisdictional defect which goes to the root of the matter, invalidating the assessment proceedings initiated against a non-existing company even after amalgamation with the successor company.

***BMM Ispat Ltd. v DCIT - [2018] 93 taxmann.com 76 (Bangalore - Trib.) - IT APPEAL NOS. 911 & 912 (BANG.) OF 2015 & OTHERS dated April 10, 2018***

**2835.** On account of amalgamation order, Assessee company was merged with new entity. AO u/s. 143(3) passed assessment order in name of the amalgamating company. Assessee took plea that assessment order passed on non-existing amalgamating entity instead of amalgamated/ successor company was void ab-initio. The Tribunal held that, High Court's order in relation to amalgamation was passed wherein assessee-original entity was merged with new entity. TPO passed order in name of assessee. Draft assessment order was passed in name of original entity. DRP passed order in name of new entity. Order was passed in name of assessee/original entity. Despite AO being intimated/informed fact of amalgamation still AO choose to pass assessment order in name of non-existent company. Assessment order passed in name of a non-existent company had to be quashed.

***Vertex Customer Management India Pvt.Ltd. vs. Dy. CIT-(2018)53 CCH 0295 DelTrib.-ITA No.966/Del/2016-Dated Jul. 6, 2018***

**2836.** Assessee company was primarily engaged in business of importing buying and selling and distributing wide range of mobiles phones in India and providing related post sale support services. Assessee had undertaken international transaction, AO referred matter to TPO for determination of ALP of international transaction entered into by assessee with its AE. TPO determined upward adjustment. DRP upheld assessee's order. Tribunal gave some part relief. High Court restored matter to file of Tribunal with certain directions. The Tribunal held that, assessee filed its return of income in name of M/s. Sony Ericsson Mobile Communications (India) Private Limited. Name of company was changed to M/s. Sony Mobile Communications (India) Private Limited. AO passed draft assessment order in name of M/s. Sony Ericsson Mobile Communications India Private Limited. AO in order passed u/s. 143 (3) had passed final assessment order u/s. 143 (3)/144C in name of M/s. Sony Ericsson Mobile Communications (India) Private Limited. Final order had been framed on non-existent company. Assessment framed by AO on non-existent company was nullity in eyes of law and void and provisions of sec. 292B could not rescue revenue. Therefore, order was unsustainable and accordingly same was quashed.

***Soni Mobile Communications India(P) Ltd. & ANR vs. Dy. CIT & ANR-(2018)53CCH 0323 DelTrib. -ITA No.554/Del/2015,836/Del/2014-Dated July 6, 2018***

**2837.** The Tribunal held that the assessment order passed by the AO in the name of an amalgamating company which was non-existent was invalid.

Go to Index

***Genpact Infrastructure (Bhopal) (P.) Ltd. v. DCIT – [2018] 93 taxmann.com 334 (Delhi – Trib.) – IT Appeal No. 199 (DELHI) 2015 dated April 27, 2018***

**2838.** The assessee, through its AR, attended before the AO in the course of assessment proceedings but did not mention the fact of its merger with another company. As the assessment was completed in the name of a non-est entity, the assessee claimed that the same was null and void. The CIT(A) held that the assessee could not now claim that notice was invalid as it was issued in the name of a non-est entity as it was covered by the provisions of section 292BB. On appeal, the Tribunal relied on the ruling of the Co-ordinate Bench in M/s Images Credit and Portfolio [P] Ltd (ITA Nos. 5301 to 5306, 5418/DEL/2013) and held that assessment framed in the name of a non-existing entity was null and void.
***Rudraksha Agencies Company Ltd. vs. DCIT – (2018) 53 CCH 0085 (Delhi ITAT) – ITA No. 670/DEL/2018 dated May 2, 2018***

**2839.** The Tribunal held that the assessment order passed in the case of the assessee making additions on account of unexplained cash credits pursuant to revision proceedings under Section 263 of the Act was bad in law as it was passed in the name of the amalgamating company which was no longer in existence as it had been amalgamated pursuant to the order of the Delhi High Court permitting the amalgamation. It held that once a company was amalgamated it would cease to be a person under Section 2(31) of the Act and therefore the assessment order passed on such person was a nullity. Accordingly, it directed the AO to pass a fresh assessment order in the name of the amalgamated company.
***BASUNDHARA GOODS P. LTD. vs. INCOME TAX OFFICER - 2018) 52 CCH 0313 KolTrib - ITA No. 674/Kol/2016 dated Mar 23, 2018***

» *Jurisdictional AO*

**2840.** The Apex Court held that transfer of case made by CIT under section 127 from Income-tax Officer (Tamil Nadu) to ACIT (Kerala) as not justified and authorized under section 127(2)(a) of the Act on the ground that for complying with the provision of section 127(2)(a) the assessing officer from whom the case is to be transferred to another assessing officer to whom the case is transferred are not subordinate to the same DGIT/CCIT/CIT and there should be agreement between the two DGIT/CCIT/CITs to whom such assessing officers are subordinate where as the counter affidavit filed by the Revenue did not disclose whether such agreement was reached. It further held that absence of disagreement could not tantamount to agreement as visualized under Section 127(2)(a) of the Act which contemplates a positive state of mind of the two jurisdictional Commissioners of Income Tax which was conspicuously absent.
***Noorul Islam Educational Trust [TS-575-SC-2016] (SLP No. 13968/2015)***

**2841.** The Apex Court dismissed Revenue's SLP against the High Court order wherein the High Court had quashed the block assessment for the block period 1989-90 to 1999-2000, holding the notice issued u/s 158BC by the AO, Nagpur to be without jurisdiction. The CIT, Raipur (pursuant to search operations carried out) had transferred the assessee's case u/s. 127 from Rajnandgaon to Nagpur in July, 1999 which was set-aside by the MP High Court, however, the

CIT had passed fresh order of transfer u/s. 127 (similar to earlier order) in 2000 pursuant to MP High Court directions and the Revenue contended that by virtue of subsequent order of 2000, the earlier order of 1999 passed u/s 127 stood revived and consequently the AO, Nagpur would retrospectively enjoy the status of the AO even on the date when notice was issued. The High Court had held that transfer of proceedings u/s 127 could not be retrospective so as to confer jurisdiction on a person who does not have it.

***CIT v Lalit Kumar Bardia [TS-11-SC-2018] – SLP (CIVIL) Diary No(s). 40053/2017 dated 09.01.2018***

**2842.** The Apex Court dismissed the SLP filed by the assessee against the decision of the Bombay High Court, wherein the Bombay High Court dismissed the petition filed by the assessee challenging the order passed under section 127 of the Act, transferring the case from Mumbai to Hyderabad, on the ground that the assessee had filed the petition only upon receipt of reassessment notices issued by the DCIT Hyderabad whereas the transfer order could have been challenged at an earlier stage. It upheld the finding of the High Court that the assessee's conduct was indicative of having accepted the transfer order.

***Patel KNR v CIT – TS-448-SC-2016 - (C) No(s).10247/2014***

**2843.** Where High Court accepted assessee's plea that reason assigned for transfer of its case from one jurisdiction to another jurisdiction i.e. decentralisation of cases from central charges, did not constitute sufficient reason and thus, impugned transfer order passed by AO was not sustainable, the Apex court dismissed the SLP filed against said order.

***Pr. CIT(Central) v. Rohtas Project Ltd. -SLP(Civil) Diary No(s).34314 of 2018-dated November 16, 2018***

**2844.** The Court dismissed the assessee's petition challenging the order of transfer of jurisdiction from Moradabad to Delhi (where the assessee had its corporate office) with a view to centralize the survey proceedings conducted at the assessee's premises. It held that no prejudice had been caused by such transfer and dismissed the contention of the assessee that only cases of search and seizure and not survey could be centralized.

***PMC Fincorp Ltd v Pr CIT – (2016) 97 CCH 0135 (All HC)***

**2845.** Where the Madhya Pradesh High Court had quashed the transfer of jurisdiction from MP to Nagpur and had directed the CIT to pass a reasoned order, the Court held that the assessment proceedings initiated u/s 158BC by DCIT Nagpur and assessment order passed pursuant to the said proceedings were invalid being in contravention of the decision of the Court. It held that the assessee's participation in the proceedings u/s 158BC would not be hit by section 124(3) [which provides that a person is not entitled to question the jurisdiction of a AO after the expiry of 1 month from the date on which he was served with a notice u/s 142(1)/115WE(2)/143(2) or completion of the assessment where he has filed return u/s 139(1)/115WD(1)] since the return was filed in response to notice u/s 158BC and not u/s 142(1). It accordingly, dismissed Revenue's contention that the AO's order was valid as the assessee had participated in the proceedings.

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

Go to Index

**2846.** The High Court allowed assessee's petition against the SCN proposing for transfer of its case from Kolhapur to Mumbai (issued merely on ground of facilitating better co-ordinated investigation) and quashed the SCN holding that the notice proposing the transfer did not give sufficient indication for the reasons to transfer the assessee's case from Kolhapur to Mumbai and merely stating that the transfer is proposed/being done for the purposes of coordinated investigation was not sufficient. Thus, it held that SCN proposing transfer of case u/s 127 without explaining reasons, was breach of Audi Alteram Partem Rule, and hence quashed.
***D.Y. PATIL EDUCATION SOCIETY vs. COMMISSIONER OF INCOME TAX (EXEMPTIONS) AND ANR. [2018] 102 CCH 0310 BOM HC- WRIT PETITION NO. 5496 OF 2018 dated August 09,2018***

**2847.** Where the Petitioner's case was transferred from Mumbai to Chennai u/s 127(2) without giving any reasons for the same, the Court remitted the matter back to the AO for passing fresh order u/s 127(2) after issuing notice to the Petitioner and after hearing the Petitioner.
***ADITYA BIRLA MONEY LIMITED vs. PCIT & ANR (2017) 99 CCH 0043 ChenHC dated 05.06.2017***

**2848.** The Court held that where an order under Section 127 (for transfer of case) was challenged, there are were two interests – that of the assessees who would invariably plead inconvenience and hardship and that of the revenue which would inevitably cite public interest. It was the Court's task to unravel whether in fact the revenue's contentions are correct and if so reject the assessee's contentions or if there was no real public interest and if there are no reasons even the briefest one, the order cannot be sustained.
***Chaudhary Skin Trading Company & ORS. vs. PCIT & ORS.(2016) 97 CCH 0061 DelHC (W.P. (C) 3837/2016)***

**2849.** The Court allowed assessee's writ challenging order issued u/s 127(2) transferring its case from Guwahati to New Delhi for centralization of different assessees' cases on the ground of absence of reason in the show cause notice, and remanded the matter to AO's file for fresh adjudication. It accepted assessee's contentions that if centralisation of cases was the objective of the impugned transfer it wasn't shown that why cases couldn't be clubbed at Guwahati and further acknowledged that transfer of case may cause inconvenience and monetary loss to the assessee. It further stated that quasi-judicial power u/s 127(2) must be exercised in public interest and by applying the ratio laid down by the Apex Court in Ajantha Industries, held that centralizing of the cases can be for a bonafide objective but the appropriate reason must be disclosed in the notice itself and the failure to do so would vitiate the notice and also the transfer order, consequent upon such inadequate notice.
***Shri Mul Chand Malu vs UOI -TS-180-HC-2016(GAUH HC)***

**2850.** The Court, held that where the Department, by passing an ex-parte order, transferred assessee's case without supplying the assessee with necessary reasons, information and documents, the transfer of assessment was wholly irrelevant and arbitrary and the order of transfer was liable to be quashed
***Genus Electrotech ltd vs UOI (2017) 100 CCH 0014 GujHC SCA No. 10328 of 2017 Dated 13.09.2017***

Go to Index

**2851.** The Court noted that issuance of notices under section 127 of the Act for centralization and transferring a case must prima facie show application of mind and that the expression 'reasonable opportunity of being heard' should be effective and not a mere formality. It held that the assessee should at least know the gist of enquiry carried out against them and were liable to be supplied with the adverse material gathered against them during assessment proceedings in order to enable them to represent their cases effectively and that it was entitled to a pre-decisional hearing on jurisdiction transfer under section 127 of the Act.
***Virbhadra Singh v CIT [CWP No. 2014/2015 along with CWPs No. 2015/2015, 2017, 2018, 2019 and 2020 of 2015]– TS-506-HC-2015 (HP)***

**2852.** Where in case of assessee-company having registered office at Mumbai and a branch office at Indore, ITO, Indore, issued a notice under section 143(2), the Court held that in view of fact that assessee was filing e-returns from inception in Indore and, moreover, it had accepted jurisdiction of Assessing Officer at Indore in earlier assessment years, objection raised by assessee that jurisdiction in its case lay in State of Maharashtra, was rightly rejected by Chief Commissioner.
***Frolic Reality (P.) Ltd. v. Chief CIT-[2019] 101 taxmann.com 311 (Madhya Pradesh HC)-Writ Petition No. 2876 of 2014-December 5, 2018***

**2853.** The Court dismissed the assessee's writ petition challenging transfer of its case u/s 127 from DCIT, Corporate Circle-1(1), Chennai to the Central Circle-1(1), Chennai noting that the reason for transfer as recorded by Revenue was centralisation of cases relating to search and seizure operations on Vasan Health Care to facilitate smooth and easy proceedings. It rejected assessee's contention that reasons for transfer should have been communicated to assessee and held that no opportunity of hearing was required to be given u/s 127(3) as it excluded certain procedure contemplated u/s 127(1) and 127(2) when both the transferee and transferor officers are situated in the same city, locality or place. It also noted that that two Heads of Department for Company Circle and Central Circle had concurred and reasons for transfer had been duly recorded, thus, the requirement u/s 127(2)(a) was satisfied; Regarding assessee's contention that its case was not related to Vasan Health Care group of cases, it holds that the administrative exigencies and the manner in which the investigation has to proceed are all matters into which this Court would refuse to probe into under Article 226 of the Constitution.
***Advantage Strategic Consulting Pvt Ltd v PR CIT - TS-576-HC-2017(MAD) - W.P.No.35408 of 2016 & W.M.P.No.30475 to 30478 of 2016 dated 05.12.2017***

**2854.** The Tribunal dismissed the appeal of the assessee challenging the jurisdiction of the DCIT to assess its income on the basis of CBDT Instruction No 1 / 2011 (which precluded DCITs from assessing taxpayers with declared income of less than Rs.15 lakhs) and held that CBDT instructions did not override the provisions of the Act and since the assessee had not objected to such assessment before the DCIT itself it could not raise such objection at this stage.
***Udbhav Constructions v DCIT – TS-273-ITAT-2016 (Bang)***

**2855.** Assessee was originally formed under name M/s. B in Chennai which was later acquired during FY 2008-09 and accordingly, name was changed.Thereafter, assessee was permitted to

transfer his registered office from Tamil Nadu to Maharashtra.Assessee filed return of income for AYs 2010-11 & 2011-12 to DCIT, Mumbai.Assessment for AY 2010-11 was completed by ACIT, Chennai.Assessee raised a legal issue contending that ACIT, Chennai did not had any jurisdiction to pass assessment order for AY 2010-11. The Tribunal held as per system prevailing in Department, though return of income was filed in Mumbai office, yet jurisdiction remained with Chennai AO in view of fact that return was filed electronically.Since assessee's case was not transferred to Bombay Officer as per record of Department, AO, Chennai issued a notice u/s 143(2).AO having original jurisdiction could be relieved of case only if transfer of case was done as per provisions of s. 127.According to assessee, CIT, Mumbai had approved transfer on 16.01.2013. As details of order passed by CIT, Chennai were not available on record. In absence of same, it might not be possible to ascertain as to whether case of assessee was transferred prior to passing of assessment order. Thus, CIT(A) was justified in rejecting contentions of assessee

***CREDIT SUISSE FINANCE (INDIA) PVT. LTD. & ANR. vs. Dy. CIT & ANR (2018) 54 CCH 0410 MumTrib ITA No. 1435/M/2016, 1436/M/2016, 1415 & 1416/M/2016 dated 21.12.2018***

**2856.** The Tribunal held that a notice served on old address could not be quashed if assessee had not intimated the new address to department. However, where Additional Commissioner of Income tax passed assessment order, but no order conferring concurrent jurisdiction to Addl.Commissioner of Income tax over cases of Income tax Officer was available, assessment being without jurisdiction was void ab initio.

***Harvinder Singh Jaggi v ACIT - [2016] 67 taxmann.com 109 (Delhi-Trib)***

**2857.** The Tribunal quashed the assessment order passed by Additional CIT as the order was without jurisdiction since only the Assistant or Deputy CIT was covered under the definition of AO. It held that it was only under the directions of the Board that an Additional CIT could exercise the powers of the AO.

***Mega Corporation v ACIT (ITA No. 102/Del/2014) – TS-615-ITAT-2015 (Del)***

» *Notice issued u/s 143(2)*

**2858.** The Apex Court reversed the High Court order quashing notice issued u/s 143(2) which was served on assessee after 12 months from the end of the month in which return was filed. The assessee filed return of income on October 17, 2005 for AY 2005-06, and AO issued the notice u/s 143(2) on October 16, 2006 which was dispatched on October 18, 2006 and served on assessee on November 2, 2006. The Apex Court noted that Post Office attempted to serve the notice on assessee twice which could not be done since he was not available, further notice was also served on authorized representative of the assessee on October 19, 2006. Thus, the Apex Court held that the non-availability of the assessee to receive the notice sent by registered post as many as on two occasions and service of notice on October 19, 2006 on the authorized representative of the assessee whom the assessee now disowns, was sufficient to draw an inference of deemed service of notice on the assessee and sufficient compliance of the requirement of Sec. 143(2).

Go to Index

***Dharam Narain [TS-76-SC-2018] - CIVIL APPEAL NO(S). 2262 OF 2018 dated FEBRUARY 19, 2018***

**2859.** The Apex Court set aside the order of High Court quashing the notice issued u/s 143(2) and held that since it was due to the non-availability of assessee to receive the impugned scrutiny notice sent by registered post as many as on two occasions that the notice was served on the authorized representative of the assessee whom the assessee had disowned, it was sufficient to draw an inference of deemed service of notice on assessee and there was sufficient compliance of requirement of section 143(2).
***ITO v Dharam Narain – (2018) 301 CTR 41 (SC) – Civil Appeal No.(S) 2262 of 2018 dated 19.02.2018***

**2860.** In the assessment order, the AO mentioned that the assessment order was passed u/s 143(3)/153A. The CIT(A) allowed appeal of assessee on ground that assessment order was wrongly passed u/s 153A though it should have been u/s 143(3). Tribunal observed that no notice was issued u/s 143(2) and held that though notice u/s 143(2) did not give any jurisdiction to AO to make assessment u/s 143(3) but it was obligatory to issue notice u/s 143(2) before making assessment under Section 143(3) or Section 144. Since assessment was claimed to have been completed u/s 143(3), notice u/s 143(2) was mandatory and noncompliance thereof vitiated assessment. The Court upheld the order of the Tribunal.
***CIT vs. MOINS IQBAL & ANR. (2017) 99 CCH 0143 AllahabadHC ITA No. 168 of 2009, 169 of 2009 dated 28.07.2017***

**2861.** Where the assessee had filed its return of income on November 20, 2006 mentioning its address as Mittal Court, Nariman Point and subsequently on November 23, 2006 informed the AO vide a letter that its address had been changed to Ruby House, Dadar and the AO on November 28, 2007 issued a notice under section 143(2) of the Act to the Nariman Point address of the assessee, which remained unserved and then subsequently issued a notice on December 12, 2007 to the correct address of the assessee, the Court upheld the order of the Tribunal wherein it was held that the notice issued under section 143(2) was invalid as it was time barred since the last date for issuance of such notice for the relevant AY was November 30, 2007 and the consequent order passed under section 143(3) read with Section 144C(13) was also invalid. The Court noted that the assessee had objected to the proceedings at the very first instance and therefore the assessment proceedings were not curable under section 292BB of the Act. Further, it placed reliance on Section 27 of the General Clauses Act where the expression "serve", "given" or sent would be deemed to be effected by proper addressing, prepaying and posting which was not satisfied in the instant case.
***CIT v Abacus Distribution Systems (India) Pvt Ltd – (2017) 98 CCH 0058 Bom HC ITA No. 1382 of 2014***

**2862.** Where the Assessee filed return of income in response to notice under Section 142(1) of the Act, the assessment was completed without service of notice under Section 143(2) after filing of return of income or during the course of entire assessment proceeding. CIT(A) upheld the order of the AO. Tribunal relied on the ruling of the *Gwalior Tribunal in the case of Umesh Agarwal Vs ACIT 1, Gwalior ( ITA No. 261-266/IT/09-10/Gwl vide order dated 10.05.2011)*

wherein assessment order passed under Section 153A by the AO was cancelled in absence of any notice being issued/served under Section 143(2) as the same was held as a non-curable defect. Thus, the Tribunal remitted the matter to the CIT(A), to decide the case afresh in accordance with law after affording due and adequate opportunity of hearing to the Assessee.
***POONAM SHIVHARAE vs. ACIT (AGRA TRIBUNAL) (ITA No. 146/Agra/2016) dated May 1, 2018 (53 CCH 0078)***

**2863.** The assessee filed its return of income with ITO at New Delhi having jurisdiction over case of assessee. Thereafter, ITO, Faridabad issued notice under section 143(2) on 23-10-2007 but since it did not have jurisdiction over case of assessee, ITO at Delhi issued notice under section 143(2) on 28-7-2008 and completed assessment under section 143(3) wherein addition was made under section 68. The Tribunal held that since the notice under section 143(2) by the officer having jurisdiction over the assessee was beyond period prescribed under law i.e. one year of filing of return, the assessment order was null and void. Accordingly, it dismissed Revenue's appeal.
***ITO v NVS Builders (P.) Ltd - [2018] 91 taxmann.com 462 (Delhi - Trib.) - IT APPEAL NO. 3729 (DELHI) OF 2012 dated MARCH 8, 2018***

**2864.** The Tribunal accepted the assessee's contention that for making assessment u/s 143(3), issuance of notice u/s 143(2) within statutory time limit was mandatory requirement and could not be considered as a procedural irregularity or a curable defect, relying on the decision in the case of ACIT v. Hotel Blue Moon [(2010) 321 ITR 362 (SC)]. However, it remitted the matter to the CIT(A) to verify whether the notice u/s 143(2) was issued to the assessee within the time prescribed as per the Act **(**since there was no reference of any date in the assessment order**)** so as to ascertain on which date such notices were issued and served on the assessee.
***HATCH ASSOCIATES INDIA PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0277 DelTrib - ITA No. 4862/M/2011 & 6832/Del/2011 dated April 2, 2018***

**2865.** As the assessee, being a company had not filed its return of income voluntarily before due date under Section 139 of the Act, the AO issued notice under Section 142(1) of the Act. However, since assessee did not attend proceedings or filed an application for adjournment, penalty proceedings were issued under Section 271F of the Act. AO made addition under Section 69C in respect of certain expenditure as no documentary evidences were produced by assessee in support of any of its expenses, payments/ cash received. CIT(A) upheld the order of the AO. On appeal before the Tribunal, the assessee challenged validity of assessment order passed in absence of notice under Section 143(2) of the Act. Tribunal held that the assessee cannot take pretext of 143(2) notice being not issued by AO since notice issued by the AO [though not mentioned to be issued u/s 143(2)] had all the ingredient of notice u/s 143(2) and made it amply clear that assessment proceedings was initiated in case of assessee for relevant assessment year. Thus, Assessee's appeal was dismissed.
**U-*LIKE PROMOTERS (P) LTD. & ANR. vs. DCIT & ANR. (DELHI TRIBUNAL) (ITA No. 327/Del/2012, 590/Del/2012) dated May 21, 2018 (53 CCH 0061)***

**2866.** Though Notice u/s 142(1) was issued and sent to the assessee , upon no reply being received, the Assessing officer completed the assessment proceedings exparte without sending notice

u/s 143(2) of the Act to the assessee either on the address mentioned in the return of income or the address mentioned on the assessment order. The Tribunal held that the AO failed to issue notice u/s 143(2) which was mandatory and failed to comply with procedure laid down in section 143(2), during the entire assessment proceedings and consequently the assessment order in dispute was invalid, void ab intio, against the provisions of the law and not sustainable in the eyes of law. Accordingly, the Tribunal canceled the same by accepting the cross objection filed by the assessee and dismissed the appeal of the Revenue.
***Assistant Commissioner of Income Tax & Anr vs. Ravnet Solutions Pvt Ltd & Anr - (2017) 49 CCH 0156 DelTrib (ITA No. 4889/Del/2011)***

**2867.** The Tribunal held that where the requisite notice u/s 143(2) was not served on the assessee within the time prescribed by law, the assessment framed by AO was time barred. It held that though service of the notice was not a condition precedent to conferment of jurisdiction upon the AO to deal with the matter, it was a condition precedent to making of the order of assessment. Accordingly, it held that the s. 143(2) notice had to be issued not only before the expiry of the limitation period but had also to be served upon the assessee before the expiry of the limitation period.
***Cameron (Singapore) Pte Ltd vs ADIT-IT(TP)A No 2/JP/2014 dated 27.07.2017***

**2868.** The Court held that assessment would be invalid if notice is not issued under section 143(2) was issued even if the assessee participates in proceedings notwithstanding the provision of section 292BB.
***Travancore Diagnostics (P.) Ltd. v. ACIT ([2016] 74 taxmann.com 239 (Kerala)) (IT Appeal Nos. 221 and 228 of 2015)***

» *Special Audit u/s 142(2A)*

**2869.** The Apex Court stayed the High Court's order confirming initiation of special audit u/s 142(2A) where the order for special audit was claimed by the Revenue to have been passed on 30.03.2013 (though the same was served on the assessee on 03.04.2013), noting that the assessee's contention that the date in the receipt register vide which proposal for special audit was forwarded to DCST was afterward tempered with a change to 30.03.2013 from 31.03.2013.
***Nokia India (P.) Ltd. v ACIT - [2018] 93 taxmann.com 450 (SC) - SPECIAL CIVIL APPEAL (C) (NOS). 8384 OF 2018 dated April 9, 2018***

**2870.** The Court upheld the special audit under section 142(2A) of the Act in case of the assessee and rejected the submission of the assessee that special audit was merely a ploy to extend time to complete assessment which would have otherwise become time barred, by noting that nothing in the Act which prohibits the AO from ordering / directing special audit where the accounts of the assessee were complicated and there was a doubt to the correctness of the accounts due to multiplicity of transactions or volume of transactions or specialized nature of accounts. Noting that the conditions were complied with in the case of the assessee, the Court upheld the special audit.
***Sharad Kantilal Shah – TS-523-HC-2016 (Bom)- W.P. No.1134/2016***

Go to Index

**2871.** The Court held that where Assessing Officer had carefully outlined salient aspects in accounts and returns of assessee that needed to be looked into and made impugned order directing special audit and assessee had not alleged any mala fides, impugned order directing special audit was justified.
***Patanjali Ayurveda Ltd. v. Dy. CIT- [2019] 101 taxmann.com 46 (DelhiHC) - W.P. (C) No. 2591/2013- dated December 6, 2018***

**2872.** The Court dismissed the assessee's writ petition and confirmed Revenue's initiation of Special Audit u/s 142(2A) rejecting assessee's contention that assessment proceedings for AY 2009-10 had been abated and time barred due to non-communication of order requisitioning special audit before March 31, 2013. It noted that the AO had issued a show-cause notice for special audit on March 21, 2013 and passed order requiring special audit on March 30, 2013 and dismissed assessee's contention that since it had received the order only after March 31, 2013 (i.e. last date for completion of assessment) the assessment was time barred and held that the order u/s 142(2A) would stand communicated when it was sent out (i.e. before March 31, 2013) as it went out of AO's control and there was no chance to change his mind or modify order. Accordingly, it held that the period of exclusion for limitation to pass assessment order in terms Explanation 1 to Sec. 153, would commence from the date on which AO directed assessee to get his accounts audited u/s 142(2A) and not the date on which assessee received the order, and since the order of special audit was despatched before March 31, 2013, it held that the assessment was not time barred.
***Nokia India (P.) Ltd v Add CIT - [2018] 92 taxmann.com 76 (Delhi) - WRIT PETITION (CIVIL) NO. 2974 OF 2013 dated MARCH 6, 2018***

**2873.** The Court upheld the order of the Tribunal wherein it held that an auditor nominated by the Commissioner could not be considered as an agent of the assessee and therefore quashed the AOs extension of time limit for furnishing audit report under section 142(2C) of the Act where the request for such audit was made by the nominated auditor for AY 2005-06 (prior to the amendment whereby the AO may suo motu grant extension for filing audit report). It held that the request for audit made by the nominated auditor could not be considered as a request made by the assessee and therefore the extension of time limit by the AO was invalid and the order issued under section 153A was time barred.
***Pr CIT v Nilkanth Concast Pvt Ltd – TS-268-HC-2016 (Del)***

**2874.** The Court dismissed writ petitions filed by several Assessees, challenging constitutional validity of retrospective amendment to Section 142(2A) by the Finance Act, 2013. expanding the scope of special audit to cover 4 new grounds viz. (i) volume of accounts, (ii) doubts about the correctness of accounts, (iii) multiplicity of transactions in the accounts and (iv) specialized nature of business activity of the assessee. It held that the Retrospective amendment to section 142(2A) was constitutionally valid as in fiscal matters the Legislature has the ability to amend the law retrospectively. It also noted that section 142(2A) does not confer any vested right on the assessee, which could not be taken away by retrospective amendment as it was enacted to confer an important power on the revenue to curb tax evasion and facilitate investigation into the accounts of an assessee for the proper determination of tax liability. Therefore, even if the

amendments to section 142(2A) were given retrospective effect, the same would be within the powers of the Legislature.

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

**2875.** Assessing Officer directed special audit on grounds that; firstly, assessee had failed to provide relevant information in respect of several imprest accounts maintained by it and, further, while maintaining accounts on mercantile basis, why imprest accounting (cash basis) was followed; secondly, amount of exemption claimed under section 80-IC differed in both original and revised return filed by assessee. The Court noted that order passed under section 142(2A) contained a detailed discussion as to complexity of accounts. There was complexity in allocating expenses incurred by assessee as it chose to supply information to Assessing Officer, during inquiry, in a piecemeal fashion. Information was not forthcoming from assessee in timely manner. In regard to imprest accounts, details of expenses incurred were not furnished. Also, benefit of section 80-IC was an aspect which could not be given a light treatment, but needed inquiry. Since Assessing Officer had carefully outlined salient aspects in accounts and returns of assessee that needed to be looked into and assessee had not alleged any mala fides, the Court held that impugned order directing special audit was justified.

***Patanjali Ayurveda Ltd. v. Dy. CIT- [2019] 101 taxmann.com 46 (DelhiHC)-W.P. (C) No. 2591/2013- dated December 6, 2018***

**2876.** The AO, vide order dated 17.2.2006, directed the assessee to get its accounts audited under section 142(2A), which was to be completed within 35 days but was extended to 07.07.2006 on applications made by the assessee. Subsequently, the AO suo moto extended the time limit to 17.07.2016. Accordingly, the AO passed the final assessment order on 14.09.2006 as opposed to 06.09.2006. The Court dismissed the appeal of the Revenue and held that the Tribunal had rightly concluded that the assessment made by the AO was time barred and was to be quashed since the period covering the suo moto extension of time limit by AO to complete audit could not be excluded for the purpose of determining the time limit for completion of assessment under section 153 of the Act. It held that it was only after 2008 that the said period could be excluded by virtue of Proviso to Section 142 (2C) and since the instant case pertained to AY 2003-04 the same would not apply.

***Pr CIT v Jindal Dyechem Industries Pvt Ltd – (2017) 99 CCH 0007 (Del HC) – ITA 668 / 2016 dated 05.05.2017***

**2877.** Where assessee, a State Govt. Undertaking which was subjected to audit at hands of CAG as well as independent CA, had produced these two audit reports for the relevant years before the DCIT, the Court set aside the order for 'special audit' passed u/s 142(2-A) by DCIT mechanically without due application of mind and without giving a reasonable opportunity of hearing to assessee. It was noted by the Court that the impugned order did not disclose discussion on objections of assessee for there being no justification for special audit and that in case of one of the years, the DCIT did not even wait for objections to be placed on record and before they were furnished, he had already passed the impugned order. However, the Court gave one more opportunity to DCIT to reconsider the matter in the light of the Court's order, considering the

objections and written submissions filed by the assessee in the correct perspective and pass fresh orders.

***Karnataka Industrial Area Development Board v. ACIT - (2018) 401 ITR 74 (Karnataka HC) - Writ Petition No. 25223 of 2016 & 1863 of 2017 dated 02.01.2018***

**2878.** The Court dismissed the petition filed by the assessee against the order passed u/s 142(2A) by the assessing authority for directing Special Audit, noting that it was recorded that to understand the complex treatment of multiplicity of agreements entered into by the Petitioner for different projects, the Special Audit was directed and that no inference could be drawn that there was breach of principles of natural justice or arbitrariness in the impugned order. It held that the Court could not go into sufficiency of reasons assigned by assessing authority for directing Special Audit and only where there were no reasons assigned or objections of assessee were not considered that the requirement of section 142(2A) could be said to have not been complied by authority.

***Habitat Shelters (P.) Ltd. v Pr.CIT – (2018) 91 taxmann.com 271 (KarnatakaHC) – Writ Petition no. 2009 of 2018 (T - Res) dated 12.02.2018***

**2879.** The Court dismissed assessee's writ and held that where direction for special audit is subjected to approval of Principal Commissioner, the PCIT had to apply mind before granting approval for special audit and after granting opportunity for hearing to assessee. The AO after considering nature and complexity of accounts, doubted about correctness of accounts and due to multiplicity of transactions, voluminous seized material, and total non-cooperation on part of assessee, made a request to Principal Commissioner, to accord approval for special audit. The Principal Commissioner had granted reasonable opportunity of being heard twice to the assessee and thereafter, approval for special audit was accorded after careful consideration of facts. Thus, the Court held that the requirement of pre-decisional hearing was met as Principal Commissioner, before deciding the issue of approval for Special Audit gave opportunity to assessee and, thus, writ filed by assessee to challenge said order was dismissed.

***Ramswaroop Shivare vs DCIT- (2018) 98 taxmann.com 89 (MP HC)- WP no 7936 of 2018 dated 06.09.2018***

» *Time limit for passing assessment order*

**2880.** The Court held that explanation 1 to section 158BE(2) excludes period during which assessment proceedings were stayed, from the period of limitation to complete block assessment. Where stay of some other nature is granted other than the stay of the assessment proceedings i.e. stay of the special audit, but the effect of such stay is to prevent the AO from effectively passing the assessment order, even that kind of stay order may be treated as stay of the assessment proceedings because of the reason that such stay order becomes an obstacle for the AO to pass an assessment order thereby preventing the AO to proceed with the assessment proceedings and carry out appropriate assessment.

***VLS Finance Ltd v CIT - TS-231-SC-2016***

Go to Index

**2881.** The Court held that where in course of remand proceedings, Assessing Officer failed to complete assessment within a period of nine months from date of service of remand order on revenue authorities, in view of provisions of section 153(2A), impugned assessment order was barred by limitation.

***Surendra Kumar Jain v. Pr. CIT, Central-III, New Delhi- [2018] 100 taxmann.com 38 (Delhi)- W.P. (C) Nos. 4304 to 4311 & 4313 to 4316, 4318 & 4319 of 2018 - C.M. Appl. Nos. 16759 to 16764, 16766, 16768, 16772, 16774, 16781, 16782, 16786 & 16787 of 2018 date October 1, 2018***

**2882.** The Court allowed Revenue's appeal against Tribunal's order wherein the Tribunal had held that the final assessment order passed pursuant to directions of DRP was void-ab-initio since the draft assessment order *itself* was passed beyond prescribed statutory period. It held that draft assessment order passed was within limitation period and was not void and invalid since clause (iv) to Explanation 1 categorically states that that the period from the date when the AO directs the special audit till the last date of furnishing such report u/s 142(2A) shall be excluded and not counted for limitation period.

***Pr.CIT vs AT & T Global Network Services (India) (P.) Ltd [2018] 97 taxmann.com 462 (Delhi)- IT APPEAL NO. 292 of 2018 dated August 20 2018***

**2883.** The Court quashed assessment order passed pursuant to Tribunal's remand on the ground that order was barred by limitation u/s 153(2A) [which prescribes time limit for framing assessment pursuant to Tribunal order setting aside or cancelling assessment]. It rejected Revenue's stand that section 153(2A) limitation applied only where there was complete setting aside of assessment and not when the proceedings were remanded to the AO with directions from Tribunal. Noting that in the present case, the assessment in respect of five issues (out of total seven issues) was set aside and remanded back for a fresh determination, the Court referred to the intention of legislature behind inserting section 153(2A) and highlighted the distinction between Sec. 153(3)(ii) [which provides that orders passed pursuant to any direction or finding of appellate authorities are not subject to any time limit] and Sec. 153(2A). Accordingly, it held when the assessment on an issue is set aside and the matter remanded with a direction that the issue has to be determined afresh, section 153(2A) of the Act would get attracted.

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

**2884.** The Court held that in the absence of dispatch date made available to Court from records, to prove that order under section 153(A) read with section 143(3) of the Act was issued within prescribed period, order passed by AO was barred by limitation and thus justified to be set aside.

***CIT v B J N Hotels Ltd - [2016] 95 CCH 0120 (Kar)***

**2885.** The Court held that where the order issued by it quashing the special audit initiated by the AO was passed on September 9, 2002, considering the period of exclusion available to the AO which amounted to 17 days, the assessment should have been completed by September 26, 2002. It further held that even if the contention of the AO was to be considered viz. that he was informed of the order dated September 9, 2002 on November 25, 2002, the assessment should

have been completed within 17 days of that date which was not so in the instant case, since the assessment was completed March 31, 2003. Therefore, the Court held that the assessment was time barred under section 153 and the order was liable to be quashed

***CIT v Bata India Ltd – (2016) 96 CCH 0051 (KolHC) G.A.NO.824 OF 2011 & ITAT 77 OF 2011***

**2886.** Where the orders under Section 144 were passed by the AO within the specified time (30.12.2016) but was dispatched after the expiry of such time (07.01.2017), the assessee contended that such orders of assessment passed by the AO were barred by limitation. Relying on the ruling of Kolkata High Court in Binani Industries ltd. (59 taxmann.com 389), the CIT(A) upheld the orders in absence of any material to show that the AO re-visited such orders after the expiry of the time limit. The Tribunal held that to become a valid order of assessment, its communication must commence within period of limitation as prescribed by law though communication might end after prescribed period of limitation. Accordingly, the Tribunal set aside the assessment orders as they were time barred as the orders were dispatched after the expiry of the time limit prescribed under the Act.

***Nidan Infront of DIG Officer vs. ACIT – [2018] 53 CCH 0046 (Cuttack ITAT) – ITA Nos. 32 to 37/CTK/2018 S.P.Nos.14 to 20/CTK/2018 dated May 16, 2018***

**2887.** Assessment was completed u/s. 143(3). Later case was reopened u/s. 148 and addition was made on account of unexplained amount received from company and assessment was completed u/s. 147/143(3). CIT(A) dismissed assessee's appeal. Tribunal set aside issue regarding addition to file of AO with direction to decide issue afresh. AO in absence of confirmation of creditor made addition u/s. 254/143(3). CIT(A) rejected assessee's claim that impugned order was time barred. The Tribunal held that, as per provisions of sec. 153(2A), assessment order, pursuant to order u/s 254 had to be made before expiry of one year from end of financial year in which order u/s. 254 was received by Department. Delhi High Court in case of Nokia India Private Limited vs. DCIT, held that unless entire assessment order was wholly set aside, time limit for passing fresh order u/s.153 (2A) would not be attracted. Object behind introduction of sub-section (2A) of section 153 was to prescribe a time limit for completing assessment proceedings upon original assessment being set aside or being cancelled in appeal. Along with insertion of sub-section (2A), sub-section (3) underwent simultaneous change. It was expressly made "subject to the provisions of sub-section (2A). Section 153(3) would thereafter apply only to such cases where Section 153(2A) did not apply. AO would be bound to follow time- limit imposed by sub-section (2A). Where AO was only giving effect to an appellate order, then Section 153(3)(ii) would apply. In assessee's case limitation period for passing order u/s.254/143(3) expired on 31.03.2012 whereas, impugned assessment order was passed on 28.03.2014, therefore, it was time barred.

***Vivek Financial Focus Ltd. vs.Dy.CIT-(2018) 53 CCH 0311 DelTrib-ITA No.6972/Del./2017-Dated Jul.9, 2018***

**2888.** Search and seizure operation was conducted at assessee's premises wherein incriminating documents were found.AO formed a belief that an amount was paid by assessee to UPDA.Assessee strongly contended that its notings/entries on loose sheets/diaries found at premises of Shri RKM/UPDA did not have any evidentiary value.AO framed assessment

u/s 153C r.w.s 153A based on documents seized from premises of Shri RKM recorded u/s 132(4).Assessment proceedings u/s 153C were started on 11.12.2006 when AO received satisfaction note and documents belonging to the assessee.AO completed assessment after making additions u/s 68.Assessee filed a writ petition before High Court of Calcutta challenging order passed u/s 127 transferring jurisdiction from ACIT Calcutta to New Delhi wherein, proceeding was stayed by Court and interim order was passed.Thereafter, authorities were direction to proceed with matter u/s127.CIT(A) dismissed assessee's appeal. The Tribunal held that as per provisions of Act contained in s. 153B(b), AO had to frame assessment order by 22.03.2008, excluding period of stay and adding same period to nine months whereas assessment order was framed on 30.12.2008 and hence, was beyond period of limitation.When stay got vacated on 07.05.2017 and there was no further stay only such time during which order of High Court was passed granting stay till same was allowed could alone be excluded.Assessment order framed u/s 153C r.w.s 153A dated 30.12.2008 was barred by limitation.Since assessment order was held to be barred by limitation, proceedings subsequent to the happenings got vitiated.

***LORDS DISTILLERY LIMITED & ORS. vs. Dy. CIT & ORS. (2018) 54 CCH 0370 DelTrib- ITA No. 2576/Del/2010 dated 14.12.2018***

**2889.** The Tribunal held that when on an earlier occasion, it had asked the Assessing Officer to determine total income by re-deciding issues involved in additions, limitation for completion of assessment under section 153(2A) would apply and thus since the fresh assessment framed by the Assessing Officer was barred by limitation in terms of section 153(2A), the fresh assessment was declared as a nullity.

***DCIT v Sanjay Jaiswal – TS-159-ITAT-2016 (KOL)***

» *Fresh claim during assessment*

**2890.** Where the Assessee engaged in execution of construction contracts, filed return of income consequent to notice u/s 153A in which it did not exclude from its income the amounts retained by its customers till completion of defect liability period as the amount could not be quantified in the short time but it did file a note along with its return seeking appropriate deduction when completing the assessments, the Court held that the claim was made in principle even though not quantified and thus was to be allowed. It further noted that even if the claim was considered to be a fresh claim and could not be entertained by the assessing officer, there was no bar/impediment in raising the claim before the Appellate Authorities under the Act for consideration. The Revenue's appeal was, accordingly, dismissed.

***Commissioner of Income Tax, Pune v. B.G. Shirke Construction Technology (P.) Ltd [2017] 79 taxmann.com 306 (BombayHC) (ITA Nos. 1392 & 1531 of 2014)***

**2891.** The assessee's case was selected for scrutiny and examination of certain capital gain offered to tax and the during the assessment proceedings, assessee claimed the said gains to be exempt from tax, in view of fact that in light of section 96 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, the amount of compensation received on acquisition of land was held to be exempt from tax. The AO rejected

assessee's claim for exemption only on technical plea that assessee had not filed a revised return as the time available for revising the return had expired. The Assessee filed a writ petition in Court which was accepted by the Court and the assessment order was quashed to the extent it assessed the assessee to capital gains resulting from the said acquisition of land. While deciding as above, the Court also distinguished the decision in case of Goetze (India) Ltd. v. CIT [(2006) 284 ITR 323 (SC)] by holding that the question that arose in Goetze (India) Ltd. was whether an assessee could make a claim for deduction other than by filing a revised return; whereas the question in the case on hand was whether the AO is precluded from considering an objection as to his authority to make an assessment u/s 143 merely for the reason that the petitioner has included in his return an amount which is exempted from payment of tax and that he could not file a revised return to rectify the said mistake in the return.

***Raghavan Nair v ACIT - (2018) 89 taxmann.com 212 (Ker) - W.P. (C) no. 26004 of 2017 dated 04.01.2018***

**2892.** Where the AO was of the view that additional claim made by the assessee (by claiming higher cost of acquisition and re-computing LTCG) could not be entertained in limited scrutiny proceedings by placing reliance on CBDT Instruction No.7/2017, the Tribunal held that as per the said CBDT Instruction there was a bar on the jurisdiction of the AO to go beyond the subjected issue(s) under limited scrutiny cases, however, he was not restrained to adjudicate the issue(s) raised by the assessee. It held that correct income of assessee had to be computed and there was no bar for not entertaining the claim / issue raised by the assesee in limited scrutiny proceedings. Accordingly, the Tribunal remanded the case to the file of AO to adjudicate the claim of the assessee in accordance with law.

***Thakur Raj Kumar vs Dy.CIT [2018] 54 CCH 0413 (Amritsar- Trib.)- ITA No.766 (Asr) of 2017 dated 27.11.2018***

**2893.** The AO rejected assessee's claim for deduction u/s 80JJA and certain prior period expenses, in view of the fact that the assessee had not claimed the deduction for both the items in return of income / revised return but by filing revised statement of taxable income during the course of assessment. The CIT(A) allowed the assessee's claim relying on the decision in the cae of CIT vs. Pruthvi Brokers and Shareholding P. Ltd. [349 ITR 336 (Bom)], CIT vs. Sheth Developers (P) Ltd. [77 DTR 249] and Raj Rani Gulati vs. CIT [346 ITR 543 (All)] wherein it was held that assessee can make a fresh claim before the CIT(A). The Tribunal held that the CIT(A) was justified in admitting new claim, however, it remanded the matter back to the AO noting that certain details filed by the assessee with the CIT(A) were not before the AO and the CIT(A) had neither called AO during the hearing nor asked the AO to file a remand report.

***DCIT v INTERNATIONAL TRACTORS LTD. & ORS. - (2018) 67 ITR (Trib) 0538 (Delhi) – ITA Nos 5756/Del/2013 & 6239/Del/2013 (C.O. No.130/Del/2014 & 173/Del/2014) dated July 23, 2018***

**2894.** The assessee had failed to claim deduction u/s 80-G in the ROI and before the AO and had claimed the same before CIT(A). However, CIT(A) following the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT 284 ITR 323 did not allow the claim of the assesssee since it was not claimed in the ROI or before the AO. Tribunal following the decision of the Hon'ble Supreme Court in the case of Goetze (India) Ltd held that the Tribunal

had the powers to direct the AO to accept the claim of assessee, though the same had not been claimed in the ROI, directed the AO to allow the claim of deduction to the assessee. The Court upheld the order of the Tribunal

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

» *Principle of natural justice*

**2895.** Assessee an individual, during the year his return was selected for scrutiny under CASS and a notice was issued thereafter u/s 143(2) whereby various details like bank accounts, valuation reports and documents were submitted. The assessee contented that he brought on record various documents in support of income declared in return. However, the AO without even taking into consideration those documents, passed assessment order making various additions. The assessee in response filed a writ petition before High Court contending that assessment order was liable to be set aside on ground of violation of principles of natural justice and the same was accepted by the High Court and consequently the order was quashed The Supreme Court against Revenue SLP's held that where High Court accepted assessee's contention that assessment order passed by AO was without considering material on record was in violation of principles of natural justice, SLP filed against said order was dismissed.

***ACIT vs Balmiki Prasad Singh- (2018) 99 taxmann.com 204 (SC)- Special Leave to Appeal (C.) No 21738 of 2018 dated 28.09.2018***

**2896.** The Court held that action of the DRP in granting time to the assessee till 24th July 2017 to submit documents and then passing the order on the same day itself and that too without taking on record the documents produced by the assessee was clearly unreasonable and in violation of the principle of natural justice. Accordingly, the Court set aside the impugned order and remanded the matter to the file of DRP for fresh adjudication.

***Systra SA Project Office vs DRP -W.P.(C) 7114/2017 dated 18.08.2017, Delhi High Court***

**2897.** The assessee, by way of writ petition challenged the assessment order u/s 143(3) and consequential notices of demand on the ground that there was non-compliance of Principles of Natural Justice by not giving an opportunity to the assessee to cross-examine the witness. The Court held that the DCIT was at liberty to re-frame assessment, after complying with principles of natural justice, by supplying copy of statements of witnesses as well as investigation report, to assessees and providing opportunity of cross-examination to the assessee before completing the fresh assessment.

***Vishal Agarwal v DCIT (2018) 101 CCH 0212 KarHC - WP No. 3801/2018 c/w W.P.Nos. 5073/ 2018HC dated 24-04-18***

**2898.** Where the assessee contended that in spite of filing overwhelming documents and making various grounds in response to showcause, AO had passed the assessment order in haste in arbitrary manner, only to meet the time limit for passing the assessment order, without even looking to documents and other materials submitted, and thus in violation to principles of natural justice, the Court held that it is a cardinal principle of law that if relevant materials and objections

are produced before a quasi-judicial authority, the quasi-judicial authority is duty bound, under law to advert to consider the same, discuss them and then reject it by recording reasons. It held that in the present case, since the said principle had not been followed, it was an order based on the ipse dixit of the AO without adverting to consider the relevant materials produced before him and the objections raised by the Petitioners and thus the order had been passed in violation of the principles of natural justice. The Court quashed the assessment orders and directed the AO to decide the issue in accordance with law considering this order and the relevant documents to be filed by the assessee.
***Dhananjay Kumar Singh v ACIT & ORS – (2018) 402 ITR 91 (Patna) – Civil Writ Jurisdiction Case No.1391, 1527, 1520, 1402, 1415, 1518, 1522, 1428, 1429, 1539, 1451 & 1400 of 2018 dated 25.01.2018***

**2899.** The Tribunal held that where the AO passed an ex parte assessment order without giving a show cause notice as per law and without giving the assessee adequate opportunity for hearing and the CIT(A) neither accepted additional evidences, nor rejected the same and upheld the order of the AO, then in the interest of natural justice, the matter was to be remanded back to the file of the AO to decide the matter afresh after giving full opportunity to the assessee.
***Ashok Kumar v ITO – (2016) 46 CCH 0097 (Del –Trib)***

**2900.** The Tribunal held that where the AO / CIT(A) used certain adverse material to make an addition under section 69B in the hands of the assessee without providing the assessee an opportunity to rebut / cross examine the same, the order passed could not be sustained as the same violated the principles of natural justice. Accordingly, it remanded the matter to the file of the AO.
***YS Vidya Reddy v DCIT – (2016) 47 CCH 0222 (Hyd Trib)***

» *Best Judgement Assessment*

**2901.** The Court upheld Tribunal's order holding that the AO could not reject assessee's book results and transpose expenditure declared / disclosed for non-exempt unit as expenditure incurred on exempt unit, on the basis of assumption and surmises (by referring to difference in turnover, expenses and net profit rate of exempt and non-exempt units as well as vis-à-vis earlier years and other assessee), without pointing out any defects or deficiencies or wrong entry in the books of accounts for the said units. It held that the differences could be the starting point of investigation and verification but not the essence to reject the book results and make best judgment assessment u/s 144. Accordingly, the Court dismissed Revenue's appeal.
***Pr.CIT vs Cincom Systems India Pvt Ltd.[2018] 103 CCH 0292 (Del HC)- ITA 365/2018 dated 29.11.2018***

**2902.** The Tribunal allowed assessee's appeal and deleted the disallowance made by the AO on account of interest and remuneration paid to partners while passing the assessment order u/s 144 [claiming that the assessee *had* not produced details u/s 142(1)], noting that the AO had himself recorded in impugned order that the assesee had complied with statutory notice issued u/s 142(1) and produced details of statutory audit reports, ledger copies of purchase and sale,reconciliation statements of UCO, HDFC & ICICI bank accounts,….etc. Thus, it held that

the AO was not correct in completing the assessment u/s 144 and consequently in disallowing deduction of partner's interest and remuneration, also in view of the fact that the same were in accordance with terms of partnership and within the permissible limit u/s 40(b).
***Bhambra Service Centre. vs ITO [2018] 53 CCH 0414 (Cuttak Trib)- ITA No.301/CTK/2017 dated August 02 2018***

» *Rejection of books of account*

**2903.** Where Assessee objected that A.O had not stated that accounts were being rejected u/s 145(2) of the Act, and that consequently the Tribunal was not justified in holding rejection u/s 145(2), the Court held that it was not mere mention of the provision but existence of substance of the intention deducible from reading the order which would determine the position of the accounts. Since there was a clear observation by the AO that showed that he was not satisfied that the accounts were complete and correct, assessee's appeal was rejected. Further, where assessee claimed exemption u/s 80HH & 80I of the Act, the Court held that in view of admission on part of assessee that it could not quantify actual amount of expenditure attributable to the new unit, wrong computation of profit of new unit was also evident, hence assessee could not have claimed deduction for the amount it had not correctly computed. Further, where assessee claimed deduction on account of commission paid to OECC, the Court held that it was an admitted position that such deduction was neither claimed by OECC nor paid by assessee and hence the AO was correct in finding the amount as ingenuine, fictitious and inflated. Accordingly, appeal of the assessee was dismissed on all grounds.
***Ema India Limited v. Deputy Commissioner of Income Tax & Ors - (2017) 98 CCH 0164 AllHC (ITA Nos. 481&482 of 2005, 694 of 2017, 258 of 2016)***

**2904.** Where pursuant to a survey conducted under section 133A at the nursing home of assessee. various account books and registers including the OPD register and indoor patient register were examined and seized, the Court held that AO was not justified in rejecting the books of accounts of the asssessee and imputing adjustment @ 50 percent of the receipts of the assessee on the allegation that there were some discrepancies between entries recorded in books of account of assessee and registers and documents seized during survey, as the allegation of discrepancies made by the AO were wholly vague inasmuch and the AO had not recorded nature and extent of discrepancy. Further, the Court noted that the assessee had also produced his cash book, ledger as also bank passbook and no specific discrepancy had been pointed out in those books of account. Accordingly, it held that mere absence of vouchers would not give rise to any presumption that there was any non-disclosure of income inasmuch as there was no evidence to doubt correctness of entries made in OPD register as also Indoor Patient register.
***Dr. Prabhu Dayal Yadav v CIT - [2018] 89 taxmann.com 126 (Allahabad) - IT Appeal No. 5 of 2008 dated 11.12.2017***

**2905.** The assessee engaged in the business of civil construction and related services for the Government had lower profit margins. The AO, without rejecting the books of accounts of the assessee u/s 145 made addition to the income returned by the Assessee by estimating gross profit. The Court observed that it was sine qua non for the AO to come to a conclusion that the

Books of Accounts maintained by the assessee were incorrect, incomplete or unreliable before the proceeding to make his own assessment. Since there was no finding by the AO regarding the books of accounts of the assessee being incorrect, the AO was not justified in estimating the profit of the assessee.

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

**2906.** The Court dismissed assessee's appeal field against the Tribunal's order upholding the additions made by the AO based on the balance sheet submitted by the assessee to bank for availing credit facilities which was also supported by a certificate issued by the Chartered Accountants in Form 3CB under rule 6G(1)(b) of the Income-tax Rules, 1962, rejecting the assessee claim for determining his income based on a balance sheet prepared subsequently by another firm of chartered accountants. It held that the balance sheet and profit and loss accounts of an assessee accompanied by a certificate as to its fairness, cannot be tailor-made to suit a particular purpose or window dressed to make it attractive for bankers to rely thereupon and all gloss and sheen removed thereafter when it was time to pay tax. It thus held that it was open to the AO and income tax authorities to pin assessee down on basis of the assessee's representation contained in earlier balance sheet to avail bank loan and make additions.

***Binod Kumar Agarwala v CIT - [2018] 94 taxmann.com 422 (CalcuttaHC) - ITAT NO. 22 OF 2015, GA NO. 436 OF 2015 dated June 21, 2018***

**2907.** Where during the course of assessment proceedings, the AO without rejecting books of accounts, made reference to the Departmental Valuation Officer(DVO) to determine the cost of construction consequent to which the DVO valued the land at higher cost, the Court upheld the view of the Tribunal that before making a reference to the DVO under Section 142A of the Act, if the Assessing Officer had to reject the books of account and since the same had not been done, the reference under Section 142A of the Act itself was bad in law and consequently, DVO's report could not be the basis to make addition.

***PCIT vs. Sanjay Hiralal Thakkar (2016) 97 CCH 0168 GujHC (Tax Appeal No. 832 of 2016, 837 of 2016)***

**2908.** The assessee had shown net profit ratio at 0.96 per cent during the year under review. The AO noted that such net profit ratio was very low as net profit ratio of assessee was 5.26 per cent and 1.86 per cent in two immediately preceeding assessment years and accordingly determined income by adopting net profit ratio of 5 per cent. The Tribunal, considering factors such as past tax history of said two assessment years, huge job work receipts in earlier assessment years, which substantially reduced during relevant assessment year, fixed net profit ratio of 2.5 per cent of turnover. The Court upheld the order of the Tribunal and dismissed the Revenue's appeal.

***Principal Commissioner of Income-tax v Praveen Kumar Jain - [2018] 92 taxmann.com 26 (Madhya PradeshHC) - IT Appeal No. 220 of 2017 dated March 5, 2018***

**2909.** In the case of the assessees who were liquor contractors, the AO rejected the books of accounts as sales were unsupported by day-to-day sales and shop-wise stock registers. On the basis of information collected from the excise department, the AO estimated the sales turnover as

against the sales declared by the assessee and added the differential amount as suppressed sales. The Tribunal upheld the order of the CIT(A) and relying on the ruling of the jurisdictional High Court in Balchand Ajit Kumar (263 ITR 610) & Manmohan Sadani (304 ITR 52) held that if the books of account are rejected, entire sales cannot be charged to tax as income, but only the reasonable profit margin on such sales is taxable as income.
***SHIVHARE ASSOCIATES & ORS. vs. JCIT – [2018] 53 CCH 0047 (Agra ITAT) – ITA NO. 47/AGR/2015, 48/AGR/2015, 71/AGR/2015, 72/AGR/2015 dated May 16, 2018***

**2910.** The Tribunal upheld the action of AO in rejecting the books of accounts of the assessee-firm and estimating net profit at rate higher than the rate of net profit declared by assessee in her return of income on the ground that the assessee had declared net profit at rate which was far less in comparison to profit rates achieved in earlier years and there were various discrepancies found and also noting that the assessee had failed to show any justification for payment of additional rent during relevant year. It further held that since the assessee had also failed to demonstrate as to what services had been rendered by her husband or daughter to whom salaries had been paid, the said salaries claimed by assessee towards husband and daughter were disallowed.
***Smt. Kantaben Ramjibhai Chaudhari v ITO – (2018) 91 taxmann.com 179 (Ahmedabad Trib) – ITA No. 1 (Ahd.) of 2016 dated 16.02.2018***

**2911.** The Tribunal held that marginal fall in the GP Ratio compared to preceding years and non-incurring of expenditure such as travelling, telephone, salary etc were not relevant reasons for rejecting books of account under section 145 of the Act and therefore the AO was not justified in making an addition by taking the higher GP rates.
***ITO v Ramdulari Sidhkishor Agarwal – (2016) 48 CCH 0014 Ahd Trib – ITA No 1440 / Ahd /2012***

**2912.** Where gross profit of assessee was reduced substantially as compared to the preceding year on account of wrong estimates of closing stock which resulted in overstatement of the same in the preceding year as compared to current year, the Tribunal held that as the assessee could have rectified such mistake in preceding Financial Year by revising its return, correcting financial statement and getting it duly certified by auditors which it did not do, the revenue was justified in rejecting the assessee's books of accounts and making addition on estimate basis.
***Sabhaya Corporation vs. Deputy Commissioner Of Income Tax(2016) 48 CCH 0110 (AhdTrib) (ITA No. 706/Ahd/2014)***

**2913.** The AO rejected the books of accounts having observed that the form of reporting of the advertisement payments in the profit and loss account was not proper and hence, made disallowance of such payments. The Tribunal observed that while doing so, the AO neither pointed out any specific defect in maintenance of books of accounts by the assessee nor identified the accounting standards to be followed by the assessee. Having observed that the assessee followed the same method of accounting in the earlier years, the Tribunal set aside the order of the AO and directed the AO to accept the books of accounts of the assessee.
***Google India Private Limited & Ors. vs. JDIT (IT). – [2018] 53 CCH 0027 (Bangalore ITAT) – IT(TP)A No.374/Bang/2013, 881/Bang/2016, IT(IT)A No.2845/Bang/2017, 949/Bang/2017,***

***950/Bang/2017, 68/Bang/2015, 387/Bang/2017, 559/Bang/2016, 69/Bang/2014, 1295/Bang/2014, 466/Bang/2013, 191/Bang/2014, 205/Bang/2015, 1299/Bang/2015, 1190/Bang/2014 dated May 11, 2018***

**2914.** The Tribunal held that when books of account were rejected and income was computed by applying net profit rate, same books of accounts could not be made basis for making disallowance of specific expenses and claim of various expenses including depreciation was to be allowed.
***SUPERIOR ROADLINES & ANR. vs.INCOME TAX OFFICER & ANR. – (2017) 51 CCH 0137 DelTrib - ITA Nos. 2827 & 2828/Del/2011, 3021 & 3022/Del/2011 dated 28.09.2017***

**2915.** The assessee was non-Government company engaged in business of share trading and returned Nil income. Since there was repeated non-compliance from side of assessee and non-production of books of accounts for his verification, AO presumed that books of accounts were not complete and unrealizable, therefore, rejected book results by invoking provisions of section 145 (3) and determined total income of assessee at certain amount by making disallowance. On appeal, the CIT(A) reversed the order of the AO. The Tribunal upheld the order of the AO and held that in the absence of production of relevant details, CIT (A) was not justified in allowing appeal filed by assessee challenging rejection of books of account and deleting various additions made by AO. Accordingly, it reversed the CIT(A)'s order and restored the AO's order.
***ASSISTANT COMMISSIONER OF INCOME TAX vs. ORIGIN EXPRESS (I) NORTH PVT. LTD. - (2018) 52 CCH 0175 DelTrib - ITA No. 734/DEL/2014 dated Feb 21, 2018***

**2916.** The Tribunal held that where the AO rejected the books of accounts of the assessee and made an addition on account of suppressed sales, which was not challenged by the assessee, the AO could not proceed to make disallowances under Section 68 and Section 40A(3) of the Act based on the rejected books of accounts.
***DEEPAK MITTAL vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0273 DelTrib - ITA No. 4709/Del./2017 dated Mar 23, 2018***

**2917.** Opining that the asseessee had offered low profits to tax and noting that the assesse had shown huge quantity of stock as closing and opening stock without owning any godown (which the assesse claimed to have been taken on rent but he didn't furnish any details with respect to rent paid and no expense was debited under the head Godown Rent), the AO rejected the books of account of the assessee u/s 145. AO estimated the net profit of the assessee @ 3% of the gross turnover of the assesse. On appeal, CIT(A) confirmed the addition. The Tribunal noted that the AO had not given any reasons for rejection of books of account. It directed the AO to consider the past history and recompute the addition after applying the net profit @ 1.75%.
***DELIP KUMAR JAIN vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0124 (Indore Trib) - ITA Nos. 529 & 530/Ind/2015 dated June 8, 2018***

**2918.** Assessee firm filed its return showing income and thereafter notice u/s 143(2) followed by notice u/s 142(1) was served upon assessee. The AO on the basis of information as revealed from return filed by assessee made addition to income of assessee. The CIT(A) upheld the order of

AO by adopting assessee's net income at 8% of turnover. The Tribunal observed that the assessee's bank statements showed that cheques were deposited, and money was immediately withdrawn by way of cash which proved that substantial portion of expenditure were shown by assessee in cash for which it had not submitted any evidence during assessment proceedings. Further, on basis of continuous dilatory tactics of assessee in seeking adjournment on various dates of hearing and discrepancies in details submitted, it was held that books of account of assessee were not reliable Thus, the Tribunal held that in absence of major details of expenses which were not produced for verification and in presence of certain lacunae on part of assessee as observed by CIT(A) estimation of net profit @ 8% of gross turnover was justified.
***MAA Engineering vs ACIT- (2018) 54 CCH 0010 Kol Trib- ITA No 739/Kol/2016 dated 14.09.2018***

**2919.** Where the AO made an ad hoc addition of 2 percent of raw materials consumed on the ground that the consumption of raw materials of the assessee had gone up by 25 percent but the production of finished goods only went up by 10 percent, the Tribunal set aside the order of the AO and held that the AO had failed to appreciate that the value of closing stock of finished goods and WIP had also increased by 29%. Further, it held that since the books of accounts of the assessee had not been rejected the AO was not justified in making addition on an estimated basis. Accordingly, it remitted the matter to the file of the AO for de novo adjudication.
***VESUVIUS INDIA LTD. & ANR. vs. ADDITIONAL COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0326 KolTrib - ITA No. 544/Kol/2010, 518/Kol/2010 dated Mar 7, 2018***

**2920.** The Assessing Officer noticed from the information submitted by the assessee (details of sales of flats), as well as from the information obtained by him from the website www.magicbricks.com that there was a huge variation in sale prices of the flats constructed by the assessee within the wing and also within the floor of the residential project constructed by assessee and accordingly rejected the books of accounts of the assessee and made an addition on account of unaccounted sales price in the hands of the assessee. The Tribunal noted that the AO had not asked for variation in sale prices with regard to any particular flat though the assessee requested that the explanation could be furnished once it was known in respect to which particular flat the information was to be submitted. The AO had merely proceeded on the basis of the general allegation. It held that the AO was completely unjustified in relying on the data contained on www.magicbricks.com as the disclaimer of the website clearly mentioned that the data contained therein was not actual transaction based. It noted the findings of the CIT(A) i.e. many flats were sold in "Shell condition" and only some flats were sold post completion and accordingly held that the AO had proceeded on mere guesswork. Accordingly, it held that the rejection of the assessee's books of accounts was not valid. However, it accepted the contention of the Revenue and directed the assessee to file the agreements for sale of flats with the AO for verification as to how many of the flats were sold on Shell basis.
***ASSISTANT COMMISSIONER OF INCOME TAX vs. SAI SHIRDI CONSTRUCTIONS - (2018) 52 CCH 0262 MumTrib - ITA No. 5135/MUM/2015 dated (2018) 52 CCH 0262 MumTrib***

**2921.** The SB of the Tribunal deleted addition in hands of Assessee (a cigarette manufacturing company) on account of alleged premium generated through sale of cigarettes at a price over

and above the MRP using dubious method of twin branding of the product by holding that the evidences and material only indicated that in some clandestine manner the wholesale buyers had sent the money to fictitious bank accounts standing in benami names and the same was for discharging the liability of the Assessee was sans any material and there was no live link nexus to implicate Assessee . The SB observed that AO did not ascertain that the Assessee or its employees had actual control of the said benami bank accounts or the amount deposited in said bank accounts had gone to the coffers of the assessee; Further, SB quashed AO's action in rejecting books of account and estimating assessee's income u/s. 145(2) by holding that once it was held that there was no material to implicate the Assessee then the presumption that Assessee was maintaining cash in bank account outside the books also failed.

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

**2922.** The Tribunal upheld the order of the CIT(A) wherein the CIT(A) held that the AO was not justified in rejecting the books of accounts of the assessee on the ground that the electricity consumption of the assessee vis-à-vis other companies was higher and that if the DEPB benefit of the assessee was excluded it would lead to a fall in the net profit ratio of the assessee and held i) since the assessee's yield of fish (business of the assessee) was at par with the industry average there was no occasion for doubting the books of the assessee and that ii) since the assessee carried out processing activities along with preservation its electricity consumption could not be compared with the electricity consumption of companies only carrying out preservation. Accordingly, observing that the accounts of the assessee were duly audited and no specific defects were pointed out by the AO, the Tribunal held that the AO was not justified in rejecting the books of accounts of the assessee and making addition on account of estimated profits.

***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. GRACY KUTHUMKAL THOMAS & ANR. - (2018) 52 CCH 0152 RajkotTrib - ITA No. 37/RJT/2013 dated Mar 1, 2018***

**2923.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the addition made by the AO by rejecting assessee's books of account and estimating profits @8% of the total turnover. It was noted that the books of accounts were duly audited and supported with the documentary evidence and the AO had not pointed out any defect in the books of accounts maintained by the assessee except routine/minor observations. It was thus held that the books of accounts could not be rejected u/s 145(3) and there was no reason to estimate the profit after rejecting the books of account. The Tribunal further held that even if it was assumed that the books of accounts were correctly rejected u/s 145(3) then also the profit could not be estimated @ 8 % of the gross receipts in the given facts & circumstances since the AO had not brought on record any comparable cases to the business of the assesse wherein the profit @ 8% of the gross receipts had been declared.

***INCOME TAX OFFICER vs. VIRGIN LOGISTICS - (2018) 53 CCH 0199 (Rajkot Trib) - ITA No. 384/Rjt/2015 dated Jun 20, 2018***

» *Others*

Go to Index

**2924.** The Court held that as long as the certificate of VDIS is in force, the income which is subject matter of the certificate cannot be taxed not only in the hands of declarant but also in the hands of other person and once VDIS was accepted as correct and genuine, the income could not have been added once again in the hands of the assessee.
***CIT vs. Rajeev Gupta (2016) 97 CCH 0034 (All HC) (ITA No. 375 of 2006)***

**2925.** The Court allowed assessee's writ, challenging letter issued by Revenue expressing its helplessness to process the e-return of income under section 143(1), in view of technical glitch encountered. It noted that as per section 143(1) of the Act, the AO was required to process the return by sending an intimation to the assessee which was not done in the instant case due failure in technology employed by the Department. It held that the use of technology was to assist the Department in functioning and not cause inconvenience to a large number of taxpayers and accordingly directed the CCIT to resolve the issue or come up with an alternative so that the return can be processed by the AO under section 143(1).
***Shapoorji Pallonji and Co. Pvt. Ltd. [TS-570-HC-2016(BOM)] (W.P. No 2424 of 2016 with 2425 of 2016)***

**2926.** The Court held that debatable issues could not be adjusted by way of intimation u/s.143(1)(a) as it would lead to arbitrary and unreasonable intimations being issued leading to chaos. Accordingly, it held that the AO was not justified in disallowing the assessee's claim of deduction on account of provision for bad debts in the intimation under Section 143(1)(a) without providing the assessee an opportunity of being heard.
***BAJAJ AUTO FINANCE LTD. vs. COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0072 BomHC - INCOME TAX REFERENCE NO. 25 OF 2000 dated Feb 23, 2018***

**2927.** Where the assessee had filed return through electronic mode but could not furnish ITR-V form within 30 days from the date of filing of return since there was no provision under electronic mode to attach ITR-V form or even send any scanned form and the Revenue treating the return as 'Nil' made assessment u/s 143(3) and initiated penalty proceedings, the Court dismissed the Revenue's appeal against the Tribunal's order wherein the Tribunal had accepted the assessee's argument that in the absence of a notice u/s 143(2) within the time stipulated, scrutiny assessment u/s 143(3) could not have been completed. It noted that the CBDT had later extended period for furnishing the ITR-V within which the assessee had availed of filing of ITR-V forms through post and that the con-joint reading of CBDT Circular No.3 of 2009 and Circular dated 01.09.2010 made it clear the CBDT itself was alive to the difficulties faced in the event of assessee choosing to file electronic mode without digital signatures.
***PR.CIT v NATIONAL INFORMATICS CENTRE SERVICES INC – (2018) 400 ITR 387 (Del HC) – ITA 897/2016 dated 04.01.2018***

**2928.** The Court held that where the final order passed by the AO was dated the same date as notice under section 274 of the Act, but the date on the final order was hand-written as opposed to typed and was delivered to the old address of the assessee, whereas the draft AO order issued prior to the final order and all other notices were issued to the assessee's changed address and the department failed to prove even on preponderance of probabilities that the final order was

Go to Index

passed on the date written by hand, then both the final order and penalty order were liable to be quashed.

***ST Microelectronics Pvt Ltd v DCIT – TS-285-HC-2016 (DEL)***

**2929.** The Court set aside CCIT's order rejecting assessee-HUF's application for condonation of delay of two months in filing return on account of mismatch in TDS actually deducted requiring corrections in TDS certificates which took considerable time, noting that the application of Karta of assessee-HUF filed in his individual capacity under identical circumstances for condonation of delay was accepted by revenue

***Sahebsingh Bindrasingh Senagar (HUF) v CCIT – (2018) 91 taxmann.com 362 (Guj) – Special Civil Application No. 21411 of 2017 dated 21.02.2018***

**2930.** The Court dismissed the Petitioners writ challenging the order of the AAR wherein the AAR disposed of the Petitioner's application on the ground that it had become infructuous in view of the completion of assessment proceedings. It held that where the Petitioner had consciously participated in the assessment proceedings thereby accepting the jurisdiction of the AO it could not simultaneously pursue proceedings before the AAR.

***Eplanet Ventures Mauritius Ltd v DIT– TS-510-HC-2016 (Kar) - Writ Petition No.55093/2015(T-IT)***

**2931.** The assessee company received certain amount on allotment of shares of Face Value of Rs.100 each at a premium of Rs.291 per share. AO opined that the Fair Market value of the said share could only be Rs.100 and thus the share premium received by assessee was liable to be assessed as 'Income from Other Sources' u/s 56(2)(viib) (provides that where a company receives consideration for issue of shares exceeding the face value of such shares, that exceeded value is liable to be assessed as income from other sources). The assessee filed a writ petition against the AO's order making the above addition, on the ground that since the assessee's case was picked-up for scrutiny for verification of the limited issue, i.e. "Whether the funds received in the form of share premium are from disclosed sources and have been correctly offered for tax", the AO had exceeded his jurisdiction while making the impugned addition. The Court, however, held that the later part of the abovementioned issue (whether the share application money had been correctly offered for tax) was an issue to be examined with reference to section 56(2)(viib) and if it was found that the share premium had not been correctly offered for tax as provided therein, the assessee had to be assessed in accordance with the said provision. Further, it held that the assessment by the AO could not be regarded without jurisdiction in the matter of passing the impugned order merely for the reason that the said funds were assessed as provided for under the said section (i.e. on merits). Thus, the Court dismissed the assessee's petition.

***Sunrise Academy of Medical Specialities (India) P Ltd v ITO [2018] 94 taxmann.com 181 (Kerala) – W.P (C) NO. 3485 OF 2018 dated 22.05.2018***

**2932.** The Court remanded the matter back for disposal afresh, in case of an assessee who filed its return declaring certain taxable income and subsequently, filed a revised return under section 139(5) within prescribed time period, wherein value of closing stock was reduced, and administrative cost was increased. The AO in the present case had rejected the said revised

return at the very threshold on ground that it was not accompanied with tax audit report. The CIT(A) and the Tribunal concurred with the findings of the AO and dismissed assessee's appeal. The Court held that, whether on facts, if, in opinion of AO, return was defective, then procedure contemplated under sub-section (9) of section 139 ought to have been followed and since assessee had not been given an opportunity to rectify defects as contemplated under sub-section (9) of section 139, the order was to be set aside and matter was to be remanded back for disposal afresh.

***Zeenath International Supplies vs CIT Central- (2018) 98 taxmann.com 219 (Madras)- Tax Case appeal no 1447 of 2008 dated 10.09.2018***

**2933.** For relevant year, the assessee trust filed return of income claiming status of AOP. In course of assessment, the Assessing Officer opined that since status of the assessee was AOP, its income would be brought to tax at Maximum Marginal Rate by applying provisions of section 164(1). Subsequently, the assessee filed a rectification application under section 154 contending that it was a 'Public Charitable Trust' and not a 'Private Trust' and, thus, rate applicable was normal tax rates with basic exemption. The Assessing Officer rejected rectification application. The Tribunal held that it was noted that the assessee was not a trust registered under section 12A. Moreover, trustees of the assessee-trust were filing their own returns and were also having taxable income. In aforesaid circumstances, the Assessing Officer, on basis of original return file by the assesse, rightly treated it as an AOP and, consequently, impugned order applying provisions of section 164(1) did not require any interference.

***Basil Mendes Memorial Educational & Charitable Trust v. ITO [2018] 98 taxmann.com 474/173 ITD 390 (Bang. – Trib.) ITA No. 2887 (BANG.) of 2017 [Assessment Year 2011-12] dated September 14, 2018***

**2934.** The Tribunal dismissed assessee's appeal against CIT(A)'s order holding that income tax computation sheet (dated March 2013) made by the AO (showing reduction in the demand raised) pursuant to the Tribunal's order in the first round of litigation could not be treated as an assessment order and thus the assessment framed by the AO u/s 143(3) r.w.s. 254 (dated March, 2014) expressing inability to follow the Tribunal's directions (since the assessee had failed to furnish necessary evidences) was not non-est as there was only one order for the relevant year (i.e. dated March, 2014). It held that as per section 143(3), the assessment order necessarily has two components, i) dealing with the assessment of the total income or loss of the assessee and ii) determining the tax payable by him or the refund due to him and in the present case, the 'Income-tax Computation' only dealt with the second component since there was no order passed by the AO assessing the income preceding such computation of income tax.

***Punjab Beverages Pvt. Ltd v DCIT [TS-753-ITAT-2018(CHANDI)] - ITA No.438 & 446/Chd/2018 dated 17.12.2018***

**2935.** The Tribunal held that AO was justified in directly issuing assessment order u/s 143(3) without first issuing a draft order in case of an eligible assessee u/s 144C where AO did not intend to make any variations in total income returned by the assessee but only intended to make corrections in computation of tax liability done by the assessee by erroneously treating business income as capital gains.

Go to Index

***Mosbacher India LLC v. Additional Director of Income-tax, International Taxation - I, Chennai[2016] 76 taxmann.com 31 (Chennai - Trib.) (IT APPEAL NO. 1085 (CHENNAI) OF 2015)***

**2936.** The AO had allowed assessee's claim for deduction u/s 80-IC partially while framing the draft assessment order. The assessee-company did not file objections with the DRP and thus the AO finalized the assessment as per section 144C(3). However, while passing the final assessment, the AO disallowed the entire deduction claimed u/s 80-IC. The CIT(A) observed that after framing the draft assessment order, the AO had made further enquiries with regard to eligibility of the deduction claimed and disallowed the same after giving the assessee opportunity of hearing. He thus upheld the AO's final assessment order. The Tribunal held that only in a case where final assessment order is passed in conformity with directions of DRP, the AO can vary draft assessment order in respect of any addition/disallowance as per directions of DRP. It held that where the AO passes final assessment order u/s 144C(3), he has no such power to deviate from draft assessment order and can pass final assessment order only on basis of draft assessment order. Thus, it deleted the disallowance of deduction u/s 80-IC made by the AO in final assessment order, over and above amount disallowed in draft assessment order.
***Piramal Enterprises Ltd. v ACIT - [2018] 97 taxmann.com 352 (Mumbai - Trib.) – ITA Nos. 5471 AND 5583 (MUM.) of 2017 dated July 30, 2018***

**2937.** The Tribunal held that where assessee engaged in the business of diamonds export, entered into manufacturing by setting up its own factory, paid substantially higher wages and job work charges as against the preceding year and was not able to provide justification for the same, gross profit ratio @ 7% estimated by CIT(A) as against 6.93% was quite justified and fair keeping in view of factual matrix.
***Kumudchandra D.Mehta vs. ACIT (2016) 48 CCH 0026 (Mumbai Trib)-ITA No.1207/Mum/2012***

*Reassessment*

» *Person to be assessed*

**2938.** The Apex court dismissed SLP against High Court ruling that where Assessing Officer issued notice under section 148 to assessee on ground that it had received certain accommodation entries from a bogus company, in view of fact that by time of issuance of notice, assessee had already merged with another company and thereby lost its legal existence, notice issued in name of assessee became invalid and,therefore, impugned reassessment proceedings deserved to be quashed.
***Asst. CIT (Central) Circular 1(2) v. Dharmnath Shares & Services (P.) Ltd.- [2018] 100 taxmann.com 416 (SC)- SLP (Civil) Diary No. 41239 of 2018-dated December 10, 2018***

**2939.** The Apex Court dismissed Revenue's SLP against HC ruling wherein reassessment proceedings had been quashed in view of the fact that by the time of issuance of notice (on ground that it had received certain accommodation entries from a bogus company), assessee

had already merged with another company, thereby losing its legal existence and thus, the notice issued u/s 148 in name of assessee was invalid.
***Asst CIT (Central) vs Dharmnath Shares and Services Pvt Ltd [2018] 103 CCH 0265 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 38121/2018 dated 20.11.2018***

**2940.** Where re-assessment notice was issued in the name of erstwhile company despite the company having ceased to exist as it had been converted into LLP, the Court held that the same would not invalidate the re-assessment proceedings as wrong name mentioned in the said notice was merely a clerical error which could be corrected u/s 292B.
***Sky Light Hospitality LLP v. ACIT – [2018] 92 taxmann.com 93 (SC) – Special Leave to Appeal (C) No. 7409 of 2018 dated April 6, 2018***

**2941.** The Court held that where notice seeking to reopen assessment was issued in name of deceased assessee, since she could not have participated in reassessment proceedings, provisions of section 292BB were not applicable to assessee's case and as a consequence, impugned reassessment proceedings deserved to be quashed.
***Rajender Kumar Sehgal v. ITO - [2019] 101 taxmann.com 233 (DelhiHC) W.P. No. 11255/2017 CM NO. 46017/2017 dated November 19, 2018***

**2942.** The Court held that where the impugned notices under section 148 of the Act seeking to reopen assessment of assessee were issued to assessee after it had amalgamated with petitioner company and was no longer in existence, they were invalid and had to be set aside.
***Rustagi Engineering Udyog (P) Ltd v DCIT - [2016] 67 taxmann.com 284 (Delhi)***

**2943.** The Court held that where the department intended to proceed under section 147 of the Act against assessee when he was already dead, it could have been done so by issuing a notice to legal representative of assessee within period of limitation for issuance of notice. Therefore, where the notice was issued to the legal representative of the deceased assessee beyond the period of limitation, the reassessment proceedings were misconceived and liable to be quashed.
***Vipin Walia vs ITO - [2016] 67 taxmann.com 56 (Delhi)***

**2944.** The Court dismissed the Revenue's appeal for AY 1982-83 and quashed reassessment proceedings initiated under section 147 for taxing interest earned on bank accounts in the UK and loan advanced out of undisclosed funds pursuant to information received from the UK tax authorities under the India-UK DTAA. Noting that the information was received from the UK authorities in 1989 based on the interview conducted for investigation in the case of the assessee's brother in law wherein the assessee was found to have admitted that he made deposits in his brother in laws accounts, and that the Revenue chose to wait three years to open the reassessment (as they issued a notice in December 1992 which incidentally was after the death of the assessee i.e. January 1992), the Court held that Revenue should have proceeded to act at the earliest opportunity as there could have been crucial leads related to bank accounts etc. It held that the lack of probe in this regard and exclusive reliance upon the UK Revenue information was not sufficient to conclude that the amount which was attributed to the assessee actually belonged to him. Further, it noted that the UK Revenue authorities had already taxed

the amounts in the hands of the assessee's brother in law and therefore there could be no question of assessing the deceased assessee.
***CIT v Late KM Bijli Thrul LR's – (2016) 97 CCH 0153 (Del HC)***

**2945.** Where the notice u/s 148 was issued to a company which had amalgamated with Petitioner and had therefore ceased to exist on the date of issue of notice, the Court held that the proceedings u/s 148 were void ab initio since the company had ceased to exist by reason of amalgamation with the Petitioner.
***BDR Builders & Developers Pvt. Ltd. vs. ACIT (2017) 99 CCH 0142 DELHC W.P. (C) 2712/2016 dated 26.07.2017***

**2946.** The Court dismissed the assessee's writ petition [filed by Sky Light Hospitality LLP converted into LLP from Pvt. Ltd. Co.], challenging the re-assessment notice issued in the name of erstwhile Pvt. Ltd. Co wherein the Petitioner contended that despite the Pvt. Ltd. Co. ceasing to exist in May 2016, the notice under Section 148 was addressed in its name in March 2017 and hence the notice issued to a dead juristic person ought to be treated as invalid and void. The Court referred to the reasons recorded by AO based on the Tax Evasion Report forwarded by the Investigation wing (in respect of the purchase of land transaction and collaboration agreement entered into with DLF) and held that the "reasons to believe" established a live link and connect with the inference drawn that income had escaped assessment in the hands of the assessee. On the issue of validity of notice issued in the name of the company, it noted that conversion of the private limited company into a LLP was noticed and mentioned in the tax evasion report, reasons to believe recorded by AO, approval obtained from Pr. CIT and order u/s. 127, however, the only mistake was made in addressing the notice and accordingly held that the same was as an 'error' and a 'technical lapse' which could be cured u/s. 292B.
***Sky Light Hospitality LLP vs ACIT - [TS-57-HC-2018(DEL) - W.P.(C) 10870/2017 and CMNo. 44503/2017 dated FEBRUARY 02, 2018***

**2947.** The Court quashed the reassessment notice issued u/s 148 in the name of deceased father of the assessee-son (being the legal representative), relying on the decision in the case of Rasid Lala v ITO (2017) 77 taxmann.com 39 (Guj) wherein it was held that notice was required to be issued in name of heir of deceased assessee in a case where the reassessment proceedings were initiated against dead person after a long delay, even if section 159 was attracted. In the present case also, the authorities were very well aware that the current assessee was heir and legal representative of deceased assessee, though more than four years had lapsed after the death of the assessee, the impugned notice was issued in name of deceased. As regards section 292BB deeming notices issued under the Act to be valid where an assessee had appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it was held that nothing contained in the said section should apply in the present case since the assessee had raised the objection before completion of such assessment or reassessment.
***JAYDEEPKUMAR DHIRAJLAL THAKKAR v ITO – (2018) 401 ITR 0302 (Guj) – SPECIAL CIVIL APPLICATION NO. 17186 of 2017 dated 22.01.2018***

Go to Index

**2948.** Where original assessee died and thereafter Assessing Officer issued notice under section 148 in his name to reopen assessment and petitioner being heir and legal representative of deceased raised an objection that assessee had already expired and, therefore, notice in his name was not valid, the Court held that merely because petitioner had informed Assessing Officer about death of assessee and asked him to drop proceedings, it could not be construed that petitioner had participated in proceedings and, therefore, provisions of section 292B would not be attracted and thus notice under section 148 was to be treated as invalid and the proceedings pursuant there to were quashed.

***Chandreshbhai jayantibhai Patel v. ITO- [2019] 101 taxmann.com 362 (Gujarat)-R/Special Civil Application No. 15172 of 2018 dated December 10, 2018***

**2949.** The assesseee, whose husband died on 26/01/2010, received notice u/s 148 on 30/03/2017 to re-open the assessment in the case of her husband. Upon informing the Revenue about her husband's death, the assessee was asked to submit all the documents pertaining to her husband's assessment. The Court allowed the writ petition filed by the assessee against the said notice holding that notice issued in name of dead person was not enforceable in law and thus the same could not be enforced against the assessee. Further, with respect to Revenue's contention that it was not informed about the said death, it was held that there is no statutory obligation on part of legal representative of deceased to immediately intimate death of assessee or take steps to cancel PAN registration and the provisions of section 159 dealing with the liability of the legal representative could be invoked only if the proceedings had already been initiated when the assessee was alive.

***Alamelu Veerappan v ITO - [2018] 95 taxmann.com 155 (MadrasHC) - WRIT PETITION NO. 30060 OF 2017; WMP NO. 32631 OF 2017 dated June 7, 2018***

**2950.** Where the Petitioner, a principal member of an AOP formed with his brothers, filed a writ petition requesting the Court to issue a writ of Certiorari quashing the notice issued by the AO under section 148 of the Act on the ground that the AO issued a query / notice to the Petitioner in its individual capacity alleging that income of the AOP had escaped assessment whereas the query / notice was to be issued to the Petitioner in the capacity of member of the AOP, the Court noting that since it was not able cull out whether any separate query / notice was sent to the Petitioner in his capacity of a member of AOP as the relevant documents were not furnished in the Writ Petition, it held that it could not interfere under Article 226 in the facts of these cases. Accordingly, it left it open to the Petitioner to raise all contentions available to them under the law before the statutory authority

***Maruti Nandan Sah & Anr Vs. Income Tax Officer & Anr. (2017) 98 CCH 0108 UTTARAKHAND HC (Special Appeal No. 29 of 2017, 30 of 2017)***

**2951.** AO got information that assessee had deposited an amount in saving bank account during FY 2007-08 & thus wrote a letter to assessee requesting him to explain source of cash deposits in bank account. According to AO, this letter was not replied with, hence assessment was reopened and notice u/s 148 was issued. AO passed exparte assessment u/s 144 r.w.s. 147 and recorded a finding that amounts were deposited in Bank on various dates and made addition with aid of section 68 on account of unexplained cash credit in hands of M who was deceased. CIT(A) upheld order of AO. The assessee contended that M had passed away which the AO

had the knowledge of and despite that the AO didn't try to locate his legal heirs and issue notice to them. The Tribunal held that 'assessee' means a person by whom a tax is payable under this act & included every person who was deemed to be the assessee. However, in this case the notice was issued to a deceased who ceased to be called as an 'individual'. Thus, the Tribunal observed that the issuance of valid notice was the very foundation of validity of reassessment which was deviated in this case and quashed the reassessment proceeding.
***Ishwarbhai Maganbhai Desai (2018) 52 CCH 0374 AhdTrib - ITA No. 90/Ahd/2017 dated 23.04.18***

**2952.** Where, based on the statement of assessee recorded under section 131 by DDIT (Investiagation) during proceedings of his HUF, the AO reopened assessment of assessee alleging that value of land was unexplained investment by assessee who had already shown the said land in the revised computation of HUF and taxes were paid by HUF, the Tribunal held that at the time AO recorded reasons for reopening of assessment he was not in possession any material in the individual case of assesssee and once the same had been considered in hands of HUF, it could not be considered in the hands of assessee again and therefore quashed the reassessment order.
***Karshanbhai Dahyabhai Kakadia vs. Income Tax Officer (2016) 48 CCH 0116 (AhdTrib) (ITA No. 2011 and 2012/Ahd/2013)***

**2953.** The Tribunal held that if order has been passed in the name of non-existent company i.e the amalgamating company, same has to be quashed and provisions of section 292B will not come to resuce of Department.
***DCIT vs NDC Telecommunications India Pvt Ltd- (2018) 54 CCH 0089 DelTrib- ITA No 3011/Del/2015 dated 16.10.2018***

**2954.** The Tribunal quashed the reassessment order passed assessing the wrong person, holding that income arising after the death of assessee, is to be assessed in the hands of "Estate of deceased assessee" u/s 168 and not in the hands of the "Legal heir of the deceased" u/s 159. It was noted that Assessee (who passed away in 2005 and was survived by his 2 sons i.e. legal heirs) had written a will and had also appointed executors, the Executors were filing return of income for the "Estate of deceased assessee"; Pursuant to the details of assessee's HSBC Bank a/c, Geneva coming to notice of Revenue in 2011, AO had issued re-assessment notice u/s 148 to " Legal Heir of assessee" and had assessed the amount of deposits found therein in the hands of legal heir. The Tribunal rejected Revenue's stand that "Legal Heir of assessee" and "Estate of assessee" are one and the same thing and hence re-assessment on former is valid, holding that the Act provides two different provisions, viz., Section 159 and Section 168, for the assessment of the income of deceased assessee earned during his life time and income earned post his death respectively and since the deposits were found during subject AY 2007-08, i.e., subsequent to the date of death of the assessee, these deposits could not have been made by the assessee and accordingly, could not be assessed in the hands of legal heir.
***Estate of Late Shri Vrajlal Chandulal Mehta v ACIT [ TS-499-ITAT-2018 (Mum)] – ITA No. 4252/MUM/2017 dated 29.08.2018***

Go to Index

» *Sanction u/s 151*

**2955.** The Apex Court dismissed the SLP against High Court's ruling that where Joint Commissioner recorded satisfaction in mechanical manner and without application of mind to accord sanction for issuing notice under section 148, reopening of assessment was invalid.
***CIT, Jabalpur (MP) v. S.Goyanka Lime & Chemical Ltd., [2015]64 taxmann.com 313(SC) SLP to Appeal (C ) No.11916 of 2015, dated July8, 2015***

**2956.** The Court upheld the Tribunal's order quashing the reassessment order passed u/s 143(3) r.w.s. 147 holding that since the permission to issue the notice u/s 148 was not granted by the Additional Commissioner as required by section 151(2) but by the Commissioner (though a higher authority), the sanction was in breach of section 151.
***CIT v Aquatic Remedies (P.) Ltd- [2018] 96 taxmann.com 609 (BombayHC) – ITA No. 904 of 2016 dated July 25, 2018***

**2957.** Where the assessing officer issued notice under Section 148 to reopen the assessee's case for which original assessment had taken place under Section 143(1) and claimed to have obtained adequate sanction from the JCIT under Section 151(2), since the reasons for reopening assessment referred to Section 147(b) of the Act, which was no longer on statute, the Court admitted the writ petition and held that the sanction granted by the higher Authority for issuing of a reopening notice had to be on due application of mind and could not be a mechanical approval without examining the proposal sent by the Assessing Officer. It observed that if the JCIT would have applied his mind to the application made by the Assessing Officer, then the very first thing which would have arisen would be the basis of the notice, as the provision of law on which it is based is no longer in the statute and therefore held that the non-pointing out of the mistake / error by the JCIT on the part of the Assessing Officer was prima facie evidence of non- application of mind on the part of the sanctioning authority while granting sanction.
***KALPANA SHANTILAL HARIA vs. ASSISTANT COMMISSIONER OF INCOME TAX – (2017) 100 CCH 0165 BombayHC - WRIT PETITION (L) NO. 3063 OF 2017 dated Dec 22, 2017***

**2958.** The Court granted interim relief by staying the reassessment proceedings and admitted the writ petition filed by assessee objecting to the initiation of reassessment proceedings observing 'prima-facie' non-application of mind by JCIT while sanctioning the reopening on the basis of application made by the AO wherein the provisions referred to for reopening, i.e. section 147(b), is the one which is no longer in the statute. It rejected department's stand that the AO inadvertently mentioned 147(b) instead of section 147 and that the defect was curable u/s. 292B holding that the issue involved was not with regard to the mistake/ error committed by AO while taking sanction from JCIT but whether there was due application of mind by JCIT while giving the necessary sanction for issuing the impugned notice.
***Kalpana Shantilal Haria v ACIT - TS-608-HC-2017(BOM) – Writ Petition (L) NO. 3063 OF 2017 dated 22.12.2017***

Go to Index

**2959.** The Court held that mere fact that Additional Commissioner did not record his satisfaction would not render invalid, sanction granted under section 151(2), when reasons on basis of which sanction was sought for could not be assailed.
***Prem Chand Shaw (Jaiswal) v ACIT - [2016] 67 taxmann.com 339 (CalcuttaHC)***

**2960.** The Court held that absent sanction from the CCIT under Section 151(1), the initiation of reassessment proceedings after a period of 4 years from the end of the relevant assessment year was invalid. It held that obtaining a sanction under Section 151(1) was a pre-requisite for initiating reassessment proceedings and accordingly held that the Tribunal was justified in quashing the re-assessment order. Accordingly, it dismissed Revenue's appeal.
***CIT v Gee Kay Finance & Leasing Co Ltd – (2018) 101 CCH 0034 Del HC – ITA 935 / 2009 dated Feb 8, 2018***

**2961.** The Petitioner was issued notice u/s 148 on 23/03/2015 by one AO and, subsequently another AO, without obtaining approval of Additional CIT, issued a fresh notice u/s 148 on 18/01/2016 and supplied the reasons to believe that the assessee had obtained accommodation entries of Rs. 13.5 crores based on the information received from Investigation wing. The Court observed that the Revenue did not pursue the proceedings u/s 129 but issued fresh notice u/s 148 on 18/01/2016 without obtaining approval of Additional CIT. It further observed that the reasons to believe were communicated vide one single sentence without any supporting material. Accordingly, it held that there were numerous legal infirmities which lead to inevitable invalidation of all the proceedings. Therefore, it set aside both the notices issued u/s 148 and the consequential assessment order.
***MASTECH TECHNOLOGIES PVT. LTD. vs. DCIT (2017) 99 CCH 0102 DelHC W.P.(C) 2858/2016 & C.M. APPL.11983/2016 dated 13.07.2017***

**2962.** The Court held that where revenue produced bunch of documents to suggest that entire proposal of reopening of assessment along with reasons recorded by AO for same were placed before Additional Commissioner who, upon perusal of same, recorded his satisfaction that it was a fit case for issuance of notice for reopening assessment, reassessment notice issued against assessee was justified
***BaldevbhaiBhikhabhai Patel v DCIT [2018] 94 taxmann.com 428 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 21092 OF 2017 dated 09.05.2018***

**2963.** The Tribunal held that Pr CIT granted approval for reassessment proceeding by merely writing 'Yes'. CIT(A) upheld AO's order. Held, ss 147 and 148 were charter to Revenue to reopen completed assessments. Section 151 provides safeguard that sword of s 147 may not be used unless competent statutory officer was satisfied that AO has good and adequate reasons to invoke reopening provisions. As per mandate of s 151(2), Competent Authority has to examine reasons, material or grounds on which reopening was sought to be based and to judge as to whether they were sufficient and adequate to formation of necessary belief of escapement of income from taxation on part of AO—It was if and only if Competent Authority, after applying his mind, was of opinion that AO's belief was well reasoned and bona fide, that he would accord his sanction thereon. In case of assessee, approval was clearly granted without application of mind, and therefore, it was not at all legally tenable approval. Assessee's appeal allowed.

Go to Index

***Anita Yadav vs. ITO-(2018) 53 CCH 0286 AgraTrib-ITA No. 422/Agra/2017-dated Jul 4, 2018***

**2964.** AO issued notice u/s 148 to assessee for reassessment holding that AO had reason to believe that income of assessee had escaped assessment. CIT(A) satisfied that it was fit case for issuance of notice u/s. 148 and granted approval in this regard by merely writing 'Yes'. Assessee took plea that approval was no approval in eye of law having been granted without application of mind and reassessment proceeding initiated required to be quashed. The Tribunal held that, Sections 147 and 148 were charter to Revenue to reopen completed assessments. Section 151 provided safe-guard that sword of section 147 might not be used unless competent statutory officer was satisfied that AO had good and adequate reasons to invoke reopening provisions. As per mandate of section 151 (2), Competent Authority had to examine reasons, material or grounds on which reopening was sought to be based. It was only if Competent Authority, after applying his mind, was of opinion that AO's belief was well reasoned and bonafide, then he would accord his sanction thereon. Order of Lower Authority set aside and Assessee's appeal was allowed.
***Avnindra Mishra Vs. Income Tax Officer-(2018) 53 CCH 0292 AgraTrib-ITA No. 441/Agra/2017-Jul 5, 2018***

**2965.** The Tribunal held the notice u/s 148 and all the proceedings pursuant thereto to be null and void ab initio noting that the AO had not recorded anywhere in the reasons for reopening assessment, after four years from the end of the relevant assessment year, suggesting/ showing that the income chargeable to tax which had escaped assessment was Rs.1 lakh or more. It relied on the decision in the case of Mahesh Kumar Gupta Vs. CIT [363 ITR 300 (All)] wherein it was held that since the assessment had been reopened after four years from the end of the relevant assessment year, the sanctioning authority should have been made aware of the fact that the case been dealt with involved income chargeable to tax which had escaped assessment was Rs.1 lakh or more and that it had exercised power of extended period of limitation u/s 149(1)(b).
***USHA AGARWAL vs. INCOME TAX OFFICER - (2018) 53 CCH 0318 (Agra Trib) - ITA No. 167/Agra/2018 dated June 19, 2018***

**2966.** The Tribunal held that if the AO issues the notice for reopening the assessment before obtaining the sanction of the CIT, the reopening is void ab initio and the fact that the sanction was given just one day after the issue of notice makes no difference.
***ITO vs. Ashok Jain - ITA.No.1505/Ahd/2017 dated 14.11.2018***

**2967.** The Tribunal upheld initiation of reassessment proceedings and rejected the assessee's contention that the reassessment proceedings were bad in law since the AO obtained prior approval from the CIT and not from the Joint / Additional CIT as prescribed under Section 151 of the Act. The Tribunal noted that as per the internal processing sheet used by the income-tax authorities for the purpose of granting approvals, both the Add CIT as well as the CIT had recorded their satisfaction and approved the initiation of reassessment proceedings. Accordingly, it held that merely because a higher authority expressed similar satisfaction it

would not obliterate from the satisfaction of the lower appropriate authority. It further held that even if there was any defect in the proceedings, it was curable under Section 292B of the Act,
***Mayurbhai Mangaldas Patel v ITO – TS- 559-ITAT-2017 (Ahd) - I.T.A. No.3451/Ahd/2014 dated 30.11.2017***

**2968.** The assessee filed appeal before the Commissioner (Appeals) challenging initiation of reassessment proceedings on ground that notice issued by the Assessing Officer was without approval of competent authority. The Commissioner (Appeals) rejected the assesse's plea taking a view that the assessee had not filed any evidence in said regard. The Tribunal held that once a challenge is posed that necessary approval in terms of statutory mandate is not on record, adjudicating authority is required to look into record and pass an order after following due procedure prescribed by law. In view of aforesaid legal position, impugned order was to be set aside and issue was to be remanded back to file of the Commissioner (Appeals) for disposal afresh.
***Smt. Jasleen Kaur v. ITO [2018] 99 taxmann.com 336 (Chandigarh – Trib.) -ITA Nos. 362 & 363 (CHD.) of 2018 dated September 4, 2018***

**2969.** The AO initiated reassessment proceedings u/s 147/148 after recording reasons on basis of information received from Investigation Wing of Department on basis of search and seizure operation and made addition of share capital under Section 68 of the Act alleging that the assessee had issued share capital as a camouflage to introduce its own fund through entry operator. The Tribunal on perusal of the reasons held that the AO had blindly followed the information received from the Investigation Wing and had failed to bring anything to link the reasons to the assessee. It held that basis of belief should be discernible from material on record which was available with AO when he recorded reasons, absent which the reassessment proceedings were bad in law. Further, it noted that the Commissioner had simply affixed "approved" at bottom of note sheet prepared by ITO and held that if the Commissioner had read report carefully he could not have come to conclusion that this was fit case for issuing notice u/s 148. Noting that the Commissioner had nowhere recorded satisfaction note, it held that the sanction granted was mechanical and contrary to Section 151 of the Act. Accordingly, it quashed the entire proceeding.
***TARA ALLOYS LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0159 DelTrib - ITA No. 2421/Del/2017 dated Mar 1, 2018***

**2970.** The Tribunal it noted that the sanction for reopening of assessment beyond 4 years had been done by obtaining approval from Addl. Commissioner and not from the Commissioner or Pr. Commissioner or Pr. Chief Commissioner, which was the pre-requisite provided in Section 151 of the Act and therefore held that the initiation of the proceedings u/s 148 of the Act was invalid for lack of requisite sanction.
***Hi Gain Investment Pvt Ltd v ITO – (2017) 50 CCH 0034 (Del Trib)***

**2971.** The Tribunal held that (i) Sanction granted by writing "Yes, I am satisfied" is not sufficient to comply with the requirement of section 151 because it means that the approving authority has recorded satisfaction in a mechanical manner and without application of mind, (ii) if information is received from investigation wing that assessee was beneficiary of accommodation entries but

no further inquiry was undertaken by AO, said information cannot be said to be tangible material per se and, thus, reassessment on said basis is not justified.
***Pioneer Town Planners Pvt. Ltd vs. DCIT - ITA No.132/Del/2018 dated 06.08.2018***

**2972.** Where the AO initiated reassessment proceedings based on information received from the office of the Addl CIT Range-1 New Delhi (which was based on the statement of one PK Jindal) that the persons from whom the assessee received share application money were bogus entities, the Tribunal noting that the AO had ignored the evidences provided by the assessee and had merely based his opinion on the statement of PK Jindal without any independent application of mind held that the reassessment proceedings were not valid in law. Further, it also held that the sanction obtained from the Add CIT were at best a mere mechanical sanction as there was no evidence that the Add CIT had gone through any evidence to establish that the assessee's income had escaped assessment. It held that merely writing "Yes I am satisfied" was not requisite sanction under Section 151 of the Act. Accordingly, it quashed the entire proceedings.
***INCOME TAX OFFICER & ANR. vs. VIRAT CREDIT & HOLDINGS PVT. LTD. & ANR. - (2018) 52 CCH 0161 DelTrib - ITA No. 89/Del./2012 (CO No.57/Del/2012) dated Feb 9, 2018***

**2973.** The Tribunal held that even if assessment was reopened in consequence of or to give effect to any finding or direction of Appellate Authority, requirement of sanction u/s 151 is mandatory for issuing notice u/s 148 and *accordingly*, it quashed the entire reassessment proceedings initiated after expiry of period of 4 years from end of assessment year, without obtaining sanction u/s 151. It held that the requirement of sanction u/s 151 was mandatory and in the nature of check and balance and it was a measure against the misuse of power by the assessing authority for assessment or reassessment on basis the reasons not being found satisfactory by the authorities provided u/s 151.
***Sonu Khandelwal vs ITO [2018] 97 taxmann.com 431 (Jaipur Trib)- IT APPEAL NOs. 735 and 736(JP) of 2015 dated August 21 2018***

**2974.** Assessee individual, filed his return of income declaring income from commission and salary. Assessment was completed under Section 143(3) r.w.s. 153C of the Act. Subsequently, assessment was re-opened under Section 147 of the Act after expiry of four years from the end of the relevant assessment year and the AO made addition under Section 68 of the Act in respect of cash credit. CIT(A) upheld the order of the AO. The Tribunal held that since the notice under section 148 was served after the expiry of four years from the end of the relevant assessment year, the AO should have obtained the prior approval of CIT. In absence of such approval, Tribunal held that the notice was invalid and all subsequent actions thereto were also void and that violation of mandatory provision provided under statute could not be validated by resorting to 292B or 292BB. Thus, re-assessment proceedings were quashed and the Assessee's appeal was allowed.
***ASHOK BALDEVBHAI PATEL vs. ACIT (Mumbai Tribunal) (ITA No. 787/Mum/2014) dated May 8, 2018 (53 CCH 0150)***

**2975.** The Tribunal held that where no approval of JCIT had been obtained by AO under section 151(2) of the Act before the issue of notice u/s 148, the issue of notice u/s 148 was invalid and consequently the assessment order passed in pursuance thereto was also invalid.

Go to Index

***ITO & ANR vs Nikhil Vinod Aggarwal & Anr. (2017) 51 CCH 186 MumTrib. - ITA No. 2574/mum/2017 dated 13.10.2017***

» *Service of notice u/s 148*

**2976.** The Apex court dismissed the SLP against High Court ruling that where assessee challenged validity of reassessment proceeding on ground that service of notice by Inspector at factory premises on security guard was not proper service under provisions of section 282(2), since in response to notice issued under section 148, one director of assessee-company had appeared before Assessing Officer, it could be concluded that provisions of section 292B would apply to assessee's case and, thus, assessmentproceedings could not be regarded as invalid for want of proper service of notice.
***Sudev Industries Ltd. v. CIT- [2018] 99 taxmann.com 109 (SC)- SLP Appeal (C) (No(s). 26677 OF 2018- dated October 22, 2018***

**2977.** The Court held that reassessment proceedings initiated on basis of notice served under section 148 on accountant of company were vitiated, as accountant was not Principal Officer of Company, nor was there any material to show that he had been authorised by company to accept any notice.
***SLP dismissed in CIT v. Kanpur Plastipack Ltd. [2018] 95 taxmann.com 140/256 Taxman 394(SC)- Special Leave Petition (CIVIL) Diary No. 19775 of 2018 dated July 3, 2018***

**2978.** The Court held that when department had correct address of assessee furnished in return of income, sending notice u/s.148 notice at incorrect address available with bank and then drawing presumption of service of notice *on* ground that notice was not received back unserved, could not be sustained. Accordingly, the Court allowed assessee's appeal and set aside the order of Tribunal directing the CIT(A) to adjudicate the case on merits
***Suresh Kumar Sheetlani vs ITO [2018] 96 taxmann.com 401 (SC)- IT Appeal No.413 of 2011 dated August 14 2018***

**2979.** The Court held that where there was proof from Department of Post that dispatch of notice was made within the period of limitation, notice under section 148 was valid.
***ABAB Offshore Ltd. vs. DCIT (2016) 97 CCH 0068 ChenHC (WP No. 29643 of 2015)***

**2980.** Where reassessment notice under section 148(1) was issued against assessee after expiry of period of limitation at old address of assessee which was already changed by assessee before date of issuance of said reassessment notice in official record by updating PAN data base, the Court held that there was no service of reassessment notice upon assessee and thus quashed the reassessment proceedings.
***Ardent Steel Ltd. v ACIT [2018] 94 taxmann.com 95 (Chhattisgarh) – WP (T) NO. 168 OF 2016 dated 04.05.2018***

**2981.** The Court held that where the search in case of a Delhi based CA firm revealed that actual management and control of assessee-companies, which were registered in Sikkim, was in Delhi

and that none of these companies had in fact filed any returns under Income-tax Act, 1961 despite earning income in India, reopening of assessment under section 148 of the Act was justified. Further it held that since the management and control of assessees (Sikkim registered companies), was with a Delhi based CA firm, said CA firm would have implied authority to receive notices issued to assessees under section 148 of the Act.
***CIT v Mansarovar Commercial P Ltd – TS-87-HC-2016 (DEL)***

**2982.** The Court held that reassessment proceedings made consequent to non-service of notice under section 148 of the Act was without jurisdiction and liable to be quashed.
***CIT v Chetan Gupta – (2015) 94 CCH 0013 Del HC***

**2983.** The assessee was issued notice u/s 148 r.w S.147 by registered post and through inspector of Department. The assessee did not file the return in response to the said notice albeit their director "R" appeared before the AO and upon R's request, reasons recorded for issue of notice and a copy of notice u/s148 was furnished to R. Further, best judgement assessment was completed where additions were made and CIT(A) confirmed the said addition. In the appellate proceeding, the assessee for the first time raised a plea of improper service u/s 282(2) stating that the notice was served by the inspector to the security guard at the factory premises of the assessee and the Tribunal accepted the assessee's plea and quashed the assessment. However, the Court dissented with the Tribunal's view on the reasons that (i) The notice was served by Registered Post as well, which is the prescribed mode of service (ii) S.282(2) is to ensure compliance of principles of natural justice and not for finding fault and held that it was clear that the notice was served by making the assessee aware of the initiation of proceedings and thus the notice u/s 148 r.w S.147 was valid. However, for the purpose for adjudicating the matter on merits, the Court remanded the matter back to the Tribunal.
***CIT v Sudev Industries Ltd. [2018] 94 taxmann.com 373 (DelhiHC) – ITA NO 805 OF 2005 dated 31.05.2018***

**2984.** The Court held that non-quoting of reasons by Assessing Officer in section 148 notice will not vitiate entire proceedings.
***Dayanidhi Maran v. Asstt CIT [2018] 98 taxmann.com 202 (Mad.)- W.P. Nos. 3405 & 43944 of 2016-W.M.P. Nos. 2780 & 37778 of 2016-dated October 10, 2018***

**2985.** The Court held that reasons to be recorded by Assessing Officer for taking decision to reopen escaped assessment does not mean that such reasons are to be communicated along with notice itself; very notice will not provide a cause of action for assessee to file writ petitions.
***South Asia FM Ltd v. Asstt CIT [2018]98 taxmann.com 200/259 Taxman 266 (Mad.) W.P. Nos. 3405 & 43944 of 2016 W.M.P. Nos. 2780 & 37778 of 2016 dated October 10,2018***

**2986.** The Court held that where notice under section 148 was issued to the Petitioner and the reasons for issuance of notice / initiation of proceeding had also been disclosed, required sanction which was also obtained from the competent authority, the said notice issued under section 148 was valid and rejected the contention of the Petitioner that the reassessment proceedings were bad

in law since the Department had also initiated assessment proceedings by issuing notice under section 142(1) of the Act.

***Maruti Nandan Sah v ITO – (2016) 97 CCH 0166 (Uttarakhand HC) – Writ Petitioner (M/S) No 2804 of 2016)***

**2987.** The Tribunal allowed assessees' appeal against CIT(A)'s order and held that the reassessment made u/s 147 was invalid in absense of valid service of notice u/s 148, noting that the said notice was served upon the part time accountant, who was not authorized to receive any document on behalf of the assessees. Relying on Rules of Code of Civil Procedure, 1908 in respect of service of summons, it held that only if summons are accepted by authorized agent of defendant it could be called a "good service".

***Smt. Sarojben Manubhai Shah & other v ITO [TS-737-ITAT-2018(Ahd)] - I.T.A. Nos.1215, 1269 & 1475/Ahd/2015 dated 14.12.2018***

**2988.** The Tribunal set aside the notice issued u/s 148 and held the reassessment order passed pursuant to such notice to be unsustainable on account due to non-service of valid notice. The AO had claimed to have served to the deceased-assessee notice u/s 148 as well as 142(1) through affixture at his last known address and notice u/s 142(1) to the legal heir (after knowing about the assessee's demise) again through affixture and receiving no response, framed the assessment u/s 144. The Tribunal held that there were many doubts with regard to genuineness of service of notice on deceased assessee because if notice had been served then certainly the notice server would had used his due and reasonable diligence for not finding deceased assesse. Further, it was held that the AO never tried to serve legal heir in ordinary way, however made attempt only through substituted service which also created lots of doubts about service and validity of notices which was not a mere procedural requirement but was mandatory. The Tribunal thus held that no notice was properly served either u/s 148 or 142(1) upon deceased assessee or his sole legal heir.

***SHRIDHAR BEDI THROUGH LEGAL HEIR vs. INCOME TAX OFFICER - (2018) 53 CCH 0171 (Asr Trib) - ITA No. 02(Asr)/2017 dated June 20, 2018***

**2989.** The Tribunal quashed the reassessment proceedings where the assessee had furnished an affidavit denying service of notice u/s 148 and the Revenue had not brought any material on record to establish valid service of notice. It held that edifice of entire proceedings was not in accordance with law and thus untenable.

***DHARA SINGH vs. ITO – 0(2018) 53 CCH 0370 DelTrib - ITA No. 2213/DEL/2018 dated July 20, 2018***

**2990.** The Tribunal held that communication of reasons for reopening assessment u/s.148 is not a mere formality or arrangement or understanding between the AR and the AO, but it is a legal requirement. The reasons recorded must be communicated to the assessee and then only the assessee would come to know the reasons recorded and furnish objections if any for reopening of the assessment. As the reason were not communicated to the assessee, the asseseement was rendered invalid.

***Alapati Kasi Subrayan vs. ITO (2018) 54 CCH 0426 Vishakapatnam Trib- ITA 113-116/Viz/2018 dated 21.12.2018***

Go to Index

» *Notice u/s 143(2)*

**2991.** The Court allowed the assessee's [successor to India Cellular Towers Infrastructure Ltd. ('ICTIL'), a telecom company] writ and quashed reassessment proceedings for AY 2009-10 on the ground of delay in issuing notice u/s. 143(2) despite validly issued reopening notice u/s. 148. It noted that though Section 148 notice was issued in February, 2013 (i.e. within prescribed time- limit), the Revenue failed to issue notice u/s. 143(2) within prescribed time-limit (i.e. before September 30, 2013 i.e. within six months from the end of the Financial Year in which the return was furnished by an assessee) pursuant to return filed u/s. 148. Relying on the ruling of the Apex Court in the case of Hotel Blue Moon [TS-113-SC-2010] which was reiterated in Madhya Bharat Energy Corporation [TS-653-HC-2011(DEL)-O] and Jai Shiv Shankar Traders (P.) Ltd. [TS-5736- HC-2015(DELHI)-O], it held that the delay in issuing a notice u/s 143(2) would be fatal to the re- assessment proceedings.
***Indus Towers Limited vs DCIT-TS-213-HC-2017(DEL)-Writ petition (C) No. 1560 of 2014 dated 29.05.2017***

**2992.** The Court held that reassessment order could not be passed under section 147 of the Act without compliance with mandatory requirement of issuing a notice under section 143(2) of the Act to the assessee and accordingly held that the reassessment orders were legally unsustainable.
***Pr CIT v Silver Line & ANR – (2015) 94 CCH 0077 Del HC***

**2993.** The Court held that where no return was filed in compliance of notice issued under section 148, issuing of notice under section 143(2) was not required for making assessment.
***Principal CIT v. Broadway Shoe Co. [2018] 99 taxmann.com 83/259 Taxmann 223 (J & K)-IT Appeal No. 10 of 2017 dated October 11, 2018.***

**2994.** The Court quashed reassessment under section 147 r.w.s 143(3) as no notice u/s 143(2) of the Act was issued to the assessee. It rejected Tribunal's view that reassessment was valid on the ground that it was clear case of suppression of income and since assessee participated in the re-assessment proceedings, absence of issuance of notice under section 143(2) would have no bearing and would stand condoned in view of section 292BB. It held that the issuance of statutory notice under section 143(2) was a mandatory requirement and not a mere procedural defect and that the AO could claim and avail the benefit under section 292BB only after a notice under section 143(2) had been validly issued.
***Travancore Diagnostics (P) Ltd. [TS-583-HC-2016(KER)] (ITA.No. 221 of 2015)***

**2995.** The Court upheld the Tribunal's order quashing the entire reassessment proceeding where it was noticed that no notice u/s 143(2) was issued by the AO before undertaking the reassessment. The Court relied on the Apex Court decision in the case of ACIT v. Hotel Blue Moon [321 ITR 362 (SC)] wherein it was held that omission on the part of the AO to issue notice u/s 143(2) within the time allowed to do so, for the purpose of completing an assessment, was not a procedural irregularity and the same was not curable and, therefore, the requirement of notice u/s 143(2) could not be dispensed with. It also held that section 292BB also does not dispense with the issuance of any notice that is mandated to be issued under the Act, but merely

cures the defect of service of such notice if an objection in such regard is not taken before the completion of the assessment or reassessment.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. OBEROI HOTELS PVT. LTD. - (2018) 102 CCH 0108 (Kol HC) - ITAT No.152 of 2015 & GA No. 3671 of 2015 dated June 22, 2018***

**2996.** The Tribunal held that where the assessee filed its revised return of income for AY 2001-02 and the AO issued a notice under section 148 of the Act within the timeline available for issuing notice under section 143(2) i.e. one year from the end of the AY in which the revised return was filed, the notice issued under section 148 was invalid since the AO could have issued notice under section 143(2) but sought to extend the period of limitation for completing assessment by the period provided under section 147 by issuing the impugned notice under section 148. It held that the provisions of section 143(2) and section 148 operated in two different spheres and could not be imported into the other in such manner.
***Vardhman Holdings Ltd v ACIT – (2016) 69 taxmann.com 376 (Chandigarh)***

**2997.** The Tribunal held that even though the case was reopened u/s 148 and reason for reopening were supplied, the AO was expected to serve the notice u/s 143(2) within a period of six months, if the notice u/s 143(2) was not issued within prescribed time, then there will be presumption that the AO accepted the return filed by the assessee. As the said notice was not issued within 6 months, the Tribunal held that it was unable to uphold the orders of the lower authorities.
***T.S.R Khannaiyann vs ACIT- (2018) 54 CCH 0159 Chen Trib- ITA No 256,257,812/Chny/2018 dated 12.09.2018***

**2998.** The Tribunal held that reassessment order passed by the AO without issuing notice u/s.143(2) was bad in law.
***Maestrro Mutistate vs ITO 2018] 54 CCH 0436 (Del- Trib.)- ITA No.3871-72/Del/2018 dated 28.12.2018***

**2999.** The Tribunal held that if the notice u/s 143(2) is issued prior to the furnishing of return by the assessee in response to notice u/s 148, the notice issued u/s 143(2) is not valid and the reassessment framed on the basis of said notice has to be quashed. It also held that section 292BB does not save the assessment.
***Halcrow Group Ltd vs. ADIT - ITA No. 5163 & 5164/Del/2010 & 5554/Del/2012 dated 02.07.2018***

**3000.** The Tribunal allowed the cross objection raised by the assessee against the CIT(A)'s order holding that non-issue of notice u/s 143(2) by itself could vitiate reassessment proceedings initiated by the AO and it held in the absence of any notice issued u/s 143(2) after receipt of fresh return submitted by the assessee in response to notice u/s 148, the reassessment order passed was bad, void ab initio. In view of above decision, the appeal filed by the Revenue was held to be infructuous.
***ACIT & ANR. v DIMENSION PROMOTERS PVT. LTD. & ANR. – (2018) 52 CCH 1 (Del Trib) – ITA No. 1105/Del./2011 (C.O. No. 326/Del./2011) dated 02.01.2018***

Go to Index

**3001.** The Tribunal held that even though notice u/s 148 was issued but since notice u/s 143(2) was not issued hence, reassessment order passed u/s 147 r/w s. 143(3) was invalid bad in law and void ab initio and thus liable to be quashed.
***Asst. CIT vs. SUKHAMANI COTTON INDUSTRIES AND ANR. (2018) 54 CCH 0490 IndoreTrib ITA No. 222/Ind/2017, 223/Ind/2017 (CO No. 16/Ind/2018, 04/Ind/2018) dated 21.12.2018***

**3002.** The Tribunal held that a notice u/s 143(2) issued by the AO before the assessee files a return of income has no meaning and thus if no fresh notice is issued after the assessee files a return (pursuant to notice u/s 148), the AO has no jurisdiction to pass the reassessment order and the same has to be quashed.
***Sudhir Menon vs. ACIT - ITA No. 1744 & 1466/Mum/2016 dated 03.10.2018***

**3003.** The Tribunal held that re-assessment completed under section 147 of the Act without issuing notice under section 143(2) of the Act is not a valid assessment.
***Kanchanjunga Impex Pvt Ltd v ITO – (2015) 45 CCH 0081 Mum Trib***

» *Time limit for initiation of reassessment*

**3004.** The Apex Court dismissed the Revenue's SLP challenging the order of the HC which held that notice issued u/ 148 on assessee was time barred u/s 149 and that relaxation of time limit of sec.149 as provided by sec 150 (assessment in consequence of finding given in an order passed, inter alia, in appeal by any authority) read with Explanation 3 to Sec. 153 was not applicable.The High Court noted that notice u/s 148 was issued on assessee in March, 2011 on the basis of a Tribunal order passed in case of one society (to whom assessee advanced loan), wherein it was held that interest income was not to be taxed in the hands of the said society but was taxable in the hands of assessee. The High Courtheld that the provisions of Sec. 150 read with Expln 3 to Sec. 153 would apply only if an opportunity of hearing had been given to the assessee before the Tribunal passed the order and asone essential ingredient of Expln 3 was missing and, the deeming clause would not get triggered and accordingly the bar of limitation prescribed by Sec149 would not be lifted.
***CIT vs. M/s Rural Electrification Corporation Ltd. TS-360-SC-2017 (SLP No. 19165/ 2014 dated August 28, 2017)***

**3005.** The Apex Court upheld the order of the High Court wherein it was held that the condition precedent for issuing a notice under section 148 read with section 149(1)(c) of the Act invoking the extended period of limitation of sixteen years is that income which has escaped assessment must have relation to any asset outside India which was not satisfied as the Revenue did not bring anything on record to prove that there was an asset located outside India.
***ITO and Ors v Deccan Digital Networks Pvt Ltd [SPL No 9577/2015] – TS-510-SC-2015***

Go to Index

**3006.** The Court held that amendment to section 149 by Finance Act, 2012, which extended limitation for reopening assessment to sixteen years, could not be resorted for reopening proceedings concluded before amendment became effective.

***Brahm Datt v. Asst. CIT- [2018] 100 taxmann.com 324 (Delhi)- W.P. (C) No. 1109 of 2016 dated December 6, 2018***

**3007.** The Court upheld initiation of reassessment proceedings in a case where income chargeable to tax for relevant year which had escaped assessment was more than one lakh in view of the provisions of section 149(1)(b), according to which proceedings could be taken for six years as against four years limitation as provided under section 149(1)(a), if income chargeable to tax which had escaped assessment amounted to or was likely to amount to one lakh rupees or more.

***DR. A. V. Sreekumar v CIT – (2018) 90 taxmann.com 355 (Ker) - ITA No. 186 of 2013 dated 24.01.2018***

**3008.** The Tribunal accepted the assessee's appeal against the CIT(A)'s order upholding the reassessment proceedings u/s 147 by considering the assessee to be the agent of the non-resident to whom he had made payment towards purchase of property without deducting TDS u/s 195. It was noted that the notice u/s 148 was issued on 24.03.2014 whereas as per section 149(3) time limit for issue of notice u/s. 148 in case of agent of non-resident was two years from end of relevant assessment year, which had expired on 31.03.2010 and the amendment made to section 149(3) to provide for six years instead of two years was only effective from 01.04.2012. Thus, it held that the reassessment proceedings initiated by the AO was barred by limitation and accordingly, quashed the notice issued u/s 148 and held the consequent assessment proceedings to be void ab initio.

***V. PRATIM ARAO & ORS. vs. INCOME TAX OFFICER (INTERNATIONAL TAXATION) & ORS. - (2018) 53 CCH 0114 VishakapatnamTrib - ITA No. 69/Viz/2018, 70/Viz/2018, 71/Viz/2018, 72/Viz/2018, 73/Viz/2018, 74/Viz/2018 dated Jun 6, 2018***

» *Initiated after four years from end of relevant AY*

**3009.** The assessee filed its return of income after claiming deduction under section 10B. During scrutiny assessment, Assessing Officer had raised several queries asking the assessee about its claim of deduction under section 10B. The assessee replied to such queries in detail, upon which the Assessing Officer passed an assessment order under section 143(3) allowing said claim of deduction. After four years, the Assessing Officer issued reassessment notice against the assessee on two grounds; firstly, no deduction under section 10B could be allowed to the assessee as it had not filed its return on or before due date specified under section 139; secondly, there was no proof on record that there was ratification from Board of Approval for EOU scheme that the assessee was hundred per cent EOU.

The High Court Held that since the Assessing Officer, in original assessment had thoroughly scrutinized claim of deduction under section 10B and allowed same, he could not reopen assessment to examine another facet of said claim. SLP filed against the High Court order was dismissed.

Go to Index

***Dy. CIT v. Qx. KPo Services (P.) Ltd. [2018] 99 taxmann.com 301/259 Taxmann 317(SC)-LP (Civil) Diary No(s). 36238 of 2018 dated November 2, 2018***

**3010.** Where the revenue had initiated reassessment on the grounds of (i) non-payment of interest to partners on borrowed capital as stipulated under the partnership deed and (ii) purchase of gold from sister concern/ partner at a rate lower than the prevailing market rate, the Court quashed reassessment proceedings initiated u/s 147/148 beyond the period of 4 years absent failure on assessee's part to truly and fully disclose material facts and also because the issue was examined by the AO during original assessment.
***Adani Exports - TS 378 HC 2016 (GUJ) SPECIAL CIVIL APPLICATION NO. 3595 of 2016 WITH SPECIAL CIVIL APPLICATION NO. 3596 of 2016***

**3011.** The AO sought to reopen the assessment of the assessee under section 148 read with section 147 of the Act beyond a period of four years from the end of the relevant assessment year contending that the assessee had failed to deduct tax on the lease rent paid to the Development Authority. The Court held that for reopening of assessment beyond a period of 4 years two conditions had to be fulfilled – i) the AO must have reason to believe that income escaped assessment in a particular assessment year and ii) the AO must have reason to believe that such escapement of income occurred on account of omission on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. It noted that the AO had not satisfied the second condition as the assessee had submitted complete details of lease rent paid to the Development Authority during the financial year and the fact that no tax had been deducted was clearly evident from such details. Accordingly, it allowed the writ Petition filed by the assessee and held that no notice under section 148 of the Act could have been issued and the notice erroneously issued by the AO stood vitiated due to non-compliance of the preconditions for issue of such notice.
***Noida Power Company Ltd v CIT – (2017) 99 CCH 0010 All HC – Writ Tax No 139 of 2016 dated 02.05.2017***

**3012.** The Court held where assessee received dividend from units of mutual funds which were held by it and declared as exempt under section 10(33) of the Act in its return and during the original 143(3) assessment proceedings and that the said income was not on account of transfer of units, the reopening of assessment considering the said income as income on account of transfer of units in light of the retrospective amendment made by Finance Act, 2001 denying exemption under section 10(33) of the Act in such cases, was invalid since there was no allegation that the assessee failed to disclose truly and fully any material fact necessary for assessment.
***Nirmal Bang Securities Pvt Ltd v ACIT – (2016) 67 taxmann.com 57 (Bom)***

**3013.** The Court held that where Assessing Officer taking a view that certain interest income accrued to assessee escaped assessment, initiated reassessment proceedings after expiry of four years from end of relevant years, in view of fact that there was no failure on assessee's part to disclose all material facts necessary for assessment, impugned reassessment proceedings were to be quashed.

Go to Index

***Pr. CIT-2 v. State Bank of Saurashtra - [2018] 100 taxmann.com 437 (Bombay)- ITA No. 532 of 2016- dated November 24, 2018***

**3014.** The assessee was a co-operative society. The Assessing Officer found that the assessee allowed certain outside parties to utilize premises of society for promotion of business activities of such outside parties for pecuniary consideration. Accordingly, the Assessing Officer held that same was liable to be taxed as Income from other sources. The Assessing Officer sent notice for reassessment on ground that said income escaped assessment. The Court held that it was found that assessee-society made full and true disclosure of necessary facts. Further, the assessing officer in re-assessment proceedings did not disclose any failure by the assessee to show said income. Reassessment proceeding was not justified.
***Panchratna Co-op. Housing Society Ltd. v. Assessing Officer [2015] 60 taxmann.com 444/376 ITR 404/235 Taxmann 91(Bom.)***

**3015.** The assessee filed its return for the relevant year claiming deduction u/s 80M and the assessment was completed u/s 143(3). The AO reopened the assessment after four years on the ground that the assessee had failed to reduce expenditure incurred in earning dividend income to the extent of 5 percent of gross dividend income which resulted in excess claim of deduction. The Court noted that the issue raised by the AO was a factual issue which was subject matter of consideration while passing order u/s 143(3). The Court further noted that there was a true and full disclosure by the assessee during the regular assessment proceeding and held that it was a case of change of opinion and accordingly allowed the petition of the assessee.
***ITC Classic Finance Co. v. V. Nagaprasad – [2018] 93 taxmann.com 393 (Bombay) – W.P. No. 2029 of 2000 dated April 10, 2018***

**3016.** The Court granted interim stay restraining the Revenue from acting further upon the notice issued u/s 148 for initiating re-assessment proceedings after four years from the end of the relevant assessment year, on the ground that information was received from Deputy Director (INV) stating that the assessee had a bank account which it had failed to disclose during assessment proceedings. Noting that during course of assessment proceedings, the assessee had submitted details of its bank accounts (which included the said bank account) and that the said bank account was also reflected in its balance sheet which was a subject matter of consideration during assessment proceedings, the Court held that in absence of any failure on part of the assessee to disclose the facts fully and truly, the AO could not exercise jurisdiction u/s 147 r.w.s. 148.
***Akshar Developers v ACIT - [2018] 95 taxmann.com 104 (Bombay) - WRIT PETITION NO. 11441 OF 2017 dated June 7, 2018***

**3017.** The Court allowed assessee's petition against the initiation of reassessment proceeding by issue notice u/s 148 to disallow assessee's claim for deduction on account of certain amounts debited to the P & L A/c which were not so disallowed during the regular assessment. It was noted that the assessment was sought to be reopened after a period of four years from the end of relevant assessment year. The Court held that for the assessment to be reopened after four years, the jurisdictional requirement of showing that there had been a failure on the part of the

assessee to disclose the material facts had to be fulfilled and where such requirement was not present, it was open to the assessee to challenge the action of reopening by invoking Article 226 of the Constitution of India. It held that in the present case the assesse had produced all the necessary documents before the AO and the fresh exercise was only a change of opinion. Thus, the AO had no jurisdiction to proceed u/s 147 r.w.s. 148.

***GOA STATE COOP. BANK LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR - (2018) 102 CCH 0165 (Bombay HC) - WRIT PETITION NO. 33 OF 2018 dated June 27, 2018***

**3018.** Where the issue of sale of shares held in Goa Carbon Ltd was adequately examined and subjected to inquiry during original assessment proceedings, the Court held that the AO was not justified in initiating reassessment proceedings on the basis that Form 29B had not been filed, after 4 years from the end of the relevant assessment year where there was no failure to fully and truly disclose material facts on the part of the assessee. It held that the primary facts were duly disclosed by the assessee during original assessment proceedings and it was not for the assessee to tell the AO what inferences of facts were to be drawn from those facts. Accordingly, it quashed the notice issued under Section 148 as well as the order disposing of objections.

***DEMPO BROTHERS PRIVATE LIMITED vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0107 BomHC - WRIT PETITION NO. 1060 OF 2017 dated Mar 6, 2018***

**3019.** Where AO initiated reassessment proceedings after expiry of four years from end of relevant assessment year on ground that assessee had accepted loan, deposits etc. of Rs. 20,000 or more in cash in violation of provisions of section 269SS. The Court held that since there was no omission or failure on part of assessee to disclose fully and truly all material facts at time of original assessment, impugned reassessment proceedings deserved to be set aside.

***CIT, Kolkata-II v. Sahara India Mutual Benefit Co. Ltd. [2019] 101 taxmann.com 356 (Calcutta), IT Appeal Nos. 454 & 510 of 2008 dated December 21, 2018.***

**3020.** The Court held that since section 151(1) requires CCIT or CIT to be satisfied on reasons recorded by AO for issuance of a reassessment notice after expiry of 4 years from end of relevant assessment year, where original assessment was made u/s 143(3), issuance of notice u/s 148 without such sanction is unjustified.

***Maruti Clean Coal & Power Ltd. v ACIT - (2018) 400 ITR 397 (Chhattisgarh) - Writ Petition (T) No. 346 of 2017 dated 03.01.2018***

**3021.** The Court held that where the AO had called for details relating to share application money during original assessment proceedings and considering the responses filed by the assessee did not make an addition at that time, re-opening assessment on the same issue after a period of 4 years would amount to change of opinion. Further, since the reasons for reopening of assessment did not allege that failure to disclose fully and truly all material particulars, the issue of notice re- opening the assessment was void and liable to be quashed.

***Allied Strips Ltd v ACIT – (2016) 96 CCH 0004 (Del)***

Go to Index

**3022.** The Court held that where there was no material on record to prove that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the AO under section 147 of the Act beyond the four year period prescribed therein would be without jurisdiction.
***Oracle System Corporation v DCIT – (2015) 94 CCH 0045 Del HC***

**3023.** The Court held that for reopening an assessment beyond the period of 4 years, the threshold requirement is that the AO should on the basis of tangible material conclude that there was escapement of income on account of failure to disclose material particulars by the assessee without which the reassessment proceedings were invalid.
***Coperion Ideal Pvt Ltd v CIT – (2015) 94 CCH 0050 Del HC***

**3024.** The Court held that since the AO had examined all the points raised as reason for re-opening assessment in the original assessment proceedings and that there was no failure on the part of the assessee to disclose particulars which were material for the assessment, the notice under section 148 of the Act and consequent reassessment proceedings were invalid.
***Swarovski India Pvt Ltd v DCIT – (2015) 94 CCH 0033 Del HC***

**3025.** The Court held that since the AO had specifically raised queries and obtained responses in relation to the share transactions of the assessee post which no addition was made, initiating re-assessment in regard to the said transactions amounted to a change of opinion and therefore the reassessment was invalid.
Further, it held that since the re-assessment proceedings were initiated after a period of 4 years from the end of the relevant assessment year it was a pre-condition of there being a failure on part of the assessee to fully and truly disclose all material particulars and since there was no such allegation made by the AO on the assessee, the reassessment proceedings were invalid.
***Shri Parasram Industries Pvt Ltd v ITO – (2015) 94 CCH 0152 Del HC***

**3026.** The original assessment proceedings were completed u/s 143(3) and the AO re-opened the assessment u/s 147 after expiry of the 4 years from the end of the relevant AY on the ground that the Petitioner had failed to disclose fully and truly all material facts and with the reasons to believe that i. the Petitioner had claimed exempt income but did not disallow any expense under section 14A. ii. while computing the deduction u/s 10A, the Petitioner excluded telecommunication charges both from the export turnover as well as total turnover. iii. The Petitioner had claimed deduction u/s 35D which it had not claimed in the earlier 2 years. iv. The Petitioner had claimed deduction towards payment for purchase of software license which was a capital expenditure. v. Depreciation on certain items of computer peripheral was wrongly claimed @ 60% instead of 25% since the same was wrongly treated as a part of "computer system" instead of “Plant and Machinery.” vi. The Petitioner had not furnished details of payment exceeding Rs. 1 lakh as required by AO in the course of original assessment proceedings. The Court observed that the AO’s reason for re-opening the assessment was not based on any tangible material but was a mere change of opinion since all these information were available with AO at the time of original assessment. Accordingly, it held that there was no failure by the assessee to make a true and full disclosure and the re-assessment was bad in law.

Go to Index

***HCL TECHNOLOGIES LTD. vs. DVCIT & ANR. (2017) 99 CCH 0124 DelHC W.P.(C) 8164/2010 dated 20/07/2017***

**3027.** Where during the original assessment proceedings, the assessee had furnished details of 5 companies from whom it received share application money and the AO had examined these details and raised further queries which were duly answered by the assessee, the Court held that the AO was unjustified in initiating reassessment proceedings beyond a period of 4 years from the end of the relevant year based on a report from the DDIT (Investigation) stating that the said companies were mere paper companies as the said report did not have any specific adverse findings vis-à-vis the assessee and the AO had failed to conduct further independent verification of the alleged paper companies. It held that since the reasons for reopening of assessment did not spell out what information or fact was not disclosed by the assessee and there was no new specific material on record, the reassessment proceedings were bad in law. Accordingly, it quashed the notice issued under Section 148 as well as the consequent proceedings.

***SABH INFRASTRUCTURE LTD v ASSTT. COMMISSIONER OF INCOME TAX – Delhi HC W.P.(C) 1357/2016 dated 25.09.2017***

**3028.** The Court held that where the AO had merely re-examined the records already available and it could not be inferred from facts on record that the assessee had not made a full and true disclosure of the material particulars necessary for assessment then the re-opening of assessment was not warranted.

***Consultating Engeering Services India Pvt Ltd v DCIT – (2015) 94 CCH 0023 Del HC***

**3029.** The Court held that where the audited accounts were already available with the AO and formed part of the assessment records, merely suggesting that there was a failure on the part of the Assessee to disclose material necessary for the purpose of making assessment without demonstrating that any fresh tangible material was available could not satisfy the precondition of reopening of assessment after more than four years form the end of the relevant AY.

***Oracle India (P.) Ltd. vs. ACIT (2017) 83 taxmann.com 368 (Delhi) (W.P.(C) No. 7828/2010 dated July 26, 2017)***

**3030.** Where the original assessment proceedings were completed u/s 143(3) and notice u/s 148 was issued for re-opening the assessment after four years from the end of relevant AY with the reason to believe that expenditure in connection with dividend income earned was not disallowed u/s 14A r.w.Rule 8D, the Court noting that the assessee's return of income for the impugned AY was subject to multiple scrutinies u/s 143(3), 263, 147 (which was challenged in the writ proceedings and set aside), held that the Revenue had more than sufficient opportunity to scrutinize the returns of the Petitioner and this issue was never raised at the time of original assessment proceedings u/s 143(3) and proceedings u/s 263. Observing that there was a full disclosure by the assessee of all the material facts relating to the exempt income, it held that the notice under Section 148 was bad in law.

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

Go to Index

**3031.** The AO initiated reassessment proceedings under section by issuing notice under section 148 of the Act 4 years after the end of the assessment year alleging that the assessee had wrongly claimed deduction of interest income earned under section 80IC of the Act whereas the said amount ought to have been taxed under the head income from other sources. The Court noted that the claim under section 80IC of the Act had been verified by the AO during the original assessment proceedings and therefore held that though the notice states that the assessee had failed to fully and truly disclose material particulars, it did not bring out how the disclosure made by the assessee was not full and true especially when the AO in its original assessment order had specifically mentioned that the deduction under section 80IC was provided for "after verification". Accordingly, it held that where the conditions provided for in the first proviso to Section 147 of the Act were not fulfilled, the reassessment proceedings initiated were invalid and it set aside the notice issued and order passed by the AO dismissing the objections filed by the assessee.

***Akum Drugs and Pharmaceuticals Ltd v ITO – (2017) 99 CCH 0022 (Del HC) – WP C 6448 /2016 dated 22.05.2017***

**3032.** Where the AO had re-opened the assessment after 4 years by issuing notice u/s 148 on the ground that i) the Petitioner was not allowed to claim deduction u/s 10B in respect of one of its unit where it had incurred a loss; ii) the Petitioner was not bringing any sale proceeds in India from rendering manufacturing services to its AEs, the Court observing that both the issues were examined by the AO at the time of original assessment proceedings and that there was no allegation that there was a failure to disclose fully and truly all material facts, quashed the notice issued u/s 148.

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

**3033.** The Court held that in absence of any failure on assessee's part to disclose fully and truly all material facts necessary for assessment, reassessment proceedings could not be initiated after expiry of four years from end of relevant year, merely on basis of change of opinion of AO that due to disproportionate bifurcation of expenditure between eligible and non-eligible units, higher amount of exemption was claimed under section 10B in respect of profits earned by eligible industrial undertaking.

***E-Infochips Ltd. v. Asstt. CIT [2018] 99 taxmann.com 84(Guj.)- R/Special Civil Application No. 13566 of 2018 dated October 15, 2018***

**3034.** Where the Assessing Officer sought to reopen assessment on ground that even though assessee had earned certain exempt income under section 10(34) during relevant year, yet no disallowance had been made under section 14A, the Court held that in view of fact that assessee had disclosed all material facts relating to tax free investment and interest expenses in its books of account at time of assessment, impugned reassessment proceedings initiated after 4 years from the end of the assessment year deserved to be quashed as there was no failure on part of assessee to disclose all material facts necessary for assessment.

***Kumari Aditi Janmejay Vyas v DCIT - [2018] 89 taxmann.com 336 (Gujarat) - SPECIAL CIVIL APPLICATION NO. 14693 OF 2016 dated 12.01.2017***

Go to Index

**3035.** Where the assessee transferred technology to its subsidiaries based in BVI, a tax haven, which was further transferred by the BVI entities to the assessee's US based subsidiary under a technology transfer agreement and it was subsequently discovered that the BVI entities did not have any R&D capabilities (since their financials did not reflect any fixed assets), the Court held that the AO was justified in initiating reassessment proceedings as the reasons recorded by the AO was prima facie based on tangible material which demonstrated how technology developed by the assessee was routed through its BVI subsidiary. It also noted that the assessee did not disclose true and full facts as it did not reveal whether the BVI entities had any R&D facilities and therefore the reassessment proceedings initiated after a period of 4 years were justified.
***Sun Pharmaceutical Industries Ltd v ACIT – TS-517-HC-2016 (Guj)- )-ITA No. 768 of 2015***

**3036.** The Court dismissed assessee's writ challenging notice issued u/s 148 and upheld reopening of assessment for AY 2009-10 (beyond 4 years period) which was based on fresh material unearthed by the IT department through the investigation wing indicating that purchase made by assessee from one supplier was bogus. It rejected assessee's stand that since the entire issue of genuineness of purchases was examined by AO during original scrutiny assessment, reopening beyond 4 years was invalid and held that the purchases from relevant supplier were admittedly not part of original proceedings, and therefore neither the question of change of opinion nor the concept of full disclosure would have a bearing. It further noted that relevant supplier had received funds of Rs. 4.48 crores from the assessee which were immediately withdrawn in cash and that summons issued by the department on the supplier were not responded to and moreover the supplier was not found to be existing at the given address.
***Gujarat Ambuja Exports vs DCIT-TS- 406-HC-2017(GUJ)- SPECIAL CIVIL APPLICATION NO. 10745 of 2016 dated 11.09.2017***

**3037.** Where the original assessment proceedings were completed u/s 143(3) and the AO reopened the assessment after 4 years on the ground that the assessee had received unsecured loan from JP Infrastructure Pvt. Ltd. in which the shareholders of the assessee held beneficial interest exceeding 10% and therefore, such loan amount received was deemed dividend u/s 2(22)(e), the Court rejected the Revenue's contention that the assessee had not disclosed its share holding pattern to enable the AO to examine the applicability of Section 2(22)(e) at the time of original assessment proceedings. It observed that the assessee had made disclosures about the borrowings from J.P. Infrastructure in the return and did not have any onus to disclose its share holding pattern to enable the AO to examine the applicability of Section 2(22)(e). Accordingly, it held that if the AO desired to scrutinize this aspect of the matter it was always open for him to call upon the assessee to provide for such details as and when necessary. Accordingly, it held that the re-opening of the assessment was bad in law.
***Gujarat Mall Management Company Pvt. Ltd. vs. ITO (2017) 99 CCH 167 GujHC - Special Civil Application NO. 16590 of 2017***

**3038.** The Court quashed the notice u/s 148 for reopening assessment issued after expiry of four years from the end of relevant assessment year, noting that there was no failure on part of assessee as to full and true disclosure at time of assessment and that reassessment proceedings could not be initiated on the basis of a mere change of opinion, wherein during the course of scrutiny assessment, AO had allowed assessee's claim for deduction u/s 80-IB(8A)

after a detailed analysis in relation to the activities carried out by the assessee and the reopening was sought on the ground that income of assessee was not eligible for claim of deduction u/s 80-IB(8A) since assessee was providing professional services of research to its clients, which did not lead to any technology development.

***Lambda Therapeutic Research Ltd. v ACIT – (2018) 90 taxmann.com 308 (Guj) – Special Civil Application no. 16338 of 2017 dated 29.01.2018***

**3039.** The Court set aside the reassessment notice issued u/s 148 by the AO on the reason to believe that assessee's *claim* of deduction u/s 54B with respect to sale of agriculatural land was not sustainable. It noted that the AO in the original assessment proceedings had called for and examined various details with respect to sale and purchase of properties as well as working of capital gains and accordingly, held that the AO had formed an opinion during the original assessment and reopening would result in change of opinion. Further, it held that there was nothing mentioned in the reasons to reopen that assessee had failed to disclose truly and materially all facts necessary for assessment which is an essential pre-condition in cases where re-opening is beyond a period of 4 years, like the present case.

***Devendrasinh Chhatrasinh Vaghela vs JCIT [2018] 97 taxmann.com 173 (Gujarat)-R/SPECIAL CIVIL APPLICATION NO. 3506 OF 2018 dated August 20 2018***

**3040.** Where assessee submitted that the gratuity expenses had been claimed and allowed to it with respect to the scheme which was approved by CIT way back in year 1976 and after that LIC undertook responsibility to manage same and on said basis it had been raising claim year after year right since its inception without any issue being raised by AO in this regard in the past years, the Court set aside the notice issued u/s 148 to initiate reassessment proceedings on ground that the said deduction was wrongly claimed as the gratuity scheme was not approved as per requirements of section 36(1)(v). It held that merely because assessee did not provide an additional declaration in its return that the scheme was approved and was unable to produce a copy of order approved by CIT, it could not be categorized as failure on part of assessee to disclose truly and fully all material facts so as to validate the issuance of impugned notice beyond a period of four years from the end of the relevant assessment year, irrespective of the fact that the AO during the original assessment has not pointedly examined this aspect, nor raised any queries for being satisfied about this claim of deduction.

***Valsad District Central Co-Op. Bank Ltd. v ACIT – (2018) 92 taxmann.com 280 (Guj) – Special Civil Application No. 20801 of 2017 dated 05.02.2018***

**3041.** Where assessee, a partnership firm made payment of certain sum as pension to retiring partners as per partnership deed and the same was allowed in original assessment, the Court held that initiation of reassessment proceedings to disallow said payment opining that since a partner was not an employee of firm, not entitled to pension after retirement and thus, capital in nature, beyond the period of four years from the end of relevant assessment year, was unjustified. It held that all these details were on record before AO, when original assessment proceedings were being made and there was nothing outside of record which could have thrown any light on nature of payment and its deductibility and thus, there was no failure on part of assessee.

***Deloitte Haskins & Sells v DCIT – (2018) 253 Taxman 490 (Guj) – Special Civil Application Nos. 22407 & 22408 of 2017 dated 06.02.2018***

Go to Index

**3042.** Where pursuant to survey, incriminating documents showing receipt of unaccounted cash and professional income by assessee were found and impounded and after accepting to have received the same, assessee had included the income in return filed by him in response to reassessment notice and the same was accepted by AO during assessment proceedings, the Court set aside the notice issued u/s 148 for reopening assessment which was issued on the ground that the figures of unaccounted cash amounts in the entries in impounded material were recorded after dropping one zero and that, accordingly, assessee had not disclosed true particulars of his unaccounted income even in said return. The Court held that there was no new information or material which did not form part of original assessment proceedings and, thus, AO could not issue fresh reassessment notice, that too, beyond a period of four years.
***Jalil Abdulbhai Shaikh v DCIT – (2018) 254 Taxman 26 (Guj) – Special Civil Application Nos. 16898 & 19899 of 2017 dated 06.02.2018***

**3043.** The Court held that where, there was no failure on part of assessee to disclose truly and fully all material facts necessary for assessment AO could not initiate reassessment proceedings after expiry of four (4) years from end of the relevant assessment year merely on basis of change of opinion that unutilised CENVAT credit was to be included in valuation of closing stock.
***Adani Enterprise Ltd. v. Asst.CIT - [2019] 101 taxmann.com 91 (Gujarat) - R/Special Civil App. No. 14446 of 2018 dated October 16, 2018***

**3044.** The Court allowed the writ petition filed by the assesseee against the re-opening notice issued u/s 148 by the AO, after four years from the end of the relevant assessment year. The said notice was issued mainly on ground that the assessee had shown profit from partnership firm 'S' of Rs. 7.65 crores, whereas 'S' had declared profit of Rs. 32.00 crores, according to which the assessee's share would come to Rs. 6.40 crores and thus the excess of Rs. 1.25 crores was required to be added as income u/s 68. It was noted from records that during assessment proceedings, the assessee had pointed out that the amount in question was received from two separate firms and the assessee had also produced returns of said two firms which showed matching figures. Another ground for issuance of the said notice was disallowance u/s 14A, with respect to which the Court held that since the reopening was sought to be made beyond the period of four years and there was no element of failure of the assessee in disclosing full facts, reopening was not permissible on such ground also.
***Alpeshkumar Dahyabhai Patel v ITO - [2018] 95 taxmann.com 48 (Gujarat) - R/SPECIAL CIVIL APPLICATION NO. 17700 OF 2017 dated April 10, 2018***

**3045.** The Court held that where during original assessment proceedings, even though the assessee disclosed the joint development agreement with developer and conversion of land held by it as investment into stock-in-trade but the AO did not invoke section 45(2) to tax consideration as capital gains, either because he overlooked the applicability of the provisions or he thought that the sale of stock-in trade didn't take place during the relevant year, the subsequent reopening for imposing capital gains tax was not proper since there was no non-disclosure of true and correct facts by the assessee and the AO did not invoke section 45(2).
***CIT v Chaitanya Properties (P)Ltd - [2016] 67 taxmann.com 201 (Karnataka)***

Go to Index

**3046.** Where AO had allowed deduction u/s 80-IA(4) after discussing all the relevant contracts and after excluding income from works like which did not fall within definition of 'developing, operation and maintaining any infrastructure facility', the Court held that the reassessment notice issued after four years from the end of the relevant assessment year, without satisfying the twin conditions for invoking the jurisdiction u/s 147/148 viz. (i) failure on the part of the petitioner-assessee to truly and fully disclose the relevant facts, and (ii) that the original AO did not consider or apply his mind to the allowability of deduction u/s 80-IA(4) on the facts and evidence placed before him while passing the assessment order, was unjustified.
***Kotarki Constructions (P.) Ltd. v. ACIT - (2018) 89 taxmann.com 265 (Kar) - Writ Petition No. 61671 of 2016 dated 02.01.2018***

**3047.** In the Original Assessment, the assessee (tea trader) incurred loss which was allowed by the AO and the relevant facts and materials were disclosed fully. The AO reopened the assessment after 4 years stating that as the assessee sold tea which was grown in its own plantation, it would be Agricultural Income and would be liable to be excluded from the loss. As the reassessment was initiatied without detection of new facts and only for the application of Rule 8 (which provides that 40% of the income derived from sale of tea grown and manufactured in India is deemed to be income liable to tax), the Court held that the reassessment was invalid as reassessment proceeding u/s 147 could be permitted after 4 years only on failure on part of the assessee, to disclose materials facts and there was no such failure in the instant case.
***CIT v Parry Agro Industries Ltd. [2018] 95 taxmann.com 100 (Kerala) – ITA NO. 1123 OF 2009 dated 23.05.2018***

**3048.** Where interest income from bank deposits was disclosed by assessee in profit and loss account but it was not disclosed in return, by virtue of Explanation 1 to section 147, the Court held that this resulted in non-disclosure of material facts and therefore held that the AO was justified in initiating reassessment proceedings to tax the impugned interest income.
***CIT v Tata Ceramics Ltd - [2018] 92 taxmann.com 124 (Kerala) - IT APPEAL NO. 1375 OF 2009 - MARCH 8, 2018***

**3049.** The Court quashed reassessment order under section 147 of the Act pursuant to reassessment proceedings initiated after a lapse of 4 years as it amounted to change of opinion. It held that where the reopening of assessment could not stand on the strength of the reasons recorded under section 148(2), the Revenue could not seek to justify the reopening by finding some other point or other post facto after the reopening. Further it held that true and full disclosure contemplated in the first proviso to section 147 refers to ‘all material facts’ and not to a legal provision.
***PVP Ventures Ltd v ACIT (W.A.Nos. 1171 and 1172 of 2015) – TS-712-HC-2015 (MAD)***

**3050.** The assessment was reopened in case of the assessee in order to consider its claim for deduction of broken period interest afresh. The Tribunal recorded a finding that since re-opening was done after end of four years from assessment years in question first provisio to section 147 would squarely apply and, in absence of any failure on part of the assessee to disclose fully and truly material facts necessary for assessment, impugned reassessment proceedings deserved

to be quashed. The Court held that since revenue failed to controvert aforesaid finding recorded by the Tribunal, impugned order setting aside reassessment proceedings was to be upheld.
***Indian Bank v. CIT[2015] 63 Taxmann.com 145(Mad.)***

**3051.** The Tribunal held that no notice u/s 148 could be issued after a period of 4 years from the end of the relevant assessment year wherein the original assessment order was passed under section 143(3) unless it was established that income chargeable to tax had escaped assessment on account of failure of assessee to disclose all material facts fully and truly, and since the assessee had submitted statutory audited accounts under the Companies Act as well as audit report in Form No.3CA and 3CD along with its return as well all other details called for by AO, the AO was incorrect in alleging that income had escaped assessment as the assessee failed to deduct tax on interest paid to a non-resident. Accordingly, the assessment order was quashed.
***ACIT v Nova Petrochemicals Ltd – (2016) 47 CCH 0368 (Ahd Trib) - ITA No. 1154/Ahd/2012***

**3052.** The Tribunal dismissed assessee's appeal against the initiation of reassessment proceeding u/s 148 r.w.s. 147 where the notice u/s 148 was issued on the basis of information received that the assessee-company had received share application money from shell companies / unaccounted sources. The Tribunal rejected the assessee's argument that it had disclosed truly and fully all material facts required, noting that reassessment was initiated within 4 years from the end of the relevant assessment year and thus the proviso to section 147 was not applicable. It also held that since the return was only processed u/s 143(1), it was not a case of change of opinion, as held by the Apex Court in the case of Rajesh Jhaveri Stockbrokers Ltd. [291 ITR 500 (SC)].
***RANJITPURA INFRASTRUCTURE PVT. LTD. & ANR. vs. DEPUTY COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0309 BangTrib - ITA No. 1104 & 1105/Bang/2015, 1110 & 1111/Bang/2015 dated Apr 10, 2018***

**3053.** The Tribunal held that where the assessee submitted his claim during the assessment proceedings vide a revised return and the AO raised queries pertaining to such claim, the assessee cannot be held guilty of failure to disclose all material facts necessary for assessment and therefore held the initiation of reassessment proceedings as invalid.
***ACIT v Mussoorie Dehradun Development Authority – (2015) 45 CCH 0225 Del Trib***

**3054.** The assessee filed his return of income which was processed under Section 143(1) of the Act. Thereafter, the AO re-opened the assessment in view of the information available that the *assessee had purchased farm house land for which excess money, over and above amount mentioned in registered deed, was paid by purchasers.* The AO made addition in respect of the same and completed assessment under Section 147 of the Act. The CIT(A) upheld the order of the AO. The Tribunal quashed such re-assessment proceedings for the following reasons

i. AO mechanically issued notice under Section 148 of the Act on basis of information allegedly received by him from DCIT
ii. Approval granted by competent authority was mechanical approval

Go to Index

iii. There was no allegation in reasons recorded that there was failure on part of assessee to disclose fully and truly all material facts necessary for assessment under Section 147
iv. Notice under Section 148 of the Act was issued after four years from end of assessment year in case where assessment had been framed
v. Reasons recorded did not constitute valid reason to believe for initiating proceedings under Section 147 of the Act

***SUNIL AGARWAL vs. ITO (DELHI TRIBUNAL) (ITA No. 988/Del/2018) dated May 24, 2018 (53 CCH 0090)***

**3055.** The Court held that where the AO had received a report from the DGIT based on which it had The AO sought to reopen assessee's case u/s 147, (after 4 years from the end of the relevant AY) after receiving information from DIT regarding assessee being one of the beneficiaries to a person providing accommodation entries. During assessment proceeding, AO noted that assessee had received a sum from five parties as share capital and various opportunities were given to assessee and notices u/s 131 were also issued to produce directors, however due to non-compliance of notices, AO made an addition and completed assessment and the same was upheld by the CIT(A). The Tribunal observed that, "*the A.O. in the recorded reasons to believe relied mainly upon a letter/report received from the Investigation Wing, however, the report did not form part of the reasons and neither was it annexed to the reasons. Thus, the Tribunal held that if the Revenue had any basis to show that the primary facts were incorrect, the same ought to have been set out in the reasons to believe. Thus, it concluded that the assessee could not be said to have failed to disclose fully and truly all the material facts. This being a jurisdictional issue, the assumption of jurisdiction under section 147 and 148 was erroneous and thus assessee's appeal was allowed.*"

***Peethamabra Buildcon vs ITO- (2018) 54 CCH 0223 Del Trib- ITA No 637/Del/2018 dated 23.10.2018***

**3056.** Where the assessee had filed its return during original assessment proceedings and claimed a deduction under Section 10A of the Act (supported by Form 56F wherein the entire working of deduction was provided) and the AO post examining the claim of 10A deduction allowed the same, the Tribunal held that the AO was not justified in re-opening assessment beyond a period of 4 years from the end of the assessment year to deny the entire 10A deduction on the allegation that freight and insurance charges of a sum of Rs.2.51 crore were not deducted from export turnover leading to losses in the other business activities. The Tribunal upheld the order of the CIT(A) wherein the CIT(A) held that the reassessment proceedings were bad in law as i) the AO did not specify the failure on the part of the assessee to disclose fully and truly all material facts relevant for assessment ii) reassessment was initiated on the basis of information forming part of the original assessment records iii) the issue of claim under Section 10A was completely examined during original assessment proceedings iv) the AO erred even on the merits of the case as the assessee had duly proved that the freight and insurance expenses did not pertain to the export sales under Section 10A. The Tribunal noted that the AO had reopened assessment merely on the basis of the objections of the audit party without any application of mind and accordingly dismissed the Revenue's appeal.

***ASSISTANT COMMISSIONER OF INCOME TAX vs. SAMSUNG INDIA ELECTRONICS PVT. LTD. - (2018) 52 CCH 0184 DelTrib - ITA No. 386/DEL/2015 dated Mar 15, 2018***

Go to Index

**3057.** The Tribunal held that where the assessee submitted details of prior period expenses and amount debited towards gratuity and leave encashment debited to its P&L along with its return of income, the AO was not justified in re-opening assessment beyond the period of 4 years when original assessment was completed under section 143(3) of the Act on the ground that the prior period expenses were not allowable and that the gratuity and leave encashment were partly allowable, since there was no failure on the part of the assessee to file return under section 139(1) or to disclose fully and truly all material facts relevant to that assessment year.
***DCIT v Engineering Projects India Ltd – (2016) 47 CCH 0617 (Del Trib) - ITA Nos. 281/Del/2011, 2028/Del/2012 & 2651/Del/2012 (Cross Objection Nos.45/Del/2011, 239/Del/2012 & 279/Del/2012)***

**3058.** Assessee was an individual and its assessment was completed u/s 143(3) for AY 2007-08 after making an addition towards long term capital gains and after allowing deduction u/s 54 EC towards investments in REC bonds. AO observed that the flat was sold within three years of acquisition and thus the exemption u/s 54EC was not allowable as gain on transfer of asset was STCG. AO was of opinion that income had escaped assessment and issued notice u/s 148 for reopening of assessment on 17.7.2013 i/e 4 years from the end of the relevant AY. CIT(A) confirmed order of AO. However the Tribunal followed CIT Vs Arvind Remedies Ltd and held that AO failed to record anywhere his satisfaction/ belief that income chargeable to tax had escaped assessment on account of failure of assessee to disclose truly and fully all material facts necessary for assessment. On contrary, it was AO who had failed to consider materials placed before him at time of regular assessment and thus the re-assessment was set aside.
***Late Kolisetty Nagesware v ITO (2018) 52 CCH 0417 HydTrib - ITA No. 1220/Hyd/2017 dated 20.04.2018***

**3059.** The Tribunal held that the initiation of the re-assessment proceedings by issuance of notice u/s 148 beyond 4 years, without recording reasons for reopening and without recording a finding that the escapement of income was due to the failure of the assessee to disclose fully and truly all material facts, was void ab initio as recording of the failure on part of the assessee was a condition precedent for initiation of proceedings u/s 147 of the Act. The assessee's appeal was, accordingly, allowed.
***Kushal Kumar Kankaria v. Deputy Commissioner of Income Tax - (2017) 49 CCH 0148 HydTrib (ITA No. 134/HydTrib)***

**3060.** In case of an assessee a Regional Rural Co-operative Bank the AO issued notice u/s 148 for reopening of assessment for already completed assessment year 2008-09 with regard to disallowance u/s 36(1) (viia) and the same was upheld by CIT(A). The Tribunal observed that notice u/s 148 was issued on 24.3.2015 and this date fell after completion of four years from the relevant A.Y. Further, for the relevant AY the assessee duly filed return of income and assessment was completed u/s 143(3) and submitted all material facts necessary for assessment. The Tribunal held that the first proviso to section 147 was squarely applicable on given facts for relevant A.Y. and thus as reopening was beyond four years from end of relevant assessment year the same was held to be invalid and accordingly, reassessment proceedings u/s 147 were quashed.

Go to Index

***Jhabua Dhar KshetriyaGramin Bank vs DCIT- (2018) 53 CCH 0520 Indore Trib- ITA No 106 to 114/2017 dated 05.09.2018***

**3061.** The Tribunal quashed reassessment proceedings initiated by the AO u/s 147 r.w.s. 148 beyond a period of four years as the assessee had truly and fully disclosed the material facts while filing return of income as well during assessment proceedings. The AO had reopened the assessment on ground that interest received on fixed deposit was to be taxed under income from other sources (and not as business income) and, thus, the income chargeable to tax had escaped assessment as assessee had received undue benefit by claiming set off of business losses against such interest income. The Tribunal had also noted that the AO while framing original assessment u/s 143(3), after careful consideration of material on record, had come to the conclusion that income from interest on fixed deposits was to be assessed to tax as business income and not income from other sources

***Ambuja Cement India Pvt Ltd. Vs Asst.CIT [2018] 53 CCH 474 (Kar) ITA No.2600/Mum/2014 DATED AUGUST 27, 2018***

**3062.** The Tribunal allowed assessee's appeal and held the assessment order passed u/s 143(3) r.w.s. 147 to be invalid on the ground that the reopening was barred by the limitation provided in the first proviso to section 147, in a case where the AO had reopened the assessment after expiry of four years from end of relevant year to disallow u/s 40(a)(ia) in respect of failure of assessee to deduct tax at source from payment of channel rent and it was noted that the reasons recorded by the AO didn't point out to any failure on the part of the assessee as contemplated in the first proviso to section 147 (i.e. either to file return or to disclose fully and truly all material facts necessary for his assessment).

***Dipak Kumar Dasbhowmik v ITO – (2018) 92 taxmann.com 75 (Kolkata Trib) – ITA No. 2384 (Kol) of 2017 dated 23.02.2018***

**3063.** The AO issued notice under Section 148 of the Act for reassessment holding that income of assessee had escaped assessment. The CIT(A) upheld order of AO. Tribunal held that since this was a second reopening of assessment beyond period of four years from end of the Assessment Year and since the AO did not allege that assessee had failed to disclose fully and truly material facts necessary for completion of assessment, re-opening of assessment was bad in law as it did not fulfill requirement of the Proviso to Section 147 of the Act and also, no tangible material came to possession of the AO. Thus, re-assessment proceedings were quashed and the Assessee's appeal was allowed.

***CYGNUS INVESTMENTS & FINANCE PVT. LTD. vs. ACIT (KOLKATA TRIBUNAL) (ITA No. 117/Kol/2018) dated May 18, 2018 (53 CCH 0053)***

**3064.** Based on search and seizure operations conducted on the assessee, the AO issued a notice under Section 148 of the Act to the assessee after four years from the end of the Assessment Year. CIT(A) held that reopening of assessment was bad in law. Tribunal held that since the AO did not allege that there was failure on part of assessee to truly and fully disclose all material facts which were necessary for assessment, re-opening of assessment was bad in law as the mandatory requirements of the proviso to Section 147 were not fulfilled. Thus, reassessment proceedings were quashed and the Revenue's appeal was dismissed.

Go to Index

***ACIT vs. ADHUNIK CEMENT LTD. (KOLKATA TRIBUNAL) (ITA No. 1375/Kol/2017) dated May 18, 2018 (53 CCH 0179)***

**3065.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that the assessment made u/s 143(3) r.w.s. 147 could not be sustained, where the AO had reopened the assessment on the ground that since bogus purchases were found during search proceedings in the case of assessee for subsequent years, a similar discrepancy in respect of the purchases of the assessee could be inferred for the year under consideration. It held that in absence of any failure on part of assessee to disclose fully and truly all material facts necessary for its assessment, the concluded assessment of assessee could not be reopened after lapse of period of 4 years from end of relevant assessment year and mere drawing of inferences by the AO for year under consideration, on basis of facts pertaining to subsequent years, could not form basis for reopening assessment.
***DCIT & ORS. v WIND WORLD (INDIA) LIMITED – (2018) 52 CCH 50 (Mum) – ITA No. 5714/Mum/2015 dated 17.01.2018***

**3066.** The Tribunal held that where at time of original assessment, assessee had disclosed all material facts relating to sale of property, and on being satisfied therewith Assessing Officer completed assessment under section 143(3) of the Act, reopening of assessment beyond period of four years on basis of valuation made by stamp duty authorities was unjustified in the absence of some tangible material' coming into possession of AO.
***R.P.Suvarna vs ITO - [2016] 68 taxmann.com 14 (Mumbai-Trib)***

**3067.** The Tribunal quashed the reassessment order passed u/s 147 noting that as per first proviso to section 147 where an assessment is completed u/s 143(3), re-assessment could not be done after expiry of four years from end of relevant AY unless any income chargeable to tax had escaped assessment by reason of failure on part of assessee to disclose fully and truly all material facts and, in the instant case, in the reassessment notice issued u/s 148, the AO failed to refer any material which indicated any such failure on part of assessee. Accordingly, the asessee's appeal was allowed.
***Ayoki Fabricon Pvt Ltd vs Dy.CIT [2018] 54 CCH 0257 (Pun- Trib.)- ITA No.1723/Pun/2014,11/Pun/2015 and 1608/Pun/2015 dated 20.11.2018***

**3068.** The Tribunal held that reopening of completed assessments based on judgments delivered subsequently after completion of assessments was invalid as assessee could not be held guilty of not disclosing all material facts truly and fully necessary for making assessment.
***KALYANCHAND MANAKCHAND LALWANI (HUF) & ORS. vs. INCOME TAX OFFICER & ORS. - (2018) 52 CCH 0162 PuneTrib - ITA NO. 1891/PUN/2014, 1892/PUN/2014, 1893/PUN/2014 dated Feb 23, 2018***

» *Recording & furnishing of reason to believe*

**3069.** In course of appellate proceedings, the Tribunal noticed that order passed consequent to reassessment, had not confirmed addition attributable to reasonable belief of the Assessing

Officer while issuing reopening notice and that reassessment order had made an addition on an issue which was not a subject matter of reasons recorded for reassessment. The Tribunal, thus, set aside reassessment order. The Court held that no question of law arose out of impugned order.

***SLP dismissed in Pr. CIT v. Lark Chemicals (P.) Ltd. [2018] 99 taxmann.com 312/259 Taxman 365 (SC)- SLP (Civil) Diary No. 34183 of 2018 dated October 5, 2018***

**3070.** The AO had not furnished a copy of "reasons to believe" for reopening assessment after issuing notice u/s 147/148, even after the assessee had requested the AO twice for the same. The reassessment proceeded and the AO made several additions which included additions made on grounds other than those included in the "reasons to believe" u/s 147/148. Aggrieved, the assessee relied on Ranbaxy Laboratories Ltd. v. CIT which enunciated the rule that if reassessment proceedings did not culminate in an order making additions of the amounts relatable to the reassessment notice, and rather additions are made of amounts on other issues, the reassessment order would be invalid. The Revenue on the other hand relied on N. Govinda Raju v. ITO wherein it was held that the AO can even assess income with respect to "any other income" which comes to his notice subsequently during course of proceedings. The High Court, in the present case, held that despite there being a failure on part of AO on not adhering to assessee's request to furnish the copy of "reasons to believe", it could not per se invalidate the assessment proceedings. However, it further held that since different views were taken by High Courts in the above two cases, it was appropriate to refer the case to the larger Bench for reason that there was some doubt as to inaccuracy of interpretation of section 147 r.w.Expln.3. The SLP filed by the assessee against High Court's order referring the matter to the larger bench was dismissed by the SC.

***Jakhotia Plastics (P.) Ltd v PCIT [2018] 94 taxmann.com 96 (SC)SPECIAL LEAVE TO APPEAL (CIVIL) NO 12622 OF 2018 dated 18.05.2018***

**3071.** The Court held that where assessee challenged validity of reassessment proceedings on ground that Assessing Officer had supplied two sets of reason, in view of fact that gist of reasons recorded in both sets of communications sent to assessee were same, assessee's objection was to be rejected and validity of reassessment proceedings deserved to be upheld.

***Himmatbhai M. Viradiya v. ITO 25(2)(4) - [2019] 101 taxmann.com 172 (Bombay)- WP. No. 3444 of 2018 dated December 13, 2018***

**3072.** The Court held that the validity of a reopening notice has to be tested on the basis of the reasons recorded at the time of issuing the notice and that no subsequent event or amendment could validate the AO's reason to believe income chargeable to tax has escaped assessment.

***Godrej Industries Ltd v DCIT [Writ Petition No 2664 of 2007 (Bom)] - TS-433-HC-2015(BOM)***

**3073.** The Court held that non-supply of reasons recorded for reopening the assessment by the assessing officer renders the reassessment order bad in law.

***CIT vs. IDBI Ltd (Bombay High Court)***

Go to Index

**3074.** The Court held that where the AO issued a notice under section 148 of the Act to reopen assessment in respect of issue relating to transfer pricing but supplied the said reasons only when the period of limitation to pass reassessment order was going to expire under section 153(2) of the Act, the notice was invalid and liable to be quashed. It observed that the reason for delay relied on by the AO was that the issue was pending before the TPO and held that the TPOs reasons on merits much after the issue of reopening notice did not have any bearing on serving reasons to the assessee.

Further, since the AO failed to dispose of the objections raised by the assessee in contravention of the decision of the Apex Court in GKN Driveshafts India Ltd, the reassessment proceedings were to be set aside.

***Bayer Material Science Pvt Ltd v DCIT – TS-32-HC-2016 (BOM)***

**3075.** The assessee filed a writ petition challenging order u/s 147 of the Act passed by the AO, on the ground that the impugned order proceeded to tax sums received in form of share application amount, which was transferred to "forfeiture of share account", under head income from "profits and gains of business/profession", whereas, notice u/s 148 was issued on a different ground, which, ultimately, did not form part of impugned order. The Court held that section 147 of the Act empowered an Assessing Officer to reopen the assessment, if, AO had reason to believe, that any income chargeable to tax has escaped assessment for the relevant year, "and also bring to tax", any other income, which may attract assessment, though, it was brought to AO's notice, subsequently, albeit, in the course of the reassessment proceedings. However, the purported income discovered subsequently, could be brought to tax, only, if the escaped income, which caused, in the first instance, the issuance of notice under Section 148 of the Act, was assessed to tax. Accordingly, the impugned order was set aside.

***Martech Peripherals Pvt Ltd v. Deputy Commissioner of Income Tax & Anr - (2017) 98 CCH 0137 ChenHC (WP No. 10710 of 2014)***

**3076.** The Court allowed the writ petition filed by the assessee and set aside the reassessment order passed by the AO u/s 147 without furnishing the reasons for reopening, prior to passing the assessment order. It relied on the Apex Court decision in the case of GKN Driveshafts (India) Ltd. V. ITO [2003] 259 ITR 19 (SC) wherein it was held that the AO is bound to disclose the reasons for reopening within a reasonable time after receipt of the assessee's request for furnishing the said reasons. The Court thus held that the impugned order stood vitiated for non furnishing of reasons, which is mandatory u/s 148(2).

***S. PADMALAKSHMI vs. DCIT (2018) 102 CCH 0251 ChenHC – W.P.(MD)No.5974 of 2013 and M.P.(MD)No.1 of 2013 dated July 23, 2018***

**3077.** The Division bench of the Court referred the matter to a larger bench on whether the interpretation of section 147 r.w. Explanation (3) thereto, as given by the co-ordinate bench in Ranbaxy Laboratories Ltd. v CIT (2011) 336 ITR 136 (Del HC), following the decision in the case of CIT v Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom), holding that if reassessment proceedings do not culminate in an order that adds the amounts relatable to the reassessment notice, and rather adds amounts on other issues, the reassessment orders would be invalid. It opined that any explanation only clarifies the provision and cannot go beyond or against the main provisions of the Act and thus the emphasis placed in Jet Airways's case on "and also" undermines the essential objective of Section 147 and unduly restricts and narrows it. The

Division bench also opined that the view of the Karnataka High Court in the case of N. Govind Raju v ITO (2015) 377 ITR 243 (Kar) was a more accurate one wherein it was held that if notice u/s 148 was found to be valid, then addition could be made on all grounds or issues (with regard to 'any other income' also) that may come to notice of the AO subsequently during course of proceedings u/s 147, even though reason for notice for 'such income' which may have escaped assessment, may not survive.
***Pr.CIT v Jakhotia Plastics Pvt Ltd [TS-40-HC-2018(DEL)] – ITA No. 727, 728 & 925/2017 & CM APPL. 31671/2017 dated 22.01.2018***

**3078.** The Court held that reasons recorded for reopening assessment should state that the Assessee had failed to disclose fully and truly all material facts necessary for his assessment in returns as originally filed and reasons recorded should provide live link to formation of belief that income had escaped assessment. Accordingly, where the reasons recorded by the AO were ambiguous and incapable of being understood since they were totally incoherent and a plain reading of the reasons gives rise to a doubt that some lines were missing and also that the reasons were grammatically incorrect, the essential requirements of section 147 of the Act had not been fulfilled and therefore, the proceedings were to be quashed.
***Sabharwal Properties Industries (P)Ltd.& Ors v ITO - [2016] 95 CCH 0046 (DelHC)***

**3079.** The Court allowed assessee's writ petition quashing the reassessment notice issued u/s 148 and subsequent orders noting that reasons were not recorded before the issue of impugned notice on 28.05.2007. It was noted that there was an inescapable inference from records made available that reasons to believe had not been recorded prior to issue of notice u/s 148, but were recorded later. Thus, the Court opined that reassessment was not sustainable where the "reasons to believe" had not been recorded prior to the issue of notice u/s 148, given that it was a mandatory requirement.
***PRABHAT AGARWAL vs. DEPUTY COMMISSIONER OF INCOME TAX [2018] 102 CCH 0191(Del HC) W.P.(C) 8907/2008 DATED AUGUST 16,2018***

**3080.** The Court held that where the AO accepted loss declared by assessee on sale of immovable property in which she was one of co-owners, he could not reopen assessment subsequently on ground that in case of another co-sharer of same property, AO had disputed value and referred question to DVO and, on basis of valuation so presented, he had computed certain capital gain.
***KalpanaChimanlal Shah v ITO [2018] 94 taxmann.com 252 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 5670 OF 2018 dated 09.05.2018***

**3081.** The Court held that where the AO merely mentioned about the impugned transaction in his notice initiating reassessment and did not mention how he had arrived at a reason to believe that income had escaped assessment, such notice was invalid.
***Prakiya Pharmacem v ITO – (2016) 66 taxmann.com 149 (Guj)***

**3082.** The Court allowed the writ petition filed by the assessee challenging the notice issued u/s 148 on the ground that the proceedings initiated were contrary to the statutory requirements as envisaged u/s 149(1)(b) which contemplates reopening in a case where the escaped assessment amount is or is likely to be Rs.1 lakh or more, if the time limit has elapsed 4 years

but not more than 6 years. Noting that the reasons assigned by the AO for initiating reassessment proceedings did not specify that the escaped assessment amounted to or was likely to amount to Rs. 1 lakh or more, it held that it was mandatory for the AO to specify the same in his reasons recorded, to bring the case within the ambit of section 149(1)(b) as it was based on the reasons assigned by the AO, that the CIT / Sanctioning Authority on application of mind could take a decision whether it was a fit case for issuance of notice u/s 148. The Court, thus, quashed the notice issued u/s 148.

***Novo Nordisk India (P.) Ltd. v DCIT - [2018] 95 taxmann.com 225 (Karnataka) - WRIT PETITION NO. 21206 OF 2014 (T-IT) dated June 25, 2018***

**3083.** Where the AO had not furnished the reasons recorded for reopening the assessment to the assessee after the same being sought by the assesssee, the Court set aside the reassessment order passed u/s 143(3) r.w.s. 147 and directed the AO to consider the assessee's request for furnishing the reasons recorded for reopening the assessment within a period of 15 days from the date of receipt of a copy of the Court's order and the assessee to file her objections/reply within 30 days after furnishing of such reasons for reopening so as to enable the AO to consider the same and redo the assessment as expeditiously as possible.

***Manjula Athur v ITO – (2018) 91 taxmann.com 438 (Mad) – W.P. No. 33318 of 2017 W.M.P. Nos. 36760 of 2017 & 2328 of 2018 dated 27.02.2018***

**3084.** The AO initiated reassessment proceedings u/s 147 on the ground of income escaping assessment. The assessee made a specific written request to the AO to supply reasons for believing that the income had escaped assessment but the AO failed to furnish the same. The AO made certain addition u/s 56(2)(vii). On appeal, the CIT(A) did not adjudicate the ground of non-supply of reason raised by the assessee but decided the issue on merits in favour of the assessee. In response to the Revenue's appeal, the assessee filed cross-objection challenging the non-supply of reasons recorded by AO. The Tribunal followed GKN Driveshafts (Supra) wherein it was held that AO was bound to furnish reasons within reasonable time and on receipt thereof, noticee was entitled to file objections to issuance of notice and also AO was bound to dispose of same by passing speaking order. The Tribunal held that non-supply of reasons to assessee was in direct violation of 'GKN Driveshafts', debarring the assessee from exercising his legal right to file objections against issuance of reassessment notice and since reasons recorded by AO to form belief of escapement of income were not communicated to assessee despite specific written request, proceedings initiated u/s 147 culminating in assessment order were illegal.

***ITO & Anr v Rishi Godani & Anr (2018) 52 CCH 0335 AgraTrib - ITA No. 493/Agra/2015 dated 16.04.2018***

**3085.** The Tribunal held that as per section 147 of the Act, the AO could make an addition of any other income found during the course of reassessment proceedings only if he made an addition to income based on the issue for which proceedings were reopened.

***ITO v Amrut Metal Coats – (2016) 46 CCH 0072 Ahd***

**3086.** Pursuant to survey action u/s 133A, the AO had initiated re-assessment proceedings u/s 147 and thereafter the assessee had asked the AO to provide reasons recorded for reopening, which

were however not furnished by the AO and assessment was completed which was upheld by the CIT(A). The Tribunal relied in case of Home Finders Housing Ltd (93 taxmann.com 371) wherein it was held that if order was passed without following the prescribed procedure, the entire proceedings would not be vitiated. In the present case even when the reasons recorded were not furnished, the assessee had participated and cooperated with the AO in completion of assessment proceedings. Thus, the Tribunal remitted the matter back to the file of AO with the direction to provide reasons recorded and follow other required procedures correctly in accordance with law and pass order had to be passed accordingly.

***Regional Oilseeds Growers Co-op Societies Union Ltd vs JCIT- (2018) 53 CCH 0538 BangTrib- ITA No 1352 to 1355/Bang/2016 dated 05.09.2018***

**3087.** The Tribunal held that if reassessment proceedings do not culminate in making addition on ground mentioned for reopening in reassessment notice and addition is made on other grounds, found during course of reassessment proceedings, then entire addition made by AO is liable to be quashed being invalid.

***Simplex Solutions Pvt Ltd vs ITO- (2018) 54 CCH 0015 Bang Trib- ITA No 1339/Bang/2018 dated 14.09.2018***

**3088.** The Tribunal quashed the reassessment proceedings which were initiated on the basis of show cause notice issued by the Central Excise department to the asssessee alleging suppression of value of sales, without taking note of the fact that the order passed by Commissioner of Central Excise pursuant to the said show cause notice was set aside by CESTAT. It held that since the CESTAT's order had neither been stayed nor reversed, it had to be given effect to without any restriction and, therefore, the reasons recorded subsequent to the order of CESTAT were not valid reasons to assumption of jurisdiction to invoke u/s 147.

***ACIT v CENTURY METAL RECYCLING PVT. LTD. (2018) 53 CCH 0586 DelTrib - ITA No. 6657/DEL/2017 & C.O. NO. 36/DEL/2018 (IN ITA No. 6657/DEL/2017) dated July 19, 2018***

**3089.** The Tribunal held that where the reasons recorded by the AO for reopening of assessment merely contained the modus operandi of the alleged entry operator and there was nothing to create or provide nexus to believe that the assessee had introduced its own unaccounted income in the form of share capital, the initiation of reassessment proceedings was bad in law. It further held that the reasons were recorded in a mechanical and casual manner by considering irrelevant and incorrect facts.

***Touch Wood Projects Pvt Ltd v ITO – (2016) 48 CCH 0009 Del Trib – ITA No 6319 / Del / 2012***

**3090.** The Tribunal allowed assessee's appeal against the reopening of assessment and held the same to be bad in law noting that the reasons for reopening were not communicated to the assessee violating the directions of the Apex Court in the case of GKN Drive Shaft [259 ITR 19] (SC)

***N. SRINIVAS v JCIT – (2018) 52 CCH 34 (Hyd Trib) – ITA No. 1400/HYD/2012 dated 12.01.2018***

Go to Index

**3091.** The assessee company was engaged in the business of running hospital at Pune. During the course of assessment proceedings, the AO made ad-hoc disallowance under Section 14A of the Act and thereby computed / assessed loss of the Assessee. Thereafter, the AO reopened the assessment and made certain disallowances. The CIT(A) upheld the order of the AO. The Tribunal observed that the AO failed to provide copies of the reasons recorded to the assessee despite written requests and that there was no tangible material to support reasons relied on by AO in re-assessment proceedings. Accordingly, the Tribunal directed the CIT(A) to pass a speaking order stating the grounds supporting the validation of the re-assessment proceedings. Accordingly, the Assessee's appeal was allowed for statistical purposes.
***ADITYA BIRLA HEALTH SERVICES LTD. vs. DCIT (PUNE TRIBUNAL) (ITA No.248/PUN/2015) dated May 23, 2018 (53 CCH 0077)***

» *Filing & disposal of objection against reassessment*

**3092.** The AO, noticing that the income chargeable to tax had escaped assessment, initiated reassessment u/s 147 to which the assessee raised objection. Without disposing the objection, the AO proceeded to pass the reassessment order. Aggrieved, the assessee had challenged the reassessment order before the High Court on the ground that AO failed to observe the directions to be followed & violated the law declared by the Supreme Court in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 wherein it was held that the AO should pass a speaking order taking into account the assessee's objections against the re-opening. The High Court had however held that the non-compliance of procedure indicated by the SC would not render the reassessment order void but such a violation was a procedural irregularity which could be cured by remitting matter to the authority. Accordingly, the matter was remitted back to lower authority. The SLP filed by the assessee against the said High Court's order was dismissed by the SC.
***Home Finders Housing Ltd. v ITO [2018] 94 taxmann.com 84 (SC) – SPECIAL LEAVE TO APPEAL (CIVIL) NO 12721 OF 2018 dated 18.05.2018***

**3093.** The Court held that if the AO does not follow the law laid down in GKN Driveshafts 259 ITR 19, the reopening proceedings have to be quashed. There is no reason to restore the issue to the AO to pass a further/fresh order because it would give a licence to the AO to pass orders on reopening notice, without jurisdiction (without compliance of the law in accordance with the procedure), yet the only consequence, would be that in appeal, it would be restored to the AO for fresh adjudication after following the due procedure. This would lead to unnecessary harassment of the assessee by reviving stale/ old matters. Accordingly, it allowed assessee's appeal.
***KSS Petron Private Ltd vs ACIT-ITA No. 224 of 2014(Bombay HC) dated 03.08.2017***

**3094.** Where the assessee had filed writ petition to quash the notice issued under section 148, the Court held that writ petition was premature as the petitioner had approached the Court after receipt of reasons for reopening, prior to filing objections. Accordingly, it directed the petitioner to submit its objections to the reasons for reopening as furnished by the first respondent within a period of 30 days from the receipt of a copy of this order and to raise all issues both factual

as well as legal. It further directed the Respondent to consider the same, and on receipt of the submissions, without in any manner being influenced by the observations made in this order pass a speaking order and communicate the same to the Petitioner so as to enable them to evaluate their remedy available under the Income Tax Act.

***Megatrends Inc Represented vs. ACIT & ORS (2016) 97 CCH 0102 ChenHC (W.P. No. 18870 of 2015)***

**3095.** The Court kept the reassessment proceedings in abeyance noting that the AO had committed lapses in not observing the directives issued by the Supreme Court in GKN Driveshafts (India) v ITO and Ors. (2003) 259 ITR 59 (SC) by not passing a speaking order. It was noted that the assesse had raised an objection that it was not permissible to take the sworn statement in action u/s 133A as it does not have evidentiary value and the same was supported by various decisions referred by the assesse during the hearing. The Court directed that the AO to consider the objections filed by the assessee, refer to the decisions relied on by the assessee and pass a speaking order on merits and in accordance with law.

***K. VELAYUTHAM vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0095 ChenHC - W.P.Nos.33917 to 33920 of 2017 & 37620 to 37623 of 2017 dated June 13, 2018***

**3096.** Despite specific objection raised by the assessee-petitioner to the reopening of assessment u/s 147 of the Act, the assessing officer failed to pass a speaking order disposing those objections. Consequently, assessee filed a writ petition and contended that the impunged order was passed just one day prior to the last date for passing such assessment, as required under Section 153(2) of the Act and that the Court at any event could not extend the time period by giving an opportunity to the respondent to further reassess the income of the petitioner. The Court held that where the AO had passed the order of assessment within the prescribed period of limitation and thereafter, if such order was put to challenge before the Court of law and consequently, was set aside on some reason, which in the opinion of the Court was a curable defect, it was always open for the Court to remit the matter back to the AO for passing a fresh order of assessment after curing those defects, even though time prescribed under statute got expired by that time. Accordingly, the impugned order was set aside and the matter was remitted back to the AO to pass a speaking order on the objections raised by the petitioner, after giving an opportunity of hearing to them.

***Home Finders Housing Limited v. Income Tax Officer - (2017) 98 CCH 0136 ChenHC (WP No. 1019 of 2017)***

**3097.** Where the Assessing Officer finalized the re-assessment proceedings without having first disposed of the objections of the assessee, the Court allowed assesssee's writand quashed the assessment order passed by AO and held that the Assessing Officer was bound to furnish reasons within a reasonable time and dispose of the objections filed by the assessee by passing a speaking order. Since the procedure required to be followed was not adhered to, relying on the decision in the case of GKN Driveshafts (India) Ltd, held that the Assessing Officer was not justified in finalizing the assessment without disposing the objections of the assessee

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

Go to Index

**3098.** Where the assessee trust, engaged in running various educational institutions obtained a new PAN for one of its colleges for the purpose of opening a bank account, the Court held that the AO was unjustified in initiating reassessment proceedings in the case of the assessee on the allegation that the college having obtained a separate PAN having substantial bank balance ought to have filed a return of income, moreso when the receipt in the bank account had already been offered to tax by the assessee. Since the AO had not disposed of all the objections filed by the assessee, the Court directed the assessee to file supplementary objections and also directed AO to re-examine the peculiar facts, assessee's original and additional objections and granted the assessee interim relief till the AO passed a fresh order

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

**3099.** Where Petitioner filed a petition before the Court seeking to quash notice issued under section 148, the Court as per the law laid down by the Apex Court in GKN Driveshafts (India) Ltd. Vs. ITO, first the Petitioner had to submit its objections to reasons for reopening and thereafter that the Respondent had to pass orders either accepting or rejecting objections so made and only then could the Petitioner approach the Court for writ remedy. Accordingly, it held that the question of quashing notice did not arise at the stage of providing reasons for the re-opening of assessment without the filing of any objections.

***M. Gurusamy vs. ACIT (W.P. No. 38210 of 2016), Madras HC***

**3100.** The assessee, a Real Estate Promoter, filed his return of income as nil for the relevant assessment year which was passed by the AO u/s 143(3). The AO invoked section 147 and issued a notice u/s 148 to the assessee. Pursuant to the request made by the assessee, the AO furnished the reasons for invoking Section 147 and ultimately passed the reassessment order but failed to dispose off the objections of the assessee that were submitted on receipt of the reasons furnished by the AO for invoking Section 147. The assessee challenged the order before the High Court on the ground that by not passing a specific order after receiving objections, the AO violated the law laid down by the SC in GKN Driveshafts (India) Ltd. v. ITO [2002] 125 Taxman 963 and resultantly the order was bad in law. The issue, whether the non-compliance of a procedural provision would ipso facto make the assessment order bad in law, was answered by the HC in the negative and subsequently held that such a violation in the matter of procedure was only an irregularity which could be cured by remitting the matter to the authority and accordingly decided the matter in favour of the Revenue.

***Home Finders Housing Ltd. v. ITO – [2018] 93 taxmann.com 371 (Madras) – W.A. No. 463 of 2017 dated April 25, 2018***

**3101.** The Court set-aside the reassessment order passed by the AO noting that the AO had passed the final reassessment order one day before the deadline for completion of reassessment proceedings without disposing off the assessee's objections against reasons for reopening assessment and remitted the matter back to his file directing him to pass a speaking order on the objections against re-opening raised by the assessee. It rejected the assessee's contention that it could not remit the matter to AO to redo the assessment beyond the period prescribed u/s 153(2), thereby extending the period of limitation. And held that if the AO passed the order

of assessment within the prescribed period of limitation and thereafter, if such order is put to challenge before the Court and is consequently set aside on some reason, which in the opinion of the Court is a curable defect, it is always open for the Court to remit the matter back to the AO for passing a fresh order of assessment after curing those defects. Citing the distinction between empowering original authority 'to do' and 'redo' the exercise, it held that when the power "to do" was exercised within the statutory period of limitation, the power to "redo" such exercise would not fall under the purview of limitation once again.

***Home Finders Housing Limited [TS-449-HC-2017(MAD)] - Writ Petition No.1019 of 2017***

**3102.** The Court held that where Assessing Officer did not adjudicate objection raised by assessee as to assumption of jurisdiction under section 148 on ground that it was not feasible to pass speaking order on objections and passed impugned order of assessment, assessment order and consequent actions would be illegal. Consequently, the proceedings in question were remitted to the department for fresh
hearing and decision/adjudication according to law.

***Raninder Singh v. CIT, Patiala [2019] 101 taxmann.com 210 (Punjab & Haryana)- CWP Nos. 5872, 5873 of 2018 (O&M)-dated November 29, 2018***

**3103.** The Tribunal held that the order of the AO passed during reassessment proceedings without disposing off the objections filed by the assessee was in violation of the law laid down by the Apex Court in GKN Driveshafts (259 ITR 19 – SC) and therefore the said order was bad in law and liable to be quashed. It refused to restore the matter to the AO to redo the procedure as per law and held by doing so it would enable assessing officers to get away with passing order that were without jurisdiction.

***ABHISHEK SHARMA vs. INCOME TAX OFFICER - (2018) 52 CCH 0251 AgraTrib - ITA No. 64/Agra/2016 dated Mar 21, 2018***

**3104.** The Tribunal held that it was not open to AO to decide objection to notice u/s 148 by composite assessment order, as AO was first required to decide objection of Assessee filed u/s 148 and serve copy of order on Assessee and give some reasonable time to assessee for challenging AOs order. It was further held that reopening based on certain documents found during the course of search at the premises of the company which purchased land from assessee as well, the statement of the Director of the said company which seemed to suggest that the purchase consideration received by the assessee was more than that declared by it, was not valid since assessee had not been given any opportunity to cross examine the Director and even more so since the CEO of the company had confirmed that the consideration of land as declared by the assessee was correct.

***Vijaya Woven Sacks (P) Ltd. v ITO - (2016) 47 CCH 0207 (Bang Trib)***

**3105.** The Tribunal dismissed assessee's appeal and upheld the validity of reassessment order u/s 147, rejecting the assessee's contention that (i) reasons recorded were not stated in the notice issued u/s 148 for initiating reassessment and (ii) its objections were not disposed by a separate speaking order. It held that the statute did *not* require that the notice u/s 148 should disclose the reasons for re-opening of the assessment and only recording of reasons was a condition precedent to re-opening. Further, the Tribunal held that the AO was only required to dispose of the objections of the assessee to the notice issued u/s. 148 by a speaking order and there was

no requirement of a separate order, as in the instant case the AO had disposed of the objections in the assessment order itself which was tantamount to considering all the objections raised by the assessee.
***Dr. RP Patel Vs Asst.CIT [2018] 53 CCH 0460(Cochin Trib) ITA No.586 to 588/Coch/2017 dated August 17, 2018***

» *Change of opinion*

**3106.** The Assessee was engaged in manufacture of cotton piece goods, denim, yarn, caustic soda, salt pulp nd paper, etc. The assessee filed its return claiming deduction under section 80-IC in relation to its paperand pulp unit on basis of audit report in Form 10CCA. During scrutiny proceedings under section 143(3), he Assessing Officer raised specific queries with regard to above claim which was duly responded to by the assessee. The Assessing Officer, thus, allowed a part of deduction claimed. Subsequently, the Assessing Officer initiated reassessment proceedings taking a view that the assessee had made excessive claim of deduction under section 80-IC. The Tribunal finding that the Assessing Officer had made detailed enquiries while allowing the assessee's claim in scrutiny assessment, set aside reassessment proceedings initiated on basis of change of opinion. The High Court held that on facts, there was no infirmity in impugned order of the Tribunal. SLP filed against the High Court order was dismissed.
***Principal CIT v. Century Textiles & Industries Ltd. [2018] 99 taxmann.com 206/259 Taxman 360 (SC) - SLP (Civil) Diary No.(s) 34277 of 2018 dated October 5, 2018***

**3107.** The Apex Court dismissed the Revenue's SLP and upheld that order of the High Court wherein it was held that since the taxability of maintenance and service fees received by the assessee was duly considered by the AO while passing order under section 143(3) of the Act, the re-opening of assessment was invalid. It further held that the assessee was required to disclose full and true material facts and was not under the obligation to explain or interpret the law.
***CIT v Cray Research India Ltd [SPL No. 22031/2013] – TS-509-SC-2015***

**3108.** The Apex Court dismissed the SLP filed by the Revenue against the High Court order setting aside the reassessment notice issued u/s 148, holding that since the question as to how and to what extent deduction should be allowed u/s 10A was well considered in original assessment proceedings itself, initiation of re-assessment proceedings u/s 147, merely because of fact that now the AO was of view that the said deduction was allowed in excess, was based on nothing but a change of opinion. It also held that before interfering with proposed re-opening of assessment on the ground that same was based only on a change of opinion, the Court ought to verify whether the AO in the assessment earlier made had either expressly or by necessary implication expressed an opinion on a matter which was basis of alleged escapement of income. Further, it held that if assessment order was non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the AO any opinion on questions that were raised in the proposed re-assessment proceedings. But every attempt to bring to tax income that has escaped assessment, could not be absorbed by judicial intervention on an assumed change of opinion

even in cases where the order of assessment does not address itself to a given aspect sought to be examined in re-assessment proceedings.

***ITO v TechSpan India (P.) Ltd - [2018] 92 taxmann.com 361 (SC) - CIVIL APPEAL NO. 2732 of 2007 dated April 24, 2018***

**3109.** The assessee claimed deduction being the expenditure incurred by way of interest, advertisement, business promotion, printing and stationery, share application forms, traveling and other expenses which was allowed during original assessment proceedings. The AO based on audit objections re-opened assessment u/s.147 after a period of 4 years proposing to revise assessment order passed earlier under Section 143(3) on ground that income of assessee escaped assessment disallowing expenditure that was earlier allowed. The Court observed that the materials / facts relevant were admittedly and already available in concerned original assessment proceedings and there were no new facts and therefore held that the reassessment was on a mere change of opinion by blindly following the audit objections. Therefore, it held that AO was unjustified in reopening assessment and accordingly set aside the order.

***KUMARS METALLURGICALCORPORATION LTD. vs. JOINT COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0071 APHC - ITTA No. 158 of 2005 dated Feb 9, 2018***

**3110.** The Court allowed the Assessee's writ and quashed reassessment proceeding initiated beyond the period of four year from the end of the relevant AY viz AY 2005-06. It held that the AO erred in issuing notice u/s 148 seeking to deny the benefit under the India – UAE DTAA contending that i) the Assessee had not filed its TRC ii) Asssesse's UAE residence permits was invalid as the Assessee resided outside UAE for more than 6 months. It held that these requirements were introduced w.e.f i) 1/04/2013 and ii) 28/11/2007, respectively and therefore would not apply to the relevant AY. Further, the Court noted that the Assessee during regular assessment had disclosed the relevant information to show that it was entitled for the benefits of DTAA with UAE and therefore reopening was on account of a mere change of opinion which was impermissible.

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

**3111.** Where in case of the assessee-charitable trust (engaged in livestock development), the AO had raised a specific issue with regard to assessee-trust's activity and verified whether its income was covered by term 'charitable purpose' as appearing in section 2(15), the Court admitted the assessee-trust's petition holding that the notice issued u/s 148 on belief that income chargeable to tax had escaped assessment in respect of certain amounts received from State Govt. on the ground that the assessee-trust's activity would not be covered within definition of charitable purpose u/s 2(15), was prima facie a case of change of opinion. Accordingly, it also granted interim stay.

***J.K. Trust Bombay v DCIT – (2018) 91 taxmann.com 269 (Bom) - Writ Petition Nos. 2469 & 2472 of 2017 dated 25.01.2018***

**3112.** Where in the case of the assessee, the original assessment proceedings were completed under section 143(3) and the AO Subsequently, reopened assessment and made additions on account of provision for diminution in value of assets and provision for doubtful debts, which was set aside on the ground of change of opinion by the Tribunal which was in turn upheld High Court, the Court admitted the assessee's writ petition and held that the AO was unjustified in once

again initiating reassessment proceedings on ground that set off of unabsorbed depreciation against book profit was not in order. It held that when the High Court had already set aside reassessment proceedings for relevant assessment year, there was no warrant for issue of further notice under section 148 and even otherwise noted that since assessment had been reopened only on basis of change of opinion and that too beyond period of four years, impugned reassessment proceedings deserved to be quashed.
***Rallis India Ltd. v DCIT - [2018] 89 taxmann.com 88 (Bombay) - WRIT PETITION NO. 328 of 2011 dated 20.12.2017***

**3113.** In the original assessment, the AO had disallowed only Rs.242 crores from the Misc. Expenses claimed of Rs.339.96 crores even after noting that the entire Misc. Expenses was not routed through the P&L A/c. The assessment was sought to be reopened on the ground that the said expense allowed of Rs.97.74 crores were not routed through the P&L A/c and hence, the same was not allowable. The CIT(A) held the reassessment proceedings to be invalid since the reasons recorded for reopening dealt with the very same issue which were subject matter of consideration during the original assessment. The Tribunal upheld the CIT(A)'s order. The Court dismissed Revenue's appeal filed against the said Tribunal's order, holding that the AO had applied his mind during the original assessee over the issue forming the basis of reopening and thus, reopening based on mere change of opinion was not sustainable.
***Pr.CIT v ICICI Bank Ltd – ITA No. 1113 of 2015 (Bom) dated 07.03.2018***

**3114.** The Court dismissed Revenue's appeal against Tribunal's order annulling the reassessment proceedings which was initiated on the reasons that the assessee had failed to furnish a copy of sale deed of land sold during the year and stamp duty value for the said property was higher than the sale consideration adopted by the assessee for computing capital gains. It was noted that the Tribunal had given a finding that the assessee had produced a copy of the sale deed during the regular assessment proceedings and the same was also subjected to consideration as queries were made by the AO on the issue of capital gains on the said sale of land. Further, the Court noted that the reasons recorded did not state that the AO had failed to considered the provisions of section 50C rather it proceeded on the basis the assessee had failed to furnish a copy of the sale deed. Accordingly, it held that once the sale deed was before AO and enquiries were made during the regular assessment proceedings regarding the quantum of capital gains, it must follow that the AO had taken view on facts and in law as in force at the relevant time and, thus, this was a case of change of opinion.
***PR.CIT v vs. INARCO LIMITED - (2018) 102 CCH 0206 BomHC – ITA No. 102 of 2016 dated July 23, 2018***

**3115.** The Court granted interim stay to the reassessment proceedings initiated by issue notice u/s 148, holding that prima facie the said notice was issued without jurisdiction since the reasons in support of the same indicated change of opinion. The assessment was sought to be r-teeopened to disallow the assessee's claim for deduction with respect to provision made for diminution on account of restructured Advances in accordance with the RBI guidelines. It was noted that the assessee had claimed the said deduction in the computation of income and the notes annexed thereto made a reference to the fact of such provision made in accordance with RBI guidelines. Further, it was noted that the assessment order passed by the AO during regular assessment

mentioned about examining the computation of income and certain disallowances were also made but there was no disallowance on account of the said provision. The Court held that it must necessarily be inferred that the AO had applied his mind at the time of passing an assessment order to this particular claim made in the basic document viz. computation of the income by not disallowing it in proceedings u/s 143(3) as he was satisfied with the basis of the claim as indicated in that very document and, therefore, where he accepted the claim made, the occasion to ask questions on it would not arise nor did it have to be indicated in the order passed in the regular assessment proceedings. It was thus, held that issuing the impugned notices on the above ground, prima-facie, amounted to change of opinion.

***STATE BANK OF INDIA vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0087 BomHC- WRIT PETITION NO. 271 OF 2018 ALONGWITH WRIT PETITION NO. 278 OF 2018 dated June 20, 2018***

**3116.** Where the assessee had purchased certain shares at Rs. 10 per share, the value of which were less than Rs. 5 per share as per rule 11UA and there was a complete disclosure of all facts during regular assessment proceedings, the Court held that reassessment notice issued u/s 148 for valuing these shares at Rs. 35 as per valuation by Government valuer was without jurisdiction since the impugned notice indicated a change of opinion, as this very issue namely - valuation of share was a subject matter of consideration during the regular assessment proceedings and further, the Explanation to section 56(2)(vii) states that the fair market value is to be determined in accordance with the Income-tax Rules i.e. Rule 11UA. Accordingly, it admitted the assessee's petition and granted interim relief by staying the reassessment proceedings.

***Shahrukh Khan v DCIT – (2018) 253 Taxman 487 (Bom) – Writ Petition No. 58 of 2018 dated 08.02.2018***

**3117.** During the year assessee filed its return disclosing taxable income under section 115JB and the AO completed assessment under section 143(3) making certain addition to taxable income. However, subsequently, the AO initiated reassessment proceedings taking a view that computation of book profit in assessment order was incorrect, resulting in escapement of income from assessment. The assessee preferred a writ and the High Court opined that, since there was no new material on record to suggest that assessee was guilty of suppression of relevant facts at time of assessment, initiation of reassessment proceedings merely on basis of change of opinion was not justified.

***Binani Industries Ltd vs DCIT- (2018) 98 taxmann.com 472 (CalcuttaHC)- WP No 232 of 2011 dated 27.09.2018***

**3118.** The Court, relying on the decision of the Apex Court in GKN Driveshafts (India) Limited Vs. Income Tax Officer, (2003) 1 SCC 72, held that once the AO proceeded to re-open assessment by issuing notice under section 148 of the Act, the assessee / Petitioner was entitled to seek reasons for issuance of such notice, upon which the AO was bound to furnish the reasons within reasonable time. Noting that in the instant case, the AO had re-opened assessment but had failed to provide the Petitioner with the reasons for re-opening assessment, the Court held that the notice issued by the AO was bad in law. It further held that the AO had acted beyond the ambit of the provisions of Section 147 of the Act by taxing sale consideration arising from

transfer of property situated in Kovalam as capital gains in the hands of the Petitioner, where all the details pertaining to such property had been submitted to the AO during original assessment proceedings wherein no addition was made. Accordingly, it held that the AO proceeded to initiate proceedings under section 147 of the Act on a mere change of opinion which was invalid.
***S.M. KUTUBUDDIN vs. ACIT (2017) 99 CCH 0042 ChenHC W.P. Nos 12801 of 2016 and 11196 and 27344 of 2016 dated 02.06.2017***

**3119.** Where during the original assessment proceedings, the AO had issued a detailed questionnaire covering the payments received by the UK based assessee on account of operation and maintenance of power plant projects and no addition was made therein, the Court held that the AO was not justified in reopening assessment and passing order under section 147 of the Act taxing the receipts as fees for technical services as it amounted to a mere change of opinion. It held that there was no new material brought on record and noted that the assessee had discharged its burden of disclosing fully and truly all material facts before the AO during the original assessment proceedings. Accordingly, it held that the assumption of jurisdiction under section 148 of the Act was not valid.
***DIT (IT) v Rolls Royce Industrial Power India Ltd – (2017) 99 CCH 0019 (Del HC) – ITA 1058, 1061 & 1063 / 2011 dated 18.05.2017***

**3120.** Where the assessee had claimed normal business income as agricultural income, which had been accepted under scrutiny proceedings under section 143(3), and subsequently the AO issued notice under section 148 on the ground that such income had escaped assessment, the Court held that notice for re-opening the assessment was permissible only when it did not amount to change of opinion and was based on tangible material/evidence and therefore, where the claim had been examined by the AO in original assessment and no new tangible material had arisen, the reopening of assessment was invalid. Accordingly, it quashed the notice as well as the consequent proceedings emanating from such notice.
***Technico Agri Sciences Ltd. vs. DCIT & ANR (2016) 97 CCH 0163 DelHC (W.P.(C) 2685/2016)***

**3121.** The Court allowed the assessee's writ petition against the reassessment proceedings which was initiated on the reasons that assessee had not offered for taxation the amount remaining untilized (not applied) out of the amount accumulated as per clause (a) to third proviso to section 10(23C) for specified purpose. It held that the relevant schedule to the returns, clearly disclosed the position vis-a-vis the accumulation of surplus and, thus, "the reasons to believe" recorded were unsustainable as they amounted to an attempt to form a second opinion or carry out a review, which are both impermissible in law in view of the decision in the case of CIT vs. Kelvinator of India Ltd [320 ITR 561 (SC)]. Accordingly, the re-assessment notice and all further proceedings emanating from it were quashed
***ISHAN EDUCATIONAL RESEARCH SOCIETY vs. ITO(E) & Anr. (2018) 102 CCH 0157 DelHC – W.P.(C) 9990/2017 & CM APPL. 40736/2017 (stay) dated 16th July, 2018***

**3122.** The Court held that re-assessment initiated on the basis of an office note prepared by the AO in relation to gifts received by the assessee from non-resident donors which was subject matter of reference to the Foreign Tax Division, was invalid as no information was received from the

Foreign Tax Division about the donations and therefore the reassessment was a mere change of opinion.

***Kulbhushan Khosla v CIT (ITA 33/2004) – TS-731-HC-2015 (Del)***

**3123.** The Court quashed reassessment proceedings initiated since the basis of reassessment viz. belief that the difference in purchase price and book value of shares (the shares were purchased at cost price which was below the book value) purchased by the assessee was taxable under section 28 (as a benefit or perquisite arising from business), was a mere change of opinion as the AO during original assessment proceedings had called for substantial information and satisfied himself at that time, without making any addition. Further, it held that it was difficult to accept that the acquisition of investments by the assessee would lead to income under section 28(iv) of the Act.

***Unitech Holdings Ltd – TS-242-HC-2016 (Del)***

**3124.** The Court held that where the assessee disclosed all material facts relating to tax free dividend income at the time of the original assessment, initiation of reassessment proceedings merely on the basis of change of opinion that the assessee did not offer any expenditure for disallowance under section 14A of the Act was not valid.

***Sun Pharmaceutical Industries Ltd v DCIT – TS-18-HC-2016 (DEL)***

**3125.** The Court quashed the notice issued u/s 148 in a case where the assessee's claim for deduction u/s 80-IA which was rejected by the AO under scrutiny assessment was allowed by the CIT(A) in entirety and the assessment was reopened, after four years from the end of the relevant assessment year, on the ground that amount on which assessee had claimed deduction included interest income assessable under head 'Income from other sources' and same was not derived from infrastructure development activity of assessee, thus, could not be considered for deduction u/s 80-IA. It noted that during the scrutiny assessment, the AO had examined the assessee's claim of deduction u/s 80-IA as well as the assessee's treatment to interest income and assessee's reply to the AO showed that out of the total interest income, the assessee had attributed a sum of certain amount as business income and, thus, it held that there was no failure on the part of the assessee to disclose fully and truly all relevant facts. Further, it held that once AO had rejected claim of deduction u/s 80-IA(4) in its entirety and, in appeal, the CIT(A) had allowed the said claim, it would thereafter be not open for AO to reassess this very claim for possible disallowance of part thereof on some additional ground due to merger of order. The Tribunal, however, rejected the assessee's contention of possible change of opinion holding that since the AO had rejected entire claim, he had no occasion to thereafter comment on a part of such claim relatable to the assessee's interest income.

***Gujarat Enviro Protection & Infrastructure Ltd. v DCIT– (2018) 91 taxmann.com 186 (Guj) – Special Civil Application no. 16163 of 2017 dated 19.02.2018***

**3126.** Where the assessment was completed u/s 143(3) and subsequently the AO re-opened the assessment of the assessee by issuing notice u/s 148 with the reason to believe that i) the assessee had erroneously claimed 1/5th of IPO expenditure as the expenses did not qualify for deduction u/s 35D since the assessee had not commenced new business and ii) the assessee had not disallowed interest expense u/s 14A r.w.Rule 8D(ii) against the dividend income earned,

the Court held that since the claims of the Petitioner were thoroughly scrutinized during regular assessment u/s 143(3), the reasons to believe recorded by the AO were nothing but a mere change of opinion. Accordingly, it quashed the notice issued u/s 148 and the assessment order passed.

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

**3127.** The AO issued notice u/s 148 for reopening assessment of Petitioner (charitable trust) for AY 2009-10 with the reasons to believe that the Petitioner during AY 2011-12 had entered into business transfer agreement with Ananya Finance for Inclusive Growth Pvt Ltd., (AIFG) to transfer on slump sale basis its assets and liabilities for consideration of Rs. 45 crores and at the same time it had given Rs. 45 crores as corpus donation to another trust for subscribing the share capital of AIFG. Therefore, the Petitioner had routed funds to AFIG through the trust in the form of Share Capital and had created complex structure to siphon of funds with a view to earn profit. Further, the Petitioner had borrowed funds from certain financing institutions and had lent to NGOs for lending to poor women and accordingly, this activity of lending money could not be said to be for 'relief to poor' as the Petitioner was not directly reaching out to poor but was acting as a mediator. Accordingly, the Petitioner had been carrying out the activity in the nature of trade, commerce of business and not charitable activity. The Court observed that issue of transfer of assessee's business to AFIG took place during AY 2011-12 and such issue was, therefore, not relevant for AY 2009-10. It further observed that the AO had examined these issues during original assessment. Accordingly, it held that any attempt to re-examine these issues would be considered as change of opinion which was not permissible. Accordingly, it set aside the notice issued u/s 148.

***FRIENDS OF WWB INDIA vs. DCIT (2017) 99 CCH 0123 GujHC Special Civil Application No. 17108 of 2014 dated 13.07.2017***

**3128.** The assessee-company had transferred certain shares of huge market value to its subsidiary company without consideration and this transaction was scrutinized during original assessment and no additions were made by AO. The AO issued notice u/s 148 to initiate reassessment proceedings on the ground that even though capital gain could not be charged, assessee had to pay dividend distribution tax on transferred shares, as such transfer amounted to payment of dividend as per section 2(22)(a). The Court set aside the notice issued u/s 148, holding that once (after scrutinizing the transaction with respect to the issue whether such transaction would invite capital gain tax) the AO had not expressed that assessee had to pay dividend distribution tax in original order of assessment, he could not have a second inning to examine same transaction from a different angle by resorting to reopening of assessment.

***Demuric Holdings (P.) Ltd. v ACIT – (2018) 91 taxmann.com 270 (Guj) – Special Civil Application No. 22517 of 2017 dated 14.02.2018***

**3129.** Where the AO sought to reopen assessment on ground that assessee under-allocated weighted deduction for R&D expenses to unit claiming Sec. 80IA benefit and that deduction u/s 80HHC should be based on profits of business computed after reducing unabsorbed depreciation, the Court upheld the Tribunal order for AYs 2000-01 & 2001-02 quashing the assessee's reassessment proceedings on the ground that reopening was based on mere change of opinion.

Go to Index

Regarding AO's ground for reopening that assessee intentionally submitted voluminous details in a complicated manner so as to make it difficult for the Revenue to comprehend them, the Court ruled that the successor AO could not be permitted to take this ground when the predecessor AO did not find the facts to be difficult while completing the original assessment. It further held that since claim u/s 80IA/80HHC were processed by the earlier AO at length, mere fact that such claim were not examined from a particular angle could not be a ground for reassessment.

***Sun Pharmaceutical Industries Ltd. [TS-388-HC-2016(GUJ)] - TAX APPEAL NO. 128 of 2016 With Tax Appeal No. 129 of 2016***

**3130.** Assessee's case was not selected for scrutiny, thereafter, AO received an information through ITD, wherein it was intimated that assessee sold some scrip named T which was ascertained as a penny scrip and assessee had claimed exemption u/s 10(38), thus the AO issued reopening notice u/s 148.

The Court held that since there was no scrutiny assessment, AO had no occasion to form any opinion on any issue arising out of return filed by assessee and thus concept of change of opinion would therefore have no application. Further, the Court observed that AO had material on record which would suggest that assessee had sold number of shares of a company which was found to be indulging in providing bogus claim of long term and short-term capital gain and the company was found to be a shell company. Thus, the Court held that when the AO had material available with him which he had perused, considered, applied his mind and recorded finding of belief that income chargeable to tax had escaped assessment, re-opening could not and should not be declared as invalid.

***Purviben Panchhigar vs ACIT- (2018) 103 CCH 0145 Guj HC- Special Civil Application No 16725 of 2018 dated 29.10.2018***

**3131.** The AO after due application of mind had allowed assessee to carry forward deficit of earlier year at the time of scrutiny assessment. Subsequently, only on the basis of an audit objection, for making disallowance of adjustment of carry forward deficit on the ground that income of the trust was not computed as business income which is a pre-requisite for allowing carry forward and set off of losses of earlier years against income of current year, the AO reopened the assessment by issuing notice u/s 148. The Court held that the notice was based on a mere change of opinion and, thus, not sustainable. Further, with respect to assesses's contention that the AO had not considered the objections filed by it against the reopening, it held that, in view of decision of GKN Driveshafts (India) Ltd. v. ITO (2002) 125 Taxman 963 (SC), the AO is bound to decide on the objections raised by assessee against reasons recorded for reopening of assessment where such objections were filed prior to framing of assessment order, irrespective of the fact that the objections were submitted belatedly, almost after 100 days after receipt of reasons recorded. Consequently, the Court quashed the notice issued u/s 148 as well as the reassessment order passed u/s 143(3) r.w.s. 147.

***Bharatmaiya Memorial Foundation v DCIT – (2018) 91 taxmann.com 25 (Guj) - Special Civil Application No. 20513 of 2017 dated 25.01.2018***

**3132.** In the case of the assessee-firm which was converted into a private limited company where notice u/s 148 was issued to tax the income upto the date of succession in the hands of the firm,

the Court quashed the notice on the ground that it was issued based on change of opinion. It Court noted that the AO during scrutiny assessment had accepted the return of income declaring nil income upon being convinced by explanation given by assessee that the profit earned till conversion was transferred to successor company and company also paid tax on same.

***Giriraj Steel v DCIT – (2018) 91 taxmann.com 342 (Guj) – Special Civil Application no. 18138 of 2017 dated 31.01.2018***

**3133.** Where during the original assessment proceedings the AO had partly accepted assessee's claim of deduction under Section 80-IA of the Act but the AO subsequently issued notice under Section 148 of the Act on the ground that the assessee had not prepared a separate P&L and balance sheet of its undertaking, the Court noting that the assessee's claim for deduction u/s 80-IA was examined by AO minutely during scrutiny assessment proceedings and that the AO had given detailed reasons for reducing the claim and accepting rest of claim, held that any attempt now on part of AO to modify this position would be based on change of opinion. Accordingly, it set aside the notice issued under Section 148 of the Act.

***AJANTA PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX AND ANOTHER - (2018) 101 CCH 0123 GujHC - SPECIAL CIVIL APPLICATION NO. 15865 of 2016 dated Feb 5, 2018***

**3134.** The Petitioner had claimed deduction u/s 10B which was allowed by the AO in the original assessment. The AO re-opened the assessment u/s 148 on the reason that the deduction u/s 10B was claimed without obtaining the approval from the Board. Rejecting the Petitioner's objection, he passed the order disallowing the assessee's claim u/s 10B. The Court observed that during the original assessment, the AO had asked for the details for the claim of deduction u/s 10B and only after being satisfied, the AO had allowed the deduction. Accordingly, it held that re-opening the case on this ground would amount to change of opinion and accordingly, there was no reason to believe that income had escaped assessment. Accordingly, it set aside the order of the AO.

***E-INFOCHIPS LIMITED vs. DCIT (2017) 99 CCH 0063 GujHC (Special Civil Application No. 2527 of 2017) dated 12.06.2017***

**3135.** The Petitioner, engaged in business of selling, purchasing and developing land, sold plot of land and offered the sum as long term capital gain. During the regular scrutiny proceedings u/s 143(3), the AO observed that the assessee was in business of purchase and development of land and had shown land as stock in trade. Therefore, he held that income earned by the assessee through sale of land was business income and not capital gains. He rejected the contention of the assessee that no notice u/s 143(2) was served on the assessee and therefore the assessment proceedings were not valid. The CIT(A) held that the assessment proceedings were invalid since there was no proof of service of notice u/s 143(2) on the assessee. He did not give any finding on the merits of the case. Subsequently, the AO issued notice u/s 147 for reopening the assessment of the assessee. The Court rejected the Petitioner's contention that there was change of opinion by the AO since this aspect was covered at the time of original assessment proceedings. It held that assessment order passed u/s 143(3) was set aside by CIT on the ground of invalidity and accordingly, since there was no original assessment, there

cannot be case of change of opinion. It further held that merely on the ground that the reasons recorded by the AO proceeded on the same basis on which he had already made additions but which failed on account of setting aside the order of assessment by CIT, that would not preclude the AO from carrying out the exercise of reopening of the assessment.
***KRISHNA DEVELOPERS AND COMPANY vs. DCIT (2017) 99 CCH 0145 GujHC SPECIAL CIVIL APPLICATION NO. 8352 of 2017 dated 25/07/2017***

**3136.** The Court upheld Tribunal's order setting aside the reassessment notice issued u/s 148 as well as the assessment order framed thereon, where the AO had issued the said notice on the reasons that (i) the dividend income, interest income and other income were to be classified as 'Income from Other Sources' instead of business income and (ii) business loss was to be set-off against the capital gains earned during the year. The Tribunal had held that since the business of the assessee itself was that of investing in shares and securities, dividend income was taxable as business income only. Further, the Tribunal had noted that in the preceding year as well as subsequent year and even while framing the original assessment for the year under consideration, the aforesaid incomes were treated as business income and the AO had not given any reason to deviate from the said view while issuing the notice u/s 148 of the Act. Thus, this resulted in change of opinion. With respect to reason (ii), the Tribunal held that the said reason was factually incorrect as the business loss was set-off against the capital gains earned by the assessee during the said year. The Tribunal also noted that the reopening was made on the basis of objection of the audit party and there was no independent application of mind by the AO. Accordingly, the Court held that the Tribunal had arrived at reasonable and sustainable findings based on relevant materials and, thus, dismissed Revenue's appeal.
***CIT v GMR HOLDING PVT. LTD (2018) 407 ITR 439 (KarnatakaHC) - I.T.A. No. 58/2012 dated July 31, 2018***

**3137.** The Court upheld the initiation of reassessment proceedings for AY 1987-88 and 1988-99 to deny the assessee claim of deduction 80HHC (earlier allowed during original assessment) noting that the CIT(A) for the earlier years denied the assessee deduction on the ground that the assessee had not provided a certificate from the export house / trading house to substantiate its claim. The Court held that the order of the CIT(A) constituted information and could not be classified as a change of opinion. Accordingly, it dismissed assessee's appeal.
***BABY MARINE EXPORT vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0114 KerHC - ITA Nos. 12 of 2009 & 30 of 2009 dated Feb 20, 2018***

**3138.** The assessee filed its return of income and assessment was completed under section 143(3). Later on, reassessment notice was issued against the assessee on ground that it had debited prior period depreciation to profit and loss account during relevant assessment year and that expenditure in respect of pre-payment of premium on term loan being expenditure directly in relation to capital base of company was to be disallowed. The Court held that since in assessment order passed, there was neither any discussion nor opinion formed with respect to any of aforesaid issues on which a reassessment was attempted, it could not be said that there was change of opinion in initiating the reassessment proceedings. Thus, the initiation of impugned reassessment proceedings was justified.

Go to Index

***Innovative Food Ltd. v. Union of India [2018] 96 taxmann.com 250 (Kerala HC) -W.A. No. 936 of 2013 WPC No. 5061 of 2013 dated July 6, 2018***

**3139.** The AO made addition on account of two out of four reasons recorded in the notice as reasons for re-opening assessment u/s 148 r.w s.147and no addition was made with respect to the other two reasons which were initially(originally) stated in the said notice. The assessee, relying on Travancore Cements Ltd. v. Asstt. CIT [2006] 4 KLT 344, contended that only if all recorded reasons end in assessment of escaped income, there can be assessment made on issues of escapement detected during course of re-opening. However,the Court, relied on the decision in the case of CIT v. Jet Airways (I) Ltd. [2010] 331 ITR 236 (Bom.) wherein it was held that the decision of Travancore was rendered prior to the insertion of Explanation 3 (which provides that the AO can assess or re-assess the assessee' s income on any issues other than those forming part of reasons for reopening). It held that the present case was not the one wherein addition was made on the issues not originally recorded u/s 148(2) and two of the reasons recorded did conclude in assessment of escaped income. Accordingly, it decided the above issue in favour of the Revenue. However, noting that the AO had only made certain changes in the apportionment of sales of the various business units of the assessee while re-computing the deduction allowable u/s 80IA, during the reassessment proceedings and the said issue on merits was decided in favour of the assessee by the Court in the assessee's own case for another assessment year, it held the reassessment proceedings to be incomplete since it was based on mere change of opinion against the binding precedent of other AY.
***CIT v MalayalaManorama Co. Ltd [2018] 95 taxmann.com 136 (Kerala) – ITA NO 26 OF 2010 dated 29.05.2018***

**3140.** The Court quashed the reassessment proceedings initiated by issue of notice u/s 148 noting that there was no fresh material available with AO for reopening and, thus, in absence of any tangible fresh material, reopening of an assessment after four years cannot be done. During the original scrutiny assessment, the AO had allowed assessee's claim for depreciation u/s 32 with respect to vendor and dealer network and goodwill acquired under a business purchase. However, on basis of an audit objection raised by audit party, AO called for an explanation on the said claim for depreciation and initiated reassessment proceedings. It was further noted that based on the information obtained by the assessee under RTI, it was clear that on objection being raised by audit party (CAG), the AO stood by his decision of allowing the said claim.
***Mobis India Ltd. v DCIT – (2018) 90 taxmann.com 389 (Mad) - Writ Petition no. 11371 of 2016 WMP no. 9819 of 2016 dated 24.01.2018***

**3141.** Where the assessment u/s 143(3) was completed by taking cost of construction of building on the basis of expert approved valuer, the Court held that reopening of assessment after about seven years on the basis of report of departmental valuer would amount to change in opinion and accordingly decided in favour of the assessee by holding that the report of the Departmental valuer was inconclusive and could, at best, be treated as an opinion.
***CIT v. P. Nithilan – [2018] 93 taxmann.com 435 (Madras) – Tax Case (Appeal) No. 834 of 2008 dated April 4, 2018***

Go to Index

**3142.** The assessee owned coffee estates in Coorg and claimed exemption under Section 10(1) on income from the sale of coffee subjected to only pulping and drying. The AO reopened assessment seeking to tax 25 percent of the receipts of the assessee on the ground that the sale of coffee seeds took place after drying and pulping which amounted to sale of cured coffee seeds taxable under Rule 7B. The Court held that the assessee had fully and truly disclosed all facts before the AO during original assessment and therefore held that the reassessment proceedings were based on a change of opinion which was not valid in law.
***P Chidambaram – TS-525-HC-2017 (Mad) W.P.Nos.1589, 1590, 1843 and 1855 of 2017 dated 13.11.2017***

**3143.** After completion of assessment, the AO received a letter from the AO of one PGIIPL stating that PGIIPL had given advances to assessee-firm in which two of its shareholders had substantial interest The AO on the basis of said letter, reopened assessment to consider applicability of section 2(22)(e) The assessee challenged the reopening contending that it was a case of change of opinion as said advances had been discolsed in financial statements. The Court held that when there was no information before the AO regarding shareholding pattern of PGIIPL or its accumulated profits, it could not be said that assessee had disclosed all necessary materials for assessment in this regard and ruled that reopening of assessment was not a case of change of opinion.
***Aswani Enterprises vs ACIT- (2018) 100 taxmann.com 178 (Mad HC)- Tax Case Appeal No 1111 & 1112 of 2008 dated 25.09.2018***

**3144.** Where AO had accepted the claim of assesse for exemption u/s 10(1) with respect to the entire income from sale of raw coffee subjected to pulping and drying (instead of taxing 25% as per Rule 7B) and it was noted that the assessee's such claim was accepted for several years and there were hundreds of other coffee growers whose income were also exempted, the Court held that reopening notice issued only against assessee during the relevant assessment year being mere change of opinion was unjustified
***P. Chidambaram v. ACIT - (2018) 90 taxmann.com 166 (Mad) - Writ Petition No. 29413 to 29416 of 2017 & 31685 to 31688 of 2017 dated 02.01.2018***

**3145.** Where the AO had reopened the assessment u/s 147 r.w. 148, after completion of original assessment, to tax the amount received / recovered by the assesseee as advance from its JV partner on account of its semi finished software product, the Court dismissed Revenue's appeal against the Tribunal's order holding that the reassessment proceedings were based on mere change of opinion. It noted that the said amount recovered was disclosed in the income-tax return and thus it could not be said that income chargeable to tax which had escaped assessment came to the notice only subsequently.
***Pr.CIT v Santech Solutions (P.) Ltd. [2018] 97 taxmann.com 179 (MadrasHC) - T.C. (A) NO. 435 OF 2018 dated July 17, 2018***

**3146.** The assessee had filed the return for the relevant assessment year and the assessment order was passed u/s 143(3). The AO, after a period of four years initiated reassessment proceedings on the ground that the assessee had received External Development Charges (EDC) from land developers which was not offered for tax by the assessee but was instead shown as liability in

the balance sheet under the head 'other liabilities'. A petition was filed by the assessee challenging the validity of the reassessment proceedings. The Court dismissed the petition and stated that the issue relating to the taxability of EDC was not considered by the AO at the time of assessment and there was no disclosure of any material relating to EDC mentioned by the assessee during assessment. Accordingly, the Court upheld the validity of the reassessment proceedings and stated that the reopening of the assessment was not based on change of opinion.

***Greater Mohali Area Development Authority v. DCIT - [2018] 93 taxmann.com 441 (Punjab & HaryanaHC) - CWP NO. 26125 OF 2017 (O&M) dated April 27, 2018***

**3147.** Assessee's original assessment proceedings were concluded under section 143(3) of the Act. Subsequently, the Director General of Central Excise as well as the Income-tax authorities had examined on oath one of creditors from whom the assessee had claimed to have borrowed funds from, pursuant to which the creditor had stated that it had not given any loan to the assessee. It was also noted that neither was the loan accounted for in the creditors accounts nor was the assessee reflected as a debtor therein. Accordingly, based on this information, the AO sought to initiate reassessment proceedings by issuing notice under section 148 of the Act. The Tribunal held that since the basis for reassessment i.e. the information from the Director General of Central Excise and the Income tax authorities was fresh information and the assessment had been reopened within 4 years from the end of the relevant assessment year, the notice issued by the AO under section 148 was valid.

***Bintal D Baxi v ITO – (2017) 50 CCH 0001 (Ahd Trib) – ITA No 920, 921 and 922 / Ahd / 2014 dated 1.05.2017***

**3148.** Where the AO had raised specific question with respect to allowability on loss on sale of stores during original assessment and the assessee had explained same, the Tribunal held that it could be assumed that the AO had indeed formed an opinion about deductibility of loss on sale of stores and, therefore, in absence of any new material, reopening of assessment on said issue was clearly on account of change of opinion and thu bad in law.

***Atul Ltd. v DCIT [2018] 95 taxmann.com 161 (Ahmedabad - Trib.) – ITA No. 1766 (AHD.) OF 2014 dated July 11, 2018***

**3149.** The assessee, engaged in insurance business, was allowed deduction with respect to re-insurance premium paid to non-resident re-insurance company during the original assessment completed u/s 143(3). Reassessment notice u/s 148 was issued on ground that the said payment was made contrary to the provisions of Insurance Act and moreover, without deducting TDS. The assessee contended that the reopening of assessment was only due to change of opinion since the details of re-insurance premium were available before the AO at the time of original assessment and thus the AO could not reopen the assessment. The Tribunal accepted the assessee's aforesaid contention, noting that the assessment was reopened based on the material already available while processing the assessment u/s 143(3) and no new material was found. Therefore, it held the reopening was not justified and accordingly set aside the reassessment order passed.

Go to Index

***Cholamandalam MS General Insurance Co. Ltd. v. DCIT - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018***

**3150.** Noting that the AO initiated reassessment proceedings on account of incorrect valuation of closing stock, incorrect allowance of depreciation, disallowances under Section 40(a) and 43B which were all reflected in the tax audit report filed with the AO during original assessment proceedings, the Tribunal held that notwithstanding the fact that the reassessment proceedings were initiated within a period of 4 years, the proceedings were invalid as they were initiated on the basis of the same set of information and facts available during the original assessment proceedings. It held that merely because the AO did not express any opinion vis-à-vis the aforesaid issues during original assessment proceedings it would not validate reassessment proceedings as there was no fresh tangible material.

***MAHANADI COALFIELDS LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0189 CuttackTrib - ITA No. 300/CTK/2014, 329/CTK/2014 dated Mar 19, 2018***

**3151.** Assessee filed return of income which was assessed u/s 143(3) at an enhanced loss as compared to returned loss. Subsequently, reassessment proceedings were initiated u/s 147 on ground that as per Form 3CD report, assessee had prior period income. AO held that as assessee was following mercantile system of accounting, said prior period income should be added back to assessee's income. Reassessment was completed after making addition of prior period income. CIT(A) dismissed assessee's legal ground challenging validity of reassessment proceedings but deleted addition made by AO. The Tribunal held that, in reply to a query raised by AO, assessee submitted that prior period expenses were not claimed by assessee in its return of income and as profit / loss for year was considered only before claim of previous year expenses, no disallowance was needed in assessment proceedings. Prior period adjustment was also disclosed by way of a Note to audited balance sheet of company. Sales Tax Deferment was disclosed in computation of income of assessee which was filed along with return of income. It was very much evident that all such information was before AO during original assessment proceedings. Therefore, there was no fresh tangible material which had come in possession of AO with regard to prior period income so as to warrant initiation of reassessment proceedings. Said reassessment was based on a mere change of opinion by AO which, under law, he was not entitled to do. Revenue's appeal was dismissed.

***Dy. CIT vs. Jai Parabolic Springs Ltd.- (2018) 53 CCH 0576 DelTrib-ITA No. 4717/Del/2014 & C.O. No. 189/Del/2017 (in ITA No. 4717/Del/2014)-Dated Jul 4, 2018***

**3152.** Assessee filed return of income declaring a loss. Assessee's case was selected for scrutiny. During assessment proceeding, AO noted that assessee had incurred repair and maintenance expenses and same was claimed while filing return of income. AO completed assessment after making an addition on account of various expenses. Notice u/s 148 was issued after recording reasons to believe which were provided to assessee and an opportunity of being heard was given. Notice u/s 143(2) was issued. AR attended proceedings and furnished written submission. Thereafter, re-assessment proceeding was completed after making on account of BOT repair and maintenance expenses. No relief was granted by CIT(A). The Tribunal held

that, total repair and maintenance expenses were mostly paid to labourers who does not have Bank accounts. AO did not have any fresh and new material showing that income of assessee had escaped which was chargeable to tax and therefore re-opening was unjustified. Matters on which case was reopened was already assessed and all materials were available on record. Section 147 permitted to initiate reassessment proceedings only when AO had a reason to believe that income had escaped assessment. In present case, there was no reason to believe that had escaped assessment and matters which was stated in reasons was already explained at duing initial assessment u/s 143(3). AO had wrongly reopened case u/s 147/148. AO proceeded solely on based on return of income, enclosures and information submitted by assessee during initial assessment and all material and information were available with AO at time of initial assessment u/s 143(3). AO had no fresh material to form his opinion regarding escapement of assessment and he had also not found any tangible material to record reasons for reopening of assessment of assessee. Mere change of opinion was not permissible under law. Assessee's appeal was allowed.

***Vishesh Infrastructure P. Ltd. Vs. Asst. CIT-(2018) 54 CCH 0303 DelTrib-ITA No.4464/Del/2018-December 4, 2018***

**3153.** The Tribunal set aside the reassessment proceedings flowing from invalid initiation in the case where the assessee-company's income was assessed during the assessment accepting taxability of operational revenue u/s 44BB @ 10% and the assessment was sought to be reopened u/s 148 on the ground that assessee's income was from 'Fees for technical services', taxable @ 20% u/s 44DA r.w.s. 115A. It held that it was clear case of change of opinion which could not justify initiation of reassessment, noting that –

- the services provided by assessee were found to be covered by provisions of section 44BB
- all necessary details about taxability of assessee's income u/s 44BB were available before AO at time of original assessment
- original assessment was made by the AO with full knowledge of nature of work carried out by assessee
- no fresh material came into existence igniting the AO to initiate reassessment

Further, the Tribunal noted that the provisions of section 44DA were inserted from AY 2011-12 and relied on the jurisdictional High Court in the case of B.J. Services Company Middle East Ltd. & Ors. Vs. DDI(IT) (2011) 339 ITR 169 (Uttarakhand) wherein the said section was held to be prospective and under similar circumstances initiation of reassessment were also held to be invalid.

***IPR INTERNATIONAL LTD. v ADIT (IT) – (2018) 52 CCH 87 (Del Trib) – ITA No. 4408/Del/2011 dated 23.01.2018***

**3154.** The Tribunal held that where there was clear opinion given by AO before Auditor that there was no new evidence that impugned provision was an unascertained liability; the proceedings u/s 147 were not valid as notice u/s 148 issued on account of change of opinion was not valid.

***Nokia India (P)Ltd. v DCIT - (2016) 47 CCH 0176 DelTrib***

**3155.** The Tribunal held that when the AO has no fresh material to form his opinion regarding escapement of assessment and he has no found any tangible material to record the reasons for

reopening the assessment, then reopening of assessment on mere change of opinion is not valid.

***DCIT v Shree Ram Piston & Rings Ltd – (2015) 45 CCH 030 Del Trib***

**3156.** The Court held that re-assessment order passed by the AO was bad in law as it was passed without dealing with the objections of the assessee. It upheld the order of the CIT(A) quashing the reassessment order on the ground that it was on account of a change of opinion for the purpose of review of the original assessment order.

***DCIT v I-Process Services India Pvt Ltd – (2015) 45 CCH 0152 Del Trib***

**3157.** The Tribunal upheld the re-assessment proceedigns initiated beyond 4 yrs period from relevant AY, noting that the assessee had not made full disclosure regarding apportionment of head office (HO) expenses while computing deduction u/s 80IA in respect of its wind power generating undertakings. It noted that while claiming deduction u/s. 80IA, assessee had only considered direct operation and maintenance expenses without charging proportionate HO expenses. It was acknowledged that it could be assessee's position that HO expenses have no nexus with tax holiday units and therefore, there was no necessity to allocate these expenses in the first place, however, such a position of assessee and the related facts were not disclosed by assessee and hence, the issue of allocation of HO expense was not examined at all during the course of original assessment. Accordingly, the Tribunal rejected assessee's contention that there was a change of opinion. However, on merits, it remanded the matter back to AO to recalculate the eligible profits after allocating expenses in the nature of employee costs and other establishment expenses in the ratio of turnover.

***Rajasthan State Mines and Minerals Limited - ITA No 704/JP/2018 -[TS-662-ITAT-2018(JPR)] – dated 05.11.2018***

**3158.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order quashing re-assessment order passed by the AO u/s 147 r.w.s. 143(3) where the assessment was reopened after 4 years from the ended of the relevant assessment year on the ground that income chargeable to tax had been escaped assessment in view of wrong claim made u/s 80IB (4) of the Act and the CIT(A) had held that there was no allegation that the assessee had failed to disclose fully and truly all material facts necessary for assessment (which is prerequisite for reopening after 4 years from the end of the relevant assessment year). Further, the AO had reopened the assessment on mere change of opinion without there being any new material which suggests escapement of income.

***ASSISTANT COMMISSIONER OF INCOME TAX vs. DIAMOND TOOL INDUSTRIES - (2018) 53 CCH 0160 (Mum Trib) - ITA No.6936 to 6938, 6940 & 6941/M/2016 dated Jun 13, 2018***

**3159.** Where the AO re-opened the assessment u/s 148 (beyond 4 years period) on the ground that the assessee had received amount from the company (where he was substantial shareholder) which was taxable as deemed dividend u/s 2(22)(e) and made the additions, the Tribunal observed that the return of income was processed u/s 143(1) and rejected the assessee's contention that in absence of any fresh material after order u/s 143(1), reassessment was based on change of opinion on the ground that an intimation issued u/s 143(1)(a) could not have been held to be an assessment and accordingly, there was no change of opinion. It further rejected

the assessee's argument that the amount received from the company was advance received towards agreement to sell agricultural land and was therefore in the nature of ordinary course of business which could not have been considered as deemed dividend u/s 2(22)(e) noting that sale-deed for the land was not registered, there was no mention in the company's 'books of account' of any transaction in respect of the property under consideration and the company had only 2 directors and the assessee was a director as well as the chairman of the company. Therefore, the transaction was for avoiding deemed dividend taxation. Accordingly, it upheld the reassessment proceedings initiated by the AO.
***Kapil N. Shah [TS-357-ITAT-2017(Mum)] I.T.A. No. 1580/Mum/2013 dated 11/08/2017***

**3160.** The Tribunal held that where the AO, after proper examination of facts and materials, passed the original assessment order, reopening of assessment on the very same set of facts and material would tantamount to a review of assessment on a mere change of opinion and therefore was invalid.
***Tata Communications Ltd v Add CIT – (2016) 46 CCH 0077 (Mum)***

**3161.** The Tribunal quashed reassessment proceedings initiated by the AO based on audit objections wherein the audit party had interpreted section 36(viiia) of the Act in a particular manner pursuant to which it concluded that income had escaped assessment. The Tribunal further noted that the assesse had submitted all relevant details during its regular assessment proceedings and therefore the reopening amounted to review or re-appraisal of facts which was not permissible under section 147 of the Act. It also held that such an observation made by the audit party was beyond its power as it was not empowered to interpret the law with regard to the facts of the case.
***Yes Bank Ltd – TS-463-ITAT-2016 (Mum) - /ITA/1991/Mum/2015***

**3162.** The Tribunal held that re-opening of assessment based on a mere change of opinion pursuant to audit objections was not valid since all necessary facts were placed before the AO during original assessment proceedings.
***ACIT v Suma Shipla Limited - (2015) 44 CCH 0514 Pune Trib***

» *Non-application of mind by the AO*

**3163.** Where High Court set aside reassessment proceedings on ground that said proceedings were based on mere audit objection that there was undervaluation of closing stock. The Apex court dismissed the SLP filed against said order.
***Pr.CIT V. S. Chand & Co. Ltd. - [2018] 100 taxmann.com 353 (SC)- SLP (CIVIL) Diary No. 38560 of 2018 dated November 16, 2018***

**3164.** Assessee's income was assessed u/s 143(1). On ground that income chargeable to tax had escaped assessment proceeds on information received from Deputy Director of Investigation AO was to verify the transactions of assessee u/s 148 and accordingly passed notice. The Court held that, reasons for action of AO did not indicate any application of mind and/or further processing of the information to come to reasonable belief that income chargeable to tax had

escaped assessment. In fact, it proceeded on the basis that transactions were suspicious. Reasons also did not specify, prima-facie, the quantum of tax which had escaped assessment but merely states that it would at least be Rs.1,00,000. Prima-facie, reasons recorded did not indicate reasonable belief of the AO himself to issue the impugned notice. Impugned notice was held to be without jurisdiction.

***Dulraj U. Jain Vs. Asst. CIT & Ors. - (2018) 102 CCH 0198 BomHC-Writ Petition No. 1641 of 2018-dated Jul 6, 2018***

**3165.** The assessee was a company engaged in Investment and trading in shares and debentures. The assessee filed its return declaring a loss which was processed u/s 143(1). The assessment was subsequently reopened by the AO by issuing a notice under Section 148 on the basis of an intimation received from DDIT (Inv.) about Mahasagar Securities Pvt Ltd. entering into suspicious transaction. The High Court dismissed the appeal of the Revenue and held that the re-opening notice had to be issued by the AO on his own satisfaction and not on borrowed satisfaction and stated that the action of the AO was clearly in breach of settled position of law. The Court further held that the intimation received from DDIT (Inv.) only mentioned that Mahasagar Securities Pvt Ltd. was engaged in suspicious transaction but contained no further indication as to how the assessee was linked to the activities of Mahasagar Securities Pvt Ltd. Accordingly, the reassessment order was set aside and the appeal was dismissed.

***PCIT v. Shodiman Investments (P.) Ltd. – [2018] 93 taxamnn.com 153 (Bombay) – IT Appeal No. 1297 of 2015 dated April 16, 2018***

**3166.** The Court upheld the Tribunal's order holding the re-opening of assessment u/s 147 r.w. 148 to be bad in law as it was based on change in opinion of the AO, noting that the assessment was sought to be reopened for disallowing deduction u/s 80-IC on 'other income' whereas the claim of section 80-IC deduction was the subject matter of enquiry by AO in the regular assessment proceedings. It held that the AO was conscious of the claim of deduction made by the assessee u/s 80IC which led to the enquiry and it was for the AO to decide the extent and nature of enquiry in respect of claim u/s 80IC. It further held that when the AO had taken a conscious decision of making enquiry u/s 80IC then it was not open to him to turn around and claim that certain aspects of the claim u/s 80IC were not considered by him. It also rejected the reliance placed by the Revenue on the decision in the case of Export Credit Guarantee Corporation of India Ltd. v. ACIT (2013) 350 ITR 651 (Bom) wherein the re-opening was held to be valid since no query had been raised during the regular assessment by the AO, thus indicating non-application of mind. It held that in the present case, the reasons for re-opening were not premised on non-application of mind by the AO to the claim for deduction u/s 80IC, but it proceeded to exclude 'other income' from the claim on account of omission by the AO during the regular assessment proceedings.

***Pr.CIT v Century Textiles and Industries Ltd [TS-178-HC-2018(BOM)] – ITA No. 1367 of 2015 dated April 4, 2018***

**3167.** The Court upheld the Tribunal's order quashing the reassessment proceedings initiated u/s 148 in a case where the assessment was reopened on the basis of audit part objection against the deduction allowed u/s 80-IB in respect of duty drawback incentive and it was noted that the reasons recorded by the AO to reopen assessment were identical to the audit objections. It held

that there was no material on record to even remotely suggest that the AO had any independent application of mind (without being influenced by audit report).
***CIT v Rajan N. Aswani – (2018) 91 taxmann.com 313 (Bom) – ITA No. 606 of 2015 dated 24.02.2018***

**3168.** The Court held that a complaint or information from a third party before AO, when it is 'definite' information and not mere gossip or guess or rumour, can certainly be a ground for issue of notice u/s 147/148 albeit AO must form an honest belief upon some material, and basis, which supports such belief. However, in the present case, since the AO had merely observed and recorded that the objections raised by the assessee were untenable and wrong, without elucidating and dealing with contentions and issues raised in the objections letter, the Court held that the AO had not applied his mind to the assertions and contentions raised by the assessee and remanded the matter back to AO to pass a fresh order.
***Scan Holding (P.) Ltd. v. ACIT – (2018) 90 taxmann.com 396 (Del HC) - W.P.(C) No. 9800 of 2015 dated 08.01.2018***

**3169.** The Court held that since the AO had mechanically relied on the information received from the investigation wing without coming to an independent conclusion that he had reason to believe that income escaped assessment he had not applied his mind to material on record to substantiate that he had reasons to believe that income of the assessee escaped income and therefore reopening was not justified as it did not satisfy the basic requirement warranting reopening.
***PCIT v G&G Pharma India Ltd – (2015) 94 CCH 0039 Del HC***

**3170.** The Court held that where the AO in this reasons, based on information received from Director of Income Tax, (Investigation)alleged that the assessee had received a sum of money by way of accommodation entries for the purpose of converting its unaccounted cash but there was no link established by the AO between the information received by the him and the conclusions reached by him, the Tribunal was justified in concluding that the proceedings under section 147 and 148 of the Act did not satisfy the requirement of law. It held that the reasons to believe contained not the reasons but the conclusions of the AO one after the other and that there was no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The Court held that the conclusions of the AO were at best a reproduction of the conclusion in the investigation report and therefore amounted to a 'borrowed satisfaction', which could not be the basis for re-opening of assessment.
***Pr CIT v Meenakshi Overseas Pvt Ltd (2017) 99 CCH 0028 DelHC - ITA 692/2016 dated 26.05.2017***

**3171.** The Court, dismissing Revenue's appeal upheld the quashing of reassessment proceeding by holding that the exercise of recording reasons appeared to be ritualistic and formal rather than meaningful. Section 151 of the act clearly stipulated that the CIT a competent authority to authorize the reassessment notice, had to apply his mind and form an opinion. The mere appending of the expression approved said nothing and reasons had to be recorded to agree with the noting put up.

Go to Index

***N.C Cables Ltd (2017) [98 CCH 0010 DelHC]***

**3172.** Where the AO initiated the reassessment proceedings on the reasoning that he had received information from Investigation Wing of department that the assessee had received certain amount by way of loan from a company working as an entry operator and it was noted that the reasons recorded did not proceed only on the information supplied by the Investigating Wing but the AO had applied his mind and formed his belief that the income chargeable to tax had escaped assessment, the Court dismissed the assessee's petition filed against the notice issued u/s 148 holding that there was sufficient material before AO to form a belief that income of assessee had escaped assessment and also in view of the fact that the said belief was formed based on the above referred information received after original assessment was over.
***Jayant Security & Finance Ltd. v ACIT – (2018) 91 taxmann.com 181 (Guj) – Special Civil Application No. 18921 of 2017 dated 12.02.2018***

**3173.** The Court held that reopening of assessment not based on satisfaction of Assessing Officer but on audit objection regarding disallowance under section 14A could not be sustained. Consequently, it quashes the notice issued u/s 148.
***Adani Infrastructure and Developers (P.) Ltdv Asst CIT – [2019] 101 taxmann.com 256 (Guj)-R/Special Civil Application No.14461 of 2018-dated November 20, 2018***

**3174.** The Court allowed assessee's writ petition challenging notice u/s 148 by holding that reopening of assessment under the directives and compulsion of the audit party was impermissible. Even though no specific ground was raised in writ petition claiming that reopening was based on audit objection, the Court took cognizance of the fact that such contention was raised in objections filed before AO which was not disposed by AO. The, Court called upon the Revenue to produce the original assessment file and noted that AO had not accepted the audit objection and had written a letter to CIT as well as Deputy Accountant General of Audit stating the detailed reasons as to why the stand of audit party not correct. Notwithstanding this correspondence, reopening notice was issued on the same issue and, therefore, it was held by the Court that notice was issued under the directive and compulsion of audit party which was not permissible.
***Nabros Pharma Pvt. Ltd. vs. DCIT TS-287-HC-2017(Gujarat) (Special Civil Application No. 18772 of 2014 dated July 12, 2017)***

**3175.** The Court held that where the AO had received a report from the DGIT based on which it had formulated its reasons to believe that the assessee was a beneficiary to accommodation entries passed by two brothers who were well known entry operators, the re-opening of assessment initiated was valid since the AO had a justifiable reason to believe income escaped assessment and while forming his belief he had applied his mind independently.
***Peass Industrial Engineers Pvt Ltd v DCIT – (2016) 96 CCH 0109 (Guj HC) - Special Civil Application No. 3249 of 2016***

**3176.** Where the AO based on the audit objections raised by the audit department of Income-tax, re-opened the assessment of the Petitioner and passed the assessment order without disposing of the assessee's objections u/s 148, the Court set aside the impugned assessment order on the ground that the AO was acting under the dictate of the audit party and did not form his own

judgment which was against the mandate of section 147. Further, it held that as per the Apex Court decision in the case of GKN Driveshafts (India) Ltd. v. ITO and Ors. reported in [2003] 259 ITR 90 (SC), the AO ought to have disposed off the objections of the assessee before proceeding further in the reassessment proceedings. Accordingly, it set aside the order of the AO.

***MEHSANA DISTRICT CENTRAL CO-OP BANK LTD. vs. ACIT (2017) 99 CCH 0057 GujHC Special Civil Application No. 8343 of 2013 dated 19.06.2017***

**3177.** AO noted that in AY 1997-98, certain cash credits representing deposit and share capital were found as unexplained thus, assessment for year 1992-93 was reopened.Notice u/s 148 was issued by holding that deposits collected during AY 1992-93 were also unexplained.Assessee failed to discharge its obligations u/s 68 r/w s. 269SS.Since expenditure in respect of said deposit was not allowed, assessee's income had escaped assessment.CIT(A) granted relief to assessee.ITAT held that there was no failure on part of assessee to disclose fully and truly all material facts during original assessment. It held, if renovation work was done in present AY, it could not be presumed that same work would be done in previous year.When Department presumed 10% of gross receipt would constitute profit for a particular AY, it did not follow that same formula had to be applied to earlier AY and assessment reopened u/s 147/148.That would amount to "presumption and guess work and no valid material to reopen case".Application of mind of ITO should be that of a prudent and reasonable man.Some material might subsequently be discovered along with other discovery which income-tax authority would use to form an opinion that assessee was guilty of concealment of income.Case of Department could not be whimsical. Department could not presume something to have happened 5 years ago just because in AY 1997-98, assessee failed to explain its source of fund u/s 68 and cash fund u/s 269SS.It did not meant that it indulged in similar activity in PY 1992-93. Revenue's appeal was dismissed

***CIT vs. SAHARA INDIA MUTUAL BENEFIT CO. LTD. (2018) 103 CCH 0220 Kol HC- ITA 454 of 2008 With ITA 510 of 2008 dated 21.12.2018***

**3178.** The Tribunal quashed the reassessment notice issued u/s 148, reassessment proceedings and consequent orders, holding that the AO had initiated reassessment proceedings on the basis of borrowed satisfaction without any application of mind (since the AO's conclusion was based on reproduction of conclusion drawn in investigation report and the same could not be held as valid reason to believe after application of mind) and that he did not examine or investigate the information received to establish any nexus with the information. It was noted that the AO had initiated reassessment proceedings on basis of information received from investigation wing that assessee had taken bogus entires and further during post survey proceedings, the assessee had not submitted satisfactory explanation to prove identity, genuineness and creditworthiness of share capital / premium introducers.

***PIONEER TOWN PLANNERS PVT. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX [2018] 103 CCH 0057 (Patiala HC) - Civil Writ Jurisdiction Case No. 10859 of 2018 dated August 02 2018***

**3179.** The assessee was engaged in trading in shares through his broker and claimed a trading loss of a certain amount during the relevant assessment year. In a survey conducted by the PDIT

u/s 133-A at the premises of twelve brokers, it was found that Client Code modification (CCM) was used as a tool for tax evasion and the broker of the assessee was one of them. The AO, on the basis of the above information, issued a notice under Section 148 to the assessee after obtaining necessary satisfaction of the Principal Commissioner. In response to the notice, the assessee filed a writ petition contending that the notice was issued by the AO merely upon borrowed satisfaction without application of mind. The Court dismissed the assessee's petition held that there were several details pertaining to alleged sham transactions between the assessee and his broker which showed that within a period of nine months, there were 74 modifications and it was necessary to ascertain whether these were inadvertent errors or were deliberate adjustments from broker's other clients. Based on such facts, initiation of impugned reassessment proceedings under Section 148 by the AO against the assessee was justified.
***Rakesh Gupta v. CIT – [2018] 93 taxmann.com 271 (Punjab & HaryanaHC) – CWP No. 27068 of 2016 dated April 27, 2018***

**3180.** The Tribunal allowed assessee's appeal against CIT(A)'s order wherein the CIT(A) had upheld the reassessment proceedings initiated by issuing notice u/s 148. The reassessment was sought to be reopened on the ground that information was received from Investigating Wing, based on which the AO was of the view that the source of certain amount invested by the assesse was not disclosed before the department. The Tribunal held that the link between information available with the AO and formation of belief by the AO was missing since from the reasons it was evident that there was no independent application of mind by the AO to material forming basis of reasons recorded. It noted that the AO, in reasons, had just stated information received and his conclusion about alleged escapement of income and as to what the AO did with information made available to him was not discernible from reasons. Further, noting that the material referred to in the reasons on the basis of which the AO had stated to have formed his belief was only supplied to assessee in remand proceedings, where too, objections of assessee were not met, it held that this was in direct contravention of the principles of natural justice.
***DEEPRAJ HOSPITAL PVT. LTD. & ANR. vs. INCOME TAX OFFICER & ANR. - (2018) 53 CCH 0093 AgraTrib - ITA No. 40 & 41/Agra/2017 dated June 01, 2018***

**3181.** Pursuant to information received from the Investigation Wing that assessee was one of the beneficiaries in bogus Long Term/Short Term Capital Gain and bogus gifts etc. (Hawala Entries) the AO reopened the assessment proceedings. The Tribunal quashed such proceedings and held that as there was no independent application of mind by AO to tangible material which forms basis of reasons and the reasons fail to demonstrate link between tangible material and formation of reasons to believe escapement of income, such reasons recorded by AO for reassessment were to be considered as unsustainable.
***Manoj Kumar Jain vs. ITO – [2018] 53 CCH 0009 (Agra ITAT) – ITA No 277/Agr/2017 dated May 4, 2018***

**3182.** An information was received by AO which revealed that assessee had deposited cash in his bank account. AO held that for AY 2011-12, assessee failed to file return of income hence, said amount had escaped assessment which was chargeable to tax under provisions of Act. AO recorded reasons to believe and issued SCN u/s 148 but no compliance was there. AO provided

number of opportunities through issue of notice u/s 142(1) but there was no compliance. Final notice issued u/s 142(1) was received back with comments 'refused'. AO treated it to be deemed service and completed assessment after making addition on account of unexplained cash deposit in bank account. CIT(A) noted that assessee failed to file return of income and no valid source of income was shown to explain source of cash deposit. Said reopening of assessment was valid. Held, AO recorded that assessee made cash deposit in his bank account and based on that AO recorded reasons for reopening of assessment. In reasons, AO recorded about information available with him of cash deposit. There was a contradiction in statement recorded in assessment order as well as in reasons. AO without verifying information had recorded reasons for reopening of assessment. Thus, AO has not applied his independent mind to information received in this regard. Deposit in bank account per se could not be income of assessee. It was mere suspicion of AO based on an incorrect fact that income chargeable to tax had escaped assessment. AO had wrongly assumed jurisdiction u/s 147 for reopening of assessment. Assessee's appeal was allowed.

***Inder Jeet Vs. Income Tax Officer-(2018) 54 CCH 0390 DelTrib-ITA.No.2740/Del/2018, ITA.No.1384 & 2647/Del./2018-Dated Dec 3, 2018***

**3183.** Assessee filed return of income, AO noted that assessee had constructed a building. Assessee declared an investment made in year under consideration. On reference, Valuation Officer estimated cost of construction which showeddifference between value as per valuation officer report and value as declared by assessee. AO recorded reasons for initiating proceedings u/s 147. Assessee submitted that return originally filed might be treated as return filed in response to notice u/s 148. AO held that said difference in cost as reported by Valuation Officer and assessee was treated as unexplained investment u/s 69 and made addition in re-assessment order. CIT(A) granted partial relief to assessee. The Tribunal held that, reopening of assessment is bad in law. AO merely based on report of Valuation Officer recorded reasons for reopening of assessment. Valuation Report was based on mere estimate and as such same per se was not sufficient information for purpose of reopening of assessment u/s 147. Reopening of assessment in this regard was quashed.

***Dr. Mamta Dinesh vs. Dy, CIT-(2018) 54 CCH 0331 DelTrib-ITA No. 1709/Del./2018-Dec 10, 2018***

**3184.** The original assessment of the assessee was concluded under section 143(3) of the Act. The AO based on information received from the Investigation Wing proceeded to reopen assessment after a period of 4 years from the end of the relevant assessment year stating that income of the assessee had escaped assessment on account of unexplained share application money received by it. The Tribunal noted that the issue had already been examined by the AO during the original assessment proceedings and held that the case had been reopened by the AO only on the basis of the information gathered from DIT(Inv.), New Delhi and not by applying his own mind and accordingly held that the notice under section 148 of the Act was invalid.

***Hi Gain Investment Pvt Ltd v ITO – (2017) 50 CCH 0034 (Del Trib)***

**3185.** Assessee filed return of income which was processed by AO.Thereafter, DIT(Inv.) conducted an enquiry wherein, it was found that huge accommodation entry racket was operated by

various groups of operators.Investigation Wing compiled with a report & data of beneficiaries of such entries which revealed that assessee had ploughed back unaccounted money in its business through channel of accommodation entry.Assessee failed to disclose fully and truly all material facts necessary for its assessment, and also tax was paid on such amount.Subsequently, AO issued notice u/s 148 by recording his reasons to believe that assessee's income for AY 2004-05 had escaped assessment.During assessment proceedings, assessee filed confirmation of parties, copies of their accounts.Assessee was asked to produce four parties, namely, M/s. P, M/s. A, M/s. K & M/s. P.K. for his examination for verifying genuineness of transactions against which assessee appeared before AO.However, none were produced for his examination.Assessee also failed to explain as to why a sum received by assessee from those four parties should not be treated as assessee's income.Hence, assessee miserably failed to adduce evidence regarding genuineness of transactions and credit worthiness of concerned parties concerned.AO completed assessment after making addition u/s 68.CIT(A) confirmed action of AO. The Tribunal held that form for recording reasons for initiating proceedings u/s 148 revealed that AO failed to verify assessee's assessment records as it was not traceable.Thus, before coming to conclusion based on report of Investigation Wing, it could not be said that he had applied his mind independently.When it was clearly mentioned in form that assessment records were not traceable, then, how Addl. CIT was satisfied on reasons recorded by AO that it was a fit case for issue of notice u/s 148.AO reopened assessment merely on basis of report of Investigation Wing without independent application of his mind as he was not aware as to whether assessment proposed to be made for first time since records were not traceable and since Addl. CIT in a mechanical manner had given approval, therefore, assumption of jurisdiction u/s 147/148 was not as per law.Impugned reassessment proceedings initiated by AO merely on basis of report of Investigation Wing and due to non-application of mind and thus not sustainable.

***TOPCHEM (INDIA) PVT. LTD. vs. ITO (2018) 54 CCH 0395 DelTrib ITA No.2364/Del/2013 dated 19.12.2018***

**3186.** The Tribunal allowed Revenue's appeal against CIT(A)'s order wherein the CIT(A) had quashed the reassessment notice issued u/s 148 and consequent proceedings on ground that the AO had only relied on the letter by investigation wing stating that assessee had been providing accomodation entries regularly instead of making any independent enquiry for making addition u/s 68. The Tribunal held that the AO had properly recorded reasons by independent application of mind and his assumption of jurisdiction u/s 148 was valid for the reason that (i) the AO in his assessment order had referred to seized material from premises of certain person indicating that assessee was involved in taking and giving accomadation entries (ii) the AO had also observed that details of share capital were not furnished truthfully at the time of original assessment order passed u/s 143(3). Accorindgly, it set aside CIT(A)'s order and remanded the matter to the CIT(A) for fresh disposal on merits.

***Dy.CIT vs Second Realtors Pvt Ltd.[2018] 54 CCH 0244 (Del- Trib.)- ITA No.3189/Del/2015dated 20.11.2018***

**3187.** The Tribunal held that initiation of reassessment proceedings on the basis of information regarding survey by Sales Tax Department (wherein it was found that assessee had suppressed its turnover by maintaining duplicate set of books) without making any enquiry or application of

mind by the AO was not sustainable in law as the condition precedent for issue of notice u/s 148 i.e. reason to believe that income had escaped assessment was lacking. It was noted that the AO had solely used the impugned information regarding survey in letter and spirit for formation of belief of escapement of income without making any enquiry or application of mind, particularly when subsequent proceedings before various authorities of Sales Tax Department were available before issuance of notice u/s 148 and were acknowledged to the AO before passing the reassessment order. Accordingly, the Tribunal held that the reopening of assessment was invalid.

***HARI STEELS & GENERAL INDUSTRIES LTD. vs Dy.CIT [2018] 54 CCH 0176 (Del- Trib.)- ITA No. 6199/Del/2014, dated 05.11.2018***

**3188.** The Tribunal allowed assessee's appeal against the CIT(A)'s order upholding the initiation of reassessment proceeding u/s 147 which was reopened solely on the basis of basis of information received by the AO from Investigation Wing, noting that the Pr.CIT had given the approval for initiating the said proceedings without applying his mind in a slip-shod manner by only writing the word "approved". Therefore, it quashed the reassessment proceedings u/s 147 initiated by issuing the notice u/s 148 on the basis of mechanical approval by the Pr. CIT without recording satisfaction on objective material.

***GORIKA INVESTMENT AND EXPORT (P) LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0168 (Del Trib) - ITA No. 3396/Del/2018 dated Jun 13, 2018***

**3189.** Pursuant to information received from the Investigation Wing, that assessee has received bogus share capital from paper entities, the AO reopened the assessment proceedings and made addition under Section 68. The Tribunal upheld the CIT(A) order deleting the said addition, on the following grounds:

i. There was no specific evidence which could constitute tangible or relevant material to issue notice under Section 148
ii. Notice under Section 148 was issued by the AO mechanically
iii. AO did not apply his mind or make any independent enquiry on the documentary evidences received so as to give rise to a bonafide belief that income of assessee had escaped assessment
iv. No enquiries were confronted to the assessee despite specific request
v. Bank statement of the assessee duly established that the transaction was through banking channel and the said fact was neither denied nor disputed

***ACIT vs. Madhusudan Packaging Pvt. Ltd. – [2018] 53 CCH 0021 (Delhi ITAT) – ITA No 4930 of 2017 dated May 9, 2018***

**3190.** The Tribunal quashed the notice issued u/s 148 for initiating reassessment proceedings where the assessment was reopened solely on the basis of basis of information received by the AO from Investigation Wing and the Pr. CIT had given approval mechanically in a slip-shod manner without recording satisfaction on the objective material. It was noted that the Pr.CIT gave the approval by writing the word "approved", without mentioning how and in what manner he was satisfied. It thus held that it could not be said that the Pr. CIT had applied his mind while giving the approval for reopening the assessment. The Tribunal relied on the decision in the case of Pr. CIT v N. C. Cables Ltd. [ITA No. 335/2015 (Del HC)] wherein it was held that the competent

authority, authorizing the reassessment notice, has to apply his mind and form an opinion and mere appending of the expression 'approved' says nothing.
***GORIKA INVESTMENT AND EXPORT (P) LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0168 (Del Trib) - ITA No. 3396/Del/2018 dated June 13, 2018***

**3191.** The Tribunal allowed the appeal of the assessee and held that in the absence of any independent application of mind the AO could not reopen the assessment u/s 148 acting merely under the information from the Investigation Wing that the Assessee had obtained accommodation entries in the form of share application money. It observed that the AO had arrived at a satisfaction that income had escaped assessment in a mechanical manner without due application of mind as there was no rational connection between the formation of belief and the seized material. Further, it held that there must be direct nexus between the material coming to the notice of the AO and formation of the belief that income had escaped assessmentfailing which no reopening could be done.
***Baseasar Properties Pvt. Ltd. vs. ITO (2017) 50 CCH 0248 Del Trib (ITA No. 5750 /Del/ 2016 dated August 18, 2017)***

**3192.** The Tribunal held that where the AO had initiated reassessment proceedings merely on the basis of information received by him from the Directorate of Income Tax (Investigation) and the reasons recorded were vague and not based on any tangible material and were recorded mechanically without any independent application of mind on part of the AO, the issuance of notice of reassessment was liable to be quashed.
***RK Garg Developers Pvt Ltd v ITO – (2016) 47 CCH 0729 (Del Trib) – ITA No 6558 / Del /2014***

**3193.** The Tribunal held that reassessment proceedings initiated on the basis of information received from the DIT, which did not establish any link or nexus to the alleged escaped income, did not satisfy the requirements of section 147 of the Act. Further since the AO had not applied his own mind to the information the reassessment proceedings were invalid.
***RK Arora & Sons (HUF) v ACIT – (2015) 45 CCH 0078 Del Trib***

**3194.** The Tribunal held that where the AO sought to re-open the assessment of the assessee on the basis of a report from the DIT (Investigation) which stated that the assessee received a cheque from a company used by entry providers to provide bogus entries, the reassessment was invalid since the AO had not applied his mind to come to an independent conclusion that he had reason to believe that the income escaped assessment during the year and that the reasons recorded by the AO were vague and not based on any tangible material.
***ITO v Bajaj & Company Pvt Ltd – (2016) 46 CCH 0102 (Del)***

**3195.** The Tribunal held that the basic requirement for re-opening of assessments was that the assessing officer must apply his mind to the materials on record in order to formulate reasons to believe that the income of the assessee had escaped assessment in case and where no proper satisfaction was recorded by assessing officer and notice under section 148 was issued on the basis of information received from DIT(inv.) Wing that assessee had taken accommodation entry, re-opening of assessment was bad in law.

Go to Index

***Sonia Chowdhry vs. Income Tax Officer (2016) 48 CCH 0115 (DelTrib) ITA Nos. 2036 & 2037/Del/2010***

**3196.** The Tribunal held that reassessment initiated based on audit objections was valid. It stated that reassessment proceedings based on an interpretation of law by the audit party was forbidden but where there was mere communication of law by the audit party, the initiation of reassessment could not be forbidden.
***Rollatainers Ltd v ACIT [ITA No 3134 / Del / 2010] - TS-441-ITAT-2015(DEL)***

**3197.** The Tribunal held that where assessing officer at the point of time when he recorded reasons was not having the material available to apply his mind and form a belief that income has escaped assessment the re-assessment proceedings were bad in law and liable to be quashed.
***Sanjay Gupta vs. ITO (2016) 48 CCH 0124 (Del Trib) (ITA No. 3566/Del/2016)***

**3198.** The Tribunal held that AO cannot initiate reassessment proceedings only on basis of audit objection when he himself was not convinced that the audit objection was correct.
***ACIT v Transport Corporation of India Ltd - (2016) 47 CCH 0238 HydTrib***

**3199.** The assessee had sold a property and offered to tax Long Term Capital Gain thereon. The AO however reopened assessment u/s 147 r/w s.143(3) and adopted the valuation as per the stamp valuation authority for the said property as on the date of sale, thereby making addition. CIT(A) upheld AO's order. However, the Tribunal observed that reopening had been made to meet objections raised by audit party and it was also not disputed that assessment was reopened after four years from end of relevant assessment year and no approval u/s 151 was placed on record. Thus, the Tribunal held that since assessee had placed before AO all relevant material during original assessment proceedings, and under these undisputed facts, action of AO was contrary to settled law, which demonstrated that AO had not applied his mind independently, assessment order was to be quashed being contrary to law.
***Rama Goyal v ITO (2018) 52 CCH 0522 JaipurTrib - (2018) 52 CCH 0522 JaipurTrib dated 12.04.2018***

**3200.** The Tribunal dismissed assessee's appeal wherein the assessee contented that the reassessment proceedings were initiated for AY 2011-12 & AY 2013-14 solely on the basis of the DVO's report showing difference in cost of construction estimated by him vis-à-vis the cost recorded in the books of account, without application of independent mind by the AO. It held that while completing the scrutiny assessment for AY 2012-13, which was the base year in which the reference was made to the DVO, the AO had made an addition for similar difference after applying his mind to the DVO's report and thereafter he had recorded reasons and issued notice u/s 148 for AY 2011-12 & AY 2013-14. Accordingly, it held that the cases relied on by the assessee to contend that reopening only based on valuation report is bad in law was not applicable to the present case.
***GOPAL KUMAR DEEWAN & ORS. V ITO (2018) 53 CCH 0440 JaipurTrib – ITA No. 498/JP/2017, 617/JP/2017, 02/JP/2017, 178/JP/2017, 499/JP/2017, 618/JP/2017 dated July 26, 2018***

Go to Index

**3201.** The Tribunal quashed the reassessment notice issued u/s 148 as well as the subsequent proceedings on the ground that no independent enquiry was carried out by AO himself with respect to the information received from CIT's office revealing that the assessee had received accommodation entries from certain person, before reaching his independent satisfaction that alleged escapement had actually occurred or that assessee in fact was beneficiary of any sum received having nature of accommodation entry. It held that the information given by CIT could only be a basis to ignite/ trigger "reason to suspect" for which reopening could not be made and further examination ought to be carried out by the AO. Thus, the Tribunal held that the reopening was done without satisfying conditions precedent in section 147 and for that reason reassessment was without jurisdiction.
***Premier Vyapaar Pvt Ltd vs ITO[2018] 54 CCH 0178 (Kol- Trib.)- ITA No. 1953/Kol/2017, 1010/Kol/2018 dated 02.11.2018***

**3202.** The Tribunal held that the information given by DIT (Inv) can only be a basis to ignite/ trigger "reason to suspect" and the AO has to carry out further examination to convert the "reason to suspect" into "reason to believe". Thus, if the AO acts on borrowed satisfaction and without application of mind, the reopening is void.
***Devansh Exports vs. ACIT - ITA No. 2178/Kol/2017 dated 15.10.2018***

**3203.** The Tribunal held that the AO was unjustified in reopening assessment under Section 148 of the Act in the case of the assessee [whose return was processed under Section 143(1)] based on information in the report of the investigation wing wherein it was stated that the assessee had obtained profit on account of share transactions which were mere accommodation entries, without appreciating that the assessee had not undertaken any sale transactions during the year under review. Further noting that the reasons mentioned that the assessee sold shares via one broker but the assessment order stated that the shares were sold via another broker, the Tribunal held that the AO had failed to apply his mind to the reasons and had merely relied on the report of the investigation wing without establishing any link between the assessee and the alleged income escaping assessment. Accordingly, it quashed the order passed under Section 147 of the Act.
***LEELA BHANJI GADA & ANR. vs. INCOME TAX OFFICER & ANR - (2018) 52 CCH 0163 - ITA No. 2801/Mum/2014, 2798/Mum/2014 dated Mar 9, 2018***

**3204.** The Tribunal held that though it was found by the Excise Department that there was clandestine removal of material without payment of duty the same could not be relied upon as evidence while extrapolating sales and income in the hands of the assessee during Income-tax proceedings absent AO's independent investigation. Consequently, it deleted the addition made by the AO.
***Bhagyalaxmi Steel Alloys Pvt Ltd v ACIT [ITA Nos 284, 285 & 286 / PN / 2012] - TS-432-ITAT-2015(PUN)***

» *Reason to believe*

Go to Index

**3205.** The Apex Court dismissed Revenue's SLP against HC ruling that tax evasion petitions received by *investigation* wing of income-tax department for previous years could not have formed basis for reopening of assessment for relevant year as AO had not referred to orders passed therein at time of recording reasons for reopening assessment for current year.
***ITO vs Sky View Consultants (P) Ltd.[2018] 96 taxmann.com 424 (SC)- SLP (CIVIL) DIARY Nos.27416 of 2018 dated August 17 2018***

**3206.** *The* Apex Court dismissed the SLP filed by assessee against the High Court's order wherein the High Court had held that merely because reasons recorded by AO proceeded on same basis on which the AO had initially desired to make additions but which failed on account of setting aside order of assessment [since the assessment was carried out without issuing notice u/s 143(2)], it would not preclude AO from carrying out exercise of reopening of assessment.
***Krishna Developers & Co. v DCIT – (2018) 91 taxmann.com 306 (SC) – Petition(s) Special Leave to Appeal (C) No. 23760 of 2017 dated 08.02.2018***

**3207.** The Apex Court dismissed the SLP filed by the assessee against the High Court order wherein it was held that where pursuant to survey, assessee-company had voluntarily disclosed certain amount as its undisclosed income towards allotment of shares to several companies but director of assessee-company failed to give details of investors of companies and investment made by them, reassessment was justified
***Laxmiraj Distributors (P.) Ltd. v Pr.CIT - [2018] 95 taxmann.com 109 (SC) – SLP (CIVIL) (DIARY) NO. 1757 OF 2018 dated April 20, 2018***

**3208.** The Apex Court dismissed the Assessee's SLP against the High Court's ruling which held that where the Assessee claimed land sold to be an agricultural land on the basis of certificate which was subsequently found to be fake by the AO, reopening u/s 148 of the Act was valid.
***Thakorbhai Maganbhai Patel vs. ITO (2017) 78 taxmann.com 201 (SC) (SL (C) 188 of 2017 dated 03.02.2017)***

**3209.** The Apex court quashed the reassessment proceedings initiated by the Revenue seeking to tax enhanced rental income from premises let out by the assessee to the Government where such rental income was enhanced in 1994 with retrospective effect from 1987 on the ground that retrospectivity with regard to the right to receive rent with effect from an anterior date and that income could have said to have accrued or arisen only when the right to receive the amount was vested in the assessee.
***PG & W Sawoo Pvt Ltd v ACIT – TS-251-SC-2016***

**3210.** Where the AO initiated reassessment proceeding in the case of the assessee on the ground that its shares were purchased by fictitious companies, in view of the fact that the assessee had produced voluminous documents from public offices which maintained records of those companies as well as assessment orders passed in case of said companies, the High Court quashed the reassessment proceeding on the ground that the assessee had proved the genuineness of the share transactions. The Apex Court did not find any ground to interfere with the order of the High Court and thereby dismissed the Revenue's appeal.

Go to Index

***PCIT v. Paradise Inland Shipping (P.) Ltd. – [2018] 93 taxamnn.com 84 (SC) – Special Leave Petition (Civil) Diary No (s). 12644 of 2018 dated April 23, 2018***

**3211.** The Apex Court dismissed the SLP filed against the order of High Court wherein it was held that the notice for reassessment for AY 2006-07 issued by the AO based on the assessment order passed for AY 2005-06 despite being aware of the order of CIT(A) setting aside the assessment order (before issuing such notice), was invalid since, in such circumstance, the AO could not have any reason to believe that income chargeable to tax had escaped assessment relying to the order of AY 2005-06.
***DCIT v Atomstroyexport [2018] 95 taxmann.com 260 (SC) SPECIAL LEAVE TO APPEAL (CIVIL) NO 19055 OF 2017 dated 17.05.2018***

**3212.** The AO reopened the assessment as the assessee had not furnished source of investment towards purchase of property. The assessee objected that though the said property was purchased in his name, but the same was purchased in the capacity of trustee / agent. The AO disposed-off the objections after due consideration and held that since no documentary evidences were submitted, the said investment made by assessee had escaped assessment. On writ petition, the Court held that initiation of reassessment by issue of notice under Section 148 of the Act was justified where AO was of the view that assessee's income has escaped assessment.
***Chandra Mohan Tiwari vs. ITO – [2018] 102 CCH 0001 (Allahabad High Court) – Writ Tax No. 572 of 2018 dated May 2, 2018***

**3213.** The Court held that where the assessee furnished explanation on each and every seized document, pursuant to which the AO completed the original assessment, the reopening of assessment based on the observations of the first appellate authority in subsequent years that the AO should have worked out exact figure of bogus purchases on the basis of seized books, was invalid and liable to be quashed.
***CIT v Hemkunt Timbers Ltd – (2016) 67 taxmann.com 231 (All)***

**3214.** The Court held that the AO was justified in invoking reassessment proceedings in the case of the assessee on the basis of information received from the investigation unit stating that the assessee had received a bogus receipt since the assessee failed to produce the donors or establish the creditworthiness of the donors even after being afforded various opportunities to do so.
***Sheela Ahuja v CIT – (2017) 100 CCH 78 (All HC) – ITA NO 24 of 2008 dated 09.11.2017***

**3215.** The Court set aside the order of the Tribunal wherein the assessee's ground challenging the reassessment proceedings was dismissed ex-parte (after the Tribunal denied the assessee's application of adjournment) on the ground that no material and evidence had not been adduced by the assessee in support of its ground on reassessment and that the said issue did not emanate from the order of the CIT(A). The Court noted that the assessee had categorically challenged the said ground before CIT(A) who had dismissed in Para 3 of his order. Further it held that the assessee specifically raised the ground of challenging the reassessment before the Tribunal and that it was for the Tribunal to call for such records and examine whether the

initiation of reassessment proceedings was valid or not as the issue of initiation of reassessment proceedings was a jurisdictional issue. Accordingly, it remanded the issue back to the file of the Tribunal.

***Dr. Javed Akhtar & Anr vs. CIT (2017) 98 CCH 0094 All HC (ITA No. 499 of 2007 dated March 1, 2017)***

**3216.** The Court held that where Assessing Officer reopened assessment of assessee on basis of information received in form of observation of Tribunal in case of assessee's son that certain investments made in mutual funds jointly by assessee and her son should be taxed in hands of assessee as she was first holder, further, assessee failed to explain source of such investments while filling her return under section 139(1), impugned reopening of assessment was justified.

***Smt. S. Rajalakshmi v. ITO 12(3)(3), Mah. - [2018] 100 taxmann.com 68 (Bombay)- ITA (IT) No. 2517 of 2018 dated October 25, 2018***

**3217.** Where the assessee had returned long term capital gains arising out of sale of land but for the purpose of computation of such gains adopted the market value of the land sold (i.e. Rs 2 crore) as its cost as opposed to the written down value of Rs. 1.80 lakhs, the Court dismissing the assessee's writ petition held that the AO was justified in initiating reassessment proceedings and further dismissed the assessee's contention that it was the option of the assessee either to compute capital gain based either upon market value of the asset or the written down value.

***J.B. Amin & Brothers (HUF) v UOI - [2018] 89 taxmann.com 222 (Bombay) - WRIT PETITION NO. 13064 OF 2017 dated 22.12.2017***

**3218.** The Court held that where shares of assessee foreign parent company had been transferred in India by its shareholders and not by assessee company itself, no income arose in hands of assessee company and consequently no income chargeable to tax in India had escaped assessment

***Techpac Holdings Ltd v DCIT - [2016] 67 taxmann.com 280 (BombayHC)***

**3219.** The Court dismissed the writ petition filed by a non – resident assessee against notice for reopening of assessment u/s 148 of the Act since the Petitioner was not forthcoming to produce copies of bank statements from HSBC Bank, Geneva by holding that, in normal course of human conduct if person has nothing to hide and serious allegations/questions are being raised about his funds a person would make available documents that would put to rest all questions in mind of the Authorities and that since the assessee had not done so, she was not entitled to any relief.

***Soignee R. Kohtari v DCIT – TS-207-HC-2016 (BOM)***

**3220.** The Court held that where information was received from investigation wing about certain companies that they were involved in giving accommodation entries of various natures to several beneficiaries and assessee was one of them, information supplied by investigation wing to Assessing Officer, thus, formed a prima facie basis to enable Assessing Officer to form a belief of income chargeable tax having escaped assessment. Thus, assessee's writ petition was dismissed.

Go to Index

***Avirat Star Homes Venture (P.) Ltd. v. ITO - [2019] 102 taxmann.com 60 (Bombay) Writ Petition No. 3340 of 2018 dated December 13, 2018***

**3221.** The Court held that the AO was unjustified in re-opening assessment alleging that the assessee failed to prove the genuineness of the increase in opening capital and opening stock where the assessee had claimed the increase to be on account of a gift and each donor had offered an explanation along with sufficient documentary evidence.
***Prahlad Bhattacharya v CIT – (2016) 95 CCH 0094 (Calcutta)***

**3222.** The Court, relying on the decision of the Apex Court in CIT v PVS Beedies Pvt Ltd [237 ITR 13 (SC)], upheld the reassessment initiated by the AO on the ground of the audit party's opinion in regard to interpretation of the provisions of Section 80IA of the Act.
***Eagle Press Pvt Ltd v ACIT – (2016) 96 CCH 0072 (Chen) T.C.A. Nos. 881 to 884 of 2007***

**3223.** Congress Party had given loan to AJL to write off its debts and restart newspaper National Herald. The said loan was assigned to a non-profit company YI (incorporated and registered u/s 12AA), which subsequently in turn issued shares to assessee at a price less than FMV which was not disclosed in the return of income. The assessment was completed u/s 143(3). Subsequently, the AO issued notice u/s 148 to reopen the assessment which was challenged by way of a writ petition. The Court noted that in their returns, assessee did not disclose event of share acquisition. The assessee submitted that as per second proviso to section 56(2)(vii)(c)(ii), there was no obligation to disclose shares received from non-profit company YI. However, Revenue placed reliance on memorandum of YI which stated that in event of cessation of membership or death of a member/shareholder, shares of outgoing member would be sold at FMV and reference to monetary nature of transaction i.e. FMV, meant that promoters and shareholders of company YI visualized that shares of YI (a not-for-profit company) could increase depending on its activities and income derived by it. The Court, thus concluded that assessee's argument about non-disclosure of their interest upon acquiring shares (on account of their non-taxability at that stage) was unpersuasive and held that since assessee had failed to disclose primary fact of taxing event i.e. allotment of shares in their returns, initiation of reassessment proceedings u/s 147 was justified.
***Sonia Gandhi vs ACIT- (2018) 97 taxmann.com 150 (DelhiHC)- WP No 8293 of 2018 dated 10.09.2018***

**3224.** Where the assessee's claim for provision for bad and doubtful debts was considered by AO in original assessment completed under section 143(3), the Court dismissed revenue's appeal and quashed reassessment proceedings initiated under section 147/148 to disallow the bad debts on the ground that as the reassessment was based on the reappraisal of existing materials.
***Tata Power Delhi Distribution Ltd. [TS-638-HC-2016(DEL)] (ITA 689/2016)***

**3225.** The Court held that where the assessee was earning income from licensing property and the said income had been charged to tax as business income, the AO was unjustified in re-opening assessment seeking to tax the impugned income as income from house property on the ground that the assessee had camouflaged its rental income under the head business and profession

to claim higher deduction, since there was no new material / information on recordfor him to have initiated reassessment proceedings.
***Agya Ram v CIT – (2016) 96 CCH 0103 (Del HC) - ITA 290/2004, 291/2004, 292/2004, 293/2004***

**3226.** The Court held that the AO having completed assessment under section 143(3) of the Act, could not initiate reassessment proceedings merely on basis of direction issued by Commissioner that certain disallowance was to be made in terms of section 14A
***Munjal Showa Ltd v DCIT – (2016) 67 taxmann.com 359(Delhi)***

**3227.** The Court dismissed the assessee's writ and upheld reopening of assessment u/s 147 for AY 2007-08 and AY 2008-09 (beyond completion of 4 years of relevant AY) on ground that assessee had followed wrong method of accounting for amalgamation resulting in excessive depreciation claim on goodwill while computing profits u/s 115JB. Based on the Company Court order which came to the notice of the Revenue during subsequent years assessment proceedings, the Revenue claimed that since all assets and liabilities had been transferred to assessee company in totality, the 'pooling of interest' method was the appropriate method for accounting and not the 'purchase method' followed by assessee. Accordingly, the Court held that fresh materials could also include subsequent years' assessments if AO could see the same pattern of claim being made in earlier years and therefore held that reassessment was warranted where the AO came across material subsequently, such as fresh facts, or materials which pertain to a previous assessment or assessment orders. Regarding assessee's claim that the scheme of amalgamation was approved by Company Court, the Court observed that the Company Court had no occasion to conduct a detailed inquiry about the appropriateness of the method nor was the Court competent to return conclusive findings on this issue, thus, it could not ipso facto bar any inquiry by the AO.
***JOHNSON PRODUCTS PRIVATE LIMITED v ACIT - [TS-586-HC-2017(DEL) - W.P.(C) 2697/ 2015 dated 08.12.2017***

**3228.** Where the AO, based on the DRP Directions for AY 09-10& the tax evasion petition filed by the Assessee's share holder raising issues of tax evasion by NDTV, issued notice u/s 148 contending that Rs. 405.09 Cr. invested by the Assessee in Step Up Coupon Bonds of its UK subsidiary was income that escaped assessment & represented the Assessee's unaccounted money, the Court dismissed the Assessee's contention that the documents pertaining to the impugned investment were submitted during original assessment & held that mere disclosure of a transaction at the time of the original assessment proceedings does not protect the assessee from a re-assessment u/s. 147 if AO has information that indicates that the transaction is sham or bogus.Further, it upheld the provisional attachment of the Assessee's immovable properties, non-current investments and refund of Rs.19.88 crores due to NDTV for AY 2008-09 & held that the AO was justified in exercising its extra ordinary power keeping in mind the estimated position of demands that would likely arise from re-assessment for AY 2008-09 and assessment proceedings for AYs 2010-11 to 2013-14 as well as the declining net worth of NDTV& tax evasion allegedly conducted by NDTV by floating paper companies to raise approximately Rs.1100 crore and later dissolving them.

Go to Index

***NDTV vs. DCIT TS-333-HC-2017 (W.P.C 9120 & 11638/2015(Delhi HC) dated August 10, 2017)***

**3229.** The Court held that if an expenditure or a deduction is wrongly allowed while computing the taxable income of the assesse, the same could not be brought to tax by reopening the assessment merely on account of the AO subsequently forming an opinion that he had erred in allowing the expenditure or deduction earlier.
***Turner Broadcasting Systems Asia Pacific Inc v DDIT – (2015) 94 CCH 0043 Del HC***

**3230.** The Court held that where loss attributable to Indian operations of assessee, a UK based company, operating BBC world channel had been accepted after examining relevant vouchers and statement of loss provided by assessee, reassessment could not be made merely because while assessing income in respect of business in question for other assessment years, Assessing officer had not relied on accounts produced by assessee and had estimated assessee's income on a presumptive basis.
***BBC Worldwide Ltd v ADIT – TS-162-HC-2016 (DEL)***

**3231.** The Court held that where pursuant to issuance of re-assessment notice, assessee itself had accepted that original return filed by it was incorrect for reason that assessee had failed to disclose income earned by way of royalty and fee for technical service and, accordingly, declared additional income, reassessment u/s 147 was justified. It also noted the fact that Tax at Source had been deducted on royalty and fee for technical services would not matter, as the returns filed were wrong and required a correction and modification and deduction of tax at source and failure to disclose taxable income were different and distinct aspects, thus reassessment was justified.
***Samsung Electronics Co Ltd vs DCIT (Intl Tax)- 98 taxmann.com 306 (Del)- ITA No 969 of 2018 dated 04.09.2018***

**3232.** Where the AO issued notice u/s 148 alleging that income had escaped assessment in the hands of the assessee as it had claimed deduction u/s 80IC but filed its return after a delay of 46 days, the Court noting that the assessee's claim was not disputed on merits, quashed the notice, order disposing of the objections and consequent assessment order. It also set aside the rejection of application filed before CBDT for condonation of delay in filing ROI observing that the delay in the assessee's case was not so extraordinary that it couldnot be condoned.
***Fiberfill Engineers vs. DCIT (2017) 99 CCH 0188 DELHC (W.P. (C) No. 3935/2015 dated 10/08/2017***

**3233.** The AO had issued notice under section 147 to reopen assessment on ground that assessee had deposited certain cash post-demonetization, while its return of income for relevant assessment year did not justify such cash deposit and, thus, the AO had reason to believe that income to that extent had escaped assessment. The Court observed that in pre-notice queries, the AO had asked assessee to explain source of aforesaid cash deposit and the assessee had disclosed such source being her own bank accounts and their withdrawals matching quite closely to deposits. Thus, the Court held that the AO having no reason to discard such disclosure by the assessee was not justified in issuing notice of reassessment.

Go to Index

***Swati Malove Divetia vs ITO- (2018) 98 taxmann.com 447(Guj)- Spcial Civil Applicatio No 7628 of 2018 dated 10.09.2018***

**3234.** The AO in the present case issued notice u/s 147 on the ground that assessee had sold a land during the year and capital gains on such transaction had escaped assessment. The assessee challenged the notice on filing writ petition and contended that she had never sold land and sale deed was fraudulently executed. The Court held that it could not consider the validity of the the said sale transaction and the assessee must submit to jurisdictional AO who alone could ask relevant questions in this respect and take a final decision while framing reassessment, thus dismissed assessee's petition.
***Abha Vinaykumar Jain vs ITO- (2018) 99 taxmann.com 6 (Guj HC)- Spcl Civil Application No 14841 of 2018 dated 25.09.2018***

**3235.** The Court held that where during scrutiny assessment AO carried out minute possible detailed inquiry with respect to cash purchases of raw cotton from individual farmers and assessee had produced every person who AO required for purpose of ascertaining factum of sale, reopening of assessment after four years for further inquiry was justified.
***Jaydeep Cotton Fibres (P.) Ltd. v ACIT [2018] 95 taxmann.com 227 (Gujarat) – SPECIAL CIVIL APPLICATION NO.20187 OF 2017 dated 09.04.18***

**3236.** The original assessment in case of assessee for AY 2006-07 was completed under section 143(3), subsequent to which the Assessing Officer reopened assessment taking a view that assessee wrongly carried forward unabsorbed depreciation pertaining to assessment year 1998-99 on ground that it had lapsed in view of prospective amendment in section 32(2). The Court upheld the order of the Tribunal wherein it held that since the assessment year in question was merely a transient year where carry forward of earlier year had been brought forward to that year and again carried forward to next year for set off in appropriate assessment year, the carry forward of unabsorbed depreciation had no impact on 'chargeable income' for relevant year which was alleged to have escaped assessment and accordingly set aside the reassessment proceedings. Accordingly, the Revenue's appeal was dismissed as no substantial question of law arose.
***Pr CIT v Accura Polytech Ltd - [2018] 89 taxmann.com 12 (Gujarat) - TAX APPEAL NOS. 882 & 883 of 2017 dated 06.12.2017***

**3237.** The reassessment notice issued u/s 148 in the case of the assessee, engaged in business of development of housing projects, whose claim for deduction u/s 80-IB for AY 2010-11 was allowed by the AO during scrutiny assessment after making due enquiries on ground that the claim of assessee for deduction was rejected in AY 2013-14 as it sold two separate residential units to a husband and wife, in contravention of section 80-IB(10)(f)(i). The Court set aside the notice issued u/s 148 as there was absence of allegation of allotment of residential units in breach of conditions as prescribed in section 80-IB for assessment year under consideration i.e. AY 2010-11.
***Royal Infrastructure v DCIT – (2018) 91 taxmann.com 309 (Guj) – Special Civil Application No. 23178 of 2017 dated 21.02.2018***

Go to Index

**3238.** The Petitioner had purchased a bungalow for consideration of Rs.60 lakhs and while registering the sale deed paid an additional stamp duty. In the order of assessment u/s 143(3), the AO did not make any addition. However, he made reference to the District Valuation Officer (DVO) u/s 142A for his opinion on the fair market value of the property in question. The DVO estimated the fair market value as on the date of the sale at Rs.1.71 crore. After receipt of the valuer's report, the AO issued the notice u/s 148 for re-opening the assessment with the reason to believe that the assessee had undervalued the property and had made investment in excess of the amount declared. Accordingly, he held that the assessee had unaccounted investment as per the provisions of section 69 of the Act. The Court based on the judgment of Division Bench of the Court (wherein the reference to the DVO was held as invalid) held that the report of the DVO was also invalid. Further, it observed that the same information was available with the AO at the time of original assessment which was noticed by the AO, but which did not prompt him to make any addition except for calling of DVO's report which by itself could not form a ground for reopening of the assessment.

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

**3239.** Where the AO issued notice u/s 148 alleging that the assessee had claimed a loss on speculative transactions, without disclosing the fact that the transaction was indeed speculative, the Court noting that the material relied on by the AO formed part of the return and accompanying documents filed by the assessee, held that there was thus no failure on the part of the assessee to disclose the material facts. Based on the submission of the assessee, it further observed that the issue was also examined by the AO during the regular assessment.

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

**3240.** The assessee's return of income was accepted by revenue authorities u/s 143(1) without scrutiny and subsequently, based on information received, the AO reopened the assessment on the ground that the assessee had booked contrived losses to extent of Rs.16.51 lakhs through NMCE platform operated by certain person. Taking note of the assessee's submission that he had never claimed loss of Rs. 16.51 lakhs and that the said figure appearing in his balance sheet was on credit side and, in fact, had received said sum of Rs. 16.51 lakhs and not suffered such an alleged loss, the Court set aside the reassessment notice issued u/s 148 holding that since there was nothing on record showing that said sum of Rs.16.51 lakhs was a loss claimed by assessee, the reason recorded by AO for reopening assessment was palpably incorrect.

***Narendrakumar Mansukhbhai Patel v ITO – (2018) 92 taxmann.com 259 (Guj) - Special Civil Application nos. 16788 to 16790 of 2017 dated 07.02.2018***

**3241.** The Court dismissed Revenue's appeal against the Tribunal's and CIT(A)'s order holding the reassessment proceedings to be invalid which were initiated on the ground of non-genuineness of cash received as gifts by the assessee from NRI. It was noted that the AO had carried out detailed enquiry in respect of the said gift while framing block assessment pursuant to search operations in the case of the assessee and had held majority of the amount of gift to be genuine and rest as non-genuine. The Court held that once gifts were assessed in block assessment

proceedings, the same could not be subject matter of assessment in regular assessment. It further held that it was not open for the AO to examine the question of genuineness of the gifts in regular assessment for which he had resorted to reopening of assessments u/s 147 r.w.s. 148.

***CIT v Mukesh M Sheth - [2018] 95 taxmann.com 128 (Gujarat) - R/TAX APPEAL NOS. 1537, 1696 OF 2007 AND 543 & 544 OF 2008 dated June 13, 2018***

**3242.** AO issued a notice under section 148 seeking to reopen assessment.Reason recorded for reopening assessment was that a search was carried out in case of 'V' Group engaged in transactions of purchase and sale of land and in course of search proceedings, certain documents were seized showing that the assessee had purchased four parcels of land from 'V' Group for which assessee had paid a part of purchase consideration in cash which was not recorded in her books of account. Assessee's objections to initiation of reassessment proceedings were rejected. Since the assessee failed to rebut material brought on record by AO such as cash vouchers, summary of sale deed etc. and, moreover, original return filed by her was accepted without scrutiny,a case for reopening of assessment was clearly made out and therefore, the Court dismissed the petition filed by assessee.

***KiranRavjibhaiVasani v ACIT [2018] 94 taxmann.com 354 (Gujarat) – R/SPECIAL CIVIL Application Nos. 16385 OF 2017 dated 02.04.2018***

**3243.** The Court allowed the petition of the assessee and held that where an assessing officer had completed assessment u/s 143(3) by making addition to assessee's income in respect of unexplained investment in immovable property on the basis of valuation of property by stamp duty authorities, he could not reopen the said assessment for enhancement of the said addition merely on basis of report of the District Valuation Officer.

***Akshar Infrastructure (P.) Ltd. V Income-tax Officer [2017] 79 taxmann.com 239 (Gujarat) (SCA No. 16481 of 2010)***

**3244.** Where the assessee was accused of being involved in illegal mining and accordingly notices u/s 148 of the Act were issued on the ground that assessee was involved in under invoicing in iron-ore, the Court held that 'under invoicing' was a 'sufficient reason' to believe that there was escapement of assessment and accordingly dismissed the assessee's writ petition and upheld initiation of reassessment proceedings u/s 147/148. The Court also clarified that the sufficiency of reasons and examination of invoices which were relied upon by the Revenue for exercising jurisdiction u/s 147/148 could not be decided in a writ proceeding as these were factual issues.

***Prasanna Ghotage vs Dy.CIT [TS-709-HC-2016(KAR)] (W.P.Nos 109810 to 109811 of 2016) dated 16/12/2016.***

**3245.** The Court held that where the assessee was managing consumer loyalty programs for its partner whose customers would be entitled to loyalty points on purchase of certain goods or services and an audit objection was raised in respect of allowability of provision towards unredeemed loyalty points, same being addressed by Assessing Officer during the original assessment proceedings wherein the provision was claimed and allowed as a deduction, there would remain no basis for initiating reassessment.

***Loyalty Solutions & Research (P)Ltd v DCIT - [2016] 67 taxmann.com 232 (Karnataka)***

Go to Index

**3246.** The AO during original assessment proceedings made disallowance of 20 percent of expenditure under Section 40A(3), which was deleted by the CIT(A). Subsequently, the AO initiated reassessment proceedings pursuant to inquiries made by him through which he concluded that the dealers were non-existent. The CIT(A) once again set aside the AO's order which was upheld by the Tribunal. The Court, noting that the assessee had not brought anything on record to prove that the dealers actually existed and that they were genuine dealers held that the AO was justified in initiating reassessment proceedings and upheld the order of the AO.
***COMMISSIONER OF INCOME TAX vs. PARRISONS ROLLER FLOUR MILLS PVT. LTD. - (2018) 101 CCH 0104 KerHC - ITA No. 377 of 2009 dated Mar 15, 2018***

**3247.** The Court dismissed Assessee's writ petition filed against the notice issued u/s 148 for initiation of reassessment proceeding holding that income of assessee had escaped assessment since deduction granted u/s 10B for AY 2005-06 was proposed to be disallowed in view of non-compliance with section 10B(3) providing for bringing the foreign export receipts into Country, within six months from close of previous year. The Court held that the reassessment proposed, within six year period was perfectly in order, if said amounts have not already been disallowed in original assessment order itself.
***SUNTEC BUSINESS SOLUTIONS PVT. LTD. v UNION OF INDIA AND OTHERS – (2018) 401 ITR 0101 (Ker) – WA No. 1094 of 2013 dated 09.01.2018***

**3248.** The Court held that where reassessment proceedings were initiated against assessee on ground that assessee had advanced several crores of rupees to a party but source of such amount was not explained, since assessee had not filed balance sheet or statement of affairs related to such advance, impugned reassessment proceedings were justified.
***Smt. A. Sridevi v. ITO, Non-Corporate Ward 16(1)- [2018] 100 taxmann.com 434 (Madras)-WA No.2563 of 2018 CMP. Nos. 20763 & 20766 of 2018- dated December 3, 2018***

**3249.** The Court held that reopening of assessment on basis of information on record with revenue that assessee-company had received share capital which according to CBI were revenue receipts camouflaged as capital receipts was justified.
***South Asia FM Ltd. v. Asstt. CIT [2018] 98 taxmann.com 200/259 Taxmann 266(Mad.)-W.P. Nos. 10257, 44312 & 44313 of 2016-W.M.P. Nos. 9080, 38178 & 38179 of 2016 dated October 10, 2018***

**3250.** The Court held that in order to determine admissibility of assessee's claim under section 10B, date of commencement of manufacture or production could be ascertained from relevant documents such as certificate of registration by competent authority and mere wrong mentioning of said date in Form No. 56G filed in support of claim of deduction, could not be a ground to reopen assessment.
***MBI Kits International v. ITO [2018] 98 taxmann.com 473 (Mad.) W.P. No. 7416 of 2017 WMP No. 8070 of 2017-dated October 4, 2018***

Go to Index

**3251.** The Court held that completed assessment could be reopened within period of six years where there were some information with department that share premium invested by foreign company was income of assessee-company which had not been disclosed
***Sun Direct TV(P.) Ltd. v Asst. CIT [2018] 98 taxmann.com 201/259 Taxman 228(Mad.) W.P. No. 44311 of 2016-W.M.P. No. 38177 of 2016 dated October 10, 2018***

**3252.** The Court upheld that where assessee did not mention advance given to a person for purchase of a property in return of income, reassessment notice was valid.
***Sridevi v ITO [2018] 99 taxmann.com 340 (Mad.) W.P. No. 20625 of 2016 & WMP No.17707 of 2016 dated October 4, 2018***

**3253.** The Court held that where in reassessment, gains on sale of agricultural land was taxed as business income and in revision application, there was no dealing with issue of validity of relevant reassessment notice, validity of reassessment could not be challenged in writ petition. The Court remitted back the matter to the Pr. CIT to reconsider the entire matter afresh.
***Pallavarajha vs PCIT- (2018) 98 taxmann.com 450 (Mad)- WP No 2292 & 2293 of 2018.***

**3254.** Where Joint Commissioner informed the AO that assets on which depreciation was allowed were very old and therefore, their value was nil, reassessment on the basis of said information was unjustified since no basis of giving nil value had been placed on record.
***CIT v. S & S Power Switchgear Ltd. – [2018] 92 taxmann.com 429 (Madras) – Tax Case (Appeal) Nos. 849 & 850 of 2008 dated April 3, 2018***

**3255.** The AO made addition in assessee's income u/s 68(Unexplained Cash Credit) for AY 2012-13 stating that the assessee failed to produce corroborative evidence for introduction of capital amount and to co-relate trail of funds. The CIT(A) allowed assessee's appeal holding that the Capital was introduced in FY 2009-10 and 2010-11 and that the AO could only take cognizance of matter by way of initiating suitable proceedings. Thus, the ITO issued notice u/s 148 to the assessee for reopening the assessment and passed order holding that the income had escaped assessment. The assessee challenged the reassessment on the ground that proper reasons were not given. However, the Court observed that since the ITO had made it clear that that assessee did not file its returns of income for AY 2010-11 and 2011-12 and therefore, there was no opportunity to verify transactions claimed to have been made in those years. Further, the assessee was not maintaining any bank account and failed to furnish any other proof to establish link between capital introduced and its withdrawals for purpose of investments. Thus, the Court held that the reasons stated in notice issued u/s 148 were valid and the reopening of assessment was justified.
***Alfa Investments v ITO (2018) 167 DTR 0095 (Mad) - W.A.Nos. 1438 and 1439 of 2017 and CMP Nos. 19350 and 19351 of 2017 dated 10.04.18***

**3256.** The Court dismissed the writ filed by the assessee for AY 2009-10 and upheld the reassessment proceedings initiated under section 147 of the Act for taxing excess share premium on issuance of compulsory convertible cumulative preference shares under section 68 of the Act. It noted that the assessee had issued preference shares at a high premium of Rs.240 per share despite having low net worth and that the Revenue had invoked reassessment u/s 147 on the ground

that it had reason to believe that the transaction was not genuine. It took note of the assessee's plea that the premium received could be brought to tax only under section 56(2)(viib) which was introduced only w.e.f. April 1, 2013 and therefore inapplicable to the year under review and held that the expression reason to believe implied a cause or justification and could not be read to mean that the AO ought to have finally ascertained the fact by evidence or conclusion. Accordingly, it dismissed the writ leaving it open to the assessee to work out other remedies available under the Act.

***Trans Corporate Advisory Services Pvt Ltd v ACIT – TS-669-HC-2016 (Mad)***

**3257.** The AO initiated reassessment proceeding u/s 147 on the reason that certain investment was made out of undisclosed income of assessee, which escaped assessment. However, the addition was made on issue of capital gain arising on transfer of property and the CIT(A) while deciding the matter against assessee relied on the decision in the case of Sri N Govindaraju vs. ITO (2015) 377 ITR 243 (Kar.) wherein it was held that if notice u/s 148 was found to be valid, then addition could be made on all grounds or issues (with regard to 'any other income' also) that may come to notice of the AO subsequently during course of proceedings u/s 147, even though reason for notice for 'such income' which may have escaped assessment, may not survive. The CIT(A) rejected the reliance placed by the assessee on the decisions in the case of Ranbaxy Laboratories v CIT (2011) 336 ITR 136 (Del HC) and CIT v Jet Airways India Ltd. (2011) 331 ITR 236 (Bom) on the ground that the decision of Sri N Govindaraju (supra) was rendered later than Ranbaxy Laboratories (supra) and Jet Airways India Ltd. (supra). The Tribunal held that the reasoning adopted by CIT(A) was not in accordance with law. Noting that neither of the above decisions were rendered by the jurisdictional High Court, it held that where two non-jurisdictional High Court's decisions are opposed to each other, one in favour of assessee is required to be followed by the Tribunal and, thus, it set aside and cancelled the reassessment order.

***MEENA KUNDRA v ITO – (2018) 52 CCH 38 (Agra Trib) – ITA No. 67/AGR/2017 dated 11.01.2018***

**3258.** The Tribunal upheld the reassessment initiated pursuant to survey carried out under section 133A of the Act, wherein excess stock of gold jewellery was found in the premises of the assessee. It held that for the purpose of valuation of the additional jewellery, the AO had rightly adopted the rate prevailing as on the date of survey, in accordance with the norms of valuation in the cases where survey had been conducted for making proposed addition.

***Ellore Jewel Palace v ITO – (2016) 48 CCH 0211 (Bang Trib) – ITA No 1646 / Bang / 2016***

**3259.** Where the AO made reassessment of income under section 147, however, the additions were made on the ground other than those covered in the reasons for the re-opening, the Tribunal held that the lower authorities were justified in making additions towards disallowance under section 40A(3) of the Act even though it was not a reason for reopening the assessment and no addition had been made on the basis of reasons for which assessment was reopened.

***M. Baskarn vs ACIT (2016) 48 CCH 0177 ChenTrib (ITA No. 120/Mds/2016)***

**3260.** The assessee, a family trust, declared nil income for the relevant assessment year. The assessment was completed u/s 143(3) but was subsequently reopened u/s 147 by the AO.

During reassessment, the assessee-trust was assesseed in status of AOP and at a total income of Rs. 67,14,805/- was computed at the maximum marginal rate by the AO who further held that the trust property belonged to the trust and not to the beneficiaries and though the shares of the beneficiaries were definite in the trust, they were not the co-owners of the trust property. The CIT (A) confirmed the action of the AO in taxing the rental income in the hands of the assessee-trust and subsequently, an appeal was preferred by the assessee before the Tribunal. The Tribunal held that the share of income from the trust which devolved on the beneficiary had to be treated as the income of the beneficiary. The Tribunal further held that the tax on share of each beneficiary was to be separately calculated as if it formed part of the beneficiary's income and the tax payable by the trust was the sum total of tax calculated on the share of each beneficiary. Accordingly, the reassessment order was set aside and the appeal of the assessee was allowed.

***Abad Trust v. ADIT - [2018] 93 taxmann.com 214 (Cochin - Trib.) - IT APPEAL NO. 193 (COCH.) of 2016 dated APRIL 19, 2018***

**3261.** The AO issued reopening notice u/s 148 on receipt of information from Investigation Wing that certain persons called 'beneficiaries' had resorted to money laundering by giving unaccounted cash to entry operators and in turn taking from them cheques/DDs in garb of share application money or sale proceeds of non-existent goods thereby ploughing back to undeclared cash into accounts or business. The AO passed the reassessment order inter alia making addition on account of share application money received. The CIT(A) upheld AO's order. The Tribunal observed that the Investigation Wing had not analyzed transaction of accommodation entries prior to AY 2005-06 whereas present case pertained to AY 2004-05 and even the order of AO did not reveal that he had undertaken any such exercise before recording of reasons. Further, reasons recorded did not specify other party who either received or provided accommodation entries and they also did not establish involvement of assessee in information unearthed by Income-tax Department in respect of huge money laundering mechanism. Thus, the Tribunal held that re-opening was bad in law as the satisfaction of AO was not based on any sound reasoning and thus the order passed by the AO was not legal or binding.

***Meta Plast Engineering Pvt. Ltd. v ITO (2018) 52 CCH 0353 DelTrib - ITA No. 5780/Del/2014 dated 06.04.2018***

**3262.** The AO obtained information through AIR that the assessee had deposited cash of Rs.63,27,996 in his bank A/c during the year on the basis of which he issued the letter of enquiry to the assessee to verify the genuineness and correctness of this AIR information. The assessee did not respond to the said information contending that since no proceedings were pending before the AO, the letter of enquiry was not valid in eyes of law and that, he was not under obligation to respond to this invalid letter. The AO in the absence of reply by the assessee formed the opinion for re-opening the assessment. He obtained information from the banks u/s 133(6) and calculated the peak of the bank accounts and made addition in the income from the business. The assessee contended before the CIT(A) that the deposits were only to the extent of Rs.41.15 Lakhs viz-a-vis AO's addition of Rs. 63,27,996 and accordingly, contended that the re- assessment initiated was not based on proper facts and was therefore bad in law. The CIT(A) accepted the contention of the assessee that the deposits were only to the extent of Rs.41.5 Lakhs, however, it dismissed the assessee's ground of appeal and directed the AO to compute

the income of the assessee after giving credit of turnover already disclosed by the assessee. The Tribunal observed that the bank deposits considered by the AO were Rs. 63,27,996 whereas actually the bank deposits were only to the extent of Rs. 41.15 Lakhs and accordingly, held that the AO while recording the reasons for reopening of the assessment recorded incorrect facts. Accordingly, holding that reopening of the assessment u/s 147 was clearly invalid and bad in law. It quashed the re-opening of the assessment and deleted the additions made by the AO.

***Tajendra Kumar Ghai vs. ITO (2017) 50 CCH 0088 DelTrib ITA Nos. 970,971/Del/2017 dated 07.06.2017***

**3263.** The Tribunal held that where date of agreement entered into by assessee, a US company, with an Indian company for providing data transmission service was in knowledge of Assessing Officer who instead invoking section 44D assessed receipt as royalties under section 9(1)(vi) @ 15 per cent, reopening of assessment to tax said receipt @ 20 per cent under section 44D was not sustainable.

***DDIT v Americom Asia Pacific LLC – [2016] 68 taxmann.com 51 (Delhi – Trib)***

**3264.** The Tribunal held that the re-assessment proceedings initiated on the basis of the allegation that the assessee made bogus purchases were not sustainable in light of the decision in the case of Unique Metal Industries v ITO (ITA No 1372 / Del / 2015). Further, and in any event, it held that the addition made by the CIT(A) viz. 20 percent of the alleged bogus purchases on the basis of section 40A(3) was unsustainable as it was not a correct determination of real income and that section 40A(3) was meant for cash purchases only and could not be applied in the instant case.

***Kishan Lal Gambhit & Sons v ITO – (2015) 45 CCH 0278 Del Trib***

**3265.** Assessee's case was opened for assessment after issuance of notice u/s 148 after 4 years from end of AY for alleged escapement of income being deposits in bank and assessment framed thereafter. AO did not make any addition for said deposits or part thereof but made addition for other income i.e., unaccounted investment. The Tribunal held that as AO failed to assess income for which reasons were recorded in notice issued u/s 148, and therefore it was not open to him to make addition for unaccounted investment. Thus, AO was directed to delete alleged addition.

***LATE SHRI DINESH KUMAR GOYAL LH LAXMI KANTA GOYAL AND ORS. vs. ITO (2018) 54 CCH 0403 IndoreTrib- ITA No 544 & 545/Ind/2017, ITA No 546 to 548/Ind/2017 dated 21.12.2018***

**3266.** Where AO had reopened assessment proceedings on the ground that certain amount deposited in bank account by the assessee could not be verified as the assessee had not filed the return of income (since the return was not reflected in IT System of department), taking note of the fact that assessee had filed return manually which had been duly acknowledged and in said return assessee had furnished proper details in respect of contractual receipts deposited in bank account, the Tribunal quashed the impugned reassessment proceedings.

***Narain Dutt Sharma v ITO – (2018) 91 taxmann.com 463 (Jaipur Trib) – ITA No. 203 (JP.) of 2017 dated 07.02.2018***

Go to Index

**3267.** The Tribunal upheld initiation of reassessment proceedings in the hands of the assessee, based on information that the assessee was a beneficiary of a discretionary trust having an account in a German Bank which was not disclosed by the assessee and also confirmed the addition on account of undisclosed income. It observed that the AO had received information through the Government of Germany (which was given to the CBDT) which in turn received information from the employee of the bank in which the trust had an account specifically mentioning details of the assessee. Since the assessee failed to prove that it had no beneficial interest in the said bank account, it upheld the additions made by the AO.
***Hasmukh Gandhi – TS_534-ITAT-2017 (Mum) ITA Nos. 2795 to 2798/Mum/2011 and others dated 15.11.2017***

**3268.** The Tribunal held that the reasons for reopening assessment under section 147 cannot be based on mere doubts or with a view to verify basic facts. If the AO takes the view that the income referred to in the reasons has not escaped assessment, he loses jurisdiction to assess other escaped income that comes to his notice during reassessment.
***Torm Shipping India Pvt Ltd vs. ITO I.T.A. No.1272 & 1273/Mum/2013 (ITAT Mumbai)***

» *Reopening based tangible material*

**3269.** The Apex Court dismissed Revenue's SLP against HC ruling that where Income-tax officer had not been authorized to *exercise* his power under section 131(1A), reports submitted by him could not have formed valid basis for re-opening assessment
***ITO vs Sky View Consultants (P) Ltd. [2018] 96 taxmann.com 424 (SC)- SLP (CIVIL) DIARY Nos.27416 of 2018 dated August 17 2018***

**3270.** The Apex Court dismissed Revenue's SLP against the High Court order wherein the High Court had quashed re-assessement proceedings u/s 147 initiated after the scrutiny assessment and it was noted that the AO had not received any objective material warranting reopening of a concluded scrutiny assessment and that the re-assessment was based upon the observations of the audit report which had scrutinized the return for the concerned year on standalone basis.
***DCIT v ALcatel Lucent India Ltd [TS-13-SC-2018] – SLP (CIVIL) Diary No(s). 33126/2017 dated 08.01.2018***

**3271.** The Apex Court dismissed the SLP filed against the High Court wherein the High Court had quashed the re-opening notice issued u/s 148 in absence of any tangible material available to prima facie show that the assessee had received any money in cash on account of sale consideration of land over and above the consideration mentioned in the sale deed other than one 'Sauda Chitthi' seized from third party wherein neither the assessee (seller) nor the purchaser was signatory and which was not acted upon.
***ITO v Chintan Jadavbhai Patel – (2018) 91 taxmann.com 426 (SC) – SLP (Civil) Diary No. 1464 of 2018 dated 09.02.2018***

**3272.** The AO had found one sauda chitthi (signed by assessee) during search that purportedly disclosed that one land was sold at a higher price for which the sale deed was executed at a

lower consideration and the balance amount was received by the assessee in cash. Thus, the AO issued reassessment notice to add the balance amount to the assessee's income. However, noting that the assessee wasn't the owner of the land and the sale deed was executed by original owners, the High Court held that there was no tangible material available on record to form a reasonable belief that the amount was received by assessee in cash and accordingly had set aside the reassessment notice. The Department's SLP filed against the said order of the High Court was dismissed by the SC.

***DCIT v Alpesh Gokulbhai Kotadia [2018] 95 taxmann.com 108 (SC) SPECIAL LEAVE TO APPEAL (CIVIL) NO 13051 OF 2018 dated 16.05.2018***

***DCIT v VinodbhaiShamjiRavani [2018] 94 taxmann.com 246 (SC) SPECIAL LEAVE TO APPEAL (CIVIL) NO 13518 OF 2018 dated 16.05.2018***

**3273.** Assessee HUF had filed its return of income. Same was accepted and processed under section 143(1). Later on, a reassessment notice was issued against assessee on ground that assessee had received gift of certain cash amount from one, KAB of Hong Kong and said donor was not related to assessee and genuineness of gift was to be proved. Tribunal noted that assessee had filed copy of passport, balance sheet and bank account of donor, which was also perused during assessment proceedings. The Court held that, since reasons as recorded in support of impugned notice to doubt genuineness of gift was not based on any material so as to form belief that assessee's income had escaped assessment on account of gift not being genuine and it was only a suspicion subject to enquiry, impugned reopening notice issued by Assessing Officer was unjustified.

***Pr. CIT-32 v. Rajesh D. Nandu (HUF) - [2019] 101 taxmann.com 401 (BombayHC)-IT Appeal No. 829 of 2016-dated December 18, 2018***

**3274.** The Court held that reasons recorded by the AO must be based on some material which has a bearing or nexus with escapement of income, else the notice would be without jurisdiction. Further where the AO had incorrectly classified the assessee as a supplier of the equipment when in fact the assessee had only insured the equipment, the Court held that the notice for reopening assessment on the ground that the assessee had not offered income from sale of equipment was without any legal basis or justification.

***DIT (IT) V Doosan Heavy Industries & Construction Co – [TS- 567-HC-2016 (BOM)] (ITA NO 670 OF 2014)***

**3275.** The Court dismissed the Petition filed by the assessee against the initiation of reassessment proceedings u/s 148 in case where the assessment was reopened based on a report of Auditor resulting from a special audit directed by the Forward Market Commission, received after completion of assessment, wherein it was observed that claims made by assessee towards placement fees paid to its subsidiaries, advertisement expenses and donations paid to a charitable trust u/s 80G were *prima facie* bogus as assessee could not substantiate their genuineness by providing relevant documents and evidences, holding that the special audit report was a fresh tangible material which formed basis of AO's reasonable belief that income chargeable to tax had escaped assessment.

***Multi Commodity Exchange of India Ltd. v DCIT– (2018) 91 taxmann.com 265 (Bom) – Writ Petition no. 2739 of 2017 dated 23.02.2018***

Go to Index

**3276.** The assessment was sought to be reopened on the ground that the assessees-FIIs (claiming to be exempt from tax in view of Article 14 of India-Denmark DTAA) which were registered as 'Fund' with SEBI and had taken PAN in the status of 'AOP (Trust)' may not be eligible for exemption for India-Denmark DTAA benefit since the 'possibility' of an AOP not being a taxable unit under the tax law of Denmark could not be ruled out (which was a pre-requisite for claiming the said benefit). The Court dismissed the Revenue's appeal filed against the Tribunal's order quashing the reassessment proceedings u/s 147 on the ground that the reopening notice issued did not indicate any reason to believe that income chargeable to tax had escaped assessment since the reasons proceeded merely on presumption and surmises without any tangible material. It also rejected the revenue's proposition that the use of word 'possibility' was a mistake which would not invalidate the impugned notice and that the reasons could be changed to that extent, holding that the reasons which form the basis of reopening must be strictly read and it is not open to either to improve upon or change the reasons recorded.
***CIT v Investeringsforeningen BankInvest I – ITA No. 838, 839 & 1009 of 2015 (Bom) dated 16.01.2018***

**3277.** In the assessment order passed u/s 143 (3), the AO accepted assessee's contention that the business of assessee-company, carrying on activity of mushroom farming was an agricultural activity. However,the AO issued notice u/s 148 for reassessment for the reason that there was escapement of income referring to the CBDT Circular dated 14-06-1979 [which holds the assessee liable to tax by providing that mushroom farming was not exempt u/s 10(1)]. The CIT(A) upheld AO's order. The assessee contended both in reply to reasons as well as in the said petition that the circular was not binding on the assessee as it had lost its efficiency and was substituted by another circular dated 27.03.2009 [which widens the scope of agricultural income] The Court held that the AO lacked jurisdiction for reopening of assessment on the grounds that (1) the CBDT circular, though binding on revenue was not a tangible material to be regarded as reason to reopen assessment (2) Assuming that the CBDT Circular dated 14-06-1979 was a tangible material, the assessee had rightly stated that the said Circular was inefficient and thus not relevant. Thus, the Court quashed the notice issued u/s 148.
***Zuari Foods and Farms Pvt. Ltd. v ACIT (2018) 101 CCH 0292 BomHC - WRIT PETITION NO. 1001 of 2017 dated 11.04.18***

**3278.** The Court allowed the assessee's writ petition against the reassessment notice for AY 2010-11 which was issued on the basis of information received from Investigation Wing for AY 2007-08 stating that the assessee had claimed unduly high contract charges for AY 2007-08 and these amount allegedly were distribution of illegal gratifications by the assessee. The AO claimed that the assessee's modus operandi for AY 2010-11 was same as AY 2007-08. The Court noted that (i) assessments for AY 2007-08 and AY 2008-09 were also revisited earlier u/s 263 (revision) / u/s 147 r.w.s. 148 on the same issue, but the issue was decided in favour of the assessee (ii) for AY 2009-10 also, the Court had quashed the reassessment proceedings noting that there was no new tangible material (iii) for the relevant year under appeal i.e. AY 2010-11 also, the AO relied on the same material (i.e. information from Investigation Wing) which he had relied for earlier years and there was no fresh evidence supporting the reassessment (iv) the material on record show that the AO had conducted inquiries at the time of completion of the

original assessments and there was nothing to show that the entities to whom payments were made (by the assessee) were fictitious and in fact TDS was apparently deducted. It thus quashed the reassessment proceeding for AY 2010-11 also in absence of any new tangible material.

***Sky View Consultants (P.) Ltd. – ITO [2018] 96 taxmann.com 419 (Delhi) - W.P. (C) NO. 11324/2017; C.M. APPL. No. 46251 OF 2017 dated July 30, 2018***

**3279.** The AO reopened the assessment only on the basis of information (copy of lease deed) received from the Investigation Wing. The Court quashed the reassessment proceedings as such information was already available on record with the AO during the assessment proceedings under Section 143(3) and that the 'reasons to believe' did not establish any live nexus that income had escaped assessment. Accordingly, the Court held that AO could not re-examine the issue already examined in assessment under Section 143(3) of the Act.

***Meadow Infradevelopers Private Limited vs. ITO – [2018] 102 CCH 0003 (Delhi High Court) – W.P.(C) 11554/2017 dated May 1, 2018***

**3280.** The Court allowed assessee's writ petition filed against the reassessment notice issued u/s 148 to re-open assessment for AY 2010-11 on the ground that Tax Evasion Petition (TEP) received by the investigation wing alleged that the contract charges claimed by the assessee were bribe amount distributed by the assessee. It was noted that the investigation wing had recommended reassessment for AY 2007-08 and AY 2008-09 on the basis of aforesaid TEP and the AO had mechanically followed the investigation unit's recommendation for AY 2009-10 & AY 2010-11 (present year) also. It also noted that in earlier years, the AO called the concerned sub-contractors, who had disclosed the amount received from assessee in their returns. The Court further noted that in AY 2007-08 and AY 2008-09 also, the disallowance was restricted to only 5% and this fact was not mentioned in the reopening notice for the present year. Accordingly, it held that the trigger for all the reassessment attempts by the revenue was the same TEP and there was nothing to show that the entities to whom payments were made (by the assessee) were fictitious, in fact TDS amounts were apparently deducted. Accordingly, it held that there was no was no evidence or tangible, specific material to support the reassessment.

***SKYVIEW CONSULTANTS PVT. LTD. vs ITO (2018) 258 TAXMAN 331 (Delhi) - W.P.(C) 11324/2017, C.M. APPL.46251/2017 dated July 30, 2018***

**3281.** The Court held that re-opening of an assessment could only be initiated if the AO has a reason to believe that income chargeable to tax has escaped assessment which should be based on tangible material and cogent facts. It was held that the AO's assumption that the assessee, who was engaged in the insurance business and duly regulated under the Insurance Act, 1938, was carrying on another business was incorrect and not based on tangible material and therefore not satisfying the pre-conditions set out in section 147 of the Act. It was also held that a reason to suspect could not be a reason to believe.

***Oriental Insurance Company v CIT – (2015) 94 CCH 0012 Del HC***

**3282.** The Court quashed the reassessment order of the AO as the basis for re-opening the assessment was information from the Enforecement Directorate which was not further examined by the AO to prove that the said information provided a link to form the 'reason to

believe' that the income of the assessee had escaped assessment. The Court held that while the law did not require the AO to form a definite opinion by conducting any detailed investigation it certainly did require him to form a prima facie opinion based on tangible material which provides the nexus to having reason to believe that income escaped assessment.
***CIT v Indo Arab Air Services – (2015) 94 CCH 0062 Del HC***

**3283.** The Court upheld reassessment proceedings initiated under section 147/148 of the Act on account of assessee's failure to substantiate the genuineness of issue of shares, where based on the survey operations, certain adverse inferences were drawn viz. the share applicants were not involved in any substantial business activities, coupled with the fact that the assessee had not provided the bank details of the share applications. It further noted that the ITR forms of the shareholders showed that share applicants paid paltry amounts as income tax, while claiming to have invested crores of amounts in assessee company. It held that this amounted to tangible material for the purpose of re-opening assessment and also that neither was there was full disclosure of the material facts, nor did the assessee establish the genuineness of the transaction and therefore the notice issued u/s 148 of the Act was valid.
***Aravali Infrapower Ltd. vs. DCIT (2016) 97 CCH 0130 Del HC (W.P. (C) 2385/2015)***

**3284.** The Court held that the notice issued under section 148 and consequent reassessment proceedings were liable to be quashed since the reasons recorded by the AO viz. that a portion of the consideration received from sale of shares was attributable to non-compete fees taxable as business income as opposed to taxing it as income from capital gains were invalid since the said reasons were based on the evidences submitted by the assessee during original assessment and not any additional evidence which was not available during original assessment proceedings.
***Priya Desh Gupta v DCIT – (2016) 96 CCH 0020 (Del HC)***

**3285.** The Court allowed the writ petition filed by the assessee against the reassessment notice issued u/s 148 relying on ratio laid down in case of Carlton Overseas Pvt. Ltd. v. Income Tax officer & Ors. [(2009) 318 ITR 295] wherein it was held that reliance by the Revenue upon an audit report could not be considered as tangible material to form the basis for issuing the said notice. It was noted that the reassessment notice u/s 148 was issued solely on the basis of audit objection which revealed that in computation of income, assessee was allowed deduction on account of Forex gain on interest income which was revenue in nature. Accordingly, the Court quashed the impugned notice.
***FIS Global Business Solutions India Pvt Ltd vs Pr.CIT WP (C) 12277/2018 CM APPL 47539/2018 (2018) 103 CCH 0103 (Del HC) dated 16.11.2018***

**3286.** The assessee had filed return of income which was processed u/s 143(1). The AO re-opened the assessment u/s 147 based on information received from investigation wing that the assessee had received accommodation entries to the extent of Rs. 1.56 crores in the garb of share application money and that no return was filed by the assessee and therefore, income had escaped assessment. Subsequently, the AO observed that there was some clerical error in computing the escaped income and the accommodation entries were to the extent of Rs. 78 Lakh. The Court observed that the AO proceeded on the presumption that the assessee had

not furnished ROI, however, the same was filed and processed u/s 143(1). It further observed that the AO had also erred in computing the extent of the accommodating entries. Accordingly, it held that the information received from the Investigation Wing could not have been said to be tangible material without a further inquiry being undertaken by the AO for forming reasons to believe for re-opening the assessment. Therefore, it held that the assessment was bad in law.
***PCIT vs. RMG POLYVINYL (I) LTD. (2017) 99 CCH 0085 DelHC ITA 29/2017 & CM No.1009/2017 dated 07/07/2017***
***PCIT vs. SNG DEVELOPERS LIMITED (2017) 99 CCH 0106 DelHC ITA 92/2017 dated 12/07/2017***

**3287.** The Court held that the reason for re-opening assessment proceedings cited by the AO viz. that the director of the assessee company was the person who floated the company, the shares of which were purchased by the assessee and valued at a loss, was invalid as it did not constitute tangible material for forming reasons to believe that income had escaped assessment since the value of the closing stock (shares) had been computed on the basis of the quotation in the stock exchange. Further it noted that the assessee had consistently followed the said method of valuation and that the reason to believe should have been predicated on tangible material or information and bear direct nexus to the material on which it is based, which was not fulfilled in the instant case.
***CIT v Vishisth Shay Vyapar Ltd – (2015) 94 CCH 0108 Del HC***

**3288.** The Court quashed the reassessment notice issued u/s 148 on ground that the AO's conclusion to form reasonable belief, i.e. share capital and share premium money received by the assessee was actually its own unaccounted money, was based on surmises and conjectures. It was noted that the AO had received information of share investment in assessee by Garg Logistics Pvt Ltd. which was made by the name of different companies but subsequently the said investment was owned up by Garg Logistics Pvt Ltd. under the Income declaration scheme. Inspite of this, the AO shifted the burden on assessee-company to establish that the declaration made by Garg Logistics Pvt Ltd. was correct and to prove in negative that money was not the assessee's unaccounted income.
***M.R. SHAH LOGISTRICS PRIVATE LIMITED vs. DEPTUY COMMISSIONER OF INCOME TAX [2018] 102 CCH 0344 (Guj HC) R/SPECIAL CIVIL APPLICATION NO. 21028 of 2017 DATED AUGUST 14,2018***

**3289.** Where the return of income filed by the assesse-trust was accepted u/s 143(1) and reassessment notice u/s 148 was issued on ground that assessee-trust had deposited cash in a bank account and that no return of income was filed by assessee for relevant assessment year, the Court set aside the impugned notice noting that the AO in reasons recorded, proceeded on erroneous footing that the assessee had not filed return at all but the assessee did file return of income for year under consideration which was duly acknowledged by department. Further, it had noted that the AO only contended that cash deposits could only be verified through reassessment and he did not even contend that said cash deposits were not duly reflected in return filed, but that he wished to verify validity of such deposits. Thus, it held that reopening of assessee was not permissible for mere verification or for a fishing inquiry.

Go to Index

***Sunrise Education Trust v ITO – (2018) 92 taxmann.com 74 (Guj) – Special Civil Application No. 16726 of 2017 dated 19.02.2018***

**3290.** Pursuant to information received from the Value Added Tax Department that assessee was one of the beneficiaries in hawala transactions, the AO reopened the assessment proceedings for the year under review on the ground that information regarding purchases made by the assessee from such Hawala dealers 'needed deep verification'. The Court quashed the reassessment proceedings and held that reopening of assessment would not be permitted for a fishing or a roving inquiry.
***PCIT vs. Manzil Dineshkumar Shah – [2018] 102 CCH 0008 (Gujarat High Court) – TAX APPEAL NO. 451, 457,458 of 2018 dated May 7, 2018***

**3291.** The Court allowed petition of the assessee and held that in absence of any tangible material available to prima facie show that assessee had received any money in cash on account of sale consideration of land, re-opening notice merely on the basis of one Sauda Chitthi seized from a third party, was unjustified, specially when the concerned persons who signed the sauda chitthi were not owners of the land sold and neither the assessee nor the person who purchased the land were signatory to the sauda chitthi and also the sauda chitthi was not acted upon. Accordingly, the impugned proceedings for re-opening of assessment and the impugned notice was quashed and set aside.
***Chintan Jadavbhai Patel V. Income-tax Officer [2017] 79 taxmann.com 302 (Gujarat)***

**3292.** The Court dismissed the petition filed by the assessee against initiation of reassessment proceedings by the AO after recording the reasons for reopening to be receipt of information from Investigation Wing of department that assessee had received certain amount by way of share capital and share premium from several shell companies which were working as an accommodation entry providers. It noted that there was material on record suggesting that AO had received entirely new set of documents and materials for his consideration in form of report received from investigation wing and such materials did not form part of original assessment proceedings. The Court held that since Assessing Officer had sufficient material at his command to form a reasonable belief that income chargeable to tax had escaped assessment, merely because these transactions were scrutinised by the AO during original assessment would not preclude him from reopening assessment.
***Aradhna Estate (P.) Ltd. v DCIT– (2018) 254 Taxman 1 (Guj) – Special Civil Application no. 21999 of 2017 dated 20.02.2018***

**3293.** The AO had received information from Addl. DIT (Inv) stating that that the assessee had received bogus entry in form of gift from one D and addition was also made on account of bogus gift but the AO had initiated re-assessment proceedings u/s 147 r.w.s. 148 on the basis of reasons to believe escapement of income being bogus purchase/sale of shares. The Tribunal held that the reasons recorded were vague and farfetched which showed that the AO had no specific information. Noting that the assessee had not entered into any transaction of purchase/sale of shares and no new adverse information was brought on record which could suggest any justification for satisfaction to initiate proceedings u/s 147/148, in spite of specific request of assessee, it held that the AO had not discharged his onus to prove that income had

escaped assessment, rendering initiation of reassessment proceedings void. It thus held that initiation of reassessment proceedings was bad in law.

***PRIYANK MITTAL v ITO – (2018) 52 CCH 45 (Agra Trib) – ITA No. 268/Agra/2016 dated 08.01.2018***

**3294.** The Tribunal allowed assessee's appeal against reassessment proceedings initiated by issuing notice u/s 148 and completed u/s 144, holding the reasons recorded for reopening the said assessment to be null and void. The assessment was reopened by the AO noting that the assesse had made certain deposits in the bank account but was not filing return of income. The Tribunal relied on the decisions in the case of Sunil Kumar Saraswat vs. ITO [ITA No.109/Agra/2017] and Saraf Gramodyog Sansthan vs. ITO [108 ITD 115 (Agra)] wherein it was held that the mere fact that the deposits had been made in the bank account did not indicate that these deposits constituted income which had escaped assessment. With respect to the reliance place by the Department on the decision in the case of M/s Ginni Filaments Ltd. Vs. CIT [Writ Tax No. 1402/2004 (All)] to contend that adequacy of material before the AO at the time of recording of the reasons cannot be gone into by the Court, the Tribunal held that in that case it was also held that there must be a nexus between the material and the belief of escapement of income and in absence of necessary inquiry by the AO in the light of the information received, the said nexus/ link was missing in the present case.

***SATYADEV SINGH vs. INCOME TAX OFFICER - (2018) 53 CCH 0107 (Agra Trib) - ITA No. 243/Agra/2017 dated June 04, 2018***

**3295.** The assessee-company was engaged in business of real-estate development and construction activities. The AO sought to reopen the assessment as it observed that company made payment of certain amount which ought to had been disallowed u/s 40A(2)(b), thus issued notice u/s 148 and the same was upheld by the CIT(A).The Tribunal observed that the question arose in this case was whether the assessee had made payment or not. It observed that in the current AY it had only repaid the sale consideration earlier received from the director, for sale of plot and that consideration was offered for taxation. This year, it cancelled the sale of earlier year, and repaid sale consideration. Further, the Tribunal noted that there was no payment which was covered u/s 40A(2)(b) for harbouring belief that income had escaped assessment. Further, it noted that in audited accounts as submitted by assessee, detail mentioned for this issue was, "cancellation of booking of land purchase and further assessee had given details showing that there was no loss to company. Thus, the Tribunal held that on perusal of record it would indicate that there was much less fresh information which could authorize the AO to form an opinion or record reasons showing escapement of income, thus no information was available with AO to harbor a belief that income had escaped assessment on this issue. Accordingly the Tribunal held that reassessment was bad in law.

***Ganesh Housing Corp Ltd vs DCIT- (2018) 54 CCH 0108 Ahd Trib- ITA No 3034/Ahd/2015 dated 23.10.2018***

**3296.** Where re-assessment proceedings were initiated against the assessee and the assessee contended that notice u/s 148 was invalid as it was issued during pendency of proceedings before Tribunal (Banglore) and all issues raised were similar to original proceedings, the Tribunal observed that the current issue of undisclosed investment in land was entirely new

based on survey conducted u/s 133A and was not subject matter of appeal. However it quashed the reassessment on the grounds that assessee's objection against issuance of notice u/s 148 was not dealt with by the AO, there was no nexus between AO's finding and the material bought into notice and that section 147/148 was not meant for reopening an already concluded assessment. As regards the appeal for the subsequent Assessment Year, the Tribunal quashed the best judgement assessment u/s 144 by holding that since return was filed beyond the belated return filing due date, return was to be treated as 'invalid' and the AO could only issue notice u/s 148 based on information he had in order to complete the assessment.
***Sri Jaswanth Kumar Kothari [TS-144-ITAT-2017 (Bang)] (ITA Nos. 788 & 1027 /Bang/ 2013 )***

**3297.** The AO initiated reopening of assessment in case of assessee which was later set aside by the CIT(A). The Tribunal held that, CIT(A) while dismissing appeal of Revenue had categorically noted that assessee during the assessment proceedings had specifically denied having provided any accommodation entries to any company and name of assessee or companies who had invested / purchased shares of these companies had never cropped up during assessment proceedings. The CIT(A) had further given categorical findings that six companies from whom assessee had received share application money were still active companies duly registered under Indian Companies Act and were even filing income tax returns and such companies were having huge paid up share capital and reserves. Further, the Tribunal observed that, there was no material available with AO to held that transactions entered by these companies with assessee were bogus and AO despite having made enquiries failed to bring on record any specific material to show that these companies were paper companies. Further, the Tribunal also observed that there was no specific material or oral statements pointing out that any money had been paid by assessee to investor against cheques received. Thus, the Tribunal concluded that the CIT(A) gave factual finding that there was no material available before AO to held that transactions entered into by assessee company were bogus or that same *were accommodation entries and thus reassessment proceedings were not justified.*
***ACIT vs Krishna Jewellers & investment- (2018) 54 CCH 0087 Chandigarh Trib- ITA No 697/Chd/2016 dated 07.09.2018***

**3298.** The Tribunal deleted the addition made by the AO pursuant to reassessment proceedings on the ground that the assessee had consumed a higher percentage of raw materials (ingots) as compared to the reporting made to the Excise Department as the reporting to the Excise Department did not include details of non-excisable goods and the final profit figures matched irrespective of the discrepancy in consumption. Accordingly, in the absence of any evidence or material on record the reasoning adopted by the AO was unsustainable and the addition made (difference between ingots consumed and reported) was deleted.
***Vishwakarma Ispat Ltd v ACIT – (2015) 45 CCH 0279 Chandigarh Trib***

**3299.** After the original assessment u/s 143(3) was completed, the AO had reopened the assessment u/s 147/ 148 on subsequently finding that the assessee had set off excess application of income brought forward from previous AY against the current year's receipts/ income. It was noted that the claim of set off was available on record before the AO when fresh assessment u/s 143(3) was made. Accordingly, relying on the decision in the case of TANMAC India v. DCIT [Tax Case

(Appeal) No.1426 of 2007 (Mad)] the Tribunal held that since the entire material was available before the AO during the original assessment, in absence of any new material, the AO could not reopen assessment u/s 147. Thus, it held that the consequential order passed by the AO could not stand.

***DCIT & Anr v The Willingdon Charitable Trust & Anr (2018) 52 CCH 0349 ChenTrib - TA Nos. 2984, 2985, 2986, 2987 & 2988/Chny/2016 dated 19.04.2018***

**3300.** The Tribunal held that reopening of the assessment was bad in law and quashed the same. It held that the AO merely on the basis of the report of Valuation Officer recorded reasons for reopening of the assessment. The Valuation Report was based on mere estimate and as such the same per se is not sufficient information for the purpose of reopening of the assessment u/s 147.

***DR. MAMTA DINESH vs. Dy.CIT (2018) 54 CCH 0331 DelTrib ITA No. 1709/Del./2018 dated 10.12.2018***

**3301.** During the year the assessee had sold some immovable property after paying stamp duty and as per information received from CIB to AO, there were difference in amount of valuations and thus to assess capital gain arising on sale of immovable property as per provisions of Section 50C, proceeding u/s. 147 were initiated by AO. In response to notice u/s.148, neither any compliance was made, nor return was filed by assessee and since assessment was going to be time barred, AO passed the ex-parte assessment order u/s. 144/147 and the same was upheld by CIT(A). The assessee's case was that no notice u/s.148 was received thus reassessment proceeding initiated u/s.148 could not be considered as valid. The Tribunal noted that, the A.O. passed the ex-parte re-assessment order under section 144/147 on 30.03.2015 and the assessee had filed an appeal before CIT(A)on 29.04.2015 i.e., within 30 days, thus there was no question that notice under section 148 was not served upon assessee at same address where the order was also received. Further, the assessee did not challenge the ex-parte re-assessment issue before Ld. CIT(A) nor did it challenge the findings of the A.O. that assessee did not cooperate in re-assessment proceedings.

The Tribunal further noted that the AO was having credible information that assessee sold property for Rs.10 lakhs and for stamp duty purpose it was valued at Rs.12,18,000, thus the Tribunal concluded that there were sufficient tangible material available with AO to initiate re-assessment proceedings against assessee and reopening of assessment was justified.

***Sabbal Ahmad vs ITO- (2018) 53 CCH 0517 Del Trib- ITA No 594/Del/2018 dated 04.09.2018***

**3302.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order quashing the reassessment proceedings in a case where the AO had reopened the assesseement u/s 147 r.w.s. 148 on the reasons that a complaint was received from the PMO which alleged that the assesse had much more income that the income declared to the income-tax department and also stated the minimum charges for decoration and arrangement for marriages and other parties per day was Rs.6 lakhs, whereas it was noted by the Tribunal that the assessee was in catering business (i.e. not decoration, etc.). It held that the nature of the complaint was known and the AO had reopened the assesse without verifying the information received. The Tribunal held that the information received by the AO could raise suspicion against the assessee but

without any basis and without any tangible material, reason to suspect could not become the reason to believe that income had escaped assessment.

***INCOME TAX OFFICER & ANR. vs. S.K. CATERERS PVT. LTD. & ANR - (2018) 53 CCH 0350 (Del Trib) - ITA No. 1647/DEL/2015 (CO No. 302/DEL/2015) dated June 27, 2018***

**3303.** Search operation u/s 132 were carried out at business premises of one of the Directors of assessee-company and a pen-drive was found from his possession. There were debits of certain amount in respect of expenses made on various heads which were apparently not entered in books and were not declared in return of income. Thus, the AO held that amount of undisclosed expenditure made by assessee was covered within provisions of section 69C and further the AO held that on basis of pen-drive found from possession of director he had reasons to believe that unexplained expenditure had escaped assessment and thus initiated reassessment proceeding against assessee, which was further upheld by the CIT(A). The Tribunal observed that the director from whose possession pen-derive was found did not make any allegation against assessee-company and further, in reasons for reopening of assessment, name of director was not mentioned and it did not refer to any material to connect assessee-company with escapement of income or incurring any unaccounted expenses. Further, the AO did not verify details contained in pen-drive and initiated re-assessment on the pretext of unaccounted expenditure u/s. 69C, but, later on, AO did not make any addition u/s.69C. Thus, the Tribunal held that the AO failed to establish that assessee-company had incurred expenses in question and the entries in pen-drive were connected with assessee company had also not been established. Thus, the Tribunal concluded that there was absence of link between tangible material and formation of belief and the belief of AO was based on mere imagination, speculation and suspicion, therefore, it was not a fit case for initiation of reassessment proceedings u/s. 147/148.

***RL Travels Pvt Ltd vs DCIT- (2018) 54 CCH 0018 Del Trib- ITA No 893/Del/2015 dated 18.09.2018***

**3304.** The Tribunal allowed assessee's appeal to set aside the reassessment order and held that merely because addition has been made in hands of co-owner, no presumption could be drawn that income has escaped *assessment* in the hands of assessee, without there being independent 'reasons to believe', based upon cogent materials. The AO had reopened the assessment on the reason that in case of co-owner, his claim that the gains arising on sale of agricultural land was not being exigible to tax u/s 2(14)(iii)(b) (as it was excluded from the definition of capital asset) was rejected by the AO on the ground that the land was located in an industrial hub and not used for purpose of agriculture. Accordingly, in that case, the AO had brought to tax the capital gains arising thereon and the same was upheld by the CIT(A) also.

***POONAM BHALLA vs. ASSISTANT COMMISSIONER OF INCOME TAX [2018] 53 CCH 0436(Del Trib) ITA No. 1125/Del/2015 DATED AUGUST 09, 2018***

**3305.** The Tribunal quashed the reassessment proceedings on ground that proceedings had been initiated not on basis of any material but on basis of mere alleged information. It was noted that the AO had initiated reassessment proceedings on basis of information received from Investigation Wing which revealed that in a search and seizure operation conducted in premises of Mr. C, a pen drive was recovered containing name of persons whose money and wealth Mr.C

was administering and assessee was one of such person. The Tribunal noted that the reassessment proceedings were initiated by the AO based on the above information only and no further inquiry was made or documents were verified by the AO during assessment proceedings. Accordingly, it held that the AO had no material or evidence whatsoever in his possession or on his record but proceeded to initiate proceedings u/s 148 without satisfying preconditions of section 147 i.e. having reasons to believe based on material found.
***Jagat Singh vs Asst CIT [2018] 54 CCH 0177 (Del- Trib.)- ITA No. 3036 to 3039/Del/2015, dated 02.11.2018***

**3306.** Where pursuant to information received from the Add CIT i.e. the assessee had provided a loan to a co-operative society on which it earned interest of Rs. 10 crore and the Tribunal in the case of the society had held that the interest was taxable in the hands of the assessee, the Tribunal upheld the reassessment proceedings initiated by the AO and held that the information constituted new tangible material which justified initiation of reassessment proceedings.
***DEPUTY COMMISSIONER OF INCOME TAX (LTU) & ANR. vs. RURAL ELECTRIFICATION CORPN LTD. & ANR. - (2018) 52 CCH 0248 DelTrib - ITA No. 3009 to 3011/Del/2014 dated Mar 26, 2018***

**3307.** The Tribunal deleted the addition made by the AO in reassessment proceedings on account of prior period expenses and claim of receivables noting that there was no tangible material outside the record which was the basis of reassessment proceedings. Further it held that there could be no reason to believe that income had escaped assessment, as the assessee had not claimed the impugned amount as a deduction in the first place (which was noted in the original assessment proceedings).
***ASSISTANT COMMISSIONER OF INCOME TAX vs. SAMSUNG INDIA ELECTRONICS PVT. LTD. - (2018) 52 CCH 0160 DelTrib - ITA No. 4181/Del/2011 dated Feb 23, 2018***

**3308.** The assessee company, engaged in business of manufacturing of overhead transmission lines, cables and conductors was served a notice u/s 148 based on audit objection. AO observed that assessee had not complied with provisions of section 145A of Act and had failed to include excise duty while valuing closing stock at end of year. The CIT(A) upheld the order of the AO. Tribunal observed that as per the audit certificate providing details of valuation of closing stock of the assessee, such value was derived after adding excise duty to basic price of goods and further adding other charges. Further, the Tribunal opined that the AO had merely made guess work on such audit objection and thereby made addition without bringing any material on record to prove that opening and closing stock valued by assessee company did not contain element of excise duty and taxes. Thus, the Revenue's appeal was dismissed.
***ACIT vs. NARMADA TRANSMISSION PVT. LTD. (Indore Tribunal) (ITA No. 215/Ind/2015) dated May 31, 2018 (53 CCH 0202)***

**3309.** The Tribunal held that reopening of assessment on the basis of report received from the DVO was sustainable where the AO during original assessment proceedings sought to examine the investment made by the assessee in hotel building and referred the matter to the DVO but however could not make the addition as the report of the DVO was received after the statutory limit for completion of assessment under Section 143(3).

Go to Index

***ACIT v Mashal Hotels Pvt Ltd – (2018) 52 CCH 0131 (Indore Trib)- ITA NO 618 / Ind / 2015 – dated Feb 28, 2018***

**3310.** The assessee filed his return of income pursuant of issuance of notice u/s 148 declaring agricultural income and prior to that no return of income was filed. The AO re-opened the assessment in view of the information available that the assessee had earned capital gains on sale of land and had unexplained deposits in assessee's bank account maintained with PNB which had escaped taxation. The AO made addition in respect of the same and completed assessment under Section 147 of the Act. The CIT(A) upheld the order of the AO. With respect to sale of land, the Tribunal held that there was lack of nexus between the material and formation of prima-facie belief that income had escaped taxation for the impugned AY, as the AO had not examined the sale deed (being the relevant material) which showed that the capital gains was earned in the subsequent year and not in the present year. It thus held that re-assessment proceedings could not have been initiated against the assessee on this reason / ground. However, the Tribunal upheld the reassessment on the second ground i.e. unexplained deposit in bank account, in view of non-filing of return of income by the assessee.
***JAGDISH NARAYAN SHARMA & ORS. vs. ITO & ORS. (JAIPUR TRIBUNAL) (ITA No. 751/JP/2015, 752/JP/2015, 753/JP/2015) dated May 25, 2018 (65 ITR (Trib) 0194)***

**3311.** The Tribunal upheld order of CIT(A) and dismissed appeal of the assessee challenging the legality and validity of re-opening of assessment u/s 147 of the Act. The Tribunal notes that the Assessing officer had received information from DGIT(Inv), which was based on information received from Sales Tax Department which reflected that the assessee was beneficiary of bogus accommodation entry from 28 hawala dealers. It held that it was a tangible and material information sufficient for the purposes of re-opening of the assessment. Further as the said re-opening was done by the Assessing officer within four years from the end of the assessment year and no scrutiny assessment u/s 143(3) r.w.s. 143(2) of Act was framed originally by Revenue, first proviso to Section 147 of the Act was not applicable. Accordingly, the Tribunal held that re-opening of the assessment by the Assessing officer u/s 147 was valid and legal.
***Ratnagiri Stainless Pvt Ltd v. Income Tax Officer - (2017) 49 CCH 0142 MumTrib (ITA No. 4463/Mum/2016)***

**3312.** The Tribunal dismissed assessee's appeal against the initiation of reassessment proceedings by the AO where the reopening notice was issued based on receipt of information from DGIT (Investigation) stating that the assessee had obtained accommodation entries of bogus purchase bills from one company. It was noted that on receipt of the information, the AO had analyzed the same and after matching the same from the website of Sales Tax Department came to conclusion that the certain purchases made by the assessee were non-genuine. The Tribunal held the AO had reasons to believe for income escaping assessment (which was a condition precedent for reopening assessment) since the AO received tangible material from appropriate authority and had applied its mind on information received.In the reassessment order passed by the AO, he had also made addition u/s 68 on account of receipt of share application money/ share capital/ share premium. In this regard, it was noted that that no tangible material / information was available with the AO qua this item either at the time of initiation of proceedings or during reassessment proceedings suggesting factum of escapement

of income. Thus, Tribunal accepted assessee's contention that the AO could not make fishing and roving enquiries to unearth new grounds of addition which wasn't the subject matter for initiating reassessment proceedings. It deleted the said addition, holding that the AO could not assume jurisdiction with respect to independent and unconnected items without any tangible material or information suggesting escapement of income which was the basic requirement of section 147.
***Juliet Industries Limited & Anr v ITO & Anr (2018) 52 CCH 0278 MumTrib - ITA No. 5452/Mum/2016, 5975/Mum/2016 dated 04.04.2018***

**3313.** The Tribunal quashed reassessment proceedings on the ground that there was no new tangible material or information on record which remotely suggested that the AO had reason to believe that income disclosed by the assessee was inadequate.
***Popley Diamond and Gold Plaza Pvt Ltd v DCIT [ITA Nos 5053, 5054, 5055,5056 and 5057 / Mum / 2009] - TS-462-ITAT-2015(Mum)***

**3314.** The Tribunal held that where reopening was made on basis of material which was already considered by AO during original assessment proceedings itself and AO had no new material in hand to justify reopening, the reopening was not warranted.
***ACIT v Alstom Projects India Ltd - (2015) 44 CCH 0540 Mum Trib***

**3315.** The Apex Court dismissed Revenue's SLP against the High Court order wherein the High Court had upheld Tribunal's order quashing the reassessment proceedings (initated on account of incorrect TDS claim) in absence of fresh tangible material in possession of the AO.
***Ayoki Fabricon Pvt Ltd vs Dy.CIT [2018] 54 CCH 0257 (Pun- Trib.)- ITA No.1723/Pun/2014,11/Pun/2015 and 1608/Pun/2015 dated 20.11.2018***

» *Initiated where intimation u/s 143(1) was received*

**3316.** Where the assessee's ROI was processed u/s 143(1) and there was no regular assessment proceedings u/s 143(3) and thereafter, the AO issued a notice u/s 148 on the ground that the income of the assessee had escaped assessment, the Court reversed the Tribunal's order quashing re-assessment proceedings on the ground that since the AO had considered all the material while preparing intimation u/s 143(1), there was change of opinion which was invalid. The Court held that intimation u/s 143(1) was an acknowledgment and not an order of assessment passed by the AO and therefore, it could not be said that the AO had framed any opinion. Accordingly, it held that the initiation of re-assessment proceedings was valid.
***CIT vs. VAIBHAV CASTING PVT. LTD. (2017) 99 CCH 0111 AllHC ITA No. 569 of 2012 dated 18.07.2017***

**3317.** The Court held that notice issued under section 148 of the Act would be without jurisdiction for absence of reason to believe that income had escaped assessment even in case where assessment has been completed earlier by intimation under section 143(1) of the Act.
***Khubchandanci Healthparks Pvt Ltd v ITO – (2016) 68 taxmann.com 91 (Bom)***

Go to Index

**3318.** The assessee, engaged in Computer Training and Software Development, made project exports to certain parties and claimed exemption u/s 10A (being in free-trade zone) on the profit. The said claim, which was supported by the Auditor's certificate and report, was duly accepted as per intimation issued u/s 143(1). However, the AO issued a notice to assessee u/s 148 based on the statement made by the Auditor that till date of signing of Report, certain amount against the projects exports remained unrealized. During the course of proceeding, the assessee filed supplementary Auditor's report claiming the profit from software export at the reduced figure due to sales return against project export (thus, claiming the unrealized amount to be the sales return).The AO without accepting the claim of sales return took the net profit at the original figure but reduced exemption under section 10A by the amount in question. On appeal, the CIT(A) directed the AO to reconsider and compute the net profit. The order of the CIT(A) was upheld by the Tribunal. The Court held that the AO's approach of reducing exemption of profit u/s 10A by detaching it from the reduction in sales figure on account of sales return, could not be done in isolation. Further, it relied on the CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC) and CIT v. Sun Engineering Works (P.) Ltd. [1992] 198 ITR 297 (SC) wherein it had been held that the AO can reassess but cannot review and held that since the exercise that resulted in the intimation issued u/s 143(1) was done on the basis of material and evidence then available, it could not be said that the assessee's income had escaped assessment to tax. Accordingly, it dismissed the revenue's appeal.
***CIT v L. C. C Infotech Ltd.[2018] 94 taxmann.com 117(CalcuttaHC)- ITA NO 16 OF 2017 dated 11.05.2018***

**3319.** The Court held that where the assessee had artificially and with ulterior motive reduced income of property of its proprietorship concern by setting off loss accruing to its erstwhile firm, which was impermissible in terms of section 10(2A) of the Act, the AO was correct in initiating reassessment proceedings and even more so because the return was processed under section 143(1) of the Act as a result of which the AO did not have the occasion to form an opinion on whether there was any escapement of income to begin with.
***Indu Lata Rangwala v DCIT – (2016) 96 CCH 0015 (DelHC)***

**3320.** Where the original assessment was completed u/s 143(1) and the reassessment proceesings were initiated on basis of information received from Investigation wing that assessee had received certain amount from shell companies working as an accommodation entry provider, the Court held that reassessment could not be held unjustified.
***Amit polyprints (P.) Ltd. v DCIT [2018] 94 taxmann.com 393 (Gujarat) – SPECIAL CIVIL Application Nos. 22489 AND 22514 OF 2017 dated 07.05.2018***

**3321.** The Court held that the Assessing Officer could reinitiate reassessment proceedings taking a view that the huge premium received by the assessee on account of share issue represented unexplained cash credits under section 68 of the Act having regard to the net worth of the assessee and considering that the assessee had declared nil income in its return. It held that since the assessee's return was processed under section 143(1), the question of change of opinion does not arise and that the reasons for reopening of assessment were not perverse or untenable as to terminate the assessment on the ground that the AO could not be stated to have any reason to believe that income chargeable to tax had escaped assessment since the

facts were prima facie glaring and that the assessee would only be able to establish identity, source and creditworthiness of the depositors during the reassessment scrutiny proceedings.
***Olwin Tiles (India) Pvt Ltd v DCIT – (2016) 66 taxmann.com 8 (Guj)***

**3322.** The Court held that where Directorate of Investigation (DIT) informed Assessing Officer that assessee-company (whose return had been processed under Section 143(1) of the Act) had received share application money from several entities, which were companies with no real business and were only engaged in business of providing bogus accommodation entries to beneficiary concerns and the information was further confirmed by directors/dummy directors/key persons of said entities in their respective statements recorded by the AO, the reassessment notice against assessee on basis of said information was justified. It further held that since no scrutiny assessment took place in the case of the assessee, there was no question of entertaining the contention that the reassessment proceedings were initiated on the basis of a change of opinion.
***Ankit Agrochem (P.) Ltd v JCIT - [2018] 89 taxmann.com 45 (RajasthanHC) - WRIT NO. 1101 of 2017 dated 18.12.2017***

**3323.** Where during survey proceedings, the AO observed that the assessee had sold land to various entities and had incorrectly disclosed the income arising therefrom as agricultural income exempt from tax pursuant to which he issued notice under Section 148 of the Act, the Court observed that since the assessee's return was processed under Section 143(1) of the Act and no assessment had taken place, the assessee was not justified in contending that the AO had proceeded to reopen assessment based on a mere change of opinion. Further, it also held that the sufficiency and adequacy of the reasons which have led to formation of a belief by the AO that the income has escaped the assessment could not be examined by the court and accordingly dismissed the assessee's Petition.
***Ayush Agrotech P Ltd v Pr CIT - [2018] 89 taxmann.com 63 (Rajasthan) - SPL. APPL. WRIT NO. 1102 OF 2017 dated 18.12.2017***

**3324.** The assessee company had entered into a joint venture agreement with M/s. Parsvnath Developers Ltd and received 7,02,54,000/- for which it handed over possession of land as well as development rights which was shown as a liability in the balance sheet. It had filed return of income, which was processed u/s 143(1) of the Act. Subsequently, the AO reopened assessment by issuing notice u/s 148 contending that that there was failure on part of assessee to disclose fully and truly such facts for framing assessment as the assessee had failed to offer the consideration received by it to tax under the head income from capital gains. The Tribunal dismissed the claim of the assessee that there was no fresh material to re-open assessment and held that the AO had jurisdiction to issue notice u/s 148 for bringing to tax income escaping assessment in intimation u/s 143(1)(a) as the assessee's claim that the said consideration was not taxable was not acceptable. It held that failure to take steps u/s 143(3) of the Act would not render AO powerless to initiate reassessment proceedings when intimation u/s 143(1) had been issued. Further vis-à-vis assessee's contention that no reasons had been provided by the AO, the Tribunal held that there was no material on record to suggest that assessee had asked for reasons for reopening after filing return of income in response to notice issued u/s 148. It held that there was no written request made by the assessee after filing return of income asking for

reasons recorded for reopening and noted that the assessee had also participated in the re-assessment proceedings. Therefore, it held that the assessee could not now raise that ground. Accordingly, it upheld the validity of the order passed under section 147 read with section 148 of the Act.

***SUMERU SOFT P. LTD. & ANR. vs. INCOME TAX OFFICER & ANR - (2017) 50 CCH 0020 ChenTrib - ITA No. 2101/Mds/2016, 2484/Mds/2016 dated 08.05.2017***

**3325.** Where the AO initiated re-assessment proceedings based on certain information from the DG, Investigation Wing, Pune, alleging that the assessee had undertaken certain hawala transactions / bogus purchases, the Tribunal, relying on the decision in ACIT Vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (2007) 291 ITR 500 held that the initiation of reassessment proceedings were justified where the original return of income filed by the assessee was processed under section 143(1) of the Act. On the merits of the case, it held that since the assessee failed to produce the suppliers from which it had made the impugned purchases and failed to maintain a stock register to prove that it had made sales from the impugned purchases, the AO was correct in making an addition on account of bogus purchases. However, it held that the GP rate of 20 percent on gross purchases adopted by the AO was not justified and it upheld the order of the CIT(A) restricting the addition to the GP rate of 10% on goods purchased from hawala dealers, over and above GP rate declared by assessee

***RAJDEEP ENGINEERING SYSTEMS PUNE PVT. LTD. vs. DCIT (2017) 50 CCH 0147 PuneTrib ITA Nos. 972 to 974/PUN/2016 dated 02.06.2017***

» *Others*

**3326.** The Apex Court reversed the HC order and quashed reassessment under the erstwhile Interest Tax Act, 1974 absent assessment order passed during original proceedings by relying on the Apex Court ruling in Trustees of H.E.H. the Nizam's Supplemental Family Trust and holding that where there is no assessment order passed, there cannot be a notice for reassessment in as much as the question of reassessment arises only when there is an assessment in the first instance.

***Standard Chartered Finance Ltd v CIT - TS-103-SC-2016***

**3327.** The Court held that where reassessment proceedings were pending against assessee and audit report submitted by assessee was also on record, impugned notice issued by revenue under section 142(2A) directing assessee to get its accounts audited again, deserved to be set aside.

***Multi Commodity Exchange of India Ltd. v. Dy. CIT, Mum - [2018] 100 taxmann.com 180 (Bom)- WP. Nos. 143, 149 & 161 of 2018 – dated October 1, 2018***

**3328.** The AO reopened *assessment* in the assessee's case beyond 6 years on the basis of CIT(A)'s order in case of another assessee wherein the CIT(A) had excluded certain amount from the income of that another assessee and directed that the said amount be taxed in the hands of the present assessee. The assessee filed writ petition before the Court praying to quash the reassessment notice issued u/s 148 as well as assessment order passed u/s 147. The Court quashed CIT(A)'s aforesaid directions which recorded adverse findings noting that in case of

Rural Electrification Corporation Limited vs CIT [2013] 355 ITR 345 (Del HC) it was held that before a notice u/s 148 can be issued beyond the six year period prescribed u/s 149, the ingredients of (erstwhile) Explanation 3 to Section 153 [now Explanation 2(b)] had to be satisfied which unequivocally postulate that any adverse order has to be proceeded by adequate opportunity of hearing to the concerned party (the present assessee). In the instant case, the procedure of issuing notice and granting opportunity to the party (asesssee) likely to be affected adversely was given a go-by by the CIT(A) while giving the aforesaid directions. However, it further held that if the CIT(A) wanted to proceed against the assessee, he should do so provided he shall issue appropriate notice in that regard. Accordingly, the Court allowed the assessee's writ petition to the above extent.

***RAMESH CHANDRA & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. [2018] 102 CCH 0204(Del HC) W.P.(C) 5684 & 5717/2017 Dated August 14,2018***

**3329.** The Court held that reassessment proceedings could be initiated only by the AO who had passed the original assessment order [AO Ward 39(1)] and therefore reassessment proceedings initiated by another AO [AO Ward 39(2)] were not valid in law.

***Dushyant Kumar Jain v DCIT – (2016) 66 taxmann.com 126 (Del)***

**3330.** The Court held that in the absence of no new material, the reopening of assessment was to be considered as bad in law as the same would constitute an abuse of the process of law and since the matter on which the AO sought to re-open assessment was pending before the CIT(A) / ITAT for earlier years, the re-opening of assessment was invalid as provided in the Third proviso to section 147 of the Act, which states that the AO would not assess or re-assess income involving matters which were subject matter of any appeal, reference or revision and therefore the notices issued initiating the proceedings were quashed.

***Alcatel Lucent France v ACIT – (2016) 95 CCH 0138 (Delhi)***

**3331.** The Court dismissed the writ petition filed by the assesseee against the re-opening notice issued u/s 148 by the ITO, Noida, where after three months from the date of receipt of the said notice, the assessee had raised an objection stating that the assessee was regularly filing returns with ITO, Delhi and, accordingly, the said notice issued by ITO, Noida was illegal and without territorial jurisdicition. It held that the assessee could not call in question jurisdiction of the ITO, Noida after expiry of one month from date of a service of reassessment notice upon him in view of the provisions of section 124(3) which states that no person can call in question jurisdiction of an AO in case of non-compliance and/or after the period stipulated in clauses (a) and (b).

***Abhishek Jain v ITO - [2018] 94 taxmann.com 355 (Delhi) - WRIT PETITION (CIVIL) NO. 11844 OF 2016 dated June 1, 2018***

**3332.** Where the AO had initiated block assessment proceedings under section 158BC of the Act, the Court held that the AO was not justified in issuing notices under section 148 of the Act seeking to reopen assessment for the same years covered under the block assessment proceedings as it would result in parallel proceedings. Accordingly, it quashed the notice issued under section 148 of the Act.

***South Asian Enterprises Ltd v CIT – (2017) 99 CH 0029 (Del HC) – WP C 4623 / 2001 dated 25.05.2017***

Go to Index

**3333.** The Court set aside the notice issued u/s 148 and annulled the assessment order passed u/s 143(3) r.w.s. 147 on ground of merger of order, in a case where the assessee's claim for deduction u/s 80-IA which was rejected by the AO under scrutiny assessment was allowed by the CIT(A) in entirety and the assessment was reopened on the grounds viz. firstly, post monitoring expenses under heading "Long term provisions" was not actual expenses but merely a provision and not an allowable expenditure u/s 37(1); secondly, cell utilization expenses claimed as deduction was contingent expenditure which might be or might not be incurred in future and hence, not allowable u/s 37(1); thirdly, amount debited on account of land utilization was a sort of depreciation on land which was not allowable. It held that the initial assessment order of AO had merged with order of CIT(A) and thereafter it could not be open for AO to reopen the same claim for possible disallowance of part thereof.

***Gujarat Enviro Protection & Infrastructure Ltd. v DCIT– (2018) 91 taxmann.com 436 (Guj) – Special Civil Application no. 16165 of 2017 dated 19.02.2018***

**3334.** The Court held that where Tribunal without adjudicating the ground challenging the initiation of reassement proceedings and, without considering material placed on record by assessee, upheld additions under section 68 made to income of assessee in respect of bogus creditors and further such additions resulted in huge gross profit ratio which could not arise in type of business of assessee, impugned additions were unjustified and matter was to be reconsidered afresh by Tribunal.

***Smt. Madhu Solanki v. ITO, Ward-1(3), Bangalore- [2018] 100 taxmann.com 266 (KarnatakaHC)-ITA No. 283 of 2010 dated November 13, 2018***

**3335.** Department received information (charge sheet filed by CBI on direction of Supreme Court) that the assessee through his brother had received certain sum in garb of share premium. It issued notice under section 148 to the assessee. Since notice was not accompanying reasons were communicated to the assessee. However, the assessee filed writ challenging said initiation of reassessment. The Court held that in view of fact that there were some materials on record and information with Department, reopening of assessment of the assessee was in accordance with law and, as such the assessee was bound to respond to the Assessing Officer for purpose of arriving at a conclusion and for taking a decision and in event of passing an order of assessment or reassessment, he could prefer an appeal contemplated under provisions of Act. Since based on preliminary information's gathered by the Assessing Officer, section 148 notice was issued to the assessee, it would not provide a cause of action for filing of present writ petition and writ petition was premature.

***Dayanidhi Maran v. Asstt. CIT [2018] 98 taxmann.com 202 (Mad.)- W.P. Nos. 3405 & 43944 of 2016 W.M.P. Nos. 2780 & 37778 of 2016 dated October 10, 2018***

**3336.** The Court held that if reassessment proceedings were held to be invalid by the Tribunal or a Court of Law, in that situation, it cannot be held that the original assessment stood obliterated. In other words, if the initiation of reassessment proceedings was held to be invalid, the assessee would revert back to the situation where he originally stood, i.e. the original assessment order would revive. Thus, the doctrine of merger would have no application in the case where subsequent order u/s 147 was held to be unsustainable in law. The said doctrine would apply

only in a situation where the subsequent reassessment order had been held to be valid in law. Thus, concluded that whatever income was assessed u/s 143(3) would stand and would not get merged in the reassessment order passed u/s 147 if the latter reassessment order was annulled because of some reason.

***Patiala Improvement Trust vs ACIT- (2018) 103 CCH 0142 (P&H HC)- ITA No 301/2015 dated 22.10.2018***

**3337.** The Court held that section 153(3) of the Act, which provides that time limit contained in section 153(1) and 153(2) of the Act would not apply where the assessment, reassessment or re-computation was made on the assessee or any person in consequence of or to give effect to a finding or direction contained in an order of any court in a proceeding otherwise than by way of appeal or reference under the Act, would apply only when the party on whom reassessment was done was given an opportunity of being heard. In the instant case, since the party on whom reassessment was made was not heard before the Authority passing the order, section 153(3) of the Act did not apply and the reassessment was time barred.

***CIT v Uttarakhand Van Vikas Nigam [ITA Nos 38 & 39 of 2015] – TS-508-HC-2015 (UTTARAKHAND)***

**3338.** AO had issued notice under section 148 of the Act which was stayed by the High Court on 18.03.2013 and the final order of the Court (dismissing the assessee's writ petition) was passed on 29.07.2013. The AO passed his final assessment order on 26.02.2014 after extending the period of limitation by the time taken for communication of order of the Court. The Court held that the period for communication of the order passed by the Court to the AO could not be considered while determining the period for limitation under section 153 of the Act. It held that the AO could claim extension of the period for the period for which the proceedings were stayed by the High Court but could not claim benefit of the period taken for communication of order to the AO and accordingly held that the order passed by the AO was time barred. Further, it appreciated the contention of the assessee that the AO was well aware of the proceedings occurring in the Court as the DR was present in Court during the hearings and detailed affidavits were also filed by the Department. Accordingly, it upheld the order of the Tribunal annulling the reassessment order passed.

***ACIT v Sun Pharmaceutical Industries Ltd – (2017) 50 CCH 0009 Ahd Trib – ITA No 1688 / Ahd / 2015 – 05.05.2017***

**3339.** In case of the assessee, assessment u/s 143(3) was completed by AO and subsequently, re-opening notice was issued u/s 148. In reassessment order, difference between interest accrued as per balance sheet and interest as per P&L account was added to assessee's income and reassessment was completed after considering revenue audit objection. The CIT(A) granted relief to assessee. The Tribunal observed that the CIT(A) had quashed reassessment proceedings but Department had not challenged such annulment and it had only challenged deletion of addition on merits. Thus, the Tribunal held that, in absence of a ground challenging quashing of reassessment proceedings by CIT(A), there was no reason found to interfere and the department had no case in this regard

***DCIT vs Sahara India Life Insurances Co Ltd – (2018) 54 CCH 0139 Del Trib- ITA No-3509,6243,6244,1347,6245,6246/Del/2013 dated 31.10.2018***

Go to Index

**3340.** The AO reopened the assessment and made an addition under Section 68 of the Act. The CIT(A) upheld the order of the AO. The Tribunal observed that as per *Notification No. 9579 dated August 5th,1994*, only the AO in Dehradun had jurisdiction for assessment under the Act in the case of the Assessee and accordingly, notice issued under Section 148 by the AO in Mumbai for reopening the assessment was not valid and hence the consequent re-assessment was void-ab-initio and was liable to be quashed. Thus, the Assessee's appeals were allowed.
***MYUNG HWAN LEE vs. ADIT (IT) (DELHI TRIBUNAL) (ITA No.2100/Del./2016 & 2101/Del./2016) dated May 25, 2018 (53 CCH 0082)***

**3341.** Relying on the assessee's own case before the Delhi Tribunal in ITA No. 2676/Del/2010, dated August 8, 2013, the Tribunal held that as per statutory scheme and provisions, during pendency of proceedings under Section 153A of the Act, the AO was not empowered to issue notice under Section 147/ 148 of the Act and hence the notice initiating re-assessment being illegal, the re-assessment proceedings could not be sustained. Accordingly, the Assessee's appeal was allowed.
***VIPUL MOTORS PVT. LTD. vs. ACIT (DELHI TRIBUNAL) (ITA No. 5217-18/Del/2013) dated May 23, 2018 (53 CCH 0076)***

**3342.** The Tribunal held that initiation of two parallel proceedings on a similar subject matter could not sustained and therefore where the Revenue had initiated reassessment proceedings under section 147 as well as rectification proceedings under section 154 of the Act in respect of non-offering of receipts as income on which TDS credit was claimed, the reassessment proceedings and consequent order were to be set aside as they were initiated without concluding the earlier proceedings initiated under section 154 of the Act.
***Sushil Kumar Jain v ACIT – TS-345-ITAT-2016 (Del)***

**3343.** The Tribunal quashed reassessment proceedings initiated by the AO as they were time barred under section 153 of the Act. It held that the benefit of extended limitation in terms of Explanation 1(iii) of Section 153 of the Act, pertaining to the exclusion of time period commencing from the date on which the AO directed audit of account under section 142(2A) till the last date on which the assessee was required to furnish the report, was not available to the AO since the time limit for the furnishing of the special audit report was extended by the AO suo motu without any application from the assessee.
***PHI Seeds Ltd v DCIT – TS-720-ITAT-2015 (Del)***

**3344.** The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order quashing the assessment order passed pursuant to reassessment notice issued u/s 148 since the said notice was issued during the pendency of scrutiny assessment proceedings, relying on the decision in the case of Trustees of H.E.H the Nizam's Supplement Family Trust Vs. CIT [242 ITR 381 (SC)] wherein it was held that unless the return of income already filed is disposed of, notice for reassessment under section 148 cannot be issued, i.e., no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of the return already filed are not terminated.
***ASSISTANT COMMISSIONER OF INCOME TAX vs. KAKADE INFRASTRUCTURE PVT. LTD. - (2018) 53 CCH 0206 (Pune Trib) - ITA No. 854/PUN/2015 dated June 20, 2018***

Go to Index

*Rectification u/s 154*

**3345.** The Court upholding order of the Tribunal held, that period of limitation u/s 154(7) would commence from March 31, 2006 being the date of passing of Assessment order u/s 143(3) and not from the date of passing of order pursuant to remand by Tribunal being December 31, 2009 or from the date of suo moto rectification order passed by the AO of such order being January 25, 2011 and, therefore, the application made by the Assessee dated May 9, 2011 u/s 154 was beyond period of limitation. The Court noted that the issue on which application u/s 154 was filed, being set off of brought forward capital loss, was not agitated by the Assessee before any of the lower authorities and, therefore, the same attained finality as on the date of the assessment order being March 31, 2006 and that the same did not merge with the order of the CIT(A) which subsequently merged with the order of the Tribunal. The Court further noted that the IT Act has recognised 'Doctrine of Partial Merger' u/s 263(1) which states that the power of Commissioner shall extend to only such matters which has not been considered and decided in an appeal.

The Court further differed from the decision of the Delhi High Court in the case of CIT vs. Tony Electronics Ltd (320 ITR 378), relied upon by the Assessee, (which held that period of limitation should commence form the date of rectification order as from the said date the original order ceased to operate) by holding that the decision of the Hon'ble Supreme Court in the case of Hind Wire Industries Ltd. vs. CIT (212 ITR 639), relied on by the Delhi High Court, stated that order u/s 154 can be any order including amended and rectified order and, therefore, the observations made by the Delhi High Court that it includes only rectified or amended order are much more than what has been actually said in the order of the Hon'ble Supreme Court.

***Shree New Durga Cold Storage & Ice Factory vs. CIT(2017)98 cch 0114-All HC (ITA No.14 of 2014 dated March 7, 2017)***

**3346.** The assessee had long-term capital gain on sale of land against which it set off the brought forward long term capital loss in its return of income. The AO enhanced the long term capital gain without setting off the long term capital loss of the assessee and passed the order on 31.02.2006. The AO's order was approved by the CIT(A). However, the Tribunal remanded the matter to AO to refer the matter to the valuation officer for determining the FMV of the property. The AO thereafter re-computed LTCG and passed the order on January 25, 2011. Thereafter the assessee filed the application u/s 154 stating that the AO had failed to setoff the brought forward capital loss against the long term capital gain. The AO however rejected the assessee's application on the ground that application was made after 4 years from the date of the original order and accordingly, was time barred. The CIT(A) and the Tribunal dismissed the assessee's appeal that the time limit of 4 years would be from the AO's order dated 25.01.2011 and not original order. The Court observed that the AO had failed to consider the brought forward loss in the original order and the assessee had neither filed the rectification application u/s 154 at that time nor appealed before the CIT(A) and the Tribunal. It held that the remand by the Tribunal was only on the issue of determination of FMV and accordingly, the AO's order dated 25.01.2011 was only on that issue and issue of setoff was not subject matter of that order and therefore, the issue of setoff had attained finality. Therefore, it held that the period of 4 years would be considered from the date of original order and accordingly, the application was time barred.

Go to Index

***Shri Nav Durga Bansal Cold Storage & Ice Factory [TS-236-HC-2017(ALL)] [ITA NO. 14 of 2014 dated 07.03.2017]***

**3347.** Where the assessee was not granted exemption under section 10(10C) and her rectification application was rejected without granting her any personal hearing, the Court held that the order of the AO rejecting the application being in violation of principles of natural justice, was to be set aside. Accordingly, it directed the Assessing Officer to dispose of the rectification applications, as expeditiously as possible in accordance with law (within four weeks from the date of the order).
***Mrs. Mugdha Shirish Agarkar v Pr CCIT - [2018] 91 taxmann.com 459 (Bombay) - WRIT PETITION NO. 12515 OF 2017 dated MARCH 1, 2018***

**3348.** The Court dismissed Revenue's appeal against the Tribunal's order setting aside the rectification order passed by the AO u/s 154 to recalculate (reduced) indexed cost of acquisition by applying provisions of section 48(iii) and enhance long term capital gain from transfer of shares, holding that power u/s 154 could be exercised only when mistake, which was sought to be rectified was an obvious mistake, which was apparent from record and not a mistake, which was required to be established by long drawn process of reasoning on points.
***Pr.CIT v Aura Securities (P.) Ltd - Aquatic Remedies (P.) Ltd - [2018] 96 taxmann.com 417 (Gujarat) – ITA No. 904 OF 2016 dated July 25, 2018***

**3349.** The assessee claimed deduction on expenses incurred for the granite business where infact no such business actually commenced and expense was actually incurred on Market Survey conducted abroad (European Countries). The said expense was allowed. Subsequently, the AO passed rectification order u/s 154 of the IT Act disallowing the said deduction .The Tribunal held that it was a debatable issue and an examination of records and evidence would be required before passing the rectification order. However, since the assessee itself admitted about the non-commencement of granite business and expenditure on market survey conducted abroad, the Court held that it was no longer a debatable issue and held that the AO was justified in passing the rectification order.
***CIT v Parry Agro Industries Ltd. [2018] 94 taxmann.com 462 (Kerala) – ITA NO1595 OF 2009 dated 23.05.2018***

**3350.** The Court set aside the Tribunal order cancelling the AO's order passed u/s 154 wherein the AO had charged interest u/s 220(2) and 245D(6A) which he had omitted to charge in the assessment order and the Tribunal had considered such rectification order to be an order of review, holding that the legal contours of an error apparent on the face of the record could not be exactly identified and the element of indefiniteness was inherent in its very nature and must be left to be determined judicially on the facts of each case.
***CIT v YOUNUS KUNJU, YOUNUS CASHEW INDUSTRIES – (2018) 402 ITR 0095 (Ker) – ITA.No. 64 of 2015 dated 11.01.2018***

**3351.** The Court dismissed the assessee's appeal and held that commission received by the assessee was taxable in spite of the fact that the payer had admitted unsubstantiated commission payments as its own income before the Settlement Commission. Noting that the assessee

withdrew cash immediately after receipt of cheque from the payer for onward payments to third parties which was disallowed by the AO, it held that CBDT Circular dated December 20, 1971 which provided that once the same income was assessed as a protective measure in the hands of more than one assessee, the protective assessment needed to be cancelled after the relevant assessments were final, was not applicable to the assessee since the assessee indulged in accommodation entries for collateral purposes. Further, noting that the assessee had invoked secton 154 to claim non-taxability of the impugned commission income, the Court held that the claim of the assessee, being rejected by the AO was not a mistake apparent on record but was a mistake correctable on appeal.

***D Srinivas Vyas v ITO – TS-306-HC-2016 (Mad)***

**3352.** The assessee had computed book profits u/s 115JB. Explanation to Section 115JB provides that lower of brought forward business loss or unabsorbed depreciation as per the books of accounts can be reduced from the book profits u/s 115JB. Accordingly, the assessee reduced unabsorbed depreciation as per books of accounts (being lower than brought forward business loss) from book profits and paid Nil tax. The AO accepted the computation of the assessee and completed the assessment u/s 143(3). Later the AO observed that the assessee should have set off business loss as per Income-tax Act (being lower than unabsorbed depreciation as per the Act) from book profits u/s 115JB. Accordingly, it held that there was mistake apparent from record and rectified its order u/s 154. The CIT(A) upheld the order of the AO. The Tribunal observed that the AO did not dispute computation under section 115JB at the original assessment stage. Accordingly, it held that the when the AO had considered the issue at the time of original assessment, he was not allowed to review the entire assessment order u/s 154.

***CITY CLINIC PVT. LTD. vs. ACIT (2017) 50 CCH 0121 ChandigarhTrib ITA No. 112/ Chd / 2017 Dated 02.06.2017***

**3353.** Where the assessee, a non-resident Indian citizen, e-filed his return of income under Section 139(1), the same was processed under Section 143(1) and a demand was raised. The assessee filed application under Section 154 with the AO requesting for re-calculation of his income, claiming that income earned was not taxable in India since he was a non-resident. AO rejected such application as changing the income figure could not be considered as mistake apparent on record under the provisions of Section 154 and also observed that the assessed income could not be less than returned income. The Tribunal held that if it is established that the assessee's income was not subject to tax in India, the same was to be considered as mistake apparent on record as per Section 154 and the assessee had right to modify it by filing an application for rectification of such mistake. Thus, the Tribunal restored the matter to the file of the AO and directed the assessee to substantiate its stay in India for claim of exemption.

***Manoj Kumar Nayak vs. JCIT – [2018] 53 CCH 0059 (Cuttack ITAT) – ITA No 389/CTK/2014 dated May 17, 2018***

**3354.** The Tribunal held that where assessee filed rectification application on ground that Tribunal had not adjudicated certain grounds which were specifically mentioned, in view of fact that all grounds pertained to order passed under section 263 by Commissioner and those grounds were not only taken into body of order but at same time an elaborate judgment had been passed regarding same, assessee's application deserved to be rejected.

Go to Index

***U.P. Forest Corporation v DCIT [2018] 93 taxmann.com 437 (Lucknow – Trib.) – M.A. NOS 58 AND 59 OF 2016 dated 02.05.2018***

**3355.** The Tribunal held that if deductors has delayed payment of taxes to credit of Central Government for no fault of assessee and same consequently let to issue of TDS certificate late by said payers of income then assessee should be entitled for TDS credit.
***Express Global Logistics Pvt. Ltd. vs. Asst. CIT-(2018) 53 CCH 0317 MumTrib-ITA No. 1194/Mum/2017-Dated Jul 11, 2018***

**3356.** Where the AO completed assessment under section 143(3) read with section 153A and allowed the assessee deduction under section 80HHC of the Act and then later proposed to reduce the deduction allowed by invoking the provisions of Section 154 of the Act, on the ground that excess deduction was granted as 90 percent of the interest receipts had not been reduced in terms of Explanation (baa) to Section 80HHC of the Act as opposed to view of the assessee that the net interest was excludible, the Tribunal held that section 154 of the Act could not be invoked where there were two views possible. Therefore, without going into the merits of the case, the Tribunal deleted the adjustment made by the AO.
***Firestone Trading Pvt Ltd v DCIT – (2016) 48 CCH 0239 (Mum Trib)***

**3357.** The assessee filed a Nil return under Section 139 of the Act claiming carry forward of losses based on which it claimed a refund which was granted to it. The AO then passed a rectification order under Section 154 of the Act denying the assessee its claim of TDS which was annulled by the CIT(A) pursuant to which the AO initiated reassessment proceedings and estimated the net profit from the assessee's project at the rate of 5.5.% of the cost of project incurred during and also made certain other disallowances on account of computer expenses, the disallowance under section 40A(3) of the Act, Transfer Pricing Adjustment and addition of Interest income. The addition made pursuant to reassessment proceedings was deleted by the CIT(A) and also the Tribunal. Subsequently, the AO invoked Section 154 to disallow the assessee's claim of carry forward of losses. The Tribunal held that once it had settled the issue upholding the decision of CIT(A), nothing remained for rectification under section 154 of the Act for the Assessing Officer and accordingly held that the AO was not justified in invoking Section 154 to deny the assessee's claim of carry forward of losses.
***ACIT v INTERNATIONAL METRO CIVIL CONTRACTORS - (2018) 52 CCH 0138 MumTrib - ITA No. 3935/Mum/2016 dated Feb 28, 2018***

**3358.** The Tribunal held that where Assessing Officer could not apply provisions of section 234A correctly in course of assessment, it constituted a mistake apparent from record which could be rectified by invoking provisions of section 154.
***B. Subba Raov. ACIT, Central Circle-2, Visakhapatnam [2016] 75 taxmann.com 136 (Visakhapatnam - Trib.) (IT Appeal Nos. 518 To 520 (Vizag.) Of 2014)***

*Revision*

**3359.** The High Court upheld Tribunal's order that while determining assessee's income in respect of godown receipts on estimate basis, AO had adopted a plausible view and, thus, revisional order

passed by Commissioner on said issue was not sustainable. The Apex court dismissed the SLP filed against decision of High Court

***Pr. CIT-I v. V. Dhana Reddy & Co.- [2018] 100 taxmann.com 358 (SC)- SLP (Civil) Diary Nos. 34500 of 2018-dated October 29, 2018***

**3360.** The Apex Court dismissed assessee's SLP against the High Court order wherein the High Court had set aside Tribunal's order quashing the revision order passed by CIT u/s 263, holding that the Tribunal could not substitute its own reasoning to justify the original assessment order passed by the AO when the AO himself did not give any reason in the order, on aspects, which were not expressly reflected in the assessment order and thus revision by CIT was warranted.

***Braham Dev Gupta vs Pr.CIT [2018] 103 CCH 0284 (SC)- Special Leave to Appeal (C) No(s).30377/2018 dated 30.11.2018***

**3361.** The Apex Court declined to hear the issue of revision power of CIT in the Revenues SLP as it was not going to affect tax liability of assessee.

***CIT v Mitsui & Co. Ltd - [2016] 68 taxmann.com 45 (SC)***

**3362.** The Apex Court held that what was contemplated under section 263 is that an opportunity of hearing was to be granted to the assessee and that it was nowhere mentioned that a specific show cause notice was to be served on the assessee and therefore a revisionary order of the CIT couldn't be set aside on the ground that an addition was made on the basis of issues not mentioned in the show cause notice so long as opportunity with respect to said issues was given by the CIT at the time of hearing.

***CIT v Amitabh Bachchan – TS-254-SC-2016***

**3363.** Where the Revenue had invoked section 263 on the ground that no investigation was carried out by AO in terms of section 68 to establish the genuineness/creditworthiness of actual subscribers to FCCB issued by assessee, but the assessee had adequately discharged its onus under section 68 with respect to identity, capacity and credit worthiness of lead manager of the issue from whom it had received the subscription amount and where the CIT contented that AO ignored CBDT instruction No. 3/2010 while allowing set-off of MTM losses arising on foreign exchange derivatives against taxable income, the Apex Court upheld the findings of the High Court and Tribunal had observed that CBDT instruction was issued much after the assessment order and accordingly, concluded that there was no failure on AO's part to make enquiries. Accordingly, the Apex Court dismissed Revenue's SLP against High Court's judgement upholding Tribunal's order of quashing revision proceedings under section 263.

***Reliance Communication Ltd [TS-623-SC-2016] (SLP No 21779/2016***

**3364.** The Court dimissed Revenue's appeal against the Tribunal's order setting aside the CIT's revision order passed u/s 263 wherein the CIT had held the assessessment order passed by the AO u/s 143(3) to be erroneous and prejudicial to the interest of Revenue since the assessee had failed to explain certain credit entries to the partner's capital account. The Tribunal held that since the AO had examined the book of accounts were produced by the assessee and was satisfied with assesee's explaination with respect to the transactions in the partner's capital account, there appeared no illegality in accounting entries made in the books of account.

Accoridngly, it was held that the CIT could not exercise suo-motu power u/s 263 in absence of sufficient material to satisfy that assessment order was erroneous and prejudicial to interest of Revenue.

***CIT vs. GREEN LAND MOTORS (2018) 102 CCH 0125 AllHC – ITA No. 259 of 2013 dated 13th July, 2018***

**3365.** The Court held that in order to maintain an order under Section 263 of the Income-tax Act, the Commissioner must examine the assessment records and should give an opportunity of hearing to assessee and then only he could pass an order. Failure to comply with the conditions as mentioned in Section 263 of the Act would render the very notice bad as well as the subsequent order bad in law.

***CIT vs. Sahara India Mutual Benefit Col Ltd. (2016) 97 CCH 0035 (All HC) (ITA Defective No.112 of 2000)***

**3366.** The AO did not accept assessee's claim for deduction of commission paid to Societies under Sugarcane Act on ground that payment related to AY 2012-13 and therefore could not be allowed as deduction in AY 2013-14. Assessee filed a revision application u/s 264 before Pr.CIT claiming deduction of commission in AY 2012-13 along with an application for condonation of delay but the application was rejected on ground of delay in filing. The assessee filed a writ petition against such rejection and the Court condoned the delay in filing application, noting that since the commission was paid in AY 2013-14 pursuant to order dated 19/06/2012, the assessee had taken a view that deduction was allowable in AY 2013-14 only and it is only after the AO disallowed the claim in AY 2013-14, assessee had filed the revision application within month of order of AO for AY 2013-14. Further, it directed the Pr.CIT to consider the application on merits.

***DWARIKESH SUGAR INDUSTRIES LTD. vs. DCIT (2018) 102 CCH 0162 BombayHC – WRIT PETITION NO. 1206 OF 2018 dated 12th July, 2018***

**3367.** The Court held that CIT was not justified in invoking revisionary jurisdiction u/s 263 for AY 2007-08 on the alleged ground that no investigation was carried out by the AO to establish the genuineness/creditworthiness of actual subscribers to Foreign Currency Convertible Bonds issued by the assessee for raising funds in terms of Sec 68, when infact the AO not only made enquiries about aspects referred to by the CIT but was also satisfied with assessee's submissions in support of its stand. As regards CIT's ground that AO ignored CBDT instruction No.3/2010(providing guidelines on tax implications Forward Foreign Exchange Contract) it noted that CBDT instruction was issued much after the assessment order and thus the Assessing Officer could not have imagined that such an instruction or Circular would be issued.

***CIT vs Reliance Communication Ltd -TS-178-HC-2016(BOM)***

**3368.** The Court dismissed Revenue's appeal against the Tribunal's order holding that the provisions of section 263 could not be invoked by the CIT since the twin conditions viz. the AO's order is erroneous as well as prejudicial were not satisfied. The CIT had opined that the AO's order was erroneous since the AO had allowed assessee's to carry forward and set-off unabsorbed depreciation pertaining to AY 1974-75 to AY 1996-97 against the income for AY 2007-08. On

merits, the Court held that the issue had become academic since the Court had in the case of CIT v Hindustan Unilever Ltd (2017) 394 ITR 73 (Bom) approved the decision of General Motors India P. Ltd. v DCIT [354 ITR 244 (Guj)] wherein it was held that any unabsorbed depreciation available to an assessee on 01.04.2002 (A.Y.2002-03) would be dealt with in accordance with the provisions of section 32(2) as amended by the Finance Act, 2001 (also since the Tribunal had decided in favour of the assessee following the said decision of the Gujarat High Court). The Court further noted that vide the Finance Act, 2001, section 32(2) was amended to remove the restriction against set off and carry forward that was limited to 8 years beyond which the benefit could not be claimed prior to amendment.

***Pr.CIT v Hindustan Antibiotics Ltd – ITA No. 1042 of 2015 (Bom) dated 20.02.2018***

**3369.** The Court dismissed Revenue's appeal against Tribunal's order holding that the original assessment order passed by the AO u/s 143(3) was not erroneous and thus revisionary powers u/s 263 could not be invoked, where the CIT while exercising his power u/s 263 opined that the AO had not examined the assessee's claim for deduction u/s 54 and allowed the same without application of mind. The Court noted that (i) while allowing the claim, the assessment order specifically adverted to the facts and rendered a finding that sale proceeds of flat sold have been invested in 3 years and (ii) CIT had not alleged that the AO's order was contrary to the statutory provisions rather his only basis was that the case was not properly investigated.

***Pr.CIT v Shri Hari L. Mundra - INCOME TAX APPEAL NO.144 of 2016 (Bom HC) dated 04.07.2018***

**3370.** The Court upheld the initiation of proceedings under section 263 of the Act, noting that the original order passed under section 143(3) of the Act, accepting the return filed by the assessee wherein the assessee had claimed business losses to be carried forward, was erroneous as it was not in accordance with law and prejudicial to the interest of the revenue. It noted that the AO had not taken into account the fact that the assessee had not commenced any business activities during the year and therefore, the expenditure claimed by the assessee, which was ultimately carried forward could not be treated as business loss.

***Zuari Management Services Limited vs.CIT(2016) 97 CCH 0164 BomHC (Tax Appeal No. 53 OF 2015)***

**3371.** The Court dismissed Revenue's appeal against the Tribunal's order setting aside the revisional order passed by the CIT u/s 263 wherein the CIT not only disputed the computation of deduction allowed to the assessee u/s 80-I but also attempted to demonstrate that the said deduction itself could not be claimed by the assessee, *whereas* the Tribunal (in appeal against the assessment order) had already directed the AO to allow deduction u/s 80-I in accordance with law. It was held that the Tribunal (in appeal against the assessment order) had only directed the AO to make the computation in terms of the legal provision i.e. for that limited exercise only the matter was sent to the AO and thus the CIT had exceeded its jurisdiction u/s 263. Accordingly, the Court held that Tribunal's order was neither perverse nor vitiated by any error of law apparent on the face of record.

***PRINCIPAL COMMISSIONER OF INCOME TAX vs. KOCHI REFINERIES [2018] 102 CCH 0418 (Bom HC.)- ITA No.109 of 2016 dated August 21 2018***

Go to Index

**3372.** The Court held that where assessee filed an application seeking condonation of delay in filing revision petition on ground that its tax consultant was indisposed for about 6 to 7 months due to serious back injury, assessee's application was to be allowed and, matter was to be remanded back for disposal on merits.

***Karanja Terminal & Logistics (P.) Ltd. v. Dy. CIT, Co. Circle 6(3), Mum- [2019] 101 taxmann.com 160 (Bombay)- W. P. Nos. 1685 & 1693 of 2018 – November 30, 2018***

**3373.** The Court upheld the Tribunal's order holding that since the AO had made sufficient inquiries in the course of assessment before concluding that the derivative loss claimed by assessee as a business loss was a genuine loss which had to be allowed, the revision order passed by the CIT u/s 263 setting aside the assessment order on ground that no proper inquiry was made could not be sustained.

***Pr.CIT v Ivory Consultants (P.) Ltd [2018] 96 taxmann.com 539 (Calcutta) – GA NO. 3117 OF 2017; ITAT NO. 326 OF 2017 dated July 10, 2018***

**3374.** The Court held that where Commissioner, Kolkata - II issued on assessee a notice under section 263 on 18-3-2013 proposing to revise assessment for year 2008-09 and thereafter he passed an order under section 263 on 26-3-2013, since case of assessee had already been transferred by said Commissioner by an order dated 3-9-2012 passed under section 127(2)(a) to Assessing Officer, Central Circle, Kolkata, Commissioner lost seisin / possession over the matter and became functus officio therefore, issuance of notice under section 263 and consequent order passed under section 263 were acts without jurisdiction.

***Ramshila Enterprises (P) Ltd. v Pr CIT - [2016] 68 taxmann.com 270 (Calcutta)***

**3375.** The Court upheld the order issued under section 263 by the CIT, directing further investigation into share application money received by the assessee. It dismissed with the contentions of the assessee that the order under section 263 of the Act could only be passed if the order passed by the AO was erroneous and it was prejudicial to the interest of the revenue and since the share application money was not a taxable receipt during AY 2009-10 in the absence of section 56(2)(viib) unless brought within section 68 of the Act for which all documents and evidences were duly submitted, the order could not be passed. It held that the identity of the alleged share-holders were known but the transaction was not a genuine transaction and that the creditworthiness of the alleged shareholders was also not established because they did not have any money of their own and each one of them received funds from somebody and that somebody received from a third person. The Court held that Delhi HC ruling in CIT vs. Steller Investment Ltd. [TS-20-HC-1991(DEL)], relied on by the assessee, was not applicable to the facts and circumstances of this case since the question as to whether there had been a device adopted for money laundering was not considered by Delhi HC.

***Rajmandir Estates Pvt Ltd v Pr CIT – TS-287-HC-2016 (CAL)***

**3376.** The assessee-LLP was successor-in-interest of original assessee-company. The CIT passed an order u/s 263 in the case of the original assessee-company for the assessment year when the company was in existence without issuing any show cause notice under the said section. The assessee contended that no opportunity was offered to it prior to the order being passed by the CIT. The Court held that even though a previous notice u/s 263 was not a *sine qua non*

for the jurisdiction to be exercised thereunder by the CIT, the provision mandates an opportunity of hearing to be afforded to the assessee. Thus, noting that the Tribunal had not addressed this aspect of the matter, it directed the Tribunal to satisfy itself as to whether the assessee herein as the successor-in-interest of the erstwhile company had notice of the hearing u/s 263. It also held that if there was sufficient material that the original assessee and the assessee-LLP carried on business at the same premises and notice was served at such premises, the assessee could not feign ignorance by merely stating that the notice was erroneously addressed to a defunct entity.

***Brolly Dealcom LLP v Pr.CIT - [2018] 93 taxmann.com 448 (Calcutta) - IT APPEAL NO. 25 OF 2018 dated May 7, 2018***

**3377.** Assessee filed revision petition challenging additions made in reassessment proceedings on ground that notice of reassessment and opportunity of hearing was not granted to it, in view of fact that in revision petition assessee clearly admitted that not only were notices received, even reassessment order was received but assessee did not care to appeal against it; and later on revision petition was filed after expiry period of limitation. The Court held that Commissioner was justified in dismissing said petition.

***Jindal Metal Co. v. Pr. CIT, Delhi - [2018] 100 taxmann.com 183 (DelhiHC)- W.P. (C) No. 11739/2018 & CM Nos. 45456-57/2018 date October 31, 2018***

**3378.** The Court, dealing with the powers and duties of the CIT held that the CIT(A) cannot refuse to entertain a revision petition filed by the assessee u/s 264 of the Act if it is maintainable, on the ground that a similar issue has arisen for consideration in another year and is pending adjudication in appeal or another forum. It held that when a statutory right is conferred on an assessee, the same imposes an obligation on the authority. New and extraneous conditions, not mandated and stipulated, expressly or by implication, cannot be imposed to deny recourse to a remedy and right of the assessee to have his claim examined on merits.

***Paradigm Geophysical Pty Ltd vs DCIT-(DelhiHC) W.P.(C) No. 6052/ 2017 dated 13.11.2017***

**3379.** The Tribunal held that if an inquiry was made by the AO during assessment proceedings, the objection of the CIT that the inquiry was inadequate was not acceptable considering that the AO had after examining records and details submitted by the assessee allowed the claim on being satisfied by the explanation of the assessee. Further, it held that the order of the AO maybe brief or cryptic but that was not sufficient reason to brand the assessment order as erroneous and prejudicial to the interests of the revenue.

***CIT v Sunil Aggarwal – (2015) 94 CCH 074 Del HC***

**3380.** The Court held that the initiation of revision proceedings on the ground that the AO did not conduct a detailed inquiry on account of paucity of time was unfair on the assessee and therefore invalid. It held that the Pr CIT must be satisfied that the order of the AO was erroneous with respect to the material made available to him and noted that the assessee had furnished all the details available with him along with an explanation to the queries raised by the AO. Accordingly, it held that the Pr CIT was incorrect in invoking Section 263.

***Pr CIT v Mera Baba Reality Associates Pvt Ltd – (Delhi HC) ITA No. 637/2017 dated 21.08.2017***

Go to Index

**3381.** The Court held that intimation under section 143(1) is regarded as an order for purposes of section 264 and application under section 264 is maintainable against intimation order passed under section 143(1). It further held that non-payment of prescribed fee prior to institution of application for revision under section 264 cannot be ground for rejection of such an application. ***Vijay Gupta v CIT - [2016] (Delhi HC) 68 taxmann.com 131.***

**3382.** The Court upheld the invocation of Section 263 of the Act by the Commissioner observing that while passing the assessment order under Section 143(3) the AO failed to verify the variation in cost of fixed assets of Rs.298.93 crore and failed to scrutinize two other issues viz. i) applicability of TDS provisions to certain expenditure claimed by the assessee and ii) benchmarking of transactions with group companies under Section 40A(2) of the Act, which was prejudicial to the interest of the revenue. However, it held that the assessee was to be given an opportunity of being heard prior to invocation of revision proceedings. Accordingly, it directed the CIT to pass his order only after providing the assessee an opportunity of being heard.
***BSES Rajdhani Power Ltd v PR CIT – (2017) 100 CCH 74 (Del HC) – ITA No 387 / 2017 dated 08.11.2017***

**3383.** The Court held that where there were conflicting opinions of the various benches of the Tribunal on the issue whether Section 80AC was mandatory or directory and a possible view in favour of the assessee was possible, then the CIT was not justified in exercising jurisdiction under section 263 of the Act.
***CIT v Unitech Ltd – (2015) 94 CCH 0044 Del HC***

**3384.** The Court held that surpluses recorded by the assessee in its books maintained in the normal course, which according to the assesee were not chargeable to tax could not be assumed to be undisclosed income merely due to the fact that the return of income surrendering such surpluses to tax was not filed. Accordingly, it was held that no block assessment could be made on this behalf.
***DIT(Exemption) v All India Personality Enhancement & Cultural Centre for Scholar Aipeccs Society – (2015) 94 CCH 0038 Del HC***

**3385.** The Petitioner had paid tax on interest from FDs and had claimed refund in its return of income. The refund was received on 25th April, 2014. Subsequently, the AO observed that the assessee's assets and liabilities (including FD) was taken over by a company and therefore, he held that interest on FD was to be included in income of company since after take over of the assets the FD belonged to the company. Thereafter, the assessee requested Department for intimation u/s 143(1) and filed application to CIT u/s 264 for revising his intimation on the ground that the same interest could not be taxed twice in the hands of the assessee as well as the company. The CIT observed that the assessee was granted refund and accordingly was aware that his return was processed. Therefore, he held that the revision application was made after 1 year from the date on which refund was granted to the assessee and accordingly, the application was time barred. The Court observed that as per section 264(3), an application could be made within 1 year from the date on which the order was communicated to the assessee or the date on which he comes to know about intimation (whichever is earlier). It held that till the

time Petitioner had copy of intimation u/s 143(1), it could not have been said that the Petitioner had knowledge that his return was processed even though refund was granted to him. Accordingly, it restored the Petitioner's revision application to file of PCIT.
***HARGOVIND PANDEY vs. PCIT (2017) 99 CCH 0136 DelHC W.P.(C) 4705/2017 dated 27/07/2017***

**3386.** The Petitioner pursuant to assessment order passed filed an application before CIT u/s 264 for revision of the order, claiming deduction of provision for wage arrears which was rejected by the CIT on the ground that the Petitioner had not claimed the deduction in respect of provision for wage arrears by revising the return and therefore, the issue did not arise from the assessment order. The Court relied on Gujarat High Court's decisions in the case of C. Parikh & Co. v. CIT (1980) 122 ITR 610 (Guj) and Jammu and Kashmir High Court's decision in the case of Smt. Sneh Lata Jain v. CIT (2004) 192 CTR 50 wherein it was held that u/s 264, the Commissioner was empowered to call for the record of any proceeding or pass such order thereon and held that the mere fact the Petitioner did not make any claim in the original return and also in its revised return before the passing of the assessment order by the AO would not stand in the way of the CIT exercising revisionary jurisdiction to grant relief. It further held that the Apex Court's decision in Goetze India Limited v. Commissioner of Income Tax (2006) 284 ITR 323 would also not restrict the scope of the revisionary jurisdiction of the CIT. Accordingly, it held that the CIT erred in rejecting the application of the Petitioner on the ground of maintainability.
***RITES LIMITED vs. CIT (2017) 99 CCH 0074 DelHC W.P.(C) 5331/2014 dated 03/07/2017***

**3387.** Where the assessee, engaged in the construction business had reported its transactions in its return of income viz. provision of maintenance services, which had been accepted by the AO without any disallowance and subsequently, the CIT issued notice under section 263 of the Act alleging that the assessee, by changing its method of accounting as per AS 7, had shown income amounting to Rs.11.98 crore as deferred revenue income, the Court held that the invocation of Section 263 of the Act was not warranted in the circumstances of the case since the method of accounting adopted by the assessee was subject to scrutiny by the AO and also since the method was a known, recognised method of accounting and therefore there was no error on the part of the AO.
***Pr CIT v A2Z Maintenance & Engineering Services Ltd – (2017) 98 CCH 0055 Del HC – ITA 452 / 2016 CM Appl 26465 / 2016***

**3388.** Notice u/s 263 was issued by the CIT contending that the amount reflected in assessee's books as provisional for warranty/promise obligation was erroneously allowed by the AO without enquiry as to whether such deduction was calculated on basis of scientific method. The CIT held that AO had not looked into these expenses and verified their genuineness and thus assessment was erroneous and had caused prejudice to interests of revenue and accordingly proceeded to pass order under Section 263 requiring the AO to re-examine matter afresh. Before the Tribunal, the assessee contended that the CIT relied on certain documentation including the statement of a certain person (Mr. X) and that the CIT ought to have provided it with the opportunity to rebut the same. The Tribunal held that while the CIT was free to exercise his jurisdiction on consideration of all relevant facts, full opportunity to controvert same and to explain circumstances surrounding such facts as might be considered relevant by assessee

must be afforded to him by CIT prior to finalization of decision. It noted that the addition was based on a certain X's statement which was not provided to assessee. Accordingly, it directed the CIT to provide a copy of the statement and any other material that he chooses to rely upon to the assessee and after hearing the objections of the assessee, proceed to make the final order.

***HUMBOLDT WEDAG INDIA PRIVATE LIMITED vs. COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0091 DelHC - ITA 242/2018 dated Feb 26, 2018***

**3389.** The Court upheld the CIT's order u/s 263 in case of the assessee, developer of SEZ, where the deduction claimed u/s 80-IAB on income from sale of bare shell building in SEZ to its co-developer was allowed by AO during assessment and the CIT had passed the revision order u/s 263 on the ground that sale of building to co-developer neither being an activity of development of SEZ nor operation and maintenance of SEZ was not eligible for deduction u/s 80IA, noting that the AO had not made a detailed analysis of factual narration before granting deduction u/s 80-IAB with respect to transactions and documents, having regard to provisions of SEZ Act and purpose for which SEZs were set-up.

***CIT v DLF Commercial Developers Ltd. – (2018) 92 taxmann.com 10 (Del HC) – ITA Nos. 507 of 2014 and 563 of 2015 and 610 of 2017 C.M. Appl. 28227 of 2017 dated 22.02.2018***

**3390.** The Court allowed Revenue's appeal against the Tribunal's order wherein the Tribunal had set aside the CIT's revision order passed u/s 263. The CIT had excercised the revisionary power on the ground that the AO's order was erroneous and prejudicial to the interest of Revenue since the AO had not made enquiries *inter alia* with respect to huge duty drawbacks claimed and certain loans given by the assessee. The Tribunal held that it was not a case of lack of enquiry by the AO, at best could be a case of inadequate inquiries, and that the CIT doubted the genuineness of transactions without any substantive evidence. The Court noted that the AO had not recorded any observation or findings on the issues and thus held that it was difficult to validate the Tribunal's approach of reading into AO's order, reasons which were simply not there. Accordingly, the Court set aside the Tribunal's order.

***Pr.CIT v Braham Dev Gupta & anr (2018) 408 ITR 0291 Delhi - ITA 907/2017, C.M. APPL. 38789/2017 & ITA 1162/2017, C.M. APPL.46234/2017 dated July 20, 2018***

**3391.** Where the assessee acquired assets on its own account as well as under a build operate and transfer scheme (for 30 years) and claimed depreciation @ 50% on such assets as they were used for less than 180 days which was allowed by AO after making proper inquiries, the Court held that the Pr.CIT was not justified in initiating proceedings u/s 263and by merely relying upon CBDT Circular No. 9 of 2014 contenting that the depreciation wa excessive and erroneously allowed as under the BOT scheme, the assessee was only entitled to amortization of assets merely relying on CBDT circular no 9 of 2014. The Court held if the Pr.CIT was of the view that the AO did not undertake any inquiry, it was incumbent for him to conduct inquiry to conclude that the AO order was erroneous and prejudicial to the interest of the Revenue which was not done in the instant case. Accordingly, order u /s 263 was quashed.

***PCIT vs Delhi Metro Express Pvt Ltd (2017) 100 CCH 0012 Delhi HC ITA No. 705/ 2017 dated 05.09.2017***

Go to Index

**3392.** The Court dismissed Revenue's appeal against the Tribunal's order setting aside the revision order passed by the CIT u/s 263 wherein the revision proceedings were initiated on the ground that the AO had not carried out proper inquiries with respect to two issues viz. introduction of certain sum in the capital account of the assessee and receipt of certain amount by way of loan from the assessee's brother. It was noted that during the block assessment proceedings, the AO had not made any addition in respect of the above amounts considering the assessee's explanations that he, being a NRI for over two years, had made foreign remittances over a period of time and that his brother, who was running a successful business of trading, was man of standing and means. It was held that the AO having carried out such detailed inquiries, it was not open for the CIT to thereafter reopen the issues on mere apprehension and surmises.
***CIT v Kamal Galani - [2018] 95 taxmann.com 261 (Gujarat) - R/TAX APPEAL NO. 1376 OF 2007 dated June 11, 2018***

**3393.** Where the AO had allowed the Petitioner's claim of interest paid u/s 24(b) on Optionally Fully Convertible Debentures which was utilized for repayment of loan borrowed for the construction of building and the CIT issued notice u/s 263 proposing to revise the original assessment order contending that the interest paid on debentures was not be allowable since the debentures were not directly utilised for the purpose of construction, the Court relying on the CBDT Circular dated 20.08.1969 (which provides that interest paid on the second borrowing used merely to repay the original loan obtained for construction of property was allowable u/s 24 if it was proved to the satisfaction of the Income-tax officer), observed that the AO had examined this aspect at the time of original assessment proceedings and had accordingly, allowed the claim. Therefore, it set aside the notice issued u/s 263.
***Aryan Arcade Ltd. vs. CIT (2017) Special Civil Application NO. 2914 of 2016 99 CCH 0176 GujHC Aug 10, 2017***

**3394.** The assessee had entered into agreement to sell land to 'M' for a sale consideration of Rs.38.74 lakhs and had received Rs. 1 lakh at time of execution of the said agreement. Subsequently, the assessee executed a sale deed in which land in question was sold to one 'G' Ltd. for a sale consideration of Rs. 4.43 crores and in the said sale deed, the assessee was seller, 'G' Ltd. was buyer and 'M' was confirming party. The sale deed showed that the assessee received balance sale consideration of Rs.37.74 lakhs (out of original consideration of Rs.38.74 lakhs), whereas the remaining amount of Rs. 4.04 crores was received by 'M'. The assessee thus considered sale consideration to be Rs. 38.74 lakhs and computed capital gains accordingly. The same was accepted by the AO. The CIT passed a revisional order u/s 263 holding that the sale consideration ought to be considered was Rs. 4.43 crores. The Tribunal, however, set aside revisional order. The Court held that since the assessee never received anything beyond the consideration originally agreed in the agreement to sale, the question of charging capital gain from the assessee on a sum larger than the said consideration could not arise. Accordingly, the Revenue's appeal was dismissed.
***Pr.CIT v Lalitaben Govindbhai Patel - [2018] 94 taxmann.com 396 (Gujarat) - R/TAX APPEAL NO. 329 OF 2018 dated April 11, 2018***

**3395.** Where Commissioner issued a notice under section 263 taking a view that when AO had found purchases to be bogus, there was no question of limiting addition on basis of GP Ratio the Court

quashed the said notice in view of fact that a) AO did not hold that relevant purchases were bogus and b) moreover, assessment order had been merged with order passed by Commissioner(Appeal) who had deleted the addition.
***Haryana Paper Distributors (P.) Ltd. v PCIT [2018] 95 taxmann.com 152 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 2818 OF 2018 dated 16.04.2018***

**3396.** Where Tribunal upheld revisional order passed by Commissioner giving direction to AO to reframe assessment in accordance with law, after examining issue and after giving an opportunity of being heard, the Court held that since matter was sent back for re-determination for Assessing Officer and all issues had been kept open, no substantial question of law arose from Tribunal's order.
***V.K. Bharathi v. CIT, Bengaluru-[2019] 102 taxmann.com 55 (KarnatakaHC) -IT Appeal No. 32 of 2018 -dated December 11, 2018***

**3397.** The Court held that where the original assessment order had been revised under section 264 of the Act, and therefore no longer existed, the order passed by the Commissioner under section 263 revising the original assessment order was void ab initio.
***CIT v New Mangalore Port Trust – (2016) 67 taxmann.com 229 (Kar)***

**3398.** The Court held that where the twin conditions of section 263 of the Act (i) order to be revised is erroneous and (ii) is prejudicial to the interest of the revenue were not satisfied, the Commissioner had no jurisdiction to invoke the provisions of section 263 of the Act on the ground that the AO failed to make a disallowance under section 40(a)(ia) of the Act since the assessee failed to deduct tax under section 194C, where in-fact, the assessee deducted tax under section 194H since section 194C of the act was inapplicable.
***CIT v Hewelett Packard India Sales Pvt Ltd – (2016) 95 CCH 0060 (Karnataka)***

**3399.** The assessee had made a revision application u/s 264 against the AO's order passed u/s 144 (since the assessee had not complied with the notice issued u/s 148) bringing to tax the long-term capital gains on the sale of agricultural lands, just before the expiry of period available for making such application (i.e. one year from the date of passing of the AO's order) instead of filing an appeal against the AO's order. The said application was rejected by the Pr.CIT on the ground that the assessee could not produce adequate documentary evidences to support its contentions (that they were entitled to only 1/3$^{rd}$ share in the property and that also that the sale consideration was utilised for purchase of agricultural land, entitling deduction u/s 54B). On writ been filed against the Pr.CIT's order rejecting the application, the Court at the outset held that the Pr.CIT had rightly rejected the assessee's prayer. In the writ, the assesse also contended that they being illiterate agriculturists could not avail the regular remedy of appeal and later on, preferred the said petition u/s 264 which ought to have been allowed in the facts and circumstances of the case. The Court held that the remedy by way of revision u/s 264 could not be treated as a regular remedy bypassing regular remedy of appeals against impugned assessment orders and one could not be allowed to avail said revisional remedy in a routine manner bypassing requirement of payment of tax and allowing regular appellate authorities to apply their minds to relevant facts and evidence on record. It held that the fact that the assessee preferred the revision petitions u/s 264 just before the expiry of one year of passing of AO's

order reflects that they were very conscious and aware of the legal provision and deliberately avoided the availing of the regular remedy by way of an appeal and at the nick time of the expiry of the time period, preferred the present revision petition u/s 264, which for good reasons, came to be dismissed by the Pr.CIT.

***Nataraju (HUF) v Pr.CIT – (2018) 91 taxmann.com 467 (KarnatakaHC) – Writ Petition Nos. 54836-54837 of 2017 (T-IT) dated 20.02.2018***

**3400.** The assessee was engaged in business of purchasing agricultural land and converting the same for non-agricultural purpose and selling it. It claimed the following expenses viz "Labour Charges", "Expense of Commission" and "Work in Progress". The assessee furnished the details of expenses along with the names and addresses of the parties to whom the payment for expenses was made along with their PAN details. Some part of expense was disallowed by AO and CIT(A) also upheld the order. However, CIT (Administration) by virtue of s.263 of the Act passed a revisional order for disallowing the whole expense on the grounds such as discrepancies in certain facts and need for verification. Aggrieved by the revisional order, assessee filed appeal on the ground that the said order u/s 263 was without of jurisdiction since there was merger of assessment order with the order of the CIT(A). Also, if CIT wasn't satisfied with the order, it could have re-opened the assessment or appealed to the Tribunal. The Tribunal set aside the revisional order and the Court upheld the Tribunal's order thereby dismissing the Revenue's appeal.

***Principal Commissioner of ITO v H. Nagaraja [2018] 94 taxmann.com 464 (Karnataka) – ITA NOS 604-605 OF 2017 dated 29.05.2018***

**3401.** The Assessee's daughter being the only partner of a partnership firm other than the assesse, released her share in the firm to the exclusive share of the assessee which resulted in dissolution of partnership firm and conversion of the partnership firm into a proprietorship firm. Subsequently, the assessee sold all the assets of the firm and offered inter alia the consideration received for land, goodwill and trademark for taxation as long term capital gains, however, he claimed exemption u/s 54EA on account of investment in UTI. The AO allowed the said claim of exemption. The CIT sought to revise the AO's order u/s 263 to disallow the said claim on the ground that the assesse got the exclusive possession of the properties only on dissolution of the firm and since the sale had been made within 36 months of such dissolution, it resulted in short term capital gains, not eligible for exemption u/s 54EA. The Tribunal held that CIT's order u/s 263 was not sustainable on the reasoning that the AO had considered the question of long term capital gains and allowed it. The Court held that it could not be said that on dissolution the assessee had merely taken away a pre-existing right in assets of firm rather there was a transfer on release of share of other partner and rights over that property accrued to assessee, only on such release being effected by other partner. It held that the assessee was entitled to exemption u/s 54EA to the extent of his share which he received exclusively on dissolution being relatable to pre-existing right he had, as one of partners. With respect to the remaining share in which other partner had a pre-existing right and which was released in favour of the assessee, the Court held that the right over it could be claimed only from date of release and since the subsequent sale fell within 36 month period, necessarily assets were to be assessed as short term capital gains to that extent. Therefore, the revenue's appeal was partly allowed.

Go to Index

***COMMISSIONER OF INCOME TAX vs. DR. P.N. BHASKARAN - (2018) 102 CCH 0083 KerHC - ITA No. 1622 of 2009 dated June 12, 2018***

**3402.** The Court allowed the assessee's writ & directed the CIT to consider assessee's revision petition u/s 264 for AY 2013-14. It noted that the assessee received intimation u/s 143(1) wherein certain deduction was not allowed, consequent to which a revised return was filed by assessee which was not considered by AO and the CIT also declined to entertain assessee's revision petition u/s 264, and held that even though a mere intimation did not amount to an order which could be revised u/s 264 considering that CIT's revisionary powers were very wide, if there was a failure on part of taxpayer in making a claim for deduction, the CIT was empowered to grant the assessee opportunity. It further held that independent of the notice issued u/s 143(1)(a), when the Petitioner had filed a revised return and sought for interference by the Commissioner, necessarily the claim had to be considered in accordance with law.
***Agarwal Yuva Mandal vs. Union Of India and Pr.CIT TS-30-HC-2017(KER) W.P.(C) No. 26779 OF 2016(V) dated 10.01.2017***

**3403.** Where CIT passed an order u/s 263 of the Act directing enquiry to be conducted in relation to raising of share capital at premium to the extent of Rs.21 Crores by the assessee-company, the Court held that the Commissioner had only outlined the manner in which the enquiry was to be carried out and that there was no specific direction in the order stipulating in what way the case was to be decided. The Assessing Officer had been directed to pass a speaking order after providing reasonable opportunity to the assessee and upon verifying the source of share capital including the share premium of all the subscribers so as to ascertain the true nature of transaction. The Commissioner's order gave a guideline on how the Assessing Officer shall proceed with the enquiry and did not contain a mandate in which manner the assessing officer shall pass the order. Further, the court rejected the contention of the assessee that since the Board itself did not have the jurisdiction u/s 119 of the Act to pass an order of that nature, it had to be inferred that the Commissioner also lacked jurisdiction to direct the enquiry as contained in his order. It held that the said provision dealt with power and jurisdiction of the Board to issue instruction on subordinate authorities and did not relate to the power and jurisdiction of the Commissioner. The Stay petition and appeal of the assessee was, accordingly, dismissed.
***Aim Fincon Pvt Ltd v. Commissioner of Income Tax - (2017) 98 CCH 0159 KolHC (GA No.698 of 2016)***

**3404.** The assessee sold a property and invested sale consideration from same for purchase of another aimed exemption under section 54, however, Assessing Officer allowed exemption under section 54F instead of section 54, and, assessee filed an appeal against said order.
The Court held that since larger issue was pending before Commissioner (Appeals), Commissioner could not invoke jurisdiction under section 263 against said order of Assessing Officer.
***Smt. Renuka Philip v. ITO, Business Ward-XV (2) Chennai-[2019] 101 taxmann.com 119 (Madras)-TCA No. 286 of 2012 -date November 14, 2018***

**3405.** While computing the amount eligible for deduction u/s 80HHC, the AO didn't exclude the amount allowed as deduction u/s 80IB. The CIT was of the opinion that the provisions of section

80HHC(4B) mandated exclusion of deduction allowed u/s 80IB while quantifying the deduction u/s 80 HHC. Thus, he passed revisional order u/s 263 holding that the assessment order passed by the AO was prejudicial to the interest of Revenue and the Tribunal confirmed the said order without considering the grounds challenging the assumption of jurisdiction to pass the said revision order. Aggrieved, the assessee filed the present appeal before the High Court wherein it was observed that in CIT vs. Max India Ltd. it was pointed out that phrase "prejudicial to interest of Revenue" u/s 263 had to be in conjunction with expression "erroneous" order passed by AO and further, pointed out that where two views were possible and ITO had taken one view with which CIT disagreed, it could not be treated as erroneous order prejudicial to interest of Revenue, unless view taken by income tax officer was unsustainable in law. In the present case also, the Court noted that there were two conflicting decisions on the issue under consideration and the said issue was also pending before the SC for adjudication. Thus, the Court held that the CIT could not have invoked power u/s 263, as ITO had adopted one of two views possible.
***Agasthiya Granite P Ltd v ACIT (2018) 403 ITR 0279 (Mad) - T.C.(Appeal) No.450 of 2007 dated 16.04.18***

**3406.** A reassessment order was passed in the case of the asssessee, after a scrutiny assessment, to disallow deduction claimed with respect to interest paid on loan from bank (not utilized for business purpose). Subsequently, notice was issued u/s 263 by the CIT to disallow interest on loan, administrative, selling and distribution expenses and bad debts written off, etc. The assessee filed a writ petition against the said notice. The Court rejected the assessee's claim that the revision proceedings amounted to change of opinion since the same issue was dealt with in reassessment proceedings, noting that the issue in the reassessment proceedings was only with regard to disallowance of interest paid by the assessee whereas notice u/s 263 was not restricted to the disallowance of interest on loan alone but with other aspects also such as claims of the assessee regarding administrative, selling and distribution expenses and bad debts written off, etc. However, the Court accepted the assessee's contention that since notice u/s 263 raised issues, which were not subject matter of re-assessment proceedings, then two year period contemplated u/s 263(2) would begin to run from date of original assessment and not from date of re-assessment. Section 263(2) provides that no order shall be made under the said section after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. Thus, it held that the impugned notice was issued without jurisdiction and accordingly set aside the same.
***Indira Industries v Pr.CIT - [2018] 95 taxmann.com 103 (Madras) - W.A. NO. 1091 & 1092 OF 2017; C.M.P. NO. 15223 & 15224 OF 2017 dated June 14, 2018***

**3407.** The Court held that power under section 154 is exercisable only when mistake is manifest and could be identified by a mere look which does not need a long drawn out process of reasoning and a mere mistake by itself cannot be a ground to invoke section 154.
***Lakshmi Card Clothing Mfg. Co. (P.) Ltd. v. Dy.CIT [2018] 98 taxmann.com 445(Mad.)- Tax Case (Appeal) No. 944 of 2008 dated September 24, 2018***

**3408.** The assessee was engaged in the business of manufacturing/ trading of yarn and fiber waste and was subject to survey u/s 133A wherein the assessee had surrendered certain sum as additional income and assessment was completed. Subsequently, the CIT passed an order u/s 263 holding that the AO's order was erroneous and prejudicial to the interests of the revenue

and observed that the AO had failed to make proper verification. The Tribunal however, quashed the order of CIT.

The Court noted CIT's observations that AO had failed to reject books of accounts despite assessee's own admission that there were discrepancies in the books, as well as a huge surrender of additional income of Rs. 2.15 cr. had been made during the survey and there was drastic fall in the GP rate as well as the net profit rate as compared to earlier years. Thus, in the light of the above the Court upheld CIT's order u/s. 263 and ruled that it could not be concluded that the assessment order passed u/s 143(3) of the Act was not erroneous and prejudicial to the interests of the revenue, and AO had simply accepted assessee's explanations without independent application of mind. Moreover, if excess stock/excess cash was found, it was inconceivable that such books of account were reliable.

In light of above, HC upheld CIT's order u/s 263 and fortwith directed Registry to forward this ruling copy to CBDT to issue necessary instructions to all AOs in cases of survey/search and seizure operations especially where surrender or concealment has been detected, to ensure proper scrutiny of such cases. It further directed that CBDT directive should require AO to discuss reasons for rejecting or accepting the books of account of the assessee and not to merely record in slipshod or cursory manner that the books of account produced and test checked as done by the AO in the present case.

***PCIT vs Venus Wollen Mill- TS -724-HC-2018(P&H)- ITA No 111 of 2015 dated 27.09.2018***

**3409.** The Tribunal held that where the AO had applied his mind to the claim of the assessee during the assessment proceedings and his opinion was a possible and debatable, then action under section 263 of the Act was not justified. It also noted that assessment could be branded as erroneous if there was a lack of inquiry and not in cases of inadequate inquiry.

***Adani Wilmar Ltd v DCIT – (2015) 45 CCH 0076 Ahd Trib***

**3410.** Where the assessee had filed a revised return claiming depreciation on goodwill, as per the decision of the Apex Court in CIT v Smifs Securities Ltd, which was duly examined by the AO during scrutiny proceedings, pursuant to which an order under section 143(3) of the Act had been passed, the Tribunal held that the Pr CIT was not justified in invoking jurisdiction under section 263 of the Act to revise the order as the two conditions under Section 263 of the Act viz. order of the AO sought to be revised ought to be i) erroneous and ii). prejudicial to the interest of the revenue, were not fulfilled as the AO had accepted the assessee's claim of depreciation on goodwill after making enquiries, proper verification and application of mind.

***Adani Gas Ltd v Pr CIT – (2016) 48 CCH 0215 (Ahd Trib) – ITA No 1252 / Ahd / 2016***

**3411.** The assessee individual had sold agricultural land (which had been acquired prior to 1981) during the year and adopted the Fair market value as on 1.4.1981 as the cost of acquisition (@ Rs.290 per square meter) which was derived by way of a valuation report. For the purpose of arriving at such value, the valuer used the Jantri rate (a rate prescribed for computing fair market value of argircultural land) as on 2006 stating that no other rate was available. The AO accepted the valuation and the consequent capital gains computation as provided by the assessee. Subsequently, the CIT having jurisdiction over the assessee called for the assessment records and noted that the Jantri rate for 1999 was available and as per that rate the value of land adopted as cost of acquisition was lower than declared by the assessee resulting in a higher

income from capital gains. Accordingly, he issued a notice under section 263 for revision of the order of the AO. The Tribunal held that for the invocation of Section 263 two conditions had to be satisfied – i) the order of the AO had to be erroneous and ii) the order of the AO ought to have been prejudicial to the interest of the Revenue. It held that since the AO had conducted adequate enquiry and the observations of the AO were clearly mentioned in the body of the order and the view taken by him was permissible in law, such order could not be erroneous or prejudicial to the interest of the Revenue. Accordingly, it held that the CIT had wrongly assumed jurisdiction under section 263 of the Act and held that the notice issued by him was liable to be quashed.

***Vipul T Joshi v DCIT – (2017) 50 CCH 0032 Ahd Trib – ITA No 1710 / Ahd / 2014 dated 15.05.2017***

**3412.** The Tribunal quashed revision order under section 263 directing AO to initiate penalty under section 271(1)c in respect of assesse's erroneous deduction claim under section 10B for AY 2010-11 on the ground that the CIT could not, after the conclusion of the assessment proceedings, make up his mind or arrive at the required affirmative conclusion towards initiation of penalty proceedings in substitution of the lapse committed by the AO.

***Easy Transcription & Software Pvt Ltd [TS-15-ITAT-2017(Ahd)]***

**3413.** On scrutiny of assessment records, the CIT found that deprecation @80% was granted on certain assets i.e. boilers, turbine and bio-gas plant, thus the CIT believed that AO failed to conduct inquiry and thus, his order was erroneous and prejudicial to interest of Revenue and invoked revision u/s 263.The Tribunal held that, for invocation of powers u/s 263, fulfillment of twin condition was must i.e. assessment order should be erroneous and it should be prejudicial to the Revenue and if any one condition was lacking, then action u/s 263 would not be justified. The Tribunal observed that the assessee was entitled for deduction u/s 80IA/80IC and thus, the moment depreciation was being disallowed, it would be added to total income of assessee, and accordingly enhanced deduction **u/s** 80IA/80IC would be given to assessee, thus no prejudice was being caused to Revenue on grant of depreciation. Thus, the Tribunal concluded that the order of CIT was not sustainable on this issue as it failed to fulfill twin conditions as laid down u/s 263.

***Gujarat Ambuja Exports Ltd vs PCIT- (2018) 54 CCH 0127 Ahd Trib-ITA No 1049/Ahd/2018 dated 26.10.2018***

**3414.** The assessee incurred certain R&D expenditure and claimed weighted deduction u/s 35(2AB) which was allowed by AO. The Principal Commissioner issued notice u/s 263 on grounds that the AO failed to exclude expenditure on account of quality control and regulatory approvals out of R&D expenses on which assessee had claimed weighted deduction. It was noted that during scrutiny assessment, assessee clarified that expenditure relating to quality control and regulatory approvals were not grouped into R&D expenses and quality control was claimed as an ordinary expenditure as it was a part of production costs. Further, the AO while framing the scrutiny assessment had also taken note of the fact that Approving Authority i.e. DSIR after verification had excluded certain expenditure from the amount eligible for weighted deduction u/s 35(2AB) and accordingly it could not be said that he had not applied his mind and thus made

an error. Accordingly, the Tribunal set aside and cancelled the order issued u/s 263 by the Pr.CIT.

***Torrent Pharmaceuticals Ltd. vs Dy.CIT [2018] 97 taxmann.com 671 (Ahmedabad - Trib.)-IT APPEAL NO. 164 (AHD.) OF 2018 dated August 08 2018***

**3415.** The Tribunal held that the power of suo motu revision under section 263(1) was in the nature of supervisory jurisdiction and could only be exercised if the circumstances specified therein existed viz. order was erroneous and by virtue of being erroneous was prejudicial to the interest of the revenue. It further held that where the issue based on which the Commissioner invoked such power viz. whether the assessee was correct in not offering service tax as its income by not crediting the same to P&L account, had been examined by the AO who did not make any addition on account of the same, there were two views possible and therefore the order of the AO could not be treated as erroneous.

***A Menarini India Pvt Ltd v Pr CIT – (2016) 47 CCH 0726 (Ahd Trib) - ITA No. 1461/Ahd/2015***

**3416.** Where the AO passed the assessment order considering the revised computation (and not revised return) filed by the assessee offering Nil income to tax as against Rs.8.32 crores offered in the original return filed, Tribunal held that since the assessment order itself was null and void based on non-est revised return, the CIT could not exercise jurisdiction u/s 263

***Hari Mohan Das Tandon (HUF) v Pr.CIT – (2018) 91 taxmann.com 199 (All Trib) – ITA No. 44 (Alld) of 2016 dated 08.01.2018***

**3417.** The Tribunal held if there was an enquiry during assessment proceedings, even if it was inadequate, it would not give occasion to the Commissioner to pass an order under section 263 of the Act merely because he had a different opinion in the matter.

***Dev Raj Hi-Tech Mechines Ltd v DCIT – (2015) 45 CCH 0106 Amritsar Trib***

**3418.** The Tribunal held that since there is no provision u/s 115JB for addition of “Forex Losses” OR “Prior Period Expenditure”, such disallowances/additions are not tenable under the law and the PCIT cannot issue directions u/s 263 to make additions/disallowances which are not allowed under the law.

***Harman Connected Services Corporation India Private Limited vs. Pr. CIT-(2018) 54 CCH 0301 BangTrib-ITA No. 1101/Bang/2016-Dated Dec 5, 2018***

**3419.** The Tribunal quashed section 263 proceedings by holding that where the AO had applied its mind and conducted inquiry, CIT was not justified in assuming jurisdiction under section 263.The provisons of section 263 were not recourse for roving enquries. The issues raised by CIT were already examined by AO and only after considering assessee’s explanation. Merely because the AO had failed to give any reasons in the assessment order, it could not be said that there was no application of mind.

***IBM India Pvt. Ltd vs CIT [TS-16-ITAT-2017(Bang)]***

**3420.** Assessee filed return of income which was selected for scrutiny. AO noted that assessee had received FDI comprising of share capital and share premium from a company, namely, M/s P which was a resident of Mauritius. Assessee had submitted evidences in support of its claim.

Assessee's case was assessed after making proper enquiries by AO. Thereafter, PCIT received information in form of White Paper from Finance Ministry regarding unaccounted wealth generated in India which was routed back to Country through FDIs, GDRs from outside Country. PCIT found assessment order passed by AO was erroneous and prejudicial to interest of Revenue on ground that AO failed to make proper enquiries relating to share capital and share premium received by ssessee from M/s P, which was a resident of Mauritius. Accordingly, PCIT revised assessee's case by invoking provisions u/s 263. The Tribunal held that, identity of investor company was duly proved by Certificate of Incorporation issued as per laws of Country and Tax Residency certificate issued by Mauritian Revenue authorities, giving name and address of investor company and certifying that it was a company incorporated in Mauritius as per its laws and was a resident of Mauritius for Income Tax purposes. Genuineness of transaction, that share capital was received from said investor company could be sufficiently gathered from copy of return filed to RoC, submitting said fact of receipt of share capital from investor company and also from copy of share certificates issued to it. That money was genuinely received on account of share capital from said investor was evidenced by documents submitted by remitting and accepting bank to RBI as per FDI norms governing impugned transaction i.e. FIRC issued by bank remitting money from Mauritius to India i.e. accepting bank. Letter issued by RBI allocating a unique Identification number to transaction, thus confirming that transaction was taken on record, further corroborated genuineness of transaction. Certificate of CA certifying manner of determining FMV of share of assessee, justified premium also received. Documents filed before AO sufficiently established identity of investor that it was a company incorporated in Mauritius and also a tax resident of Mauritius, genuineness of transaction, that it had invested in share capital of assessee and also justification for premium. No infirmity was pointed out in documents by PCIT. AO was rightly satisfied with genuineness of share capital received. Premises on which PCIT had rested his case was based on general information issued by Ministry of Finance regarding unaccounted wealth generated in India, which was routed back to country through FDIs, GDRs from outside Country. It was merely suspicion of PCIT that money received by way of share capital was unaccounted income of assessee itself. There had to be a definite finding of error based on material evidences and not on suspicion. PCIT had to come to such conclusion and himself decided that order was erroneous, by conducting necessary inquiries, if required and necessary, before order u/s 263 was passed. Commissioner could not remand matter to AO to decide whether findings recorded were erroneous. Adequate inquiries were conducted by AO regarding share capital received from Mauritius Company, order could not be said to be erroneous even as per Explanation 2 to s. 263. Credit standing in name of investor who was a non-resident, onus to explain source did not lie with assessee, as per s. 68. PCIT failed to point out why any further enquiry was required to be made. It was not a case where any infirmity was pointed out in documents submitted by assessee or for that matter, huge share premium was justified. If that be case then of course, satisfaction of AO could not said to be reasonable and definitely in such a case enquiry of AO would have been clearly deficient. Identity, genuineness and even share premium received was established and justified. No reason remained for doubting transaction. Assessee appeal was allowed.

***Colors Textiles Limited vs. ITO-(2018) 54 CCH 0300 Chandigarh Trib-ITA No. 1514/Chd/2017-Dated Dec 5, 2018***

Go to Index

**3421.** The Tribunal held that under section 263 of the Act there was no requirement of giving any notice before assuming jurisdiction under the said section and that all that was required was to provide an opportunity to the assessee of being heard before passing the order and not before commencing the inquiry.
***Vodafone South India Limited v CIT (TDS) [ITA Nos 610 to 614 / Chd / 2013] - TS-466-ITAT-2015(CHANDI)***

**3422.** Assessee filed return of income declaring income under head "income from house property and capital gain". Assessee's case was selected for scrutiny through CASS wherein, AO noted that details equisitioned during course of hearing were furnished and were examined with reference to income shown by assessee. AO also stated that assessee had declared LTCG on sale of Booth No. 36 and concluded assessment taking note of an office note which was also appended in assessment order. Thereafter, CIT exercised his powers u/s 263. PCIT stated that assessee made investment in shop-cum-flat which was primarily a commercial property purchased jointly in name of Smt. SR, Smt. SB and Smt. MB. Said property was a single property and could not be sold in parts as per composite sale deed registered with competent registering authority. AO had allowed assessee's claim without inquiring nature of said property. Inquiries were got conducted through ACIT. Thus, said assessment was erroneous in so far as prejudicial to interest of Revenue in view of provisions of s. 263, including Explanation 2(a). Assessment order u/s 143(3) was set-aside and AO was directed to pass a fresh order. The Tribunal held that, in order to justify exercise of power vested by Statute u/s 263, it was incumbent upon PCIT to demonstrate that at time of investment, property was not a residential property and in terms of Explanation 2(a), PCIT was required to demonstrate that order passed was without making enquiries or investigation. PCIT was not able to show that order passed either suffered from any error let alone such an error which was prejudicial to interests of Revenue. Issues were enquired into by AO during assessment proceedings. Before AO, assessee's explanation was offered. Plan and map site was also made available. Nothing was brought out in order to show status of property at time of investment. Thus, explanation 2(a) was not attracted and accordingly, order passed by PCIT was quashed.
***Meenu Bansal vs Pr.CIT- (2018) 54 CCH 0352 ChandigarhTrib- ITA No 627/CHD/2017 dated 08.10.2018***

**3423.** The AO had passed assessment order u/s 143(3) and made GP addition based on estimates by considering GP rate of 5% as against 4.66% offered by assessee. The Pr.CIT issued notice for revision of assessment u/s 263 holding that the AO failed to verify/enquire into facts and thus, the assessment order passed by the AO was prejudicial to the interest of the revenue. The Tribunal observed that the AO had passed order after conducting detailed enquiries on all issues and further, even during revision proceedings, the assessee had submitted necessary details such as copy of accounts from creditors containing their names, address, PAN etc, calculation sheet of capital gains etc regarding the same issues dealt during assessment proceedings. The Tribunal relied on the decision in the case of DIT Vs. Jyoti Foundation (357 ITR 388) wherein it was held that in case the Revisionary Authority is of the view that there is inadequate enquiry then the Revisionary Authority must make enquiry and show that the assessment order is erroneous. It thus held that since the Pr.CIT did not make any enquiry and had also failed to address replies of assessee even after extracting them in order, the Pr CIT had passed bald

order without bringing out any error whatsoever let alone error which could be said to be prejudicial to interests of revenue. Accordingly, it quashed the revision order passed by the CIT thereby allowing assessee's appeal.

***Abhimanyu Gupta v PCIT (2018) 52 CCH 0581 ChandigarhTrib - ITA No. 771/Chd/2017 dated 09.04.2018***

**3424.** Although incriminating documents were found and seized during search and seizure operations, AO accepted assessee's explanation and did not make any addition to the total income of the assessee. However, CIT concluded that since it was a case of further enquiry which AO had failed to make, the assessment order passed by the AO was erroneous and prejudicial to interest of Revenue. Thus, CIT set aside the assessment order. The CIT(A) upheld the AO's order passed pursuant to the CIT's direction u/s 263. Appeal filed by the assessee against the said CIT(A)'s order as well as the revision order were heard together by the Tribunal. On merit, the Tribunal decided the issue in favour of the assessee, noting that there was no evidence on record to show that the assessee had paid on money for purchase of certain land. With respect to revision order, the Tribunal held that since additions made by lower authorities were set aside on merits, no revision order could be passed against assessee under Section 263 of the Act. Thus, assessee's ground was allowed.

***AMARJEET DHALL & ORS. vs. CIT & ORS. (CHANDIGARH TRIBUNAL) (ITA No. 366/CHD/2012, 148/CHD/2014, 263/CHD/2012, 369/CHD/2014, 459/CHD/2014) dated May 21, 2018 (53 CCH 0186)***

**3425.** The assessees sold jewellery to a company, which was received by them during the course of their marriage from the respective parents and relatives. The AO made addition in respect of such jewellery thereby rejecting the explanation offered by the assessees. The assessees also filed revised return disclosing all the jewellery and offered the same for taxation, before initiation of penalty proceedings under Section 271(1)(c). The said returns were accepted by the AO and no additions were made. Accordingly, the AO dropped the penalty proceedings. The CIT exercised powers under Section 263 and held that voluntary offer of income by the assessees by way of revised return does not absolve the assessees from penalty under Section 271(1)(c). Relying on the ruling of the Supreme Court in Suresh Chandra Mittal (251 ITR 9), the Tribunal set aside the order of the CIT and upheld the action of the AO in dropping the penalty proceedings as the Department did not discharge its burden of proving that income was concealed.

***S. Ashok Kumar & Ors. vs. ACIT – [2018] 53 CCH 0128 (Chennai ITAT) – ITA Nos. 2450/2451/2452/2387/2388/2389/2391/2392/2393/2395/2396/2397/2399/2400/ 2401 of 2016 dated May 17, 2018***

**3426.** The Tribunal held that the AO is expected to discuss each and every issue arising for consideration and record his own reasoning in the assessment order and since no such exercise was done by the AO, the CIT was correct in exercising power under section 263 of the Act.

***ACIT v India Cements Ltd – (2016) 46 CCH 0005 (Chen)***

**3427.** The Tribunal dismissed assessee's appeal against the PCIT's revision order passed u/s 263 setting aside the AO's order on the ground that the AO had not made any proper enquiry to find out income generated by assessee from business operations. It was noted by the PCIT that the

assessee had not disclosed the entire unaccounted cash found during the search operations at the premises of the partners of the assessee-firm. It was noted that the partner had accepted that the cash found during search was in respect of the unaccounted income generated outside the books of account and the AO had not made proper inquiry with respect to any accounted income as per books of accounts from the assessee's business operations. It thus held that the PCIT had rightly exercised his jurisdiction u/s 263.

***SURABI BULLION vs. DCIT (CHENNAI TRIBUNAL) (ITA No. 2489/Chny/2016, 2569/Chny/2017) dated May 3, 2018 (53 CCH 0141)***

**3428.** Assessment was completed in case of assessee u/s 143 r/w/s 263 and the AO in such order did not allow claim of deduction made u/s 10B representing export proceeds which was not billed during relevant AY and not brought to India within stipulated time and the same view was upheld by the CIT(A). The Tribunal held that the CIT(A) erred in not adjudicating issue raised before him on merits as the Tribunal in the appeal against order passed u/s 263, while confirming jurisdiction of administrative CIT in passing order u/s 263, had clarified that issue raised on merits was left open as there were no specific direction by CIT while passing his order u/s 263. Thus, CIT(A) should have decided the same de hors observations made by CIT in revisionary order passed u/s 263. Thus, the Tribunal held that the matter needed to be examined by CIT(A) afresh and matter was remanded.

***U.S. Technology International Pvt Ltd vs ACIT- (2018) 54 CCH 0157 Cochin Trib- ITA No 109/Coch/2018 dated 24.09.2018***

**3429.** The Tribunal held that when many of the issues that were raised in the notice issued u/s 263, were never considered in the assessment order, the CIT was justified in invoking his revisionary powers u/s 263 of the Act.

***Delphi Connection Systems India Pvt. Ltd. Vs. ACIT (2016) 48 CCH 0196 CochinTrib (ITA No. 256/Coch/2016)***

**3430.** The assessee debited an amount towards provision for doubtful debts which was not added back for the purpose of computation of total income under regular provisions and also for the purpose of computation of book profit under section 115JB which was accepted by the AO. The CIT observed that the provision made during the year was not debited to provision for doubtful debts account and consequently, the provision for doubtful debts was not obliterated. According to the Commissioner, it was only for disclosure purpose that the amount was shown as reduction from the trade receivables in the balance sheet and therefore he initiated proceedings under Section 263 of the Act. On perusal of the assessment order passed by the AO, the Tribunal held that there was no application of mind on his part and that he simply accepted the impugned claim of the assessee without any application of mind or enquiry on this issue. It held that based on the evidence available on record it was not enough to hold that this claim of the assessee was objectively examined or considered by the Assessing Officer. Accordingly, it held that the order of the AO was erroneous. Vis-à-vis assessee's contention that the AO had taken a possible view and therefore the order was not prejudicial, the Tribunal held that mere failure on the part of the Assessing Officer to make the necessary inquiries or to examine the claim made by the assessee in accordance with law, renders the resultant order erroneous and prejudicial to the interest of the revenue and nothing more was required to be established in such a case.

Go to Index

It held that if the AO passed an order mechanically without making the requisite inquiries or examining the claim of the assessee in accordance with law, such an order will clearly be erroneous in law as it would not be based on objective consideration of the relevant materials. It therefore held that the failure on the part of the Assessing Officer in not making the inquiries or not examining the claim of the assessee in accordance with law that per se renders the resultant order erroneous and prejudicial to the interest of the revenue.
***Cochin International Airport Ltd v ACIT - [2018] 92 taxmann.com 277 (Cochin - Trib.) - IT APPEAL NO. 501 (COCH.) OF 2016 dated MARCH 15, 2018***

**3431.** Where the AO had treated the unexplained amount credited to the capital account as unexplained income u/s 68 and allowed set off net business loss against that unexplained income, the Tribunal held that the CIT had not erred in exercising jurisdiction u/s 263 as the AO had allowed excessive relief to the assessee which was *prejudicial* to the interest of the Revenue. It relied on the decision of Fakir Mohmed Haji Hasan Vs. CIT ([2001] 247 ITR 290 (Guj.) wherein it was held that various deductions which are applicable to the corresponding incomes under various heads could not be allowed in the case of deemed incomes which were covered under the provisions of sections 69, 69A, 69A and 69C in view of the scheme of those provisions. Accordingly, the Tribunal held that AO's order was erroneous and prejudicial to the interest of the Revenue and dismissed assessee's appeal.
***BHIMA JEWELLWERS vs. PRINCIPAL COMMISSIONER OF INCOME TAX [2018] 53 CCH 0459 (Cochin-Trib.)- ITA No.208/Coch/OF 2018 dated August 20 2018***

**3432.** Search and seizure operation u/s 132 was conducted at assessee's business and residential premises wherein, certain materials and documents were seized and impounded. AO initiated proceeding u/s 153A and issued notice to assessee. In reply, assessee disclosed its total income for AY 2009-10. AO completed assessment after determining total income. Thereafter, PCIT found that assessee had debited an amount in the P&L account towards shortage of materials for which no reasons was recorded. Expenditure claimed towards shortage of material into railway rack for onward transportation was not an allowable expenditure u/s 37(1) and thus, assessment order passed by AO was erroneous and prejudicial to interest of Revenue. Accordingly, AO was directed u/s 263 to re-do same afresh after examining issue in detail. The Tribunal held that, difference claimed as expenditure and in case of shortage of material, customers deducted cost of materials from bills raised by assessee and same was brought to knowledge of AO in earlier years. In earlier assessment u/s 143(3), AO having called for information had made addition and completed assessment after satisfaction and observations. PCIT observed that assessee had no eligibility for claim of expenditure. As per questionnaire in original assessment proceedings, assessee had satisfied availability of evidence and thereby assessment was completed. Expenditure claimed by assessee considering business was normal in nature and business operations of expenditure was arising out of shortages, which was already submitted and completed assessments could be interfered with by AO while making assessment u/s 153A only based on incriminating material unearthed during course of search which were not produced. When no incriminating material was found in respect of shortage of materials in course of search operations, order of revision u/s 263 by PCIT could not be sustained.

Go to Index

***Basukinath Roadways Pvt. Ltd. vs. Pr. CIT-(2018)54 CCH 0305 CuttackTrib-ITA No.204/CTK/2018-Dated December 5, 2018***

**3433.** Where the CIT invoked revision proceedings in the case of the assessee noting that the assessee had claimed an expense of Rs.3.50 crore on account of 'land premium' which the CIT opined was wrongly allowed as a revenue expenditure, the Tribunal, noting that neither any enquiry had been made on the impugned issue nor was there any finding in the assessment order, held that the CIT was justified in invoking revision proceedings under Section 263 of the Act.
***CUTTACK DEVELOPMENT AUTHORITY vs. COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0151 CuttackTrib - ITA No. 361/CTK/2014 dated Mar 5, 2018***

**3434.** The AO had completed assessment of assessee's income, originally u/s 143(3) after making various additions. However, later the Pr.CIT issued notice u/s 263 on the ground that in profit and loss account, assessee had shown closing stock which included gold jewellery and silver jewellery which was valued at cost price or NRV whichever is lower and the same was not examined by AO. Further the Pr.CIT held that valuation of closing stock ought to have been done by taking average of opening stock and purchase price and held the order of assessment was erroneous as well as prejudicial to interest of revenue. The Tribunal, on appeal held that assessee was consistently following same method of valuation of closing stock which was also followed in current year and profit was deduced in accordance with method adopted by assessee. Thus, the PCIT was not justified in disturbing consistent method of valuation and Tribunal observed that valuation of unsold stock at close of accounting period was necessary part of process of determining trading results of that period and held that it could in no sense be regarded as source of such profits and thus concluded that order passed by PCIT could not be sustained.
***Sree Alankar vs PCIT- (2018) 54 CCH 0019 Cuttack Trib- ITA No 108/CTK/2018 dated 12.09.2018***

**3435.** The Tribunal held that in terms of section 55A, Assessing Officer has discretionary power to refer matter to DVO for valuation of property and, thus, where Assessing officer was satisfied with valuation made by assessee and did not refer matter to DVO, it could not be a ground to invoke revisional power of Commissioner under section 263.
***Jitindar Singh Chadha v. Pr. CIT-18, New Delhi-[2019] 102 taxmann.com 93 (Delhi - Trib.)-IT Appeal No. 2732 (Delhi) of 2018- dated December 31, 2018***

**3436.** The Tribunal held that CIT does not have power u/s 263 to give its own opinion when there is no new material unearthed. Thus CIT was wrong in directing the examination of taxability of deemed dividend u/s 2(22)( e), in proceedings u/s 153A while passing order under s 263 when the proceedings u/s 153A itself had not unearthed the impugned issue.
***Mahesh Kumar Gupta v CIT - (2016) 47 CCH 0190 DelTrib***

**3437.** Where assessee-company claimed expenditure towards payments made to cricket players under head 'advertisement and publicity' and assessing Officer after making enquiry and considering explanation furnished by assessee allowed such expenditure, the Tribunal held that

the commissioner was unjustified in disallowing claim of assessee by invoking section 263 on ground that Assessing Officer had not made proper enquiries.
***Sanspareils Greenlands (P.) Ltd. v CIT [2018] 99 taxmann.com 222(Delhi – Trib)- ITA Nos. 3225 of (DELHI) 2013 & 695 (DELHI) of 2016 October 11, 2018***

**3438.** The Tribunal dismissed the assessee's appeal against the CIT's revisional order passed under section 263, wherein the CIT had held the AO's order to be erroneous and prejudicial to interest of revenue on the ground that the AO had not made proportionate disallowance out of indirect expenses claimed in Profit and loss account which were not loaded on to work in progress. The Tribunal observed that during the course of assessment proceedings, the AO had not made any enquiry about valuation of closing stock and had merely asked what was basis of valuation of closing stock. It held that there was subtle distinction between basis of valuation of closing stock and items, which had gone into valuation of closing stock. It thus held that the AO had not applied mind to determine cost of work in progress and the assessee's case fell under category of lack of inquiry and not a case of inadequate Inquiry.
***RED ICE PRODUCTIONS PVT. LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0268 (Del Trib) - ITA No. 5351/Del/2016 dated Apr 3, 2018***

**3439.** After the completion of original assessment u/s 143(3), the CIT found that assessee company had claimed loss incurred on account of "cross currency swap"/ interest rate swap and provision for Non-performing assets (NPA) which were not allowable expenditure. Accordingly CIT passed order u/s 263 holding that original assessment order was erroneous and prejudicial to interest of revenue because the said deductions were wrongly allowed and the AO had not examined issues properly. With respect to provision for NPA, the Tribunal observed that out of total provision, certain amount was suo moto added back in computation of income and further sum was disallowed by AO in original assessment order. The balance amount represented actual write off and thus there was no error or prejudice to the interest of Revenue. With respect to the interest rate swap, the Tribunal observed that it was actual loss and only net loss after setting of gain of interest rate swap was claimed as deduction. Further, noting that both these issues were duly examined by AO vide Questionnaire to which replies were furnished, the Tribunal held that the finding of CIT that issues were not examined properly was not correct and since CIT failed to point out definite and specific error in original assessment order, it held that the revision order was bad in law and void-ab-initio. Accordingly, the assessee's appeal was allowed.
***Ge Capital Services India v ACIT (2018) 52 CCH 0372 DelTrib - ITA. NO. 2697/DEL/2007 & 231/DEL/2012 dated 23.04.2018***

**3440.** The Tribunal held that an order can be revised under section 263 of the Act only if the 1). the order if erroneous and 2). It is prejudicial to the interest of the revenue. It held that the Commissioner must have some material which would enable him to form a prima facie opinion that the abovementioned conditions are fulfilled. Since the AO had made proper enquiries during the assessment and the Commissioner had not conducted any independent enquiry it held that the revision was unsustainable.
***Singhal Construction Company v CIT – (2015) 45 CCH 0097 Del Trib***

Go to Index

**3441.** CIT passed revisional order u/s 263 taking a view that while completing assessment, AO had only verified identity of share applicant, being a Swiss entity holding 74% equity in the assessee-company but he had failed to verify the genuineness of transactions and creditworthiness of Swiss entity. Noting that (i) AO had made enquiry by seeking information from Switzerland Tax Authorities through proper channel of FT TR division of CBDT, for exchange of information so as to verify identity, source of funds and creditworthiness of Swiss company and its promoters, (ii) such an information was made available by Swiss Authorities from financial statements of Swiss entity and (iii) further the assessee had explained source from where the Swiss entity had made investment, the Tribunal held that the transactions in question could not be regarded as bogus or sham transactions u/s 68 and, accordingly, it set aside the impugned revisional order.
***Bycell Telecommunications India (P.) Ltd. v Pr.CIT – (2018) 90 taxmann.com 268 (Del Trib) - ITA Nos. 2819 to 2823 (Delhi) of 2017 dated 24.01.2018***

**3442.** Assessment was completed by AO u/s 143(3), thereafter the CIT by invoking provisions u/s 263 noticed that assessee company had claimed expenditure under the head "Legal and Professional charges" in P&L a/c which were allowed without due care and verification by AO and thus held that the assessment order passed by AO was erroneous and pre-judicial to interest of revenue.
The Tribunal observed that the AO had raised specific query related to all expenses debited in accounts and copies of ledger accounts with necessary evidences were to be produced, but only ledgers were produced by the assessee. The Tribunal thus held that enquiries as to expense claim of legal and professional charges could not be allowed merely on the basis of ledger unless supported with documentary evidence and thus explanation 2 to Section 263 was attracted in this case. The Tribunal concluded that the AO passed order without making enquiries or verification and thus CIT had passed legal and valid order directing AO to make fresh assessment so far as expenses claim was concerned, by affording reasonable opportunity of being heard to assessee.
***Supreme Build Cap P Ltd vs PCIT- (2018) 54 CCH 0122 Del Trib- ITA No 4739/Del/2018 dated 25.10.2018***

**3443.** The Tribunal dismissed the assessee's appeal against the CIT's revision order passed u/s 263 setting aside the AO's order on the ground that the AO had not made any proper verification and enquiries of documents seized during search, therefore, said assessment order was deemed to be erroneous and insofar as prejudicial to interest of Revenue rather he had disallowed assessee's claim for deduction of expenditure on account of business activity noticing that the assessee was not engaged in any business activity nor it had started any business project/work. It held that though the assessment was reopened u/s 148 on allegation of accommodation entry taken from S group, however AO had not made any enquiry regarding accommodation entry pertaining to the assessee specifically which was found during course of search and that once adequate or proper enquiry was not done, then in terms of Explanation 2 inserted in section 263, the assessement order was deemed to be erroneous in so far as it was prejudicial to interest of Revenue.
***SURYA FINANCIAL SERVICES LTD. v PR.CIT – (2018) 52 CCH 22 (Del Trib) – ITA No. 2915/DEL/2017 dated 08.01.2018***

Go to Index

**3444.** The Tribunal allowed the assessee's appeal and set aside the Pr.CIT's revision order passed u/s 263 where the revision proceedings were initiated to disallow 25% of the royalty expense claimed by the assessee treating the same as capital expenditure on the only reasoning that in its sister concern's case also technical know-how, as well as running royalty had been disallowed and when the matter travelled upto the High Court, the Court answered the question in favour of the Revenue and the Supreme Court had also dismissed the appeal against the said High Court order. In the present case, the Tribunal held that the said Supreme Court decision did not support the Revenue as in that case the issue was decided in favour of Revenue because the assessee in that case (i.e. asseessee's sister concern) was not at all in existence at the time when the Joint Venture Agreement was entered into to set the sister concern (a JV company) and the royalty was agreed to be paid as per the said agreement, whereas the assesse in present case was in existence since the year 2000 and was paying royalty since past 11 years. It thus held that considering the facts of the case in hand, the PCIT had erred in assuming jurisdiction u/s 263 by considering the facts of the case of the sister concern without appreciating the facts of the case in hand in true perspective.

***HONDA MOTORCYCLE AND SCOOTERS INDIA PVT. LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0241 (Del Trib) - ITA No. 2330/DEL/2018 dated June 26, 2018***

**3445.** Where the assessee sold agricultural land during the year under review and claimed that the consequent gains on sale were not taxable as agricultural land did not constitute a capital asset, which was accepted by the AO during original assessment proceedings, the Tribunal held that the CIT was not justified in invoking revision proceedings under Section 263 on the contention that other than the Tehlsidar's certificate, the assessee had not provided any further substantiation with regard to the land being agricultural in nature. It held that when the claim of the assessee was accepted in assessment order after due consideration of the facts, it could not be said that the assessment order was erroneous as assessment was passed after application of mind. Further, it held that when assessment order is passed u/s 143(3) of the Act, there is presumption that assessment order has been passed after application of mind and accordingly held that if an Assessing Officer takes one of the two possible views, assessment order could not be treated as erroneous. Accordingly, it quashed the order of the CIT passed under Section 263 of the Act.

***SANGEETA JAIN vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0101 DelTrib - ITA No. 3888/DEL/2017 dated Feb 15, 2018***

**3446.** Assessee being Tata Motors dealer, filed its return of income and assessment was completed u/s. 143(3) making certain additions and disallowances. The CIT perused assessment records of assessee u/s. 263 and observed that assessee claimed depreciation on trucks @30% instead of 15% as entitled and had invested in equity shares and proportionate interest was required to be disallowed u/s.14A, but AO had not examined this issue. Thus, CIT held assessment order to be erroneous and prejudicial to interests of revenue. The Tribunal observed that the assessee had accepted to its wrong claim of depreciation on trucks and noted that the AO had not made any verification on the same, further the assessee contested that the CIT initiated revision u/s 263 on the basis of audit objections. However, the Tribunal observed that there were no material to prove that revision proceedings were intittaed on the basis of audit objections. Thus, the

Tribunal held that the AO had not made any verifications for the above issues and upheld the order u/s 263 and dismissed assessee's appeal.

***Jasper Industries vs DCIT- (2018) 54 CCH 0021 Hyd Trib- ITA No 1344/Hyd/2015 dated 19.09.2018***

**3447.** The Tribunal condoned the delay in filing appeal on part of the assessee on account of the fact that the assessee was under bonafide belief that the order passed under section 263 of the Act was not appealable. It further held that when proceedings under section 148 of the Act resulted in assessing the assessee's business profits on estimation basis, having rejected its books of accounts, the orders passed by the AO were not prejudicial to the interest of the Revenue and therefore section 263 was not applicable.

***Kobashi Machine Tools Ltd v DCIT – (2015) 45 CCH 0110 Hyd Trib***

**3448.** The CIT passed revision order u/s 263 directing the AO to redo assessment noting that there were certain discrepancies with respect to the vehicle numbers provided during the assessment proceedings by the assessee, a transport contractor, which were used for transport, rejecting the assessee's submission that the same was on account of a typographical error made by the accountant making the data entry. During the remand proceedings before the AO, the assessee also submitted a list of the correct vehicle numbers and submitted that a perusal of the correct numbers and the recorded numbers demonstrates that there was single number variation, which could occur if numbers were not fed correctly in to the computer, which resulted in the error. The AO, however, did not consider the assessee's submission / explanation and passed the revised assessment order holding that the asssessee had inflated expenditure incurred towards transport charges by producing fake and fabricated vouchers and receipts. The Tribunal relied on the ruling of *ACIT vs. ITW India (P) Ltd [40 SOT 348 (Hyd)],* wherein it was held that the assessee can substantiate its claim of a particular expenditure even in a case which was remanded to file of AO by CIT while exercising revisionary powers u/s 263 for fresh adjudication on merit. The Tribunal held that AO should not have refused to examine the explanation given by assessee and should have conducted an enquiry into evidence given by assessee to verify whether claim made that typographical and data entry errors of vehicle numbers had crept in was correct or not. However, noting that the assessee had not properly supported his case by producing necessary evidence in support of the expenditure claimed, it directed the AO to assess the income @ 5% of gross receipts, relying on the decision in the case of Sri Venkata Balaji Transport vs. ACIT [ITA No.1236/Hyd/2015] and DCIT vs. M/s. Sri Sai Ram Transport [ITA No. 102/Hyd/2013].

***MODIYAM VENKATARAVINDRA REDDY vs. ITO (HYDERABAD TRIBUNAL) (ITA No. 952/Hyd/2016) dated May 8, 2018 (53 CCH 0152)***

**3449.** Assessee was served with a notice u/s. 153C of the Act in connection with search and seizure proceedings in the case of M/s. MBS Jewellers Pvt. Ltd. and its group cases pursuant to which it filed its return of income declaring an income of Rs. 85,000/- and the AO completed assessment u/s. 143(3) r.w.s. 153C of the Act accepting the returned income resulting in NIL demand. The CIT issued a show cause notice under section 263 of the Act alleging that the AO failed to examine certain information in the seized material (with respect to certain sale deeds executed by the assessee which were subsequently cancelled) and since the said notice was

not served on the assessee by the AO as the assessee's address was unknown, the CIT set aside the original order passed by the AO with a direction to re-examine and pass appropriate assessment orders. The Tribunal held that the CIT was incorrect in concluding that the AO had not verified the issue and held that the AO had certainly verified this aspect as it was very basis for assessment proceedings. It further noted that the original order passed by the AO was also approved by Jt. Commissioner, being assessment consequent to search and seizure proceedings and in those circumstances, it could not be stated that AO had not verified issue. It alos held that without giving proper opportunity to assessee, revision proceedings u/s. 263 could not be finalized as provisions of Section 263 mandated that CIT may pass such orders after giving opportunity of being heard and since the mandatory requirement of opportunity of being heard had not been provided to assessee, it held that the order passed by the CIT was void ab- initio. Accordingly, it held that the CIT erred on both fronts i.e. concluding that there was an error in the order of the AO due to non-examination of facts and in proceeding to pass order under section 263 of the Act without affording the assessee an opportunity of being heard.
***Anthi Reddy Yamireddy v DCIT - (2017) 50 CCH 0046 HydTrib - ITA No. 96/HYD/2017 dated 23.05.2017***

**3450.** Where the CIT issued a show cause notice under section 263 of the Act proposing to revise assessment by disallowing the write off of expenses incurred on laying of transmission lines by treating it as a capital expenditure, the Tribunal held that the assessee had written off the expenses as the project was ultimately abandoned, which was supported by judicial precedents in favour and therefore there was no error in the order of the AO. Accordingly, the Tribunal quashed the order passed under section 263 of the Act.
***Transmissioner Corporation of AP Ltd v DCIT – (2016) 48 CCH 0249 (Hyd Trib) – ITA No 538 / Hyd / 2016***

**3451.** The Tribunal held that the CIT was not justified in passing order under section 263 of the Act revising the order of assessment on the ground that the relief under section 10A was wrongly granted without setting of brought forward loss and depreciation in light of the amendment to sub- section (6) by Finance Act, 2003 with retrospective effect April 1, 2001. It further held that section 10A in its present form is an exemption provision and therefore the deduction under section 10A of the Act has to be allowed from the total income of the assessee prior to set off of un-absorbed business loss.
***Indus Business Systems ltd v ITO – (2016) 47 CCH 0240 (Hyd – Trib)***

**3452.** The Tribunal held that assessment order passed under section 143(3) read with section 153C of the Act post the approval of the Additional CIT under section 153D of the Act, could not be subject to revision under section 263 of the Act.
***Trinity Infra Ventures Ltd v DCIT – (2015) 45 CCH 0290 Hyd Trib***

**3453.** Assessee filed return of income. AO noted that assessee had claimed deduction for remuneration topartners. Assessee during course of survey had declared investment in Hotel Imperial, source of which could not be explained and such declared income was considered as income u/s 69. Income from declaration in investment of Hotel could not be treated as business income and could not be included in income while calculating remuneration u/s 40(b). AO

restricted assessee's claim u/s 40(b) and made addition towards excess salary paid to partners. Thereafter, CIT issued a notice u/s 263 on ground that disallowance of expenses and depreciation were not examined by AO, and additions were not made under appropriate head. CIT found that during course of survey, assessee had declared investment in Hotel Imperial source of which could not be explained as such declared income was considered as income u/s 69. CIT concluded that income from declaration in investment of Hotel could not be treated as business income and could not be included in income while calculating remuneration u/s 40(b). Thus, assessment order was erroneous and prejudicial to interest of Revenue. The Tribunal held that, AO was conscious of fact that income so surrendered did not partake character of business income. However, he disallowed claim of partner's remuneration but allowed claim of set off of loss/expenditure against income so surrendered. It was also noted that assessment order does not speak of consideration of claim of donation by AO. Assessee failed to demonstrateincome so surrendered during course of search had any link with business receipts. In absence of such link, set off of expenditure against such income would not be allowed. Allowance of such expenditure by AO in absence of supporting evidence of business income was patently erroneous and consequently prejudicial to interest of Revenue. No infirmity was found into order of CIT(A). Assessee's appeal was dismissed.

***A-One Enclave vs. Pr. CIT-(2018) 54 CCH 0299 IndoreTrib-ITA No. 311/Ind/2017-Dated Dec 5, 2018***

**3454.** AO completed assessment after making additions of assessee's declared income.CIT(A) enhanced assessment for all three AYs and estimated income of assessee by applying N.P. rate of 8.5%, 9.5% and 10% for AYs 2012-13 to 2014-15 respectively. The Tribunal held that CIT(A) could exercise its power to enhance income u/s 251 on issue which was subject matter of assessment.Said power could not be exercised in respect of issue which was not subject matter of assessment and therefore, there was a restriction on exercise of power of enhancement not to take up an altogether new source of income.There was a distinction between subject matter of assessment and scope of assessment.Subject matter of assessment was confined only on issue and subject which took up for scrutiny by AO whereas scope of assessment was very wide which includes even an enquiry of any issue and claim but might not have been taken up by AO during scrutiny assessment.Subject matter of assessment was matters which were taken up by AO during the scrutiny assessment are very much subject matter of appeal so far as power of CIT(A) exercising enhancement of income.Issue and subject matter which were falling under scope of assessment but were not taken up for scrutiny would fall in ambit of provisions of s. 263 and Commissioner in its revisionary power could take up those matters for revision of assessment order.There was segregation of jurisdiction under Ss 263 and 251.CIT(A), therefore, though, vested with very wide powers u/s 251(1) so far as subject matter and aspects of assessment about which assessee made a grievance as well as regarding any other matter considered by AO and determined in assessment.It was not open to CIT(A) to introduce in assessment a new source of income and assessment must be confined to those items of income which were subject matter of original assessment which meant items of income and aspects on which AO took up for scrutiny.In present case, AO made certain disallowances of expenses while completing assessment u/s 143(3) whereas CIT(A) invoked powers to enhance assessment by rejecting books of account and consequently income of assessee was enhanced by applying G.P. rate to estimate income of assessee.Said issue and

aspect of not accepting book results was never taken up by AO in scrutiny assessments.Even if AO ought to have considered said point of correctness of books of account and rejection of same u/s 145(3) if said matter was not taken up for scrutiny and enquiry then it was a subject matter falling in ambit of revisionary power u/s 263 on ground that there was a complete lack of enquiry on AO's part to examine correctness of books of account.Thus, impugned order passed by CIT(A) was set aside and assessee's ground was allowed

***ZUBERI ENGINEERING COMPANY & ORS. vs. Dy. CIT & ORS. ((2018) 54 CCH 0430 JaipurTrib ITA No. 977/JP/2018, 1122/JP/2018, 978/JP/2018, 979/JP/2018 dated 21.12.2018***

**3455.** The Tribunal held that clause (c) of Explanation 1 to Section 263, which restricts the CIT's revisionary powers to subject matters which are not considered and decided in an appeal, included and extended to subject matter which though are not considered and decided in appeal but are pending before CIT(A). It was noted that the assessee had filed an appeal before the CIT(A) against the AO's order disallowing 25% of unverifiable purchases from two parties and the Pr.CIT had invoke his revisionary power to disallow 100% of such purchases.

***GAD FASHION vs. PR.CIT (2018) 53 CCH 0374 JaipurTrib – ITA No. 670/JP/2018 dated 17th July, 2018***

**3456.** The assessee's original assessment was completed u/s 143(3) wherein the AO accepted income declared by the assessee by allowing deduction on account reserve debited in profit and loss account as per the requirements of statutory requirements of the Rajasthan Cooperative Societies Act, 2001. The Pr CIT invoked proceedings under Section 263 of the Act on the ground that the amount was to be disallowed under Section 40A(9) as there was no actual payment was made. The Tribunal observed that the AO merely reproduced accounting entries by way of transfer to general reserve and education reserve as reflected in profit/loss appropriation account which could not be read and understood to mean that AO examined allowability of these reserve transfers for tax purposes. It held that In absence of any specific query by AO and in absence of any specific finding in assessment order, it could not be said that the AO formed an opinion in the first place. It held that there was no due and proper application of mind by AO and it was a clear case of non-examination and non-application of mind by AO and therefore it held that the order of AO was clearly erroneous to this extent. Accordingly, it upheld the revision proceedings.

***BIJAYLLNAGAR KRAYA VIKRYA vs. INCOME TAX OFFICER - (2018) 52 CCH 0076 JaipurTrib - ITA No. 330/JP/2016 dated Feb 5, 2018***

**3457.** The Tribunal held that where assessee had claimed depreciation @ 80% on windmill and civil foundation work and electrical items which were part and parcel of windmill and that same was also accepted by assessing officer in consonance with the order of ITAT for earlier assessment year, CIT was not justified in holding that the assessment order was erroneous and prejudicial to the interest of revenue.

***Mehru Electricals & Mechanical Engineers Pvt. Ltd. vs. Principal CIT (2016) 48 CCH 0080 (Jaipur Trib)-ITA No.519/JP/16***

Go to Index

**3458.** The Tribunal held that where the assessing officer after not being satisfied with explanation of assessee had taxed entire receipt credited in the bank account, the assessment order could not be said to be erroneous and prejudicial to the interest of the revenue.
***Sunil Kumar Girdhar vs. Principal CIT (2016) 48 CCH 0088 (Jaipur Trib)-ITA No.513/JP/2016***

**3459.** The CIT believing that order passed by the assessing officer assessing net loss of the assessee was prejudicial to interest of Revenue, issued show cause notice to assessee, subsequent to which the details of expenses incurred (which were also furnished to the AO)to the CIT. However, the CIT without specifying which particular document or evidence the assessee was expected to produce but had failed to do so made only a general assertion that despite opportunity the assessee did not produce evidence. The Tribunal held that once assessee had met CIT's objections in SCN by furnishing explanation and details, then onus was on CIT to prove with cogent material that explanations put forth were not proper and assessment was erroneous and prejudicial to interest of Revenue. Accordingly, the Tribunal cancelled CIT's impunged order passed u/s 263 and AO's order u/s 143(3) was restored.
***Riverbank Developers Pvt Ltd. Vs Commissioner of Income Tax (2017) 49 CCH 0136 KolTrib (ITA No. 1329/Kol/2016)***

**3460.** The Commissioner passed a revisional order on ground that assessee had debited certain amount towards provisions for gratuity and provision for bad and doubtful advances which was required to be disallowed. In view of fact that assessee's income was eligible for deduction under sec. 80P and, thus, the aforesaid disallowance would only lead to enhanced deduction under section 80P, the Tribunal held that the impugned revisional order was to be set aside as the assessment order sought to be revised was not prejudicial to the interest of Revenue.
***Goghat Thana Large Sized Primary Cooperative Agricultural Marketing Society Ltd. v. Asst. CIT, Circle -1, Hooghly-[2018] 100 taxmann.com 460 (Kolkata - Trib.)- ITA No. 1872 (KOL) of 2017- dated November 30, 2018***

**3461.** The Tribunal quashed revision order under Section 263 wherein the Pr.CIT held that AO's order u/s 153A r.w.s. 143(3), was erroneous and prejudicial to the interest of Revenue since the AO allowed claim of assessee for deduction u/s 80IA by solely relying on claim made by assessee without enquiry. Tribunal held that no addition or disallowance could be made in the order under Section 153A r.w.s. 143(3) without any incriminating material found during course of search under Section 132 of the Act. Also, relying on the ruling of Madras High Court in M/s Tamilnadu Petro Products Ltd. Vs ACIT (338 ITR 643), the Tribunal concluded that deduction under Section 80IA(4) could not be denied even if infrastructural facility was for captive use.
***Rashmi Metaliks Ltd. vs. DCIT – [2018] 53 CCH 0005 (Kol ITAT) – ITA No 813 to 816/Kol/2017 dated May 2, 2018***

**3462.** The assessee had sold its unit in a slump sale and declared capital gains tax which had been accepted by the AO in scrutiny assessment after examination of the issue by issuing notices under section 142(1) and 143(2) of the Act. The CIT having jurisdiction of the AO issued notice under section 263 stating that the AO failed to examine sale of other assets during the year, failed to obtained form 3CEA and failed to examine whether the assets added by the assessee

during the year qualified for benefit under section 50B of the Act. The Tribunal held that it was settled law that the twin conditions i.e. AO's order was erroneous and prejudicial to interest of revenue was sine qua non for assumption of revisionary jurisdiction by CIT. It held that every loss of revenue as consequence of order of assessment order could not be treated as prejudicial to interest of revenue. It held that since the AO had made enquiries into slump sale transaction which took place in relevant assessment year and action of AO in accepting claim of assessee that transaction in question was slump sale after detailed enquiry was plausible view, the twin conditions required for exercising jurisdiction u/s 263 were found missing/ existing/absent. Accordingly, the order passed u/s 263 of the Act was quashed by the Tribunal.
***Ambo Agro Products Ltd v Pr CIT - (2017) 50 CCH 0042 KolTrib – ITA No. 676/Kol/2016 dated 19.05.2017***

**3463.** The Tribunal held that if assessee consistently claims exchange fluctuation loss as deduction, there shall absolutely be no case for invoking revisionary jurisdiction u/s 263 with regard to allowability of foreign exchange fluctuation loss.
***Himadri Chemicals & Industries Ltd vs Pr.CIT- (2018) 54 CCH 0002 Kol Trib- ITA No 813/Kol/2018 dated 05.09.2018***

**3464.** The Tribunal held that while computing Gross Total income under Chapter IV of the Act, if CIT himself in his order passed u/s 263 admits deduction u/s 10AA, then assessment order passed by AO granting exemption to assessee cannot be considered as erroneous and prejudicial to interest of revenue.
***Himadri Chemicals & Industries Ltd vs Pr.CIT- (2018) 54 CCH 0002 Kol Trib- ITA No 813/Kol/2018 dated 05.09.2018***

**3465.** The Tribual held that if issue of provision for MTM losses has been allowed by AO after due examination of same, then no error can be attributed in assessment order of AO warranting revisionary jurisdiction u/s 263
***Himadri Chemicals & Industries Ltd vs Pr.CIT- (2018) 54 CCH 0002 Kol Trib- ITA No 813/Kol/2018 dated 05.09.2018***

**3466.** Where the AO had passed the order without inquiry into the issue whether assessee (being a cooperative society) could *claim* deduction u/s 80P with respect to income earned from trading, the Tribunal held that there was no infirmity in the order of Pr.CIT passed u/s 263 who had set aside the issue for fresh adjudication denovo, to the extent of examining the claim of deduction u/s 80P. It was held that since there was no application of mind to the said issue in the assessment order, such order was erroneous and in the instant case, it was also pre-judicial to the interest of the Revenue.
***ADAMBANDH SAMABAY KRISHI UNNAYAN SAMITY LTD. vs. CIT [2018] 53 CCH 0471 (Kol-Trib.)- ITA No.164 (AHD.) OF 2018 dated August 24 2018***

**3467.** Search and seizure operation u/s. 132 were conducted in case of assessee at residence & office premises of IRC Group and at lockers maintained in name of individual assessees with various banks and notice u/s.153A was issued asking assessee to file correct return of its total income. Assessee had claimed operating expenses of certain amount which was disallowed by AO.

Further, the PCIT had observed that some amount being part of operating expenses was disallowed namely sundry balance written off in preceding assessment order u/s.143(3) but same disallowance had not been made when order was passed u/s.153A r/w section 143(3), thus PCIT concluded that assessment order passed by AO was erroneous and prejudicial to interest of revenue and therefore and initiated proceedings u/s 263. The Tribunal, noted that since there was no incriminating material unearthed during search, AO had not made any additions in his assessment order, based on incriminating material thus it was not case of Pr. CIT that AO failed to make any additions/disallowances based on incriminating material seized/unearthed during search. Thus, the Tribunal held that items of regular assessment could not be added back in proceedings u/s 153A when no incriminating documents were found in respect of disallowed amounts in search proceedings and concluded that PCIT erred in exercising his revisional jurisdiction u/s 263

***Indian Roadways Corp Ltd vs PCIT- (2018) 54 CCH 0038 Kol Trib- ITA No 787/Kol/2018 dated 12.09.2018***

**3468.** The Tribunal allowed the assessee's appeal against the CIT's order passed u/s 263 on the ground that the AO had not properly verified workings for disallowance u/s 14A r.w. Rule 8D as total interest paid by assessee on borrowed funds should have been considered by the AO while working out disallowance made u/r 8D(2)(ii), noting that the AO on due satisfaction of replies given, proceeded not to make any disallowance of interest as diverted for non-business purposes u/s 36(1)(iii)—Assessee gave entire details of interest payment on borrowed funds and its specific utilization before the AO itself and AO took conscious decision on the same and did not disallow any interest u/s 36(1)(iii). Accordingly since the AO had made elaborate enquiry about aspect of 14A and took possible view on same while discussing it elaborately in assessment order, it held that the entire revisionary jurisdiction exercised by CIT u/s 263 was not sustainable.

***KISHAN GOPAL MOHTA & ANR. v JCIT & ANR– (2018) 52 CCH 6 (Kol Trib) – ITA No. 310/Kol/2015, 634 & 635/Kol/2016 dated 03.01.2018***

**3469.** Where the assessing officer during original assessment proceedings examined the issue pertaining to issue of share capital under Section 68 and no addition was made, the Tribunal held that the Pr CIT was not justified in stating that the issue was not enquired into by the AO and that the order of the AO was erroneous and prejudicial to the interest of the revenue.

Vis-à-vis the second issue raised by the Pr CIT i.e. notional loss wrongly allowed by the AO during assessment proceedings, the Tribunal noted that the loss occurring was arising out of the valuation of the assessee's stock in trade at cost or net realizable value whichever was less and that the Pr CIT had incorrectly classified it as notional loss. Accordingly, it held that the revision proceedings were without jurisdiction and bad in law.

***RBS CREDIT & FINANCIAL DEVELOPMENT PVT. LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0165 KolTrib - ITA No. 1156/Kol/2017 dated Mar 9, 2018***

**3470.** The Tribunal reversed PCIT's revision order passed u/s 263 and held that the original assessment order passed by the AO u/s 143(3) was not erroneous and prejudicial to the interest of Revenue in allowing deduction u/s 80-IB with respect to export incentives derived by the assessee-company. The PCIT opined that export incentive received was not an income derived

from eligible business and hence, on such income, deduction u/s 80-IB was not allowable. It was noted that the assessee (engaged in manufacturing in plastic sector) had received the impugned incentive as per the Govt's Foreign Trade Policy by exporting goods manufactured in India and the same could be utilized against import of capital goods relating to manufacturing activity in plastic sector. Thus, the Tribunal held that such incentive was an instance involving reimbursement of cost of running eligible business forming part of profits qualified for deduction u/s 80-IB.

***KKalpana Industries (India) Ltd. vs Pr.CIT[2018] 54 CCH 0237 (Kol Trib)- ITA No.814/Kol/2018 dated 06.11.2018***

**3471.** The Tribunal quashed the revision order passed by the Pr CIT under Section 263 and held that the order of the AO allowing the assessee's claim of taxing interest derived by it under Rule 8 of the Income-tax Rules, 1962 (where interest income was composite with the agricultural operation) was valid. It held that the Pr CIT had alleged that the interest income had no connection with the agricultural operations of the assessee without pointing out any defects in the assessee's submission before it wherein the assessee had adequately proved that the interest derived by it was directly linked with its agricultural operations. Accordingly, it held that the assessee's claim was correctly allowed by the AO.

***Darjeeling Organic Tea Estates v DCIT – (2018) 52 CCH 0136 KolTrib – ITA No 964 / Kol / 2017***

**3472.** Where the assessee, a US LLP, rendering consultancy and technical services had filed its return of income claiming certain sum received for services rendered outside India as not chargeable to tax in India as per Article 15 of India-USA DTAA and the AO, after making due enquiries with regard to non-taxability of receipts by assessee for services rendered outside India and applicability of article 15 of India-USA DTAA, had accepted the total income of assessee as declared in return of income, the Tribunal quashed the revisional order passed u/s 263 by the CIT on ground that there was complete lack of enquiry/verification by AO during scrutiny proceedings. It held that the CIT sought to substitute his view with that of the AO since it is evident that the AO made due enquiries before completing the assessment and, thus, the AO's order cannot be termed as erroneous for lack of proper enquiry before concluding the assessment.

***Pricewaterhouse Coopers LLP USA v ACIT – (2018) 91 taxmann.com 444 (Kolkata Trib) – ITA No. 540 (kol.) of 2015 dated 14.02.2018***

**3473.** The Tribunal quashed CIT's revisional order passed under section 263 wherein the CIT had held the AO's order to be erroneous and prejudicial to interest of revenue on the ground that the AO had not enquired into the aspect of applicability of section 2(22)(e), during the course of assessment proceedings, with respect to loan received from a related party, SVPL. It was noted that during assessment, the AO had inquired into facts that SVPL was a related party and that it had given loans to the assessee and thus it could not be said that there was no enquiries or verification made by the AO on this issue of loan, though the AO had not recorded that he had examined the transaction from the angle of section 2(22)(e). Further, it held that inadequate enquiries could not be a basis for invoking powers u/s 263. On merits also, it held that section

2(22)(e) was not attracted in the facts of the present case since SVPL (the lending company) was an NBFC and interest was charged on the said loan received.
***CASTRON TEHNOLOGIES LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0427 KolTrib - ITA No. 945/Kol/2017 dated Apr 4, 2018***

**3474.** The assessee, an individual, was engaged in providing various services including strategic Management services as well as legal services for the recovery of assets and debts. For the relevant year, he had claimed deduction with respect to certain legal and finance expense incurred in connection with a litigation pending in the court involving ownership of an immovable property wherein the assessee was representing one of the party. As per the agreement with the said party, the assessee was to bear the said expense and was entitled to receive a percent of the value in the property as profit. The assessee's return was selected for scrutiny and assessment was framed u/s 143(3) by the AO wherein the AO had accepted the declared income. However, the CIT u/s 263 held the AO's order to be erroneous in so far as prejudicial to interest of the Revenue, inter alia on the ground that the aforesaid expenditure incurred by the assessee was capital in nature as it was related to immovable properties, assuming that the assessee was interested in buying the property in future, and therefore not eligible for deduction. The Tribunal held that as there was no allegation in the order of the CIT u/s 263 that the expenditure was not in connection with the business of the assessee. It held that no capital asset resulted after incurring the said expenses and thus, the expenditure was revenue expenditure eligible for deduction u/s 37(1). The Tribunal also observed that the assessment order was passed after conducting necessary enquiries and considering submission filed by assessee and mere non-discussion of issues could not render order erroneous or prejudicial to the interest of revenue on account of non-verification of issues. Accordingly, the Tribunal quashed the order passed by CIT u/s 263.
***Hartaj Sewa Singh v DCIT (2018) 52 CCH 0412 KolTrib - ITA No. 1011/Kol/2017 dated 27.04.18***

**3475.** Where the AO had taken one of possible views by duly appreciating contentions of assessee that advance received had already been taxed in earlier years and he had rightly not brought same to tax in assessment even though same was framed u/s 144 the Tribunal held that the order passed by AO was neither erroneous nor prejudicial to interests of revenue and was not required to be interfered with. Accordingly, it quashed the order passed by the CIT under section 263 of the Act.
***Juoti Ranjan Roy v CIT – (2016) 47 CCH 0356 (Kol- Trib) - ITA No. 1251/Kol/2013***

**3476.** The Tribunal, relying on its earlier decision in the case of SubhlakshmiVanijyaPvt Ltd v CIT, held that the revision order passed by the CIT under section 263 of the Act in respect of taxability of share capital received by the assessee under section 68, was valid and was to be upheld. It relied on the findings of its earlier order viz. that the CIT was empowered to direct the AO to examine / make an addition on account of receipt of share capital with or without premium before the amendment to section 68, inadequate inquiry conducted by the AO was as good as no inquiry being conducted.
***Brotex Sales Pvt Ltd v CIT – (2016) 47 CCH 0587 (KolTrib) - ITA No.1030, 1031, 1088 & 1090/Kol/2016***

Go to Index

**3477.** The Tribunal held that jurisdiction under section 263 of the Act could not be exercised where the conditions prescribed in the said section, viz. that the order of the AO was erroneous and prejudicial to the interest of the revenue for failure on part of the AO to make proper enquiries before completion of assessment and that jurisdiction under section 263 could not have been exercised for the reason that the AO did not enquire as to whether the commercial area in the project exceeded the statutory limits laid down in section 80IB(10)(d) of the Act.
***Shree Krishna Developers v ITO – (2016) 46 CCH 0045 (Kol)***

**3478.** The Tribunal held that there is no prohibition under section 263 for Commissioner to act on basis of proposal by Assessing Officer if other conditions specified under said section are satisfied.
***Stewarts & Lloyds of India Ltd v CIT – TS-112-ITAT-2016 (KOL)***

**3479.** The Tribunal held that where the assessee, private limited company during the course of search and seizure operation, made a disclosure of undisclosed income by writing off advance under section 41(1) and the AO assessed the same without initiating penalty proceedings under section 271AAA by exercising his jurisdiction, the CIT was not justified in revising the order of the AO on the ground that the penalty proceedings were not initiated. It further held that the CIT could not just substitute the authority of the AO with his opinion.
***Enfield Gems & Jewellwery Ltd v CIT – (2016) 47 CCH 0324 (Kol Trib)***

**3480.** The Tribunal held that failure of the AO to give a logical conclusion to the enquiry conducted by him during assessment proceedings empowers the CIT to revise the assessment order passed by him by holding that the enquiry conducted by the AO could not be construed as a proper enquiry. It was further held that law does not require service of notice under section 263 strictly as per the terms in section 282 of the Act as long as the assessee was given an opportunity of being heard.
***Mayfair Commotrade Pvt Ltd v CIT – (2015) 45 CCH 0197 Kol Trib Khushi Conbuild Pvt Ltd v CIT – (2015) 45 CCH 0177 Kol Trib Sambhav Commodities Pvt lTd v CIT – (2015) 45 CCH 0182 Kol Trib Rising Tracom Pvt Ltd v CIT – (2015) 45 CCH 0201 Kol Trib***
***Tara Vinimay Pvt Ltd v CIT – (2015) 45 CCH 0188 Kol Trib***

**3481.** The Tribunal held that failure of the AO to give a logical conclusion to the enquiry conducted by him gives power to the CIT to revise such assessment, by holding that the enquiry conducted by the AO in such cases could not be construed as a proper enquiry.
***Billbody Vyapaar Pvt Ltd v ITO – (2015) 45 CCH 0184 Kol Trib***
***Esteem Tradecom Pvt Ltd v CIT – (2015) 45 CCH 0196 Kol Trib***

**3482.** Assessee filed return of income which was assessed by AO without making any addition.Thereafter, CIT issued SCN in order to revise assessee's case.CIT noted that in computation of income, assessee claimed deduction as loan written back under OTS scheme, considering it as "capital receipt" not liable to tax.It was apparent from perusal of the Balance-sheet, Schedule under head "Secured Loan" that assesses had obtained cash credit an working capital loan from Bank which was shown as outstanding but was reduced to NIL.Similarly, loan from another Bank was shown towards Term Loan and Corporate Loan, apart from International

Funded loan.Said amount remained outstanding to Bank on account of part payment and one time settlement scheme.AO failed to carry out relevant and meaningful inquiries about reasons for which loans were taken and also about terms and conditions of one time settlement as a result of which there were no dues to Financial Institution or Banks.Even book profit u/s 115JB was wrongly worked out.Assessee had claimed unabsorbed depreciation.AO failed to consider whether Deferred Tax Asset was considered for Book Loss shown or there was a separate entry for it.Assuming figure was not correct and Deferred Tax Asset had to be considered also for Book Loss then also AO failed to consider correct figure for adjustment u/s 115JB.If there was typographical error on part of assessee, then also no question was asked during assessment proceedings.AO acted in a mechanical fashion to pass the assessment order hence, he was directed to form fresh assessment. The Tribunal held that after printing words 'working capital', same was cut and by hand it was mentioned 'term loan'.Language used was clearly confusing and does not categorically state that all loans were taken for trading activity.In reply to show cause reproduced by CIT in his order u/s. 263, cutting of 'working capital' substituting of same with 'term loan', was not mentioned therein. AO had not made any enquiry regarding nature of loans waived off purposes for which they were utilized. Assessee at no stage gave correct and complete details and purposes for which all loans were utilized.CIT directed AO to pass an order after doing meaningful enquiry and as per law and after giving assessee reasonable opportunity. The Tribunal held that no prejudice was caused to assessee and assessee's appeal was dismissed.

***Expo Gas Containers Ltd vs CIT [2018] 54 CCH 0435 (Mum- Trib.)- ITA No.5210 /Mum/2015 dated 27.12.2018***

**3483.** The Tribunal held that in view of contrary decisions of High Court, issue as to whether notional income on unsold flat held by assessee-builder as stock-in-trade in its books of account should be assessed as income from house property is a debatable issue, and hence order of Assessing Officer for not bringing unsold flats to tax at notional letting value under head 'income from other sources' which was one of possible views, was not erroneous and therefore, section 263 could not be invoked.

***S.D. Corporation (P.) Ltd. v.Pr. CIT-3, Mumbai-[2019] 102 taxmann.com 226 (Mumbai - Trib.)-IT Appeal No. 3311 (Mum) of 2018-dated December 26, 2018.***

**3484.** The Tribunal allowed assessee's appeal against the CIT's revision order passed u/s 263, holding that the issue under consideration i.e. determination of annual lettable value (ALV) of premise was not only involved in appeal before the CIT(A) but he had also considered the same and thus the order passed by the CIT u/s 263 was clearly without jurisdiction. It was noted that for the year under consideration, the Tribunal had remanded the matter to the AO for determination of ALV of the premise and the AO had passed an order giving effect to the Tribunal's order wherein he had accepted the ALV adopted by the assessee. However, the AO had subsequently passed another order giving effect to the Tribunal's order wherein he had made an addition to the ALV adopted by the assessee. In the appeal filed against the subsequent order giving effect to Tribunal's order, the CIT(A) held that the AO had no jurisdiction / power to pass the subsequent order. The CIT(A) also discussed the merits of the issue of determination of ALV, though the assessee had not filed any ground of appeal for the same. The Tribunal held that an assessment order may be challenged by an assessee in appeal as beyond jurisdiction as well as on merits and in such appeal, it is open to the appellate authority

to decide both the issues i.e., with respect to the jurisdiction as well as on merits. Accordingly, it concluded that though the determination of ALV was not a subject matter of appeal before the CIT(A), since he had considered and decided on the same, CIT could not exercise his jurisdiction u/s 263.

***INDOKEM LTD. vs. CIT (2018) 53 CCH 0391 MumTrib - ITA Nos. 3282/Mum/2014, 3283/Mum/2014, 3284/Mum/2014, 3285/Mum/2014, 3286/Mum/2014, 3287/Mum/2014 dated July 25, 2018***

**3485.** The Tribunal quashed the revision order passed by the CIT u/s 263 wherein the CIT had held that the assessment order passed by the AO was erroneous and prejudicial to the interest of Revenue since the assessee had not included included interest on advance given to certain company while computing book profits u/s 115JB whereas the same was offered to tax under normal provisions of the Act. The Tribunal held that once the accounts have been certified by the auditors and adopted in the AGM, the AO has a limited power to make adjustments as provided for in the explanation of section 115JB and therefore, the AO had taken a correct view as the matter stood covered in favour of the assessee. Further, it noted that the assessee had explained that this income was not accounted for in the books of account due to uncertainty of receipt but the same was offered in the computation of the normal income due to abundant caution. Accordingly, it allowed assessee's appeal.

***Tata Realty and Infrastructure Ltd. vs Pr.CIT [2018] 54 CCH 0362 (Mum -Trib)- ITA Nos.7135 to 7137 /Mum/ 2018 dated 02.11.2018***

**3486.** The Tribunal allowed assessee's appeal against the revision order passed by the PCIT u/s 263 holding that since the AO's order was not erroneous, the twin conditions, viz. a) order of AO sought to be revised was erroneous and b) prejudicial to interest of Revenue, were not fulfilled and, therefore, the order passed by the AO could not be subject matter of revision. It was noted that the AO had allowed assessee's claim for deduction of foreign exchange loss on currency swap (conversion of loan in Japanese yen to American dollars) and the PCIT had passed the revision order holding that loss was capital in nature for the reason that ECB borrowed was used for acquiring a capital asset. The Tribunal relied on ratio laid down in case of coordinate bench decision in Cooper Corporation Private Ltd vs. DCIT wherein it was held that where assessee's act of conversion of Indian currency loan which was availed for acquisition of assets, etc. into foreign currency loan was dictated by revenue consideration towards saving interest cost, foreign exchange fluctuation loss being on revenue account was allowable expenditure u/s 37. Thus, it held that in the said case, the assessee had entered in to foreign currency swap agreement to hedge foreign exchange fluctuation risk of liability of foreign currency which was revenue loss and, thus, an allowable deduction.

***JBF Industries vs Pr.CIT [2019] 54 CCH 0365 (Mum Trib)- ITA No.701/Mum/2018 ITA No.702/Mum/2018 dated 16.11.2018***

**3487.** Where the assessment order revealed the AO had picked up the figures of 'Book Profits' u/s 115JB as per 'Return of Income' without applying any mind thereupon and adopted the same as such without any *iota* of discussion in the quantum assessment order, the Tribunal held that *prima facie*, this was a case of 'no inquiry' by AO and not the case of 'inadequate inquiry' or 'Lack of Inquiry' or 'adoption of one of the possible views' and therefore as per the statutory

provisions as contained in section 263 including Explanation 2 the order of AO was deemed to be erroneous in so far as it is prejudicial to the interests of the revenue. However, on merits, it held that since the employee benefit cost, i.e., Fringe Benefit Tax, was not part of income-tax, the same was not required to be added back while arriving at Book Profits u/s 115JB. Thus, the Tribunal held that since one of the prime condition viz. prejudicial to interest of revenue to invoke the revisional jurisdiction u/s 263 had remained unfulfilled, the order passed u/s 263 by the CIT could not be sustained in law and accordingly was set aside.

***Rashtriya Chemicals & Fertilizers Ltd. v CIT – (2018) 91 taxmann.com 104 (Mum) – ITA No. 3625 (Mum.) of 2017 dated 14.02.2018***

**3488.** Where assessee itself had accepted before CIT that it had not maintained separate books of account in respect of research and development facility even though it was required to maintain same as per provisions of Act for claiming deduction u/s 35(1), the Tribunal upheld CIT's revision order passed u/s 263 setting aside the AO's order wherein the assessee's claim for the said deduction was wrongly allowed.

***Nivo Controls (P.) Ltd. v CIT – (2018) 90 taxmann.com 271 (Mum) – ITA No. 3533 (mum.) of 2014 dated 31.01.2018***

**3489.** Where inquiry in respect of the requirement of disallowance of interest under section 14A r.w. rule 8D of the Rules was conducted by the AO in the assessment proceedings and he took a possible view after application of mind that no disallowance was called for on interest, ostensibly in respect of rule 8D(2)(ii) of the Rules and that disallowance was called for under rule 8D(2)(iii) of the Rules, the Tribunal held that mere fact that the CIT was not in agreement with the view adopted by the AO and had a different opinion on the same, would not render the order of assessment erroneous and prejudicial to the interest of Revenue. Thus CIT exceeded his jurisdiction u/s 263 of the Act in this case. Accordingly, order of CIT was set aside and appeal of the assessee was allowed.

***Future Ideas Co. Ltd v. Principal Commissioner of Income Tax - (2017) 49 CCH 0157 MumTrib (ITA No. 3062/Mum/2016)***

**3490.** The Tribunal allowed the assessee's appeal and set aside the revision order passed by the CIT u/s 263, where the CIT had held the AO's order passed u/s 143(3) to be erroneous as far as prejudicial to the interest of revenue on the ground that the AO had made the assessment considering the revised return filed by the assessee without examining the relevant details as to why the income was reduced in the revised return as compared to the original return of income. It was noted that the revised return of income was necessitated on account of reconciliation exercise carried out consequent to migration from use of one accounting software package to another, resulting into an adjustment to the originally returned income. Further, the said revised return also contained a explaining the rationale for the said adjustment. It relied on the decision of the co-ordinate Bench in the case of Gaurav Mathrawala vs CIT [ITA No. 2378/Mum/2015] wherein it was held that a specific finding by the CIT as to how the claim of the assessee was wrong on the basis of facts and material on record was required before the assessment order could be set-aside for redoing of the assessment and thus held that CIT was wrong in considering the assessment order as erroneous for merely requiring the AO to verify

the situation and to amend the originally assessed income depending upon the outcome of the verification exercise.

***BOMBAY STOCK EXCHANGE LTD. vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0469 MumTrib - ITA NO. 3502/MUM/2016 dated April 3, 2018***

**3491.** The assessee had declared income derived from sale of shares as short term capital gains, which had been accepted by the AO in his order passed under section 143(3) and subsequently in his order under section 143(3) rws 153A (wherein the AO disallowed professional tax paid) and the same had also been accepted in prior assessment years. In the opinion of CIT, the gains should have been declared as business income instead of short term capital gains and be charged at maximum marginal rate. Accordingly he issued notice under section 263 of the Act. The Tribunal noted that evidences for above assessment years were filed before AO in proceedings u/s 143(3) r.ws. 153 A Act which were verified by AO and therefore it could not be said that the said view was erroneous and prejudicial to interest of revenue so as to be covered under mandate of Section 263. Accordingly, it held that the assumption of jurisdiction under section 263 was invalid.

***Anand Jain v CIT – (2017) 50 CCH 0013 (Mum – Trib) – ITA 3895 / Mum / 2013 dated 05.05.2017***

**3492.** The Tribunal held that where during the assessment proceedings the AO had examined details of rents received by the Assessee alongwith the agreement with the tenants and, thereafter, treated the same as income from HP, CIT was incorrect in assuming jurisdiction u/s 263 and directing the AO to make fresh enquiry as to whether the said rental income could be treated as income from business merely on the ground that the AO had not made any elaborate discussion in that regard in the order. The Tribunal observed that the CIT ought to have given findings as to how the order was prejudicial and erroneous to the interest of the revenue and without the same CIT could no assume jurisdiction u/s 263.

***Basudev Kumar Sanghai vs. CIT (2017) 50 CCH 0255 Mum. Trib. (ITA No. 5300/Mum/2014 dated August 21, 2017)***

**3493.** Noting that during the original assessment proceedings, the assessee withheld his actual source of investment in immovable property and the AO summarily accepted assessee's claim that the source of such investment was loan raised from his mother by merely placing on record documents produced without any verification on deliberation on them, the Tribunal upheld the revision of the assessment order u/s 263, considering that the CIT, on perusal of records, had gathered that the loan from the assessee's mother was utilised for payment to another entity and not to the seller of property, who was already paid in earlier year. However, vis a vis CIT's invocation of revisionary power on the ground that stamp duty of the property was more than the declared value, it held that provisions of sec 50C would not be attracted in the hands of the assessee being the buyer of property and therefore assessee's case could not be revised for the purpose of verifying tax liability of the seller i.e, third party.

***Parth Ajit Pawar [TS-419-ITAT-2017(MUM) I.T.A. No. 3835/Mum/2017 dated 14.09.2017***

**3494.** The assessee's original assessment was reopened by the AO under Section 147 of the Act based on information received from DGIT(Inv) pursuant to which he proceeded to examine the

source of advances given by assessee company to Loop Telecom Limited (LTL) and made a request for information to revenue authorities in Mauritius to verify the claim of assessee that an amount of USD 185 million credited in its books of account which formed the source of advances to LTL was share application money received from a Mauritius based company. However, without waiting for the information from Mauritius revenue authorities and aborting the very process of seeking of requisite information, the AO passed a reassessment order on same date on which report was received from said authorities treating the advance as an interest free loan and imputing interest @20 percent on the said loan. The Pr.CIT passed the order u/s 263 of the Act setting aside the order passed u/s 147 of the Act by the AO. The Tribunal held that the Principle Commissioner of Income-tax was justified in setting aside the order of the AO under Section 263 of the Act and directing him to decide the issue afresh noting that the AO had completed reassessment in case of assessee without making proper enquiries with regard to preliminary basic facts about source of share application money found credited in books of account of assessee, as well as not considering information which was called for by him from Mauritius Tax Authorities. Accordingly, it held that the reassessment order passed by him was erroneous and prejudicial to interest of revenue.

***ATC Telecom Tower (P.) Ltd. vs. Principal Commissioner of Income-tax, Mumbai [2017] 86 taxmann.com 97 (Mumbai - Trib.) [03-10-2017***

**3495.** The Tribunal held that when the AO had taken one of two views permissible in law and which Commissioner did not agree with and which resulted in a loss of revenue, it could not be treated as erroneous order prejudicial to interest of revenue, unless view taken by AO was completely unsustainable in law.

***Nathpa Jhakri Joint Venture v ACIT – (2015) 45 CCH 0339 (Mum Trib)***

**3496.** The Tribunal allowed assessee's appeal and held that the exercise of jurisdiction by CIT u/s 263 was both invalid and bad in law where the CIT opined that the AO had erred in droping the reassessment proceedings initiated u/s 147 r.w.s. 148. It was noted that the AO in original assessment u/s 143(3) had allowed assessee-firm's claim for deduction u/s 80IA(4)(i)(a) & (b) [w.r.t. income from eligible business of development, operation and maintenance of infrastructural facilities] noting that the partnership firm which fulfilled all the criteria provided u/s 80IA(4)(i)(a) & (b) would be eligible for getting the benefits of the provisions of the said section. Subsequently, reassessment proceedings which were initiated for the reason that assessee-firm was not eligible to claim the aforesaid deduction, were dropped by the AO accepting assessee's plea that (i) no new material had come to the possession of AO and (ii) said issue had been discussed in the order passed u/s 143(3). The Tribunal held that the CIT had erred in exercising his jurisdiction u/s 263 against the order dropping proceedings u/s 147/148 because the said order did not decide the issue of deduction u/s 80IA(4)(i)(a) & (b) since the AO had already taken a view in original assessment. It held that the CIT could not disturb the said view as it would amount to change of opinion.

***Suyojit Infrastructure vs ITO [2018] 54 CCH 0230 (Pune Trib)- ITA Nos.850 & 851/PUN/2016 dated 06.11.2018***

**3497.** The Tribunal quashed the CIT's revisionary order u/s 263, and rejected the curtailment of deduction u/s 10A for assessee's engineering design services division applying provisions of

Sec. 10A(7) r.w.s. 80IA(10). The CIT proceeded to invoke Section 10A(7) rws 80IA(10) on the ground that the assessee had shown disproportionately high profit margin on engineering design and development Services (270%) as against business support services (7.39%). The Tribunal noted that the margin of 270% was relevant only when the engineering design services were benchmarked under TNMM, but in the instant case they were benchmarked under CUP method and accepted by TPO, pursuant to which AO himself had adopted the said profit margins, and after verification had allowed the deduction under section 10A. Relying on Honeywell Automation India Limited [TS-71-ITAT-2015(PUN)-TP], it held that the onus to prove that there existed an arrangement between parties which resulted into higher profits was upon the department and there was nothing on record in the instant case to prove so. Further, with regard to the validity of the proceedings under section 263 of the Act, the Tribunal held that in order to invoke the provisions of section 263, the order of the AO must be both erroneous and prejudicial to the interest of Revenue and a mere disagreement with the view of the AO could not be the basis/justification for invoking the provisions of section 263. It also held that order of CIT passed u/s 263 lacked jurisdiction for not coming to a conclusion and directing the AO to make enquiries and carry out fresh search, if necessary.

***Eaton Industries Private Limited vs. CIT - TS-227-ITAT-2017(PUN)-TP - ITA No.1148/PUN/2012 dated 24.03.2017***

**3498.** The Tribunal quashed CIT's order u/s. 263 denying deduction u/s 80IA(4) to assessee (a partnership firm having 3 corporate entities as its partners) and rejected Revenue's stand that deduction u/s 80IA(4) was available only to a company or a consortium of companies and since the assessee was a partnership firm, it was not eligible for impugned deduction. Referring to the provisions of Sec. 80IA(4)(i)(a), it observed that that the section was applicable to an enterprise being a company registered in India or a consortium of companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act and held that the word "consortium" had not defined in the Income Tax Act, hence relying on the definition of the word in the Merriam Webster dictionary, it held that a consortium would be defined to mean "an agreement, combination, or group (as of companies) formed to undertake an enterprise beyond the resources of any one member". Further, it relied on the decision of Madhya Pradesh HC ruling in Org Informatics wherein it was observed that a consortium is akin to a partnership where each partner is liable for action of other partners. Since there was nothing brought on record by the Revenue to demonstrate that the view taken by the AO was an impermissible view or was contrary to law or was upon erroneous application of legal principles it held that invocation of Section 263 of the Act was invalid.

***Rohan & Rajdeep Infrastructure - TS-118-ITAT-2018(PUN) - ITA No.633/PUN/2017 dated 23.02.2018***

**3499.** The Tribunal held that as Commissioner while exercising power u/s 263 did not set aside issue for adjudication to AO, rather he himself enhanced income and gave a direction to AO for inclusion of those amounts, unless his order was challenged before Tribunal and directions modified, Order giving effect by AO in pursuance of such directions, could not be agitated before CIT(A). The Tribunal thus dismissed the assessee's appeal.

***Adhyakshya Lok Mela Amlikaran Sammittee vs ITO- (2018) 54 CCH 0206 RajkotTrib-05.10.2018***

Go to Index

**3500.** PCIT took up assessee's case for revision u/s 263 and observed that assessment was completed u/s 143(3) but return was filed subsequent to date of issue of letter and notice u/s 148. PCIT observed that though assessee had taxable income, it did not file returns of income. Returns were filed only after enquiries which were conducted by Department. AO completed assessment without initiating penalty proceedings. Since there was no voluntary return of income and return was filed in response to notice u/s 148, thus AO ought to have initiated penalty proceedings u/s 271(1)(c). PCIT held that order passed by AO u/s 143(3) was erroneous and prejudicial to interest of Revenue. Assessee submitted that penalty proceedings were not part of assessment proceedings, therefore, giving directions to initiate penalty proceedings u/s 271(1)(c) in revision was beyond scope of proceedings u/s 263. The Tribunal held that, assessee was in habit of not filing return of income and non-payment of taxes due to government. Since assessee had not filed return of income though it had taxable income, AO ought to have initiated penalty proceedings for concealment of income. Since AO did not initiate penalty proceedings, PCIT took up assessee's case for revision u/s 263 and held that non-initiation of penalty proceedings, which ought to have been initiated during assessment proceedings as erroneous and prejudicial to interest of Revenue. Non initiation of penalty proceedings during assessment proceedings u/s 143(3), where AO ought to have initiated, was erroneous and prejudicial to interest of Revenue. Assessee's appeal was dismissed.
***Omcon Reign Forest Projects vs. Pr. CIT-(2018) 54 CCH 0349 VishakapatnamTrib-ITA Nos. 80-82/Viz/2018-dated Dec 12, 2018***

**3501.** The Tribunal allowed assessee's appeal against the PCIT's order passed u/s 263 to disallow assessee's claim for deduction u/s 54 and cancelled the said order. The PCIT opined that the assessee was not eligible for the said deduction since he had acquired land (on which he constructed residential house) prior to sale of old property (though he had completed construction within a period of 3 years as provided u/s 54). The Tribunal held that in order to claim deduction u/s 54, in case of construction of residential houses, date of commencement of construction of house property was irrelevant and construction commenced even before transfer of property was entitled for the said deduction, if the same is completed during with the period of 3 years from date of the said transfer. Accordingly, it cancelled the PCIT's revisional order.
***Gandaraju Prabhavati vs Pr.CIT [2018] 54 CCH 0212 (Vishakaptanam Trib)-I.T.A.No.512/Viz/2017 dated 06.11.2018***

**3502.** The Tribunal allowed assessee's appeal and quashed the revision order passed by the Pr.CIT u/s 263 where the notice was issued under the said section only for the reason that assessee had shown substantial profits in Rudrapur Unit (for which it had claimed deduction u/s 80IC) whereas its Vijaywada unit was showing lesser profits on account of managerial remuneration, labour charges, etc. being debited to Vijaywada Unit which were not debited in the case of Rudarapur unit. The Tribunal held that invocation of revisionary power u/s 263 was not justified since during the assessment proceedings, the AO had called for all the details necessary before allowing the deduction u/s 80IC and there was no error in the assessment order. It observed that the PCIT was unable to specify any issue which made the assessment as erroneous or prejudicial to the interests of the Revenue. Accoridngly, it held that there was no error which caused prejudice to the interests of Revenue.

Go to Index

***Liners India Ltd vs Asst.CIT[2018] 54 CCH 0211 (Vishakapatnam Trib)- ITA No. 310/VIZ/2017. dated 06.11.2018***

*Appeals*

**3503.** The Apex Court set-aside the order of the High Court and held that the Court was not justified in allowing appeals filed by Revenue u/s 27A of the Wealth Tax Act without formulating substantial question of law. It observed that section 27A of the Wealth Tax Act and sec 100 of the Code of Civil Procedure, 1908 which are identically worded and are pari materi, provided that existence of substantial question of law is a sine qua non for admitting appeal by High Court. Accordingly, it remanded the matter to the High Court for deciding the appeal afresh on merits after formulating the substantial questions of law.
***Maharaja Amarinder Singh vs CIT-TS-375-SC-2017 CIVIL APPEAL No.1349 OF 2007 dated 05.09.2017***

**3504.** The Apex Court dismissed Revenue's SLP against the decision of the Gujarat HC quashing re-assessment on the ground that the reason stated for re-opening was subject matter of appeal before lower authorities. The High Court noted that assessee's appeal was pending before ITAT with respect to its claim that receipts from premature transfer of leasehold rights in land was a capital receipt, however, the AO had issued Sec. 148 notice taking stand that alleged receipt was income from other sources. The Court clarified that when the impugned issue was the subject matter of appeal, the principle of merger would apply and also noted that there could not be two separate considerations to the same subject matter relatable to the income, one by the appellate authority or forum and another by the AO in fresh re-assessment.
***Radhaswami Salt Works vs ITO - TS-144-SC-2018 - SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 42502/2017 dated 16-03-2018***

**3505.** The Apex Court held that where High Court without framing question of law as per provisions of section 27A(3) decided appeal, matter was remitted to High Court for framing a substantial question of law and hearing of appeal again.
***P.A. Jose v. CWT[2015]60 taxmann.com 344/233 Taxman 511/376 ITR 448/279 CTR 533(SC)***

**3506.** The Apex Court held that CBDT's Instruction No.3/2011, dated 9-2-2011 specifying momentary limit for filing the appeal clearly indicate that it shall not govern the cases which have been filed before 2011 and it will govern only such cases which are filed after the issuance of aforesaid instruction.
***CIT v. Suman Dhamia [2015] 60 taxmann.com 460 / 279 CTR 329 (SC)***

**3507.** The Apex Court refused to condone delay in filing appeal which was on ground that appeals on identical issues for earlier years were pending before Court and, thus, assessee was under a bona- fide belief that relief, if any, granted in those appeals pending before Court would enure to his benefit for subject assessment year as well. In view of fact that High Court had to decide question of law between parties in any case in respect of earlier assessment years. The Apex

Court held that it should not have taken such technical view of dismissing appeal in instant case on ground of delay. It thus, set aside the impugned order.
***Anil Kumar Nehru v. Asst. CIT, Circle 16(2), Mumbai- [2019] 101 taxmann.com 191 (SC)-Civil Appeal Nos. 11750/2018 dated December 3, 2018***

**3508.** The Apex Court held that Where assessee is in appeal in the High Court which is filed under Section 260A of the IT Act, if the date of assessment is prior to March 06, 2003, Section 52A of the 1959 Act shall not apply and the court fee payable shall be the one which was payable on the date of such assessment order. Further, it held that In those cases where the Department files appeal in the High Court under Section 260A of the IT Act, the date on which the appellate authority set aside the judgment of the Assessing Officer would be the relevant date for payment of court fee. If that happens to be before March 06, 2003, then the court fee shall not be payable as per Section 260A of the IT Act on such appeals.
***K Raveendranathan Nair vs CIT- dated 10.08.2017s***

**3509.** The Apex Court dismissed the Revenue's appeal in light of CBDT Circular No 21 / 2015 dated December 10, 2015 since the tax effect of the appeal was below Rs.25 lac at the time of filing appeal.
***CIT v NSN Jewellers Pvt Ltd Ltd – (2016) 95 CCH 0081 (SC)***

**3510.** The Apex Court dismissed the SLP filed by Revenue against the High Court's rejection of Revenue's application filed with a delay of 958 days for restoration of appeal, which was dismissed in view of the fact that the Revenue had failed to remove office objections pointed out in its appeal in terms of rule 986 of Bombay High Court (Original Side) Rules, 1980, within prescribed time period without showing any reasonable cause.
***CIT v Bharati Vidyapeeth [2018] 96 taxmann.com 496 (SC) - SLP (Civil) Diary No.(S). 24604 OF 2018 dated July 23, 2018***

**3511.** The Apex Court set aside High Court judgments wherein the taxpayers writ petitions against notices issued under section 148 were dismissed as not maintainable by relying on the decision of the Apex Court in Chhabil Das Agarwal wherein it was held that no writ would lie where alternate remedy was available and held that aforesaid view was contrary to the law laid down by co-ordinate bench in case of Calcutta Discount Company Ltd [1961] 41 ITR 191 (SC). Accordingly, without making any observation on merits it remitted the cases to respective High Courts to decide the writ petitions on merits.
***Jeans Knit Private Ltd. [TS-658-SC-2016]***

**3512.** The Apex Court dismissed Revenue's appeal holding that there was an inadequate and unconvincing explanation given for the delay of 596 in filing the petition. Further, noting that the Revenue had given a totally misleading statement about pendency of a similar matter, it held that Union of India through the CIT had taken the matter too casually and, accordingly directed the petitioner / Revenue to pay cost of Rs.10 lakhs to be paid to the Supreme Court Legal Services Committee.
***CIT v. Hapur Pilkhuwa Development Authority (2018) 258 Taxman 125 (SC) - Special Leave Petition (CIVIL) Diary No(s). 26127/2018 dated 27.08.2018***

Go to Index

**3513.** The Apex Court dismissed Revenue's appeal against the High Court's order wherein the High Court had held that the limitation period of 120 days mentioned in section 260A(2)(a) for filing an appeal before the High Court against the Tribunal order is to be reckoned from the date of receipt of Tribunal's order by any CIT including the CIT (Judicial) and the same was not limited only to the concerned CIT having jurisdiction over assessee receiving a certified copy of the Tribunal order.

***CIT v ODEON BUILDERS PVT. LTD [TS-225-SC-2018] - ITA 52, 755 & 756 /2015, CM APPL 23522/2015 dated March 24, 2017***

**3514.** The Apex Court dismissed Revenue's appeal against High Court order and held that CBDT Instruction 3/2011 (laying down monetary appeal filing limits for Revenue's appeals) was retrospective in nature. It held that the circular would apply to even pending matters but subject to two caveats namely., (i) the circular should not be applied by High Courts ipso facto when the matter had a cascading effect and (ii) where common principles may be involved in subsequent group of matters or a large number of matters. Further, taking note of the divergent views by various High courts on this issue, the Apex Court approved Karnataka High Court Ruling in Ranka and Ranka wherein it was held that to bring the circular/instruction in harmony with the National Litigation Policy, it held that it would be appropriate to hold that the such circular/instruction also applies to the pending cases as otherwise an anomalous situation would arise.

***DIT vs S.R.M.B Diary Farming (P) Ltd – TS- 549-SC-2017- SLP No.24055/2013 dated 14.11.2017***

**3515.** The Apex Court allowed Revenue's appeal and held that CBDT Instruction 3/2011 (laying down the monetary limit for Revenue's appeals) was not retrospective in nature and that it would not govern cases filed before 2011. With respect to assessee's specific reliance on para 10 of the CBDT circular of December 2015 (revising the monetary appeal filing limits and directing its retrospective application), it held that CBDT had no power to issue any circular having retrospective application. Accordingly, it remitted the matter back to the High Court for re-adjudication on merits and in accordance with law.

***CIT vs Gemini Distillers – TS- 476-SC-2017-CIVIL APPEAL No.16815/2017 dated 12.10.2017***

**3516.** The Apex Court allowed Revenue's appeal and set aside Allahabad HC order which had allowed assessee's application for recall of its earlier order exercising jurisdiction u/s 260A(7) of the Income Tax Act, 1961 read with Order XLI Rule 21 of the Code of Civil Procedure, 1908 (which provides for power of recall in case of an exparte order) on the ground that the order recalled was not an exparte order as contemplated by the provisions of the Code of Civil Procedure, 1908. It further rejected assessee's contention that as the discretionary power vested in the High Court has been exercised in favour of the assessee, SC should not interfere with the same in the exercise of jurisdiction under Article 136 of the Constitution of India.

***Subrata Roy - TS 374 SC 2016 - ITA NO. 60/2006***

Go to Index

**3517.** The Apex Court directed the High Court to admit the appeal filed by the Revenue, rejected by the Court on the ground that the tax effect was less than Rs.10 lakhs, since the Court had admitted the Revenue's appeal for the subsequent year and the issue in both years were identical.
***CIT v Bangalore Housing Dev & Investments – TS-26-SC-2016***

**3518.** The Apex Court held that the High Court was not permitted to make a fresh determination of facts found by the Tribunal. However, it noted that the High Court could take into account additional facts already on record but not taken note of by the Tribunal in arriving at its finding and also to construe certain facts to be of significance as against different views taken by the Tribunal.
***Ganapathy & Co v CIT – (2016) 65 taxmann.co 194 (SC)***

**3519.** Since the question before the Apex court i.e. quantum of deduction of rent & whether the payment of rent was statutory or contractual was a mixed question of law and fact, the Court noting that the issue was neither decided by any of the authorities below nor by the Tribunal or the High Court remanded the matter to the file of the Tribunal for fresh determination.
***CIT vs. Travancore Cochin Udyoga Material (2017) 84 taxmann.com 189 (SC)(Civil Appeal No. 2015/2007 dated August 17, 2017)***

**3520.** Revenue had preferred an appeal before High Court challenging an order passed by the Tribunal. However, such appeal was defective and thus rejected. Department took abnormal time of 1371 days in removing those defects. An application for condonation of delay was also filed which was dismissed by the High Court. The Apex Court held that no doubt, there was a long delay in removing office objections, but High Court should have condoned delay and heard matter on merits. Accordingly, Revenue was directed to pay one lac rupees for such delay and matter was remitted back to High Court for consideration.
***CIT vs Reliance Industries Ltd- (2018) 103 CCH 0067 ISCC- Civil Appeal No 10774 of 2018 dated 26.10.2018***

**3521.** The Apex Court dismissed SLP filed by Revenue on ground of low tax effect (being below the threshold of Rs.1 crore).
***CIT vs Chemical Dyestuff Industries [2018] 103 CCH 0276 (ISCC)-SLP Civil Diary Nos 18716/2017 dated 19.11.2018***
***Dy.CIT vs Jalil Abdulbhai Shaikh [2018] 103 CCH 0274 (ISCC)-SLP Civil Diary Nos 37893/2018 dated 19.11.2018***
***Dy.CIT vs SC Johnson Products Pvt Ltd.[2018] 103 CCH 0278 (ISCC)-SLP Civil Diary Nos 40504/2018 dated 22.11.2018***
***Pr.CIT vs Ruby Singla [2018] 103 CCH 0255 (ISCC) - SLP(CIVIL) Diary No(s). 38318/2018 dated 13.11.2018***
***CIT(E) vs Patanjali Yogpeeth (NYAS) [2018] 103 CCH 0243 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 21945/2018 dated 02.11.2018***
***Pr.CIT vs Ashok Kumar Agarwal [2018] 103 CCH 0241 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 35523/2018 dated 02.11.2018***

Go to Index

***Pr.CIT vs FIIT JEE Ltd. [2018] 103 CCH 0249 ISCC- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 35920/2018 dated 12.11.2018***

**3522.** The Court dismissed the appeal of the Revenue on the ground that the Counsel for the Revenue could not dispute that questions raised before the Court in connection to whether Tribunal erred in facts in restoring the turnover recorded in the BOA of Assessee instead of turnover estimated by the AO were merely questions of facts and not of law. The Court clarified that ordinarily in two situations only inference on the basis of facts is possible viz a) when material which has not been considered would have led to opposite conclusion than the one already taken and b) a finding of fact has been given by a lower authority by placing reliance on an inadmissible evidence, exclusion of which would have led to an opposite conclusion.

***ITO vs. Shri. Ram Lallan Shukla (2017) 98 CCH 0043 All HC (ITA No. 78 of 2015 Dated 03.02.2017)***

**3523.** Where the assessee challenged order passed by the Pune Bench of the Tribunal before the Bombay High Court, in view of fact that both parties to appeal were situated at Ahmednagar, and assessment order was also passed at Ahmednagar, which was within jurisdiction of the Aurangabad Bench. The Court held that it would be appropriate that instant appeal was heard and disposed of by the Aurangabad Bench of the High Court.

***Suhas Sugandhilal Bora v. ITO [2018] 96 taxman.com 311(Bom.) -IT Appeal Nos. 46, 47 & 48 of 2016 dated July 2, 2018***

**3524.** The Court dismissed the Revenue's notice of motion seeking condonation of delay of 1128 days in challenging order of the Prothonotary and Senior Master which dismissed the appeal as the Revenue failed to cure the defects / office objections in the Appeal within the time limit provided by the Prothonotary. It dismissed the contention of the Revenue that it was not aware of the fact that the appeal was dismissed due to non removal of objections until the subsequent appeals were listed for admission before the High Court. It observed that this was a case of gross negligence and utter callousness on the part of the Revenue/Department and further stated that if the Revenue and it's officials were aware of lodging and filing of an Appeal, then, they must attend the Registry's office alongwith their advocate and take requisite steps. Noting that in the present case, the Revenue was given more than one opportunity to remove the office objections, the Court held that it could not set aside the orders of the Registry. Accordingly, it dismissed the Notice of Motion.

***Pr CIT v Parle Bisleri Ltd - NOTICE OF MOTION (L) NO. 1672 OF 2017 dated 28.09.2017(Bombay HC)***

**3525.** Where the issues for appeal before the Court were framed on 26th September 2016 (KR Shriram J) and the plaintiffs were to file their list of witnesses, Evidence Affidavit and compilation by 24th October 2016 but failed to do so and applied for time to comply with these directions (for which matter was kept on November 2016) and had not done so till 2018, the Court computed the period of delay from November 2016 to the date of hearing at 450 days and directed the plaintiff to pay costs of Rs. 1000 per day i.e. Rs.4,50,000- noting that till date no application for condonation of delay had been granted. It held that the contention of the plaintiff i.e. it was a trust was not a consideration in the instant case.

Go to Index

***RAM NAGAR TRUST & ANR. vs. MEHTAB L SHEIKH & ORS. - (2018) 101 CCH 0074 BombayHC - CIVIL JURISDICTION SUIT NO. 2012 OF 2009 dated Feb 27, 2018***

**3526.** The Court held that Instruction No. 5 of 2014 would also be applicable to pending appeals and references. Where tax effect in pending reference application was lower than the value prescribed in CBDT's Instruction No. 5 of 2014, such reference was to be returned unanswered.
***Commissioner of Income-tax, Mumbai City-V v. Computer Point (I) Ltd., [2017] 79 taxmann.com 381 (Bombay), IT Reference No. 430 of 1997 dated July 24, 2015***

**3527.** The Court set aside the order of the Tribunal departing from the earlier order of the coordinate bench in the assessee's own case since the Tribunal failed to provide reasons for ignoring the coordinate bench decision. It held that in case a subsequent bench of the Tribunal did not agree with the reasons indicated in a binding decision of a coordinate bench, then for reason to be recorded, it must request the President of the Tribunal to constitute a larger bench to decide the difference of view on the issue.
***Hatkesh Cooperative Housing Society Ltd v ACIT – TS-485-HC-2016 (Bom)-ITA No.424/Mum/2011***

**3528.** The Court held that where the petitioner responded to notices issued under section 142(1) /143(2) of the Act issued by the AO pursuant to reopening of assessment, it means that he submitted to the AO's jurisdiction and therefore was estopped for filing a Writ Petition to challenge the same and the fact that the jurisdiction was challenged while participating in the proceedings was irrelevant.
***Amaya Infrastructure Pvt Ltd v ITO – (2016) 95 CCH 0136 (Bom)***

**3529.** The Court held that an appeal wrongly filed before the AO and not CIT(A) was an unintentional lapse of the assessee and that the AO ought to have returned the appeal to enable the assessee to take corrective steps. The likelihood of error is inherent in human nature and therefore the power of condonation is in view of human fallibility and must be exercised in cases of bona fide lapses. Accordingly, it held that both the Tribunal and the CIT(A) were incorrect in rejecting the assessee's prayer for condonation of delay in filing appeal and dismissing the appeal of the assesse.
***Prashanth Projects Ltd v DCIT – ITA No 192 of 2014 (Bom)***

**3530.** The assessee filed his return of income which was enhanced by the AO by passing an order u/s 143(3) resulting in a demand of Rs. 1.39 lakhs. The assessee filed his declaration under the Samadhan Scheme, which was notified as a part of the Finance Act, 1998 during the pendency of the appeal before the Tribunal, seeking to settle its dispute and computed the amount payable to arrive at the settlement of the dispute at Rs. 38,703 determined on the basis of tax unpaid on the date of declaration. The Designated authority rejecting the computation done by the assessee, arrived at an amount of Rs. 1.66 lakhs for settlement of the tax dispute on the basis of tax unpaid on the date of deduction. A petition was filed by the assessee against the computation done by the Designated Authority as it resulted in a figure higher than what the assessee was required to pay under the Samadhan Scheme. The Court restored the matter to the Designated Authority to determine the disputed income on the basis of taxes unpaid as

provided u/s 87(e) and (f) of the Samadhan Scheme which required the disputed income to be arrived at on the basis of tax unpaid on the date of filing declaration under the Samadhan scheme and not on the basis of taxes already paid by the assesseee.

***Nimesh Indravadan Shah v. H.C. Parekh - [2018] 93 taxmann.com 186 (Bombay) - Writ Petition No. 722 OF 1999 dated APRIL 4, 2018***

**3531.** Where the Revenue had preferred SLP before the Hon'ble Supreme Court against the order of the Court rejecting the review petition of the Revenue (in which it was contended that the appeal filed was maintainable as the tax effect of the impugned appeal was above Rs. 4,00,000/- and that the CBDT Circular No. 5/2008 dated 15/5/2008 was not applicable) and the Hon'ble Supreme Court directed the Court to re-hear the review petition and if required, the appeal again on merits, the Court, considering the subsequent CBDT Circular No. 21/2015 (which stated that appeals filed by the Revenue having tax effect lower than Rs. 20,00,000/- were to be withdrawn) which was applicable to pending appeals, held that even assuming that the tax effect was more than Rs. 4,00,000/- the same was covered by the subsequent CBDT Circular in light of which the review petition was liable to be dismissed at the threshold itself as the tax effect was less than Rs. 20,00,000/-. Accordingly, it held that the question of deciding appeals on merits would not arise.

***CIT vs. Velingkar Brothers (2017) 98 CCH 0103 Bom HC [Civil Application (Review) No. 8 of 2011 & Tax Appeal No. 16 of 2007 dated March 15, 2017***

**3532.** The Court dismissed the Assesse's second writ petition on the same cause of action by holding thatthe petitioner had withdrawn the earlier petitions without any liberty to file a fresh petition and by doing the Petitioner had indulged in Bench hunting tactics which was disapproved by the SC in the case Sarguja Transport AIR 1987 SC 88. The Court noted that in the earlier petition the Court was persuaded to go on with the matter despite the objection raised by the Revenue about the residential status of the petitioner. After a preliminary hearing, on finding that it was not possible to get over the objection raised and the allegation of suppression of a material fact, the Petitioner withdrew the writ petition, but without seeking any liberty to file a fresh petition on the same cause of action. The Court held that it would be acting contrary to judicial discipline, if a second writ petition on the same cause of action but with a marginal improvement was entertained. The Court further noted that was not a case where substantial justice demanded that the point of maintainability could be overlooked.

***Kamal Galani vs. ACIT & others (2017) 99 CCH 0201 BombayHC (WP No. 1033/2017 dated August 14, 2017)***

**3533.** Where the assessee being in full time employment with a bank was not well versed with the tax laws and was advised not to file an appeal by his Chartered Accountant to avoid multiplicity of litigation as the issue of deduction under Section 80-O for the impugned year was already pending before the Tribunal for a prior year and filed an appeal against the CIT(A)'s order before Tribunal after a delay of over 8 years on the advice of another Chartered Accountant, the Court held that the assessee provided a reasonable and bonafide explanation for delay in filing the appeal and there was no intentional delay. Accordingly, it condoned a delay of over 8 years by assessee in filing an appeal against the CIT(A) order before the Tribunal. It further held that the Tribunal was unjustified in holding that the conduct of the assessee was beyond the

comprehension of "human conduct and probabilities" and erred in commenting adversely against the ICAI, CA coaching classes and individual Chartered accountants.

***Vijay Vishin Meghani [TS-455-HC-2017(BOM) - INCOME TAX APPEAL NO.493 OF 2015 dated 19.09.2017***

**3534.** The Court dismissed the Department's notice of motions praying for condonation of delay of 318 days in filing appeal against the order of the Tribunal. The reason cited by the Department was that the impugned order dated 15-4-2016 was received by the Principal Commissioner on 5-7-2016. Thereafter, on 11-7-2016 it was forwarded to the Commissioner (Exemptions) who transferred the papers to the office of the Deputy Commissioner (Exemptions) who on 21-9-2016 the Deputy Commissioner prepared his report which was approved by Joint Commissioner. Thereafter, the report was sent on 29-9-2016 to the Commissioner (Exemptions) and on receipt of the above reports, he forwarded it to the Chief Commissioner, New Delhi for approval which approval from the Commissioner, Delhi was received by on 29-5-2017. Thereafter, this appeal was filed on 20-7-2017] was not sufficient / satisfactory. The Court held that if the reasons of the Department were to be accepted it would tantamount to accepting the proposition that work takes time and, therefore, the period of limitation imposed by the State should not be applied in case of revenue's appeal where the tax effect involved is substantial, which was contrary to the law. Further, it dismissed the contention of the Department since none appeared for the Assessee, the assessee had no objection against the application for condonation of delay and held that merely because the assessee does not appear, it cannot follow that the revenue is bestowed with a right to the delay being condoned. Accordingly, it dismissed the notice of motions filed by the Department.

***CIT(E) v Lata Mangeshkar Medical Foundation - [2018] 92 taxmann.com 80 (Bombay) - NOTICE OF MOTION NOS. 1779 AND 1783 OF 2017 dated MARCH 18, 2018***

**3535.** Where the Court dismissed the appeal of the department on account of procedural defects in 2013 &the Department filed a notice of motion to reinstate the appeal after a delay of 1371 days, for which no satisfactory explanation was rendered, the Court dismissed the said notice of motion. Accordingly, the appeal of the Revenue stood dismissed. The Court lashed at the Department by observing that explanation so tendered reflected total negligence and callousness of the Revenue officials.

***CIT vs. Reliance Industries Ltd. (2017) 84 taxmann.com 313 (Bom) (ITA (L) No. 1647/2012 dated August 22, 2017)***

**3536.** The assessee filed the writ petition against the reference made by the AO to the District Valuation Officer (DVO) u/s 50C wherein the AO had sought valuation of land belonging to a company while considering the assessee's claim for loss on account of sale of equity shares of the said company. It was noted that before filing the petition, the AO had passed the assessment order accepting assessee's claim of loss but subject to receiving the valuation report from the DVO. The assessee had filed an appeal before the CIT(A) against the said assessment order but had not raised a grievance with regard to the impugned reference. The Court held that since the assessee had availed of a remedy of an appeal under the Act, the present petition could not be entertained. However, further noting that the assessee had not raised the impugned grievance before the CIT(A) on a bonafide belief that the since the assessment order had

accepted the loss claimed, an appeal would not lie, it granted assessee the liberty to file the additional ground before the CIT(A) with respect to the aforesaid issue.
***Praham India LLP v ITO – Writ Petition No. 682 of 2017 (Bom) dated 05.01.2018***

**3537.** Where the appellant assessee sought to raise an additional ground at the time of the hearing of the appeal (relating to claim u/s 80-IA), the Court held that an additional ground could be urged by the appellant assessee for the first time in appeal only if it was supported by evidence already on record for the year under consideration and the same was not on record in this case and the fact that claim had been allowed by the AO in a subsequent year was irrelevant. Besides, in the present case the additional ground was not a pure question of law, but was depended on the satisfaction of the authority as to the facts existing in the subject assessment year for allowing the benefit of Section 80IA of the Act. Accordingly, appeal was disposed off in favour of the Revenue.
***Ultratech Cement Ltd vs. Additional Commissioner of Income Tax - (2017) 98 CCH 0157 BombayHC (ITA No. 1060 of 2014)***

**3538.** The Court allowed assessee's appeal to quash Tribunal's order and restored the matter to Tribunal for fresh consideration noting that the Tribunal had dismissed assessee's appeal by merely recording that it agreed with the view of CIT(A) without giving any independent reasons showing consideration of submissions made on behalf of assessee. It held that an appellate order which affirms the order of the lower authority need not be a very detailed order, nevertheless, there should be some indication in the order passed by the appellate authority, of due application of mind to the contentions raised by the asseseee in the context of findings of the lower authority which were the subject matter of the challenge before it.
***Cheryl J Patel vs Asst CIT [2018] 102 CCH 0401 (Bom HC) - IT No.643 & 424 of 2016 dated 26.11.2018***

**3539.** The Court dimissed Revenue's appeal where it contended that CBDT Circular dated 11-7-2018 laying down the monetary limit for filing appeal by Revenue was not applicable in view of Para 10 of the said Circular which inter alia allows filing appeal where Revenue Audit objection in the case has been accepted by the Department. It held that mere raising objection in terms of CBDT Circular is not enough, CBDT Circulars continue to bind revenue and if they contain any conditions, whether such conditions are attracted or not would have to be proved and established by Revenue. The Court hed that in the present case, no records were produced to show that the audit objection was accepted by the Department.
***Pr.CIT v Nawany Construction Co. (P.) Ltd. - [2018] 258 Taxman 365 (Bom HC) - ITA No. 1142 of 2015 dated 10.09.2018***

**3540.** The Court quashing Tribunal's ex-parte order observed that the representative for the assessee had withdrawn his power of attorney and a notice was issued to parties to appear for the proceedings and the Tribunal had failed to ascertain whether notice was duly served on assessee, or whether there was a proof of service of notice and whether assessee had avoided intentionally and deliberately to attend case or hearing.Thus, the Court ruled that the Tribunal should not have proceeded further with the proceedings and such an approach would result in miscarriage of justice. Accordingly, it remanded the matter to the Tribunal to re- hear the appeal.

Go to Index

***Lalitnirman Business Deelopment (P) Ltd vs ITO (2018) 98 taxmann.com 190 (Bombay)- IT No 17 of 2016 dated 19.09.2018***

**3541.** The assessee's claim for benefit of sections 11 to 13 was denied by the AO while passing assessment order u/s 143(2). The CIT(A) however directed the AO to grant the said benefit. While passing the order to give effect to the CIT(A)'s order, the AO didn't take into account all expenses incurred by assessee to earn gross income which resulted in a surplus taxable income even after application of section 11. On appeal, the CIT(A) set aside the said order of the AO on ground that the AO passed order without giving a hearing to the assessee and figures taken to determine exempted income had to be reworked. The Tribunal set aside order of the CIT(A) holding that appeal from order giving effect to order of CIT(A) had raised issues which were not subject matter of appeal filed in first round, i.e., from order of the AO passed u/s 143(3) to the CIT(A). The Court allowed assessee's appeal holding that the order of the AO had not appropriately dealt with the directions of the CIT(A) and the same was on account of incorrect application of section 11, inter-alia, taking incorrect figures to give effect to the said directions. Further, it held that the purpose and object of the orders passed under the Act was to ensure that the Act is properly implemented and the assessee was not burdened with tax which under the law, it was not obliged to pay. Thus, the Court held that the aforesaid finding of the Tribunal was incorrect and, according, it allowed the assessee's appeal.
***Cotton Textiles Exports Promotion Council v ITO(E) - [2018] 95 taxmann.com 296 (Bombay) - IT APPEAL NO. 292 OF 2002 dated June 27, 2018***

**3542.** The Court set aside the order of the ITAT referring the issue to the ITAT President for constitution of larger bench as the ITAT overlooked and did not comment on 7 favourable Tribunal Rulings and the Ruling of the Madras High Court. It further overruled the ITAT's decision wherein the second ground of appeal was decided without deciding the first ground which dealt with a jurisdictional issue even though the assessee did not argue Ground number 2 since if the first issue was decided in its favour the second ground would not arise for consideration.
***Mumbai Metropolitan Region Development Authority v DIT (ITA No 726 of 2015) – TS-535-HC-2015(BOM)***

**3543.** The Court dismissed Revenue's appeal against the Tribunal's order wherein the Tribunal had held that the direction given by the CIT(A) to the AO to reopen the matter to ascertain whether further income had escaped tax in the course of hearing for appeal filed by the assessee against the penalty order passed by the AO u/s 271(1)(c), was unwarranted. It was noted that Explanation to section 251 provides that in disposing of an appeal, the CIT(A) can consider and decide "any matter arising out of proceedings in which the order appealed against was passed", notwithstanding that such matter was not raised before the CIT(A) by the appellant. The Court held that it is evident from section 251(1) that since an appeal against an order of assessment is covered by clause (a) thereof and an appeal against an order imposing a penalty is covered by clause (b) thereof, independent appeals arise out of orders of assessment and orders imposing any penalty. It thus held that in the appeal arising out of the order imposing the penalty, the matter pertaining to some other income escaping assessment did not fall within the purview

of the expression "any matter arising out of proceedings in which the order appealed against was passed".

***Pr.CIT v KPC Medical College & Hospital - [2018] 95 taxmann.com 322 (CalcuttaHC) - ITAT NO.165 OF 2015, GA NO. 3718 OF 2015 dated June 19, 2018***

**3544.** The Court held that if tax effect was found to be less than Rs.20 lacs, assessee's appeal would be liable to be dismissed, in view of provisions contained in section 268A of the Actand in the light of the Circular no.21 of 2015 dated 10th December, 2015. The matter was however, remanded back to the assessing officer for examining the tax effect, in the light of the said Circular.

***CIT vs. Apeejay Medical Research & Welfare Association (P) Ltd - [2016] 95 CCH 80. (CalcuttaHC)***

**3545.** The Court held that where the assessee had exercised the option to file an appeal before the CIT(A) against the assessment order wherein the AO had denied the assessee exemption under section 11 / 10(23C), it was not open for the assessee to seek remedy vide filing of a petition before the Court since the assessee had the option to exercise an equally efficacious alternative remedy.

***Prathyusha Educational Trust v ACIT – (2016) 96 CCH 0052 (Chen) -W.P. Nos. 23341 & 23342 of 2015***

**3546.** The Court held that when petitions filed against orders of assessment had been heard and orders were to be passed by CIT(A) within a period of eight weeks then no action for recovery or no other coercive action should be taken against Assessee.

***Tamil Nadu State Marketing & Anr. vs ACIT - (2016) 96 CCH 0035 (Chennai)***

**3547.** The Court disposed of assessee's writ petition noting that the assessee had also filed an appeal against Tribunal's order on the same issue and thus held that the issues would be decided on merits in tax appeal cases filed u/s 260A. Further, noting that as per the interim order the assessee was granted stay against recovery proceedings, it held that the interim protection granted would continue till stay petitions in said tax case appeals were being heard.

***Cholamandalam MS General Insurance Company Ltd. vs ITAT and ors.[2018] 103 CCH 0084 (ChenHC)-WP Nos.22376 to 22379 of 2018 etc. dated 13.11.2018***

**3548.** Where appeal was filed by the Assessee-Charitable institution against order of CIT(A) after 1631 days and the Chartered Accountant engaged in the matter was unaware of the fact that appeal could be filed against order of CIT, post amendment made in Sec 253(1)(c), the Court held that in petitions for condoning delay not only the period of delay had to be taken into account but also the quality of explanation, the legal assistance, if any, sought and rendered to the litigant and the detriment that the condonation of delay would cause to the other party had to be looked into and since in this case the assessee did not receive the best legal assistance and there was nothing on record to suggest that Revenue refuted this averment made in petition and no detriment was caused to the Revenue, the delay was condoned and the matter was remitted back to the Tribunal for taking decision on merits.

Go to Index

***United Christmas Celebration Committee Charitable Trust vs. Income Tax Officer - (2017) 98 CCH 0126 Chen HC (TCA No. 886 of 2016)***

**3549.** Where appeal was filed by the Assessee-Charitable institution against order of CIT rejecting registration u/s 12AA, after 1902 days and the Chartered Accountant engaged in the matter was unaware of the fact that appeal could be filed against order of CIT, post amendment made in Sec 253(1)(c), the Court held that in petitions for condoning delay not only the period of delay had to be taken into account but also the quality of explanation, the legal assistance, if any, sought and rendered to the litigant and the detriment that the condonation of delay would cause to the other party had to be looked into and since in this case the assessee did not receive the best legal assistance and there was nothing on record to suggest that Revenue refuted this averment made in petition and no detriment was caused to the Revenue, the delay was condoned and the matter was remitted back to the Tribunal for taking decision on merits.
***Hosanna Ministries vs. Income Tax Officer (2017) 98 CCH 0126 Chen HC (TCA No. 886 of 2016)***

**3550.** The Larger bench of the Court held that words 'the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner' occurring in Sec 260A(2)(a) (relating to limitation period for filing appeal before HC) is not limited only to 'jurisdictional' Principal or Chief Commissioner of Income-tax ('CIT') and it would include any CIT including the CIT (Judicial). The Court rejected Revenue's stand that unless the concerned CIT having jurisdiction over Assessee receives a certified copy of ITAT order, the limitation of 120 days within which an appeal has to be filed does not commence and held that in absence of a qualifying prefix 'concerned', the receipt of ITAT order copy by any of the officers (designated as CIT), including the CIT (Judicial) will trigger the period of limitation.
Further, the Court distinguished Revenue's reliance on division bench rulings in CIT vs. Arvind Construction Co. (193 ITR 330) and CIT vs. ITAT (245 ITR 659) by holding that they were rendered in the context of Sec. 256 (Reference to HC) and not in context of sec. 260 .
***CIT vs. Odeon Builders Pvt. Ltd. [TS-117-HC-2017(Del)] (ITA No. 52/2015 dated March 24, 2017)***

**3551.** The Court allowed assessee's writ petition against Tribunal's order consolidating 13 appeals pending before different Benches in assessee's case based on Revenue's application for such consolidation, noting that the Tribunal did not follow proper procedure laid down in Dr. Prannoy Roy [W.P. (C) No. 4742/2018] and Olympia Paper & Stationery Stores (63 ITD 148) viz. firstly, it should have given adequate notice to the Appellant on the issue of consolidation and secondly, if the Revenue"s request is found feasible and reasonable, indicate brief reason as to why the consolidation was essential. Accordingly, it quashed the Tribunal's order consolidating the appeals.
***BPTP Ltd v Pr.CIT - W.P.(C) 7098/2018 (Del HC) dated 16.07.2018***

**3552.** Condonation of delay of 395 days in refiling appeal by revenue owing to budgetary constraints of department to pay differential Court fee and filing of soft copies of paper books, was not granted.

Go to Index

***Commissioner of Income-tax v. Dion Global Solutions Ltd., [2016] 71 taxmann.com 32 (DelhiHC), IT Appeal No. 765 of 2014, July 13, 2015***

**3553.** In the first round of proceedings, the Court had remitted the matter to the Tribunal for fresh adjudication. However, the Tribunal in its order merely reproduced the orders of the lower authority without assigning any reasoning or expressing its views on the findings of the lower authority. On second appeal to the Court, the Court held that the Tribunal was to consider the matter afresh and discuss the issue and the contentions raised before it. It noted that the Tribunal had failed to do so and had simply incorporated the passages, words and phrases of the lower authorities without enumerating its reasoning. Accordingly, it set-aside the order of the Tribunal and restored the issue to the file of the Tribunal for the second time.
***Shri Arun Malhotra v Pr CIT – (2017) 99 CCH 0021 (Del HC) – ITA 303 / 2017 dated 17.05.2017***

**3554.** The Court refused to condone delay of 335 days on filing of Reveue's appeal. It held that government departments were under a special obligation to ensure that they performed their duties with diligence and commitment. Condonation of delay was an exception and should not be used as an anticipated benefit for Government departments. The mere fact that the AO was busy in other time-bearing assessments is not an excuse for delay particularly given the fact that section. 260A provided a long time period of 120 days. Every day's delay has to be explained. Accordingly, it dismissed Revenue's appeal.
***CIT vs Historic Infracon- ITA 409/2017 Delhi High Court dated 19.05.2017***

**3555.** Where the assessee had made petition before the Apex Court for withdrawal of SLP filed with the liberty to move the High Court in review petition and that the Apex Court dismissed the petition as withdrawn without stating anything in relation to whether the liberty for review petition was granted, the High Court held the review petition to be maintainable and not barred by SLP dismissed as withdrawn on the ground that once the Apex Court permitted the withdrawal of SLP without recording any reasons, it was as if no appeal was ever filed or entertained.
***Kanoria Industries Limited & Ors [TS-222-HC-2017(DEL)] W.P.(C) 494/1991 dated 27.02.2017***

**3556.** The Court upheld the Tribunal's order in denying condonation for delay of over four years in filing cross-objection by the assessee to challenge the disallowance u/s 14A by claiming the investment in subsidiary was made for business purpose and not for investment purposes, in an appeal filed by revenue with the Tribunal against limited relief granted by CIT(A), stating the cross-objections so raised meant that assessee was seeking to rake up stale issues in respect of which tax liability had become final.
***Jubilant Securities (P.) Ltd. v DCIT – (2018) 400 ITR 527 (Del HC) – ITA Nos. 1000, 1001 &1014 of 2017, and C.M. No. 41761, 41761 & 41800 of 2017 dated 10.01.2018***

**3557.** The Court allowed assessee's writ petition and quashed the order passed by the Tribunal for consolidation of appeals since the said order was passed without giving notice to the assessee and was without reasoning.

Go to Index

***BPTP Ltd. v Pr.CIT [2018] 95 taxmann.com 234 (Delhi) - W.P. (C) NO. 7098 OF 2018 dated July 16, 2018***

**3558.** The Court set aside Tribunal's order wherein the Tribunal had remanded the issue of disallowance of depreciation on fixed asset (claimed by AO to be unverified asset, accussing the assessee to have failed to produce invoices and details relating to purchase of such assets) back to the AO, noting that the Tribunal had erroneously observed that the assessee had not produced books of accounts before the AO when books of accounts, invoices and details relating to purchases etc. were produced before the AO and filed before it also. The Court directed the Tribunal to examine the issue afresh and to remand, only if the said question could not be answered on the basis of papers and documents filed.
***ARADHANA FOODS AND JUICES PVT. LTD. vs. CIT [2018] 102 CCH 0247 (Del HC) - ITA No. 701/2017 and CM No.30647/2017 & ITA No. 702/2017 and CM No. 30648/2017 dated August 21,2018***

**3559.** Where the assessee had filed a revision application with the CIT u/s 264 with respect to the penalty order passed u/s 271(1)(c) by the AO for concealment of income after filing an appeal before the CIT(A) against the said penalty order and CIT had accepted the assessee's revision application, the Court upheld the Tribunal order setting aside the CIT(A)'s order wherein CIT(A) had decided appeal on merits and dismissed the same even after the said acceptance of revision application by CIT and after the assessee conveying his wish to withdraw appeal. It held that once the penalty order was set aside by revisional authority, it was thereafter not open for CIT(A) to still examine merits of such an order and declare his legal opinion on same.
***Nitin Babubhai Rohit v Dharmendra Vishnubhai Patel – (2018) 91 taxmann.com 196 (Guj) – Special civil application no. 22959 of 2017 dated 05.02.2018***

**3560.** The Court dismissed assessee's petition praying that Union of India & IT Department be directed to pay the assessee principal amounts and interest & 18% along which were seized during search proceedings and held that Karta of the HUF had initiated litigation against alleged illegal search u/s 132, and in absence of any allegations of misfeasance at hands of Karta, the assessee being a member of HUF could not restart the same litigation and file a writ petition long many years after the cause of action had arisen. The Court observed that the law does not recognize multiple actions at the hands of different members of an HUF. It noted that one of the essential elements of maintaining a writ petition under article 226 of the Constitution of India which pertains to Court's discretionary powers of issuing writs, is timely action at the end of the petitioner. Thus, the Court concluded that the Petitioner could not file a writ petition 17 years later on the ground that he only recently attained majority and had no independent right to raise grievances
***Alay Rakesh Shah vs Dept of Income Tax- (2018) 98 taxmann.com 448 (Guj)- Application no 13477 of 2018 dated 24.09.2018***

**3561.** During the assessment, AO made addition of unexplained cash credits and also imposed penalty u/s 271(1)(c) at 100% of the Tax sought to be evaded which came to Rs.13,00,990. The Tribunal, held that the penalty could be imposed in proportion to the profit of the business which the assessee might not have offered to tax. Without saying so effectively, the Tribunal

considered 10% of the total deposits as the assessee's profit from the business and that is how reduced the penalty to about 1/10th of the originally imposed.Revenue has filed this petition for two reasons. Firstly, according to the counsel for the petitioner, the Tribunal has exceeded his jurisdiction as under section 271(1)(c), the discretion to impose penalty ranges between equivalent to amount of tax sought to be evaded to three times that much. The Tribunal imposed penalty which was 10% of the tax sought to be evaded which was wholly impermissible. The other reason for the Revenue to file this writ petition was that as per CBDT circular dated 10-12-2015, no appeal would be filed before the High Court if the tax effect is less than Rs. 20 lacs. The Court held that it may be possible for the Revenue to argue that the monetary limits set out by CBDT are for filing appeals before various foras including the High Court and the Supreme Court but these limitations could not be applied to a writ petition that may be filed by the Revenue. Under the circumstances, it held that they were not inclined to entertain this petition. However, before closing, it held that when the proceedings of assessment in which the additions in the hands of the assessee were made, the Tribunal could not have ignored such final conclusions by simply adopting the different mode or yardstick to judge the amount of tax sought to be evaded by the assessee.

***PCIT v DevendraJasraj Kothari [2018] 94 taxmann.com 291 (Gujarat) – R/Special Civil Application No. 7872 OF 2018 dated 11.05.2018***

**3562.** Where the assessee, could have produced evidences for the claim of depreciation before CIT(A), the Court held that assessment order (wherein the claim of depreciation was reduced) cannot be assailed before High Court in the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, in view of an effective alternative remedy by way of appeal already being available to the Petitioner and that CIT(A) has extensive powers as are available to the AO and Court cannot undertake valuation exercise in writ.

***ADC India Communications Limited vs.ACIT (2016) 97 CCH 0093 KarHC (WP No.18581/2016)***

**3563.** The assessee filed an application before President of Tribunal for constitution of Special Bench as well as transfer of its matter from Bangalore to another bench for disposal of its appeal. The President rejected both the applications and directed the Touring Bench in Bangalore to dispose of assessee's appeal pursuant to which the assessee filed a writ petition wherein the Single Judge passed an order directing Tribunal to decide assessee's appeal in expeditious manner by stating that “a direction is issued to the Appellate Tribunal, Bengaluru Bench to hear and dispose of the appeals by its Members in an expeditious manner, on or before 16/04/2018”. In appeal, the Court dismissed the assessee’s contention raised in petition against the order of the Single Judge that the Single Judge had practically confined the matter to be heard only by the Members of the Bengaluru Bench of the Tribunal and had therefore wrongfully assumed the powers of the President of the Tribunal. It noted that the learned Single Judge passed the order impugned only after taking note of the fact that the President had rejected the prayer of the appellant for transfer of the appeals outside Bengaluru and therefore dismissed the assessee’s contention.

***Google India (P.) Ltd. v DCIT (IT) - [2018] 91 taxmann.com 21 (KarnatakaHC) - WRIT APPEAL NOS. 828-829 OF 2018 (T-IT) dated MARCH 1, 2018***

Go to Index

**3564.** The Court dismissed Revenue's appeal as withdrawn as tax effect of the appeal was less than Rs.50L in view of the CBDT Circular No.3/2018 revising monetary limits for filing of appeals by Department before High Courts to Rs.50,00,000.
***Pr.CIT vs Shriram Chits (Karnataka) Pvt Ltd. [2018] 102 CCH 0250 (Kar HC) INCOME TAX APPEAL NO. 344 OF 2018 dated August 02 2018***

**3565.** Where assessee's appeal against the AO's order denying deduction u/s 80P(2)(a) was pending before CIT(A) and the AO had also not passed any order with respect to the application filed by the assessee before AO for not treating it as assessee-in-default u/s 220(6), the Court dismissed the writ filed by the assessee seeking a direction to CIT(A) to decide pending appeal expeditiously, considering the writ to be premature in nature. It directed assessee to appear before both concerned authorities, namely, CIT(A) and AO and pursue for disposal of its appeal as well as application filed u/s 220(6) in accordance with law.
***Primary Agriculture Credit Co-operative Society Ltd. v CIT(A) – (2018) 92 taxmann.com 263 (Karnataka HC) – writ petition no. 5647 of 2018 (T-IT) dated 06.02.2018***

**3566.** The Court dismissed the appeals of the Revenue as 'withdrawn' in accordance with the CBDT Circular No.21/2015 dated December 10, 2015 as the tax effect in the appeals taken together was lesser than Rs. 20,00,000. The Court held that since the Revenue failed to place any material to prove that the appeals had any cascading effect or 'Tax Effect' beyond Rs. 20,00,000, the Revenue's appeals were dismissed.
***CIT vs. COMMISSIONER, BELGAUM URBAN DEVELOPMENT AUTHORITY (BUDA) (KARNATAKA HIGH COURT) (ITA No. 243, 244, 246, 247 & 249 of 2006) dated May 29, 2018 (102 CCH 0093)***

**3567.** Noting that in the earlier year, the Tribunal had decided the issue in favour of the assessee and the CIT(A) for the instant year had taken an adverse view even after taking note of the said Tribunal order (against which no appeal was pending before the High Court), the Court allowed the assessee's writ petition against CIT(A)'s order and held that such totally callous, negligent and disrespectful behaviour shown by the Departmental authorities should not be tolerated at all. It held that it is because of this kind of lack of judicial discipline which if it goes unpunished, will lead to more litigation and chaos and such public servants are actually a threat to the society. The Court also directed the CIT(A) to pay cost of Rs. 1 lakh from his personal funds.
***XLHealth Corporation India Pvt. Ltd. Vs. UOI (Karnataka High Court) - WRIT PETITION No.37514/2017 dated 22.10.2018***

**3568.** Court upheld the Tribunal's order dismissing the assessee's cross appeal filed against assessment reopening without adjudicating the same, after dismissing the revenue's appeal on merits of the case, as such adjudication would only be of academic interest. However, the Court gave assessee the liberty to challenge validity of reassessment order in event revenue filed an appeal challenging Tribunal's order on merit.
***Vishwa Bharati Education Society v DCIT – (2018) 91 taxmann.com 34 (KarHC) – ITA No. 100020 of 2017 dated 08.01.2018***

Go to Index

**3569.** The Court dismissed Revenue's appeal as withdrawn as tax effect of the appeal was less than Rs.50L in view of the CBDT Circular No.3/2018 revising monetary limits for filing of appeals by Department before High Courts to Rs.50,00,000.
***DIRECTOR GENERAL OF INOCME TAX & ANR. vs. A. ABDUL RAFEEKH - [2018] 102 CCH 0229 KarHC ITA No. 255/2018 dated August 06 2018***

**3570.** The assessee-company had bought back its own shares from its 99.99% holding company at Mauritius at an abnormally high price and the Tribunal held that the payment for buy-back in excess of fair market price of shares of assessee, would certainly fall within ambit of section 2(22)(e) and could be taxed as dividends, in hands of assessee-company. However, since this aspect of matter had not been examined by authorities below, the Tribunal remanded the matter to assessing authority. The assessee filed an appeal against the Tribunal's direction. The Court held that the Tribunal has power to give directions for fresh enquiry into aspects of subject matter of appeal filed before it either suo motu or on any grounds raised by either party to appeal which have not been investigated or enquired into by lower authorities earlier and which may result in enhancement of tax liability of assessee. Further, it held that the said directions could not be said to be per se amounting to taxability of said payout by assessee as 'Dividend' but same would depend upon nature of enquiry to be conducted by assessing authority and findings arrived at in pursuance of said direction. Thus, it dismissed the assessee's appeal.
***Fidelity Business Services India (P.) Ltd. v ACIT [2018] 95 taxmann.com 253 (KarnatakaHC) - ITA No. 512 OF 2017 dated July 23, 2018***

**3571.** The Court held that remand is not power to be exercised in routine manner and should be used only when the facts warranted such course of action. Where materials were available on record (viz. the assessee had claimed provision of warranty as an expense during the relevant year which was allowed by the CIT(A) as a result of which the Revenue appealed to the High Court, wherein the Court remanded the matter to the Tribunal to determine whether the assesee's provision for warranty was based on past history or actual expenditure), the Tribunal ought to have arrived at a conclusion rather than further remanding the matter back to the AO that too after giving a positive finding that the method adopted by the assessee was on a scientific and reasonable basis. Thus where no proper reasoning had been given by Tribunal for exercising power of remand, such Order passed by ITAT was justified to be set aside.
***Dell International Services India (P) Ltd v ACIT- [2016] 95 CCH 0119 (Karnataka HC)***

**3572.** The Court set aside the order of the Tribunal dismissing Revenues appeal as the tax effect involved was less than the prevailing monetary limit prescribed by the CBDT instruction as the appeal filed involved a substantial question of law. Reliance was placed on the decision of the Apex Court in Surya Herbal Ltd wherein it was held that the High Court can ignore CBDT circulars and proceed to decide statutory appeals on merits where substantial question of law was involved.
***CIT v South Travancore Distilleries & Allied Products (ITA.No. 153 of 2001) – TS-682-HC-2015 (Ker)***

**3573.** The question before the Court was as to whether the appeal in question should be heard on merits in view of the fact that by reason of the assessee's death, there was abatement of the

said appeal and the Revenue had filed the application for setting aside of the abatement after a delay of 3345 days. The Revenue contended that it was only when notice issued to assessee from Court could not be served, death of the assessee was brought to notice of CIT and immediately thereafter, the said application was filed. However, noting that for executing the Tribunal's order, the Tax Recovery Officer had written a letter wherein demand was raised from the assessee's wife showing the assessee as deceased, the Court held that it could be concluded that department was aware of death of assessee long before and there was no explanation for gross delay caused. Accordingly, the appeal filed by the Revenue was dismissed as abated.

***CIT v V.M.Varghese [2018] 94 taxmann.com 319 (Kerala) – ITA NO 1429 OF 2009 dated 23.05.2018***

**3574.** The Court dismissed Revenue's appeal against the Tribunal's order refusing to entertain the appeal relying on the circular of the CBDT restraining the Department from filing appeals where the tax effect is less than Rs.2 lakhs. The issue involved was as to whether 1/6$^{th}$ amount paid by the assessee for know-how for the purpose of setting up of modern plant was allowable u/s 35AB when the assesseee had not commenced business in the relevant assessment year. Before the Court, the Revenue placed reliance on the decision of the Division Bench dated 31.10.2017 in ITA 70/2014 wherein the Court had directed another appeal to be considered on merits despite the CBDT directions on monetary limit. Noting that the tax effect, in the subject year and the succeeding years was NIL for reason of the assessee having continuosly suffered loss in all the years, it was held that there could be no cascading effect atleast in the case of the assessee. Therefore, the revenue's appeal were rejected answering the question against the Revenue.

***CIT v TATA CERAMICS LTD. - (2018) 102 CCH 0094 KerHC - ITA.No. 1377 of 2009 dated June 08, 2018***

**3575.** The Court held that the decision to recall an appeal or to pursue it only for its dismissal as not pressed was the decision of the Department and was to be exercised after due application of mind. Accordingly, it held that an order was to be issued by the Central Board of Direct Taxes to the Principal Chief Commissioner of Income-tax to take up follow-up action by appropriate utilization of IT and quicker acces of information relating to pending appeals before the High Court and for the identification of cases where the monetary limit of Rs. 20 lacs (as per CBDT Instruction No 21 / 2015).

***CIT v Smt Lakshmikutty Narayanan – TS-171-HC-2016(KERALA)***

**3576.** Where the AO disallowed assessee's claim for deduction on account of loss on account of foreign exchange forward contracts as the assessee had not proved that the forward contract pertained to its exports but the CIT(A) on examining additional evidence filed by the assessee allowed the claim (which was upheld by the Tribunal), the Court held that the Revenue was not justified in contending that the CIT(A) had erred in admitting the additional evidence and held that as per Rule 46A(4), the CIT(A) had the independent power and jurisdiction to call for production of any document to enable him to dispose of the appeal. Further, it noted that the Revenue had merely raised technical objections and did not raise any objections on the merits of the case. Accordingly, it dismissed the Revenue's appeal.

Go to Index

***PRINCIPAL COMMISSIONER OF INCOME TAX vs. L.G.W. LIMITED - (2018) 101 CCH 0063 KolHC - GA NO. 2274 OF 2016 WITH ITAT NO. 311 OF 2016 dated Feb 13, 2018***

**3577.** Where the assessee could not attend the Tribunal hearing as its authorised representative was unwell and the Tribunal passed an ex-parte order on 25.08.2015, pursuant to which the assessee preferred a miscellaneous application on 23.08.2016 which was dismissed by the Tribunal on the ground that it had been preferred after an expiry of six months and Section 254(2) provides for a limitation of 6 months, the Court noting that at the time of passing the ex-parte order the time limit under Section 254(2) was 4 years, held that the miscellaneous application was filed within the time limit prescribed. Accordingly, it directed the Tribunal to decide the application under Section 254(2) within 3 months of receipt of the certified copy of its order.
***District Central Co-op. Bank Ltd. v. Union of India [2017] 86 taxmann.com 176 (Madhya PradeshHC)***

**3578.** The Assessee was a joint venture company which was controlled by the State Government. An assessment order was passed against the assessee Against said order of assessment an appeal was filed to the Commissioner (Appeals) after a delay of 231 days. The assessee filed an affidavit explaining reason for delay that its Director and Chief Executive Officer (DCEO), an IAS Officer, nominated by the Government, who had to take decision on filing an appeal, had resigned, and as a result of which, a decision could not be taken. Post of DCEO remained vacant and, subsequently, a new DCEO was appointed by the Government who after considering issue, took up matter before the Board of Directors and a decision to file appeal was taken and, accordingly, appeal was filed. The Court held that the revenue had not filed any counter affidavit disputing correctness of affidavit filed by the assessee in support of delay condonation petition. Thus, averments set out by the assessee in affidavit remained uncontroverted. On facts, the Commissioner (Appeals) was not justified in refusing to condone impugned delay. Therefore, the matter was to be remanded back to the Tribunal to take a decision on merits of case.
***Elnet Technologies Ltd. v. Dy. CIT [2018] 99 taxmann.com 219 (Mad.)- Tax Case (Appeal) No. 997 of 2008 dated October 8, 2018.***

**3579.** Where the Tribunal remanded the matter to AO for fresh calculation, the Court laid down that the Tribunal does not have the power to enhance assessment and take back the benefits that had been granted by the AO. The Court relied on the decision of the Apex Court in the case of MCORP Global (P.) Ltd. v. CIT [2009] 178 Taxman 347/309 ITR 434 and held that the direction of the Tribunal to AO to determine depreciation or business loss of each year and carry forward lower of the two adjustments u/s 115JA would result in enhancement of assessment and accordingly allowed the appeal of the assessee.
***Sanmar Speciality Chemicals Ltd. v. ITO – [2018] 93 taxmann.com 330 (MadrasHC) – T.C. (Appeal) No. 885 of 2008 dated April 4, 2018***

**3580.** In a writ petition filed against an ex-parte Tribunal order dismissing the appeal for default, the Court remanded the matter to the Tribunal and held that the Tribunal has to dispose of an appeal on merits irrespective of whether appellant appears or not, in view of Rule 24 and 25.

Go to Index

***N. S. Mohan v ITAT [2018]94 taxxman.com 92 (MadrasHC) – W.P NO. 8126 OF 2018 dated 16.04.2018***

**3581.** The Court held that where show-cause notice was issued under section 251(1)(a) of the Act intending to make addition to income of the firm as the maximum number of members in the firm exceeded the prescribed number of 20 and for addition of disallowed expenditure to taxable income, the writ petition filed would not have any merit as the petitioner could very well submit their explanations and contest the same on merits in accordance with law before the CIT(A).
***Megatrends Inc v CIT – TS-93-HC-2016(MAD)***

**3582.** The assessee's case was reopened u/s 147 and the AO had made addition by treating agricultural income of assessee as non-agricultural. Whereas, in the remand report submitted by the AO before the CIT(A), he himself accepted that the assessee was carrying on agricultural activity and, thus, she was earning agricultural income thereof. Accordingly, CIT(A) allowed the assesssee's claim of agricultural income on basis of said remand report. However, Tribunal disallowed said claim of assessee without taking into consideration that order allowing assessee's appeal by CIT(A) was based upon remand report. The Court also dismissed appeal filed by the assessee against the said Tribunal order. For the first time before the Court in a Review Application, the assessee raised the claim that the appeal before the Tribunal was not maintainable since the CIT(A)'s order was based on consideration of the AO's remand report. The Court allowed the Review Application and remanded the matter to the Tribunal to decide the question of its jurisdiction to entertain the appeals filed by the Revenue against the CIT(A)'s order.
***Smt. B. Jayalakshmi v ACIT - [2018] 96 taxmann.com 486 (Madras) - Review Application Nos. 88 TO 90 OF 2014 dated July 30, 2018***

**3583.** The Court held that where the assessee had mentioned the name of the Director and affixed the signature of the Director to the application of condonation of delay, the Tribunal was incorrect in dismissing the same on the ground that the Director's name was not mentioned in the appeal memorandum. Accordingly, it condoned the delay of 201 days in filing appeal before the Tribunal.
***Wayne Burt Petro Chemicals P Ltd v ITAT – TS-245-HC-2016 (Madras)***

**3584.** The Division Bench of Madras HC dismissed assessee's writ challenging Single Judge order declining to entertain its writ petition on the ground of lack of territorial jurisdiction wherein the writ petition had sought for a mandamus directing tax authorities not to take any coercive action against assessee who was under BIFR proceedings. On perusal of Article 226 of the Constitution of India the Madras HC noted that HC is empowered to issue certain writs if the "cause of action" wholly/ partly arises within its territory. However since the a) assessee's principal office was in Gurgaon, b) Revenue (i.e. ACIT, Delhi) had held assessee as defaulter for non-deposit of TDS, c) assessee had obtained TAN number in Delhi jurisdiction, the Madras HC held that cause of action in assessee's case was at Delhi, and not at Madras.
***Tecpro Systems Limited [TS-405-HC-2016(MAD)] - WRIT APPEAL No.250 of 2016 and C.M.P. No.4260 of 2016***

Go to Index

**3585.** The Court dismissed assessee's writ petition filed against the reassessment notice issued u/s 148 and order passed by the AO rejecting assessee's objection to the reassessment proceedings, accepting Revenue's contention that the assesee had the liberty to avail statutory (alternate) remedy available under the Act. The AO had initiated reassessment proceedings u/s 147 r.w.s. 148 on ground that the assessee was not eligilble for weighted deduction u/s 35(2AB) with respect to entire R&D expenses incurred which was partly allowed during the original assessment. The Court held that in absence of any concluded facts being available *before* it, it would not be proper to interfere with the impugned notice and order.
***Alkem Laboratories Ltd. vs Pr.CIT [2018] 103 CCH 0057 (Patna HC) - Civil Writ Jurisdiction Case No. 10859 of 2018 dated August 02 2018***

**3586.** Where additions were made for unexplained income and the Tribunal remanded back the matter to the AO to decide the case afresh in light of additional evidence in accordance with the decision of CIT v Ravi Kumar, without making any conclusive findings itself, the Court held that if the Tribunal had made conclusive findings there would be no requirement for such remand findings and that the decision referred to by the Tribunal in its direction to the AO was not a well-founded reliance and therefore in the event of the remand, the AO would be empowered to consider other decisions on the issue as well.
***PCIT Vs. Aggarwal Sales (2016) 97 CCH 0076 PHHC (ITA No. 316 of 2016 (O&M))***

**3587.** The Court held that the legislation amended Section 268A(4) of the Act with retrospective effect to ensure reduction of arrears in Supreme Court, High Courts and Tribunals by putting some prohibition on department, and accordingly CBDT circulars were issued instructing subordinate officers that no appeal shall lie, except where the issue decided by the CIT (Appeals) or Tribunal was contrary to the judgments of the Supreme Court, from an order where monetary limit of tax effect was lesser than that stipulated for different appellate fora. Accordingly, it held that the said Circulars would be binding on subordinate officers and that the department could not take a contrary view and insist for arguing matter on merits.
***CIT v GAD Fashion [2017] 87 taxmann.com 239 (RajasthanHC) - IT APPEAL NO. 575 OF 2008 dated 10.11.2017***

**3588.** Where the Department filed an appeal before the Court within 120 days of receipt of the Tribunal order, the Court allowed the appeal for admission hearing and held that the time limit for filing an appeal before the Court commenced from the date of receipt of the Tribunal order by the officer entitled to file the appeal. The fact that the officer was aware of the Tribunal order as it was party to various collateral proceedings was not relevant, unless there was actual receipt of the Tribunal order.
***DIT(IT) vs. Hyundai Heavy Industries Co. Ltd. – [2018] 102 CCH 0012 (Uttarakhand High Court) – ITA No 30 of 2011 dated May 17, 2018***

**3589.** The Department filed an appeal against a Tribunal order dispatched on 09.09.2009 stating that since copy of impugned order was received in office of Department only on 16.3.2011 the appeal was filed within time, the assessee argued that the appeal filed by Department was not maintainable as it was barred by limitation. The Court observed that the order was communicated and received by the office of the Director only on 16.3.2011, pursuant to which

the appeal was filed within the statutory time limit prescribed. The Court held that knowledge of such order could not be attributed to Department earlier than 16.3.2011, by virtue of it being party to various proceedings or even proceedings under Section 263 unless there was actual receipt of the order. Thus, it held the Revenue's appeal to be in time and listed the matter for hearing on admission.

***DIT (IT) vs. HYUNDAI HEAVY INDUSTRIES CO. LTD. (HIGH COURT OF UTTARAKHAND) (ITA No. 30 of 2011 With Delay Condonation Application No. 3188 of 2018) dated May 17, 2018 (102 CCH 0012)***

**3590.** The Tribunal gave effect to CBDT Circular No 21 / 2015 dated December 10, 2015 on no appeals to be filed below the revised tax effect of Rs. 10 lakhs and consequently dismissed a batch of appeals as not maintainable as any pending appeal below the revised limit would amount to a legal nullity. It also specified that the dismissal was without prejudice to the rights of the revenue authorities to raise the same issue as and when the tax effect crosses the threshold limit.

***DCIT v Soma Textiles & Industries Ltd (ITA No 302 / Ahd / 2014) – TS-711-ITAT-2015 (Ahd)***

**3591.** Assessee had filed application for stay of outstanding demand, originally before Surat bench which was rejected considering that relevant appeals were pending before Ahmedabad bench and subsequently, assessee moved stay application before Ahmedabad bench. However, at time of hearing, AO having jurisdiction to assess income of assessee was located at New Delhi at relevant time, which falls in jurisdiction of Delhi benches. The Tribunal thus held that jurisdiction for hearing of there applications, and hearing of related appeals, vested in Delhi benches of Tribunal. However, in view of rule 4(1) of the Incomw-Tax Appellate Tribunal Rules, 1963, it held that it was for the President of Tribunal to take a final call on issue and hence, registry was to be directed to place matter before President for final decision on transfer of assessee's case to Delhi benches.

***Vedanta Ltd v Asst. Director of Income-Tax [2018] 93 taxmann.com 203 (Ahmedabad – Trib.) – S.A. NOS. 41 TO 45 OF 2018 dated 11.05.2018***

**3592.** The Tribunal allowed the additional grounds of appeal raised by the assessee relying on the judgments in the case of National Thermal Power Co Ltd v CIT (1998) 229 ITR 383 (SC), PV Doshi v CIT (1978) 113 ITR 22 (Guj) and Ramilaben Ratilal Shah v CIT (2006) 152 Taxman 37 (Guj) wherein it was held that legal issues could be raised at any stage before the Tribunal. However, it set aside the order of the CIT(A) and restored the additional ground to his file for determination in accordance with law.

***JK Paper Ltd v CIT – (2015) 45 CCH 0325 Ahd Trib***

**3593.** The Tribunal rejected assessee's application for condonation of delay of 316 days in filing of appeals holding that although power available to Tribunal u/s 253(5) was discretionary, however it could be exercised only in case of sufficient cause. In the present case, it was contended that the delay on the ground that the Official Liquidator remained occupied in other works and hence could not apply his mind into the assessee-company's case. The Tribunal held that the Official Liquidator failed to demonstrate as to how he could not apply his mind for filling appeal till 316 days as the same not believable.

Go to Index

***New Gujarat Synthetic Ltd. vs ITO [2018] 53 CCH 0604 (Ahd - Trib.) ITA No. 752 TO 754/Ahd/2016 dated August 01 2018***

**3594.** The Tribunal held that instruction no.3 of 2018 dated 11/07/2018 restraining subordinate authorities from filing appeal before Tribunal in case tax effect by virtue of the relief given by CIT(A) is less than Rs.20 Lakhs is applicable even on pending appeals as on date of issuance of such instructions. Accordingly, the Tribunal dismissed Revenue's appeal as the tax effect was less than 20 Lacs.
***ITO & ANR. vs. Flexell Computer Forms Pvt. Ltd. & ANR. - (2018) 54 CCH 0292 AhdTrib- ITA No. 277/Ahd/2015, 344/Ahd/2015-Dated Dec 3, 2018***

**3595.** The Tribunal held that where tax effect by virtue of order passed by Commissioner (Appeals) was below Rs. 20 lakhs in assessee's case, in view of mandate issued by CBDT in Circular No. 3, dated 11-7-2018, appeal filed by revenue was to be dismissed being non-maintainable.
***Dy. CIT, Central Circle- 1, Baroda v. Shashiben Rajendra Makhijani- [2019] 101 taxmann.com 248 (Ahmedabad - Trib.)- IT (SS) Appeal Nos. 254 & 255 (AHD.) of 2016-C.O. Nos. 170 & 171 (AHD.) of 2016 dated December 17, 2018***

**3596.** With respect to the revenue's argument that the assessee had claimed deduction u/s 80P for the first time before the CIT(A), placing reliance on various decisions, Tribunal held that it is well settled law that the Appellate Authorities have power to consider the claim not made in a return.
***Baroda Uttar Pradesh Gramin Bank v DCIT – (2018) 91 taxmann.com 182 (All Trib) – ITA Nos. 403, 404 & 405 (Alld.) of 2014 dated 08.01.2018***

**3597.** The Tribunal dismissed Revenue's appeal holding that Revenue should not have filed the appeal in view of CBDT Circular No.3/18 dated 11.07.2018, vide which CBDT has revised monetary limit to Rs.20,00,000/- for filing appeal before the Tribunal and instructions provided in Circular would operative retrospectively to pending appeals. Revenue contended that since CIT(A) had decided legal issue the monetary limit was not applicable since it was not a blanket bar on filing of appeals before ITAT as the said Circular itself mentions that where tax effect could not be quantified like in case of Registration u/s 12AA, the monetary limit would not be applicable. The Tribunal held that nowhere in the said Circular it was mentioned that the monetary limit was not applicable in case of legal issue.
***Asst CIT vs Bishan Steel Industries Ltd [2018] 54 CCH 0281 (Amritsar- Trib.)- ITA No.588/Asr/2014 dated 30.11.2018***

**3598.** The Tribunal held that in terms of sub-section (4) of section 249, payment of tax is mandatory but requirement of paying such tax before filing appeal is only directory and, therefore, when defect in appeal, being non-payment of such tax, is removed, earlier defective appeal becomes valid.
***Smt. Sushila Devi Malu v. ITO, Ward-3, Kalaburagi - [2019] 101 taxmann.com 85 (Bangalore - Trib.) – ITA No. 564 (BANG.) of 2018- November 20, 2018***

**3599.** The Tribunal held that the CIT(A) erred in allowing assessee's additional ground of deduction of manpower and service expenses by admitting additional evidence (bills etc) without obtaining

a remand report from the AO. It held that the CIT(A) acted in violation of Rule 46A of the Income-tax Rules and accordingly directed the CIT(A) to decide the ground afresh after affording an opportunity of hearing to the AO.

***DEPUTY COMMISSIONER OF INCOME TAX & ANR. vs. JSW STEEL PROCESSING CENTRES LTD. & ANR. - (2018) 52 CCH 0167 BangTrib - ITA No. 1978/Bang/2017, 2001/Bang/2017 dated Mar 7, 2018***

**3600.** Where there was nothing on record to show that assessee had consciously and knowingly waived right to be heard, the Tribunal allowed assessee's appeal against the CIT(A)'s ex-parte order and restored the matter back to CIT(A) directing him pass a speaking order after giving assessee a reasonable opportunity of being heard. Noting that the ex-parte order was passed only on basis the written submissions of assessee where he was unable to advance his case, it was held that there was lack of opportunity of being heard.

***Harbans Lal vs ITO [2018] 97 taxmann.com 622 (Chandigarh - Trib.) IT APPEAL NO. 419 (CHD.) OF 2018 dated August 06 2018***

**3601.** The Tribunal levied exemplary cost of Rs. 1 lakh upon assessee-trust for fraud in wrongly seeking exemption on basis that it is controlled & managed by the Govt. It held that the Tribunal is deemed to be a Civil Court and its proceedings are deemed to be judicial proceedings within the meaning of s.193 & 228 & of the Indian Penal Code. Thus, any attempt to play fraud on the ITAT by way of conveying wrong and false facts and pleadings is required to be strictly dealt with.

***Sri Dashmesh Academy Trust vs. CIT (Exemptions) - ITA No. 1257/CHD/ 2017 dated 08.10.2018***

**3602.** The Tribunal held that the assessee had reasonable cause in not filing appeal against the CIT(A)'s order in within period of limitation and hence condoned the delay of 546 days. It was noted that (i) when the order of CIT(A) was passed, the assessee was focused on the search proceedings carried out in its case and (ii) the assessee was wrongly advised by a Tax Practitioner that in view of initiation of search proceedings, the pending proceedings would stand terminated.

***ACIT & ANR. vs. R.P.P. INFRA PROJETS LTD. & ANR. (2018) 53 CCH 0373 ChenTrib – ITA No. 2127/Chny/2016, 3161/Chny/2017 dated 17th July, 2018***

**3603.** The Tribunal allowed the assessee's rectification petition against the earlier order issued by it wherein it had deleted the demand under section 68 of the Act and held that the attachment of property by the Revenue was not warranted, without specifically directing the Revenue to lift the attachment and rectified the said order to the effect of giving a specific direction for such lifting of attachment since the Revenue had deliberately failed to lift the attachment of property on the ground that the Tribunal had not provided for such direction explicitly and that the case had not reached finality before the Apex Court.

***Shangkalpam Industries Pvt Ltd v ITO – TS-502-ITAT-2016 (Chny) - I.T.A.No.1613/Mds/2013***

Go to Index

**3604.** The Tribunal, while considering assessee's request for condonation of delay in appeal, held that an assessee supported by large number of CAs & Advocates cannot seek condonation of delay on the ground that the officer handling the issue was transferred. A party cannot sleep over its rights and expect its appeal to be entertained. The fact that the issue on merits is covered in favour of the assessee makes no difference to the aspect of condonation of delay
***Catholic Syrian Bank Ltd vs. DCIT (ITAT Cochin) - I.T.A. Nos. 341 to 345/Coch/2018 dated 08.10.2018***

**3605.** Where Commissioner (Appeals) dismissed assessee's appeal on ground that assessee did not wish to pursue appeal, since revenue failed to bring any evidence to prove actual service of notice of hearing on assessee, requirements of procedure as mentioned in section 250(1) and (2) could not be said to have been fulfilled and, thus, the Tribunal held that the impugned order was to be set aside and the Commissioner (Appeals) was directed to pass denovo order as per law.
***HV Metal ARC (P.) Ltd. v. Asst. CIT, Circle 11(1), New Delhi- [2018] 100 taxmann.com 4 (Delhi - Trib.)- IT Appeal No. 1912 (DELHI) of 2018 – dated October 16, 2018***

**3606.** The Tribunal held that the monetary limit for filing appeals (i.e. Rs.10 lakhs for appeals before Tribunal) as laid down by the CBDT vide Circular No 21 / 2015 would apply retrospectively to all pending appeals. Accordingly, it dismissed the appeals filed by the Revenue since the tax effect in the said appeals were less than Rs. 10 lakhs.
***ITO v Dhirender Rehnani – (2017) 51 CCH 0343 Del Trib – ITA No 3036 / Del / 2016 dated 14.11.2017***

**3607.** The Tribunal dismissed Revenue's appeal as the tax effect was less than 20 lakhs by holding that CBDT Circular No.3/18 dated 11.07.2018, revising the monetary limit for not filing appeal before the ITAT will be operative retrospectively to the pending appeals.
***Dy. CIT vs. ORACLE INDIA LTD. ((2018) 54 CCH 0330 DelTrib ITA No. 3995/Del/2014 dated 10.12.2018***

**3608.** Where the CIT(A) deleted addition on account of incentives paid by assessee to various State Electricity Boards (SEBs) under the terms of one-time settlement scheme, the Tribunal relied on the ruling of the Jurisdictional High Court in the case of Rural Electrification Corp. Ltd and held that, since the Committee on Disputes (COD), had not permitted the CBDT to pursue such issues, the said appeals were to be disposed and the Revenue would be entitled to ask for revival of the appeals if they succeed in the appeal before the Supreme Court in the other pending matters.
***DCIT vs. NTPC Ltd. – [2018] 53 CCH 0101 (Delhi ITAT) – ITA No 15/Del/2009 dated May 4, 2018***

**3609.** The Tribunal dismissed Revenue's appeal as not maintainable holding that tax effect was less than Rs.20 lakhs and vide Circular No. 3 of 2018 dated 11.07.2018 issued by CBDT u/s 268A, it was directed that Department should not file appeal before the Tribunal in case where tax effect did not exceed monetary limit of Rs.20 lakhs. Further, such instruction would apply retrospectively to pending appeals and appeals to be filed henceforth in Tribunal.

Go to Index

***Dy CIT vs Woven Gold Acrylic (I) Pvt Ltd[2018] 54 CCH 0381 (Del- Trib.)- ITA No.4965/Del/2015 dated 15.11.2018***

**3610.** The AO noted that the assessee did not file complete details and addresses regards amounts received from various parties and family and accordingly made an addition in the hands of the assessee., which was upheld by the CIT(A). The assessee filed an appeal before the Tribunal after a delay of 1403 days. The Tribunal noted that in any case the assessee had no material evidence with him to explain unexplained income and that the appeal was filed by it only when the penalty appeals were dismissed by CIT(A). Accordingly, it dismissed the application for condonation of delay and dismissed assesssee's appeal.
***SHAMBHU DAYAL SHARMA vs. INCOME TAX OFFICER - (2018) 52 CCH 0075 DelTrib - ITA Nos. 211, 212, 213/Del./2015 dated Feb 2, 2018***

**3611.** The Tribunal upheld the CIT(A)'s order allowing the asssesse's claim to carry forward the short term capital loss which was not claimed by him in the return of income but was claimed during the assessment proceeding before the AO, which was not allowed by the AO since no revised return had been filed by the assesse, though it had file revised computation. It held that even if the AO could not have considered the claim of assessee but there was no bar on the powers of the appellate authority to consider the claim of assessee as per law and the powers of the CIT(A) are co-terminus powers to that of the AO. It held that the assessee was, therefore, not legally barred from making such claim and the CIT(A) had correctly directed the AO to consider the claim of assessee for carry forward of short term capital loss.
***DEPUTY COMMISSIONER OF INCOME TAX vs. JUGAL KISHORE ARORA - (2018) 53 CCH 0190 DelTrib - ITA.No.157/Del./2015 dated June 21, 2018***

**3612.** The Tribunal held that where the appeal filed by the revenue against the order of the CIT(A) was dismissed by the Tribunal because of low tax effect, the cross objections filed by the assessee could not be dismissed merely because the appeal of the revenue was dismissed.
***ACIT v Ajay Kalia – (2016) 66 taxmann.com 99 (Del)***

**3613.** Where the assessee was going to disclose income under the Income Declaration Scheme 2016 (which provides the tax payers an opportunity to declare undisclosed income and pay tax on such undisclosed income) for AYs 2009-10 to 2011-12, the Tribunal allowed the assessee application for withdrawal of the appeals filed for the relevant years.
***Praveen Kumar Mittal v ITO – TS-477-ITAT-2016 (Del) - ITA No. 5540 – 5541 and 5542/Del/2015***

**3614.** The Tribunal dismissed assessee's (amalgamating company) appeal as not maintainable in the absence of filing of amended memo and form 36 in the name of the new entity. Noting that the amalgamation of assessee with other group entities was effective from April 1, 2015 as per the High court order but the assessee wished to continue the appeal in the name of old entity on the ground that there is no requirement to file amended Form 36/memo as Rules 26 and 9 of the ITAT Rules do not provide so. The Tribunal held that in the case of amalgamation, the transferor company ceases to exist, and there is transfer all rights to the amalgamated company

as per transfer scheme, hence the proceedings initiated by assessee can only be continued by the transferee company in its own name. Accordingly, it dismissed the appeal.
***EADS India P Ltd vs Dy.CIT-TS-471-ITAT-2017 ITA NO. 1856 & 2638/Del/2014 dated 17.10.2017***

**3615.** The Tribunal deleted the addition made by the CIT(A) by disallowing expenditure incurred by the assessee on account of procurement of materials from third party vendors u/s 40(a)(ia), following the Apex Court decision in the case of CIT vs. Shapoorji Pallonji Mistry [44 ITR 891 (SC)] wherein it was held that AAC is not competent to enhance assessment in appeal by discovering new source of income not mentioned in return or considered by the Assessing Officer in assessment. The Tribunal held that since in the present case also, there was no discussion of any such disallowance either in the return of income or in the assessment proceedings, therefore, the disallowance made by the CIT(A) by discovering a new source of income was not sustainable in law.
***LG ELECTRONICS INDIA (P) LTD. vs. ACIT (2018) 53 CCH 0375 DelTrib – ITA Nos. 3612 & 3613/Del/2017 dated 18th July, 2018***

**3616.** Where the CIT(A) deleted the addition made by the AO under Section 68 by admitting the additional evidence filed by the assessee which substantiated the identity, capacity and genuineness of the share allottees to whom the assessee had issued share capital, the Tribunal held that since the AO was not given the opportunity of examining the additional evidence, the mandate of Rule 46A was violated. Accordingly, it set aside the case to the file of the AO to consider the additional evidences filed.
***COMMISSIONER OF INCOME TAX & ANR. vs. DIAMOND HUT INDIA PVT. LTD. & ANR. - (2018) 52 CCH 0263 DelTrib - ITA No. 3428 & 3425/Del/2013, 3427/Del/2013 dated Mar 5, 2018***

**3617.** The Tribunal condoned 387 days in filing appeal in view of the bonafide explanation offered by assessee i.e that cause of delay in filing appeal was due to turbulent time in family as well as with his earlier C.A., who had mischievously prepared accounts and also filed return of income in his own signatures without assessee's knowledge, was bonafide.
***Nitesh Agarwal vs ACIT (2018) 97 taxmann.com 459 (Jaipur-Trib)- ITA No 825 of 2018 dated 19.09.2018***

**3618.** The Tribunal rejected the appeal filed by the revenue as it was not accompanied by the prescribed fee and therefore in contravention of section 253 of the Act. It held that Tribunals can exercise discretion to accept the memorandum of appeal even if the same was deficient in enclosures but not when the appeal was not accompanied by the prescribed fee.
***ACIT v DE Shaw India Software Pvt Ltd – [2015] 64 taxmann.com 95 (Hyd – Trib)***

**3619.** The Tribunal dismissed the appeals filed by the Revenue following the Circular No. 3/2018, dated 11-7-2018, whereby monetary limits for filing of appeals by department before Tribunal and High Courts and SLP before Supreme Court had been increased, upholding the retrospective application of the said Circular to pending SLPs/appeals/cross objections/references. It held that the said Circular, which itself states that it is applicable to

pending SLPs/appeals/cross objections/references, was binding on the Revenue, as held by the Apex Court in the case of Commissioner of Customs v. Indian Oil Corporation Ltd. [2004] 267 ITR 272 (SC).

***ACIT v Khalishpur Cold Storage (P.) Ltd - [2018] 96 taxmann.com 420 (Kolkata - Trib.) – ITA Nos. 1054,1259 TO 1260/1661 & 1795 OF 2016; CO. NO. 95 (Kol) of 2017 dated July 30, 2018***

**3620.** The Tribunal held that if because of wrong advice given by advocate, assessee could not prefer appeal before Tribunal, then assessee could not be faulted for not preferring appeal on time. The Tribunal held that the Hon'ble Supreme Court in the case of Collector of Land Acquisition vs Mst Katiji & Others 167 Hon'ble Apex Court has emphasized that substantial justice should prevail over technical consideration. The Hon'ble Apex Court has also observed that a litigant does not stand to benefit by lodging the appeal late. The Hon'ble Apex court has also observed that every day's delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational, common sense and pragmatic manner. In the light of the aforesaid judicial precedent and taking into consideration the fact that because of the wrong advice given by the Ld. AR Shri Tiwari caused the assessee in not preferring an appeal before this Tribunal. Therefore, the assessee cannot be faulted for not preferring an appeal on time. Taking into consideration the aforesaid facts given for causing the delay, Tribunal was of the opinion that the delay should be condoned and Tribunal did so and admit the appeal for adjudication

***Jayant Saha vs DCIT- (2018) 54 CCH 0022 Kol Trib- ITA No 106/2018 dated 19.09.2018***

**3621.** Where the assessee erroneously made certain disallowance in its return on account of non-deduction of tax at source and same was not contested before CIT(A), the Tribunal held that there was no estoppel against the statute and it was open for assessee to challenge said disallowances before the Tribunal for first time. Accordingly, it remanded the said issue to file of AO for adjudication on merits.

***Allahabad Bank v DCIT – (2018) 169 ITD 189 (Kol Trib) – ITA Nos. 127 of 2011 & 649 (Kol.) of 2013 dated 07.02.2018***

**3622.** The Tribunal confirmed the CIT(A)'s order deleting the addition made by the AO on account of difference in the amount of incentive remuneration as appearing in the return filed (shown at a lower amount) and the amount reflected in Form 26AS considering the reconciliation statement submitted by the assessee, rejecting Revenue's contention that the relief had been granted by CIT(A) in exercise of power u/s 251 on basis of additional evidence in form of reconciliation statement which were in contravention of provisions of Rule 46A, in view of fact that reconciliation statement had been duly filed before AO in course of assessment proceeding and he did not find any defect in same. Accordingly, it concluded that no additional evidence had been submitted by assessee at time of appellate proceedings as alleged by Revenue

***DCIT v Lexicon Auto Ltd. – (2018) 92 taxmann.com 84 (Kolkata - Trib) – ITA No. 1354 (kol.) of 2016 dated 19.02.2018***

**3623.** Where the Revenue filed appeal against order of CIT(A), the assessee pleaded that the Revenue's appeal was not maintainable as the tax effect in the said appeals was less than

monetary limit as prescribed in Circular No. 21/2015 dated 10 December 2015. The Tribunal held that since the Circulars were binding on the Revenue, appeals filed by the Revenue on 30 May 2014 were dismissed.

***DCIT vs. Chemical & Metallurgical Design Co. Ltd. & Arn. – [2018] 53 CCH 0035 (Kolkata ITAT) – IT (SS) A. Nos. 94 & 95/Kol/2014, 1090-1092/Kol/2014 dated May 15, 2018***

**3624.** The Tribunal set aside the CIT(A)'s order wherein the CIT(A) had not admitted the additional evidence, in form of a registered valuer's report on valuation of the assessee's own shares issued by its, on the ground that it had no relevance to the issue involved in the appeal of the assessee. It was noted that the AO had brought to tax u/s 56(2)(viib), the amount representing the difference between the fair market value of the shares as per Rule 11UA(1)(b) and the value amount actually received on such issue of shares, without giving the assessee an opportunity to exercise its option given as per Explanation (a)(ii) to section 56(2)(viib) to substantiate the higher value at which the shares were issued. The Tribunal held that the said additional evidence was very much relevant to decide the issue relating to the addition made u/s 56(2)(viib) and thus the matter was restored to the file of the AO with a direction to decide the issue afresh on merits after considering the said valuation report.

***ASG Leather (P.) Ltd. v ITO - [2018] 95 taxmann.com 151 (Kolkata - Trib.) - IT APPEAL NO. 2562 (KOL.) OF 2017 dated June 20, 2018***

**3625.** The Tribunal upheld the CIT(A)'s order striking down the action of the AO in treating LTCG on sale of equity shares of a certain company to be STCG while passing the order giving effect to the remand direction of the Tribunal in first round of appeal wherein the Tribunal had denied the benefit of section 47(xiib) on conversion of assessee company into LLP and had remanded the computation of capital gains thereon. The Tribunal held that the AO ought not to have taken a different stand in the proceedings giving effect to its directions by treating the resultant gains on sale of equity shares as STCG.

***Aravali Polymers LLP & ANR Vs ACIT & ANR. [2018] 53 CCH 0485 ITA No.222 & 267/Kol/2015, DATED AUGUST 29,2018***

**3626.** The Tribunal held that where assessee filed appeal before Tribunal with a delay of 107 days without showing that it had taken all possible steps to file appeal within prescribed time period and delay in filing appeal occurred due to factors which were beyond its control, appeal was to be rejected and, as a consequence, appeal was to be dismissed being barred by limitation.

***Krishna Developers v. Dy. CIT, -8(1) Mum.- [2019] 102 taxmann.com 51 (Mumbai - Trib.)- IT Appeal No. 3914 (Mum.) of 2015 - dated December 5, 2018***

**3627.** The Tribunal held that in the absence of any evidence to prove bonafideness of the assessee, merely on the basis of self- serving documents (i.e the new consultant (as against the old one) had advised the assessee to file appeal), huge delay of 285 days in filing appeal cannot not be condoned.

***Astec Life Sciences vs DCIT- (2018) 54 CCH 0197 MumTrib- ITA No 955/Mum/2016 dated 05.10.2018***

Go to Index

**3628.** The AO passed an order u/s 201(1) treating the assessee as assessee in default for failure to deduct tax at source. On appeal filed against the said order, since the assessee neither appeared before the CIT(A) nor filed any written submissions, the CIT(A) vide ex parte order upheld findings of the AO without even considering the assessee's objections filed before the AO. The Tribunal held that though there was failure on the part of the assessee in appearing before the CIT(A) on various dates but the CIT(A) could have considered the written submissions filed by the assessee before the AO in the light of the observations made by the AO and thus it remanded the matter back to the CIT(A) to decide the issue afresh in light of objections filed by assessee before the AO.

***Baweja Movies (P.) Ltd. v ITO(TDS) - [2018] 97 taxmann.com 73 (Mumbai - Trib.) – ITA Nos. 2670 & 2671 (MUM.) of 2015 dated July 31, 2018***

**3629.** The Tribunal allowed assessee's appeal and restored the matter to file of CIT(A) with direction to readjudicate issue on merits, noting that the CIT(A) had dismissed the assessee's appeal for delay in filing of appeal without considering the fact that the address mentioned in the assessment order was wrong and thus there was high probability that assessment order was not served on directors of the assessee-company, in absence of any material proving to contrary. Further, it was noted that the assessee had filed within the prescribed time (i.e. 30 days) from the date a copy of assessment order was provided to the assessee, upon the tax consultant's request for giving the same.

***NOKODA GRANITE & MARMO PVT. LTD. vs. ITO - (2018) 53 CCH 0380 MumTrib - ITA No. 6340/Mum/2014 dated July 23, 2018***

**3630.** The Tribunal held that if a decision is challenged by the assessee both on the issue of jurisdiction as well as on merits, the appellate authority [CIT(A)] has to decide both issues. He cannot decline to decide one of the issues on the basis that the decision on the other issue renders it academic. This approach leads to multiplication of proceedings and leads to delay.

***ITO vs. Mohanraj Trading & Exchange - I.T.A. No.6098/Mum/2016 dated 02.07.2018***

**3631.** The assessee filed an appeal before the Commissioner against the order of the AO dated 14-02-16 in manual form. The Commissioner opined that the appeal was to be filed only in electronic form and since it was filed manually, the appeal was not maintainable. The Tribunal on an appeal held that the CBDT circular which mandated the e-filing of the appeal was not applicable to orders passed prior to 1-03-2016 and since the AO had passed the order on 14-02-2016, the Commissioner was directed to admit the appeal of the assessee and pass an order on the merits of the case.

***Ashraf Aziz Kasmani v. ITO – [2018] 92 taxmann.com 283 (Mumbai – Trib.) – IT Appeal No. 235 (MUM.) of 2018 dated April 2, 2018***

**3632.** Where the assessee could not file the Form 35A in original as the same was not received from Singapore (where assessee is located) in time and further, it failed to replace the scanned copy with the original one subsequently due to change in its authorized representative, the Tribunal quashed DRP's dismissal of assessee's application under section 144C(13) and held that such defect is curable under section 292B.

***MSM Satellite (Singapore) Pte. Ltd. [TS-614-ITAT-2016(Mum)] (I.T.A. No.1929/M/2014)***

Go to Index

**3633.** Where the order of the Tribunal was passed after 90 days of completion of hearing without recording any reason for the delay, Tribunal relied on the ruling of the Bombay High Court in Shivsagar Veg. Restaurant (317 ITR 433) and the Mumbai Tribunal in G. Shoe Exports v. ACIT (89 taxmann.com 308) and held that, in view of Rule 34(5) of the Income-tax (Appellate Tribunal) Rules, 1963 r.w.s 254(2) of the Act, unexplained delay in pronouncement of order was not curable and even administrative clearance could not cure the same. Accordingly, accepting the assessee's request, the Tribunal held that such order was to be recalled and heard afresh as there was mistake apparent from record.
***CROMPTION GREAVES LIMITED vs. CIT – [2018] 53 CCH 0039 (Mumbai ITAT) – MA No. 151/Mum/2016 Arising out of ITA No. 1994/Mum/2013 dated May 11, 2018***

**3634.** Where the CIT(A) dismissed the assessee's appeal on the ground that appeal filed in paper form was not valid, the Tribunal held that since e-filing of appeal was only a technical consideration and that eventually the appeal, although in paper form, was already on record, the CIT(A) should not have dismissed the appeal solely on ground that assessee had not filed the appeal electronically. Accordingly, it remitted the matter back to the file of the CIT(A) to decide the appeal on merits.
***All India Federation of Tax Practitioners vs. ITO – [2018] 53 CCH 0087 (Mumbai ITAT) – ITA No 7134/Mum/2017 dated May 4, 2018***

**3635.** Where the assessee prayed for withdrawal of the appeal filed by him, which was declined by the Ld. DR (Accountant Member) on the ground that it should be listed together with the appeal filed by the department, the Tribunal held that the Petitioner/ Plaintiff is the 'dominus litis' and it was open to him to pursue or abandon his case and withdrawal cannot be denied except when the person making the prayer has obtained some advantage/ benefit which he seeks to retain. Accordingly, it allowed assessee's prayer and dismissed the appeal as withdrawn.
***Sainath Enterprises vs ACIT-ITA No. 189 / mum / 2011 (Mumbai Tribunal) dated 18.11.2016***

**3636.** The Tribunal restored back the matter for fresh consideration to the file of the lower authorities when assessee had furnished certain additional evidence to justify his claim of expenditure which were not submitted earlier before Departmental Authorities.
***Roderick Sale v DCIT - (2016) 47 CCH 0177 MumTrib***

**3637.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order allowing admission of additional evidence furnished before the CIT(A), noting that the show cause notice for assessment proceeding was issued by the AO for first time on 15-03-2013 (which was served on assessee on 18-03-2013), the assessee had replied to the same on 25-03-2013 and on 26-03-2013 assessment order was passed. It held that chronology of events clearly indicated that assessee did not have sufficient time to respond to queries raised by the AO in the said notice. Further, it noted that the CIT(A) gave due opportunity to the AO to comment on documents furnished by assessee as additional evidence but the AO merely chose to oppose admission of these documents without commenting on merits of the additional evidence.
***DCIT v RAJENDRA BANSILAL RAISONI - (2018) 53 CCH 0606 PuneTrib – ITA Nos. 1264 & 954/PUN/2016 dated July 20, 2018***

Go to Index

**3638.** The assessee had filed appeal before the CIT(A) against the AO's disallowance of deduction claimed u/s 54F against the long-term capital gains arising on sale of development rights in a land. The CIT(A) instead, without issuing any show-cause notice to the assessee, held that the income on sale of development rights was to be treated as adventure in nature of trade/business income which resulted in enhancement of Assessment. The Tribunal held that in view of no opportunity or any show-cause notice of enhancement been given to the assessee, as required u/s 251(2), the order of CIT(A) suffered from infirmity and the same could not be sustained. Further, noting that the CIT(A) had held the assessee to be otherwise eligible for claim u/s 54F and that the Revenue had not filed an appeal against the CIT(A)'s order, the Tribunal directed the AO to allow the assessee's claim u/s 54F.

***Naresh Sunderlal Chug v ITO - [2018] 93 taxmann.com 485 (Pune - Trib.) - IT APPEAL NO. 765 (PUNE) OF 2014 dated April 12, 2018***

**3639.** The Tribunal dismissed Revenue's appeal holding since the tax effect of the appeal was below Rs.20 Lakhs and in view of the CBDT Circular No.3/2018 revising monetary limits for filing of appeals by Department, the same was not maintainable.

***KAMALA DEVI vs. ASSISTANT COMMISSIONER OF INCOME TAX - [2018] 53 CCH 0424 Vishakapatnam Trib ITA No. 113 to 115/Viz /2017 dated August 03 2018***

**3640.** The AO while completing assessment, called for information with regard to sources for capital introduction, sources for payment of licence fees, copies of bank account, confirmation of unsecured loans, creditors and the same were placed by assessee before AO. Further, being satisfied with genuineness, identity and credit worthiness of creditors and sources for investment of capital and other investments, AO accepted sources for investment and did not make any addition on account of sources for investments as well as introduction of capital. However, AO made addition by rejecting books of accounts of assessee and estimated income @ 20% of Cost of goods sold. The CIT(A) restricted it to 10%, however the CIT(A) noticed that assessee had made investments towards the advance license fee and further observed that the AO has neither caused any enquiries nor called for the details and the assessee also did not furnish the sources for investments. The CIT(A) thus stated that there was inconsistency in respect of explanation for the sources of investment and held that the assessee failed to prove the identity and credit worthiness of the parties and the genuineness of the transactions and therefore, enhanced the income u/s 68 as unexplained cash credits. The Tribunal held that CIT(A) was not permitted to make enhancement on completely new source of income, which was not considere by the AO. It held that during appeal proceedings while adjudicating estimation of income, CIT(A) re examined sources for investments stating that AO had not caused any enquiries. From assessment order, it was clear that AO had called for details and verified sources for investment and cash credits. Further verification of sources for investments into business by CIT(A) was nothing but re examination of same issue which was already examined and accepted by AO. At best it could be termed as inadequate enquiry, but could not be held that there was lack of enquiry. From above, it was clear that enhancement was towards altogether new and different source of income and tantamount to redoing entire assessment. Issue in this case was whether CIT(A) was permitted enhance assessment on new source of income and re do assessment. In case of CIT Vs. B.P. Sherafudin, it was held that undeniably,

precedential position on powers of first appellate authority under section 251 undulates. There were seeming contradictions. But, as held by Union Tyres, and as affirmed on reference by Sardari Lai, there was consistent judicial assertion that powers u/s 251 were, indeed, very wide; but, wide as they were, they did not go to extent of displacing powers under, say, sections 147, 148, and 263. For escapement of income, there were remedial measures provided u/s 147 and 148. If order passed by AO was erroneous and prejudicial to interest of the revenue, alternative remedy was provided u/s 263. Similarly, if mistake was committed by AO, which was apparent form record, remedial measures were provided u/s 154. If CIT(A) was allowed to make enhancement on new source of income which was not considered by AO, provisions of section 147, 148 and 263 would become redundant. Therefore, the Tribunal was of considered opinion that CIT(A) was not permitted to make enhancement on completely new source of income, which was not considered by AO. Order of CIT(A) was set aside and enhancement made by CIT(A) was deleted

***B. Durga Prasad vs ITO – (2018) 54 CCH 0117 Vishakapatnam Trib- ITA No 451/Viz/2016 dated 24.10.2018***

*Miscellaneous Application (Rectification u/s 254)*

**3641.** Where the assessee, engaged in the business of construction and sale of buildings, had received on-money during AYs 1980-81 to 1987-88, which it offered to tax only in AY 1987-88 and 1988-89, consequent to search proceedings, stating that it was taxable only in those years as per the project completion method and the AO / CIT(A) rejected the contention of the assessee and held that the on-money was to be taxed in the respective years of receipt, which the assessee challenged before the Tribunal on various grounds, one of them being that if the AO / CIT(A)'s view was correct, the amount disclosed as taxable income by the assessee in the search proceedings was to be reduced and the Tribunal did not grant any relief to the assessee, the Court held that when an appeal from an assessment is brought before the Tribunal all questions arising there from, including questions which are incidental or consequential to such assessment, are open to be agitated before the Tribunal. Accordingly, it held that the miscellaneous application filed by the Petitioner seeking to rectify the order of the Tribunal, which ignored an alternative plea made by the assessee, was valid and directed the Tribunal to consider the alternative plea.

***Parmanand Builders Pvt. Ltd. & Anr. vs.CIT & Anr (2016) 97 CCH 0075 BombayHC (ITR NO. 5 OF 2002)***

**3642.** The Court set aside the order of the Tribunal passed u/s 254(2) (dated 30th September, 2016) of the Act dismissing assessee's application for rectification of order passed u/s 254(1) (dated Feb. 3,2016) in light of the subsequent decisions of the Court passed in favour of the assessee, noting that the order which was subject to rectification was passed beyond a period of 90 days after the hearing of the appeal was concluded (i.e. Sep.20, 2015) which amounted to breach of Rule 34(5)(c) of the Income Tax Appellate Tribunal Rules, 1963 (Tribunal Rules). It relied on the coordinate bench ruling in Shivsagar Veg. Restaurant wherein the coordinate bench after referring to various decisions of the Apex Court directed the President of the Tribunal to frame guidelines to prevent delay in delivery of orders/judgments. In view of the fact that the order u/s 254(2) dated September 30, 2016, rejecting rectification application, did not consider

the aforesaid Rules and the binding decisions of this Court, it held that the order was not sustainable on that ground alone. So far the second issue i.e. rectification of the order passed under Section 254(1) of the Act on the basis of a subsequent decision of the jurisdictional High Court was concerned, it held that since in any case, the order was being set aside on the first issue itself, this issue would be considered by the Tribunal while disposing of the rectification application. Thus it restored assessee's miscellaneous application to the ITAT for fresh consideration.

***Otters Club [TS-19-HC-2017(BOM)]***

**3643.** The Tribunal in its original order, relying on the order of the assessee's sister concern for earlier years, allowed the assessee's appeal and held that the rent received by it from its sister concern was taxable as income from other sources and not income from house property. On Revenue's application under Section 254, the Tribunal recalled its earlier order on the issue on taxability of rent received by the assessee from its sister concern on the ground the order relied upon did not consider the claim of the Revenue that rent/ compensation was chargeable to tax under the head 'income from the house property' while holding it to the taxable as 'income from other sources'. The Court admitted the assessee's Writ Petition and held that the order of the Tribunal recalling its earlier order was without jurisdiction as it amounted to review of its own order. It observed that the Tribunal had relied on the earlier year's orders in the case of the assessee's sister concern wherein the issue was duly considered and accordingly held that the Tribunal exceeded its jurisdiction in admitting the Revenue's application under Section 254 of the Act. More so, it held that the issue was a debatable issue and was outside the scope of rectification. Accordingly, it set aside the impugned order of the Tribunal.

***PROCTER & GAMBLE HOME PRODUCTS PVT. LTD. vs. INCOME TAX APPELLATE TRIBUNAL & ORS. - (2018) 101 CCH 0102 BombayHC - WRIT PETITION NO. 2738 OF 2017 dated Mar 9, 2018***

**3644.** The Court allowed assessee's writ petition and directed the Tribunal to expeditiously dispose off assessee's Miscellaneous Application (MA), noting that though the said application was filed in July 2018 yet till October 2018, the assessee had no information of when the same was to be heard. The Court also directed the Revenue to not take any coercive measure to recover taxes & penalty, pending such application.

***Lupin Investments Pvt. Limited vs. ITAT Mumbai & Ors [TS-620-HC-2018(BOM)] WP(Lodging) No.3104 of 2018 dated 15.10.2018***

**3645.** The Court allowed assessee's writ petition and set aside Tribunal's order not entertaining assessee's miscellaneous / rectification application against the original Tribunal order which was a non-speaking order. It was noted that the Tribunal had passed the original order with a finding that no positive material was brought on record by the assessee to show that the investment made by the five companies in the assessee-company's shareholding was genuine inspite of the assessee filing a paperbook indicating identity, creditworthiness and genuiness of investment. Further, it was noted that there was no discussion of the various case laws given in the submissions. Accordingly, the Court not only set aside the rectification order but also the original Tribunal order.

Go to Index

***AMORE JEWELS PRIVATE LTD. vs. Dy.CIT [2018] 102 CCH 0186 (Bombay HC) CIVIL JURISDICTION WRIT PETITION NO. 1833 OF 2018 dated August 03 2018***

**3646.** The Assessee, a partnership firm, had undertaken construction project. There were search and seizure actions under section 132 during which incriminating documents were seized. The statement of DKS, partner of assessee, was recorded in which he admitted to have collected Rs.30 lakhs as on-money over and above agreement value. The Assessing Officer held that on-money over and above agreement value. The Assessing Officer held that on-money was to be taken as income and, accordingly, made addition to income of the assessee. The Commissioner (Appeals) also upheld same. The assessee filed a miscellaneous application on ground that entire on-money did not represent its income and reasonable expenses were to be deducted from same and only balance amount was to be taxed. The said application was rejected by the Tribunal. The assessee filed second miscellaneous application which was disposed of by the Tribunal in chambers without hearing the assessee and without assigning detailed reasons. The Court held that the Tribunal is a last fact finding authority and it is obliged to consider appeal on facts and law aggrieved parties before the Tribunal must an opportunity to demonstrate that findings of Assessing Officer even it confirmed by the First Appellate Authority, are indeed erroneous both on facts and law and that such an opportunity ought to be extended and no technicalities should come in way of a proper and complete adjudication of contested issues. Therefore, the Tribunal was unjustified in rejecting second miscellaneous application filed by the assessee.

***D.K. Enterprises v. ITAT [2018]99 taxmann.com 151(Bom.) IT Appeal Nos. 144, 145, 220, 227 & 228 of 2002 dated October 3, 2018***

**3647.** The revenue filed an appeal against order of the Tribunal wherein the Tribunal recalled its order passed in miscellaneous petitions preferred by the Assessee. The Court held that the Tribunal was right in recalling the said order as that order was passed suo motu by the Tribunal without giving an opportunity of being heard to the affected party, that is, the Assessee and that the order was beyond the jurisdiction of the Tribunal in view of the fact that it was passed well beyond the period of limitation u/s 254(2) of the Act. Hence, it was held that even if suo motu powers were exercised by the Tribunal, they could not have been exercised beyond the period of limitation prescribed u/s 254(2) of the Act and accordingly, the appeal of the Revenue was dismissed.

***Commissioner of Income Tax vs. Indian Overseas Bank (2017) 98 CCH 0125 ChenHC (TCA Nos. 879 to 882 of 2016)***

**3648.** The Court held that where assessee filed instant petition challenging validity of Tribunal's order under section 254(2), in view of fact that Tribunal had accepted additional evidence without complying with provisions of rule 29 of ITAT Procedure Rules, impugned order passed by Tribunal became defective and, thus, same was to be set aside.The Court accordingly directed the Tribunal to deal with the assessee's application on merits and pass appropriate order in accordance with law.

***Dr. Prannoy Roy v SCIT [2018] 93 taxmann.com 328 (Delhi) – CM APPLICATION NOS. 18248 TO 18251 OF 2018 dated 04.05.2018***

Go to Index

**3649.** The Court held that it is open for the Tribunal in application u/s 254(2) to not only rectify mistakes of fact apparent on face of record but also to examine if order sought to be rectified had apparent error of law

***Promain Ltd CIT - [2016] 96 CCH 0039 (Del)***

**3650.** The Court allowed assessee's appeal against Tribunal's order wherein the Tribunal had erroneously recalled its earlier order, noting that the Tribunal's finding, irrespective of its correctness, in the earlier order was based on evidences on record and submissions made. Whereas in the rectification order, the Tribunal had not given any reason for coming to the conclusion of recalling the earlier order. The Court held that the power of rectification is circumscribed with the condition that the same can be exercised for correcting error be of law or facts apparent on record and such power vested in Tribunal was not akin to review power.

***SHAMBHUBHAI MAHADEV AHIR vs. INCOME TAX APPELLATE TRIBUNAL- [2018] 103 CCH 0087 Guj HC R/Special Civil Application No. 6337 of 2018 dated August 20 2018***

**3651.** The Court held that for the purposes of filing a rectification application, the period of limitation of six months commences from the date of receipt of the order sought to be rectified by the assessee and not from the date of passing the order.

***Liladhar T Khushlani vs Commissioner of Customs- TAX APPEAL NO. 915 of 2016(Gujarat High Court) dated 25.01.2017***

**3652.** The assessee had adopted market value of the polished diamonds as the value of its opening and closing stock. However, since the assessee was not able to produce the stock records, the AO revalued the closing stock and made additions in the income of the assessee. The CIT(A) and the Tribunal upheld the AO's order. The assessee filed the rectification application before the Tribunal the assessee contending that when the methodology was changed for the closing stock, same should have been applied for the opening stock. However, the Tribunal rejected the assessee's application since the same was not raised at the time of hearing of the appeal. The Court held that when the Revenue modified the method of valuation of closing stock of the assessee in a particular year, the same methodology should have been applied for the purpose of computation of the opening stock for that year also. It further held that the Tribunal erred in rejecting the rectification application on the ground that no such issue was canvassed before the Tribunal at the time of hearing of original appeal. It held that the issue could have been adjudicated by the Tribunal on its own account while disposing of the Tax Appeal irrespective of whether it was argued by the assessee and more so when the assessee had applied for rectification. Accordingly, it granted the Petitioner's request for rectification of the Tribunal's order to the extent of providing direction to the AO that the valuation of the opening stock of polished diamonds was to be done on the same basis as applied for valuation of the closing stock.

***VEERA EXPORTS vs. ACIT (2017) 99 CCH 0067 GujHC dated 05.06.2017***

**3653.** The assessee sought rectification of Tribunal's order on ground that while applying net rate of 10 per cent on gross receipt, Tribunal failed to take into consideration binding order passed by co-ordinate Bench of Tribunal of effect that net profit rate of 5 per cent was a reasonable rate. The Court held that in view of fact that Tribunal had passed impugned order on basis of order

passed by co-ordinate Bench in another case relied upon by revenue, judicial discretion exercised by Tribunal could not be construed to be an error on face of record which could be rectified by resorting to section 254(2)

***Ajay Kapoor v CIT [2018] 93 taxmann.com 433 (Jammu & KashmirHC)- ITA NO 05 OF 2017 dated 18.04.2018***

**3654.** The Court set aside the Tribunal's order wherein the Tribunal had dismissed the assessee's miscellaneous petition for rectification only on the ground of delay in filing the said petition. The petition was filed by the assessee against the Tribunal's order dismissing the assessee's appeal against the penalty proceedings u/s 271(1)(c), without giving relief in view of order passed by the Court in case of CIT v. Manjunatha Cotton & Ginning Factory in [2013] 359 ITR 565 (Kar), wherein it was held that notice u/s 274 should specifically state grounds mentioned in section 271(1)(c) and mere notice sent in a printed form without mentioning grounds would not satisfy requirement of law. The Court held that in order to do substantial justice, in view of the power under articles 226 and 227 of the Constitution of India, the delay had to be condoned and thus it remanded the matter back tto the Tribunal to decide the misc. petition on merits strictly.

***Muninaga Reddy v ACIT [2018] 96 taxmann.com 230 (KarnatakaHC) - WRIT PETITION NO. 25553 OF 2018 (T-IT) dated July 12, 2018***

**3655.** The Court dismissed assessee's writ petition where in the Tribunal had upheld order of CIT(A) upholding applicability of Explanation 2 to section 2(22) holding that loans and advances made to directors of company were taxable as deemed dividend. The assessee did not chose to file any appeal before the High Court, rather filed belatedly only a Miscellaneous Petition purportedly seeking certain corrections in order passed by Tribunal. The Tribunal rejected the application as it was barred by limitation and thus the assessee further preferred instant writ petition in High Court. The Court concluded that the writ jurisdiction against the order passed by the Tribunal dismissing the Miscellaneous Petition was time barred and was not available to the assessee as it was a discretionary order. Further it also held that the assessee could have preferred an appeal to High Court u/s 260A, if at all the assessee was dissatisfied with the Tribunal dismissing the appeal and if any question of law arose.

***Smt Rinku Chakraborthy vs DCIT- (2018) 98 taxmann.com 188 (Karnataka)- WP no 40052 of 2018 dated 24.09.2018.***

**3656.** Where the assessee did not press a ground of appeal before the Tribunal on the ground that it was advised that there were prior Tribunal orders directly against it but filed a miscellaneous application before the Tribunal to re-hear the matter on merits, consequent to a favourable High Court order, which was rejected on the ground that there was no mistake apparent from record, the Court held that though there was no mistake on the part of Tribunal, considering the incorrect advice received by the assessee and apparent fact that the Tribunal was not aware of the High Court order which otherwise would have been brought to the notice of the assessee, the Tribunal was to reconsider the application under section 254.

***Binaguri Tea Company Pvt. Ltd. vs. Deputy Commissioner Of Income Tax (2016) 97 CCH 0015 (Kol HC) (G.A.No.2250 of 2016 & ITAT No.304 of 2016)***

Go to Index

**3657.** The Tribunal allowed assessee's rectification petition and altered the outcome of the earlier order (in the Department's appeal) to 'dismissed'. It held that in its earlier order, mistake was committed in adjudicating Departmental appeal on merits where the only substantive ground was that of violation of Rule 46A (for admitting additional evidence without providing the AO with the opportunity to provide comments).
***Ajit Pulp & Paper Ltd v DCIT – TS-581-ITAT-2016 (Ahd) – IT(SS)A No 12 / Ahd / 2013)***

**3658.** The Tribunal held that since the miscellaneous petition filed by assessee was seeking a review of earlier order of Tribunal by reconsidering application of principles laid down by superior Courts to facts of case (disallowance of service tax payable under Section 43B of the Act), the petition filed by the assessee was to be dismissed as it was contrary to the provisions of section 254(2) of the Act.
***Gowthami Associates v ITO - [2018] 89 taxmann.com 192 (Bangalore - Trib.) - M.P. NO. 240 (BANG.) of 2017 dated 22.12.2017***

**3659.** The Tribunal held where assessee filed miscellaneous application seeking recall of an order on the ground that after conclusion of hearing on 16.10.2014, the Tribunal had pronounced its order dismissing revenue's appeal, and thus, order under challenge (wherein the matter was remanded) was inadvertently at variance with pronounced order the application so filed was liable to be dismissed by the Tribunal on the ground that there was no order dictated in open court dismissing revenue's appeal.
***Vatika Ltd. vs DCIT - [2016] 68 taxmann.com 87 (Delhi-Trib)***

**3660.** The Tribunal had dismissed the assesse's appeal for non-prosecution (ex-parte) instead of disposing of the same on merits. The rectification application filed by the assessee u/s 254(2) with the Tribunal was also dismissed by the Tribunal on account of delay in filing the said application being the prescribed the time-limit of 4 years. On appeal against the Tribunal's order rejecting the rectification application, the Court held that the assessee had to follow the mandated time-limit prescribed to approach the Tribunal for rectification. However, it held that the Tribunal had exceeded its jurisdiction by dismissing the assesse's appeal on account of non-prosecution and not on the merits of the case since Rule 24 and 25 of the Tribunal Rules mandated the Tribunal to decide the appeal on merit even in case of ex-parte hearing. Thus, noting that the proviso to the said Rules do not stipulate any period of limitation within which the aggrieved party can approach the Tribunal, the Court held that it was open to the appellant to approach the Tribunal with a suitable application for restoration of the appeals and, accordingly, directed the Tribunal to consider the appeal on merits and in accordance with law after hearing both the parties.
***Om Prakash Sangwan v ITO [2018] 94 taxmann.com 394 (Delhi) ITA NOS 625 & 626 OF 2018 dated 22.05.2018***

**3661.** The Tribunal allowed assesee's appeal alongwith the Miscellaneous Application (M.A.) filed against Tribunal's own order for AY 2012-13 wherein the Tribunal had denied assessee's claim for deduction u/s 54 with respect to long term capital gains arising out of sale of property, accepting Revenue's contention that the assessee was not eligible for the said deduction since he had purchased three residential houses. In M.A., the Tribunal accepted assessee's

contention that it had not considered earlier decision of Jurisdictional Tribunal Bench. Accordingly, it allowed assessee's claim relying on the decision in case of Laxman Singh Rawat vs ACIT [ITA nos. 1668 & 2256/Del/2013] (which was subsequently affirmed by HC) wherein it was held that the amendment brought in section 54 to limit the exemption u/s 54 to one residential unit was applicable only from AY 2015-16 and prior to such amendment, the expression "a residential house" would mean more than one residential house.
***Harbinder Singh Chimni vs Dy.CIT [2018] 54 CCH 0249 (Del- Trib.)- M.A No. 437/Del/2018 dated 20.11.2018***

**3662.** The Tribunal held that the period of limitation for filing a rectification application is six months from the end of the month in which the order is passed and not from the date of receipt of order. Even if a liberal view is taken, it can be considered as the date of uploading of the order on the Tribunal website. Ordinarily anything which is uploaded in the public domain can be accessed by the public at large and even the assessee would have access to the order and such a date always be treated as the services of the order.
***Srinivas Sashidhar Chaganty vs ITO – ITA No. 1420/hyd/2015 dated 12.07.2017***

**3663.** Where assessee had filed the Miscellaneous Application (MA) on 17-03-2017 with respect to the order of the Tribunal passed on 06-04-2016 and it was noted that as per the provision of section 254(2) as amended by the Finance Act, 2016 w.e.f. 01.06.2016 an application for rectification of apparent errors in the order of the Tribunal had to be filed within six months from the end of the month in which the order was passed whereas prior to the aforesaid amendment, such an application could be filed at any time within four years from the date of the order, the Tribunal held that the MA though filed after 1-6-2016 would continue to be governed by the law of limitation laid down u/s 254(2) on the date when the order against which application was sought to be filed was passed and not as per the amended law and, thus, the MA had to be construed as one filed within the period of limitation.
***Gifford & Partners Ltd. v ADIT – (2018) 169 ITD 224 (Kol) - M.A. Nos. 39 & 40 (Kol.) of 2017, ITA Nos. 2082 (Kol.) of 2010 and 1489 (Kol.) of 2011 dated 02.02.2018***

**3664.** The Tribunal allowed the miscellaneous apealication filed by the assessee against the Tribunal's ex-parte order, noting that on the date of the impugned order, the assessee's application for consolidation of Revenue's appeal and assessee's appeal was pending for disposal. Acccordingly, it recalled its ex-parte order passed in respect of appeal filed by Revenue and scheduled hearing for the same on date of hearing of assessee's appeal.
***Ashok N . Mehta - (2018) 53 CCH 0619 MumTrib – M.A. No.80/Mum/2018 (Arising out of ITA No. 2775/Mum/2016) dated July 20, 2018***

**3665.** The Tribunal held that an order passed by the Tribunal even one day after the prescribed period of 90 days from the date of hearing causes prejudice to the assessee and is liable to be recalled u/s 254(2) and the appeal posted for fresh hearing.
***Kaushik N. Tanna vs. ACIT - M.A. No. 98/Mum/2018 dated 01.11.2018***

**3666.** Relying on the decision in the case of K Ravindranathan Nair, wherein it was held that right to appeal was vested in the litigant at the commencement of lis and therefore such vested right

cannot be taken away and cannot be impaired or made more stringent by any subsequent legislation unless the said legislation said so either expressly or by necessary intendment, the Tribunal held that the amendment to section 254(3) to curtail the limitation period for filing rectification applications to six months from four years was prospective and applicable to appeal orders passed after 01/06/2016 and not the order prior to it.
***Lucent Technologies GRL LLC, (Since merged with Alcatel Lucent USA Inc) vs Addl CIT- MA No. 411 / mum / 2016 to 414 / mum / 2016 dated 09.10.2017***

**3667.** The Tribunal held that the amendment by the Finance Act, 2016 w.e.f 01.06.2016 specifying the time limit of 6 months to file a rectification application applies even to applications filed with respect to appeal orders passed prior to the date of the amendment and that it has no power to condone the delay in filing a miscellaneous application.
***DCIT vs Hita Land Private Limited- Miscellaneous Application No. 103/Mum/2017 dated 25.04.2017***

*Refund*

**3668.** The Apex Court dismissed Revenue's SLP against High Court's ruling wherein the High Court held that where co-operative bank made deposits in government securities and earned interest, on basis of principle of presumption that government departments had deposited TDS on interest, bank's claim for refund of TDS was to be allowed.
***CBDT v Meghalaya Co. Operative Apex Bank Ltd - [2018] 92 taxmann.com 374 (SC) - SPECIAL LEAVE PETITION (CIVIL) (DIARY) NO. 1948 OF 2018 dated MARCH 19, 2018***

**3669.** The Apex Court quashed CBDT Instruction No 1 / 2015 dated January 13, 2015 and held that the same could not to be relied upon by the AOs to deny refund to assessees in cases where notice of scrutiny was issued under section 143(2) of the Act. It noted that section 143(1D) of the Act, vide the language used therein viz. 'Notwithstanding anything contained in sub-section (1), the processing of a return shall not be necessary, where a notice has been issued to the assessee under sub-section (2)', provided the AO with discretion to deny refund in cases where notice under section 143(2) of the Act were issued, whereas the CBDT Instruction curtailed such discretion. It observed that where the language used in the legislature conferred discretionary powers to the AO, it could not be contradicted by the CBDT Instruction and that as per section 119(2), CBDT directions / instructions should not be prejudicial to the interest of the assessee.
***Tata Teleservices Ltd v CBDT – TS-135-SC-2016***

**3670.** The Assessee had filed returns for relevant AY's within the prescribed time limit for claiming refund. The returns were not processed within the time limit u/s 143(1) due to technical glitches in processing software. CBDT had extended the date for processing the return but excluded the cases covered u/s 143(1D) i.e. cases where returns have been transferred by CPC to AO and the assessee's case was one of such. The Court allowed assessee's writ petition and held that in such cases the manual processing of return ought to be allowed and refund should be issued within timelimit by the AO. Further, noting that Notification No.S.O.17(E) dated 4th January,2012 sub-clause (iib) of clause 8 confers power on the Commissioner to decide the order of priority for processing of returns of income based on "administrative requirements", so to avoid

arbitrariness, the Court also directed CBDT to formulate a 'rational' policy for processing of returns within 2 months from the date of direction.

***Tata Projects Limited & another v DCIT & others – Writ Petition No. 782, 2051, 2498 of 2017 -[TS-1-HC-2018(BOM)] – November 21-23, 2017***

**3671.** The Court directed the expeditious processing of assessee's Rs 19 crores refund application for AY 2014-15 in accordance with law, despite the fact that notice under Section 143(2) had been issued. It considered the argument of the Revenue that the refund could not be processed in pending scrutiny cases in view of Sec. 143(1D) and CBDT Instruction no. 1/2015 and also in light of the constitutional challenge to Sec 143(1D) raised by the taxpayer, but accepted the taxpayer's plea that it would not press the constitutional challenge or the challenge to the CBDT Circular if the Court were to direct the processing of the refund application in the peculiar facts and circumstances of the case. Accordingly, it directed processing of tax refund within 2 weeks in accordance with law by observing that once the petitioner agreed to give up the constitutional challenge if the refund application was processed, the order directing issuance of refund would serve the ends of justice. However, it clarified that the present order was passed in the peculiar facts and circumstances of the petitioner's case and could not be treated as a precedent for any future case, further the larger challenge of constitutional validity was kept open

***Aegis Ltd. [TS-646-HC-2016(BOM)] (W.P. No.1619 of 2016)***

**3672.** The Court allowed the assessee's writ petition and quashed the order of the CBDT dismissing assessee's refund claim under section 119(2) with respect to condonation of delay in filing return of income. It held that since the Act allows for filing of returns and refund claim within a period of one year from the end of the assessment year and there was a delay of only one day on part of the assessee, the order of the CBDT rejecting the application was erroneous to the extent that it was based on observation that there was a delay of 17 months.

***Cosme Matias Menezes v CIT (WRIT PETITION NOS. 225 AND 505 OF 2011) – TS-691-HC-2015 (Bom)***

**3673.** The Court held that the Income-Tax dept. should bring some order and discipline to the aspect of granting refunds and all pending refund applications should be processed in the order in which they are received. It held that it is the bounden duty of the Revenue to grant refunds generated on account of orders of higher forums and disburse the amount expeditiously. The Court also cautioned that in the absence of a clear policy, the Courts may impose interest on the quantum of refund at such rates determined by the Court.

***SICOM Ltd vs. DCIT - WRIT PETITION NO. 2200, 2353, 2460, 2467 & 2479 of 2018 (Bom HC) dated 01.10.2018***

**3674.** The Court held that when assessment pursuant to notice under section 143(2) was pending and likelihood of substantial demands upon assessee after completion of scrutiny could not be ruled out, refund claim could not be allowed.

***Vodafone Mobile Services Ltd. v. Asst. CIT W.P.(C) No.2730 of 2018 of 2018 and CM Nos.46054-55 of 2018(Delhi HC)-dated December 14, 2018***

Go to Index

**3675.** The Court directed the revenue to examine and pass refund claims despite notices issued under section 143(2)/142(1) and rejected the Revenue's stand that in view of section 237, the right to claim refund in the circumstances where assessments are completed or pending can be restricted by provision of section 143(1D) and clarified that even if such provision does not exist, even then the assessee would still have a right to claim excess amount in law unrestricted in any manner with respect to procedural formalities dictated by the Act.
***Indus Towers Limited [TS-568-HC-2016 (Del)] (W.P. (C) 3665/2015)***

**3676.** The Court allowed assessee's writ and quashed Revenue's adjustment u/s 245 of demand pertaining to AY 2008-09 against refund due for subject AY 2006-07, without affording an opportunity of being heard to assessee. The Court noted that although the refund voucher used the word 'adjustment to be made', the refund issued was after the adjustment was made, and rejected Revenue's stand that it was merely 'withholding' and not 'adjusting' part of refund for subject AY, pending 'verification' of demand for AY 2008-09. It relied on co-ordinate bench rulings in The Oriental Insurance Company Limited and Glaxo Smith Kline Asia (P) Ltd. to hold that prior to invoking the discretionary power u/s 245 of adjusting demand against refund due, a show cause notice must be issued to assessee;, and directed Revenue to forthwith issue the balance refund to the assessee which was unlawfully withheld.
***Vijay Singh Kadam vs CCIT - TS-233-HC-2016(DEL)***

**3677.** Where certain amount of refund receivable by the assessee had been unblocked but the payment had not been made, the Court held that it was the responsibility of Revenue to ensure that unblocked amount was paid and credited to account of assessee and that the interest was to be paid till amount was refunded and not up to date of unblocking.
***Vodafone Mobile Services Ltd. v ACIT - (2018) 253 Taxman 168 (Delhi HC) - W.P. (C) Nos. 9126 & 9127 of 2017 dated 04.01.2018***

**3678.** The Court held that where the assessee had made a payment of interest as a penalty to its lender in accordance with the agreement entered into between the two and deducted tax at source on the same, where the funds were used for import of capital goods which was one of the purposes set out in section 10(15)(iv)(c) of the Act, the assessee was correct in contending that the interest fell under the exemption provided under section 10(15)(iv)(c) of the Act and therefore the refund of excess TDS on the interest paid was to be refunded and that the Revenue authorities were incorrect in denying refund on the ground that the interest was paid as a result of violation of the agreement since the penal interest was imposed as a part of the conditions of the agreement itself.
***CEAT Ltd v CBDT – TS-195-HC-2016(DEL)***

**3679.** The Department recovered interest due from the Petitioner under section 220(2) of the Act by appropriating the amounts from the property of the Petitioner which had been attached and from the refunds due to the Petitioner. However, subsequently, the CCIT had waived of all the interest payable by the Petitioner pursuant to which the Petitioner filed an application to the AO for refund of the amount wrongly claimed and interest on such refund. The same was denied by the AO on the ground that the refund arising to the Petitioner by way of waiver of interest under section 220(2) was due to discretion exercised by the CCIT and not due to the fact that the tax paid by the Petitioner exceeded the demand. The Court held that the language

contained in section 244A(b) (providing for refund of interest in any other case) was to be read along with the expression 'refund of any amount becomes due' occurring in Section 244A of the Act. Therefore, it held that interest on refund would be payable even where the refund arose out of waiver of interest by the CCIT.

***Preeti N Aggarwala v CCIT – (2017) 99 CCH 0001 (Del HC) – WP C 1011, 1012, 1183 / 2016***

**3680.** Where the assessee made payment of royalty to a non-resident French company and deducted tax @ 20 percent under Section 206AA but subsequently realized that as per the India-France DTAA tax was to be deducted @ 10 percent, consequent to which the assessee filed application for refund before the CBDT, the Court held that the CBDT was unjustified in refusing to grant the assessee refund on the ground that the application was belated by 9 months. The Court noted that the excess deduction of TDS was on account of a bonda-fide mistake and condoned the delay in filing application. Accordingly, it directed the CBDT to consider the plea of refund on merits.

***MULTIBASE INDIA LTD. vs. INCOME TAX OFFICER & ORS. - (2018) 101 CCH 0179 GujHC - SPECIAL CIVIL APPLICATION NO. 22195 of 2017 dated Feb 15, 2018***

**3681.** The Court held that that mere issuance of notice u/s. 143(2) claiming extended period for processing of refund u/s. 143(1) would not be sufficient reason to withhold tax refund claimed by the assessee. Assesse had filed tax returns for both the years AY 2015-16 and 16-17 declaring high amount of tax losses and claimed tax refunds arising on account of TDS and for one of years i.e AY 2015-16 notice u/s Sec 143(2) was issued but the assessment was not complete. Further, the Court stated that it would be 'wholly inequitable' for the AO to merely sit over the petitioner's request for refund citing the availability of time up to the last date of framing the assessment u/s 143(3). Applying the reasonable interpretation of the provisions, it observed that the AO was expected to take up an expeditious disposal of the processing of return u/s 143(1) once the assessee requests for release of the refund and send an intimation to the assessee if he wishes to withhold the refund. For AY 2015-16, the Court directed the AO to complete the process by Oct 31, 2017 and for AY 2016-17, it noted that the time limit for processing return u/s 143(1) was not over.

***Corrtech International Pvt. Ltd. vs. DCIT [TS-434-HC-2017(GUJ) SPECIAL CIVIL APPLICATION NO. 13987 of 2017 dated 16.09.2017***

**3682.** The return filed by the assessee claiming refund was wrongly declared by the Department as invalid u/s 139(9) on the ground that the aggregate of the shares filed by the assessee exceeded 100%. The department further advised the assessee to file a fresh return and an application u/s 119(2)(b) to the Pr. Commissioner to condone delay in filing the return. However, the application was rejected by the Pr. Commissioner without providing an opportunity for hearing. The Court was of the view that it was obligatory on part of the Department to scrutinize whether the return filed was within time and in the instant case the Court directed the ITO to scrutinize the return even though the time had lapsed and also pass an order for refund if the assessee was entitled to it.

***Shubharam Complex v. ITO – [2018] 93 taxmann.com 290 (Karnataka) – Writ Petition No. 27383 of 2016 dated April 10, 2018***

Go to Index

**3683.** The Court allowed the asssessee's writ challenging CIT's order dismissing assessee's application u/s 119(2)(b) seeking refund of advance tax paid for AYs 2004-05 and 2005-06 on ground of delay, noting that the assessee was suffering from huge loss for a considerable period of time and was not in a position to engage a proper accountant for preparing accounts and thus there was genuine hardship, warranting condonation of delay. Referring to Sec 119(2)(b), the Court held that the CIT has powers to condone delay on account of genuine hardship and there was sufficient cause for delay condonation in the instant case. It further held that if the amount claimed was not refunded, the assessee's losses would be much more than what was computed presently and therefore directed the Revenue to process refund.
***Beta Cashews and Allied Products Pvt. Ltd. [TS-577-HC-2016(KER)] (WP(C).No. 18010 of 2012 (A))***

**3684.** Where the assessee filed a petition under Section 119 of the Act praying for condonation of delay in filing of return wherein it claimed a refund, which was denied by the Commissioner who held that the return was invalid and that the refund could not be granted, the Court set aside the order of the Commissioner refusing to condone the delay and denying refund and held that the Revenue was under an obligation to effect refund, without calling upon assessees to apply for refund claim. Accordingly, it held that the assessee was entitled to the refund claimed by it.
***Gopalan Thygarajan v CIT - [2018] 89 taxmann.com 187 (MadrasHC) - W.P. NOS. 10726 & 10727 of 2011 dated 11.12.2017***

**3685.** Despite the fact that the assessee, a co-operative bank was exempt from tax on income derived from securities by virtue of Section 80(P)(2)(a)(i) of the Act, certain Central, State organisations had wrongly deducted TDS on the assessee's interest income. Though there was a delay in filing of returns by the assessee, it made a claim of refund and interest on refund of the excess tax deducted (exceeding Rs. 1 Lakh) in its returns. The assessee also made a petition for the refund and interest on refund before the CBDT u/s 119(2)(b) (which was also delayed), wherein the CBDT condoned the delay in filing of return and allowed the refund to the assessee but denied the assessee interest on refund. The Court, relying on the Supreme Court ruling in Tata Chemicals Ltd (2014) 6 SCC 335 and P&H Court ruling in National Horticulture Board (2002) 125 Taxman 922 (P&H). held that the assessee was entitled to interest on refund under section 244A but held that the interest was to be allowed from the date of making petition to CBDT and not before. Further it rejected the assessee's compensation claim in the form of 'interest on interest', distinguishing its reliance on SC ruling in Sandvik Asia Ltd, it noted that the assessee therein was made to wait for refund of interest for decades and was hence greatly prejudiced for inordinate delay on the part of the Revenue and that in present case, the initial long delay in filing returns and application to CBDT was attributable to the petitioners themselves. Therefore it held no interest on interest could be granted.
***The Meghalaya Cooperative Apex Bank Ltd. & Anr [TS-228-HC-2017(SIKKIM HC)] W.P. No. 317 of 2014 dated 31.05.2017***

**3686.** The Tribunal held that once it was found that income covered by the return filed by the assessee was not taxable and tax was paid by the assessee, the refund of such tax was a must.
***Vaibhavi Discretionary Family Trust & Ors v ITO & Ors – (2015) 45 CCH 0179 Mum Trib***

Go to Index

**3687.** The Tribunal held that where due to mistake, TDS related to HUF of assessee whereof assessee was karta was credited to assessee's TDS account, assessee could claim refund of such TDS credit, provided HUF had not availed benefit of such TDS certificate.
***Ratanlal Biharilal Atal v. Income-tax Officer, Ward-1, Amravati- [2018] 100 taxmann.com 70 (Nagpur - Trib.)- ITA No. 90 (NAG.) of 2017-dated October 26, 2018***

*Recovery*

**3688.** The Apex Court dismissed Revenue's SLP against HC ruling wherein it was held that section 226(3)(x) did not confer arbitrary power on Income-tax department to recover amount of tax liability of Mining department from assessee who was awarded tender for settlement of sand Ghats by Mining department. The assessee-company was awarded tender for settlement of Sand Ghats located in different districts and it was required to pay settlement amount in three instalments with simultaneous payment of required amount of tax to Sale Tax Department and the assessee received notice issued by ITO under section 226(3) calling upon to deposit a sum being income-tax liability of Mining department for default in deducting TCS by the Mining department from various settlements. The Court held that income-tax authorities had arbitrarily deducted said amount from bank account of assessee without any action being carried out by Income-tax department against Mining department for failure to deposit TCS under sections 276B and 276BB. The tax was the liability of the Mines and Geology Department and instead of taking coercive action under section 276B and section 276BB, action of Income-tax Department by attaching the bank account and directing the same to be recovered from the account of the assessee was most unreasonable. It directed the Income-tax Department to return the said amount with interest.
***Principal Chief Commissioner of Income tax vs SAINIK FOOD PVT. LTD. AND ORS. [2018] 103 CCH 0254 (ISCC)- SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 38319/2018 dated 13.11.2018***

**3689.** Pursuant to the order of the Delhi High Court, (ultimately upheld by the Supreme Court), the assessee was liable to pay tax on payments received by it under the Race Promotion Contract for which the Department had attached the assessee's letter of credit u/s 281B. The assessee invoked such letter of letter of credit which had to be honored by the bank. The Apex Court directed the assessee to remit the amount received under the said LC towards the tax liability on consideration received under the Race Promotion Contract.
***The Royal Bank of Scotland PLC vs. Axis Bank Ltd. & Ors. TS-376-SC-2017 (Civil Appeal No. 11064-65/2017 dated August 25, 2017)***

**3690.** The Court dismissed the writ petition filed by the Petitioner who had purchased an immovable property from the assessee against the AO's order declaring the sale of the said property by the assessee to the petitioner to be void in terms of section 281, since the said sale was below market price and there was outstanding demand of tax arrears payable by the assessee. The petitioner had also challenged the Tax Recovery Officer's order for attachment under rule 48 of Second Schedule to Act. It was noted that prior to the said sale/ purchase, the AO had rejected the assessee's application for certificate under section 230A on the ground that there was a demand for income tax arrears due from company. However, subsequently section 230A itself

was repealed. It was held that the clause (i) of section 281(1) which inter alia provides that the transfer shall not be void if it is made without notice of any tax or other sum payable by the assessee under the Act was not applicable since, in instant case, on account of refusal of the AO, to issue a certificate u/s 230A, petitioner became aware of arrears of tax and other sums payable by the assessee. The Court also rejected the petitioner's plea that if the Department found that a property of assessee had been transferred with intention to defraud revenue, it would have to file a suit under rule 11(6), to have transfer declared void under section 281, holding that if a transfer had been made by a defaulter in contravention of rule 11(6), it was automatically void.

***Shriya Bhupal v ACIT - [2018] 95 taxmann.com 230 (Andhra Pradesh) - WRIT PETITION NO. 11629 OF 2007 dated May 2, 2018***

**3691.** The assessee company was liable to pay income tax for period 1995-96 to 2002-03 but was declared to be wound up. The assessee company owned two immoveable properties and by two registered sale deeds, it sold property to the Petitioner. Prior to the execution of such sale deed, the assessee-company had made an application with the AO to issue certificate under Section 230A [an erstwhile provision mandating a certificate from the AO stating that all the liability under the Act have either been discharged or satisfactory provisions have been made for the same, before registering any document for transfer of property], which was rejected by the AO as there were demands for income-tax arrears from the assessee. However, after the said section itself was repealed, the said sale deeds were executed. Noting the above, the ACIT passed an order u/s 281 declaring that sale of two immoveable properties to as void, since the sales consideration was far below the market value of property and thus indicating that the sale was done with view to defraud the Revenue. An order was also passed for attachment of property. The Petitioner filed the present writ petition against the said order passed u/s 281 and the order of attachment. The Court dismissed the petitioner's argument that the Tax Recovery Officer, like any other creditor has to go to the Civil Court seeking a judicial declaration to give effect to the statutory declaration u/s 281, holding that the Revenue cannot be equated with a mere creditor and tax due to the state is crown debt. It observed that the Petitioner had taken chance by going ahead with the purchase even after knowing about non-payment of tax arrears by the assessee and rejection of application for a Certificate u/s 230A. It thus declined to set aside the order of attachment and the order u/s 281 declaring the sale to be void.

***ACIT vs. PRUDENTIAL CONSTRUCTION CO. LTD. (HIGH COURT OF ANDHRA PRADESH) (Writ Petition No. 11629 of 2007) dated May 2, 2018 (102 CCH 0052)***

**3692.** The Court, following the decision of division bench in the case of Andrew Communications India Ltd. (W.P. No. 1021 of 2016), quashed the notices issued by the Revenue u/s 226(3) and held that Revenue was not justified in attaching the bank accounts of the Assessee since, admittedly, 15% of the disputed demand had been already recovered.

***SESA Resources Ltd. vs. ACIT (2017) 98 CCH 0069 – Bom HC (W.P. No. 117/2017 Dated 02.02.2017)***

**3693.** The Court held that AO can exercise jurisdiction u/s 179(1) for recovery from directors of a private company only when it fails to recover its dues from such company and that such jurisdictional requirement cannot be said to be satisfied by a mere statement in the order that

recovery proceedings had been conducted against the defaulting company. It was held that since the show cause notice issued u/s 179(1) did not indicate or give any particulars in respect of steps taken by department to recover tax dues from defaulting private company, the impugned order passed u/s 179(1) was to be set aside.
***Madhavi Kerkar v ACIT - (2018) 253 Taxman 288 (Bom) - Writ Petition No. 567 of 2016 dated 05.01.2018***

**3694.** Where the commissioner passed an order in terms of section 245 whereby refund available to the assessee for assessment year 2005-06 was adjusted against demands for assessment years 2004-05, 2006-07 and 2008-09, the Court held that since the said order was a non-speaking one and, moreover, it was passed without considering assessee's objection, it was to be set aside. Accordingly, the matter was remanded back to ACIT for disposal afresh.
***Vodafone India Ltd. v. DCIT – [2018] 92 taxmann.com 399 (Bombay) – Writ Petition No. 3064 of 2017 dated April 10, 2018***

**3695.** The assessee was a former director of Shravan Developers Pvt Ltd. and had resigned in the year 2013 following which the company became a delinquent private limited company owing to failure to pay taxes for AY 2011-12. The assessee received a show cause notice u/s 179(1) seeking to recover the taxes dues of Rs. 4.69 crores of the delinquent Private Ltd. Company as its director. In response, the assessee sought details of the notices issued on the company but without responding to the assessee, an order u/s 179(1) making a demand of Rs. 4.69 crores. The assessee filed a writ petition and contended that the order was without jurisdiction for the reason that section 179(1) could be invoked only when the taxes due to the company could not be recovered from it. The Court held that the efforts made and the failure to recover taxes from the company in a notice u/s 179(1) was sine qua non but the show cause notice issued by the AO did not indicate any particulars of the failed efforts to recover taxes from the company and accordingly the order was quashed.
***Mehul Jadavji Shah v. DCIT - [2018] 92 taxmann.com 401 (Bombay) - WRIT PETITION NO. 291 OF 2018 dated APRIL 5, 2018***

**3696.** Where the AO passed an order u/s 220(6) directing the assessee to deposit 50 percent of the tax demand without considering the assessee's stay application pending disposal by CIT (A), the Court set aside the order of the AO as it was arbitrarily directed upon the assessee to deposit 50 percent of the tax demand.
***Sushil Bhatia (HUF) v. ACIT - [2018] 94 taxmann.com 30 (Bombay) - WRIT PETITION NO. 804 OF 2018 dated APRIL 19, 2018***

**3697.** The Tax Recover Officer issued on assessee a notice dated 18-11-2004 for auction of its attached property, challenging which the assessee filed writ petition praying to quash said notice. The Court observed that the notice was barred by limitation because of rule 68B of Second Schedule- which specifies the time limit of 3 years from the end of FY in which the demand arises and the immovable property is attached for recovery. The Assessee had challenged the original assessment order up to Supreme Court and the same vide order dated 16-1-2001 had been dismissed against the assessee. The Court further held that the period of limitation of 3 years enacted by parliament in rule 68B(1) of second schedule of Income Tax Act would begin to apply from 1.4.2001 and therefore the above mentioned issued notice on

18.11.2004 was barred by limitation i.e beyond 3 years and the attachment of property was set aside.
***Rambilas Gulabdas (HUF) vs TRO- (2018) 98 taxmann.com 309 (Bom)- WP no 3388 of 2005 dated 27.09.2018***

**3698.** The Court held that where Assessing officer attached bank accounts of assessee and withdrew amount therefrom without disposing of stay application filed by assessee, action of assessing officer was not justified and directed the AO to refund back the amount to the assessee within a period of one week.
***Khandelwal Laboratories (P) Ltd v DCIT - [2016] 68 taxmann.com 171(Bombay)***

**3699.** The Court dismissed Assessee-individual's writ and refused to interfere with the order passed by Tax Recovery officer TRO u/s. 159 (proceedings against the legal representative of the deceased). The Court rejected the contention of the Assessee that although he is the son of the deceased, he could not be considered as legal representative as he had not succeeded to the estate due to severance of relationship with the deceased by holding that the definition of legal representative as provided in Sec. 2(11) of the CPC and Sec. 2(29) of IT Act wasan inclusive and wider in scope definition which not only included heirs but also persons who represented the estate of the deceased and the Petitioner was undoubtedly, as a matter of fact, one of the heirs and legal representatives of the deceased.
***Arvind Kayan vs. UOI & Ors. TS-373-HC-2017(CalcuttaHC) (WP No. 504/2017 dated August 30, 2017)***

**3700.** The Court held that Income Tax Department could not claim any precedence over the secured creditor in proceedings against property for the purpose of recovery of the income tax arrears in the light of the law laid in the Enforcement of Security Interest and Recovery of Debts Laws and Miscellaneous Provisions (Amendment) Act, 2016.
***Edhayam Frozen Foods Pvt. Ltd. Vs.Tax Recovery Officer & Anr.(2016) 97 CCH 0115 ChenHC (WP No. 27240 of 2016)***

**3701.** The Court dismissed assessee's writ and upheld recovery proceedings against garnishee- Bank (with which assessee had an account) with respect to non-payment of tax arrears by assessee u/s 226(3)(i). The Court rejected assessee's stand that tax recovery proceedings were illegal as it was incumbent upon the Department to have issued notice u/s. 226(3)(iii) to assessee simultaneously with or prior to the issue of notice to the Bank u/s. 226(3)(i) for attaching assessee's bank account and held that the requirement u/s. 226(3)(iii) was only that a copy of the notice should be 'forwarded to the assessee' and not that a copy should be served on the assessee in advance or simultaneously. Further, it observed that the assessee was fully aware of consequences of failure to pay tax within 30 days of receipt of demand notice u/s 156 and also noted that the assessee had not filed any application for stay of demand till date.
***GECAS Services India Pvt. Ltd. vs. ITO & Others TS-290-HC-2017(HC Delhi) (WP (C) 3127/2017 dated July 11, 2017)***

**3702.** The Court held that notice issued under section 13(2) of the SARFAESI Act operates as an attachment / injunction, restraining the borrower from disposing of the secured assets and

therefore such notice was not a mere show cause notice and where the same was issued prior to the section 281 order issued by the income tax department, it could not be overruled by the said order.

***Suresh Kumar Goyal v CCIT – (2016) 96 CCH 0068 (Del) - W.P.(C) 3430/2016 & CM No. 14665/2016***

**3703.** The Court held that TRO cannot declare a transaction of sale of attached property null and void under section 281, if notice for recovery under rule 2 of Schedule II was not served upon owner/defaulter, prior to sale of said property.

***Rekhadevi Omprakash Dhariwal v. TRO [2018] 96 taxmann.com 84/257 Taxman 109 (Guj.) - Special Civil Application No. 1492 of 2018 dated July 2, 2018***

**3704.** The Court dismissed Petitioner-Director's writ petition and upheld order u/s 179 lifting the corporate veil and holding Petitioner in default for income-tax dues of the public company in which he was a director. The Court rejected Petitioner's contention that Sec 179 is applicable only to a private company by observing that the company partook the character of a private company as public was not invited to subscribe the share capital and there was no remote public involvement and that for the purpose of sec 179 the company could be treated as a 'de facto' private company. The Court noted that substantial accommodation entries were made during the petitioner's tenure and after his resignation the company was left with huge liabilities and the activities carried out by the company were ultra-vires the memorandum. The court further held that a director with a sizable amount of holding in the company could not be allowed to keep himself away from his responsibilities and that lifting of the corporate veil was necessary.

***Ajay Surendra Patel Vs. DCIT [TS-79-HC-2017 (GUJ)] (C/SCA/6580/2016) dated 02/03/2017***

**3705.** The Court held that where during pendency of appellate proceedings, stay was granted to respondent no. 2 firm in which assessee was an while partner subject to deposit of a part of amount demanded, proceedings under sec. 188A could not be initiated against assessee as long as respondent No.2 firm continued to deposit amount so demanded even in instalments.

***Mukesh Kumar Prabhatbhai Desai v. ITO- [2018] 100 taxmann.com 130 (Gujarat)- R/Special Civil Application No. 13571 of 2018-dated October 29, 2018.***

**3706.** Assessee acquired property by executing sale deed for consideration through power of attorney of original owner. Transaction was carried out after due diligence like public advertisement and title clear certificate. TRO under rule -16 of second schedule of Income Tax Rules held that sale deed of property was declared null and void, and property was also ordered to be under communication. The Court held that, 2nd Schedule of Income Tax Act was procedure for recovery of tax wherein Rule 2 provides for issuance of notice for recovery of arrears by Tax Recovery Officer upon defaulter requiring defaulter to pay amount specified in certificate within fifteen days from date of service of notice and intimating that in default, steps would be taken to realize amount under this schedule Rule 16 provides for considering private alienation to be void in certain cases. This rule required service of notice on defaulter under Rule 2 and after such service defaulter or his representative in interest shall not be competent to alienate property in manner prescribed belonging to defaulter without permission of TRO. It also prohibits

for issuance of any process by Civil Court against such property in execution of decree for payment of money. It also provided that where attachment had been made under this schedule private transfer or delivery of property attached should be void as against all claims enforceable under Attachment Act. From affidavit as well as from additional affidavit department had not been able to bring on record service of notice under Rule 2 of Schedule 2, only documents on record along with additional affidavit were order of attachment of immovable property whereas no notice as contemplated under Rule 2 was found on record. Assessee's petition was allowed.
***Rekhadevi Omprakash Dhariwal vs. Tax Recovery Officer-(2018) 102 CCH 0214 GujHC-R/Special Civil Application No. 1492 of 2018-Dated Jul 2, 2018***

**3707.** Where in course of investigation on FIR of an individual, police recovered certain amount in cash and applications filed by department in session court for interim release and possession of currency seized by police were dismissed, on such dismissal being challenged by the department before the High Court on ground that it was entitled to the possession of money as the same was unaccounted money of individual under provisions of Act, the Court held that department was entitled to retain cash till final conclusion of proceedings under Act.
***Vipul Chavda v State of Gujarat - (2018) 253 Taxman 263 (Guj) – Special Criminal Application possession of muddamal No. 10055 of 2017 dated 18.01.2018***

**3708.** The Court allowed assessee's writ and quashed recovery notice u/s 226(3) issued to Allahabad Bank with respect to assessee's tax-arrears for AY 2011-12 on the ground that assessee was holding cash credit and term loan account with Allahabad Bank to enable assessee to borrow money from bank for the purpose of its business, whereas power u/s 226(3) would be available "when there is person from whom money is due or may become due to the assessee.
***Kaneria Granito Ltd - TS-406-HC-2016(GUJ) - SPECIAL CIVIL APPLICATION NO. 14497 of 2014***

**3709.** Certain amount of cash, jewellery, fixed deposit and National Savings Certificates (NCSs) were seized during the search and seizure proceedings conducted at the residential premises of the assesse and his spouse. The AO also passed penalty order u/s 271(1)(c) by raising demand of amount for various years from 2005-2006 to 2011-2012. When the assesse requested to release cash and other assets seized, he was informed that entire cash was adjusted against outstanding demand. The assessee file a writ petition with the high Court against such refusal to release cash and other assets. The Court held that since entire cash amount seized was adjusted against various demands raised during assessment proceedings and even details of such adjustment had been provided to the assessee, there was no question of return and/or release of cash seized. With respect to release of fixed deposit/ NCSs and jewellery, the Court held that after adjusting the amount outstanding in case of the assessee's spouse, the balance fixed deposit receipts / NSCs and jewellery seized as per the seizure panchnama should be returned to the assesses at the earliest, wihtin two weeks.
***SANDEEP RAGHUNATH GUPTA vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0117 (Guj HC) - R/SPECIAL CIVIL APPLICATION NO. 2017 of 2018 With R/SPECIAL CIVIL APPLICATION NO. 2022 of 2018 dated June 25, 2018***

Go to Index

**3710.** The assessee was engaged in the provision of the Managing Consultancy Services. The ITO passed an order u/s 143(3) and made an addition u/s 69 against the return filed by the assessee on the ground that the assessee was unable to explain the source of funds in respect of the investment that the he had made. An appeal was filed by the assessee before the CIT (A) on the same day. The assessee also filed a stay application before the ITO requesting to stay the demand until the disposal of appeal. The ITO directed the assessee to pay 50 percent of the tax demand subject to which the recovery of the balance demand would be stayed. The assessee paid 20 percent of the tax demand and approached the PCIT to stay the recovery of the balance demand until the disposal of the appeal but the PCIT confirmed the order of the ITO to pay 50 percent of the tax demand. The assessee filed an application before the CIT (A) for stay of recovery of the balance demand until the disposal of the appeal and at the same time a communication was issued by the ITO to the CIT (A) to proceed with the recovery notwithstanding the pendency of the stay application before the CIT (A). Further, the CIT (A) passed an order and held that the CIT (A) had no jurisdiction to pass order on the stay application as the issue was already decided by the PCIT. Pursuant to which, the ITO issued a garnishee notice directing the bank to make payment towards the demand of tax from the account of the assessee. A writ petition was filed challenging the said order. The Court noted that the PCIT had confirmed the order of the ITO demanding 50 percent of the taxable amount without assigning any reasons and the same was liable to be set aside on the basis of the well settled principle that any order passed without assigning reasons was invalid in the eyes of the law. Accordingly, the order passed by the CIT (A), stating that the matter was already decided by the PCIT, and the garnishee notice were held invalid and the appeal of the assessee was allowed.

***Fincare Business Services Ltd. v. ITO - [2018] 92 taxmann.com 355 (Karnataka) - WRIT PETITION NO. 13913 OF 2018 (T-IT) dated APRIL 4, 2018***

**3711.** The Court quashed the order passed u/s 179 to recover the demand outstanding in the case of a company in which the assesse was a director noting that when the notice was issued to initiate the said recovery proceedings, the assesse was in Jail and the said notice should have been served on him through Superintendent of Jail, which course was not adopted by the Tax Authority. It thus held that order u/s 179 could not have been passed without affording concerned parties an opportunity of hearing and hence not in compliance with the principles of natural justice. The Court directed the Tax Authority to pass fresh order u/s 179 after affording the petitioner an opportunity of hearing. Further, with respect to the order passed u/s 230 holding that the assesse could not leave the territory of India by land, sea or air unless he furnished a Tax Clearance Certificate to the effect that satisfactory arrangements had been made by him for payment of his tax dues, it was held that after considering the fresh order to be passed u/s 179 as directed, a fresh order u/s 230 should also be passed either confirming or varying the earlier one.

***MAILAKKATTU VARGHESE UTHUP vs. PRINCIPAL COMMISSIONER OF INCOME TAX - (2018) 102 CCH 0085 (Ker HC) - W.P.(C).No. 10675 of 2018-H dated June 11, 2018***

**3712.** The Court held that before a person can be arrested and detained, the provisions contained in rule 73 of second schedule are to be complied with. Where the Tax Recovery Officer had followed due procedure established under provisions of the Income Tax Rules before directing

arrest of detenue for recovery of arrears of tax, order could not be said to being violation of article 21 of the Constitution of India.

***Ayush Kataria v. Union of India [2018] 97 taxmann.com 137(MP) -Writ Petition No. 10329 of 2018 dated July 9, 2018***

**3713.** Where the purchase of property by the petitioner was declared as void by the Tax Recovery Officer on the ground that it was under attachment proceedings for recovery of tax dues of vendor, the Court dismissed the writ petition filed by the petitioner claiming that the property was not liable for attachment as the vendor had no income-tax dues payable and the that Tax Recovery Officer attached petitioner's property for arrears of vendor long after petitioner had bonafidely purchased the property. The Court held that the petitioner could not have approached writ court invoking jurisdiction under Article 226 of Constitution of India and thus dismissed the petition 'as not maintainable' with a direction to the petitioner to file a claim before the Tax Recovery Officer.

***Champa Devi v Tax Recovery Officer-1 [2018] 96 taxmann.com 218 (Madras) - W.P. NO. 8148 OF 2012; M.P. NO. 1 OF 2012 dated July 12, 2018***

**3714.** The assessee filed a petition before the Court challenging the notice issued under section 226(3) addressed to the assessee's banker for recovery of tax demand. The assessee contended that the Revenue was not authorized to issue the said notice before the expiry of time limit to file an appeal before Tribunal against the order passed by the CIT (A). The Court in view of the facts held that the Revenue cannot direct the assessee to remit entire tax well before the expiry of limitation period for filing an appeal. Therefore, the interim protection was to be granted to the assessee till the assessee approached the Tribunal subject to the condition that the assessee would pay 20 percent of the disputed tax demand. Accordingly, the matter was remanded by the Court to the Tribunal.

***S.P. Mani & Mohan Dairy v. ACIT – [2018] 93 taxmann.com 11 (Madras) – W.P. No. 8113 of 2018 dated April 6, 2018***

**3715.** The Court allowed the writ petition filed by the assesse against the AO's order directing the assessee to pay 20% of the tax demand as per the CBDT Office Memorandum dated 31.07.2017, for being entitled for stay of the demand of the remaining tax till the disposal of the appeal before the CIT(A), noting that the AO had not dealt with the assessee's specific plea that their income of the relevant year was 1/4th of tax assessed and the plea about the financial position and the prejudice that was caused on account of the high pitched assessment. Referring to the said Memorandum, it held that the CBDT had not completely ousted the jurisdiction of the officer, while examining a prayer for stay of the demand of tax pending appeal and the AO could not have passed the impugned order without taking note of the assessee's case and without considering as to whether the assessee had made out a prima facie case for grant of interim relief. Accordingly, the matter was remanded back to AO for fresh consideration.

***Samms Juke Box v ACIT - [2018] 95 taxmann.com 247 (Madras) - WRIT PETITION NO. 3735 OF 2018; W.M.P. NO. 4550 OF 2018 dated June 28, 2018***

**3716.** The Court quashed the order of attachment passed in the name of the assessee's deceased son with respect to a property which the assessee had settled in favour of her son in 2011. It

accepted the assessee's claim that the settlement was a conditional settlement, subject to the life interest reserved by the assessee-petitioner, and thus she was entitled to be in possession and enjoyment of the property and only after her life time, the settlement would take effect. The Court held that as on date, the petitioner-assessee being the absolute owner of the property was entitled to be in possession and enjoyment and, thus, the question of attaching the said property could not arise, more particularly, by issuing an order of attachment in the name of a deceased person.

***S Rathinam v The Tax Recovery Officer - [TS-357-HC-2018(MAD)] - W.P.No.4585 of 2018 and W.M.P.Nos.5637 & 5638 of 2018 dated June 22, 2018***

**3717.** The Court held that tax Recovery Officer can not declare a transaction of transfer as void under section 281 and if revenue wants to have transaction nullified under section 281, it must go to civil court to seek declaration to that effect.

***Agasthiya Holdings (P.) Ltd. v CIT [2018] 93 taxmann.com 81 (Madras) – C.M.P. (MD) NOS. 7953 & 8250 OF 2017 dated 13.04.2018***

**3718.** A notice was issued to the assessee u/s 156 for payment of advance tax u/s 210(3) which stated that if the assessee was to pay the amount less than what had been asked to pay then the assessee would be required to send to the AO the reason for low estimate under Form 28A. The assessee on receipt of the notice paid an advance tax of Rs. 30 lakhs (as against the demand of Rs. 1, 26, 41,650/-) but failed to file Form 28A as given in the notice. Thus, the AO issued impugned notice u/s 226(3) proposing to attach the assessee's bank account and recovering the entire amount of tax. The assessee filed a writ petition against the order of the AO wherein the Court stated that the assessee had to be partly blamed for not filing Form 28A, however, the form was filed subsequently by the assessee and the same was to be considered by the Revenue. Thus, the notice issued u/s 226(3) could not be given effect to and the matter stood remanded.

***Swami Arvind v. ACIT – [2018] 92 taxmann.com 327 (Madras) – Writ Petition No. 7709 of 2018 dated April 3, 2018***

**3719.** The Court held that no coercive step should be taken for recovery of outstanding tax demand till the expiry of period of limitation for filing an appeal against the order passed by the Commissioner.

***Kalaignar TV (P.) Ltd. v. ACIT – [2018] 93 taxmann.com 190 (Madras) – W.P. Nos. 7819 & 7820 of 2018 dated April 4, 2018***

**3720.** Where during the pendency of appeal before the High Court, a notice of attachment of assessee's bank account was issued in view of the fact that the assessee had already paid a part of the tax demand, it was held by the Court that in the interest of justice, recovery proceedings were to be stayed subject to payment of a further of Rs. 5 lakh by assessee.

***V. Sabitamani v. ACIT – [2018] 93 taxmann.com 280 (Madras) – W.P. No. 7957 of 2018 dated April 16, 2018***

**3721.** The Court refused to lift attachment on immovable property purchased by Petitioner from a tax defaulter, noting that demand notice under Rule 2 of second schedule (as mandated u/s. 281)

was served upon tax defaulter prior to the execution of the sale transaction. It held that the moment such a notice was served by virtue of Rule 16(1) of the second schedule, the defaulter became incompetent to deal with the property and therefore as per Section 11 of the Contract Act 1872, he could not have passed any valid or legal title to the purchaser (Petitioner). It rejected the Petitioner's stand that the defaulter vendor ceased to have any interest in the property on the date when attachment was made, and held that as per Rule 11(3)(a) (pertaining to immovable property), the date of attachment was not relevant. However, it quashed TRO's order to the extent it declared the transaction as null and void and held that only a civil court could declare a transaction as null and void.

***D.S.Senthilvel vs Tax Recovery Officer - TS-166-HC-2018(MAD) - W.P (MD) Nos.2932 to 2939 of 2018 dated 07.03.2018***

**3722.** The Court allowed the further writ filed by Revenue and set aside the writ court's order (Single Judge) which had allowed writ of the land purchaser's (Petitioner in the first Writ) and lifted the attachment on immovable property sold to it by the vendor who had defaulted in payment of tax arrears. The Court setting aside the Single Judge Order upheld the action of Revenue of attaching the property and held that no sale deed was registered in favour of land purchaser (Petitioner in the first Writ) on the date of the attachment of property. In the absence of a deed of conveyance, duly stamped and registered, no right, title or interest in an immovable property can be said to be transferred to the Petitioner land purchaser. The Court referred to sec 281 and noted that any assessee, though after completion of any proceedings, but before the service of notice under Rule 2 of the Schedule, creates a charge on, or parts with the possession (by sale, mortgage etc) of any asset in favour of any person, such charge shall be void as against any claim in respect of any tax. The Court, therefore, held the action of the Revenue was valid in attaching the property. The Court further observed that unless the property was transferred in the name of the land purchaser, it had no locus standi to question the order of attachment by filing the first mentioned Writ as a Petitioner.

***TRO vs. M/s Sree Foundation & Others TS-271-HC-2017(HC Madras) (Writ Appeal No. 95 of 2016 & CMP No. 1111 of 2016 dated April 18, 2017)***

**3723.** The Mining department had failed to collect TCS from payment of various settlements of Sand Ghats, including the payments made by asssessee, and the assessee was called upon by the ITO as per section 226(3) to deposit the sum being income-tax liability of Mining department followed by arbitrarily deduction of the said amount from bank account of assessee by the Income-tax authorities. The Court held that section 226(3)(x) does not confer arbitrary power to Income-tax department to recover amount of tax liability of mining department from the innocent assessee after surrender of settlement and such an action was most unreasonable, in view of the fact that (i) no action was taken by Income-tax department against Mining department for failure to deposit TCS u/s 276B and 276BB (ii) Income-tax department had not carried out any factual enquiry to examine whether there was any liability to be paid by assessee in connection with settlement of Sand Ghat (iii) settlement surrendered by assessee was accepted by Govt. and after such surrender, order u/s 226 was passed. The Court, accordingly, directed the Income-tax Department to forthwith return the said amount with interest.

***Sainik Food (P.) Ltd. v Pr.CIT – (2018) 92 taxmann.com 9 (Patna) – Civil Writ Jurisdiction case no. 16778 of 2017 dated 08.02.2018***

Go to Index

**3724.** The Court dismissed the assessee's writ petition against the Tax Recovery Officer's (TRO) order raising demand against the assesse who had purchased lease rights from a company on November 17, 2006 whose property was attached by the TRO on March 31, 2004. It rejected assessee's contention that since the sale was not made by the Tax Authorities within 3 years of the date of attachment (i.e upto March 31, 2007) as per Rule 68B of Second Schedule to the Act, attachment stood vacated and the sale deed executed in favour of assessee could not be termed as void. It held that the attachment was enforceable on that day when the sale was executed. Further, the Court also noted that TRO had an option to appoint a person as Receiver instead of directing of sale of property and the Receiver was already appointed by Bombay HC, thus there was no occasion for TRO to proceed with the sale. It accordingly held that the sale transaction executed in favour of the assessee by defaulter purchaser was void and the demand raised on assessee to pay the dues of defaulting company was wholly justified.
***Premier Texto Trade Pvt Ltd v Tax Recovery Officer [TS-194-HC-2018(RAJ)] - S.B. Civil Writs No. 8308 & 4369/2010 dated April 12, 2018***

**3725.** Where the assessee, ceased to be a director of a Public Ltd company as the said company went into liquidation and the AO had issued a notice under section 179 of the Act asking the assessee to show cause why demand outstanding towards the company should not be recovered from the assessee and later confirmed the demand against the assessee, the Court dismissed the writ petition filed by the assessee and held that the plea of non-applicability of section 179 of the Act could be raised by the assessee in the alternate remedy under section 264 of the Act.
***Dr. Ajay Magan v DCIT – (2016) 97 CCH 0131 (Uttarakhand) – Writ Petition No 3272 of 2016***

**3726.** In a case where the assessee was confined in jail due to non-payment of tax dues, the Tribunal stayed recovery of outstanding dues except deposit of specified amount and ordered the TRO to arrange for release of the assessee immediately on deposit of said amount. It also directed the Income Tax Authorities to promptly do the necessary formalities including issue of release warrant to the Jail officials on compliance of the directions of the Tribunal.
***Devinder Singh Gill vs. DCIT - STAY APP. Nos. 43 & 44/Chd/2018 (in ITA Nos. 498 & 499/Chd/2015) dated 24.08.2018***

**3727.** The AO wrongly and illegally recovered certain amounts from the assessee, ignoring the submissions made by assessee (delivered manually and also through e-mail) for objecting against adjustment of refund for earlier AY against demand for current AY and despite the Stay order of Tribunal against recovery of demand. On filing the miscellaneous application, the Tribunal observed that coercive recovery effected by authorities was violative of the principles of judicial discipline and natural justice. Accepting the apology of the AO and the Addl CIT, the Tribunal disposed-off the assessee's application as the amount recovered illegally was refunded to the assessee and that the assessee was no more aggrieved.
***Greater Mohali Area Development Authority vs. DCIT – [2018] 53 CCH 0110 (Chandigarh ITAT) – M.A. No. 70/Chd/2018 in Stay Application No. 18/Chd/2017 (in ITA No. 1560/Chd/2017) dated May 9, 2018***

Go to Index

*Stay of demand*

**3728.** Where during pendency of appellate proceedings against addition made under section 68, High Court directed assessee-society to deposit only one per cent of amount demanded, SLP filed against said decision was dismissed by the Apex Court.
***Anad Farmers Service Co-operative Bank Ltd. v. Central Board of Direct Taxes (CBDT) - [2018] 100 taxmann.com 98 (SC)-SLA (C) Nos. 27516-27517 of 2018 dated November 2, 2018***

**3729.** The Pr.CIT had partly allowed the assessee's stay application by directing the assessee to pay 20% of the tax demand, pending disposal of appeal. For this, Pr.CIT had relied on the Office Memorandum issued by CBDT requiring the income-tax authorities to grant stay of demand to the asssessee till the appeal before the CIT(A) was disposed, subject to payment of 20% of tax demanded. The High Court had allowed the assessee's writ petition and had set aside the Pr.CIT's order with a direction to the Pr.CIT to consider the merits of the case before disposing of the stay application. The Apex Court disposed of Revenue's appeal filed against the High Court's order, holding that it will be open to the authorities, on individual cases, to grant deposit orders of a lesser amount than 20%, pending appeal.
***PR.CIT & Othrs v & ORS. vs. LG ELECTRONICS INDIA PVT. LTD. (2018) 303 CTR 0649 (SC) – CIVIL APPEAL NO. 6850 OF 2018 dated July 20, 2018***

**3730.** The Court dismissed the Revenue's appeal and held that the Tribunal was justified in extending the stay granted to the assessee beyond a period of 365 days as the delay in disposal of appeal was not attributable to the assessee. It held that the third proviso to Section 254(2A) of the Act stating that the stay would be vacated after a period of 365 days was merely directory and would apply only if the assessee is responsible for procrastinating the decision of the appeal.
***Vodafone Mobile Services Ltd [TS-477-HC-2017(AP)] - I.T.T.A.Nos.331, 336, 346, 386, 389 and 707 of 2017 dated***

**3731.** The Court held that the Commissioner (Appeals) is obliged to entertain and dispose of appeal before him on merits without any regard to fact that amounts demanded have been paid/deposited or not paid/deposited by the assessee before him. Once hearing on appeal is concluded, then stay application becomes infructuous as appeal itself would stand disposed of by an appropriate order of the Commissioner (Appeals).
***Saibaba Sansthan Trust (Shirdi) v. Union of India [2018] 255 Taxmann 36 (Bom) Writ Petition No. 939 of 2018 dated March 27, 2018***

**3732.** The Court set aside the order of the Revenue, dismissing the assessee application of stay of demand since the order of the Revenue was bereft of any reason and failed to consider the assessee's prima facie case and that the assessee's plea of financial difficulty was not addressed in the order. Accordingly, the Court granted stay of Rs.190 crore demand raised by the AO until final disposal of the appeal by the CIT(A).
***Geetanjali Trading & Investment Pvt Ltd v Pr CIT – TS-760-HC-2015 (Bom)***

Go to Index

**3733.** The Court held that when it has been proved that the AO refused to acknowledge the stay application submitted by the assessee, it would be in the interest of justice that the application for stay filed by the assessee be heard by another Officer different from the Assessing Officer.
***Piramal fund Management Pvt. Ltd v DCIT & Ors - (2016) 95 CCH 88 (Bombay)***

**3734.** Where the AO had raised a demand of Rs.16.90 crore as against a loss declared of Rs.10.23 crore and rejected the assessee application of stay of demand, the Court held that it would be justified to adjust 15 percent of the total demand against the pending refunds of the assessee as against the claim of the respondent Revenue that the full amount of refund should be adjusted against the demand as a condition for stay.
***Andrew Telecommunications India Pvt Ltd v Pr CIT – (2016) 97 CCH 0129 (Bom)***

**3735.** Where the AO as well as the Pr.CIT had rejected the application for stay of demand filed by the assessee u/s 220(6) without considering the decision in the case of KEC International Ltd v B.R.Balakrishnan & Other 251 ITR 158 (Bom) and UTI Mutual Fund v ITO [WP(L) No. 606 of 2012 (Bom)] which laid down the manner in which stay application u/s 220(6) had to be disposed by the authorities under the Act, the Court set aside the order of the AO as well as the Pr.CIT rejecting the said application and directed the AO to decide on the application afresh in view of the aforesaid decisions as well as the decision in the case of MMRDA v DCIT [W.P.(L) No. 2348 of 2014 (Bom)].
***Niranjan B. Bhadang v ACIT – Writ Petition No. 706 of 2018 (Bom) dated 15.03.2018***

**3736.** The assessee challenged the order passed by the AO u/s 220(6) that rejected the assessee's application for stay of penalty imposed by the AO itself u/s 271(1)(c) till the disposal of appeal filed by assessee before the CIT(A). Also, the AO u/s 156 demanded the payment within 7 days (normal period being 30 days, the AO having discretion to reduce the period) without stating the reasons of reducing the period to make the payment. However, the AO, by his order u/s 220(6) had stated that the stay application would be considered only after assessee paid 20% of the penalty imposed and further, attached assessee's bank A/C by exercising powers u/s 226 of the Act. Assessee being aggrieved by the attachment of its bank a/c filed the said writ petition. The Court quashed the order passed by the AO u/s 220(6) and thereby directed the AO to communicate the reasons for reducing the period to 7 days u/s 156 and to pass a fresh order in accordance with law on assessee's stay application after hearing the assessee.Thus, the Court accepted the assessee's plea and directed the AO to withdraw attachment of assessee's bank a/c for the reasons that it would be impossible for the assessee to carry its business.
***White Pay LLP v ITO (2018) 101 CCH 0325 BomHC - WRIT PETITION NO. 966 OF 2018 dated 02.04.18***

**3737.** The Court granted ad-interim stay on demand and directed revenue to restrain from taking any coercive steps to recover outstanding demands, in a case where assessee's appeal was pending for disposal by CIT(A) and assessee had deposited 38% of outstanding demand. It also held that the mere having of funds i.e. no financial hardship would not itself justify deposit where a prima facie case was made out
***Vodafone India Ltd. v. CIT - (2018) 400 ITR 516 (Bom) - Writ Petition (L) no. 18 of 2018 dated 04.01.2018***

Go to Index

**3738.** The Assessee had filed an application for stay of demand during pendency of appeal, before the CIT(A) the Deputy Commissioner had rejected assessee's stay application and communicated to assessee that it should pay 20 per cent of outstanding amount failing which collection and recovery would continue. The Court on assessee's writ petition held that, once it was an appealable order and the appeal had been filed, on its pendency, the assessee should get either an opportunity to seek a stay during during pendency or the AO should have held the demand in abeyance. In the present case, the AO did none of the above and proceeded to dismiss stay application. Thus, the Court directed that the appellate authority was to dispose the appeal as expeditiously as possible without calling upon assessee to pay any sum, much less to extent of 20 per cent of demand claimed to be outstanding by Revenue.
***Bhupendra Murji Shah vs DCIT- (2018) 98 taxmann.com 233 (Bombay)- WP No 2157 0f 2018 dated 11.09.2018***

**3739.** Where the assessee, subsequent to filing an appeal before the CIT(A), filed an application for stay of demand before the AO who directed the assessee to pay 20 percent of the demand, pursuant to which the assessee filed an application before the Commissioner for stay of full demand and the Commissioner, rejecting the application directed the assessee to pay 50 percent of the demand, Court held that the power of suo motu enhancement of the payment which had been ordered by the Assessing Officer was not available to the Commissioner in terms of the CBIT Circular dated 29-2-2016. It held that as per the Circular, the Commissioner could only enhance the amount to be deposited on a reference by the Assessing Officer to the Administrative Principal Commissioner that the party should be asked to deposit in excess of 20 per cent of the demand for stay of the balance demand. It noted that the demand had arisen as the AO sought to change the method of valuation of shares adopted by the assessee from DCF to NAV which was contrary to Rule 11UA which afforded the assessee an opportunity to choose either method. Accordingly, it held that there would be a stay of the assessment order to the extent of the demand raised for a period of 4 weeks. Further, it held that in case, the assessee filed a stay application to the Commissioner (Appeals) within a period of 4 weeks, the demand of Rs. 62.38 crores arising consequent to the impugned order would be stayed till the stay application was disposed of.
***Vodafone M-Pesa Ltd v Pr CIT - [2018] 92 taxmann.com 73 (Bombay) - WRIT PETITION NO. 654 OF 2018 dated MARCH 1, 2018***

**3740.** The Court held that once hearing on appeal was concluded by the CIT(A), then stay application would become infructuous as appeal itself would stand disposed of by an appropriate order of Commissioner (Appeals). It held that the approach of the CIT(A) in taking up the stay application of the assessee after hearing the appeal on merits was only done so as to collect some revenue before 31-3- 2018. Accordingly, it set aside the order of the CIT(A) passed in pursuance to the assessee's stay application, directing the assessee to pay a sum of Rs. 15.16 crore out of total demand of Rs. 122.04 crore.
***Saibaba Sansthan Trust (Shirdi) v UOI - [2018] 92 taxmann.com 299 (Bombay) - WRIT PETITION NO. 939 OF 2018 dated MARCH 27, 2018***

Go to Index

**3741.** The Court relying on its earlier decision, held that where the CBDT had classified the assessee society as an association, the authorities were incorrect in denying the assessee benefit under section 10(21) on the ground of that it was an institution and not an association and accordingly granted the assessee a stay of recovery proceedings pending disposal of appeal by the CIT(A).
***International Institute of Bio Technology & Toxicology v DCIT – (2016) 96 CCH 0056 (Chen) Writ Petition No.18336 of 2016 and W.M.P.No.16043 of 2016***

**3742.** The Court granted stay of demands on the ground that the cardinal principles which have to be taken note of while granting interim order viz (i) prima facie case (ii) balance of convenience and (iii) irreparable hardship were fulfilled in the case of the assessee since the CIT (A) in one of the years had accepted the stand of the assessee on merits.
***Kalapet Primary Agricultural Co-op Credit Society Ltd. vs. ITO - [2016] 96 CCH 0065 (Chen HC) - W.P. No. 23163 of 2016***

**3743.** The AO had granted the assessee 85 percent stay of demand subject to pre-deposit of 15 percent (Rs. 63 crore) in accordance with CBDT Instruction in its office Memorandum dated 29.2.2016. The assessee filed a writ petition before the Court contending that the condition of 15 percent pre-deposit could be relaxed as 1) the AO had not considered a credit adjustment 2) license fee adjustment on account of the Apex Court ruling in the 2G spectrum case was treated as capital and 3) there was a refund due to the extent of Rs.27 crore. The Court remitted the matter to the AO to evaluate the same, pursuant to which the AO considered the issue afresh and directed the assessee to pay Rs. 203 crore, The assessee filed second writ petition wherein the Court held that once the matter was remitted to the AO, he had to confine the focus of his inquiry only and only to whether to grant relied in excess of 85 percent exemption was possible and that he could not revisit the merits of the matter. It held that the scope of remand by a higher authority limits and circumscribes the jurisdiction of the lower authority. Accordingly, it directed the assessee to deposit 15 percent demand subject to adjustment of refund.
***Telenor (India) Communications Pvt Ltd – TS-124-HC-2017 (Del) - W.P.(C) 2539/2017, C.M. APPL.10957-10958/2017 dated 29.3.2017***

**3744.** The Court held that the AO erred in rejecting the stay application filed by the Petitioner on the ground that the Petitioner had not deposited 15 percent of the disputed demand as a pre-deposit before his application for stay. It held that the AO's interpretation for reasons of rejection was made absolutely on misconception and/or misreading of the modified instructions dated February 29, 2016. Accordingly, it set aside the order of the AO, rejecting the stay application without looking into the merits contained therein for want of 15 percent deposit.
***Jagdish Gandabhai Shah v Pr CIT – TS-171-HC-2017(GUJ) - SPECIAL CIVIL APPLICATION No. 5679 of 2017 dated 28.03.2017***

**3745.** The Court held that where appeal was not disposed of within statutorily prescribed period of three hundred and sixty five days from date of grant of initial stay and such delay was not attributable to assessee, tribunal was justified in extending stay on tax demand.
***ITO v Anil Girishbhai Darji - [2016] 68 taxmann.com 308 (Gujarat)***

Go to Index

**3746.** Where, pursuant to orders of writ court, the assessee company had deposited 30 per cent of demand of tax in default and had furnished bank guarantee to extent of 45 per cent, and appeal on merits was pending before Tribunal, the Court held that since the interest of revenue stood adequately safeguarded, there was no justification for increasing demand to 55 per cent of dues.
***CIT v Google India (P.) Ltd. - [2018] 92 taxmann.com 38 (Karnataka) - WRIT PETITION NO. 5193 OF 2017 (T-IT) dated MARCH 7, 2018***

**3747.** The assessee filed a writ petition requesting the Court to direct the Revenue authorities to not recover the disputed tax demand from the assessee till the appeal before the CIT(A) was pending. The Court disposed of the writ petition with a direction to the CIT(A) to dispose off the appeal pending before him within ten weeks from date of receipt of certified copy of the order and stated that interim order would enure to the benefit of assessee till consideration of appeal.
***Mphasis Ltd. Vs Dy.CIT [2018] 97 taxmann.com 219 (Karnataka) W.P. NO. 13313 OF 2017 (T-IT) DATED AUGUST 1, 2018***

**3748.** The Court dismissed the petition filed by assessee against the Tribunal's order rejecting assessee's claim for stay of demand noting that the Tribunal had rejected stay after considering well settled parameters such as existence of a prima facie case, balance of convenience and irreparable injury caused to assessee, and thus, the impugned order did not require any interference.
***United Spirits Ltd v DCIT – (2018) 90 taxmann.com 86 (Kar) – W.P. No. 57883 of 2017 dated 09.01.2018***

**3749.** In a case where the appeal was pending before the CIT(A) and on an application made by the assessee for staying the demand, the AO mechanically referring to CBDT instruction No. 1914 dt. 21st March, 1996 directed the assessee to deposit 20% of the demand amount, the Court held that the assessing authority had to examine the applicability of the said instructions in as much as whether the assessment was "unreasonably highpitched" or whether "any genuine hardship would be caused to the assessee" due to payment of 20% of the disputed demand. Further, noting that the order passed by the AO was a non-speaking order and without application of mind, it held that the AO was not justified in directing the assessee to deposit 20% of the demand amount mechanically referring to the said instruction. Accordingly, it quashed the impugned order passed by the AO and remanded the matter to him to reconsider the application for stay in accordance with law in an expedite manner.
***CHARISHMA HOTELS (P) LTD. vs. INCOME TAX OFFICER – Writ Petn. Nos. 12789 to 12790 of 2018 (Kar) dated 27.03.2018***

**3750.** Where the Tribunal had granted stay of demand of Rs. 109.52 crores during pendency of appeal subject to deposit of 50% of demand in question and furnishing of bank guarantee for the balance amount, the Court grant further relief to the assessee by directing it to deposit a sum of Rs. 10 crores against impugned demand during pendency of appeal and undertake not to seek any adjournment of hearing of the said appeal in view of the fact that appeal itself was coming up for final hearing shortly after pre-ponement of hearing date and that a sum of Rs. 25.66 crores had already been paid by the assessee-company.
***Flipkart India (P.) Ltd. v Union of India – (2018) 90 taxmann.com 381 (Kar) – Writ Petition No. 6533 of 2018 (T-IT) dated 15.02.2018***

Go to Index

**3751.** The Division Bench of the Karnataka HC dismissed the assessee writ appeal and refused to interfere with the Single Judge order directing additional payment /furnishing of bank guarantee in respect of outstanding demand for AYs 2009-10 to 2012-13. It noted that the Tribunal, relying on HC order for AY 2013-14, had directed further payment of Rs.175 Cr and maintenance of balance in bank account of amount equivalent to 20% of disputed demand but the Single Judge (pursuant to Writ filed by the assessee), modifying the Tribunal order, directed assessee to (i) furnish bank guarantee for 25% of demand for AY 2009-10 and 2010-11 and for 45% of demand for AY 2012-13, (ii) pay 20% of tax demand and furnish bank guarantee to cover 25% of tax demand for AY 2011-12. It dismissed assessee's argument that since Tribunal in the first instance, had granted stay with proper application of mind, it was not open to the Single Judge to impose additional conditions. Noting that stay order u/s 254(2) was a discretionary order, it held that both the Hon'ble Single Judge's order as well as consequent Tribunal order could not be classified as those which any reasonable person cannot pass.
***GOOGLE INDIA PRIVATE LIMITED [TS-55-HC-2018(KAR)] - WRIT APPEALS No.50-52/2018***

**3752.** The Court allowed assessee's writ by setting aside order of the Assessing Officer and the Pr. CIT refusing to stay collection of demand and directing the assesse to deposit 15% of the total disputed demand. The Court observed that in the review petition against the stay order of the AO, the Pr. CIT failed to consider whether the assessment order suffered from being unreasonably high pitched or whether any genuine hardship was likely to be caused to the assessee in case it was required to deposit 15% of the disputed demand in spite of assessee's submission that it had suffered loss from the very inception of the business. Accordingly, the Court directed Pr.CIT to re-decide the review petition filed by the assessee.
***Flipkart India Private Limited [TS-97-HC-2017(KAR)] (W.P.Nos 1339-1342 of 2017) dated 23/02/2017.***

**3753.** The Court dismissed the assessee's writ petition filed against the Tribunal's order imposing the condition of making payment of 20% of demand amount for the grant of stay on the remaining demand. It held that since two views were possible in the matter [involving disallowance u/s 40(a)(iib)], the Tribunal was right in imposing the said condition. However, having regard to the financial hardship pleaded by the assessee, the Court enlarged the time fixed for payment of 20% of the amount for a further period of six weeks.
***Kerala State Beverages (Manufacturing & Marketing) Corporation Ltd. v ACIT - [2018] 94 taxmann.com 91 (Kerala) - W.P. (C) NO. 10173 OF 2018 dated April 13, 2018***

**3754.** Assessment in case of the assessee was made u/s 143(3) by AO against which the assessee filed an appeal before the CIT (A) along with a stay application which was granted to the assessee on the condition that the assessee would pay 10 percent of the demand. The assessee challenged the said condition in the stay order and filed a writ petition before the High Court contending that the return filed by the assessee had been taken for scrutiny maliciously with a view to fasten liability on the assessee for having filed a complaint against an officer of the department. The Court dismissing the petition of the assessee held that several case files

Go to Index

were selected for scrutiny with the aid of computers and moreover, in terms of the order, the assessee was asked to pay a meagre portion of the demand which was justified.
***St. Joseph's Granites v. ACIT – [2018] 92 taxmann.com 372 (Kerala) – W.P. (C) No. 9173 of 2018 dated April 4, 2018***

**3755.** The CIT(A) had granted a stay on disputed tax amount subject to payment of 50% thereon which was reduced to 20% by the Single Judge Bench of the High Court in the writ petition filed against CIT(A)'s order. On second writ petition filed by assessee against the order of single judge, the Court noted that members of assessee co-operative bank were general public and marginalised sections and directed the assessee to make a deposit of 1 % of disputed tax amount .
***Aruvikkara Farmers Service Co-Operative Bank Ltd. Vs ITO [2018] 97 taxmann.com 46(Kerala) WPC NO. 15070 OF 2018DATED AUGUST 2, 2018***

**3756.** The Court disposed off the writ petition filed by the assessee against the non-action of the AO with respect to application filed by the assessee before the AO to stay receovery of demand till proceedings before the CIT(A) were pending, by directing the AO to considering the same. It also rejected Revenue's contention that since the assessee had made payment of only 15% of disputed demand as per the earlier CBDT Circular and subsequently vide new circular dated 31/07/2016 the assessee is required to deposit 20% of disputed demand, holding that since the appeal was filed by assessee in beginning of 2017 and 15% of demand was also remitted by the assessee in March, 2017, the earlier Circular was applicable his case.
***SUBIN ABDUL RASHEED v ACIT - WP(C).No. 24138 of 2018 (Ker HC) dated 23.07.2018***

**3757.** The Court held that if the assessee has exercised on time its statutory remedy of filing an appeal and also filed a stay petition, procedural fairness demands that the authorities may wait, before taking further steps, until the appellate authority decides on the stay petition.
***Kerala State Co-op Agricultural And Rural Development Bank Ltd vs. ITO - WP(C).No. 40456 of 2018 (Kerala HC) dated 12.12.2018***

**3758.** The Court allowed the writ petition filed by the assessee-company and directed the Revenue to not take any coercive action for recovering tax due till the AO considers the assessee's stay application filed u/s 220(6).
***SFO TECHNOLOGIES PRIVATE LIMITED v ACIT - WP(C).No. 41112 of 2018 (Ker HC) dated December 18, 2018***

**3759.** The demand of tax was made to the assessee for AY 2012-13 and 2015-16 by the AO. The Stay petition for AY 2012-13 by assessee was pending before the CIT(A). The Court disposing this petition for AY 2015-16, directed the assessee to file an appeal before the CIT(A) for AY 2015 -16 and thereby directed the CIT(A) to take up pending stay petition and the to-be filed petition by assessee and pass orders on merits and in accordance with law. Further, it directed that the impugned order passed by AO should be kept in abeyance and should abide by the order passed by the CIT(A).
***G.R.D. Trust v DCIT (2018) 255 TAXMAN 0121 (Madras) - W.P.No.5587 of 2018 & W.M.P.No.6917 of 2018 dated 10.04.2018***

Go to Index

**3760.** The Court held that the power of stay confers on appellate authority cannot be equated to power granted to AO u/s 220(6) and the AO should first consider assessee's request for stay of demand as referred to in guidelines issued by CBDT.
***Cavinkare (P.) Ltd. v. CIT – [2018] 93 taxmann.com 14 (Madras) – W.P. No. 3338 of 2018 dated April 4, 2018***

**3761.** The Court granted interim stay till disposal preferred by assessee where assessee had paid 25% of demand, which was also admitted by Respondents.
***Dr. Pratima Venkatachalam v CIT - [2016] 95 CCH 99 (Madras)***

**3762.** The Court quashed the order of the AO under section 220 of the Act directing the assessee to pay 50 percent of outstanding demand since the assessment was high pitched in light of CBDT Instruction No 95/1969 (14 times returned income) and the assessee's appeal was pending before CIT(A). It dismissed the Revenue's contention that CBDT Instruction No 95 / 1969 was superseded by Instruction no 1914 of 1993 by placing reliance on Valvoline Cummins Ltd v DCIT (2008) 307 ITR 103 (Del).
***N Jegatheesan v DCIT – (2015) 64 taxmann.com 339 (Mad)***

**3763.** The assessee filed its return claiming deduction u/s 80-IC which was rejected by the AO on the basis of an information received from Central excise department that the process adopted by the assessee did not amount to 'manufacture'. The assessee filed an appeal against the order of the AO before the Tribunal and subsequently filed an application for stay of recovery of outstanding demand during the pendency of the appeal which was rejected by the Tribunal on the ground that the assessee was unable to show strong prima facie case in its favour. On appeal, the Court noted that AO had no independent material in his hands while rejecting the assessee's claim and also, the Tribunal should have done a thorough exercise as to whether the AO was justified in denying the entire deduction claimed by the assessee. After perusing the materials placed on record, the Court allowed the application of the assessee seeking stay of demand during pendency of appeal on the ground that thirty percent of the tax demand was already deposited by the assessee and the same was sufficient to safeguard the interests of the Revenue.
***Turbo Energy (P.) Ltd. v. Assistant Registrar, ITAT – [2018] 93 taxmann.com 62 (Madras) – Writ Petition Nos. 6648 to 6650 of 2018 dated April 6, 2018***

**3764.** The Court held that mere pendency of an appeal before the CIT(A) was no ground to state that there should be stay on recovery of tax demanded as a) the Assessee had miserably failed to substantiate their contention that they were unable to mobilize funds to comply with direction of Assistant Commissioner to deposit 20 per cent of tax demanded b) they had brought out as to how they had made out a prima facie case for grant of an unconditional stay. However, as the assessee- company had established Eye Hospitals in various parts of country and there were several persons employed with them and there were several senior citizen, who required care and attention, assessee-company was directed by the Court to pay 5 per cent of tax demanded during the pendency of the appeal before CIT(A).
***Vasan Health Care (P.) Ltd. v ACIT [2018] 93 taxmann.com 439 (Madras) – WP NOS 6040 TO 5052 OF 2018 dated 28.04.2018***

Go to Index

**3765.** The Court held that where during pendency of appeal, assessee's application for stay of demand was rejected by revenue by a single line order, without stating any reason or finding as to why application was liable to be rejected, impugned order was set aside with a direction to revenue to decide assessee's application on merit and in accordance with law.
***Archit Khemka v. Pr. CIT, Corporate Circle-1(1), Chennai-[2019] 101 taxmann.com 488 (Madras)-W.P. No. 33800 of 2018-W.M.P. Nos. 39257 & 39261 of 2018 dated December 19, 2018***

**3766.** The Court taking into consideration the provisions of section 35C(2A) of the Central Excise Act, 1944 which is pari materia to section 245(2A) of the Income tax Act, relying on the decision of the Court in the case of Commissioner of Central Excise Rohtak vs M/s Voice Telesystem held that where the appeal could not be decided by tribunal due to pressure of pendency of cases and delay in disposal of appeal was not attributable to the assesseee in any manner, the interim stay would continue beyond 365 days in deserving cases.
***Sun Life Service Centre Pvt. Ltd [(2017) 98 CCH 0007 PHHC]***

**3767.** The Court upheld the Tribunals power to grant stay beyond 365 days and held that wherever the appeal could not be decided by the Tribunal due to pressure of pendency of cases and the delay in disposal of the appeal was not attributable to the assessee in any manner, the interim protection could continue beyond 365 days in deserving cases and would not be contrary to section 254(2A) of the Act.
***Pr CIT v Carrier Air Conditioning and Refrigeration Ltd – TS-284-HC-2016 (P&H)***

**3768.** The Court directed the revenue to adjust the refund against tax demand to the extent of amount required for granting stay and not against the total tax demand where assessee was granted stay till appeal disposal on deposit of 15% of the total tax demand. It further rejected revenue's stand that Assessing Officer was entitled to adjust any refunds arising to the assessee against the total demand relying on the office memorandum dated February 29, 2016 which states that refunds can be adjusted to the extent of the amount required for granting stay.
***Jindal Steel and Power Ltd. [TS-540-HC-2016 (P&H)] (Civil Writ Petition No. 13146 of 2016)***

**3769.** The Court held that the Tribunal is not empowered to grant stay against launch of prosecution proceedings under section 276(1) of the Act. It held that the powers of the Tribunal in relation to interim orders were confined to matters pending before the Tribunal and at best to matters intrinsically linked to matters pending before the Tribunal and that it could not be extended to matters over which the Tribunal has no jurisdiction even though the matters may incidentally be affected by the outcome of the appeal. Therefore it held that a prayer for stay of prosecution of a show casue notice would have to be made by resort to other remedies and only after the notice and replies thereon reach a conclusion.
***Pr CIT v ITAT (Civil Writ Petition No.15239 of 2015) – TS-679-HC-2015 (P&H)***

**3770.** Stay applications were filed seeking extension of the stay granted by the Tribunal in respect of income tax and interest demands, arising out of the assessment orders, which were impugned in appeals before Tribunal and had been referred to a Special Bench of the Tribunal and the

assessee pointed out that though the Special Bench was constituted almost two years ago, the matter has not come up for hearing at all. The Tribunal held that such an inordinate delay in fixation of hearing of special benches cases, particularly when stay is granted, is not only inappropriate and contrary to the scheme of the Art, but it does reduce the efficacy and utility of the mechanism of special benches to deal with important matters on which there is divergence of views by the Division Benches or which are otherwise of wider ramifications and national importance. With a view to ensure the expeditious hearing of cases referred to Special Benches and Third Members. The Tribunal formulated some guidelines that the Special Benches shall, commence hearing within 120 days of the Benches being constituted and if it is not in a position to commence hearing, it shall record the reasons, in brief, for delay in commencement for hearing and that it is only in exceptional circumstances that the adjournment may be granted and it should not exceed period of 30 days.

***Doshi Accounting Services (P.) Ltd. v. Dy. CIT, Vadodara-[2019] 101 taxmann.com 62 (Ahmedabad –Trib.)-ITA Nos. 1285 of 2012 & 1822 (AHD) of 2014-dated December 26, 2018***

**3771.** Assessee's assessment proceedings were reopened on the basis of information gathered about Praveen Kumar Jain group ('PKJ Group') which was said to be operating a web of shell entities providing various kind of accommodation entries for bogus loans, bogus share capital and bogus sales. During the reassessment proceedings, the AO found that the assessee had sold shares of Rs. 10 each, to six shell companies (which were part of PKJ group), at a premium of Rs. 140 each and all these shares were eventually sold at Rs. 10 each to Nityanand Industries Limited, and the directors and majority shareholders of the assessee were also directors and majority shareholders of Nityanand Industries Ltd. Both the transactions took place on the same day. The Tribunal dismissed the stay application filed and noted that the assessee did not have such a strong prima facie case to deserve to jump the queue of other litigants and be granted an out of turn hearing. It opined that the whole situation cannot be a case of a mere coincidence, and accordingly held that such cases of financial manoeuvrings, with the help of shell companies, deserve no sympathy from the judicial forums and should not, as a matter of course, be allowed to jump the queue of ordinary litigants.

***Gujarat Infrapipes Private Limited - TS-201-ITAT-2017(Ahd) - SP No.101/Ahd/17 dated 26.05.2017***

**3772.** The Tribunal dismissed assessee's Stay petition on collection of income tax demand as the assessee directly approached the Tribunal without exhausting alternate remedies available. Taking note of assessee's plea that since it was the end of Financial Year there was considerable pressure on the Revenue to achieve their annual revenue collection target and that it was not practical to approach all administrative authorities, the Tribunal observed that it was a harsh reality that sometimes the income tax authorities behave in such a high handed manner so as to, in effect, render the right to seek remedies against recovery of such demands nugatory and infructuous. Thus, striking a balance between procedural requirements and assessee's substantive legal rights, the Tribunal directed the assessee to approach the Pr. CIT and instructed the Pr.CIT to consider assessee's request in a judicious manner.

***Sun Pharmaceutical Industries Ltd. [TS-99-ITAT-2017 (Ahd)] (S.P No. 58/Ahd/17) dated 02/03/2017.***

Go to Index

**3773.** The Tribunal granted further extension of stay of demand to Vodafone Mobile for a period of 6 months or till appeal disposal, whichever is earlier, beyond the original stay of 365 days as the delay in disposal of appeal was not on account of reasons attributable to the assessee. The Tribunal rejected Revenue's contention that Tribunal did not have the power to extend stay beyond 365 days as it was bound by powers conferred by Sec 254(2A), even if the delay was not attributable to assessee and its reliance on Jurisdictional HC ruling in Ecom Gill Coffee (362 ITR 204). The Tribunal observed that that constitutional validity or the vires of 3rd proviso to Section 254(2A) were not tested in the Jurisdictional High Court decision and further placed reliance on the Delhi HC ruling in Pepsi Foods (376 ITR 87). The Tribunal noted that HC in Pepsi Food case, while affirming Tribunal's power to extend stay beyond 365 days in deserving cases, had observed that 3rd proviso to Sec 254(2A) was violative of Article 14 of the Constitution as it had an element of hostile discrimination against the assessee to whom the delay is not attributable vis-a-vis assessee who had caused delay in adjudication of appeal. Further, observed that the said decision had had attained finality post Revenue's SLP disposal by SC.

***Vodafone Mobile Services Ltd. vs. DCIT TS-286-ITA-2017 (SP 261 – 262/Bang/2016 dated June 28, 2017)***

**3774.** The AO had treated the loss incurred in the business as capital expenditure on the ground that the loss in the form of discounts offered to customers was intended to build-up brand value/monopoly or primacy in the online market, resulting in addition of Rs.1322 crores which was partially reduced by CIT(A). During the hearing for grant of stay before the Tribunal, the assessee had not advanced any arguments as to how there is patent error in the methodology adopted by the TPO for the purpose of arriving at the value of intangibles nor was there any argument rebutting the case of the TPO that the loss incurred by the assessee-company in the form of discounts offered was nothing but intangibles, the Tribunal held that no case was made out by the assessee-company that there was a strong prima facie case in its favour on merits. As regards financial hardship, the Tribunal noted that though the assessee-company was incurring losses but it had sufficient liquidity to pay the disputed tax liability on account of receipt of huge share capital and huge share premium and thus, no case was made out in favour of the assessee-company on account of financial hardship too. Further, as regards balance of convenience also, it held that the assessee-company had failed to make out any case in its favour. Accordingly, it directed the assessee to pay 50% of the demand in question and furnish bank guarantee for balance demand for a period of 6 months.

***Flipcart India (P.) Ltd. v ACIT – (2018) 169 ITD 211 (Bang) – Stay petition No. 25 (bang.) of 2018 ITA No. 202 (bang.) of 2018 dated 06.02.2018***

**3775.** The Tribunal dismissed assessee's stay petition seeking stay of demand of Rs. 59.42 cr. for AY 2013-14, arising on account of non-deduction of TDS in respect of 'Ad-words' payment made to Google Ireland on the ground that though Tribunal on earlier occasions had extended stay beyond 365 days, there was a change of the circumstances from the first stay order as it cannot be said that there is prima facie case in favour of assessee, Relying on the parameters in the decision of the Apex Court in the case of Dunlop India Ltd. for granting stay of demand, viz. i) Existence of prima facie case ii) Financial hardship, and iii) Irreparable injury and balance of convenience, it held that the assessee had fairly conceded that none of the parameters were

met in the present case. Noting that assessee was seeking extension only on the ground that it was proposing to appeal against the recent co-ordinate bench order before the High Court and also intended to file miscellaneous application before the Tribunal, it held that the same could not be a valid ground for stay of demand.
***Google India Private Limited vs DyCIT-TS-508-ITAT-2017(Bang) – Stay Petition no. 229/ bang / 2017 dated 07.11.2017***

**3776.** The Tribunal granted stay to the assessee for AY 2013-14 beyond a period of 365 days on the ground that if the delay in disposal of the appeal was not attributable to the assessee, then, further extension could be granted beyond one year. Further, the court observed that against the total demand of Rs 129.42 Cr including interest, assessee had already made payment of Rs 70 cr. It was also submitted that after expiry of stay in Nov 2015, the department agreed for not enforcing the demand in view of the pending appeal, however, as per letter dated 10.11.2016, the AO again forced recovery. Accordingly, the court granted extension of stay for a period of three months or till disposal of appeal whichever is earlier.
***Google India Private Limited [TS-21-ITAT-2017(Bang)]***

**3777.** The Tribunal, relying on the decision of the Delhi High Court in Pepsi Foods P Ltd v ACIT, held that where the delay in disposing of appeal was not attributanle to the assessee, the Tribunal had the power to grant extension of stay of recovery of outstanding demand beyond a period of 365 days.
***SAP Labs India Pvt Ltd v Add CIT – TS-31-ITAT-2016(BANG)***

**3778.** While disposing off an application for stay of disputed demand of Rs.47.05 crores, the Tribunal directed assessee to pay Rs. 5 Cr on or before 31.01.2018 and retain balance of another Rs.10 Cr (~20%) as balance in its bank account while granting stay for 3 months for balance amount and observed that-

- there was no 'prima facie' case in favour of the assessee as the issue involved in appeal was covered against the assessee by earlier year order in assessee's own case
- much importance could not be given to the rectification application filed by assessee (which according to assessee would reduce the total demand to Rs.34.66 Cr) as such application was filed just a day prior to filing stay application and therefore, could not be considered by AO
- assessee did not demonstrate any 'financial hardship'

***Vodafone mobile services limited - TS-16-ITAT-2018(Bang) - S.P. No.300/Bang/2017; IT(IT)A No.2818/Bang/2017 dated 05.01.2018***

**3779.** The Tribunal granted the assessee stay beyond a period of 365 days considering the fact that barring two occasions, all other adjournments were taken by the Revenue on the ground of pendency of appeal and therefore the assessee did not contribute to delay in disposal of appeal. Furthermore, it noted that even if the assessee had not sought adjournment, the matter would not have been disposed of since the previous year's appeal was still pending. It held that where the Tribunal and the AO had granted stay previously, all the conditions for stay being satisfied, no new condition could be imposed for granting further stay.
***Google India Pvt Ltd – TS-256-ITAT-2016 (Bang)***

Go to Index

**3780.** The Tribunal dismissed the Revenue's application for vacation of stay granted by the Tribunal vide an earlier order holding that if the Department was aggrieved by the order of the Tribunal, it should've sought for remedy from higher forum/High Court and not show open resentment or disrespect the order of the Tribunal by filing such applications which now a days have become a common act by the Department. Further, it held that such conduct of open resentment against judicial orders would also compel to initiate and recommend to High Court for appropriate action under contempt of courts Act

***ITO v Chandigarh Lawn Tennis Association (2018) 52 CCH 0537 ChdTrib - M.A. No. 37/Chd/2018 in Stay Application No. I8/Chd/2016 (in ITA No. 1382/Chd/2016) dated 06.04.2018***

**3781.** The Tribunal granted stay to the assessee subject to specified deposit till disposal of appeal and held that in the case of assessee the facts were not properly and thoroughly examined and verified by lower authorities. The Tribunal noted that the assessee was providing marketing and support services to a foreign company, Uber B. V. which was incorporated in Netherlands and was collecting payments on behalf of said company and making disbursements to driver-partners as per directions of Uber B. V. The assessing Officer (TDS), had held that assessee was liable to deduct TDS under section 194C, which assessee had defaulted and thus assessing Officer accordingly treated assessee in default and raised demand on account of TDS and interest. The assessee filed instant application seeking stay of demand during pendency of appeal and it was noted that assessee denied liability to deduct TDS under section 194C on ground that it was not a person responsible for making payment to Driver-Partners as contract was between Uber B. V. and driver-partners.It was also stated that there were practical difficulties as it was not possible for assessee to collect TDS on cash payments received by driver-partners directly. Thus, the Tribunal disposed off stay applications and also directed not to pass orders imposing penalty till disposal of appeal.

***Uber India Systems (P) Ltd vs JCIT (TDS)- (2018) 98 taxmann.com 199 (Mumbai- Trib)- SA Nos 436 & 437 (Mum) of 2018 dated 28.09.2018.***

**3782.** The Tribunal granted conditional stay of demand to the assessee subject to payment of Rs. 15 Cr. & payment of income-tax refund of Rs. 28 Cr. (due in the name of amalgamating company, as and when received by the assessee). It noted that vis-à-vis AY 2011-12, the issue in respect of deduction u/s 10A was covered in its favour by co-ordinate bench order in assessee's own case and that the large part of the addition for AYs 2012-13 & 2013-14 was on account of dispute on the selection of comparables. It took note of the assessee's submission that various courts held that huge turnover comparables cannot be considered comparable with small turnover company and accordingly held that the assessee had a prima facie case in its favour.

***Thomson Reuters International Services Private Limited - TS-121-ITAT-2018(Mum) - S.A. No. 521/Mum/2017, /S.A. No. 561/Mum/2017 and /S.A. No. 562/Mum/2017 dated 13.03.2018***

**3783.** The Tribunal held that where demand was raised on account of transfer pricing adjustment disallowance of claim u/s 80-IA and disallowance of long term capital loss, in view of fact that tribunal had already granted stay with reference to similar demand raised for earlier assessment

years and that huge sums of assessee stood locked up in disputed tax liability of earlier years, stay was to be granted.
***Tata Communications Ltd v DCIT - [2016] 68 taxmann.com 316 (Mumbai – tribunal)***

**3784.** The Tribunal granted 100% stay of demand in view of CBDT Instruction No. 96 since the assessee, a non – resident received management fee from its Indian subsidiary but assessing officer made assessment at sum 10 times higher than returned income by assessing the 90% of the management fees as the assessee income when in fact the assessee had charged / earned only cost plus 10% mark up. .
***Dimension Data Asia Pacific (Pte) Ltd v DCIT - TS-133-ITAT-2016(MUM)***

*Search / Survey*

» *Seizure*

**3785.** The Apex court held that where the assessee had made a number of requests from time to time for the adjustment of cash seized against its advance tax liability, and the department failed to do so, no interest under sections 234A, 234B or 234C of the Act could be charged since the assessee was entitled to adjust such seized cash.
***CIT v Sunil Chandra Gupta – TS-244-SC-2016***

**3786.** Pursuant to Government's demonetization move, the assessee had deposited Rs. 40 crore into its current bank account in December 2016, which was almost entirely seized by the department (to the tune of 37crore) pursuant to search and seizure operation and immediately thereafter, the assessee declared Rs. 20 crore under the Pradhan Mantri Garib Kalyan Yojna ('PMGKY') out of which 75 percent (i.e. Rs. 15 crore) had already been appropriated by the Government towards tax / penalty. The assessee requested for a refund of the balance Rs. 5 crore which was denied by the Revenue authorities on the ground that the assessee was not entitled to refund since seizure was made under Section 132B. The Court held that though there is force in Revenue's stand that in view of section 132B, assessee was not entitled to the release of 5 crore, especially when the declaration was made under PMGKY scheme after the seizure was effected, it allowed assessee's request of refund of 5 crore on grounds of mercy/bankruptcy as no prejudice would be caused to the department as even if the declaration was not accepted under the PMGKY scheme, 30 percent of the amount seized would have to be returned. Accordingly, it directed the release of 5 cr to assessee of excess cash seized by department.
***Jaya Balajee Real Media Pvt Ltd-TS-470-HC-2017(AP) Writ Petition No.25470 of 2017 dated oct 11, 2017***

**3787.** The Court dismissed the writ petition filed by the assesse for release of amount seized during search and seizure operation carried out at its business premises and also at banks in which it had their accounts, noting that the Court had already dismissed an earlier writ peitiion filed by the assesse against the search proceedings noting that the authorities had found incriminating material during survey proceedings conducted prior to such search. Further, it was noted that the assessment proceedings were yet to be completed and there were huge unexplained cash

deposited in bank account as well as with assesse. Accordingly, it held that unless assessment proceedings were completed, amount could not be released to assessee.
***RICH UDYOG NETWORK LTD. & ORS. vs. DIRECTOR OF INCOME TAX (INVESTGATION) ORS. - (2018) 408 ITR 0068 (All) - WRIT TAX No. 80 of 2017 dated July 24, 2018***

**3788.** Where during search and seizure, assets of assessee were seized, but, the block assessment had been set aside, the Court held that the attitude of revenue in not returning seized assets despite assessee having succeeded in appeal was clearly arbitrary and showed an attitude of causing undue harassment to the assessee. It held that interest of public revenue did not authorize Revenue Authorities to work without any authority and create or cause all kinds of harassment to innocent people on the pretext of statutory authority.
***Shreemati Devi vs. CIT (Allahabad High Court) (Writ Tax No. - 805 of 2013)***

**3789.** Where, though as per assessment order dated 12-02-2009 passed after search, seized cash was to be refunded to assessee but despite such order cash was not refunded, writ petition filed by assessee on 04.07.2018 for refund of cash seized was dismissed on ground of delay and laches.
***Kishore Jagjivandas Tanna vs DCIT-(2018) 98 taxmann.com 235 (Bombay)- WP No 20179 of 2018 dated 17.09.2018***

**3790.** The Court dismissed Revenue's appeal against the Tribunal's upholding the CIT(A)'s order deleting the addition made u/s 69A on account of seizure of jewellery found in possession of the assessee, who was a salesman working with 'P' Jewellers, At the time of seizure, the assessee had recorded statement u/s 132 admitting that the said jewellery belonged to him. However, subsequently during block assessment proceedings, he brought on record various documents to establish that jewellery seized from him actually belonged to his employer i.e. 'P' Jewellers. The Court held that there was no requirement in law that evidence in support of its case must be produced by the assessee only at time when seizure was made and not during assessment proceedings and thus the impugned addition was rightly deleted by the authorities below.
***CIT v Rakesh Ramani - [2018] 94 taxmann.com 461 (Bombay) - IT APPEAL NO. 1435 OF 2007 dated June 4, 2018***

**3791.** Where during the search and seizure proceedings of assessee's husband, search of a bank locker was conducted and assessee's jewellery was seized and even after various representations made by the assessee for the release of the jewellery, the AO retained the same on the argument that the same would be detained till the assessee's husband's tax demand was satisfied, the Court held that refusal of the revenue to release the jewellery seized even after request by assessee constituted deprivation of property without lawful authority and was contrary to Article 300-A of Constitution of India. Accordingly, it issued directions for the release of the jewellery.
***Sushila Devi vs. CIT (2016) 97 CCH 0032 (Del HC) (W.P. (C) 7620/2011)***

**3792.** The Court dismissed assessee's writ petition to quash and set aside search and seizure conducted by authorities at registered office and corporate office of assessee-society wherein,

on receipt of specific information that the assessee-society was engaged in siphoning off funds, warrant of authorization u/s 132 was issued and order u/s 133A(3)(ia) was passed to seize the documents as well as electronic media in form of hard disc/CD/Pen Drive, etc. found during course of survey proceedings. It was noted that satisfaction note had been considered and scrutinized minutely by relevant authorities and all authorities offered their own comments and thereafter authorization was issued. It was also observed that since assessee society was involved in siphoning off of funds from society to shell companies by way of advancing loans without any equivalent collateral securities, the allegation of huge tax evasion by group had been substantiated. Accordingly, the Court held that since the authorization was based on definite information and after discreet verifications, it could be termed adequate and order passed u/s 133A(3)(ia) was also absolutely in consonance with provisions of the said section.
***Adarsh Credit Co-operative Society Ltd vs Joint DIT- [2018] 97 taxmann.com 353 (Gujarat) R/SPECIAL CIVIL APPLICATION NO. 10449 OF 2018 CIVIL APPLICATION NOS. 1 AND 2 OF 2018 dated August 08 2018***

**3793.** The Court held that the Petitioner was entitled to avail remedy under Pradhan Mantri Garib Kalyan Yojana Deposit scheme with respect to Rs.30 lakhs cash seized by police officials and handed over to Income Tax officials. Noting the Petitioner's submission that the cash amount seized was sale proceeds of old jewellery belonging to him, his wife and mother, which was sold by him to one of the broker post demonetization. The Court affirmed the action of police officials in enquiring the petitioner prayer for directing unconditional return of the seize amount. However, it examined petitioner's eligibility under PMGKY Scheme and observing that the possession of undisclosed income in cash was not any offence under Indian Penal Code, moreover no FIR was registered against petitioner with respect to amount seized, held that the petitioner was eligible for availing the PMGKY Scheme. Accordingly, it directed any declaration of undisclosed income under the PMGKY Scheme, it directed IT Dept. to consider the same and pass appropriate order thereon.
***Vishal jain vs. State of Punjab & Others TS-56-HC-2017(P&H) CWP No. 1072 of 2017 dated 23.01.2017***

**3794.** The assessee was investigated by police personnel who had seized certain amount from his car u/s 102 of Cr.P.C. Further, summons u/s 131 of IT act were issued and in response the assessee submitted that out of the seized money certain money belonged to some other businessmen and some part belonged to assessee's mother and wife which he was carrying to Bhilwara from Vijaynagar. The assessee thus filed a writ petition seeking a direction to produce satisfaction note/reasons recorded, if any, under Section 132A(1) of the Income Tax Act, 1961 and further to declare the action u/s 132A(1) without jurisdiction and to release the seized amount. The Court relied on Nk Jewellers vs CIT (12 SCC 627) where in it was held that with regard to amendment made in s. 132A by Finance Act, 2017 i.e., "reason to believe" or reason to suspect", should not be disclosed to any person or any authority or ITAT and in that case the authorities had noted that money which was seized by police could always be claimed by assessee, after Department concluded its proceedings, which were initiated by issuing notice to assessee. Thus, the Court in the present case held that, in case summons to assessee were issued u/s 131 and assessee was asked to explain amount so seized, the authorities were

bound to conclude proceedings as per law and assessee had all liberty to avail remedy provided against such order being passed, thus dismissed assesse's Writ petition.
***Shiv Tiwari vs PDIT (Investigation)- (2018) 103 CCH 0111 Raj HC- S.B Civil Writ No 17567/2018 dated 07.09.2018***

**3795.** Where the AO sought to deny a percentage of expenses incurred by the assessee charitable trust, pursuant to search proceedings carried on in the premises of the assessee on the ground that the assessee was also carrying on business activities, the expenses pertaining to which were not allowable as deduction, the Tribunal noting that the AO in his assessment order nowhere referred to any document, information arising out of the search held that there was no incriminating material recovered from the search proceedings which formed the basis of the disallowance of expenses. Relying on the decision of CIT vs. Kabul Chawla reported in 380 ITR 573(Delhi), it held that in the absence of incriminating material no addition could be made under Section 153A and accordingly deleted the disallowance.
***SOCIETY FOR EDUCATIONAL EXCELLENCE vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0197 DelTrib – ITA No. 6957, 6960 and 3606/Del/2017 dated Mar 19, 2018***

**3796.** The Tribunal held that where the cash seized from assessee-individual's premises during AY 2009-10 pursuant to search and seizure operation u/s. 132 of the Income-tax Act, was deposited in the PD (Personal Deposit) account of the department, it was not available to the assessee as on the valuation date, it could not be considered as assessee's wealth u/s 2(ea)(vi) of the Wealth Tax Act and accordingly not liable for wealth tax.
***B. Rajeswar Rao TS-440-ITAT-2017(HYD)-WTA No.80 of 2016 27.09.2017***

**3797.** During the course of search proceedings for A.Y. 2011-12 u/s 132, cash was found and seized from the premises and bank lockers of the assessee. The assessee offered the cash seized as his undisclosed income for A.Y. 2005-06 to A.Y. 2011-12 and requested the AO for adjustment of seized cash against his tax liability arising on account of the offered income. The AO levied interest u/s 234B up to the date of issue of orders u/s 143(3) r.w.s 153A for non-payment of advance tax in respect of undisclosed income and then adjusted the cash seized against the tax liability including interest u/s 234B. Before the CIT(A), the assessee contended that interest u/s 234B should have been restricted till the date when the assessee requested for adjustment of cash seized against the tax liability and not till the date of passing the order of AO. CIT(A) rejected the assessee's contention on the ground that the only at the time of passing the assessment order u/s 153A/153C, the AO could arrive at the conclusion that the cash seized belonged to the assessee and then only he could adjust the cash seized against the tax liability. He further held that advance tax instalments had already expired and accordingly, the cash seized could not have been adjusted against the advance tax liability. Further, he held that the Explanation to 2 to Section 132B also excludes advance tax from the term 'existing tax liability'. The Tribunal observed that Explanation 2 to section 132B which excludes advance tax from the ambit of existing liability was effective from 1st June, 2013 and was not applicable to the assessment years involved in the appeal and accordingly held that the assessee was entitled to adjustment of cash seized against the tax liability including advance tax arising on undisclosed income. Accordingly, it deleted the interest levied u/s 234B by the AO.

Go to Index

***N. Venkatanathan vs.DCIT (2017) 50 CCH 0065 MumTrib ITA Nos. 7378 to 7383/Mum./2014***

» *Block assessment*

**3798.** The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had held that in course of block assessment proceedings, the AO had no jurisdiction to reject assessee's books of account and refer matter to DVO to verify cost of construction of building and, thereupon make addition to assessee's income u/s 69C on basis of valuation arrived at by DVO, in absence of any undisclosed income detected as a result of search
***Pr.CIT v Rajni Developers (P.) Ltd [2018] 96 taxmann.com 221 (SC) - SLP (Civil) Diary No.(S). 22633 OF 2018 dated July 23, 2018***

**3799.** The Apex Court held that although section 158BD does not speak of 'recording of reasons' as postulated in section 148, but since proceedings u/s 158BD may have monetary implications, such satisfaction must reveal mental and dispassionate thought process of the AO in arriving at a conclusion and must contain reasons which should be the basis of initiating the proceedings u/s 158BD. Thus, noting that notice u/s 158BC was issued on the same date to the searched person and also the person other than the searched person (to whom the undisclosed income belonged), it held that the notice u/s 158BC issued to the other person was not valid as no reasonable or prudent man could have come to the satisfaction that the undisclosed income belonged to the other person unless the seized books of accounts etc were verified. The Court held that in such case, the AO was empowered to issue a second notice u/s 158BD to the other person.
***Tapan Kumar Dutta v CIT - [2018] 92 taxmann.com 367 (SC) - CIVIL APPEAL NO. 2014 OF 2007 dated April 24, 2018***

**3800.** Notice u/s 132 of the Act issued in name of a dead person was duly received by Petitioner as the legal heir of that dead person and he also participated in assessment proceedings u/s 158BC of the Act. Subsequently notice u/s 158BD was issued to the Petitioner on the basis of information coming to light in course of search which was challenged by the Petitioner. The Apex court held that as the issue of invalidity of the search warrant was not raised at any time prior to issue of notice u/s 158BD and the fact that the petitioner had participated in assessment proceedings, notice u/s 158BD could not be challenged. The Apex Court, accordingly, dismissed the Special Leave Petition filed by the assessee.
***Gunjan Girishbhai Mehta v. Director of Investigation [2017] 80 taxmann.com 23 (SC) (SLA No. 30282 of 2015***

**3801.** Where survey (under Section 133A) conducted at the premises of a connected person was consequential to the search (under Section 132) conducted at the premises of the assessee, Court upheld the action of the AO in making Block Assessment under Section 158BB and held that any material or evidence found / collected in such survey would fall under words 'and such other materials or information as were available with AO and relatable to such evidence' occurring in section 158BB.

Go to Index

***CIT vs. Ajit Kumar – [2018] 102 CCH 0002 (Supreme Court) – Civil Appeal No. 10164 of 2010, 10917 OF 2013, 4449 OF 2015, 5255 OF 2015, 10165 OF 2010 dated May 2, 2018***

**3802.** The Apex Court dismissed the assessee's SLP against the order of the Gujarat High Court wherein the block assessment proceedings under section 158BD of the Act were held to be valid. Noting that in the instant case, though the search warrant under section 132 of the Act was issued on a dead person, the assessee, in the capacity of legal heir participated in the block assessment proceedings under section 158BC of the Act, the Court dismissed the contention of the assessee challenging the subsequent issue of notice under section 158BD of the Act, in the name of a deceased was invalid as the assessee had participated in the assessment proceedings under section 158BC and had not raised the issue of invalidity of search warrant at any time prior to the issue of notice under section 158BD.
***Gunjan Girishbhai Mehta v Director of Investigation – TS-123-SC-2017 dated March 21, 2017***

**3803.** The Court held the block assessment to be illegal on the ground that no valid authorization or search u/s 132(1) was made in name of assessee and at premises of assessee. Since the warrant of authorisation and panchnama was made in the name of "M/s. Verma Transport Company" instead of "M/s. Verma Roadways", the Court held that the Tribunal had not examined sufficiency of material on which authorization u/s 132(1) was issued by the competent authority but had examined identity of person in respect of whom the authorization was issued and search and seizure operations were carried on. It held that the use of wrong name was more in the nature of clerical mistake than mistake of identity since the search and seizure actually was conducted at the premises of assessee and whatever was seized included money and document belonged to the assessee and further the assessee had at no point of time, before ACIT/AA raised any such dispute that authorization as well as panchnama prepared by search and seizure team relate to another person. Thus, it held that the search and seizure operations must be held to have been conducted against the assessee and, therefore, on the basis of material collected in search and seizure operations, the ACIT/AA was justified in proceeding to make assessment under Section 158BC.
***VERMA ROADWAYS & ANR. v ACIT – (2018) 101 CCH 0015 (All HC) – TAX APPEAL NO. 3 of 2000, 4 of 2000 dated 11.01.2018***

**3804.** Tribunal did not entertain assessee's additional claim made before it on ground that second proviso to sec. 158BC(a) prohibited assessee who was subjected to search or whose books of accounts were required u/s. 132A for filing revised return of income. Tribunal held that assessee had not excluded or reduced lease rentals from depreciation offered to tax while filing return of undisclosed income for block period it was not entitled to do so later on in view of second proviso to sec. 158BC. The Court held that, prohibition in Second Proviso to sec.158BC(a) of filing revised return of income before AO would not prohibit assessee from raising additional claim before Appellate Authorities. In Goetze (India) Ltd. v. CIT after holding that AO had no power to entertain claim for deduction otherwise than by filing revised return of income by assessee. Apex Court clarified that same would not fetter appellate authority from entertaining claim not made before AO. Appeal of assessee on issue of additional claim made before Tribunal was restored to Tribunal for fresh disposal on merits in accordance with law.

Go to Index

***Alok Textile Inds. Ltd. vs. Dy. CIT-(2018)102 CCH 0152 BombayHC-ITA No.118 of 2003-Dated Jul. 10, 2018***

**3805.** The Court while dismissing the Revenue's appeal held that the AO had jurisdiction to make additions under block assessment only on the basis of the material found during the course of search and not as a result of other documents/ materials which come to his possession subsequent to the conclusion of the search operation unless and until such material has relation or connection with martial / evidence found during the course of search. The Court noted in respect of additions pertaining to cash credit, foreign travelling expenditure, professional receipts, suppressed rents and gifts, the AO had not found any material during the course of search operation and that the additions were made either on the basis of conjecture or surmises or the same were already disclosed by the Assessee in the ROI and, therefore, did not constitute any material relatable to evidence found during the course of search.

The Court further rejected the contention of the Revenue that the Third Member should not have gone into the issue of jurisdiction of the AO to make additions under block assessment as the Third Member could not have gone beyond the five issues referred to him which did not contain the issue on jurisdiction and held that Tribunal could not be denied to decide upon a foundational issue because of certain perceived procedural issue as the same would expose the legal system to insurmountable barriers – most fundamental of that being the litigant would always have to approach Superior Courts to decide upon the issue of jurisdiction. The Court further held that the Tribunal rightly decided the issue with regard to the jurisdiction of the AO to make an addition under block assessment as the same was mandated by provisions of section 254 (1) and (2) r.w. section 255 (4).

***CIT vs. Pinaki Misra & Anr. (2017) 98 CCH 0088 – Del HC (ITA No. 119/2004 & 423/2004 dated March 7, 2017)***

**3806.** The Court, upheld Tribunal's order quashing block assessment u/s 158BC on the ground that no formal notice u/s 143(2) was issued to assessee. The assessee had filed a block return on July 12, 2004, 28 months after the issue of notice u/s 158BC on February 11, 2002. The relevant block assessment period was from 1990-2001. CIT(A) and Tribunal set aside assessment order made by AO on the ground that notice u/s 143(2) was not issued before rejecting returned income. Before the Court, the Revenue contended that return filed by the assessee was after a long delay and could be treated as invalid and non-est return due to which issue of notice u/s 143(2) was not required by AO to complete assessment. Referring to the provisions of section 143, the court held that assessment u/s 143(3) would be made by AO by issuing notice u/s 143(2) only when return had been filed u/s 139 or u/s 142(1) and if it was necessary to ensure that income had not been understated by assessee. Further, as per the provisions of section 144, it held that if the assessee had not filed return of income or if the return filed was held to be invalid or non-est, AO could have proceeded to frame assessment u/s 144. Accordingly, it held that though the assessee had filed a belated return, the AO based on the return filed framed an assessment assessing income higher than the returned income and therefore notice u/s 143(2) was necessary.

***Pr.CIT vs Devendranath G Chaturvedi-TS-232-HC-2017(GUJ)-dated 12.06.2017***

Go to Index

**3807.** The Tribunal quashed the block assessment proceedings for the period 1996 to 2002 initiated u/s 158BD pursuant to search and seizure operation conducted in the case of UIC group companies. During search, it was found that the said group allotted its own shares to various companies including the assessee-company and it was alleged that unaccounted cash was channeled in the form of bogus purchase / sale of shares. The Tribunal noted that there was no search warrant in name of assessee and held that notice u/s 158BD could be validly issued to the assessee only if material belonging to assessee disclosing undisclosed income of assessee was found during course of search at the premise of UIC group, which was not the case. Accordingly, it held that the jurisdictional fact to invoke section 158BD was absent and, thus, framing of assessment u/s 158BD was ab initio void.

***TUHADI SUPPLIERS PVT. LTD. vs. ACIT (2018) 53 CCH 0338 KolTrib – I.T(SS).A. No. 66, 69, 72, 80 & 1718/Kol/2013 dated 13th July, 2018***

» *Section 153C*

**3808.** A search was carried out in case of real estate broker 'L' in course of which a document was seized showing that assessee had purchased a property in shopping mall. The Assessing Officer, initiated assessment proceedings against assessee under section 153C. In course of assessment, the Assessing Officer taking a view that assessee had failed to explain source of money from which property was purchased, added said amount to her taxable income. Subsequently, 'L' retracted his statement made in search proceedings and submitted that document in question might belong to any other broker. The Tribunal having formed an opinion that said document did not belong to the assessee, deleted impugned addition. The High Court in impugned order noted that no attempt was made by the Assessing Officer to enquire into matter to find out if at all there was any such other broker who had prepared document in question. Moreover, there were internal contradictions and inconsistencies in document in as much as document specified that rent for property in question was payable by the assessee from year 2006 onwards whereas according to revenue, said property had already been purchased by assessee.

The Court held that on facts, addition made on basis of single document whose genuineness itself was in doubt, was rightly deleted by the Tribunal.

***SLP dismissed in Principal CIT v. Vinita Chaurasia [2018]98 taxmann.com 468/259 Taxman 129(SC)-W.P. Nos. 3405 & 43944 of 2016 W.M.P. Nos. 2780 & 37778 of 2016 dated October 10, 2018***

**3809.** The Apex Court dismissed the SLP filed by Revenue against the High Court's order wherein the High Court had quashed the proceedings initiated against the assessee u/s 153C since the AO of assessee had not proved that the documents seized during search of third party belonged to assessee and not to the searched person and the satisfaction notes recorded by AO of assessee and AO of searched person were identically worded and no reason was recorded as to how the satisfaction note of AO of assessee was a carbon copy of satisfaction note of AO of searched person.

***ITO v Canyon Financial Services Ltd. – (2018) 91 taxmann.com 252 (SC) – SLP (Civil) Diary No. 2726 of 2018 dated 19.02.2018***

Go to Index

**3810.** The Court dismissed the Department's SLP filed against the High Court ruling whereby the proceedings initiated u/s 153C were quashed noting that the assessee's AO had not proved that the documents seized from premises of third party belonged to assessee and not to the searched person and that the satisfaction note of AO of assessee was a carbon copy of satisfaction note of AO of the searched person.
***ITO v Canyon Financial Services Ltd. – (2018) 90 taxmann.com 169 (SC) – SLP (Civil) Diary Nos. 41879 of 2017 dated 11.01.2018***

**3811.** Where AO made addition to assessee's income by invoking provisions of section 153C on basis of document seized in course of search carried out in case of L, in view of fact that subsequently L retracted his statement that said document belonged to assessee and, therefore, Tribunal as well as HC set aside said addition, SLP filed against decision of HC was dismissed
***Pr.CIT vs Vinita Chaurasia [2018] 98 taxmann.com 414 (SC) - SLP(C ) Diary No.27566 of 2018 dated August 20 2018***

**3812.** The Apex Court dismissed Revenue's SLP against Delhi HC ruling in case of Pepsi Foods Pvt. Ltd. with respect to AYs 2006-07 to 2011-12 wherein the High Court quashed the Section 153C notice issued to Pepsi Foods by holding that satisfaction note issued by AO failed to express "satisfaction" of the kind required u/s 153C which was a prerequisite for issuance of notice. The High Court stated that the satisfaction note ought to have provided the basis for conclusion of AO's satisfaction that seized documents 'belong to' person other than searched person and there should be cogent material available with AO to arrive at such satisfaction.
***Pepsi Foods Pvt Ltd - TS-584-SC-2017 - Petition(s) for Special Leave to Appeal (C) No. 4659/2015 dated 04-12-2017***

**3813.** The Court, dismissing the Revenue's appeal, held that where the Revenue could not, in any manner, show that the findings rendered by the Tribunal viz incriminating materials seized during the course of search conducted on Mr. Dilip Dhrai did not belong to the Assessee were perverse and since proceedings u/s 153C, as it stood prior to 1st June, 2015, could only be initiated against the Assessee if documents seized during the course of search conducted on another party belonged to the Assessee the proceedings initiated u/s 153C were bad in law.
***CIT vs. Arpit Land Pvt. Ltd. and Anr. (2017) 98 CCH 0063 – Bom HC (ITA No. 83 of 2014 dated 07.02.2017)***

**3814.** The Court held that even in cases where the AO of the person searched and the assessee who is sought to be assessed under section 153C of the Act is the same, the AO was still required to record his satisfaction that the assets / documents seized belong to the assessee.
***Pr CIT v Nikki Drugs & Chemicals Pvt Ltd – [2015] 64 taxmann.com 309 (Del)***

**3815.** Pursuant to search proceedings conducted in the BM Gupta group, the Assessing Officer initiated search proceedings in the case of the assessee on the basis of certain documents found at the premises of BM Gupta which allegedly pertained to the assessee. The Court rejected the contention of the Revenue that even prior to the amendment u/s 153 (1st June 2015), it was sufficient that the seized documents pertained to the assessee and it is not

necessary to show that the material belonged to the assessee. It held that prior to the amendment it was sine qua non for the material to 'belong' to the assessee.
***CIT & Ors vs Renu Construction Constructions Pvt. Ltd & Ors (2017) 100 CCH 0021 Delhi HC ITA no. 499/2011. 32/2012, 35/2012, 41/2017, 125/2017 dated 06.09.2017***

**3816.** Where search proceedings were carried on in the premises of the Director of the assessee as a result of which a sum of Rs.2 crore of cash had been seized and the director had given a statement that a portion of the cash belonged to the assessee, pursuant to which, the assessee was served a notice under section 153C of the Act, the Court held that the said notice could not be considered as a defective notice as it was issued based on the statement of the director which constituted sufficient material for initiation of proceedings.
***Pr CIT v Nau Nidh Overseas Pvt Ltd – (2017) 98 CCH 0072 Del HC – ITA 58, 59, 82, 83 /2017 & CM Appl 2767, 3614 & 3615 / 2017***

**3817.** Where the AO made an addition in the hands of the assessee pursuant to search conducted at the premises of the assessee, which included the assessee's brother's premises, based on documents seized from the assessee's brother, the Court dismissed the assessee's contention that the addition was invalid as no separate notice under Section 153C had been issued to the assessee and observed that i) the warrant was issued in the name of the assessee as well as his brother ii) the panchnama was signed by both the assessee and the brother iii) the statements of the assessee as well as his brother were recorded on the same date iv) the assessee and his brother were involved in a common business. Accordingly, it held that there was no requirement for issue of separate notice under Section 153C of the Act. Further, it dismissed the assessee's contention that he was not given the opportunity to rebut AO's allegations and observed that his statement along with his brother's statement and all other relevant documentation were duly made available to him to enable him to make submissions before the AO. Accordingly, it upheld the addition made by the AO.
***VINOD KUMAR GUPTA vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 101 CCH 0083 DelHC - ITA 1003/2017, C.M. APPL.41767-41768/2017 & 3505/2018 dated Mar 12, 2018***

**3818.** The Court held that when satisfaction note had not been recorded by the AO of the searched person, then initiation of search proceedings under section 153C of the Act were invalid.
***Pr CIT v Flucky Leasing & Finance Pvt Ltd – (2015) 94 CCH 0145 Del HC***
***Super Malls Pvt Ltd v DCIT – (2015) 45 CCH 0330 Del Trib***

**3819.** The Court upheld the order of the Tribunal wherein the Tribunal had deleted the addition made by the AO on account of unexplained investments on the basis of a document found in the premises of a broker during search proceedings conducted in the premises of the broker since the AO failed to prove how the document belonged to the assessee. The Revenue claimed that the said document seemed to suggest that assessee purchased land at Rs.32.85 crore whereas the assessee had only declared Rs.16.42 crore as a purchase in its books of accounts and therefore the balance amount of Rs.16 crore was unexplained investments taxable in the hands of the assessee. It held since the document did not 'belong to' the assessee, the AO was incorrect in proceeding to make addition in the hands of the assessee and it held that the Revenue could not seek to point out that the document 'pertained to' or 'related to' the assessee.

Go to Index

***Pr CIT v Vinita Chaurasia – (2017) 99 CCH 0020 Del HC – ITA 1004 and 1005 / 2015 dated 18.05.2017***

**3820.** The Court held that merely because the material seized from the assessee's Chartered Accountant related to the assessee it could not be considered as belonging to the assessee who wasn't searched and therefore the concluded assessments of the assessee could not be mechanically re-opened under section 153C of the Act. Further, it held that the limitation period of 6 years contained in the Second Proviso to Section 153C was to be reckoned from the date of recording satisfaction and not from the date on which search was conducted.
***CIT v RRJ Securities Ltd – TS-624-HC-2015 (Del)***

**3821.** The Court held that where in course of search carried out at premises of a third person, a hard disk was seized on basis of same proceedings under section 153C were initiated against assessee, since AO of searched person failed to record a specific satisfaction as to how said hard disk belonged to assessee, impugned proceedings under section 153C were unjustified.
***PCIT v N.S. Software (Firm) [2018] 93 taxmann.com 21 (Delhi) – ITA NO. 791 OF 2017 dated 18.04.2018***

**3822.** Where an application for issue of shares and confirmation thereon issued by the assessee was found pursuant to search proceedings carried out in the premises of the Dalmia Group of companies and the AO of the Dalmia group recorded a satisfaction that the aforesaid documents belonged to the assessee and handed them over to the AO of the assessee to initiate proceedings against the assessee under Section 153C, the Court held that once the application and confirmation were submitted by the assessee to the Dalmia group it could not be said to belong to the assessee. Accordingly, it quashed the satisfaction note issued by the AO of the Dalmia Group and the consequent proceedings initiated in the case of the assessee.
***CANYON FINANCIAL SERVICES LTD. & ORS. vs. ITO & ORS (2017) 99 CCH 0089 DelHC W.P.(C) 3241/2015, W.P.(C) 3242/2015, W.P.(C) 3243/2015, W.P.(C) 3245/2015, W.P.(C) 3246/2015, W.P.(C) 3248/2015 dated 10/07/2017***

**3823.** The AO had undertaken a search in the premises of a third party wherein certain documents belonging to the assessee had been found. As the AO had jurisdiction over the assessee as well, he recorded his satisfaction regarding the documents seized and proceeded to initiate search proceedings by issuing notice under section 153C of the Act. The Court dismissed the Petition filed by the assessee and held that merely because the AO did not record that the documents seized did not belong to the third party at whose premises the search was undertaken, the initiation of proceedings could not be declared void as the AO had recorded the fact that these documents belonged to the assessee.
***Ganpati Fincap Services Pvt Ltd v CIT – (2017) 99 CCH 0027 (Del HC) – W.P.(C) 525/2015, 527/2015, 529/2015, 2220-2229/2015, 2245-2248/2015 dated 25.05.2017***

**3824.** The Court dismissed the appeal of the Revenue and held that no notice u/s 153C could be issued to the Assessee for AY 2006-07as notice u/s 153C to the Assessee was issued on 04/01/2013 and, therefore, the six-year period prior to AY 2013-14 would be AY 2007-08 to AY 2012-13. The Court held that in the case of a person other than the searched person,only

subsequent to the notices issued under Sec 153A to the searched person the AO could issue notice.Therefore, the starting point for computation of the block period of six years would be the date on which notice was issued to the 'other person' under Sec 153C and not the date on which the search was conducted as contended by the Revenue.
***Pr. CIT vs. Sarwar Agency Pvt. Ltd. (2017) 99 CCH 0191 Del HC (ITA No. 422/2017 dated August 17, 2017)***

**3825.** Where search and seizure operations were carried out by the AO in the premises of two individuals and a survey was also conducted in the premises under section 133A by the same AO and a notice was issued to the assessee under section 153C of the Act on the basis that the documents seized from the premises of the individuals "belonged" to the assessee pursuant to which assessments were concluded in the hands of the assessee, the Court held that the Tribunal erred in deleting the addition in the hands of the assessee based on the facts that the documents did not actually belong to the assessee, and held that the expression belonged in the notice could not have been interpreted so strictly and was to be interpreted to mean 'relating to'. Accordingly, it allowed the appeal of the Department.
***PCIT Vs. Super Malls Pvt. Ltd. (2016) 97 CCH 0105 DelHC (ITA 449/2016)***

**3826.** Where the Revenue submitted before the Court that while quashing the proceedings initiated u/s 153C, the Tribunal had proceeded on the erroneous finding that no satisfaction was recorded by the AO of the searched person where the satisfaction was in fact recorded by the AO, the Court relegated the Revenue to file a rectification application before the Tribunal pointing out to the Tribunal what was stated in the appeal to the Court with supporting material and directed the Tribunal to decide the same in accordance with law and on its own merits.
***Pr.CIT v Mehul Lavjibhai Mehta - [2018] 95 taxmann.com 321 (Gujarat) - R/TAX APPEAL NOS. 208 TO 211 OF 2018 dated June 18, 2018***

**3827.** The Tribunal held that the recording of satisfaction by the AO of the person searched that money, bullion jewellery etc seized belongs to the person other than the person searched was a sine qua non for initiating proceedings under section 153C of the Act in the absence of which, the AO of the other person does not get jurisdiction to issue notice under section 153C of the Act.
***Parshwa Corporation Jalandhar Apartments v DCIT – (2015) 45 CCH 0051 Ahd Trib***

**3828.** The Tribunal held that merely because there is a reference to name of assessee in seized documents in the case of another person it does not mean that assessee is owner of those documents and that to invoke section 153C there should be something in satisfaction note recorded by Assessing Officer to indicate that the searched person had disclaimed those documents and documents did not belong to searched person but other third person.
***Senate v DCIT - [2016] 68 taxmann.com 223 (Bangalore-Trib)***

**3829.** The Tribunal held that where the exercise of recording satisfaction during assessment proceedings of person searched had not been carried out and the satisfaction did not satisfy requirement of section 153C, the AO lacked jurisdiction to initiate proceedings under section 153C of the Act against assessee and issuance of notice itself would be null and void.

Go to Index

***ACIT v Shivaansh Advertising & Publications Pvt Ltd - (2015) 44 CCH 0494 Del Trib***

**3830.** When exercise of recording satisfaction during assessment proceedings of person searched was not carried out and satisfaction recorded was not as per requirement of section 153C and also where no seized materials was referred even in impugned assessment orders, the Tribunal held that the AO had no jurisdiction to initiate proceedings under section 153C of the Act against Assesse.
***DCIT v Satkar Roadlines Pvt Ltd - (2015) 44 CCH 0496 Del Trib***

**3831.** The AO initiated proceedings in case of assessee u/s 153C based on certain documents found during search carried out in case of 'T' Group, opining that the assessee had not disclosed income from sale of land, which was claimed by the assessee to be in nature of agricultural land. The Tribunal held that in view of the fact that documents seized in course of search had no bearing on determination of assessee's income and moreover, while making addition there was no reference whatsoever to said documents, the initiation of proceedings u/s 153C was bad in law and thus liable to be cancelled.
***Green Range Farms (P.) Ltd. v DCIT [2018] 96 taxmann.com 249 (Delhi - Trib.) – ITA No. 5365 (DELHI) OF 2014 dated July 13, 2018***

**3832.** The Tribunal held that the main requirement for initiation of action and issuance of notice under section 153C of the Act, is that the AO of the other person was mandatorily required to record that the documents belong to such person and he has jurisdiction to assess such person. Further it held that the expression 'belong to' should not be confused with the expression 'relates to' or 'refers to'. Accordingly, in the absence of such record made by the AO, it quashed the notice and declared it void ab initio.
***ACIT v Amrapali Grand – (2015) 45 CCH 0224 Del Trib***

**3833.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order holding that assumption of jurisdiction by AO to issue notice u/s 153C was void ab initio and bad in law and vitiated the entire assessment proceedings since the AO of searched person had not recorded a satisfaction note that the seized material belonged to person other than searched person (i.e. assessee) and thus, the condition precedent u/s 153C was not satisfied.
***Asst CIT vs Surbhi Sen Jindal and Anr [2018] 54 CCH 0154 (Del Trib)- ITA 4809/Del/2014 dated 01.11.2018***

**3834.** The AO of the assessee, also the AO of another group of companies viz. Jagat Group had carried out a search in the premises of the Jagat Group and documents belonging to the assessee were found and seized from the above premises. Accordingly, the AO issued notices under section 153C of the Act to the assessee and conducted consequent assessment proceedings making an addition in the hands of the assessee under section 68 of the Act on account of share capital / premium received by the assessee during the year under review. The Tribunal held that as per Section 153C of the Act, the satisfaction of the AO of the searched person (i.e. the Jagat Group) was a must for assuming jurisdiction under section 153C of the Act in case of a person other than the searched person (the assessee). It noted that the AO did not record any satisfaction in the proceedings of the searched person and therefore held that

the proceedings initiated against the assessee would not survive. Accordingly, it upheld the order of the CIT(A) deleting the addition and dismissed the appeal of the Department.
***Victory Accommodation Pvt Ltd v ACIT – (2017) 50 CCH 0044 (Del Trib) – ITA Nos 6216 & 6217 / Del / 2014 dated 19.05.2017***

**3835.** Where search and seizure operations u/s. 132 was conducted in case of one of partner in assessee firm from where certain documents were seized and proceedings u/s. 153C was initiated against assessee, the Tribunal relying on the decision of the Apex Court in CIT Vs. Calcutta Knitwears, [2014] 362 ITR 673 (SC) [wherein it was held that recording of satisfaction was sine qua non for taking action against person u/s.158BD i.e. a person in whose case search was not conducted] noted that in the assessee's case both the satisfactions which were required to be recorded by AO as per provisions of Section 153C, one in capacity as AO of searched person and other in capacity of AO of assessee (other person) were missing in the instant case. Accordingly, it held that initiation of proceedings u/s.153C was bad in law and without jurisdiction, and the orders passed by AO u/s.153C r.w.s. 143(3) years under consideration were liable to be cancelled.
***JOYRAM ENTERPRISE vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0225 GauhatiTrib - ITA No. 260 to 266/GAU/2017 dated Feb 22, 2018***

**3836.** Search and seizure operation u/s 132 was conducted in case of M/s. PDPL wherein, various documents were seized belonging to assessee. Copies of documents related to assessee and based on which satisfaction was recorded for issuing notice u/s 153C were supplied. AO made additions on two counts. CIT(A) granted partial relief to assessee. The Tribunal held that, no specific ground was raised before CIT(A) challenging assessment on ground that no satisfaction was recorded by AO of searched person and thus, assessment was vitiated. Satisfaction of AO of searched person was a sine-qua-non to effect that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned belonged to; or any books of accounts or documents, seized or requisitioned pertains or pertain to, for any information contained thereto, related to a person other than person referred to in sub-section (1) of s. 153A. No satisfaction note by AO of searched person was furnished by Revenue, despite categorical directions given by Tribunal. However, a satisfaction note in case of assessee was furnished by Revenue. DR fairly conceded that despite various reminders, satisfaction note by AO of searched person i.e. M/s. PDPL was not made available. For purpose of s. 153C, AO before handing over items to AO having jurisdiction must be "satisfied" that items belonged to person other than person referred to in s. 153A. View formed by AO after his own enquiry does not entail in seating in appeal over satisfaction of first AO, who had handed over items to him. Accordingly, proceedings u/s 153C were not validly initiated and was contrary to settled position of law and same was therefore quashed.
***Avalanche Reality Pvt. Ltd. vs. Asst. CIT-(2018) 54 CCH 0295 IndoreTrib-ITA No. 535/Ind/2013-Dated Dec 4, 2018***

**3837.** The Tribunal held that an order under section 153C passed without obtaining the approval of the JCIT under section 153D was without jurisdiction and void in view of Calcutta Knitwears 362 ITR 673 (SC) and CBDT Circular No. 24/15 dated 31.12.2015.
***HiKlass Moving Picture Pvt. Ltd vs. ACIT (ITAT Mumbai)***

Go to Index

**3838.** Where the AO, pursuant to search in the premises of the Mukesh Gupta group of companies seized books of accounts pertaining to the assessee and proceeded to issue notice under Section 153C to the assessee, the Tribunal held that in the absence of a satisfaction note by the AO to state that the books of accounts seized during search of the Mukesh Gupta group constituted incriminating material in the case of the assessee, the issue of notice under Section 153C of the Act was without jursidction. It held that even CBDT vide its Circular No.24/2015 has provided that even if the Assessing Officer of the searched person and the other person is the one and the same, then also the Assessing Officer has to record his satisfaction in the case of the other person i.e., other than the searched person. Accordingly, it quashed the order passed by the AO.

***ASSISTANT COMMISSIONER OF INCOME TAX & ORS. vs. GUPTA DOMESTIC FUELS (NAGPUR) LTD. & ORS. - (2018) 52 CCH 0236 NagTrib - ITA Nos. 195/Nag/2014 to 200/Nag/2014 dated Mar 6, 2018***

**3839.** Search was conducted at some Marvel Group wherein, documents pertaining to assessee were found and thus the AO reopened assessee's case by issuing notice u/s 148 and completed assessment which was further upheld by the CIT(A).The Tribunal relied on the co-ordinate bench in case of V.L. Khandge and held that where the provisions of section 153C of the Act are attracted as per the given set of facts and documents impounded during the course of search, then the proceedings have to be initiated under section 153C of the Act as per prescribed procedure and no proceedings could be initiated under section 147 / 148 of the Act.

***Vikram Munishwarlal Bajaj vs ITO- (2018) 54 CCH 0133 Pune Trib- ITA No 2552/Pun/2017 dated 29.10.2018***

» *Presense / Absense of incriminating material*

**3840.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that invocation of section 153A to re-open concluded assessments of assessment years earlier to year of search was not justified in absence of incriminating material found during search qua each such earlier assessment year.

***Pr.CIT v. Meeta Gutgutia [2018] 96 taxmann.com 468/257 Taxman 441(SC) Special Leave Petition (Civil) Diary Nos. 18121 of 2018 dated July 2, 2018***

**3841.** The Apex court accepted the application seeking for exemption from filing certified copy of the order of the High Court, wherein the High Court upheld order of Tribunal deleting addition made on account of unaccounted sundry creditors (purchases) and unexplained share of money thereby limiting scope of Assessment u/s 153A on basis of incriminating material discovered in search only.

***CIT vs. SKS ISPAT AND POWER LIMITED (SUPREME COURT OF INDIA) (SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 15366/2018) dated May 18, 2018 (102 CCH 0065 ISCC)***

**3842.** TheApex Court dismissed the appeal filed by the Revenue by holding that the High Court was correct in upholding the finding of the Tribunal that as per sec 153C the incriminating material seized during the course of search must pertain to the relevant AYs whereas the documents

which were seized did not establish any co-relation, document-wise with the AYs under consideration.It also noted that the satisfaction note recorded by the AO was analysed by the Tribunal and after due consideration the Tribunal reached a conclusion that the documents belonged to a different AY.
***CIT vs. Sinhgad Technical Education Society TS-358-SC-2017 (Civil Appeal No. 110080/2017 dated August 29, 2017)***

**3843.** The Apex Court admitted Revenue's SLP against High Court order quashing assessment made by AO/TPO u/s 153A pursuant to search and seizure operations as no new incriminating material was found during the search and seizure operations which took place after completion of scrutiny assessment u/s 143(3). Observing that the scrutiny assessment concluded was based upon queries and assessee had disclosed all material which came to be reviewed subsequently under section 153A proceedings, the High Court quashed the assessment order.
***Pr.CIT vs Baba Global Ltd-TS-691-SC-2017-TP-ITA no. 938/2016 dated 28.08.2017***

**3844.** Where search was conducted at the premises of assessee and on the basis of material found, AO observed that investment in house property was made from profits earned from sale of shares and based on the inquires post search operations, he came to the conclusion that the transaction in shares was a sham transaction and was done to re-route the undisclosed money of the assessee by introducing the same in his regular books as capital gain receipts from sale of shares, the Court upheld the view of the Tribunal that additions were not made on the basis of the material/documents seized during the course of search but on the basis of inquiries conducted post search operations and accordingly, that the additions were not sustainable.
***CIT vs. Dr. Shiv Kant Mishra (2016) 97 CCH 0119 All HC (ITA No.– 484 of 2008) (IT APPEAL NO. 1959 (AHD.) OF 2013)***

**3845.** The assessee for relevant years filed its returns declaring certain taxable income. No notice under section 143(2) was issued within time limit prescribed under statute and, thus, returns of income stood assessed and attained finality. Subsequently, in year 2007, a search was carried out by Investigation wing in case of Commodities Exchange Group and assessee being a member of said group was also covered under search and seizure action. A notice under section 153A was issued to assessee relating to six assessment years immediately preceding assessment year of year of search, which included assessment years in question. In response to the notice the assessee filed its return of income which was identical to original return and the AO made addition on account of deemed dividend which was further upheld by the CIT(A). The Tribunal held that the assessment for relevant years had already attained finality and, no incriminating material was found during course of search relating to addition made on account of deemed dividend, thus deleted the addition. The Court held that the order passed by the Tribunal did not suffer from any legal infirmity thus the same was upheld.
***PCIT vs Jignesh Shah- (2018) 99 taxmann.com 111 (Bom)- ITA No 554 & 555 of 2016 dated 26.09.2018***

**3846.** Where the Assessing Officer had issued a notice u/s 153C and made additions u/s 69C of the Act, based on material seized from the residential premises of a third party (Dilip Dherai) which did not belong to the assessee and a statement made by Dilip Dherai which was later retracted,

the Court held that, the Tribunal was correct in concluding that addition could not be sustained in the absence of material which would conclusively show that huge amounts revealed from seized documents were transferred from one side to another. Further, it held that finding by Tribunal that section 153C was not attracted and its invocation was bad in law was correct and no substantial question of law arose. Accordingly, it dismissed Revenue's appeal.
***CIT vs Lavanya Land Pvt Ltd-ITA No. 72 of 2014, 114 of 2014 (Bom HC)dated 23.06.2017***

**3847.** The Court held that action of the Revenue in issuing notice under section 158BC despite the appraisal report clearly stating that no incriminating material was found was highly deplorable as it amounted to harassment of the taxpayer and that the Officers could not act on their whim and fancy. It held that the Dept should adopt a Standard Operating Procedure to provide adequate safeguards before issuing notices under Chapter XVIB of the Act and directed the Chief CIT to pay costs to the assessee.
***Dr. Gautam Sen vs. CCIT (Bombay High Court) (W.P. No. 1344 of 2000)***

**3848.** The Court dismissed Revenue's appeal against Tribunal's order wherein the additions made u/s 68 and 14A pursuant to proceedings u/s 153A/153C were deleted on the ground that no incriminating material in support of additions was brought on record by the Revenue. The Court held that in light of the finding in the Tribunal's order, no substantial question of law arose in the appeal filed by the Department.
***CIT & Ors vs Deepak Kumar Agarwal & Ors (2017) 100 CCH 0011 BomHC ITA no. 1709 of 2014 dated 11.09.2017***

**3849.** Where in a search and seizure operation conducted by the investigation wing of Income Tax department, no incriminating documents and material belonging to the assessee and relating to the subject AY was found, the Tribunal confirmed CIT(A)'s order which held that no proceeding u/s 153C could be initiated against the assessee as the jurisdictional requirement ( i.e. the incriminating material should be relating to the assessee and of the subject AY) was not met in assessee's case. Accordingly, the Tribunal dismissed Revenue's appeal against CIT(A)'s order.
***PCIT vs Index Securities Private Limited & Ors (2017) 100 CCH 0004 Delhi HC -ITA no. 566/2017, 567/2017, 568/2017, 569/2017, 570/2017, 571/2017***

**3850.** Where based upon the statements made by the director's of the assessee-company in the course of search u/s 132, the AO made additions u/s 68 on the allegation that the assessee had received bogus share-application money, the Court upheld the order of the Tribunal and deleted the additions made by the AO observing that the statements recorded u/s 132 did not by themselves constitute incriminating material for making additions and therefore, the assumption of jurisdiction by the AO u/s 153A was invalid.
***PCIT vs. Best Infrastructure (India) Pvt. Ltd. & ORS. (2017) 99 CCH 0163 DelHC ITA No. 13/2017, 11/2017, 12/2017, 20/2017, 14/2017, 15/2017, 16/2017, 17/2017, 18/2017, 19/2017, 21/2017, 22/2017***

**3851.** The Court dismissed the appeal of the Revenue and held that where the document seized during the course of search conducted in FY 10-11 did not contribute incriminating material for that year, it could not be the basis of inferring that a certain modus operandi existed for the other

assessment years covered under search and therefore held that the addition made during the course of proceedings u/s 153A r.w.s. 143(3) for AY 05-06 to AY 07-08 was not warranted. Accordingly, the additions were deleted.
***Pr. CIT vs. Dharampal Premchand Ltd. (2017) 99 CCH 0202 Del HC(ITA No. 512-514/2016 dated August 21, 2017)***

**3852.** The Court held that where no incriminating evidence related to share capital issued was found during the course of search, Assessing Officer was not justified in invoking section 68 for the purpose of making additions on account of share capital.
***Pr. CIT v. Kurele Paper Mills (P.) Ltd. [2017]81 taxmann.com 82(Delhi) ITA No.369 of 2015, dated July 6, 2015***

**3853.** The Court held that proceedings under section 153A of the Act were not valid since no incriminating material was found qua the assessee in each of the years covered by the block assessment proceedings. It rejected the contention of the Revenue that existence of incriminating material in all years was not necessary and that it was sufficient if incriminating material was found for any of the years and held that ever year was a separate year and existence of incriminating material in one year could not be applied to another year.
***Pr CIT v Lata Jain – TS-246-HC-2016 (Del)***

**3854.** During search conducted upon premises of assessee's cousin, key belonging to assessee's locker was found and search warrant was issued in respect of said locker. Since Additional Director had not disclosed any material or information on basis of which he had entertained belief that said locker contained valuable jewellery or other articles representing undisclosed income. The Court held that the impugned search warrant was unjustified.
***Shah E Naaz Judge v. Addl. Dir. of IT (Inv)-Unit-VI - [2018] 100 taxmann.com 346 (DelhiHC)- W. P. (CIVIL) Nos. 5937, 11842 & 11843 of 2016 -November 30, 2018***

**3855.** A search had been carried out in the premises of the maternal uncle (the Nanda Group in whose case incriminating material had been found) of the Petitioner wherein a key to a locker belonging to the Petitioner deceased maternal grandmother, (which had been handed down to the Petitioner), had been found. The authorities on the presumption that the Petitioners locker may contain such cash, jewellery, FDRs or other important documents which could represent undisclosed income, issued a warrant of search authorization to search the Petitioner's locker. Subsequently, notice under section 153A of the Act was issued requiring the Petitioner to furnish returns of total and undisclosed income post which notices under section 142(1) of the Act were also issued to the Petitioner in response to which the Petitioner filed objections which were unanswered. The Court, in the writ proceedings, quashed the authorization warrant and the subsequent notices issued and noted that there was no incriminating material linking the Petitioner to the activities of the Nanda Group. It held that it was only when the Revenue authorities had investigated the issue and gathered some credible evidence supporting the alleged link between the Petitioner and the Nanda Group that they could issue a search warrant and proceed further and since that was not done so in the instant case, they were unjustified in initiating search proceedings against the Petitioner.
***Ameeta Mehra v Addnl DIT- (2017) 99 CCH 0015 (Del HC) – WP C 1471 / 2013 dated***

Go to Index

***16.05.2017***

**3856.** The Court held that completed assessments could only be interfered with by the AO while making assessment under section 153A of the Act only on the basis of some incriminating material unearthed during the course of search and since no incriminating material was found during the search, no addition could have been made to the income already assessed.
***CIT v Kabul Chawla – (2015) 93 CCH 0210 Del HC***

**3857.** The Court quashed assessment passed u/s. 153A in the assessee's case as no assessment was 'pending' as on the date of initiation of search for relevant AY and no incriminating material was found during the course of search. The Court accepted assessee's reliance on P&H HC ruling in Vipin Khanna (255 ITR 2201) and CBDT Circular 549/1989 which provided that when there was failure to issue notice u/s. 143(2) on assessee within prescribed time, the return would be taken as final and no scrutiny proceedings could be initiated thereof. The Court noted that for the relevant AY, no notice u/s. 143(2) or 142(1) was issued to assessee and the period for issuing such notice expired on September 30, 2009. Accordingly, the assessment order passed u/s 153A was quashed.
***Chintels India Ltd. vs. DCIT TS-293-HC-2017(Delhi HC) (ITA 581,707 & 731/2016 dated July 19, 2017)***

**3858.** During the search and seizure operations conducted u/s 132 at the assessee's premises during A.Y. 2006-07, various documents as well as cash, jewellery and other valuables belonging to the assessee were seized. The assessee made disclosure of Rs. 110 Lakhs on account of change in the method of accounting of franchisee fees and undisclosed franchise fees for the A.Y. 2006-07 (i.e. the year in which search was conducted). On this basis, the AO initiated the assessment u/s 153A for the year of search as well as 6 years prior to A.Y. of search and contended that since the modus operandi of the business of the assessee for the earlier A.Ys (6 years prior to A.Y. of search) was same as the A.Y. in which search was conducted, there would have been such undisclosed income in the earlier A.Ys as well. Accordingly, he estimated the undisclosed income at a certain percentage of the amount of disclosure made by the assessee and made the additions for AY 2000-01 to 2004-05. The CIT(A) held the additions to be unsustainable as they were merely based on suspicion that the assessee must have earned undisclosed income in the earlier A.Ys. and deleted the addition. The Tribunal upheld the order of CIT(A). The Court observed that the disclosure of Rs. 110 Lakhs by the assessee was made only for the year of search and not for the relevant years and accordingly, there was no incriminating material on the basis of which the franchisee commission could have been added for the earlier A.Ys. Relying on the decision of this Court in the case of CIT v. Kabul Chawla (2016) 380 ITR 573(Del.), it held that invocation of assessment u/s 153A without any incriminating material for each of the earlier A.Ys was bad in law and additions made by the AO were not justified. Accordingly, it confirmed the deletion of additions made by the AO in respect of franchisee fees.
***PCIT & ORS. vs. Meeta Gutgutia Prop. Ferns 'N' Patels & ORS. (2017) 99 CCH 0024 DelHC ITA 306-310/2017***

Go to Index

**3859.** The Court, relying on the decision of the Division bench in Pr CIT v Devangi Alias Rupa (Tax Appeal No 54 / 2017) upheld the order of the Tribunal wherein it was held that the scope of Section 153A of the Act was limited to assessing only search related income and not other allegedly escaped income which comes to the notice to the AO. It held that the assessment made under section 153A had to have relation to the search / requisition and should be connected with something found therein. If in relation to any assessment year, no incriminating material was found, no addition or disallowance could be made in respect of that assessment year.

***Pr CIT v Dipak J Panchal – (2017) 98 CCH 0074 Guj HC – Tax Appeal No 134 of 2017***

**3860.** Where the AO initiated search proceedings at the premises of the assessee on 10.02.2006 wherein the Department seized certain incriminating material pertaining to AY 2004-05 onward, consequent to which the AO made an addition in the hands of the assessee for AYs 2000-01 to 2004-05 treating the capital gains claimed by the assessee as business income, the Court held that since the incriminating material pertained to AY 2004-05 onward, no addition could be made for the AYs 2000-01 to 2003-04 as no such material was found with regard to these years. Accordingly, it upheld the order of the Tribunal deleting the addition and dismissed the appeal filed by the Revenue.

***Pr CIT v Devangi Alias Rupa – (2017) 98 CCH 0051 Guj HC – Tax Appeal No 54, 55, 56, 57 0f 2017***

**3861.** The Court held that where no material belonging to a third party is found during a search, but only an inference of an undisclosed income is drawn during course of enquiry, or during search or during post-search enquiry, section 153C would have no application. The detection of incriminating material leading to an inference of undisclosed income is a sine qua non for invocation of section 153C. Further, such incriminating material must relate to undisclosed income which would empower the AO to upset or disturb a concluded assessment of the other person. Otherwise, a concluded assessment would be disturbed without there being any basis for doing so which is impermissible in law.

***CIT v IBC Knowledge Park (P) Ltd - [2016] 69 taxmann.com 108 (KarnatakaHC)***

**3862.** With regards to the assessment proceedings u/s 153A r.w.s. 143, the Court rejected the assessee's contention that the said proceedings were non-est as the documents relied on to make additions, being not one seized in search conducted but received before search by Department through a Tax Evasion Petition allegedly filed by one of brokers involved in transaction. It noted that it was pursuant to search and enquiry conducted thereafter that it was revealed that (i) assessee had rental income from a flat purchased at Bangalore which had been sold, (ii) assessee had suppressed account maintained by assessee in which there was unaccounted consideration from purchaser also was unearthed and (iii) exact amount of income escaped from assessment was supported by ample evidence.

***DR. A. V. Sreekumar v CIT – (2018) 90 taxmann.com 355 (Ker) - ITA No. 186 of 2013 dated 24.01.2018***

**3863.** Where during assessment initiated pursuant to search proceedings conducted in the premises of the assessee (engaged in business of real estate) the AO disallowed the expenditure incurred

by the assessee on filling up the land purchased by it with soil making it suitable for sale, the Court applying the benefit of presumption of validity of contents of books of accounts available under section 132(4A), held that since the expenditure incurred by the assessee was supported by documents seized at time of search and the AO did not endeavour to carry out an enquiry and investigation into source of investment or genuineness of expenditure made, no disallowance could be made under Section 37(1) of the Act.
***CIT v Damac Holdings P Ltd - [2018] 89 taxmann.com 70 (Kerala) - IT APPEAL NOS. 263 of 2014 dated 12.12.2017***

**3864.** Tribunal quashed the additions/disallowances made by the AO in course of proceedings u/s 153A, , in view of fact that said additions/disallowances had been made without reference to any specific incriminating material/evidence found as a result of search and seizure and were based on re-appreciation of facts unconnected to search.
***Priya Holding (P.) Ltd. v ACIT - (2018) 90 taxmann.com 408 (Ahd) – ITA Nos. 366 to 370 (Ahd) of 2012 dated 05.01.2018***

**3865.** Where upon survey u/s 133A, no incriminating material of whatsoever nature was found at the business premises of the appellant in the form of excess cash, evidence of unaccounted borrowings, investments etc. and the statements taken u/s.133A of the partner were later on retracted and the only evidence Revenue was harping upon was the duplicate set of books of accounts on which most of the entries, as admitted by the Accountant and the Consultant had been modified / re-arranged in order to prepare projected financial data to be provided to banks for getting sanctioned higher working capital credit limits, the Tribunal held that it was a well established judicial precedent that statement recorded u/s.133A of the Act had no evidentiary value for the reason that the Officer was not authorized to administer oath and take any sworn evidence which alone had evidentiary value as contemplated under law and thus in view of totality of facts, the Tribunal found no reason to interfere with the order of CIT(A) who had deleted the impugned addition u/s.68 of the Act and accordingly, dismissed the appeal of the Revenue.
***Assistant Commissioner of Income Tax v. Shree Krishna Developers - (2017) 49 CCH 0143 AhdTrib (ITA Nos, 1177 & 1231/Ahd/2011)***

**3866.** The Tribunal quashed the assessment framed u/s 143(3) r.w.s. 153A, pursuant to search, noting that nothing was brought on record by the Revenue in support of its contention that during course of search some incriminating material was found which required adjudication in assessment proceedings and thus, holding that in absence of incriminating material found during course of search, the regular assessment concluded could not be reopened and reframed u/s 143(3) r.w.s. 153A.
***VASCULAR CONCEPTS LTD. v DCIT – (2018) 52 CCH 65 (Bang Trib) – ITA Nos. 1921 to 1927/Bang/2016 dated 29.01.2018***

**3867.** The Tribunal cancelled the assessment order passed u/s 153A r.w.s. 143(3) pursuant to search operation, noting that the addition made u/s 68 on account of unexplained cash credit was not based on any incriminating material found during search. It relied on the decision in the case of CIT v. IBC Knowledge Park (P.) Ltd. [2016] 385 ITR 346 (Kar) wherein it was held that the fact

that search had been conducted would not justify issuance of notice u/s 153A and it is only during a valid search when certain incriminating materials are detected, the said notice could be issued.

***BMM Ispat Ltd. v DCIT - [2018] 93 taxmann.com 76 (Bangalore - Trib.) - IT APPEAL NOS. 911 & 912 (BANG.) OF 2015 & OTHERS dated April 10, 2018***

**3868.** The Tribunal held that in the absence of any incriminating material found during the course of search and the assessment proceedings having not been abated at the time of search, the AO has no jurisdiction to make addition under section 153A of the Act.

***DCIT v Times Finvest & Commerce Ltd – (2015) 45 CCH 0324 Chd Trib***

**3869.** The Tribunal held that where pursuant to search proceedings, notice under section 153A of the Act was issued, since the assessment in respect of some assessment years covered by said notice had already been completed and, moreover, no incriminating material was found during search, assessment for those assessment years could be made only as per original assessment under section 143(1) of 143(3) of the Act.

***Om Shakthy Agencies (Madras)(P)Ltd v DCIT - [2016] 66 taxmann.com 287 (Chennai-Trib)***

**3870.** The Court held that where assessment proceedings on basis of return filed being already culminated by operation of law and no incriminating material being found during subsequent search, there could not be any assessment under section 153A/153C

***Assistant Commissioner of Income-tax v. RPD Earth Movers (P.) Ltd. [2019] 101 taxmann.com 89 (Chennai - Trib.)- ITA Nos. 1606 to 1612 (CHNY) of 2018 dated December 3, 2018***

**3871.** Where, pursuant to search proceedings, the AO made addition under Section 68 in the hands of the assessee (on account of unsecured loan received by the assessee) based on the statements of two persons recorded under Section 131 wherein they stated that the company providing loan was an accommodation entry provider, the Tribunal deleted the addition made by the AO observing that the statements of those two persons were recorded after completion of search and were not material found during course of search. Accordingly, it held that the statements did not constitute incriminating material found during the search proceedings and deleted the addition.

***E-CITY PROJECTS LUCKNOW PVT. LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0266 CuttackTrib - IT(SS)A NO. 02/CTK/2018 dated Feb 28, 2018***

**3872.** The AO conducted search and seizure operation u/s 132 and issued notice u/s 153A pursuant to which the assessee filed its returns. The AO observed that the assessee had claimed deduction of huge 'Advertisement Expenses' paid to two parties. Notices issued u/s 133(6) to both the parties remained uncomplied with and thus he made addition in respect of 'Advertisement expenses'.The CIT(A) deleted the addition. The Tribunal upheld CIT(A)'s order noting that the AO had made addition without conducting any further inquiry or ascertaining genuineness of these transactions and the inference was based simply on non-compliance by these two parties, whose complete particulars were with him.It held that in case of non-compliance, AO ought to have deputed Inspector or got enquiry conducted by any other means

before jumping to conclusion of non-genuineness of transactions. Further, the Tribunal held that no addition could be made u/s 14A in respect of completed assessments as on date of search if no incriminating material was found. However, since the assessee could not produce copy of computation of income or its original assessment order, which was stated to have been passed u/s 143(3) to demonstrate that no such disallowance was earlier made either by assessee or the AO and return was actually filed u/s 139 under consideration,it remitted the matter to file of AO for examining the same.

***ACIT & Anr v Devyani International Ltd. & Anr (2018) 52 CCH 0380 DelTrib - ITA Nos. 857 to 859 & 861/Del/2015 (CO Nos. 291 & 292/Del/2015) dated 23.04.2018***

**3873.** Where pursuant to a search operation the Assessing Officer made additions to the total income of the Assessee, the Tribunal held that the additions so made were beyond the scope of section 153A of the Act, because no incriminating material or evidence had been found during the course of search so as to doubt the transactions of the assessee and as on the date of search no assessment proceedings were pending for the year under consideration. It further held that the Assessing officer was not justified in disturbing the concluded assessment without there being any incriminating material being found in search. It was held that the action of the assessing officer was based on conjectures and surmises and hence the said additions were deleted.

***Shape Builders (P) Ltd. Vs. Deputy Commissioner of Income Tax (2017) 49 CCH 0114 Del Trib (ITA No. 2406/DEL/2014)***

**3874.** The Tribunal held that when no incriminating material was unearthed during search, no additions could have been made to income already assessed.

***ACIT v Divya Jain – (2015) 45 CCH 0109 Del Trib***

**3875.** The Tribunal held that where the AO had made an addition in the hands of the assessee pursuant to a declaration made by the assessee's brother stating that the assesse had earned a commission of Rs. 10 lakhs which was not recoded in the books of accounts, without obtaining any further evidence supporting the said declaration, the addition could not be sustained. It held that in order to make a genuine and legally sustainable addition on the basis of surrender during search, it was sine qua non that some incriminating material must have been found to correlate the undisclosed income with such statements.

***Ajay Gupta v DCIT – (2016) 47 CCH 0535 (Del Trib) - ITA Nos. 4144 & 4145/Del/2010, 1259 & 1260/Del/2014***

**3876.** The AO had initiated assessment proceedings u/s 153A pursuant to search action u/s 132 at assessee's premises and on the basis of material seized in search action on a group. The AO observed that the assessee had invested amount in certain project which, similar to the case of another investor and made an addition to assessee's income. The Tribunal relied on the decision in the case of Kabul Chawla 380 ITR 573 (Del HC) where it was held that in case of completed assessments, no addition could be made without any incriminating material found in search action and also held that during search action at premises of assessee, no incriminating material was found. It held that no assessment proceedings were pending in instant assessment year as on date of search. Relying on the decision in the case of Pr.CIT v Subhash Khattar [ITA

No. 60/2017 (Del HC)], the Tribunal held that no addition could had been made in absence of any incriminating material found from premises of assesseea and the addition on merit also deserved to be deleted.

***ASHA RANI LAKHOTIA v ACIT – (2018) 52 CCH 40 (Del Trib) – ITA No. 424/Del/2015 dated 16.01.2018***

**3877.** The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the addition made u/s 68 in the course of assessment proceedings u/s 153A r.w.s. 153C on the basis of certain document found in search operation in the premises of another person. Noting that all the documents had already been brought on record by the assessee during assessment proceedings in the completed assessment, the Tribunal held that the CIT(A) had rightly deleted the addition and thus the addition made by the AO u/s 153C was outside the scope of proceedings. It held that even on merits, when the assessee had brought on record complete identity with PAN, confirmation, bank statements, memorandum and article of association and audited financials of the company from which the amount was received by the assesse to substantiate the genuineness of the transactions, the AO could not make addition on the basis of surmises that funds received by the assessee from the said company were in fact has been received from some other person.

***INCOME TAX OFFICER vs. NAHID FINLEASE PVT. LTD - (2018) 53 CCH 0228 (Del Trib) - ITA No.6246/Del./2014 dated June 22, 2018***

**3878.** The Tribunal allowed assessee's appeal against the CIT(A)'s upholding the AO's order passed u/s 153A wherein the AO had made addition u/s 68 by treating share capital and share premium as unexplained cash credit based on statement recorded of an associate of the assessee group. It accepted the assessee's contention that no incriminating material was found in respect of the addition made and the statements recorded u/s 132(4) did not constitute as incriminating material. It was further observed that the statement of associate of group company was non descriptive and vague and subject to cross checking of fact to be explained after access to books of accounts. Thus, the Tribunal held that since no incriminating material was found/seized during the course of search, the addition made by AO and upheld by the CIT(A) in the proceedings conducted u/s 153A were void ab-initio and liable to be deleted.

***MOON BEVERAGES LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 53 CCH 0120 (Del Trib) - ITA No. 7374/Del/2017, 7567/Del/2017 dated Jun 7, 2018***

**3879.** Where the AO made an addition in the hands of the assessee under Section 153A of the Act contending that the assessee ought to have declared net profits at 12 percent as opposed to 3.3 percent, the Tribunal held that the addition was unsustainable as there was no reference to incriminating material found during search in the order of the AO, absent which the addition was unsustainable. It held that the addition was based on mere suspicion and surmises.

***ASSISTANT COMMISSIONER OF INCOME TAX & ANR. vs. DINGLE BUILDCONS PVT. LTD. & ANR. - (2018) 52 CCH 0073 DelTrib - ITA Nos. 4666 & 4667/DEL/2016 dated Feb 1, 2018***

Go to Index

**3880.** The Tribunal held that despite there being incriminating material in possession of Revenue which might implicate assessee (Information was received in form of document collected by Government of India as part of tax information exchange treaty as per which certain persons in India held bank accounts with a bank in Switzerland), but same could not be used within scope of Section 153A when nothing had been found from search, especially when assessee too had denied any such involvement and there was no material gathered during search to rebut such denial by assessee. Accordingly, it held that the addition made by the AO i.e. amount in the said bank account as well as interest on such deposits was to be deleted.
***ANURAG DALMIA vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0106 DelTrib - ITAs. No. 5395 & 5396/DEL/2017 dated Feb 15, 2018***

**3881.** In proceedings u/s 153A, AO had simply added amount on account of alleged unverified software purchases for purpose of computation of income only and said addition was not based on any incriminating material. Further the said additions were made in regular assessment proceedings were deleted by the Tribunal. In the impugned appeal post search proceedings, the Tribunal held that no addition could be sustained on same item in proceedings u/s 153A as the additions in dispute made in regular assessment proceeding had already been deleted by Tribunal & no incriminating material related to addition in dispute was found during course of search proceedings. Assessee's appeal was allowed.
***Minda Inds Ltd. vs. Dy. CIT-(2018) 53 CCH 0287 DelTrib-ITA Nos.2462 & 2463/Del/2015-Dated Jul 5, 2018***

**3882.** The Tribunal held that the assessment framed u/s 153A read with section 143 (3) was not sustainable in view of the law laid down in case of CIT vs Kabul Chawla [380 ITR 173 (Del)] wherein it was held that since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed. The Tribunal noted that no incriminating material had come on record during the search and seizure operation conducted at the premises of the assessee rather assessment has been based upon special audit report whereas such facts were already brought on record by the assessee by filing original return of income along with computation
***ATS Infrastructure Ltd vs Asst CIT- [2018] 53 CCH 0509 Del Trib - ITA No. 5811/Del./2014, 5812/Del./2014, 5813/Del./2014 dated August 31 2018***

**3883.** Where the Assessing Officer had completed the assessment u/s. 153C of the Act and made the addition in dispute without any incriminating material found during the search and seizure operation and the addition was purely based on the material already available on record and where the perusal of the assessment order undisputedly indicated that no reference whatsoever had been made to any material found/ seized during the course of search, the Tribunal held that completed assessments could be interfered with by the AO while making the assessment under Section 153 only on the basis of some incriminating material unearthed during the course of search and thus addition in this case was not sustainable in the eyes of law. Accordingly, the Tribunal deleted the addition and allowed assessee's appeal.
***Global Realty Creations Ltd & Ors v. Deputy Commissioner of Income Tax (2017) 49 CCH 0147 DelTrib***

Go to Index

**3884.** Where the reasons assigned by the AO in the satisfaction note for issuing notice u/s 153C was agreement for sale between UTI and the assessee-company for purchase of office space in property which was taken in schedule of fixed assets in balance sheet of the assessee and the AO did not make any addition on account of such purchase of property treating it as undisclosed income but determined annual letting value with respect to such property, the Tribunal held that the reasons recorded by AO in satisfaction note were factually incorrect or without sustenance because property in question purchased was already disclosed in regular books of accounts it was clearly beyond scope of proceedings u/s 153C because annual letting value was determined in assessment year without reference to any incriminating material found during course of search and accordingly dismissed the revenue's appeal against the CIT(A)'s order wherein the CIT(A) had held that the addition had been made without reference to any material, found during the course of search, therefore, it was clearly beyond the scope of the proceedings u/s 153C.

***ACIT v NAHID FINLEASE PVT. LTD. – (2018) 52 CCH 51 (Del Trib) – ITA No. 4822 to 4824/Del/2014 dated 22.01.2018***

**3885.** Where the AO made an addition on account of unexplained share capital for the impugned AYs i.e. AY 2006-07 and 2007-08, based on subsequent information received in connection with the documents seized during search proceedings, the Tribunal held that the documents in itself did not constitute incriminating material as the addition was made on the basis of subsequent information. Accordingly found during search, no addition could be made. Accordingly, relying on the decision of CIT vs. Kabul Chawla reported in 380 ITR 573(Delhi), it held that in the absence of incriminating material no addition could be made under Section 153A.

***ASIAN COLOUR COATED ISPAT LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0187 DelTrib - ITA No. 2838/DEL/2015, 2839/DEL/2015 dated Mar 19, 2018***

**3886.** The AO, pursuant to initiation of search proceedings, made an addition under section 68 on account of unexplained share capital which was deleted by the CIT(A) on the merits of the case. The Tribunal, noting that no assessment was pending for the year under review and that the AO made addition based on the book entries which were already disclosed by the assessee, admitted the assessee's petition under Rule 27 and held that in the absence of incriminating material no addition could be made under Section 153A of the Act.

***ASSISTANT COMMISSIONER OF INCOME TAX vs. RAVNET SOLUTIONS PVT. LTD. - (2018) 52 CCH 0223 DelTrib - ITA No. 6589, 6590, 6591 & 6592/Del./2013 dated Mar 16, 2018***

**3887.** The Tribunal held that making of an addition in an assessment under section 153A of the Act, without the backing of incriminating material, was unsustainable even in a case where the original assessment on the date of search stood completed under section 143(1) of the Act. Accordingly, it held that in the absence of incriminating material, the issue of additional depreciation could not be examined by the AO in assessment proceedings under section 153A as it stood concluded with assessee's return being accepted under section 143(1).

***Ujjal Transport Agency [TS-586-ITAT-2016(Kol)] (ITA(SS) No.58/Kol/2013)***

Go to Index

**3888.** Notice u/s 153A was issued to assessee in pursuance to search u/s. 132(1) carried out by investigation wing of department and in response assessee had offered original return filed declaring loss. The AO held that assessee started business operations from 20/09/2010 and therefore, there was no business carried out in impugned AY (2009-10) and thus the assessee was not at all entitled to claim any expenditure before setting up of business. Consequently, expenditure claimed by assessee was treated as capital expenditure and disallowed. The CIT(A) deleted the addition stating that in absence of any incriminating material on issue, addition so made was beyond scope and outside the ambit of assessment envisaged u/s. 153A. The Tribunal on appeal held that, assessment for impugned AY was non-abated assessment since no proceedings were pending on date of search and time limit for issuance of scrutiny assessment notice u/s 143(2) had already expired which was a statutory requirement. Further, the additions made by AO were not based on any incriminating material found during search operations since expenditure as claimed by the assessee had been disallowed by AO on the basis that business was not set-up by assessee during the AY. Thus, genuineness of expenditure was not in question since AO himself had treated same as capital expenditure and thus Tribunal concluded that addition made in proceedings u/s 153A were not sustainable.
***DCIT vs United Stock exchange of India- (2018) 54 CCH 0006 Mum Trib- ITA No 541/Mum/2017 dated 12.09.2018***

**3889.** Where addition was made by AO u/s 69 on the basis of incriminating material found and the statement of assessee's mother during search proceedings and the assessee's mother had retracted the statement subsequently, Tribunal set aside the CIT(A)'s order wherein CIT(A) had held that AO made addition u/s 69 without any evidence and addition cannot be made solely on the basis of loose papers. Tribunal held that it was only with reference to the search and seizure material that assessee's mother had given a specific amount to various heads wherein the undisclosed income had been utilized, which was separately accepted by assessee also and hence it cannot be said that the addition is not based upon any incriminating material found or searched. Tribunal had also noted that the retraction was by the mother of the assessee and that there was no retraction whatsoever by the assessee.
***Ms. Priyanka Chopra v DCIT – [2018] 169 ITD 144 (Mum) – ITA Nos. 2524 and 2769 (Mum) of 2015 dated 16.01.2018***

**3890.** The Tribunal quashed the assessment order passed u/s 153A pursuant to search proceedings, noting that there was no reference to seized materials whatsoever based on which additions/disallowances were made in the said order and that the assessments for all the three years involved were unabated assessments as there was no pending proceedings and time limit for issue of notice u/s 143(2) for all such years had expired. It relied on the decision in the case of CIT Vs. Gurinder Singh Bawa [386 ITR 483 (Bom)] wherein it was held that once an assessment was not pending but had attained finality for particular year, it could not be subject to proceedings u/s 153A, if no incriminating materials were found in course of search.
***ABHISHEK ENTERPRISES vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0217 MumTrib - ITA Nos. 1008, 1009 & 1010/MUM/2016 dated June 04, 2018***

**3891.** The Tribunal upheld the CIT(A)'s order deleting the addition made the AO of additional income solely based on the disclosure made by the assessee-firm's partner in the statement recorded

during survey action u/s 133A (which was subsequently retracted) where the AO contended that there were defects in maintenance of books of accounts and the assessee had not co-operated with the Revenue during assessment proceedings and many evidences as were sought by the AO were not furnished, holding that admission or confession was not conclusive evidence as to the truth of matter, it was only piece of evidence relevancy of which was required to be judged basing on material evidence and circumstances in which it was made. Noting that the AO had referred to minor discrepancies in books of accounts and bills which were not entered in books of accounts, it held that minor discrepancies in absence of other tangible incriminating material against the assessee did not warrant any addition. It further held that the Revenue had failed to even cross examine partner of assessee post retraction of his statement wherein the assessee had alleged that the Revenue had obtained forced confession from assessee to surrender income.

***ACIT v ORIENTAL DCORATORS – (2018) 52 CCH 14 (Mum) – ITA No. 820/Mum/2015 dated 05.01.2018***

**3892.** The Tribunal held that the notice issued under section 153C of the Act without incriminating material was not sustainable in law and therefore the proceedings initiated and order passed under section 143(3) read with section 153C of the Act were bad in law.

***DCIT v Empire Mall Pvt Ltd – (2015) 45 CCH 0113 Mum Trib***

**3893.** The Tribunal held that in the absence of incriminating material relevant to the assessment year and further since the assessment under section 143(1) was deemed to be completed and attained finality before initiation of proceedings, no notice under section 153C of the Act could be issued and therefore the consequent assessment order was held to be invalid.

***DCIT v Empire Mall Pvt Ltd – (2015) 45 CCH 0113 Mum Trib***

**3894.** The Tribunal held that in the absence of incriminating material no addition could be made pursuant to search under section 132 of the Act where the assessment had already been concluded. Further it deleted the penalty imposed by the Revenue on the additional disclosure made by the assessee since all materials were seized during the search out of which no incriminating material supporting the additional disclosure was found and therefore the Revenue could not presume that the additional disclosure constituted concealed income warranting penalty.

***Uday C Tamhankar v DCIT – (2015) 45 CCH 0052 Mum Trib***

**3895.** The Tribunal held that in the case where time limit for issuance of notice u/s 143(2) had expired and assessment had been completed, a notice u/s 153C could not be issued without having any incriminating material. It noted that, in the instant case, the documents which were foundation of issue of notice u/s 153C did not indicate any financial transaction leading to understatement of income except mention of purchase of property which was not relevant for subject AY as the said transaction pertained to an earlier year. Therefore, it held that the said documents could not be held to be incriminating material for purpose of initiating proceedings u/s 153C and accordingly, quashed the impugned notice issued u/s 153C.

***KAMALA DEVI vs. ASSISTANT COMMISSIONER OF INCOME TAX - [2018] 53 CCH 0424 Vishakapatnam Trib ITA No. 113 to 115/Viz /2017 dated August 03 2018***

Go to Index

**3896.** The Tribunal allowed assessee's appeal and set aside the assessment order passed by the AO u/s 153C wherein the AO had made addition on account of unsecured loans received by the assessee in cash from various persons alleging that the assessee could not furnish any explanation with regard to source and nature of credits of such receipt **(**which were found during the survey carried out in case of group of the assessee**)**. The assessee submitted that the unsecured loans were recorded in the books of accounts and the same could not amount to incriminating material on the basis of which an addition could be made u/s 153C. The Tribunal accepted the assessee's plea relying on the coordinate bench decision in the case of L. Suryakantham Vs. ACIT [ITA Nos.300 to 305/Vizag/2012] wherein it was held that the AO had no jurisdiction to make additions u/s 153A, for the assessments which are not pending as on the date of search and also the time limit for issue of notice u/s 143(2) of the Act has expired, in absence of any incriminating material found during the course of search.
***LALITHA DEVI vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0472 VishakapatnamTrib - ITA Nos. 111 & 112/Vizag/2017 dated April 4, 2018***

» *Evidentary value of recorded statement*

**3897.** During search proceedings, one of the directors of assessee company surrendered a certain sum (on account of unexplained cash receipts, unexplained work in progress as well as the share capital and share premium received) as undisclosed income only for the AY in question. AO regarded this statement of director as an incriminating material qua each of preceding assessment years and made addition thereto for each of the six assessment years preceding year of search u/s 153A. The High Court held that the assumption of jurisdiction u/s 153A and consequent addition on said basis was not justified. The Department's SLP filed against the said order of the High Court was admitted by the Supreme Court.
***PCIT v Best Infrastructure (India)(P.) Ltd [2018] 94 taxmann.com 115 (SC) SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 14821 OF 2018 dated 14.05.2018***

**3898.** The Apex court dismissed the SLP against High Court's order where it was held that since assessee himself had stated in sworn statement during search and seizure about his undisclosed income, tax was to be levied on basis of admission without scrutinizing documents.
***B.Kishore Kumar v. Dy.CIT, Chennai, [2015]62 taxmann.com 215(SC), SLP(C) Nos. 9153 to 9159 of 2015 dated July, 2, 2015***

**3899.** In course of the assessee, the Assessing Officer made addition to the assessee's income on basis of confessional statement made by one 'R' under Maharashtra Central Organised Crime Act, 1999, to effect that he had made certain unaccounted payments to the assessee. The Tribunal noted that statement of 'R' had not been confronted to the assessee to verify whether amount was actually paid. It was also found that no corroborative evidence had been produced or brought on record to substantiate fact of alleged payment. Accordingly, the Tribunal deleted impugned addition. The High Court upheld that on facts the impugned order of the Tribunal was to be upheld. The Apex Court dismissed Revenue's SLP.
***CIT v. Jagdishprasad Mohanlal Joshi [2018] 99 taxmann.com 288/259 Taxmann 342***

Go to Index

***(SC). SLP (Civil) Diary No. 24313 of 2018 dated October 12, 2018***

**3900.** The Apex Court dismissed Revenue's SLP filed against the High Court order wherein the High Court had held that no section 69B addition could be made In hands of assessee merely on basis of statement of director when there was no other material either in form of cash, bullion, jewellery or document or in any other form to conclude that statement made was supported by some documentary evidence.
***CIT v. Mantri Share Brokers (P.) Ltd. [2018] 96 taxmann.com 280/257 Taxman 337 (SC) SLP (Civil) Diary No. 18434 of 2018 dated July 3, 2018***

**3901.** Where High Court upheld view taken by Tribunal that in absence of any corroborative evidence, addition could not be made to assessee's income in respect of confessional statement made by one 'R' under Maharashtra Central Organised Crime Act, 1999, that he paid certain undisclosed amount to assessee, SLP filed against decision of High Court was dismissed by the Apex Court.
***CIT v. Jagdishprasad Mohanlal Joshi- [2018] 99 taxmann.com 288 (SC)-SLP (CIVIL) Diary No. 24313 of 2018 dated October 12, 2018***

**3902.** The Court held that where evidence of one of two witnesses was by itself sufficient to draw adverse inference against assessee that commission payments made by it were fictitious and the assessee declined to cross examine the said witness on ground that it had to be preceded by cross examination of other witness, it must follow that assessee had accepted said witness and commission payments were rightly disallowed.
***Roger Enteprises (P)Ltd. V CIT - [2016] 67 taxmann.com 344 (Delhi)***

**3903.** The Court dismissed Revenue's appeal against the Tribunal's order deleting the addition made by the AO on account of the difference between the amount disclosed towards jewellery and cash by the assessee and other family members in the statement recorded u/s 132(4) during the course of search operation and the amount shown in the returns filed by all the family members, holding that the AO could not have made entire addition in hands of the assessee when disclosure statement u/s 132(4) was made for and on behalf of all family members. It was noted that no addition was made in the hands of the other family members.
***Pr.CIT v Pradip Jayantilal Karia - [2018] 94 taxmann.com 323 (Gujarat) - R/TAX APPEAL NO. 286 OF 2018 dated April 4, 2018***

**3904.** The Court held that while an assessment cannot be made on the basis of a statement recorded u/s 133A, if the maker of the statement has re-affirmed the statement and nothing has been produced to show that the contents of the statement are incorrect, the assessment is valid.
***Kottakkal Wood Complex vs.DCIT (Kerala)- ITA.No. 27 of 2013***

**3905.** The Tribunal allowed assessee's appeal against the CIT(A)'s order wherein the CIT(A) had confirmed AO's disallowance of expenses exceeding 30% of the gross receipts on the basis of assessee's statement recorded during survey operation u/s 133A that his expenses were about 30% of gross receipts. The Tribunal held that what was stated by assessee was only estimated expenditure against the receipts and it was not really necessary that entire expenditure must be incurred in same period in which receipts were accounted. Further, it held that the approach of

Go to Index

lower authorities of making disallowance only based on assessee's statement was fallacious and untenable in law as the statement recorded u/s 133A had no evidentiary value. Accordingly, it deleted the disallowance made.

***Dr.Suresh Manjibhai Prajapati vs Asst.CIT [2018] 54 CCH 0271 (Ahd Trib)- ITA 1357/Ahd/2017 dated 16.11.2018***

**3906.** The Tribunal held that failure by the AO to offer cross-examination of the persons whose statements are relied upon by the AO (for making addition u/s 68 on account of share application money from certain companies) would mean that no adverse inference could be drawn against the assessee on the basis of such statement. It also rejected Revneue's plea for a remand, holding that the assessee had discharged primary onus to prove identity of the investors, their creditworthiness and genuineness of the transaction.

***Rajat Exports Import (India) Pvt. Ltd vs. ITO - ITA No. 5637/Del/2013 dated 01.10.2018***

**3907.** The Tribunal held that no addition under section 68 could be made where the assessee filed adequate evidence substantiating the credit in its books of accounts (on account of receipt of Rs.60 lakhs from Cubic Commercial against the booking of property) which was not examined or dealt with by the AO who proceeded to make an the addition merely on the basis of a statement recorded of a third party, which was not even furnished to the assessee. It noted that no enquiry or verification was ever done by the AO and therefore the addition could not be sustained.

***ITO v Moksha Securities P Ltd – (2016) 48 CCH 001 (Del Trib) – ITA No 6251 / Del / 2015***

**3908.** The assessee, running a kirana shop at a small place, was not required to maintain books of accounts as per Section 44AA r.w.s. 44AF of the Act. Although the assessee surrendered certain sum on account of excess stock, loose papers etc. during the course of survey, the statement was retracted by the assessee later. The AO made additions on the basis of the statements recorded during the course of survey. The Tribunal directed the AO and held that AO should have considered facts in right perspective before making additions solely on basis of statement of the assessee recorded during course of survey.

***Ashok Vani vs. ITO – [2018] 53 CCH 0048 (Indore Tribunal) – ITA No 303 of 2017 dated May 18, 2018***

**3909.** During search proceedings, the AO held that the assessee had failed to furnish necessary books of accounts at the time of survey operation which was also admitted to by the assessee by way of a statement under section 133A. Accordingly, the AO rejected the books of accounts of the assessee and made an estimation of professional income and added the same in the hands of the assessee. Subsequently, the assessee retracted his statement and contended that the AO was incorrect in rejecting the books of accounts and making such addition. The Tribunal noted that Section 133A empowered the authority to merely record the statement of a person but did not permit the authority to take a sworn statement on oath which was only provided for in section 132(4) of the Act. Accordingly, it held that no addition could be made on the basis of a statement subsequently retracted and moreso when the lower authorities had not pointed out any specific defect in the books of accounts which were duly audited.

Go to Index

***Dr. Subrata Kundu v ACIT – (2017) 50 CCH 0026 (Kol Trib) – ITA No 815 / Kol / 2014 dated 12.05.2017***

**3910.** The Tribunal allowed assessee's appeal and deleted the addition made only on the basis of statement taken during survey without bringing on record any corroborative materials, noting that the said statement was also retracted by the assessee by filing an affidavit within one month from the date of recording such statement. It also noted that the said retraction was conveyed to the survey team before the survey report was made and to the AO before any proceedings were initiated by the AO and thus was legal and valid and was not belated. Further, the retraction was supported by explanation of impounded documents to the Survey team. The Tribunal also noted that the impounded document did not contain any information which was not recorded in the books of accounts.
***Concept Communication Ltd.vs Dy.CIT [2018] 54 CCH 0274 (Mum Trib) - ITA 2800 to 2805/Mum/2016, ITA No.3026/Mum/2016 dated 16.11.2018***

**3911.** The Tribunal deleted the addition made u/s 69 by the AO on basis of loose papers seized in course of search in respect of unexplained payments for purchase of flat, noting that the said papers only reflected a proposal to buy a flat which was later on cancelled. It further deleted the addition made u/s 69C in respect of certain cash payments not reflected in books of account, holding that since the said payments had been offered for tax as undisclosed income in return of income filed by the assessee's mother, it would amount to double taxation. The Tribunal also deleted the addition u/s 69A which was made by the AO based only on the statement of the assessee's secretary, that the assessee had charged certain amount for performing in weddings which was not accounted for in books of account. It was held that there was no evidence on record showing attendance of said marriage functions by the assessee and a mere statement by the secretary could not be said to be a conclusive proof of undisclosed income earned.
***Ms. Priyanka Chopra v DCIT - [2018] 94 taxmann.com 122 (Mumbai - Trib.) - IT APPEAL NOS. 4565, 4569, 4601 (MUM.) OF 2015 dated June 1, 2018***

**3912.** Based on the admission of an ex-partner of the assesse-firm with respect to payment of certain unaccounted money for purchase of sand ghat, the assessee's case was reopened wherein initially the assessee's partner had disclosed certain amount as additional income, however, filed the return of income of firm without offering such additional income. AO made addition based on the statement of the ex-partner, which was not accepted by other partners. CIT(A) deleted addition on account of undisclosed investment. It was noted that the examination of books of account had shown that amount was paid for acquisition of sand ghat. The Tribunal dismissed the Revenue's appeal against the CIT(A)'s order, holding that de hors any corroborative material, statements of ex-partner who was no longer partner in firm for last many years could not be said to be conclusive evidence of firm having made payment through undisclosed means for acquisition of sand ghat. It also upheld the reliance placed by the CIT(A) on the CBDT Circular No. 286/2003/IT dated 10.03.2003 which states that efforts should be made by revenue official**s** to obtain credible evidence and obtaining admission de hors evidence should be avoided.
***INCOME TAX OFFICER vs. PROGRESSIVE CARRIERS - (2018) 53 CCH 0137 (Nag Trib) - ITA No. 222/Nag./2015 dated Jun 11, 2018***

Go to Index

» *Others*

**3913.** The Apex Court rejected the assessee's contention that CIT(A) had no jurisdiction under section 246A to examine the validity of the search operations carried out under section 132 and held that if the assessment order which was based on the search operations was under challenge, the validity of the search proceedings could be examined by CIT (A).
***Ess Dee Aluminium Ltd and Etc [TS-625-SC-2016] (SLP 15734-15735/2016)***

**3914.** The Apex Court dismissed Revenue's SLP against HC ruling that where Revenue failed to establish any linkage between material seized from assessee's premises and the material seized from premises of UP Distiller's Association (of which assessee was a member) in respect of illegal payments made to various officials and politicians, no addition could be made in the hands of assessee-company on the presumption that the said illegal payment were made by the assess-company through the said Association.
***CIT vs Radio Khaitan [2018] 98 taxmann.com 359 (SC) - SLP(C) Diary No.26744 of 2018 dated August 23 2018***

**3915.** Pursuant to search carried on by the Railway Police one of the assessee's employee was found in possession of cash of Rs 30 lacs,which was requisitioned and seized u/s 132A, consequent to which search proceedings were initiated in the case of the assessee treating the seized cash as the assessee's concealed income. The Apex court, dismissing the assessee's appeal rejected the assessee's contention that proceedings initiated u/s 132 were invalid as it could not be based on a search conducted on a train by police authorities. It held that since such plea was not raised before any lower authorities and that in any case the retrospective amendment to section 132A (vide Finance Act 2017) provided that the income tax authorities were not required to disclose the reason to suspect/believe as recorded u/s 132, the contention of the assessee was invalid and was not to be considered.
***N.K Jewellers vs CIT-TS-426-SC-2017-civil appeal no. 5216 / 2008 dated 13.09.2017***

**3916.** The assessee filed a writ petition challenging notice issued under section 153A on ground that after deposit of amount of tax, surcharge and penalty under Pradhan Mantri Garib Kalyan Yojana, 2016, he as entitled for benefit of provisions of clauses 199-I and 199-J of PMGKY, 2016. In view of fact that grievance of assessee stood fully redressed in light of written instructions of Revenue which stated that income which had been disclosed by him under PMGKY would be excluded from assessment of block year for which notice under section 153A had been issued, the Court dismissed the instant petition.
***Gopal Kesarwani v. Dir. Gen. of IT (Investigation) Lucknow- [2019] 101 taxmann.com 176 (Allahabad)- MISC. Bench No. 35701 of 2018-December 12, 2018.***

**3917.** The Court dismissed the petitioner'sapplication seeking review of the original order passed by the Court in writ challenging the validity of search and seizure proceedings on the ground that the proceedings were conducted without authorization since the petitioners name was not mentioned in the warrant of authorization, since the search was carried out at petitioner's premises pursuant to the warrant of authorization issued in name of other co-owner.
***Harbhajan Singh Chadha & Ors v DIT - TS-39-HC-2015(ALL)***

Go to Index

**3918.** With respect to the assessment year under consideration [i.e. AY 2004-05], the assessee filed his return of income after the due date u/s 139(1) [i.e. 31/10/2004] but within the time permitted by notice issued u/s 153A(1)(a) pursuant to search proceedings initiated [on 02/09/2004] after the end of the relevant previous year [i.e. FY 2003-04]. The carry forward of loss claimed by the assessee under the said return was denied on the ground that such a claim was contrary to the provisions of section 139(3) which requires the return to be filed on or before the due date stated in section 139(1) for carrying forward such losses. The Court held that as per section 153A(1), upon initiation of search proceedings, it was not necessary for the assessee to file his regular return by the due date mentioned in section 139(1) as the obligation to file the return remained suspended till such time that a notice was issued to him u/s 153A(1)(a). It further held that where the assessee had filed the return within reasonable time permitted by such notice, such return would then be deemed to have been filed within time permitted u/s 139(1) for benefit u/s 139(3) to be availed of by the assessee.

***Shrikant Mohta v CIT - [2018] 95 taxmann.com 224 (CalcuttaHC) - ITAT NOS. 19 & 20 OF 2015, GA NOS. 246 & 247 OF 2015 dated June 25, 2018***

**3919.** The Court held that merely visiting the premises on the pretext of concluding the search but not actually finding anything new for being seized cannot give rise to a second panchnama so as to extend the limitation period for passing the section 153A assessment order. In such event, there would be no occasion to draw up a panchnama at all. The visit and the panchnama drawn up on the date cannot lead to postponement of the period for completion of assessment with reference to section 153B(2)(a) of the Act.

***Pr.CIT vs PPC Business and Product Pvt Ltd(Delhi HC) - ITA 290/2016, ITA 605/2016, ITA 606/2016 ITA 607/2016 dated 17.07.2017***

**3920.** The Court held that where the premises of the assessee was raided 11 years ago and its gold bars and Indian currency were seized by the Income-tax Department merely on the basis of a referral from the Enforcement Directorate and the Department had not provided any justification for the raid or seizure till date and there was nothing on record to show that any assessment or reassessment proceedings were initiated against the assessee, the warrant of authorization under section 132A of the Act was to be quashed.

***Gauri Shankar v DIT – (2016) 96 CCH 0006 (Del)***

**3921.** A search took place in the premises of the assessee pursuant to which a handwritten document was seized containing details of house construction expenses of Rs. 49 Lakh. The explanation offered by the Assessee was that the said paper was not related to him but to the company where he was director. Since the said document was seized from the residence of assessee, the AO drew a presumption u/s 292C that it belonged to him and held that Rs. 49 Lakh constituted the unexplained income of the assessee since the assessee had not submitted any evidence like a confirmation letter or any other document to show that expenditure related to any project of its company. The Tribunal observed that the document did not indicate that it pertained to the assessee nor was the address and location of the property mentioned therein nor such property was located by the AO during the assessment proceedings. Further, it noted that the AO had also not brought on record any forensic evidence to prove the handwriting of

the loose paper was of the assessee and no corroborative material was brought on record to substantiate the addition. It further observed that no attempt was made by the AO to find out that the construction expenses of any project of the company of which the assessee was a director. Accordingly, it deleted the addition. The Court upheld the view of the Tribunal and held that the addition of Rs. 49 lakhs was based on surmises and conjectures and that too on the basis of a single document without making any further enquiry.

***CIT vs. SHRI PRAVEEN JUNEJA (2017) 99 CCH 0115 DelHC ITA 57/2017 dated 14/07/2017***

**3922.** The Court upheld the Tribunal's order rejecting the assessee's appeal against the order passed by the AO u/s 153A, after taking the prior approval of the JCIT as per section 153D, wherein the assessee challenged the validity of the said order on the ground that the JCIT did not give any notice and opportunity of hearing to the assessee before granting approval to the draft assessment order of the AO. The assessee relied on the clause 9 of Manual of Office Procedure, Volume-II [Technical], February, 2003 issued by the Directorate of Income Tax on behalf of Central Board of Direct Taxes (CBDT) which lays down the guidelines for giving such an opportunity of being heard to the assessee by the Supervisory Officer to the proposed block assessment. The Court held that the internal guidelines issued by the CBDT, bereft of the statutory provisions in section 153D could not bind the approving authority, namely, the JCIT to comply with the principles of natural justice. It further held that the AO undoubtedly had given adequate and reasonable opportunity of hearing to the assessee, considering all objections on merits, and the assessee was also not able to point out any prejudice caused to him on account of approving authority not giving him an opportunity of hearing

***Gopal S. Pandit v CIT - [2018] 95 taxmann.com 246 (Karnataka) - IT APPEAL NO. 34 OF 2017 dated June 25, 2018***

**3923.** The Court held that the notice issued under section 133(6) for furnishing requisite information against the deceased would have to be complied with by the legal representative or persons who inherited estate of deceased persons and they could not deny to furnish such information. It was noted that when information was called from noticee fact of death of noticee was not in knowledge of concerned AO.

***Mrs. S. Savithri v. ITO - (2018) 400 ITR 513 (Kar) – Writ Petition No. 22020 of 2017 dated 02.01.2018***

**3924.** The Court dismissed the petitioners challenge to the constitutional validity of amendment to section 133(6) introduced by Finance Act, 1995 adding the words 'inquiry', thereby expanding the AO's power to call form information even in cases where no proceedings were pending. It held that the petitioners were incorrect in contending that the amendment led to the violation of 'right to privacy' as right to privacy could not be pleaded as a ground to invalidate a provision of the Act especially where the object of the provision was to get details of financial transactions which could be associated with black money.

***Pattambi Service Co. Operative Bank LTd – TS-348-HC-2016 (Ker)***

**3925.** The CIT passed a revisional order u/s 263 setting aside the order passed by the AO u/s 153A r.w.s. 143(3) (which was passed after obtaining the approval of the JCIT as per section 153D). The order passed by the AO making certain additions pursuant to the said revisional order was

set aside by the CIT(A) on the ground that no fresh approval had been taken by the AO u/s 153D. The Tribunal allowed the revenue's appeal and matter was restored to the CIT(A) for deciding case on merits irrespective of fact that there was no fresh approval u/s 153D before passing the impugned assessment order. On assessee's appeal, the Court upheld the Tribunal's order holding that section 153D is only applicable for passing an assessment order or re-assessment order and there is no requirement u/s 153D for prior approval for complying with remand directions.

***Osho Forge Ltd. v CIT - [2018] 93 taxmann.com 369 (Punjab & Haryana) - IT APPEAL NO. 430 OF 2017(O&M) dated April 27, 2018***

**3926.** The Tribunal held that where survey authority alleged excess stock by weighing stock on basis of cartons and not on basis of standard weights and the addition made was upheld by Commissioner (Appeals) observing that there was no evidence that assessee provided to survey team necessary facility of weighment by a standardized scale, action of commissioner (Appeals) was not justified as the surveying authority never required assessee to provide him with weighment facility.

***Smt. Kailash Devi Prop v ITO - [2016] 68 taxmann.com 288 (Amritsar – Tribunal.)***

**3927.** The Tribunal dismissed assessee's appeal filed against the CIT(A)'s order upholding the AO's order rejecting the assessee's books of account during the course of assessment proceedings after search and seizure operation conducted upon the assesse. Noting that the assessee had failed to explain the huge variation in the stock pointed out at the time of the search vis-a-vis its books of account, it held that the AO had successfully demonstrated that the rejection of books of account was justified and warranted, in the peculiar facts and circumstances of the present case.

***BHAWANI INDUSTRIES LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0207 (Chd Trib) - ITA No. 74/CHD/2017 dated June 20, 2018***

**3928.** The assessee was engaged in the business of manufacturing tread rubber as well as the business of money lending. The assessee filed its returns declaring certain amount being as agricultural income for AY 2004-05 in the year 2010. The AO carried out search u/s 132 and survey u/s 133A and found incriminating material and thereafter the AO issued notice u/s 153A (after search, AO can frame assessment for 6 preceding years). The AO treated a certain amount as non agricultural income from the agricultural income declared by the assessee in its returns thereby making addition in the assessee's total income. The CIT(A) confirmed the addition. The Tribunal, on concurring with the lower authorities stated that the onus was on the assessee to prove that the income was actually earned from agriculture and not from other sources and since in this case the assessee failed to provide evidence with reference to earning of agricultural income and corresponding expenditure incurred with reference to agricultural operations, the Tribunal held that AO had made a reasonable estimate on basis of material seized and dismissed assessee's appeal.

***K. A. Rauf Shelter & Ors v ACIT (2018) 52 CCH 0460 CochinTrib - ITA 501/C/2015 dated 23.04.18***

Go to Index

**3929.** The assessee individual, a medical practitioner, agreed to surrender certain sum during the course of survey under Section 133A and the same formed part of income declared in his return. The AO made an addition on account of cash surrendered at time of survey. The CIT(A) upheld the addition as there was is difference in the name of the patients and some of the amounts. The Tribunal observed that for the assessee, it was normal that a patient was accompanied by relatives and hence the difference in name per se could not be a ground to reject assessee's explanation. The Tribunal held that since the amount found during course of survey was included by assessee in his return of income, the addition of such amount made by the AO was deleted.

***Dr. Anoop Kumar Gupta vs. ACIT – [2018] 53 CCH 0040 (Delhi ITAT) – ITA No 3648/DEL/20146 dated May 16, 2018***

**3930.** The Tribunal held that once the factum of the assessee having purchased the gold bars during the course of search in 2009 got established, for which income was also offered for taxation as well, no fault could be found with the CIT(A) in accepting the assessee's explanation that 100 gold bars found from the locker pursuant to search in 2012 came out of the amount surrendered in the search carried out in 2009. AO held that gold bars found from lockers were physically different as compared to one claimed by assessee. CIT(A) deleted additions. The Tribunal held that Assessee has specifically submitted that gold bars earlier declared were exchanged later on with the new gold bars which were placed in the bank locker and found at the time of search. AO simply dislodged claim of assesses on premise that they could not place on record any evidence of such exchange. He has not pointed out anywhere in orders that investment in gold bars surrendered by assessee during the course of the earlier search was liquidated and amount so realized was utilized elsewhere. No fault could be found with CIT(A) in accepting assessee's explanation that 100 gold bars found from locker pursuant to search in 2012 came out of amount surrendered in search carried out in 2009.

***Asst.CIT vs. Roshan Agarwal & Shishir Agrawal-(2018)53 CCH 0577 DelTrib-ITA No.4645/Del/2015 & ITA No.4646/Del/2015-Dated July 4, 2018***

**3931.** The Tribunal held that the AO and CIT(A) were unjustified in concluding that the assessee had undisclosed and unexplained interest income on the basis of a single paged document seized during search proceedings as the impugned document i) was not even in the handwriting of the assessee ii) neither did it mention the name of the assessee nor contained the signature of the assessee and iii) the document did not even indicate whether the assessee had an investment, loan or deposit. It held that in the absence of further inquiry, no addition could be made on bald allegations.

***NEERAJ GOEL vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0271 DelTrib - ITA No. 5951/Del./2017 dated Mar 21, 2018***

**3932.** The Tribunal held that the AO, while exercising power under section 153A of the Act could make assessment and compute the total income of the assessee including the undisclosed income notwithstanding the fact that the assessee had filed a return before the date of search which had been processed under section 143(1)(a) of the Act. Further, the Tribunal held that loan credits from a third party were to be considered as genuine since the bank accounts of the said third party were available in the premises searched and since the assessee had filed necessary confirmations, statement of income for the previous years.

Go to Index

***Dr B Narsaiah v DCIT – (2015) 45 CCH 0031 Hyd Trib***

**3933.** The Tribunal held that the Addl CIT had recorded that he was granting 'mechanical approval' u/s 153D to the draft assessment order for want of time to have meaningful discussion, the assessment order was bad in law and had to be annulled. It further held that the Respondent was entitled to raise an objection under rule 27 even in respect of fresh issues and it was not necessary that the ground should have been decided against the Respondent by the CIT(A).
***AAA Paper Marketing Ltd vs ACIT-ITA No. 167 / Lkw / 2016, 168 / lkw / 2016 dated 28.04.2017***

**3934.** The Tribunal held that the AO could not assume valid jurisdiction for assessment by issuing notice u/s 153A, where no search had been conducted at place of business of assesse but at a place which neither belonged to assessee-firm nor was the assessee-firm carrying on any business therefrom and, consequently, assessment made in consequence of such notice is invalid and void ab initio.
***Regency Mahavir Properties v ACIT - (2018) 169 ITD 35 (Mum) – ITA No. 682 & 683 of 2016 dated 04.01.2018***

*Settlement Commisssion*

**3935.** The Apex court granted immunity to the assessee from prosecution under section 245H despite tax & interest payments made beyond the time specified by settlement commission vide its final order under section 245D(4) since he had made all payments before filing the SLP
***Sandeep Singh [TS-26-SC-2017]***

**3936.** The Apex Court granted SLP against the High Court's ruling that application made to Settlement Commission would be maintainable as long as the order of assessment was not passed and the date of dispatch or service of order on assessee would not be material for such purpose.
***Shalibhadra Developers v Secretary, Income-tax Settlement Commission – (2018) 91 taxmann.com 272 (SC) – SLP (C) No. 15267 of 2017 dated 23.02.2018***

**3937.** The Court held that if additional income was declared during the course of hearing before the Settlement Commission in view of what emerges during debate before the Commission it could not be said that the original application did not make true and full disclosure of its undisclosed income and that the ruling of the Apex Court in the case of Ajmera Housing Corporation (TS-183-SC-2010) was distinguishable on the fact that the disclosure was made after conclusion of the hearing when the orders were awaited. Accordingly, it dismissed the writ filed by the Revenue challenging the order of the Settlement Commission.
***The CIT v Income tax Settlement Commission & Others [Writ Petition 2521 of 2013] – TS-499-HC-2015 (BOM)***

**3938.** The Court allowed assessee's writ and set-aside the order of the Settlement Commission ('SC')which rejected assessee's application on the ground that assessee failed to fulfill conditions u/s 245C(1) (which requires the Applicant to make full and true disclosure of income not disclosed before the AO and the manner in which it was earning). The Court rejected

view of the SC that since the amounts which were earlier claimed in the returns filed before the AO as deductions, were now sought to be taxed, there was no fresh issue or incomebeing offered for tax which had not been 'declared before the AO'. The Court held thatwhere an income which was not earlier offered to tax, such as an excessive claim for depreciation, was subsequently withdrawn it would lead to income being offered to tax before the SC and the same would satisfy the requirement of Section 245C (1). Accordingly,it restored the application of the Assessee back to SC.

***Unitech Wireless (Tamil Nadu) Pvt. Ltd. vs. Pr. CIT TS-342-HC-2017(Bom HC)(WP(C) No. 11256/2016 dated August 11, 2017)***

**3939.** The Court allowed the writ petition filed by the assessee against the Settlement Commission's order passed u/s 245(D)(4) rejecting the application for settlement filed by the assessee on the ground that there was failure to make a full and true disclosure of its income on the part of the assessee. Noting that failure to disclose was alleged essentially on account of Retention money, Purchase of steel, Sub-contracting and Sales Commissions whereas the assessee had made a full and complete disclosure of primary facts on all the aforesaid heads, it held that prima facie the basis of rejection was contrary to law laid down by the Court. It relied on the decision in the case of Pr. CIT v. Income-Tax Settlement Commission, [2017] 79 taxmann.com 186 (Bom) wherein it was held that to establish that there was failure to make a full and true disclosure of income as required u/s 254(C)(1), it would be necessary for the Revenue to prove that there was a non-disclosure of primary facts and not mere non-acceptance of certain claims made before the Commission.

***Shreem Engineering Industries v Income Tax Settlement Commission - [2018] 95 taxmann.com 190 (Bombay) - WRIT PETITION NOS. 13194 TO 13197 OF 2017 dated June 21, 2018***

**3940.** The Court held that where in order passed under section 245D(2C) Settlement Commission had taken prima facie view that there was full and true disclosure and such view had not been shown to be perverse or arbitrary, High Court could not interfere with the impugned order in writ jurisdiction .

***Pr CIT v Income tax Settlement Commission - [2016] 68 taxmann.com 281. (Bombay)***

**3941.** The Court held that where before Settlement Commission, assessee disclosed additional income and sought to fulfil payment of tax by adjusting refund due to it for earlier year, since assessee's claim for such refund was proper, settlement proceeding could not be discontinued.

***Vascon Engineers Ltd. v Income Tax Settlement Commission [2015] 63 taxmann.com 276/235 Taxman 436 / 376 ITR 360 (Bom.)***

**3942.** The Court, noting that nothing was brought on record substantiating that Settlement Commission's order was vitiated by fraud or malice or contrary to provisions of law, dismissed Revenue's writ challenging Settlement Commission order which held that non-resident entities were not liable to tax in India with respect to equipment/plants sold to Indian Companies offshore. Rejecting Revenue's contention that since the sale stood concluded in India, sale proceeds were taxable in India, the Court held that the Settlement Commission had after considering the contracts in details and provisions of Sale of Goods Act, passed a detailed

order holding that sale took place offshore. Accordingly, the Court declined to interfere with the order.

***Income Tax Settlement Commission vs DIT(International Taxation)-TS-395-HC-2017(CAL) W.P. W.P. No. 742 of 2013 dated 12.09.2017***

**3943.** The Revenue had filed an appeal against the order of settlement commission reducing or waiving interest u/s 234B for AY 1992-93 and 1993-94 to the Apex Court. The Apex Court referring to its decision in CIT v. Anjum M.H. Ghaswala (2001)119 Taxman 352 held that the Settlement Commission did not have the power to reduce or waive the statutory interest, except to the extent of granting relief under two circulars issued by the CBDT and remanded the matter back to Settlement commission who withdrew the waiver of interest u/s 234B and shifted the terminal date for calculation of interest u/s 234B till the date of order passed u/s 245D(4). The Single Bench of High Court allowed assessee's writ petition against the said direction of the Commission shifting the terminal date for charging of interest in view of it amounting to recalling its earlier order as under the prior order (before the Apex Court directions) interest u/s 234B was charged till the date of assessment order and Apex Court had remanded the matter back only for the purpose of granting relief as mentioned in the CBDT circulars. In the writ petition filed by Revenue against the said order of the Single Bench, the Court held that Settlement Commission does not have the power to review but has power to rectify an order and thus it had rightly found that later decision of the Supreme Court declaring the correct legal position would render order passed earlier erroneous. Thus, interest u/s 234B was to be charged up to the date of order u/s 245D(4) and the order of the Settlement Commission that the assessee would be charged interest u/s 234B up to the date of the order u/s 245D(4), did not warrant any interference.

***UNION OF INDIA AND OTHERS vs. DR. L. SUBRAMANIAN AND ANOTHER [2018] 102 CCH 0269(Chen HC) WA No. 496 of 2018 DATED AUGUST 06, 2018***

**3944.** The Settlement Commission rejected the application for settlement filed by the assessee on the ground that the assesse-petitioner had made false claim with respect to refund receivable which came to the light from the supplementary report filed by the Pr.CIT with the Commission (which stated the said refund was already received by the assesse and the assesse submitted that it was a inadvertent and technical mistake). On a writ petition filed by the assessee against the said rejection, the Court held that the assesse-petitioner should be permitted to proceed further and for which purpose the petitioner should be given an opportunity to pay the tax since the Commission had not conducted any enquiry to satisfy itself that the stand taken by the PCIT by way of a supplementary report could be a valid ground to come to a conclusion that the assessee had made a false claim on the refund due. It held that holding the assessee to have misrepresented facts without an enquiry into the matter, in the light of the stand taken by the assessee pleading inadvertence and bona fide mistake, was a flaw in the decision making process.

***DR. PRATHAP CHANDRA REDDY vs. INCOME TAX SETTLEMENT COMMISSION - (2018) 102 CCH 0113 (Chen HC) - W.P. No. 5333 of 2018 & W.M.P. Nos. 6553 & 6554 of 2018 dated June 19, 2018***

Go to Index

**3945.** The Settlement Commission rejected the application by holding that 'prima facie' the conditions prescribed in section 245C(1) were not fulfilled. On a writ petition being filed, the Court held that the opinion formed by Settlement Commission in case of rejection under section 245D(1) is conclusive and final and not 'tentative' or 'prima facie' and if Settlement Commission was unable to form a decisive opinion to give a definitive finding for rejection of settlement application after initial and preliminary hearing, proceeding to second stage is the only option.Thus the Settlement Commission notwithstanding earlier preliminary scrutiny under section 245D, should have,as per statutory mandate called the Principal Commissioner/Commissioner to submit their report as second stage examination under section 245D(2C) in which more in-depth scrutiny and verification takes place. The present writ petition was allowed and the impugned order of the Settlement Commission rejecting the settlement applications of the petitioners under section 245D(1) was set aside, with an order of remand to the Settlement Commission

***R.T Industries vs IT Settlement Commission- (2018) 98 taxmann.com 236(Del)- WP No 4398 of 2017 dated 13.09.2018***

**3946.** The Court dismissed the writ filed by the revenue against the order of the Settlement Commission (SC). The Court held that where the Revenue failed to establish any linkage between material seized during search conducted on the Assessee and Uttar Pradesh Distiller's Association (UPDA), of which Assessee was a member, in respect of alleged clandestine payments made to UPDA which was allegedly used to bribe public officials and politicians, no addition could be made. The Court opined that Revenue was under obligation to establish through materials relatable to the Asssessee, what it alleged against the Assessee.

***CIT vs. Radico Khaitan Ltd. (2017) 83 taxmann.com 375 (Delhi) (WP(C) No. 7007/2008 dated July 13, 2017)***

**3947.** Search was undertaken on various premises of the Bindal Group (consisting of 10 companies) to which the 4 Petitioners belonged, pursuant to which returns were filed by all the companies in response to notices under section 153A of the Act. While the assessments were pending, applications were filed by the 10 companies comprising the Bindal Group before the Settlement Commission under Section 245 C (1) of the Act, where undisclosed income of the companies on account of cash, jewellery and other valuables seized during the search as well as the details of the documents seized during the search as well as non-genuine share capital and non-genuine unsecured loans introduced were now disclosed. Subsequently, the Pr CIT filed a report covering all 10 companies and specifically mentioned that the Bindal Group had filed a consolidated cash flow statement which did not cover fully the income of the 4 Petitioners as a result of which only 50 percent of the income that should have been declared had been declared. Accordingly, though the Settlement Commission admitted the application of 6 companies, it declined to entertain the applications filed by the 4 Petitioners. The Court noting that the 4 Petitioners formed part of the Bindal Group consisting 10 companies (the applications for the balance 6 being accepted by the Settlement Commission), held that it was not possible to examine the state of affairs of any one company of the group in isolation of the entire group. It noted that the applications filed by the Petitioners showed the manner of deriving the unexplained income and held that if as contended by the Revenue, there was no full and true disclosure of facts by all ten companies, then the Respondent ought to have challenged the order of the ITSC permitting the applications of the six other companies to be proceeded with,

which it failed to do. It held that merely because the consolidated cash flow was not in respect of four Petitioners could not mean that they had not disclosed the manner of earned undisclosed income. Accordingly, the Court held that the order of the Settlement Commission rejecting the application of the Petitioners was invalid and directed the Commission to entertain the applications of the Petitioners along with the other 6 applications filed by the Group.
***Bindlas Duplux Ltd & Ors v Pr CIT – (2017) 99 CCH 0017 Del HC – W.P.(C) 5424/2016, 5425/2016, 5427/2016, 5428/2016 & CM 22583/2016, 22585/2016, 22589/2016, 22591/2016 dated May 17, 2017***

**3948.** The Court held that the Settlement Commission does not have the power to direct a special audit under section 142(2A) of the Act in the course of assessment proceedings since the exclusive jurisdiction of the Settlement Commission to exercise powers and perform functions of an income-tax authority in terms of section 245F(2) was to be exercised and performed for the purpose of settlement of case under Chapter XIX-A and not for assessment under Chapter XIV. Since assessment of the type contemplated under section 143(3) of the Act was outside the purview of the settlement proceedings, a special audit under section 142(2A) which is in aid of assessment would also be beyond the scope of settlement proceedings.
***Agson Global Ltd v Income-tax Settlement Commission – TS-1-HC-2016 (DEL)***

**3949.** The Court dismissed the writ petition filed by the Revenue against the Settlement Commission's order wherein the Commission had given relief to the assessee on three issues. It was noted that of the three issues, two issues were covered in favour of the assessee by the Court's own order. The third issue pertained to deletion of transfer pricing adjustment with respect to delay in outstanding receivables from AE relating to 'J' project wherein the Commission had accepted the assessee's submission that since it had already shown super-normal profits of 500% with respect to 'J' project, there could not be any adjustment in this regard. The Court held that its scope to remit while dealing with the orders of Settlement Commission are categorical viz. only in the case where there is manifest and egregious findings of law that are erroneous, non-application of mind or lack of bona fides. Accordingly, since none of these vitiating factors were disclosed by the Revenue in the present case, it declined to interfere with the impugned order.
***CIT v STEAG ENERGY SERVICES GMBH (2018) 102 CCH 0126 DelHC – W.P.(C) 7216/2018 dated 17th July, 2018***

**3950.** The Court quashed the order passed by the Settlement Commission under section 254D(4) allowing the assessee's request of settlement on the ground that the assessee had declared an additional income of Rs.56 lacs during the course of the hearing of settlement application over and above what was already declared in the settlement application and that such disclosure was a substantial amount, exceeding 150 percent of the initial disclosure and therefore the application filed by the assessee did not comply with the statutory requirement of full and true disclosure contemplated under section 245C(1) of the Act.
***Pr CIT v Nilkanth Developers – TS-470-HC-2016 (Guj) - SPECIAL CIVIL APPLICATION NO. 14239 of 2015***

**3951.** The Court, upheld Income Tax Settlement Commission's (ITSC) order accepting assessee's settlement application u/s 245D for AYs 2010-11 to 2014-15 and rejected the Revenue's

contention that the further disclosures of Rs. 50 lakhs per AY made by the assessee represented a substantial rise from the original disclosure made in the settlement application, and that therefore the assessees' initial disclosures were not true and full. The assessees (i.e. multiple parties involved who had filed the application for settlement) in the settlement applications made additional disclosures of undisclosed income admitting receipt of money through sale of constructed properties. It was contended by the assessee that the unaccounted income would comprise of the profit element embedded in such sale of constructed properties and projected 15% profit on the turnover. On this basis, the assessees made disclosures of additional income which was accepted by Commission and immunity was granted to the assessees from prosecution and penalty. The Revenue contended that further inquiry was necessary as the 15% profit was on lower side compared to similar business. The Revenue relying on the decision in the case of Ajmera Housing Corporation [326 ITR 642 (SC)] and Nilkanth Developers [TS-6013- HC-2016(GUJ)-O] had contended that the since the assessee had after making initial disclosures, made further substantial disclosures, the initial disclosures were not true and full. Distinguishing the Apex Court's ruling in the case of Ajmera Housing Corporation [326 ITR 642 (SC)] it held that the facts of the case were different since in that case the assessee had at a belated stage, made fresh and further disclosures. Noting that the Commission had considered that assessee had made a voluntary disclosure of additional sum of Rs. 2 crores i.e 50 lakhs in case of each assesseee to put an end to the issue, it held that both the cases relied upon by Revenue were not applicable in the said cases as there was a substantial and drastic difference in original disclosure made in the application compared to the further disclosures.

***Principal Commissioner of Income Tax vs ITSC and others-TS-241-HC-2017(GUJ)-Special civil application no.1733 and 1736 of 2017 dated 13.06.2017***

**3952.** The Court upheld the constitutional validity of Sections 245D(2A), 245D(2D) and 245HA which introduced payment of additional tax with interest at the time of filing of Settlement application itself and also provided for two months window to pay the taxes due upto July 31 in respect of old applications pending as on June 1, 2007, failing which the settlement proceedings would abate. The Assessee-individual had filed settlement applications (dated May 27, 2007) for seven years and made tax payments for 5 years but could not make the tax payments for two balance years before July 31 as a result of which the Settlement Commission had abated the application for settlement for all the seven years. The Court noted that even pre-amendment, the assessee always had the liability to pay the tax on additional income disclosed in the application for settlement filed before the Commission however, there was no abatement of proceedings on such failure. Accordingly, noting that the legislative intent behind amended provisions was to bring a degree of seriousness and promptness in pursuing the settlement cases, it held that the statute could not be declared as unconstitutional merely because it is likely to work harshly against some sections of the citizens. However, as the assessee had made payment for five years and payment of additional tax was not made only for two years owing to financial difficulty, it stated that the assessee's application need not be seen as one composite application and held that abatement of settlement application should be confined to those AYs for which assessee was unable to make payment of additional tax with interest.

***Ashish Prafulbhai Patel vs Income Tax Settlement Commission-TS-401-HC-2017(GUJ)-SPECIAL CIVIL APPLICATION NO. 6379 of 2008 dated 07.09.2017***

Go to Index

**3953.** The assessee filed an application before the Settlement Commission subsequent to an order passed by the AO u/s 158BC. The assessee also filed a special civil application challenging validity of section 245HA containing provisions of abatement of proceedings before the Commission. In the meantime, this issue had reached the Supreme Court in another case in which also, vires of very same section was challenged. However, the petitioner in that case before Supreme Court withdrew its application. In such background, the Commission was of opinion that abatement provisions contained in section 245HA would apply to the assessee and passed an order declaring the proceedings before it to have abated as proceedings could not be completed on the specified date. On writ filed by the assessee, the Court held that the disposal of proceedings before the Supreme Court without expression of opinion on merits, could not be allowed to extinguish the assessee's right to challenge vires of section 245HA. It held that even otherwise, since proceedings were not delayed due to reasons attributable to the assessee, the impugned order of declaration of abatement of proceedings was to be set aside.
***M. Kantilal & Co. v Income Tax Settlement Commission - [2018] 94 taxmann.com 293 (Gujarat) - R/SPECIAL CIVIL APPLICATION NO. 20442 OF 2017 dated April 18, 2018***

**3954.** The Court quashed order passed by Income-tax Settlement Commission rejecting assessee's application for withdrawal of settlement-application in view of certificate issued under Kar Vivad Samadhan Scheme, 1998 (KVSS) where Settlement Commission rejected assessee's request for withdrawal on the ground that application once made cannot be withdrawn since the assessee's declaration was accepted and assessee had paid tax arrears and order was not passed by Settlement Commission.
***HasmukhlalThakordasDalwala [TS-555-HC-2016 (Guj)] (Special Civil Application No. 3759 of 2010 with 7784 of 2010)***

**3955.** The assessee filed two applications u/s 245C(1) before the Settlement Commission for several AYs, whereas the Settlement Commission passed an order u/s 245D(4) considering only some of the AYs and the remaining AYs were not considered and decided. The Revenue filed writ petition challenging the order passed by the Settlement Commission not considering the settlement application for all the years for which the application was submitted. The Court held that to consider the petition on merit, the foremost question to be decided was whether the Revenue could be considered as an "aggrieved person/ party" in the present case. It held that it is the assessee who approaches the Settlement Commission for settlement as per section 245 and, therefore, if at all anybody who can be said to be aggrieved by the rejection of the application by the Settlement Commission and/or non-consideration of the application for settlement for which the settlement application is submitted, is the assessee and not the Department/ Revenue. Therefore, the Court held that the present petition was not required to be considered further on merits as the department could not be said to be aggrieved by the order of Settlement Commission. However, the Court held that even otherwise, on merits, the impugned order did not suffer from any procedural lapse and no principles of natural justice were violated and thus the order passed by the Settlement Commission was not required to be interfered with. Accordingly, it dismissed Revenue's petition.
***CIT v Income-tax Settlement Commission - [2018] 97 taxmann.com 78 (Gujarat) - R/SPECIAL CIVIL APPLICATION NOS. 17177, 17179 TO 17186 OF 2013 dated July 25, 2018***

Go to Index

**3956.** Assessee filed an application for settlement of its proceedings contending that till then, reassessment proceedings were pending. Department took a stand that application for settlement was not maintainable as AO had already passed orders of reassessment against assessee on the date of filing the application. Assessee contended that though the reassessment orders passed against assessee were given to dispatch a day before making the application, the same were received by assessee later. The Settlement Commission accepted the application. In a writ petition filed by revenue, the Court held that in view of decision in case of Shailbhadra Developers v Secretary [2017] 245 Taxman 160 (Guj.) for purpose of maintainability of a settlement application, a case would be pending only as long as order of assessment is not passed and date of dispatch or service of order on assessee would not be material for such purposes. Thus, it held that the settlement commission was unjustified in accepting application of assessee.

***PCIT v Vallabh Pesticides Ltd.[2018] 94 taxmann.com 434 (Gujarat) [2018] 94 taxmann.com 434 (Gujarat) – R/SPECIAL CIVIL APPLICATION NO. 5940 OF 2018 dated 16.04.2018***

**3957.** For the purpose of deciding maintainability of settlement application vis-à-vis pendency of a case, the Court held that a case would be pending only as long as the order of assessment is not passed, once the assessment is made by the assessing officer by passing the assessment order, the case can no longer be stated to be pending and the application for settlement would be maintainable only if filed before the said date, the date of dispatch or service of order on the assessee would not be material for such purpose.

***Shalibhadra Developers v. Secretary [2016] 74 taxmann.com 152 (Gujarat) (Special Civil Application No.7256 & 7412 OF 2016)***

**3958.** The Court allowed the assessee's writ and quashed the order of the Income Tax Settlement Commission as it was barred by limitation. It negated the submission of the Revenue that the limitation provided for in Section 245D(4A) was directory and not mandatory and held that the word 'shall' used in the said section suggests that the timeline prescribed therein was in fact mandatory. It distinguished the Revenue's reliance on the decision of the Bombay High Court in Star Television News Ltd (which was affirmed by the Supreme Court) and held that only when the Settlement Commission was prevented from fulfilling its mandatory statutory duty due to any reason attributable to the applicant, the time limit for disposal of an application under section 245D(4A) will have to be read as 'may'.

***RNS Infrastructure Ltd v ITSC – TS-665-HC-2016 (Kar)***

**3959.** After accepting the assessee's application u/s 245, the Settlement Commission had passed a final order u/s 245D(4) rejecting the application as not maintainable as there was no full and true disclosure. In such case. When the assessee challenged the Settlement Commission's initial order accepting the application in the present writ and the final order was challenged in a separate writ petition, the Court held in view of fact that final order of Settlement Commission rejecting application of assessee was challenged by way of separate proceedings, examining questions raised in the instant appeal would be an exercise in futility and directed all contentions of the assessee, as raised in instant appeal, to be raised in the said writ petition.

Go to Index

***Pr.CIT v Boyance Infrastructure (P.) Ltd. – (2018) 91 taxmann.com 437 (Kar) – Writ Petition Nos. 47042-47045 of 2015 & 240-243 of 2016 (T-IT) dated 20.02.2018***

**3960.** The Court rejecting the assessee's claim that CIT, being a mere adjudicating authority under the act could not challenge the order passed by Settlement Commission, being a statutory authority under the Act set aside the order of Settlement Commission's final order passed under section 245D. The finality of settlement commission order cannot oust the jurisdiction of a High Court under Articles 226/227 of the Constitution.
***The Settlement Commission [TS-17-HC-2017(KER)]***

**3961.** The Court quashed order passed by the Income Tax Settlement Commission ('ITSC') rectifying / reviewing the order passed u/s 145D(4) for AYs 1988-89 to 1994-95 based on Revenue's miscellaneous petition. It held that Section 245F (conferring powers on the ITSC) could not be read in isolation but was to be read in tandem with Sec. 245I, which provides that order passed by the ITSC shall be conclusive as to the matters stated therein, and that there is no power of review conferred on the Commission to reopen the proceedings. It further pointed out that the amendment to sub-section 6(B) of Sec 245D by Finance Act, 2011 provided for "rectification" and not "review" of order passed by the ITSC u/s 245D(4) and thus even as per the amendment, power of review was not conferred on the ITSC. It rejected Revenue's reliance on Apex Court ruling in Hindustan Bulk Carriers and Damani Bros to contend that a mistake apparent from the records had crept in the ITSC order, and held that subsequent developments of law cannot be a ground to exercise review jurisdiction.
***R.VIJAYALAKSHMI [TS-606-HC-2016(MAD)] (W.P.Nos.5553 to 5558 of 2008)***

**3962.** The Court dismissed the assessee's writ petition and upheld the rejection of application by the Settlement Commission on the ground that the additional income offered by the assessee in the application was prima facie not full and true. It observed that the assessee had filed a Nil return at the time of filing settlement application which was done during the pendency of block assessment proceedings wherein a huge sum of unaccounted assets were seized. It rejected the contention of the assessee that the determination of undisclosed income involved complexity of investigation as contemplated under section 245D and held that merely because there were a number of partners and several firms involved, it would not make the matter complex.
***Dix Francis – TS-467-HC-2016 (Mad) - W.P.Nos.21757 & 21758, 23697 & 23698, 21997 to 21999, 22041 to 22043 of 2005***

**3963.** The Court allowed assessee-petitioners' writ and directed the Settlement Commission to consider its application in respect of undisclosed foreign income and assets for AYs 2005-06 to 2014–15 which was rejected by Settlement Commission on the ground that it lacked jurisdiction to deal with issue relating to undisclosed foreign income and asset after legislation of Black Money Act. The court noted that CBDT has clarified that the Black Money (Undisclosed Foreign Income Tax and Assets) and Imposition of Tax Act, 2015 came into effect from July 1, 2015. Since the date of filing return of income and issuance of Sec 148 notice in the case of the Petitioner was prior to provisions of the Black Money Act coming into effect, the Court held that the settlement applications were maintainable.

Go to Index

***Arun Mammen and Another - TS 373 HC 2016 (MAD) - W.P.Nos.22216 to 22219 of 2015***

**3964.** The Court upheld the rejection of settlement application filed by assesse before the Settlement Commissioner noting (i) that the Settlement Commission had rejected the application on ground that the assesse had failed to make full and true disclosure including the disclosure of manner of earning undisclosed income admitted during search proceedings and (ii) that the Settlement Commission had observed that entries appearing in documents seized during search did not match with assessee's explanations and the deficiencies pointed could not be clarified by assessee. The Court held that the first and foremost condition for an assessee to fulfil before Settlement Commission is to satisfy Commission that his disclosure was full and true and if this basic ingredient is not satisfied, Commission can reject application at very threshold. It further held that the Court cannot dictate procedure that Settlement Commission has to follow at stage of section 245D(1) unless there is a palpable error or violation of any procedures under Act
***Anbuchezhian v IncomeTax Settlement Commission – (2018) 253 Taxman 253 (Mad) – Writ Petition No. 666 of 2018 WMP Nos. 836 to 838 of 2018 dated 19.01.2018***

**3965.** The Court upheld the order passed by the Settlement Commission after giving due opportunities to the assessee after considering the CITs report made under Rule 9 and dismissed the contention of the Revenue that since the Commission added Rs.110 crore in addition to the income disclosed by the assessee, the assessee had not made full and true disclosure of its income to warrant the jurisdiction of the Settlement Commission. It noted that the Commission had wide powers to consider the income disclosed, add additional income after due investigation and also to add any income was found to be valid as per Report under Rule 9 submitted by the Department and finally settle the tax payable by the assessee.
***CIT v Income Tax Settlement Commission – TS-486-HC-2016 (Ori) - W.P.(C) No.1199 of 2015***

**3966.** After search and seizure, petitioner company filed application for settlement of case in which it declared additional income of Rs. 30 lakhs. Individual share percentage of directors was 9.3 per cent, 11 per cent, 11 per cent, respectively. Petitioner company contended that collective stake of directors exceeded 20 percent in company. Thus, directors had substantial interest in petitioner company and, therefore, petitioner company would qualify as a 'specified person' within meaning of Explanation (a) to section 245(1) being covered under clause (v) of Explanation (a) to section 245C and thus, settlement application could be filed. However, Settlement Commission rejected impugned application on ground that clubbing of shareholding held by different shareholders to make collective shareholding of 20 per cent is not permissible under law and, thus, settlement application could not be admitted. The Court held that settlement application was rightly rejected by Settlement Commission.
***Bhatia Colonizers (P.) Ltd. v. Dy. CIT, Kota- (2019) 101 taxmann.com 404(Raj)-S.B. Civil Writs No. 2050 of 2018 dated December 18, 2018***

*Prosecution*

**3967.** The Apex Court refused to interfere with the order of the Bombay HC directing initiation of civil and criminal contempt proceedings against the President of Sinhgad Technical Education

Society (assessee) as also against the Tax Recovery Officer ('TRO') for misrepresenting the order of the Court and for wilful disobedience of Court's order. It noted that subsequent to HC's refusal to grant relief against Tribunal's order to deposit Rs.18 cr., President Mr. Navale had filed communications before the Bank officials & TRO, claiming that the Court, through 'oral' directions, had allowed assessee to withdraw funds received by it in its bank account (post this communication the assessee withdrew Rs. 9 cr from bank account received from Social Welfare Department). Similar misrepresentation was also made by TRO to the assessee's bank. Noting the undisputed and agreed position between the parties that no such 'oral' instructions were given by the Court, the Court had held that the conduct of Mr. Navale and TRO amounted to wilful disobedience of the Court's order. Accordingly, the Apex Court refused to interfere with the order of the Court but also stated that the Petitioner had the remedy of approaching the High Court to tender an unqualified apology and also to make the offer of payment/deposit as was made before it. It held that the High Court was free to pass such order as it may be consider appropriate.

***Sinhgad Technical Education Society [TS-53-SC-2018] - PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 3703/2018 dated 09-02-2018***

**3968.** Where the Deputy Director of Income Tax (Investigation)-I, Bhopal filed a complaint before the Chief Judicial Magistrate at Bhopal against the appellant alleging commission of offences under sections 109, 191, 193, 196, 200, 420, 120B and 34 of IPC for giving false statement to the Income Tax Officers while their statements were recorded on oath under Section 131 of the Income Tax Act in pursuance to a search proceeding conducted in their respective premises, the Apex Court held that such complaint was invalid since the Deputy Director of Income Tax (Investigation) has no competency to file a complaint against the contempt of the lawful authority of Income Tax Officers under Section 195 of the Cr PC which stipulates that the complaint for prosecution for contempt of lawful authority of the public servants, among other things, has to be filed by either the court /public servant concerned or by the officer duly authorised in writing by that court in that behalf or by the court to which that court is administratively subordinate and since the DDIT(IT) was not authorized the same was inadmissible. ***Babita Lila v Union of India – (2016) 73 taxmann.com 32 (SC) – Criminal Appeal No 824 of 2016***

**3969.** Where the assessee had filed compounding application u/s 279(2) with respect to prosecution proceedings initiated against it for failure to remit TDS and the said application was rejected for non-payment of compounding fees as the assessee had disputed its quantum, the Court rejected the assessee-petitioner's contention that when there was a genuine dispute about the quantum of compounding fee payable by them, it was not open for Pr. CCIT to reject the application for compounding, without first resolving the dispute. It rejected the assessee's plea that reduced compounding fee @ 3% was applicable in view of the revised CBDT guidelines of December 2014, since the revised guidelines were applicable only to compounding applications filed after January 1, 2015 and the guidelines that were in existence at the time of filing of the compounding application in August, 2014 (which prescribed for higher compounding fees @ 5%) were applicable in the present case. The Court, however, permited the assessee to pay the balance compounding fees within 4 weeks and get the offence compounded.

Go to Index

***Sagar Asia Pvt. Ltd v Pr.CIT [TS-372-HC-2018(AP)] - Writ Petition No.14702 of 2018 dated May 01, 2018***

**3970.** The Court held that if a stay application is filed before the CIT(A) to seek a stay of the assessment order, during the pendency of such application, the criminal prosecution should not be launched and, if it has been already launched, the same shall not proceed.
***Ramchandran Ananthan Pothi vs. UOI (Bombay High Court) - WRIT PETITION NO.761 OF 2018 dated 04.09.2018***

**3971.** Where the assessee filed a petition challenging the Show Cause Notice issued by the ITO, calling upon the assessee to appear before him and show cause as to why the assessee's case should not be referred to the Principal CIT, for initiation of prosecution/proceedings u/s 276-C(1) on the alleged ground that assessee had willfully attempted to evade tax, interest chargeable, and penalty imposable under the Act, the Court held that the impugned proceedings, being only a Show Cause Notice, could not be interdicted at this stage (writ petition) , and whatever points, the assessee wanted to raise, could very well be raised before the ITO, by responding to the Show Cause Notice. Therefore, the prayer sought for in the Writ Petition to quash the impugned Show Cause Notice was rejected and the assessee was directed to appear before the ITO and submit their reply to the Show Cause Notice.
***M.Radhakrishnan vs. ITO & Ors(2016) 97 CCH 0059 ChenHC (WP No. 38268 of 2016)***

**3972.** Assessee filed return of income for AY 1998-1999 disclosing his income at Rs.48,150/-.Thereafter, Department conducted investigation and found that assessee's income was Rs.29,05,126/- and determined tax payable, including interest.CIT(A) determined assessee's income and tax payable.ITAT dismissed his stay petition.Assessee was thus, held liable to be punished u/s 276C(2) for non-payment of determined tax.On summons, assessee appeared and prosecution was commenced.Assessee filed petition u/s 245(1) Cr.P.C. for discharge, which was dismissed by Trial Court. The High Court held that authorities created under Income Tax Act are fact-finding bodies and assessee was knocking doors of those bodies challenging determination of income by ITO.There was no supine indifference on assessee's part in not paying demanded tax, but, he agitated before various fore and at end of day, fact-finding body itself concluded that assessee's income for relevant period was only Rs.2,82,650/- and tax payable by him thereon was only Rs.1,10,402/-.There was no necessity for Department to have launched prosecution hurriedly since law of limitation u/s 468 Cr.P.C. for criminal prosecution was excluded by Economic Offences (Inapplicability of Limitation) Act, 1974.Even in complaint, ITO stated that assessee had approached ITAT which proves that ITO was aware that assessee was agitating his case before ITAT.But, it could not be stated that assessee was wilfully evading payment of tax.Order passed by Additional CMM was set aside and assessee was discharged from prosecution.Assessee's petition was allowed.
***SAYARMULL SURANA vs. ITO (2018) 103 CCH 0155 ChenHC Crl.R.C. No. 111 of 2011 & Crl.M.P. No.1 of 2011 dated 14.12.2018***

**3973.** The Court dismissed assessee's petition filed under section 482 of the Cr.P.C. againt the summons issued by the Metropolitian Magistrate calling upon the assesse to appear before him as accused after taking cognizance of offence u/s 276CC r/w s. 278B of the Act. It was noted

that the assessee had failed to furnish return of income for the relevant year and Revenue issued notice u/s 142(1) which was not complied with and return was finally filed on 19.03.2014 (showing that the assesse was eligible for refund), and thereafter a criminal complaint was instituted by Revenue for non-compliance of section 142(1). The Court rejected assessee's reliance placed on proviso to section 276CC (which provides that prosecution shall not lie for non filing return of income u/s 139(1) if the tax payable does not exceed Rs.3000) relying on the ratio laid down in Apex Court decision in Sasi Enterprises v. Assistant CIT (2014) 5 SCC 139 wherein it was held that benefit of proviso to sec. 276CC could be taken only under section 139(1) and the provisions of section 142(1)(i) or 148 were conspicuously absent. Accordingly, it held that there was no merit in asessee's contentions for assailing of the said summons order.
***Jay Polychem India Ltd. and Anr vs Asst CIT[2018] 103 CCH 0123 (Del-HC.)- CRL.M.C. 239/2015 dated 26.11.2018***

**3974.** The assessee-company deducted an amount as TDS but failed to credit same in account of Central Government. However, later on, assessee credited amount of TDS with interest. The Commissioner issued sanction order to prosecute assessee for offence committed under section 276B, pursuant to which the assessee filed a writ petition against sanction order. The Court noted that on criminal complaint being preferred, the Additional Chief Metropolitan Magistrate had already taken cognizance of issue of non-depositing of TDS by assessee and issued summons to assessee for appearance and to face trial and in view of the fact that trial had already been initiated against assessee in criminal court, it held that it would not be fair or proper for it to decide question of validity of sanction order on merits as it would amount to a pre trial adjudication and held that the questions and issues relating to issue of sanction order could be raised and decided during trial. Accordingly, it dismissed assessee's writ.
***Indo Arya Central Transport Ltd v CIT (TDS) - [2018] 92 taxmann.com 129 (Delhi) - WRIT PETITION (CIVIL) NO. 3964 OF 2017 dated MARCH 12, 2018***

**3975.** The Petitioner had wrongly claimed depreciation on land in its balance sheet. It submitted that it was a clerical error and that while finalizing books of accounts for the subsequent year, the auditor noticed the error and rectified it. It further submitted that as soon as the error came to its notice it suo moto intimated the AO vide letter dated 8.12.2009. The AO initiated proceedings under Section 277 on account of falsification of accounts, which was confirmed by the Additional Chief Metropolitan Magistrate. During writ proceedings, the Court observed that as per the assessment records, the AO had made two order sheet notings requesting the assessee to justify its claim of depreciation of land and that it was only pursuant to such notings that the assessee filed letter dated 8.12.2009. Accordingly, it held that the assessee's claim that it had suo moto intimated the AO of the error was not correct. Further, it noted that as per the statement of the assessee's Director (recorded by the AO) the Director stated that the mistake was noticed by them in August 2008. The Court held that where the mistake was noticed in August 2008 but the assessee took steps to rectify the same only on 8.12.2009, absent justification in such delay, it upheld the order of Additional Chief Metropolitan Magistrate. Accordingly, it dismissed Assessee's petition.
***Ambience Hospitality Pvt Ltd vs DyCIT (2017) 100 CCH 100 DelHC – CRL.REV.P 16/2015 dated 23.11.2017***

Go to Index

**3976.** The Court held that the Income-tax Department cannot reject an application for compounding of offences u/s 279(2) of the Act, either on the ground of limitation or on the ground that such application was not accompanied by compounding fees as prescribed by CBDT circular. The Court notes that Revenue levied 'compounding charges' of nearly Rs.70 lakhs for considering assessee's application and subsequently rejected it on ground of delayed filing of application. It held that the CBDT circular did not stipulate a limitation period and there was nothing in Sec. 279 or the Explanation thereunder to permit CBDT to prescribe such an onerous and irrational procedure of insisting an upfront compounding fee even before considering the compounding application on merits. Accordingly, the Court set aside CCIT's order and directed the Revenue to decide the application afresh on merits.
***Vikram Singh [TS-148-HC-2017 (DEL)] (WP(C) 6825/2016)***

**3977.** The Court allowed assessee's writ and sets-aside Chief Commissioner's order refusing to consider assessee's compounding application u/s 279(2) filed pursuant to prosecution launched u/s 276B for failure to deposit TDS amount deducted from contractor payments. Noting that the assessee's compounding application was rejected by Revenue on the ground that compounding was not permissible in view of CBDT guidelines of 2014, considering the ongoing CBI investigations of the assessee, the Court held that the power to grant or refuse compounding was essentially discretionary. Considering that the assessee was faced with genuine difficulties (i.e seizure of books of accounts and documents etc. by CBI) which prevented assessee from making necessary TDS payment, the Court directed the Chief Commissioner to consider assessee's application in light of relevant facts.
***Sport Infratech pvt Ltd [TS-25-HC-2017(Del)]***

**3978.** The Court held that where the Petitioner had voluntarily agreed for compounding of offence and had undertaken to pay to the department compounding charges and to withdraw his appeal as per the Guidelines on Compounding of Offences, 2014, issued by the CBDT, he was bound by the same and that merely because, due to delay attributable purely to Petitioner, amount of compounding charges turned out to be much higher than principal and interest, the compounding charges would not per se be rendered illegal or arbitrary. It held that compounding fee is in nature of a payment made to avoid punishment for a criminal offence and the same could not be merely compared with principal and interest charged but had to be adjudged from point of view of long duration during which there was wilful non-payment of taxes. It further held that Explanation to section 279 vests CBDT with powers to issue circulars, orders, instructions or directions for proper composition of offences and CBDT Guidelines on Compounding of Offences, 2014, issued under such power were exhaustive in nature and did not reflect any exercise of power which was arbitrary or illegal
***Vikram Singh vs. Union of India – (2018) 401 ITR 307 (Del HC) - W.P.(C) No. 6268 of 2017 dated 23.01.2018***

**3979.** In a case of prosecution for non-deduction of TDS, the Chief Metropoliton Magistrate held that in the case of default, Mens rea has to be presumed to exist and it is for the accused to prove the contrary and that too beyond reasonable doubt. It rejected assessee's plea that default in payment of TDS occurred due to delay by department in refunding excess TDS due to the

assessee, holding that amount deducted by way of TDS has to be deposited within prescribed time irrespective of any counter claim of the assessee.
***ITO vs. VCI Hospitality Ltd - CC No.536182/16 (Chief Metropoliton Magistrate) dated 28.08.2018(Delhi Court)***

**3980.** The Court held that where prosecution under section 276CC was launched against assessee on account of his failure to furnish return of income in response to notice issued u/s 142(1), the offence under section 276CC, prima facie, stood constituted as there was evident failure on part of assessee to not furnish return of income for relevant AY within period prescribed as per law. Thus, the mere fact that the assessee had subsequently furnished return of income for relevant AY and no amount of tax was due, would not exempt the assessee from liability of prosecution. Thus, the criminal revision petition filed by assessee was dismissed and the prosecution proceedings would continue in light of the above order.
***Karan Luthra vs ITO- (2018) 98 taxmann.com 455 (Delhi)- CRL M.C no 3385,3390 of 2016 dated 14.09.2018***

**3981.** The assessee filed a writ petition u/s 482 of Cr.P.C. seeking to quash criminal proceedings initiated against him on ground that he had given false statements during the search and seizure conducted (where large unaccounted cash from lockers belonging to assessee were recovered) and indulged in acts of commission constituting offences under provisions of the Act and Cr.PC. It was assessee's contention that it had approached Settlement Commission u/s 245-C(1) on which Settlement Commission had passed order allowing said settlement applications "to be proceeded with further" and upon such application for settlement being entertained by Settlement Commission, filing of criminal complaint was impermissible and bad in law. The Court rejected assessee's argument noting that settlement applications had been dismissed by the Settlement Commission, nor any order to such effect accorded suo motu by the Settlement Commission u/s 245-H granting immunity from prosecution temporary or otherwise was passed. The Court dismissed assessee's writ petition by observing that assessee had not produced material to rule out and displace assertions contained in charges levelled against it and thus, it was not a fit case to invoke jurisdiction u/s 482 in ongoing criminal prosecution of assessee.
***Aditya Sharma vs. Income tax Department [2018] 102 CCH 0244 DelHC- CRL. M.C. 4666/2015 & CRL. 16736/2015 dated August 20,2018***

**3982.** Penalty was levied u/s 271(1)(c) and further prosecution was initiated by the revenue against, the assessee who applied to the CCIT for compounding of offence and offered to pay compounding fees. The CCIT levied some fees against which assessee applied for rectification of compounding fees and stated that it should be levied on amount of tax sought to be evaded and not on amount of income sought to be evaded. The Court noted that as per CBDT circular dated 23.12.14, it prescribed compounding fees at 100% of amount sought to be evaded and section 276C(1) prescribed punishment for person who wilfully attempted in any manner to evade any tax, penalty or interest. Thus, the Court held that when there was a reference to amount sought to be evaded, it must be seen in light of wilful attempt on part of concerned person to evade tax, penalty or interest and directed the CCIT to carry out fresh computation of assessee's liability to pay compounding charges.

Go to Index

***Supernova System P Ltd vs CCIT- (2018) 103 CCH 0018 Guj HC- Special Civil Application No 8715 of 2018***

**3983.** Assessee was running a finance company and a survey under section 133A was carried out in office premises of assessee and thereupon a notice under section 143(2) was issued. In absence of any response from assessee, assessment was completed under section 144 and the AO also lodged a complaint under section 276C, read with section 277. The magistrate took cognizance of the said complaint and issued proceedings against the assessee. In response the assessee filed instant petition challenging validity of prosecution proceedings. The Court held that, ground taken by assessee that there was no wilful default on his part in concealing income was not tenable, because it was a factual defence, which was to be proved during course of trial. Thus, the Court concluded that complaint lodged by AO and process issued thereon against assessee did not suffer from any infirmity of law.
***Arun Arya vs ITO- (2018) 98 taxmann.com 470 (J&K)- IA No 01/2015 dated 28.09.2018***

**3984.** Where the assessee along with his CA had tempered with the document to show that higher taxes had been paid and where the revenue had filed a private complaint under section 200 of the Code of Criminal Procedure for offence punishable under section 276C(2)/277 against the assessee as well his CA the Court dismissed the plea of the assessee that the error was committed by the CA's clerk and observed that section 277 of the Code of Criminal Procedure provides for prosecution if any person makes a false statement. It dismissed assessee's reliance on circular (which provides that no prosecution proceedings could be initiated where an attempt to evade tax is less than Rs. 25,000) and held that under no grounds the said circular could be read with regard to filing of a false declaration.
***Magdum Dundappa Lokappa [TS-652-HC-2016(KAR)] (Criminal Petition No.100919 of 2016)***

**3985.** The petition filed by the assesse before the Sessions Court was for grant of anticipatory bail in view of show cause notice received as per Rule 73 of the Second Schedule to the Act was rejected by the Sessions Judge. The assessee approached the High Court to seek protection from arrest under section 438 of Cr.P.C. The Court held that the assessee's petition seeking the said protection was not maintainable. It held that section 438 of Cr.P.C. is a device to secure the liberty of a person who is apprehending his arrest in a non-bailable offence and the 'reason to believe' that a person is likely to be arrested for a non-bailable offence is a sine qua non for invoking the jurisdiction u/s 438 of Cr.P.C. It was noted that the notice was issued under Rule 73 of the Second Schedule of the Act for the recovery of the tax dues determined u/s 222 of the Act, i.e. in course of recovery proceedings. It held that the assessee's apprehension that on issuance of the said notice, he had a reason to believe that he would be arrested and detained in prison was wholly misconceived and misplaced, since the Rule 73 specifically provides that no order for the arrest and detention in a civil prison of a defaulter could be made unless the Tax Recovery Officer has issued and served a notice upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause as to why he should not be committed to civil prison. It held that the assessee was not accused of committing any non-bailable offence so as to invoke the jurisdiction of the Sessions Court or High Court under section 438 of Cr.P.C.

Go to Index

***M A Zahid v Assistant Commissioner of Income Tax (OSD) - [2018] 95 taxmann.com 71 (Karnataka) - CRIMINAL PETITION L NO. 3668 OF 2018 dated June 26, 2018***

**3986.** Where conviction order was passed by Criminal Court against the assessee and assessee was penalised and prosecuted by the Department for belated filing of the returns which resulted in a conviction by imposing rigorous imprisonment for 6 months and assessee's representation to the Honourable Finance Minister requesting for exercising his powers and compounding the assessee's case was rejected, on the ground that it was not a deserving case, the Court directed CCIT to consider compounding application of assessee, on the ground that the Petitioner was a senior citizen and had paid entire tax and the order of conviction passed against the petitioner had been suspended by the Sessions Court.
***R. Inbavalli [TS-564-HC-2016(MAD)] (W.P. (C) 3665/2015)***

**3987.** Where during pendency of assessee's appeal before Tribunal, his stay petition was dismissed and thereupon AO initiated prosecution proceedings under section 276C for non-payment of determined tax, in view of fact that assessee was agitating his case before Tribunal, which was final fact-finding body, the Court held that there was no necessity to launch prosecution hurriedly because law of limitation under section 468 Cr. P.C. for criminal prosecution was excluded by Economic Offences (Inapplicability of Limitation) Act, 1974.
***Sayarmull Surana v. ITO, Business Ward XII (3), Chennai- [2019] 101 taxmann.com 228 (Madras)-CRL. R.C. No. 111 of 2011-CRL.M.P. No. 1 of 2011 dated December 14, 2018***

**3988.** Where during pendency of assessee's appeal before Tribunal, his stay petition was dismissed and thereupon AO initiated prosecution proceedings under section 276C for non-payment of determined tax, in view of fact that assessee was agitating his case before Tribunal, which was final fact-finding body, the Court held that there was no necessity to launch prosecution hurriedly because law of limitation under section 468 Cr. P.C. for criminal prosecution was excluded by Economic Offences (Inapplicability of Limitation) Act, 1974.
***Sayarmull Surana v. ITO, Business Ward XII(3), Chennai- [2019] 101 taxmann.com 228 (Madras)-CRL. R.C. No. 111 of 2011-CRL.M.P. No. 1 of 2011 dated December 14, 2018***

**3989.** A company, of which the assessee was an MD, had claimed bogus expenses/ deduction / loss. Accordingly, ACIT filed a complaint inter alia against the assessee for offence under Indian Penal Code (IPC) and u/s 276C(1), 277, 278 and 278B of the Act treating assessee as Principal Officer of the company. The assessee contended that she was not in-charge and responsible for carrying on day-to-day affairs of company and thus without issuance of notice u/s 2(35) by the ACIT to treat her as Principal Officer, the complain filed against her was not maintainable. The Court dismissed the petition filed by the assessee holding that since the assessee had subscribed her signature in P&L A/c and balance sheet for relevant assessment year which were filed alongwith returns, ACIT was justified in naming her as principal officer and accordingly she could not be exonerated for offence u/s 277. Further, it held that for filing a complaint u/s 276(C)(1), 277 and 278B, determination of a Principal Officer was not necessary and non-issuance of individual notice before filing of complain would be of no consequence.
***Mrs. Sujatha Venkateshwaran v ACIT(Prosecution) [2018] 96 taxmann.com 203 (Madras) - CRL R.C. NO. 615 OF 2011; M P NO. 2 OF 2011 dated July 13, 2018***

Go to Index

**3990.** Where there was no material to establish that assessee, a Non-Executive Director of the company, was in-charge of day-to-day affairs, management, and administration of his company, the Court held that the AO could not have named him as Principal Officer and prosecute him under section 276B for TDS default committed by his company.
***Kalanithi Maran v UOI - [2018] 92 taxmann.com 308 (Madras) W.P. NO. 34010 OF 2014 dated MARCH 28, 2018***

**3991.** The Court dismissed the writ petition filed by the assessee requesting the Court to issue a writ of prohibition, preventing the Authorities from initiating prosecution against the assessee under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 on apprehension of the assessee that prosecution will be initiated, as section 48 of the said Act permits the Authority to grant sanction to prosecute without even waiting for the assessment to be completed. Further, it also rejected the plea of the assessee that since 9 months had elapsed since the assessee had given all the relevant details, a direction be issued to the DDIT(Investigation) to pass an order forthwith u/s 10(3). The Court held that under normal circumstances, the Statutory Authorities could be directed to perform their functions expeditiously when no time lines are fixed under the relevant statute, and if there was slackness, the Court would fix a peremptory time limit. However, such power could not be exercised in the instant case, since time limit for the same is fixed u/s 11(1).
***Srinidhi Karti Chidambaram v Pr.CIT - [2018] 92 taxmann.com 392 (Madras) - WRIT PETITION NOS. 8832 TO 8835, 8840 & 8841 OF 2018, W.M.P. NOS. 10701, 10702 & 10706 OF 2018 dated April 12, 2018***

**3992.** The Court allowed the assessee's writ petition and set aside the CCITs order rejecting the Petitioners compounding application for offence committed under section 276B of the Act on the ground of the conviction of the Trial Court approximately 15 years prior. It held that where the Sessions Court had granted approval to the Revenue for considering the assessee's application for compounding, the Revenue could examine the matter afresh without being influenced by the conviction.
***VA Haseeb and Co v CCIT – TS-515-HC-2016 (Mad) - Writ Petition No.32731 of 2015***

### *n. Penalty*

**3993.** The Apex Court dismissed SLP filed by Revenue against High Court ruling wherein the High Court has held that merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to Revenue, that by itself would not attract penalty u/s 271(1)(c).
***CIT-2 vs. U.P. State Bridge Corporation Ltd [2018] 97 taxmann.com 279 (SC)- SPECIAL LEAVE PETITION (CIVIL) DIARY NO. 24275 OF 2018 dated August 10 2018***

**3994.** The Apex Court dismissed assessee's SLP against Rajasthan HC judgment upholding the levy of penalty under section 271D for section 269SS violation, wherein the assessee (engaged in cement manufacturing) had during AYs 1992-93 and 1993-94 accepted unsecured loans from its chairman cum managing director in cash.
***Chandra Cement Ltd [TS-8-SC-2017]***

Go to Index

**3995.** The Apex court dismissed Revenue's SLP against Karnataka HC judgement laying down law on 'penalty levy' for AY 2003-04 wherein the HC had held that notice u/s 274 must specifically state ground for initiation of proceedings (whether concealment or filing inaccurate particulars) and that mere sending of printed form with all grounds mentioned was not sufficient compliance of law.
***Veerbhadrappa Sangappa & Co - TS 381 SC 2016 - ITA NO. 5020/2009***

**3996.** The Apex Court dismissed the appeal filed by the Revenue against the order of the Rajasthan High Court wherein penalty imposed under section 271DE and 271# of the Act (pertaining to Section 269SS / 269T default) was deleted on the ground that the penalty order was barred by limitation under Section 275(1)(c) which stipulated a time limit of 6 months. It rejected the Revenue's contention that the case would fall under clause (a) of 275(1) which provided for an extended period of limitation commensurate with completion of appellate proceedings and held that the said section dealt with the limitation period relating to assessment which was not applicable in the instant case as infringement of Section 269SS was independent of assessment proceedings.
***Hissaria Brothers – TS-471-SC-2016 - CIVIL APPEAL NO.5254 OF 2008***

**3997.** The Apex Court held that it was necessary to establish that there was contumacious conduct on part of the assessee, for the levy of penalty under section 271C of the Act.
***CIT v Bank of Nova Scotia – TS-20-SC-2016***

**3998.** The Apex Court dismissed the SLP filed by the assesee and upheld the decision of the Court wherein penalty was imposed under section 271(1)(c) since the assessee claimed loss on sale of fixed assets as business loss in its original return of income and only filed a revised return disclosing the same as a capital loss when confronted by the AO. It held that the assessee's claim was totally baseless and ruled that penalty could not be deleted on the guise or pretence of an incorrect legal opinion when the claim was contrary to the basic and well known principles of accountancy.
***NG Technologies v CIT – TS-255-SC-2016***

**3999.** The Apex Court held that where pursuant to the directions issued by the CIT(A), the AO passed a fresh assessment order wherein no satisfaction was recorded for initiating penalty proceedings under section 271E, the penalty order passed under the said section was to be set aside.
***CIT v Jai Laxmi Rice Mills Ambala City – [2015] 64 taxmann.com 75 (SC)***

**4000.** Where the assessee in course of search had admitted undisclosed income and the manner in which such income had been derived, the Court held that in such cases the provisions of Section 271AAB would automatically be attracted. (Section 271AAB provides for penalty where the search has been initiated u/s 132 at a rate of 10 percent of the undisclosed income of the specified previous year)
***Sandeep Chandak v. PCIT – [2018] 93 taxmann.com 406 (SC) – Special Leave to Appeal (C) Nos. 7085-7087 of 2018 dated April 23, 2018***

Go to Index

**4001.** Where High Court upheld decision of Tribunal deleting penalty under section 271(1)(c) in respect of disallowance made under section 14A because there was no evidence of furnishing inaccurate particulars of income. The Apex Court dismissed the SLP filed against said order.
***Pr. CIT 2 v. Gruh Finance Ltd. - [2018] 100 taxmann.com 104 (SC)-SLP (CIVIL) Diary No.34494/ 2018- dated October 26, 2018***

**4002.** Where High Court set aside penalty order in respect of deduction claimed by assessee for making payments to employees under VRS taking a view that two views were possible i.e., whether amount paid was allowable as deduction under section 37(1) or deduction was to be allowed under section 35DDA and, thus, claiming full amount as deduction did not amount to furnishing inaccurate particulars of income the Apex Court dismissed the SLP filed against said order.
***Pr. CIT v. Modipon Ltd.- [2018] 100 taxmann.com 58 (SC)-SLP (CIVIL) Diary Nos. 34309 of 2018-dated October 22, 2018***

**4003.** The Court held that where assessee claimed depreciation on non-existent assets, penalty under section 271(1)(c ) was to be levied for filing inaccurate particulars of income.
***SLP dismissed in Sundaram Finance Ltd. v Dy. CIT [2018] 99 taxmann.com 152/259 Taxmann 220 (SC). SLP (Civil) Diary No. 34548 of 2018 October 26, 2018***

**4004.** The Court held that since in the present case, the assessing officer had not given any reason as to how he reached the conclusion that "the assessee has concealed it's income and furnished inaccurate particulars of it's income", merely because the books of account had been rejected it did not in itself establish or prove either of the two circumstance to levy penalty, leave alone both circumstances as the penalty order suggested. It held that the assessing officer, was obliged to reason and state in the penalty order how according to him the assessee had either concealed the particulars of his income or had furnished inaccurate particulars of the same either with reference to the material discovered during the survey proceedings or otherwise. Accordingly, it deleted the penalty levied by the AO absent the his reasoning as to how the assessee either concealed its income or furnished inaccurate particulars or both.
***CIT v DEE CONTOL AND ELECTRIC PVT. LTD -(2017) 100 CCH 0185 Allahabad HC - INCOME TAX APPEAL No. 82 of 2017 dated 19.12.2017.***

**4005.** The Court held that period of limitation prescribed under section 275 of the Act lays down that the penalty order must be passed within 6 months of the end of the month in which the appellate order is received and could not be extended merely because the assessee filed an application under section 254 of the Act. Since the penalty order was passed on January 31, 2002 and the order of the Tribunal order was received by the CIT on June 28, 1999, the Court held that the penalty order was time barred and accordingly deleted the penalty.
***CIt v KM Sugar Mills Ltd (2015) 94 CCH 0146 All HC***

**4006.** The Court reversed the Tribunal's order and held that assessee-firm was liable to penalty under Sec. 271D for contravention of section 269SS as it had accepted deposits, otherwise than by account payee cheque / draft. It held that a plain reading of Sec. 271D establishes that it was a

mandatory provision and since its language is crystal clear, the object or the purpose of the enactment of said provision had no say in the matter.In the absenceof 'reasonable cause' proved by assessee u/s. 273B no immunity from penalty was available to the Assessee.
***CIT vs. M/s Sunil Sugar Co. TS-353-HC-2017(AllahabadHC) (ITA No. 652/2012 dated July 27, 2017)***

**4007.** The Court held that making mere claims that were not sustainable in law shall not amount to furnishing inaccurate particulars regarding the income of the assessee and accordingly penalty under section 271(1)(c) of the Act could not be levied.
***CIT v Euro Footwear Ltd – (2015) 94 CCH 0128 All HC***

**4008.** Where the AO levied penalty under section 271(1)(c) of the Act on the basis of disallowances of expenses amounting to Rs.98.90 lacs and the assessee had offered adequate explanation to prove that the expenses had actually been incurred and there was no falsity or inaccuracy that could be attributed to the claim of the assessee, the Court held that there could be no levy of penalty under section 271(1)(c) of the Act in the absence of any finding with regard to concealment of income or that the explanation offered by the assessee was false or mala fide.
***JK Synthetics Ltd v CIT – (2016) 97 CCH 0147 (All HC) – ITA No 125 of 2002***

**4009.** Where the AO had levied penalty under section 271(1)(c) on the assessee with respect to its claim for deduction under section 80IB / Section 80HHC which was subsequently put to rest by the Apex Court, the Court upheld the finding of the Tribunal that no penalty could be levied since the issue was a debatable issue and also noted that there was no allegation against the assessee that it had made any incorrect, erroneous or false details in his returns.
***PCIT vs. Allahdad Tannery (2016) 97 CCH 0067 AllahabadHC (ITA-17 of 2016)***

**4010.** The Court upheld the levy of penalty under section 272A(2)(k) for the assessee's failure to furnish e-TDS quarterly statements within the prescribed time limit for a period of 5 years in spite of the notices issued by the Department. It rejected the contention of the assessee that since TDS was deducted on a timely basis no penalty could be levied for non-filing TDS statements as it did not lead to a loss of revenue and held that the department could not accurately process the returns on whose behalf the tax had been deducted until such information was furnished by the assessee and that the filing of such statements not only increased the reach of the department but also enabled the creation of an audit trial which could be utilized effectively to combat tax evasion.
***Raja Harpal Singh Inter College – TS-445-HC-2016 (All) - INCOME TAX APPEAL No. - 135 of 2016***

**4011.** The Court upheld Tribunal's order deleting levy of penalty u/s. 271(1)(c) as the show-cause notice did not specify as to whether the assessee defaulted on account of concealment of particulars of income or furnishing of inaccurate particulars of income.
***PCIT vs. Smt. Baisetty Revathi TS-299-HC-2017(Andhra PradeshHC) (ITTA No. 648/2016 dated July 13, 2017)***

**4012.** Where the assessee, a sales tax practioner failed to disclose income unearthed pursuant to a search followed by reassessment proceedings, the Court dismissed appeal of assessee and

upheld levy of penalty under section 271(1)(c) for concealment of income. It held that penalty under section 271(1)(c) was neither criminal nor quasi-criminal but a civil liability and therefore is a strict liability for which it was not essential to prove mens rea was. It clarified that question of concealment of income or furnishing inaccurate particulars was a question of fact for which Tribunal is final authority and accordingly, the appeal was dismissed.
***S L Shiva Raj [TS-554-HC-2016 (AP)] (I.T.T.A.No.134 OF 2016)***

**4013.** The Assessee had filed return of income which was selected for scrutiny and during such proceedings, the AO observed that the assessee had claimed deduction u/s 80IA in respect of manufacturing Gutkha pan masala and while claiming such deduction in return of income, assessee had relied on a favourable decision of Ahmedabad Bench of ITAT in Kothari Products Ltd. V/s ACIT. However, the AO had disallowed assessee's claim and imposed a penalty u/s 271(1)(c). The CIT(A) had deleted such penalty and the same was upheld by the Tribunal. The Court held that deduction claimed by assessee u/s 80IA was based on judicial decisions prevailing at time of making such a claim and all particulars relating thereto were disclosed in return of income, thus it could hardly be said that assessee had furnished inadequate particulars or had concealed his income within meaning of section 271(1)(c), thus penalty was deleted.
***PCIT vs Dhariwal Industries Ltd – (2018) 103 CCH 0046 Bom HC- ITA No 1133,1136 & 1129/2016 dated 04.09.2018***

**4014.** The Court held that penalty under section 271(1)(c) of the Act was to be levied in the case of the assessee since the assessee had showed a non-existing liability as an existing liability in its balance sheet which formed part of the return filed by the assessee with the attempt to escape offering the cessation of liability as income under section 41(1) of the Act. It noted that in the quantum proceedings which were taken up to Supreme Court, one of the assessee's creditors denied existence of liability towards them and another was not found at the address given.
***Palkhi Investments & Trading v ITO – TS-333-HC-2016 (Bom)***

**4015.** The Court held that where the assessee furnished evidences such as brokers note, copy of balance sheet, copy of DMAT account etc, by virtue of which one could prima facie conclude that the income was in the nature of capital gains exempt from tax under section 10(38) of the Act but the assessee had subsequently offered the same as a part of business income during survey proceedings, to buy peace, no penalty could be levied under section 271(1)(c) of the Act, since the income could have actually been regarded as income from capital gains and since the Revenue authorities accepted that the assessee had not concealed its income or filed inaccurate particulars attributable to capital gains in its original returns.
***CIT v Hiralal Doshi - [2016] 95 CCH 0048 (Bom)***

**4016.** The Court dismissed the Revenue's appeal and confirmed the deletion of penalty levy u/s 271(1)(c) as the basis of penalty on which the penalty was initiated by the AO and the basis on which the quantum was confirmed on merits by Tribunal was different.
***Indermal vs CIT-(BombayHC)INCOME TAX REFERENCE NO.10 of 2001 dated 06.07.2017***

**4017.** The Court dismissed the appeal of the Assessee and held that where the claim of the Assessee Trust that publishing of newspapers and periodicals would fall within the definition of general public utility and, therefore, would be charitable in nature was rejected by the

department forthe last forty years and affirmed by the Tribunal, penalty levied u/s 273(2)(a) for furnishinguntrue estimate of advance taxand 140A(3) for non-payment of SA tax based on NIL return so filed was to be upheld. It observed that the length of the period during which the Assessee was denied the benefit of the exemption does not permit to hold that the Assessee had a reasonable belief that its income was exempt from tax and consequently NIL estimate of advance tax was filed and no selfassessment tax was paid based on NIL Return.
***Trustee of Saurashtra Trust vs. Director of Income tax (2017) 99 CCH 0164 Bom HC (IT Reference No. 66/2000 dated August 4, 2017)***

**4018.** The assessee engaged in the business of Draft Discounting had earned commission. The AO held that the assessee had failed to prove that he carried on the business of draft discounting and earned commission and he estimated the income @ 5% of the total deposits in bank. The AO then levied penalty u/s 271(1)(c) for concealment of income. The CIT(A) upheld the order of the AO. The Tribunal upheld the contention of the assessee that he carried on the business of Draft Discounting and earned commission. The Court observed that the Tribunal accepted the assessee's contention and therefore, very basis of the Penalty Proceedings was set aside by the Tribunal. Therefore, it held that penalty u/s 271(1)(c) would not be levied on the assessee.
***INDERMAL MANAJI vs. CIT (2017) 99 CCH 0132 BomHC INCOME TAX REFERENCE NO.10 OF 2001 dated 06/07/2017***

**4019.** The Court, dismissing the Revenue's appeal, held that provisions of sec. 271(1)(c) could only be invoked only when the conditions laid down in that section are satisfied i.e. furnishing of inaccurate particulars or concealment of income. The Court observed that assessee had disclosed LTCL of Rs 80 Cr. on purchase and sale of share on which STT was paid in its ROI and that it had also filed a note with the ROI reserving right to carry forward the loss and to set it off against future gains as the assessee had not set off the said LTCL with the LTCG on sale of shares, which were exempt u/s 10(38). The Court stated that assessee under a bonafide belief, through the note, carried forward the losses on sale of shares on which STT had been paid. Thus, HC held that assessee acted in good faith with regards to interpretation of Sec. 10(38) and Tribunal was correct in deleting the penalty.
***DIT (IT) -II vs. M/s Nomura India Investment Fund Mother Fund(Bombay HC) TS-262-HC-2017 (ITA No.1848 of 2014 dated June 15, 2017)***

**4020.** The Court admitted Revenue's appeal against the order of the Tribunal wherein the Tribunal deleted penalty levied u/s 271(1)(c) by AO on addition on account of undisclosed income on ground that in quantum proceedings addition was deleted. It held that since the questions on which quantum appeal was admitted by the Tribunal were not in respect of claim for deduction or pure interpretation of law or document which could lead to appeal on deletion of penalty not being entertained.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. SHREE GOPAL HOUSING & PLANTATION CORPORATION - (2018) 101 CCH 0042 BomHC - INCOME TAX APPEAL NO. 701 OF 2015 dated Feb 6, 2018***

Go to Index

**4021.** The Court held that, if the delay in filing the return is completely attributable to the revenue for non-furnishing of copies of the documents and not giving inspection of the documents seized within a reasonable time after making the demand, the interest has to be waived. Though section 158BFA(1) does not confer the power to waive interest, it has to be read in on equitable construction because the subject cannot be made to pay for the negligence of the Officers of the State.

***Mahavir Manakchand Bhansali vs CIT- BombayHCITA No. INCOME TAX APPEAL No.42 OF 2007 dated 29.06.2017***

**4022.** The Court, dismissing the appeal of the Revenue, upon reading of Sec. 221 conjointly with the definition of "tax" as provided u/s 2(43) held that the phraseology "tax in arrears" as envisaged in Sec.221 would not take within its realm the interest component since tax u/s 2(43) was defined as income tax, super tax and/ or FBT, as the case may be and not the interest component. The Court noted that tax, penalty and interest are different concepts under the IT Act. The Court further stated that provisions imposing penalty should be strictly construed and anything which was not clearly included within the scope of the language of the provision had to be treated as excluded. The Court also made reference to sec. 156 notice of demand which also referred to tax, interest, penalty, fine etc. separately.

***CIT vs. M/s Oryx Finance & Investment Pvt. Ltd. TS-260-HC-2017(BomHC) (ITA No. 1 of 2015 dated June 1, 2017)***

**4023.** Where the appellant-assessee engaged in shipping business debited its foreign exchange fluctuation loss arising from its Tonnage business to compute its Non Tonnage income, the Court held that there was a deliberate attempt on the part of the assessee to furnish inaccurate particulars so as to reduce its taxable income and thus the Court upheld the imposition of penalty u/s 271(1)(c) of the Act. Assessee's argument that it had made a mistake and that it had voluntarily declared the same to the assessing officer was not accepted as the so called disclosure was made by the assesse only after it received notices u/s 142(1) & 143(2) of the Act.

***Samaon Maritime Ltd vs. Commissioner of Income Tax (2017) 98 CCH 0111 BomHC (ITA No. 1718 of 2014)***

**4024.** The Court stayed the operation of the Tribunal's order confirming the penalty levied u/s 271(1)(c) after the assessee's claim of exemption u/s 10B on interest income in return of income was not accepted by revenue, noting that in the subsequent assessment years, the assessee had been granted benefit of deduction u/s 10B to extent of its interest income. It held that the controversy in respect of deduction of interest income u/s 10B stood resolved in favour of the assessee and at the very least, it could be a debatable issue.

***Cybertech Systems & Software Ltd. v DCIT – (2018) 91 taxmann.com 407 (Bom) – ITA Nos. 578, 579 & 582 of 2016; Notice of Motion Nos. 166, 181 & 183 of 2018 dated 23.02.2018***

**4025.** The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty levied u/s 271(1)(c) on account of addition made with respect to accrued interest on certain loans / advances which was not accounted for by the assessee-NBFC following mercantile system of accounting, where the assessee specifically stated in it notes to account that on account of

policy decision, it had not accounted for interest accrued as well as interest payable pertaining to loans / advances given/ received by the erstwhile entities which had merged with the assessee company. It held that the assessee had taken a bonafide policy decision of not accounting for interest receivable as well as payable with respect to which full disclosure was made and that non-acceptance of the claim could not by itself lead to penalty.

***Pr.CIT v RPG Cellular Investments and Holdings Pvt. Ltd. – ITA No. 826 of 2015 (Bom) dated 23.01.2018***

**4026.** The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty u/s 271(1)(c) after rejecting the claim of the assesse, Foreign Institutional Investor, for carrying forward the long term capital loss on purchase and sale of shares and setting off the same against the long term capital gains exempt u/s 10(38). It was noted that the assessee had disclosed in its return the said loss and further in the return, note was also given that it had reserved its right to carry forward the loss. Thus, the Court held that the assessee bonafidely believed that u/s 10(38), the loss is not required to be considered and only income is required to be considered relying on the phraseology of the said provision. The act of the assessee in giving the said note was not with some ulterior intention or concealment of income or giving inaccurate particulars.

***DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION) vs. NOMURA INDIA INVESTMENT FUND MOTHER FUND - (2018) 404 ITR 0636 (Bom) – ITA No. 1848 of 2014 dated June 21, 2018***

**4027.** The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty levied by the AO u/s 271(1)(c) on account of disallowance of the assessee's claim for depreciation with asset purchased and given under 'sale and lease back' arrangement, where the Tribunal had deleted the said disallowance in quantum appeal and the appeal filed by the department against the Tribunal's order of quantum appeal was earlier admitted by the Court. The Court, in the present case, held that at the relevant time, when the assessee had made claim for depreciation, there was no statutory provision or decision contrary to stand taken by the assesse and the issue was debatable, thus the claim was bonafide. Noting that the Revenue has not been able to show even remotely that there was any concealment of income or filing of inaccurate particulars of income, it held that no penalty was imposable only for making a claim not acceptable to the Revenue. The Court relied on the decision in the case of CIT v. Reliance Petroproducts (P.) Ltd. (2010) 322 ITR 158 (SC) wherein it was held that merely because the assessee's claim was not accepted or not acceptable to the Revenue, that by itself would not attract penalty u/s 271(1)(c).

***COMMISSIONER OF INCOME TAX vs. L & T FINANCE LTD. - (2018) 102 CCH 0058 (Bom HC) - ITA No. 1363 OF 2015 WITH 1358 OF 2015 WITH 1359 OF 2015 dated June 04, 2018***

**4028.** The Court dismissed the Revenue's appeal against the Tribunal's order in the case of the assessee, a builder and developer, wherein the Tribunal, after referring to the clauses of the allotment letter as well as the possession letter, had held that the sale of flats took place only in subsequent AY when possession was given and not in the year under consideration when the allotment letter was issued and that the amount received in year under consideration was only in the nature of advances. It also noted that the Revenue did not highlight any circumstances to

indicate that by bringing the said transactions to tax in the next AY instead of the current year, there was likely to be a loss to the Revenue.
***CIT v Millennium Estates Private Ltd. [TS-186-HC-2018(BOM)] – ITA No. 853 of 2015 dated 30.01.2018***

**4029.** The Court held that Assessing Officer may pass combined order under sections 201 and 221 when it is admitted position between parties that assessee is in default. Further penalty under Section 221 would continue to be imposable even if tax has been deposited before initiation of penalty proceedings.
***Reliance Industries Ltd. CIT[2015] 59 taxmann.com 259/233 Taxman 307/377 ITR 74/279 CTR 128(Bom.)***

**4030.** The Court dismissed assessee's appeal against the Tribunal's order giving partial relief to the assessee by partly deleting the penalty levied u/s 271D with respect to loans received in cash in breach of section 269SS. The assessee claimed that the Tribunal's order was not sustainable because on the same set of facts, it had deleted penalty in respect of some parties while upheld penalty in respect of the other parties. The Court noted that the Tribunal had passed a detailed speaking order wherein the Tribunal had (i) deleted the penalty wherever reasonable cause was shown, (ii) restored the issue to AO for fresh consideration where reasonable cause was likely and (iii) upheld penalty where reasonable cause was not shown. It thus held that on facts of the case, the Tribunal had taken a reasonable view which could not be said to be perverse.
***SHIVAJI RAMCHANDRA PAWAR (HUF) vs. JCIT (2018) 102 CCH 0336 BomHC – ITA NO. 145 OF 2016 WITH ITA NO. 154 OF 2016 WITH ITA NO. 171 OF 2016 dated 18th July, 2018***

**4031.** The Court held that where Assessing Officer levied penalty holding that assessee claimed deductions in respect of borrowed funds which were diverted to sister concern and not for business and assessee bonafidely pleaded that its deduction was covered by a particular provision of law, penalty could not be levied.
***CIT v. Dalmia Dyechem Industries Ltd. [2015] 61 taxmann.com 200 / 234 Taxman 9 / 377 ITR 133 (Bom.)***

**4032.** The Court upheld the Tribunal's order deleting the penalty levied u/s 271(1)(c) holding that view taken by Tribunal on facts of the case was a possible view. The Tribunal had set aside the AO's penalty order by holding that explanation given by assessee was bonafide as to why it had claimed a higher rate depreciation of 40% vis-à-vis eligible rate @ 25%, noting that assessee was eligible to claim higher rate of depreciation @ 40% in immediately-preceding year (since it had added plant & machinery in that year thus was eligible for additional 15% depreciation) and accordingly while preparing depreciation chart by downloading relevant figures from chart of immediately preceding year it had mistakenly considered the said higher rate.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. BUNGE INDIA PVT. LTD. [2018] 103 CCH 0015 Bom HC- INCOME TAX APPEAL NO. 356 OF 2016 dated August 08 2018***

**4033.** During assessment proceeding, the AO found that assessee had claimed that sales tax incentive was in nature of a capital receipt and therefore was not taxable, however, the AO rejected assessee's claim and accordingly made additions and also imposed penalty on

assessee. The CIT(A) deleted such penalty which was further affirmed by the Tribunal. The Court held that the assessee had made the above claim based on a decision of a Special Bench of ITAT, Mumbai in DCIT v/s Reliance Industries Ltd and in the present case, facts relating to receipt of subsidy by way of sales tax exemption/deferral scheme and its treatment by assessee, was clearly mentioned in computation of income. Thus, the Court concluded that the CIT(A) as well as Tribunal were correct in deleting the penalty and held that submitting an incorrect claim in law would not tantamount to furnishing inaccurate particulars of income or its concealment u/s 271(1)(c).

***PCIT vs Dhariwal Industries Ltd – (2018) 103 CCH 0046 Bom HC- ITA No 1133,1136 & 1129/2016 dated 04.09.2018***

**4034.** The Court deleted the penalty u/s 271(1)(c) which was levied on the assessee-firm on account of inaccuracy in the statement of income to the extent of Rs.91,000 for AY 1987-89, noting that it didn't appear that the assessee had any intention of evading tax as the aforesaid amount if shown as income would have still shown a loss return. Taking note of the assessee's contention that the aforementioned amount had been inadvertently not included in their income in tax return, the Court relied on the Apex Court ruling in the case of Price Waterhouse Coopers Pvt. Ltd. [2012] 348 ITR 306 (SC) wherein it was held that an inadvertent mistake in the calculation of income would not be construed as furnishing inaccurate particulars or concealment thereof.

***B.M.BAGARIA & CO. v CIT [TS-341-HC-2018(CAL)] - ITR No.16 of 1998 dated June 6, 2018***

**4035.** The Court held that where assessee disclosed its additional income only after search by DIT (Investigations) with certain evidences, it would amount to concealment of income under section 271(1)(c).

***CIT v. Balarampur Chini Mills Ltd.[2015] 64 taxmann.com 91 / 280 CTR 363 / 376 iTR 1 (Cal)***

**4036.** The Court dismissed Revenue's appeal against Tribunal's order deleting penalty levied u/s 271(1)(c) holding that there was no substantial question of law warranting interference by the Court as the Tribunal had arrived at factual findings. The Tribunal had upheld CIT(A)'s order deleting penalty u/s 271(1)(c) levied on account of additions of unexplained cash credit made u/s 68 and rental income noting that (i) identity and creditworthiness was not in dispute as the assessee had received loan from NRI after obtaining approval from RBI, what was rejected was conversion of loan to gift by assessee and (ii) reasonable cause was shown for omission of rental income in the return as assessee had filed ROI before the audit of the tenant company.

***Pr.CIT vs. MP Purushothaman [2018] 103 CCH 0038 ChenHC- I.T.A. No. 1313 /Mds/2008 dated August 06 2018***

**4037.** The Court held that where the Department had accepted the assessee's ill health as reasonable cause for not filing its return in response to notice under section 153A, such cause can also be construed as a reasonable cause, while considering as to whether penalty has to be levied under section 271F which provides for penalty for failure to furnish the return of income. Accordingly, it set aside the penalty levied under Section 271F of the Act.

***S.Jayanthi Shri vs.Assistant Commissioner Of Income Tax &Anr.(2016) 94 CCH 0023 (Chen HC) (WP No. 23794 of 2016 & WMP No. 20394 of 2016)***

Go to Index

**4038.** Where penalty u/s 271E was levied by the AO and upheld by the Tribunal as the assessee had contravened provisions of section 269SS and 269T of the Act and had failed to substantiate its claim that the value of transaction undertaken by it were less than Rs. 20,000, the Court held that the issue raised before it being factual did not constitute a substantial question of law. Accordingly, it dismissed the assessee's appeal.
***Najardhanam Balaji vs. Add. CIT (2017) 99 CCH 0177 ChenHC Tax Case Appeal Nos. 413 and 414 of 2017 and C.M.P.No. 10330 of 2017 dated 02/08/2017***

**4039.** Assessee was subjected to search and seizure operations at his premises, and documents were seized containing details of cash payments made to various parties for acquisition of land and the AO initiated penalty proceedings u/s 271AAA which was later on set aside by the CIT(A). The Tribunal observed that the penalty proceedings u/s 271AAA had been initiated by AO on limited ground that assessee had not substantiated manner in which undisclosed income was derived. The Tribnal held that penalty levied u/s 271AAA on the ground that the assessee had not substantiated the manner in which the undisclosed income was derived was not sustainable where the assessee in the return of income had included such amount and no addition to the returned income was made by the AO, thus penalty levied u/s 271AAA was deleted.
***Pr.CIT vs Bhavi Chand Jindal- (2018) 103 CCH 0011 Del HC- ITA no 973/2018 dated 13.09.2018***

**4040.** The Court held that once the regarding bogus purchases as well as the estimated addition made by the AO, which was the basis of initiating penalty, was set aside by the CIT(A), it could not be said that there was any concealment of facts or furnishing of inaccurate particulars by the assessee that warranted imposition of penalty under section 271(1)(c) of the Act.
***Pr CIT v Fortune Technocomps Pvt Ltd – (2016) 96 CCH 0018 (Del)***

**4041.** The Court held that no penalty u/s 271AAA can be levied in respect of undisclosed income found during a search u/s 132 if the AO did not put a specific query to the assessee by drawing his attention to section 271AAA and asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived.
***Pr.CIT vs Emirates Technologies Pvt Ltd- (Delhi HC)ITA No. ITA 400/2017 dated 18.07.2017***

**4042.** Where the assessee claimed a business loss in respect of sale of shares, which was disallowed by the AO (who held that the shares were held as investments) but allowed by the CIT(A) and Tribunal in the first round of appeal, and on further appeal by the Department to the High Court, the Court had remanded the matter for fresh adjudication to the Tribunal, pursuant to which the Tribunal changed its earlier view and held that the loss was a capital loss, no penalty under section 271(1)(c) of the Act could be levied.
***PCIT Vs. Moderate Leasing And Capital Services Pvt. Ltd.(2016) 97 CCH 0084 DelHC (ITA 721/2016)***

Go to Index

**4043.** The Court dismissed the Revenue's appeal and upheld the order of the Tribunal where it deleted the 271(1)(c) penalty for non-reporting of capital gains by the assessee on account of the assessee's bonafide belief that it was eligible for relief u/s 54G based on CA's advice.
***Machintorg (India) Ltd. [TS-601-HC-2016(DEL)] (ITA 300/2016)***

**4044.** The Court dismissed Revenue's appeal against Tribunal's order deleting penalty leveied u/s 271(1)(c) on account of addition of interest earned on income tax refund which the assessee had netted off against the interest paid while computing deduction u/s 10B instead of treating interest on income tax refund as income from other sources. It held that the conduct of assessee in netting of income received from interest paid was bona fide as clearly there was a link between interest paid towards the overdraft facility to the bank which was taken to make payment of tax to the Income Tax Department and the interest received from the Department.
***Pr.CIT vs American Express India Pvt Ltd. [2018] 102 CCH 0252 (Del HC) - Income Tax Appeal No.422/2018 dated August 27 2018***

**4045.** Where the assessee had declared additional income pursuant to search proceedings but failed to provide the specified manner in which such income was earned, the Court held that the AO was justified in levying penalty under Section 271AAA of the Act.
***PRINCIPAL COMMISSIONER OF INCOME TAX vs. RITU SINGAL - (2018) 101 CCH 0077 DelHC - ITA 672/2016 dated Mar 12, 2018***

**4046.** Where the assessee merely made a voluntary surrender by way of revised return pursuant to survey proceedings and did not offer any explanation as to the nature of income or its source, the Court held that in light of the decision in the Apex Court in MAK Data 358 ITR 593 (SC) such voluntary surrender of income after survey by filing a revised income would not save the assessee from levy of penalty for concealment of income in the original return if there was no explanation as to the nature of income or its source.
***Pr CIT v DR. VANDANA GUPTA - ITA 219/2017 dated 20.02.2018(Delhi HC)***

**4047.** The Court held that adverse inference against the assessee for failing to cross examine a witness in quantum proceedings would equally apply to penalty proceedings and there was no necessity to offer the assessee a further opportunity of cross examination. Accordingly, it held that initiation of penalty under section 271(1)(c) of the Act was completely justified.
***Roger Enteprises (P)Ltd. V CIT - [2016] 67 taxmann.com 344 (Delhi)***

**4048.** The Legislature did not intend to penalize every person who makes a wrong claim for deduction. The Court held that in view of judgment of the Supreme Court in the case of CIT v. Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322/322 ITR 158, merely because the assessee had claimed expenditure, which claim was not accepted or was not acceptable to the revenue, that, by itself, would not attract penalty under section 271(1)(c).
***Principal CIT v. Samtel India Ltd. [2018] 96 taxmann.com 162 (Delhi)- IT Appeal No. 43 of 2017 dated July 9, 2018***

**4049.** AO noted that assessee had recognized revenue from LB and LP till construction and development crossed threshold of 35% and cost so incurred was booked under head 'capital work in progress'.Threshold of 30% of development for LB and LP were crossed during AYs

2010-11 and 2011-12 respectively and accordingly proportionate cost and revenue was booked in P&L account and offered to tax.'Indirect' expenses in respect of LB and LP were treated and shown by assessee as deductible in returns for AYs 2010-11 and 2011-12.Assessee submitted that they under PoC Method had rightly not accounted for revenue in respect of LB and LP for AYs 2010-11 and 2011-12 as projects had not crossed threshold limit.AO held that assessee had wrongly booked 'indirect' project expenses relating two projects in the two years.'Indirect' costs should be booked and treated as 'capital work in progress'.Thus, AO proceeded to make additions to assessee's income.Assessee had not filed any appeal against assessment orders for AYs 2010-11 and 2011-12.Assessee revised return of income for 2011-12.When matter reached before ITAT, it was held that assessee's claim for expenses was inconsistence with Guidance Notes 2006, issued by ICAI.Assessee submitted that claim of expenses was in accordance with Guidance Notes 2012 of ICAI.Assessee's explanation was not bona fide because when returns were filed by assessee, Guidance notes 2012 had not been issued by ICAI, and instead, Guidance Notes issued by ICAI in 2006 were applicable.Consequently, assessee was covered by Explanation 1(B) to s. 271(1)(c). The Tribunal noted that disallowance of expenses by AO, was accepted by assessee. However, it held that mere surrender and voluntary disclosure by an assessee could not be a ground to delete penalty for concealment.'Indirect' expenses could not have been claimed as expense under AS-7 as it was inconsistent with Guidance Note, 2006 which was applicable when returns were filed.Reference made to Guidance Note, 2012 was considered irrelevant as they were not applicable at relevant time when returns of income were filed.Sham and bogus claim reducing tax liability would be lame excuse and not a bona-fide explanation.Certificate of CA in compliance with statutory requirements would not absolve assessee from penalty if act or attempt in claiming deduction was not bona fide.An explanation even on a legal claimed when without any basis and foundation should be rejected as this would give a license to unscrupulous assessees to make wholly untenable and unsustainable claims in hope that return would not be taken for scrutiny assessment.Dictum as expounded was correct. The Court held that an assessee to escape penalty for concealment as per clause (B) to Explanation 1 must establish its bona fides in making the rejected claim. Assessee must establish that all facts and material for computation of total income were duly disclosed. The Court noted that audit report stated that assessee had recognized revenue from projects based on PoC Method in relation to sold areas on basis of percentage of actual construction and other related costs incurred thereon excluding land cost as against total estimated cost of project under execution subject to such actual cost being 30% or more of total estimated cost.There were disclosures under heading 'inventory and cost of construction/development' to effect that 'work in progress' was valued at lower of cost than net realizable value, cost of pricing of land including development rights, material services and other overheads.Costs of construction/development incurred would be charged to P&L accounts proportionate to project area sold, in cases where threshold of 30% had exceeded. It held that full details with regard to expenses claimed under selling, administrative and another expense was disclosed. Full and complete disclosure of material facts was made by assessee. Thus, Assessee could not be burdened with penalty for concealment of income u/s 271(1)(c).

***GRANITE GATE PROPERTIES PVT. LTD. vs. Pr. CIT (2018) 103 CCH 0327 DelHC ITA Nos. 398/2017, 399/2017 dated 19.12.2018***

Go to Index

**4050.** The Court accepted assessee's contention that it was incumbent upon the Revenue to complete penalty proceedings and pass order u/s 271(1)(c) within 6 months period from the date of receipt of CIT(A)'s order where the revenue had withdrawn the appeal filed against the CIT(A)'s order giving part relief to the assessee with respect to additions made by AO while computing the book profit and the AO had initiated penalty proceedings beyond six months of receipt of the CIT(A)'s order contending that the period of limitation u/s 275 should be reckoned from date on which order of Tribunal permitting withdrawal of appeal was received. In this regard, it was held that it was an adjudicatory 'order' which culminated in Proceeding that was to be deemed a terminus quo for completion of Penalty Proceeding.
***Salora International Ltd. v CIT – (2018) 91 taxmann.com 287 (Del HC) – ITA No. 799 of 2005 dated 20.02.2018***

**4051.** Assessee was subjected to search and seizure operations at his premises and certain documents were seized containing details of cash payments made to various parties for acquisition of land. The AO levied penalty u/s 271AAA on limited ground that assessee had not substantiated manner in which undisclosed income was derived. The CIT(A) had set aside the order of AO which was further upheld by the Tribunal.The Court on appeal observed that one of directors of assessee had surrendered undisclosed amount in his statement recorded on oath u/s 132(4) on basis of seized documents, however, the assessee had included this amount in return of income. Further, no addition to returned income was made by AO and penalty order passed u/s 271AAA was equally brief and the AO had not relied upon or claimed that there was violation of clause (i) to sub-section (2) to Sec 271AAA i.e admission of undisclosed income and the manner in which it was derived in a statement u/s 132(4) in the course of search but had imposed penalty on account of fact that there was violation and non-compliance of clause (ii) to sub-section (2) to Section 271AAA, i.e., assessee was not able to substantiate manner in which undisclosed income was derived. Thus, the Court concluded that penalty levied u/s 271AAA on the ground that the assessee had not substantiated the way the undisclosed income was derived was not sustainable where the assessee had already in the return of income included that amount (on the basis of statement of its director) and no addition to the returned income was made by the Assessing Officer.
***PCIT vs Bhavi Chand Jindal- (2018) 103 CCH 0011 Del HC- ITA No 973/2018 dated 13.09.2018***

**4052.** The assessee purchased FDRs in his name out of the loan given to him by charitable and religious organization, wherein he was a General Secretary. The AO held that since such receipt by the assessee was in cash and was beyond limits laid down under Section 269SS, penalty was levied under Section 271D of the Act. CIT(A) upheld the order of the AO. The Tribunal deleted the penalty levied by holding that there was no loan or deposit, as the Tribunal primarily relied on entries in books of account wherein only two cash payments were made under the imprest account. The Court held that since the Tribunal did not consider the specific aspects referred to in order to levy penalty under Section 271D of the Act and also failed to consider the observations of the CIT(A), the matter was remitted back to the Tribunal for fresh determination.
***CIT vs. PAWAN KUMAT JAIN (DELHI HIGH COURT) (ITA 640/2005) dated May 24, 2018 (102 CCH 7)***

Go to Index

**4053.** The Court reversed the Tribunal order and deleted the penalty levied u/s 271C for TDS default in respect of warehousing payments made, absent the deliberate failure on part of assessee for not deducting TDS u/s 194I. The Court rejected the Revenue's argument that assessee cannot plead ignorance of law in view of CBDT circulars of 1995,clarifying that the CBDT's circulars were at best the opinion of the CBDT and to the extent they were adverse to the assessee, they were not binding on the assessee. Thereby, the Court held that the assessee had reasonable cause for failure to deduct TDS u/s 194I u/s 273B.
***Hindustan Coco Cola Beverages PvtLtd [TS-433-HC-2016(DEL)] ITA 194/2004***

**4054.** Where the assessee had filed an original return under section 139(1) of the Act and then pursuant to search proceedings conducted in its premises filed a return under section 153A(1) declaring a higher income which had been accepted by the AO, the Court held that the AO was not justified in levying penalty under section 271(1)(c) on the ground that without the search proceedings, it would not have disclosed such additional income. The Court further held that as the return filed under section 153A would render the original return under section 139 of the Act would become non est and therefore there was no concealment of income as the return filed under section 153A had been accepted by the AO.
***Pr CIT v Shri Neeraj Jindal – (2017) 98 CCH 0061 Del HC – ITA 463 / 2016***

**4055.** The Court upheld the Tribunal's order holding that since penalty proceeding initiated u/s 271(1)(c) against the assessee was dropped after considering the reply submitted by the assessee, the AO was not justified in initiating fresh penalty proceedings on same set of facts.
***Pr.CIT v Geetaben Chandulal Prajapati [2018] 96 taxmann.com 100 (Gujarat) – R/TAX APPEAL NO. 816 OF 2018 dated July 10, 2018***

**4056.** The Tribunal while deleting the penalty levied u/s 271(1)(c) had recorded the findings (i) that one of the partner of assesse-firm, in his statement u/s 132(4) at the time of the search, had explained the entries recorded in seized material and stated that such entries pertained to 'on money' in its building project and (ii) that assessee had also quantified total amount of such 'on money' and during the course of recording of such statement, specific questions had not been asked to substantiate the manner in which the income was derived received. The Court after noting that the assessee had also paid taxes and interest on declared income before the passing of the assessment order, held that the conditions envisaged in clauses (i), (ii) & (iii) 271AAA(2) were fulfilled and, hence, the Tribunal had rightly deleted the penalty levied by AO u/s 271AAA for default of not substantiating manner in which undisclosed income was earned. It held that there is no prescription as to the point of time when the tax has to be paid *qua* the amount of income declared in the statement made u/s 132(4) and, thus, there would be sufficient compliance with the provision if tax is shown to have been paid before the assessment was completed.
***Pr.CIT v Swapna Enterprise – (2018) 91 taxmann.com 12 (GujHC) - Tax Appeal No. 826 of 2017 dated 22.01.2018***

**4057.** The assessee was a public charitable trust with the object of providing education, relief to the poor. The DIT observed that during the A.Y 2001-02, the assessee had misapplied the donations received on account earthquake relief donations to its sister concerns. Accordingly,

he held that the assessee was not engaged in charitable activities and therefore revoked the registration granted to the trust w.e.f 30.03.2004. The Tribunal held that the DIT was incorrect in withdrawing the registration w.e.f. 30.03.2004 merely on the basis of activities carried on by the assessee during A.Y. 2001-02 and restored the issue to the DIT directing him to consider the activities carried on by the trust in FY 2003-04 as well. The Court noting that the DIT had carried on detailed examination of the activities of the trust during the A.Y.2001-02, held that the Tribunal had erred in rejecting the DIT's order. It held that if the Tribunal was of the view that the findings of the DIT were incorrect, it should have disapproved the findings and that it was not justified in remanding the matter to the DIT to consider activities carried out in other years as well. It held that even if the subsequent year of the Trust was uneventful, it would not mean that the past misdeeds were to be ignored. Accordingly, it set aside the order of the Tribunal and restored the order of the DIT.

***DIT vs. K. VARMA CHARITABLE TRUST (2017) 99 CCH 0046 GujHC dated 05.06.2017***

**4058.** The Court held that where the assessee received a sum of Rs.2 lakh in cash from his son in view of urgent necessity, no penalty under section 271D of the Act could be levied by the AO on account of violation of the provisions of Section 269SS, since there was a reasonable cause for such failure and there was no evidence on record to indicate that the assessee had indulged in any tax planning or tax evasion and there was no evidence on record to show that the infraction of the provisions was with knowledge or in defiance of the provisions.

***Dr Rajaram Lakhani – (2016) 96 CCH 0043 (Guj)***

**4059.** The Court dismissed Revenue's appeal against the Tribunal's order deleting the penalty levied u/s 271(1)(c) on account of addition made by the AO adopting the stamp duty valuation of the immovable property sold by the assessee as the sale consideration instead of the actual sale consideration claimed to be received by the assessee. Noting that the application of section 50C(1) could not automatically give rise to penalty proceedings and that the assessee had initially disputed stamp valuation by pointing out inter alia that the property was facing certain restrictions from the forest department, and later on gave up challenge, the Court held that there was no reason to interfere with the judgement of the Tribunal wherein the Tribunal had held that merely because the assessee had agreed to addition on basis of valuation made by stamp valuation authority the same was not conclusive proof that sale consideration as per sale agreement was incorrect and wrong and the penalty could not be levied on basis of deeming provision.

***Pr.CIT v Sun on Peak Hotel (P.) Ltd - [2018] 95 taxmann.com 320 (Gujarat) - R/TAX APPEAL NO. 556 OF 2018 dated June 12, 2018***

**4060.** The Court held that a Chartered Accountant who is accused of offering a bribe to an Income Tax Officer for performing an official act can be tried under section 7 and 13(1)(d) of the Prevention of Corruption Act and Section 120-B of the Indian Penal code and the fact that the CA is not a public servant is irrelevant.

***H.Naginchand Kincha vs Superintendent of Police-(Karnataka HC) ITA No.- Income Tax Appeal No.487 of 2014 dated 13.09.2017***

Go to Index

**4061.** The Court held that where a notice was issued under section 274 of the Act proposing to levy penalty under section 271(1)(b), but the penalty order was passed under section 271(1)(c) of the Act, the said order was liable to be set aside as it was indication of the non-application of mind by the AO at the time of issuance of notice.
Further, it held that in terms of section 271(1B) of the Act, the direction to initiate penalty proceedings had to be clear and unambiguous and merely stating that penalty proceedings have been initiated did not satisfy the requirement of law.
***Safina Hotels Pvt Ltd v CIT – TS-81-HC-2016(KAR)***

**4062.** The Court held that section 200A of the Act, enabling Assessing Officer to determine fee under section 234E (for late filing of TDS return) brought about with effect from 1-6-2015 was prospective in nature, hence, no computation of fee for demand or intimation for fee under section 234E could be made for TDS deducted for respective assessment years prior to 1-6-2015. It held that the Parliament intended to insert the provisions of section 234E providing for fee and simultaneously the utility of such fee was for conferring the privilege to the defaulter-deductor to come out from the rigors of penal provisions of section 271H. If section 234E providing for fee was brought on the statute book, keeping in view the aforesaid purpose and the intention, then the mechanism provided for computation of fee and failure for payment of fee under section 200A which had been brought about with effect from 1-6-2015 could not be said to be only a regulatory mode or a regulatory mechanism but it could rather be termed as conferring substantive power upon the authority. Thus, amendment made under section 200A with effect from 1-6-2015 was held to be having prospective effect, hence, no computation of fee for demand or intimation for fee under section 234E could be made for assessment years prior to 1-6-2015.
***Sri. Fatheraj Singhvi and others - TS-514-HC-2016 (KAR) - ITA No. 1461/Ahd/2015***
***Gajanan Constructions and others -TS-530-ITAT-2016 (PUN)***
***Little Servants of Divine Providence Providence Charitable Trust vs. ITO (Cochin Trib)-ITA No 258/Coch/2016***

**4063.** The Court set aside the order of CIT(A) and the order of Tribunal confirming CIT(A)'s order wherein CIT(A) had held that since there was no specific mention of proceedings taken under Explanation 1(B) to section 271(1) in the notice issued u/s 271 which was an imperative mandate, penalty order invoking the said Explanation passed by AO was to be set aside. It held that when a notice was issued under section 271, Explanation also being included under the said provision, assessee was sufficiently put to notice of entire provision as available u/s 271(1).
***CIT v Smt. Vasantha Anirudhan – (2018) 401 ITR 279 (Ker) – ITA No. 78 of 2008 (Ker) dated 12.01.2018***

**4064.** The Court held that penalty under section 271C of the Act would be leviable on the assessee for delay in making payment of the tax deducted and that penalty was not to be waived under section 273B of the Act.
***Classic Concepts Home India Pvt Ltd v CIT – (2015) 93 CCH 0442 (Ker)***

**4065.** Where assessee accepted deposits from staff members in cash in violation of provisions of section 269SS, the Court held that since assessee failed to discharge its burden in proving that

there was a reasonable cause in accepting deposits from staff members other than by way of cheque or draft, penalty order passed under section 271D was to be confirmed.
***CIT v AL-Ameen Educational Trust Kulapully P.O - [2018] 92 taxmann.com 128 (Kerala) - IT APPEAL NOS. 199 & 203 OF 2013 dated MARCH 13, 2018***

**4066.** The Court upheld the levy of penalty under section 271C for the assessee's failure to withholding tax under section 194A on interest paid to its sister concerns since the assessee failed to justify its failure to comply with section 194A and therefore was not eligible for the benefit of section 273B of the Act. It held that section 273B of the Act provides that penalty under section 271C of the Act may not be levied if the assessee could substantiate that there was reasonable cause for its failure to withhold TDS and the burden of establishing reasonable casue was on the assessee.
***CIT v Muthoot Bankers – TS-326-HC-2016 (Ker)***

**4067.** The Court, allowing the writ petition of the Assessee, directed the Pr. CIT to process the declaration filed by the Assessee expeditiously by holding that Pr. CIT was incorrect in rejecting the application made by the Assessee under the Dispute Resolution Scheme, 2016 ("DRS") by concluding that it applied only to penalty linked to the total income finally determined through assessment order and not to penalty u/s 271D, 271E and 272A(2)(C) (penalty for violation of sec 269SS, 269T and 285B) as they are transaction specific and not linked with assessment proceedings. The Court opined that the DRS contemplates the making of a declaration of tax arrears, which is defined as meaning an amount of tax, interest or penalty determined, inter alia, under the Act, and in respect of which an appeal is pending before the appellate authority as on 29.02.2016.
***M/s Grihalakshmi Films vs. JCIT & Others TS-251-HC-2017(KeralaHC) (WP(C) No. 6417 of 2017 dated May 26, 2017)***

**4068.** The AO after the completion of the assessment, noticed that the assessee had violated provisions of Sections 269SS, 269T and 285B by accepting and repaying loans/deposits otherwise than by way of account payee cheques and/or draft and by not filing statements regarding the film production carried on by it. Accordingly, he issued notices for imposing penalty u/s 271D, 271E and 272A (2)(C) [i.e. penalties for contravening Sec. 269SS/T for accepting / repaying loan in cash and for non-furnishing of statement by assessee-producers regarding film production carried on by them]. The assessee's appeal before CIT(A) was pending. The assessee filed a declaration under the Direct Tax Dispute Resolution Scheme, 2016(the Amnesty Scheme) by paying 25% of the minimum penalty levied as also the tax and interest payable on the total income finally determined. The assessee's declaration were not processed on the ground that for the Amnesty Scheme to be applicable penalty necessarily should be linked to total income finally determined under the assessment proceedings whereas in the assessee's case penalties imposed were not linked to any assessment proceedings. The Court allowed the assessees' writ petition and directed the Revenue to process assessees' declarations under the Direct Tax Dispute Resolution Scheme, 2016 ('DRS') with respect to penalties imposed under Sections 271D, 271E and 272A(2)(C) and held that there was no specific exclusion under the scheme for availing the scheme only for the penalties linked to the assessment.

Go to Index

***GRIHALAKSHMI FILMS [TS-251-HC-2017(KER)] WP(C).No. 6417 of 2017 (B) dated 26.05.2017***

**4069.** The Court dismissed Revenue's appeal against the Tribunal's order setting aside the revision order passed by the CIT u/s 263 wherein the CIT had held that the AO had erred in not passing a penalty order u/s 271(1)(c) even though he had stated in the assessment order that penalty proceedings have been initiated. It was noted that the AO had made a noting in his filed that there was no concealment of income or inaccurate furnishing of particulars and hence the penalty proceedings had been dropped. The Court held that the proposal for initiating such proceeding did not by itself constitute initiation of such proceeding and the AO's noting which suggested dropping of penalty proceeding itself had all attributes of formal order.
***Pr.CIT vs. SRI UDAY CHAKRABORTY - (2018) 102 CCH 0226 KolHC – ITAT NO. 411 of 2017 & GA No. 3791 of 2017 GA No. 3792 of 2017 dated 18th July, 2018***

**4070.** The Court held that once the assessee explained that the mistake was due to an error of its accountant and not mala fide, the AO was not justified in imposing penalty under section 271(1)(c) of the Act.
***Pr CIT v HV Williams & Company – (2015) 94 CCH 0124 Kol HC***

**4071.** The Court held that where the assessee filed a revised return before the issuance of notice under section 148 of the Act, there was no issue of concealment of income or finishing of inaccurate particulars and therefore upheld the order of the Tribunal setting aside the penalty imposed under section 271(1)(c) of the Act.
***CIT v Arun Kumar Khetwat – (2015) 94 CCH 0154 Kol HC***

**4072.** The Court upheld Tribunal's order in case of an assessee which had claimed depreciation on assets purchased from a subsidiary company and further leased back to the parent company of such subsidiary company. The Tribunal had observed that the sale and lease back transaction was bogus and assessee had failed to substantiate with evidence its claim of 100 per cent depreciation on leased assets. Further, it upheld the imposition of penalty for concealment of income under section 271(1)(c). It also noted that items mentioned in lease agreement were part of a bigger system of machinery and the same were incapable of commercial purchase and sale in open market and assets mentioned in lease were permanently fixed as part of machinery. Thus, assets were not capable of being sold and sale existed only on paper and not in real sense and hence imposition of penalty for concealment of income was justified.
***Magna Credit &Financial Services vs DCIT- (2018) 98 taxmann.com 392(Madras) – TC (A) No 1522 of 2007 dated 20.09.2018***

**4073.** The Court upheld the order of the Tribunal confirming thepenalty levied u/s 271(1)(c) for filing inaccurate particulars of income whereassessee claimed depreciation on non-existent assets (arising out of non-genuine sale and lease back transaction.)
***Sundaram Finance Ltd. v ACIT [2018] 93 taxmann.com 250 (Madras) – T.C.(APPEAL) NOS. 876 & 877 of 2008 dated 23.04.2018***

Go to Index

**4074.** The Court held that where repayment of loan in cash was made out of compulsion by financier as he did not lend or receive back loan amount in cheque or draft from anybody, penalty under section 271E was to be deleted.
***CIT, Pondicherry v. M.Ramakrishnan, [2015] 63 taxmann.com 321(Madras), TC(A) Nos. 291, 292 & 325 of 2015, dated July 1, 2015***

**4075.** The AO during assessment found out that the assessee had accepted loans by way of cash which was in contravention to section 269SS and thus a penalty was imposed u/s 271D. The CIT (A) allowed the assessee's appeal by holding that the transaction was in the nature of trade transactions relating to the purchase of raw material which was later overturned by the Tribunal and the penalty order given by the AO was restored. The HC noted that the assessee had been given an opportunity to substantiate the genuineness of the parties and the claim that the transaction related to trade alone but the assessee failed to establish the same. It dismissed the appeal by observing that there was no distress situation for assessee so as to take loan in cash, since it was their own case that they had sufficient cash during the relevant period.
***Five Star Marine Exports (P.) Ltd. v. DCIT – [2018] 92 taxmann.com 404 (Madras) – Tax Case (Appeal) No. 476 of 2008 dated April 3, 2018***

**4076.** The Court dismissed Revenue's appeal against the Tribunal's and CIT(A)'s order deleting penalty levied by the AO u/s 271(1)(c) on account of additional income offered to tax by the assessee under the revised return filed after issuance of notice u/s 143(2) and on account of non-production of proof of remittance of TDS deducted on certain payment into Government account. It was noted that the additional income offered represented advance received by the assessee, a cine artist, in the relevant assessment year from various cinema producers towards work to be done by her and the same had been shown in the balance sheet annexed to the original return and, thus, there was no intention on part of the assessee to conceal any amount. With regard to disallowance qua non-furnishing of chalans for deduction and remittances of TDS, on facts the CIT(A) & the Tribunal had held it was an advertent error on the part of the accountant.
***CIT v Trisha Krishnan - [2018] 95 taxmann.com 105 (Madras) - TAX CASE (APPEAL) NO. 239 OF 2017 dated June 14, 2018***

**4077.** The Court dismissed the assessee's appeal against the Tribunal's and the CIT(A)'s order confirming the penalty levied u/s 271(1)(c) on account of additional income offered by the assessee under the revised return filed by it pursuant to survey proceedings conducted in the case of the assessee, wherein certain incriminating evidences regarding purchase were found. The Court held that the revised returns filed by the assessee, could not be termed to be voluntary, as it was done by the assessee after the revenue deducted non-disclosure, inflation of purchases and concealment of income during the survey proceedings. It also held that the burden was on the assessee to prove non-concealment against additional income disclosed in the revised return, wherein the instant case, no explanation was offered for not having disclosed income earlier in original return.
***Khandelwal Steel & Tube Traders v ITO - [2018] 95 taxmann.com 15 (Madras) - T.C. (APPEAL) NOS. 186 AND 187 OF 2005, TC M.P. NOS. 164 AND 165 OF 2005, W.P. NOS. 43110 & 43111 OF 2016 dated June 4, 2018***

Go to Index

**4078.** The Court upheld the Tribunal's order deleting the penalty levied u/s 271(1)(c) which was levied on account of disallowance of the assessee's claim of exemption u/s 54 in absence of any evidence that property sold by assessee was used for residential purposes, noting that the Tribunal had arrived at factual finding that assessee had neither concealed his income nor furnished inaccurate particulars of income.
***CIT v D.Harindran [2018] 97 taxmann.com 297 (Madras) – T.C.(APPEAL) NO. 360 OF 2018 dated July 10, 2018***

**4079.** Where assessee had availed benefit of the KVVS Scheme, 1998 and paid requisite tax thereunder and where u/s 91 of the Scheme, a designated authority was empowered to grant waiver from imposition of penalty and interest in respect of income, which was subject matter of declaration, the Court held that in such a case the Revenue was wrong in levying penalty on a transaction which was subject matter of the scheme and where arrears of tax had already been settled and paid under the Scheme. Accordingly, the orders imposing penalty and interest on the Petitioner were quashed.
***S.Narayanan v. Commissioner of Income Tax [2017] 80 taxmann.com (Madras) (WP No. 10791 of 2014)***

**4080.** Where the assessee after realising that the travel expenditure claimed by her u/s 57 of the Act was not tenable and she could not produce evidence of such expenditure due to absence of her accountant, offered the amounts expended to be added to her income and, accordingly, paid the requisite tax and interest upon the same, the Court held that this did not amount to concealment of income or furnishing of inaccurate particulars by the assessee and accordingly dismissed the Revenue's appeal against Tribunal's judgment deleting penalty levied u/s 271(1)(c) of the Act.
***Commissioner of Income Tax vs. Anita Kumaran. (2017) 98 CCH 0089 (Madras HC) T.C.(A) Nos. 139 to 141 of 2017.***

**4081.** Where the assessee had incorrectly claimed set-off of its brought forward business losses against its income based on a legal opinion received from a CA firm, The Court upheld the order of the Tribunal deleting penalty u/s 271(1)(c) wherein the Tribunal noted that there was nothing clandestine in the manner in which the opinion was sought. It held that the rejection of the patently wrong claim of the assessee of setting off of brought forward business loss in its return of income would not amount to furnishing of inaccurate particulars of income/concealment of income and would not be liable for penalty.
***Atotech India Ltd. [TS-699-HC-2016(P & H)]***

**4082.** Where the assessee had made an incorrect claim by reducing deferred tax from the book profits computed under MAT at the time of filing its return and subsequently a retrospective amendment had been introduced prohibiting such reduction, the Court held that penalty under section 271(1)(c) could not be levied on the assessee as there was no suppression of facts or deliberate misstatement by the assessee.
***PCIT vs. A.B. Sugar Mills Ltd. (2016) 97 CCH 0139 PHHC (ITA-228-2016 (O&M))***

Go to Index

**4083.** The Court quashed prosecution proceedings u/s 276B initiated against the assessee on account of failure to deposit the tax withheld by it on interest and commission payments within the specified time (i.e. 7th of the month following the month when deduction is made) which occurred due to oversight of its accountant as the assessee had reasonable cause for such delay u/s 278AA. Moreover, it noted that upon the defect being noted, the assessee had deposited the TDS along with interest u/s 201(1A).
***Sonali Autos Private Limited [TS-312-HC-2017(PATNA)] Criminal Miscellaneous No.16498 of 2014 dated 02/08/2017***

**4084.** The assessee filed revised return to claim deduction under Section 80IC in respect of interest accrued on FDRs, by producing certificate in Form 10CCB. The AO denied the claim since interest income was not generated by the business, eligible for deduction under Section 80IC. Thereafter, the AO levied penalty under Section 271(1)(c) for such disallowance made in assessment order. The Court upheld the order of the CIT(A) and ITAT setting aside such order imposing penalty by holding that mere making of claim which was found to be not sustainable in law would not amount to furnishing inadequate particulars.
***PCIT vs. Mahima Udyog – [2018] 102 CCH 0013 (Uttarakhand High Court) – ITA No 13 of 2018 dated May 9, 2018***

**4085.** Search u/s 132(1) was conducted at premises of assessee pursuant to which notice u/s 153A was issued. In compliance to such notice, neither assessee attended nor any written submission was filed by assesse. Thus AO levied seven penalties u/s 271(1)(b) for non-compliance of consolidated notice issued u/s 142(1) which was upheld by the CIT(A). The Tribunal held that before levying penalty u/s 271(1)(b), there must be specific notice to assessee for specific assessment requirements to be complied with which must have relevance and apparent nexus with assessment of assessment year to be completed. It further concluded that statutory provision for levy of penalty was not for mere technical non-compliance, but for actual or habitual defaulters. The grievance of assessee was found to be justified and as assessee had not been shown to be a heavy defaulter, penalty imposed were cancelled.
***Satish Kumar Arora vs DCIT- (2018) 54 CCH 0065 Agra Trib- ITA No 400-406/2017 dated 27.09.2018***

**4086.** Where the AO, after rejecting the assessee books of accounts under Section 145(3) of the Act made an addition in the hands of the assessee @12.50 percent of its gross profit receipts alleging that the assessee had inflated its expenses and the CIT(A) and Tribunal reduced the addition to 6 percent and 3 percent respectively, the Tribunal held that the AO was not justified in levying penalty under Section 271(1)(c) of the Act as there was no concealment of income by the assessee since the addition by the AO was computed on a mere estimated basis and was substantially reduced by the Tribunal in quantum proceedings. Further, the Tribunal noted that the AO had not recorded a specific satisfaction as to whether penalty was issued on account of concealment of income or furnishing of inaccurate particulars of income.
***Naresh Katrare Contractor v ACIT – (2017) 51 CCH 0316 (Agra – Trib) – ITA No 53 / Agr / 2016 dated 09.11.2017***

Go to Index

**4087.** The Tribunal cancelled the penalty levied for concealment vide order passed u/s 271(1)(c), following the decision in the case of Sachin Arora v ITO [I.T.A No. 118/Agra/2015] involving similar facts and circumstances wherein it was held that since the AO had stated in the assessment order that the penalty was initiated on the ground of 'a' particular charge (say, concealment of income), however immediately thereafter the AO had issued show cause notice u/s 274 r.w.s 271(1)(c) mentioning both charges (i.e. concealment of income or furnishing of any inaccurate particulars thereof), the penalty notice suffered from non-application of mind and, thus, the penalty order passed pursuant to such notice was void ab initio.

***SUMAN GUPTA v ITO – (2018) 52 CCH 62 (Agra Trib) – ITA Nos. 484, 486 & 491/Agra/2015, 80 to 82, 85, 86, 142, 144, 149, 150, 172, 180, 254 & 256 /Agra/2016 & 53, 91 & 181 /Agra/2017 dated 10.01.2018***

**4088.** Assessee, a finance company, filed its original return declaring Nil income and pursuantly Notice u/s 148 was issued, in response to which assessee submitted that its original return be treated as return in compliance to such notice. The AO during proceedings got enquiry conducted from Reserve Bank of India, from which it transpired that assessee's application for registration as NBFC was rejected by RBI and finally assessment was completed on basis of material available on record, making additions, on account of interest, commission and depreciation. The AO further imposed penalty in respect of these three disallowances which was upheld by CIT(A). The Tribubal on appeal held that where income was estimated, or disallowance of expenses was made on estimate basis, there could be no penalty and merely because certain disallowance of expenses had been made, it could not itself justify imposition of penalty u/s 271(1)(c). The Tribunal observed that penalty was initiated on specific charge of 'furnishing inaccurate particulars of income', but penalty order was eventually passed with vague and uncertain default of 'furnishing of inaccurate particulars/concealment of income, thus held that CIT(A) was not justified in confirming penalty imposed in respect of disallowance of interest and commission.

***Farrukhabad Investment (India) Ltd vs DCIT- (2018) 54 CCH 0064 Agra Trib- ITA No 141/Agra/2009 dated 11.09.2018***

**4089.** The Tribunal allowed assessee's appeal and deleted penalty levied u/s 271(1)(c) in respect of interest and commission disallowances, noting that (i) disallowance of 10% of total interest expenses was made on account of non-production of books of accounts which were taken away by certain disgruntled depositors as RBI had rejected assessee's request for NBFC license and (ii) assessee had paid commission for deposits to agents over and above the RBI prescribed rate of 2% and hence the same was disallowed invoking explanation 1 to section 37(1). With respect to interest expense, it held that the AO had not disputed genuineness of depositors and further the assessee could not produce books for reasons beyond its control and there was no concealment / furnishing of inaccurate particulars on the part of assessee. With respect to commission expense, it was held that when the assessee had made payment, Explanation 1 to section 37(1) was not on the statute and hence, though disallowance could be made by way of retrospective application of the said explanation, penalty could not be levied as it did not amount to concealment of income or furnishing of inaccurate particulars of income.

***Farrukhabad Investment (India) Ltd v DCIT [TS-536-ITAT-2018(AGR)]- ITA No. 141/Agra/2009 dated 09.08.2018***

Go to Index

**4090.** Where the AO made additions in respect of unexplained cash credits u/s 68, 69 and 69C, penalty proceedings under Section 271(1)(c) of the Act were initiated separately for concealment of particulars of income within Explanation-1 to section 271(1)(c). The CIT(A) upheld the order of the AO. Tribunal held that since the notice under Section 274 r.w.s. 271 of the Act was not specific about the charge against assessee (i.e. of concealment of income or furnishing of inaccurate particulars), penalty could not be imposed on assessee as the notices were not valid in law. Thereby, penalty levied by the AO was unsustainable on technical grounds and hence the Assessee's appeal was allowed.

***SARLA DEVI AGARWAL vs. ITO (AGRA TRIBUNAL) (ITA No. 70/Agra/2017) dated May 18, 2018 (53 CCH 0056)***

**4091.** Where the assessee filed return of income but failed to disclose income from short term capital gains and filed details of the same post enquiry by the AO and had failed to substantiate its claim of cost of purchase and improvement the levy of penalty under section 271(1)(c) of the Act was valid.

***Nandubhai Nathabai Patel v ITO – (2016) 48 CCH 0104 Ahd Trib – ITA No 3033 / Ahd / 2013***

**4092.** The assessee, an individual, had filed return of income without disclosing long term capital gain on sale of agricultural land under the belief that he was eligible for deduction u/s 54B on the entire amount of gains as he invested entire gains in agricultural land within 2 years of sale. However, during assessment, the AO made addition on account of the said gain to the extent the same was not invested before filing of return of income and levied penalty u/s 271(1)(c) thereon. The Tribunal deleted the penalty u/s 271(1)(c) as the assessee was under bonafide belief that since investment was made in new agriculture land, no capital gain liability would arise. The Tribunal further held that though assessee had not challenged the capital gain addition, but he had substantiated his explanation with the help of details of payments, copies of sale deed as well as receipts of payments executed by vendors. It held that the assessee could easily harbor a belief that there was no long term tax liability upon him even though that belief did not meet AO's approval.

***Sh Nitinkumar Desai vs ACIT, Patan Circle TS- 267- ITAT-2018 (Ahd)-ITA No-2065/AHD/2017 dated 13.04.2018***

**4093.** Where the assessee had not paid the self assessment tax under section 140A, while filing the return of income, but paid tax at the time of filing revised return of income, the Court held that the payment of admitted tax liability at the time of revised filing of return of income u/s 139(5), does not affect the lapse committed at the time of filing the original return of income even though claims made in such original income tax return stand supplanted by the claims made in the revised income tax return. Accordingly, it held that the assessee was liable to pay penalty u/s 221(1) of the Act.

***Claris Life Sciences Limited vs DCIT- ITA No.498/Ahd/2011 dated 26.09.2017***

**4094.** The Tribunal held that where the assessee had filed its return claiming a loss of Rs.12.41 lakhs after claiming Prior period expenses and deferred taxes as expenses and the AO issued a show cause notice requesting the assessee to substantiate its claim, pursuant to which the assessee

without responding to the aforesaid notice revised its return of income to reduce the loss claimed to Rs. 3.15 lakhs the AO was justified in invoking penalty under section 271(1)(c) read with Expalantion 1 thereto, considering the fact that the assessee did not furnish any explanation to prove the existence of itsbonafides before the AO.
***KTM Textile Mills P Ltd v ITO – (2016) 47 CCH 0545 (AhdTrib) - ITA No. 2034/Ahd/2012***

**4095.** Pursuant to a survey conducted in the premises of the assessee after the date of filing of return of income, though no incriminating material had been unearthed, the assessee during original assessment proceedings offered an addition sum of Rs.1.65 crores on account of share application money received by it in the earlier years as its income to buy peace and avoid litigation even though it explained the genuineness and creditworthiness of the source of such share application money, the Tribunal held that merely because the assessee had offered the sum, which was received by it in the past, to buy peace of mind and avoid litigation, it could not be held that the assessee had concealed income and furnished inaccurate particulars. Accordingly, it upheld the order of CIT(A) deleting the penalty levied u/s 271(1)(c) of the Act.
***Assistant Commissioner of Income Tax vs. Varia Engineering Works Pvt ltd (2017) 51CCH 0167 AHD trib. ITA No. 1379/ahd/2012 dated 06.10.2017***

**4096.** Where the CIT(A) had deleted the penalty levied u/s 271(1)(c) by the AO on the ground that related quantum disallowance of head office expenditure had been deleted by the Tribunal, the Tribunal upheld the CIT(A)'s order and rejected the Revenue contention that the CIT(A) should not have deleted the penalties since it had filed the appeal before the High Court against the Tribunal's order in quantum proceedings and was hopeful of succeeding before the High Court. The Tribunal held that even if the penalty u/s 271(1)(c) stood deleted, the Revenue could still impose the penalty under Section 275(1A), (which provides for the possibility of imposition of penalty while giving effect to the order of the appellate authority) if it succeeded in High Court.
***Dalma Energy LLC [TS-211-ITAT-2017(Ahd)] ITA No. 2517 and 2518/ Ahd/ 2013 dated 31.05.2017***

**4097.** The Tribunal deleted the penalty levied u/s 271(1)(c) by the AO on account of disallowance of various deductions claimed by the assessee viz. deduction u/s80HHC, weighted deduction u/s 35(2AB), Transfer Pricing addition and loss due to foreign exchange fluctuation relying on the Apex Court decision in the case of CIT vs. Reliance Petroproducts Pvt. Ltd., wherein it was held that merely because the assessee's claim for expenditure was not accepted or was not acceptable to the Revenue, that by itself would not attract penalty u/s 271(1)(c).
***DCIT & Anr v Cadila Pharmacueticals Ltd. & Anr (2018) 52 CCH 0319 AhdTrib - ITA No. 852/Ahd/2015, 651/Ahd/2015 dated 04.04.2018***

**4098.** CIT(A) deleted penalty levied on assessee. The Tribunal held that, sub-clause (iii) of section 271(1)(c) provided mechanism for quantification of penalty. It contemplated that assessee would be directed to pay a sum in addition to taxes, if any, payable him, which should not be less than but which should not exceed three times of amount of tax sought to be evaded by reason of concealment of income or furnishing of inaccurate particulars of income. In other words, quantification of penalty was depended upon addition made to income of assessee. Assessee filed appeal before CIT(A) against quantum addition. Adjudication of quantum

addition was pending before CIT (A) and penalty proceedings was solely depended upon ultimate determination of income, therefore, appeal arising out of imposition penalty could not be decided before adjudication of quantum appeal. Order of CIT(A) was set aside and issue remitted to file of AO for fresh adjudication.

***Asst.CIT vs. Vadodara District Co-Op. Sugarcane Growers Union Ltd.-(2018) 53 CCH 0328 AhdTrib-ITA No.1021/Ahd/2015 & 2215/Adh/2016-dated July 12, 2018***

**4099.** The Tribunal deleted the late filing fees (of TDS return) charged u/s 234E by the AO through the order of intimation u/s 200A on assessee-individual during AY 2014-15, holding that the amendment u/s 200A w.e.f. 01.06.2015 made vide the Finance Act, 2015 enabling the AO to levy fees u/s 234E while making adjustments through intimation u/s 200A had prospective effect and it could not apply to the period prior to 01.06.2015. It relied on the decision in the case of CIT v Vatika Townships (P) Ltd. (2014) 271 CTR (SC) wherein it was observed that "if a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect".

***Nimaben Rameshbhai Thakkar v DCIT [TS-15-ITAT-2018(Ahd)] – ITA No. 3111/Ahd/2015 dated 04.01.2018***

**4100.** The Tribunal held that when the quantum on which penalty levied was deleted, penalty would not survive notwithstanding that the present appeal was filed after a delay of 2379 days. It observed that the Revenue did not point out as to how the assessee has taken advantage of not filing the appeal in time.

***Rama Multi Tech Ltd v ACIT – (2015) 45 CCH 0327 Ahd Trib***

**4101.** AO imposed penalty u/s 271(1)(c) towards non disclosure of various amounts of remuneration and interest from partnership firm M/s. S. CIT(A) upheld order of AO. The Tribunal held that, entries towards remuneration and interest were simply being credited to account of assessee without any actual payment and it was only in AY 2007-08, some amounts were paid by firm. Consequently, in absence of specific details, assessee was not in position to declare income. As mitigating circumstances exist for not including income towards remuneration and interest from partnership firm which were not actually received and Assessee had taken consistent position towards its lack of awareness on point, penalty towards such addition was not justified.

***Rajan Dilipbhai Desai vs ACIT- (2018) 54 CCH 0102 AhdTrib- ITA No 1874 to 1880/Ahd/2016 dated 16.10.2018***

**4102.** The Tribunal held that no penalty was to be levied under section 271(1)(c) of the Act on part of the commission paid by the assessee, disallowed by the AO, based on the lacuna that the agreement was entered into on stamp paper dated July 8, 2012 and the agreement was made effective from November 24, 2001 as the rest of the commission was duly allowed and there was no mensrea of concealing the particulars of income for such a meagre sum. Further, it noted that the assessee had furnished all particulars of his income and expenditure.

***Power Build Ltd v ACIT – (2015) 45 CCH 0191 Ahd Trib***

Go to Index

**4103.** The Tribunal quashed imposition of penalty u/s 271(1)(c) on assessee-individual observing that the AO had imposed penalty alleging 'concealment of particulars of income', while CIT(A) had confirmed penalty on the ground of 'furnishing inaccurate particulars of income'. It held that the imposition of penalty was solely dependent upon the 'satisfaction' of the AO [unless initiated by CIT(A)] and nothing else, and since the basis and foundation for imposition of penalty was altered by CIT(A), the penalty order passed by AO was liable to be struck down. It held that where the original basis of imposition of penalty was altered in a significant way by the first appellate authority, the very basis for sustaining the penalty was rendered non-existent and accordingly deleted the penalty levied.
***Kantibhai Naranbhai Prajapati [TS-86-ITAT-2018(Ahd)] - /I.T.A. No.2880/Ahd/2014 dated 15/02/2018***

**4104.** The Tribunal held that where the AO had not worked out the exact taxable income of the assessee on the basis of sale consideration received and the assessee had not filed her return originally as she was under the bona-fide belief that her income was below the taxable income, no penalty could be imposed on the assessee.
***Chimanbhai Patel v ITO – (2015) 45 CCH 0130 Ahd Trib***

**4105.** The Tribunal upheld concealment penalty u/s 271(1)(c) on the assessee company for failure to pay MAT on book profit u/s 115JB noting that the assessee had filed MAT computation despite normal income being higher in the earlier years but failed to do so in the current year. It rejected assessee's contention that it advertently lost sight of amendment which requires addition to book profit for long term capital gains exempt u/s 10(38) and also observed that the assessee did not adhere to the statutory requirements of filing Form 29B. Further, it held that it was surprising to observe that on one hand assessee accepted the error committed by it and on the other hand it had not taken any pain to revise the return and to comply with the statutory requirements of filing form 29B r.w.s. 115JB of the Act which clearly raised doubts about its bonafideness.
***Indian Chronicle Ltd. vs. ITO TS-55-ITAT-2017(AHD) ITA No.1275/AHD/2012 dated 09.02.2017***

**4106.** The AO did not impose any penalty, though he made disallowance u/s 40A(3), the CIT(A) made enhancement to assessee's income by treating total purchases made from three paties as non genuine and also initiated penalty proceedings and also initiated penalty proceedings and imposed penalty u/s 271(1)(c.). The Tribunal held that it was not brought on record whether purchases were to be treated as bogus or not and hence deleted the alleged penalty.
***Ganesh Industries vs ITO- (2018) 54 CCH 0203 AhdTrib- ITA No 93,814/Ahd/2016 dated 10.10.2018***

**4107.** Where the assessee, a contractor, could not maintain adequate vouchers as a result of which it had estimated its income and the AO had also estimated the income by rejecting books of accounts, the Tribunal held that levy of penalty under section 271(1)(c) could not be sustained as it could not be said that the assessee had concealed the income. It further noted that the AO had nowhere alleged that the assessee had concealed or furnished inaccurate particulars of

income and that even though AO had observed certain discrepancies but had not investigated the same and had merely proceeded on an estimate basis.
***National Construction Co vs. DCIT (2016) 48 CCH 0179 (Amritsar Tribunal) (ITA No.462 (Asr)/2016)***

**4108.** Where AO while disallowing claim of depreciation had not considered exclusion of principle component of lease rental, the Tribunal held that penal provisions of s 271(1)(c) could not be attracted; and where the AO treated transaction as finance lease and consequently disallowed the claim of depreciation the same would not ipso facto lead to the conclusion that the assesse had furnished inaccurate particulars of income or concealed the particulars of income.
***JCIT v. H P India Sales Pvt. Ltd. (2016) 47 CCH 0618 BangTrib. ITA No. 316/BANG/ 2014***

**4109.** The Tribunal held that where assessee had sufficiently proved that share application money was taken from a director to meet urgent and immediate requirement of business and there was a reasonable cause to take 'loan' or deposit otherwise than by account payee cheque or account payee bank draft, penalty under section 271D could not have been levied.
***Valley Extraction (P) Ltd v JCIT - [2016] 68 taxmann.com 202.(Chandigarh)***

**4110.** During assessment, the AO noticed some difference in TDS as reflected in Form No.26AS and that shown in return of income. The assessee submitted that it had claimed lesser credit of TDS of Rs. 3,419/- as there was dispute regarding billing of Rs. 3,13,542/-. However, AO made addition of such gross receipt of Rs. 3,13,542/- holding that assessee had failed to explain such difference and initiated penaty u/s 271(1)(c.) which was further upheld by the CIT(A). The Tribunal noted that the assessee had explained reason for difference in TDS as being TDS of disputed billings not taken credit of it in return of income and it had also filed all details of receipts and TDS relating to the same, pointing out that all bills had been accounted for in books of assessee which was confirmed from letters filed during assessment proceedings and submissions made before CIT(A). Thus, the Tribunal held that merely because assessee agreed to any addition to avoid litigation, it would not upturn facts of case to make it a case of concealing and furnishing inaccurate particulars of income to initiate penalty proceedings.
***Heritage Marketing vs ITO- (2018) 54 CCH 0316 Chd Trib-ITA No 284/Chd/2018 Dated 24.09.2018***

**4111.** The Tribunal dismissed assessee's appeal filed against the CIT(A)'s order confirming the penalty levied by the AO u/s 271(1)(c) on account of concealment of interest income received from Fixed Deposit Receipts (FDR) purchased from one bank, rejecting the assessee's claim that he was under a bona fide belief that the said interest income was not taxable since the bank had not deducted TDS thereon. It noted that the assessee had shown the agricultural income even though it was not taxable in the return of income and had also shown the interest received on FDR's from other Banks. Thus the Tribunal held that the assessee's plea that interest had been omitted on bona fide belief, could not be accepted as the same was not proved and it was a clear case of concealment of income.
***Nitin Chauhan v ITO - [2018] 97 taxmann.com 669 (Chandigarh - Trib.) - ITA No. 1409 (CHD.) OF 2017 dated July 27, 2018***

Go to Index

**4112.** The Tribunal deleted the fee levied u/s 234E for late filing of TDS return / statement noting that the intimations u/s 200A for all the relevant AYs were issued before 01.06.2015 and in the case of Smt. G. Indhirani v. DCIT (2015) 60 taxmann.com 312 (Chen) it had already been held by the Tribunal that prior to 01.06.2015, there was no enabling provision in section 200A for making adjustment in TDS return / statement by levying fee u/s 234E and therefore, the AO could not make any adjustment by levying fee u/s prior to 01.06.2015.
***A.R.R. CHARITABLE TRUST v ACIT - (2018) 66 ITR (Trib) 69 (Chennai) - ITA No. 1307/Chny/2017 & ITA Nos. 238, 239, 240 & 241/Chny/2018 dated July 24, 2018***

**4113.** The Tribunal upheld levy of penalty u/s 271(1)(c) on false depreciation claim made by assessee company on a furnace for AY 2004-05. The assessee had argued that the machinery (i.e furnace) was subject to trial run (i.e., at the supplier's premises) in the presence of assessee's engineers and hence it was put-to-use. It held that the test running at supplier's premises was only to confirm if the plant being delivered was in a 'OK' state and could not be regarded as commissioning of it's plant by the assessee. Further it held that even assuming constructive delivery at the sellers' premises, so that the plant stands acquired, it would enter the block of assets only upon being put to use. Since the assessee could not prove that the furnace was delivered / installed at its premises before March 31 of the relevant AY, the Tribunal held that the provisions of section 271(1)(c) were clearly applicable.
***Sundaram Fasteners Ltd. vs. ADIT - TS-179-ITAT-2017(CHNY) - /ITA No. 590/Mds/2012 dated 26.04.2017***

**4114.** The Tribunal held that penalty proceeding under section 272A(2(e) is a separate proceeding from assessment of income and, thus, once assessee, liable to file return under section 139(4A), failed to do so within prescribed time period, provisions of section 272A(2)(e) would attract automatically irrespective of income determined in course of assessment
***Himalayan Educational Trust v. Addl. CIT (Exemptions), Coimbatore-[2019] 101 taxmann.com 113 (Chennai - Trib.)-ITA No. 1772 (CHNY) of 2018-dated November 27, 2018***

**4115.** The Tribunal deleted the penalty levied u/s 271(1)(c) noting that, in quantum appeal, the addition on the basis of which penalty was levied was deleted.
***XAVIER INSTITUTE OF MANAGEMENT vs. ITO - (2018) 53 CCH 0398 CuttackTrib - ITA Nos. 98, 99, 100 & 101/CTK/2016, 266, 267 & 320/CTK/2017 dated July 27, 2018***

**4116.** The assessee had claimed deduction u/s 80IB but however it was rejected by the AO on the ground that assessee did not comply with conditions precedent for availing of benefit of section 80IB and added the amount to the income of assessee. Thereafter, AO levied penalty u/s 271(1)(c) for concealment of income and CIT(A) confirmed the said penalty. The Tribunal observed that the penalty was levied by the AO on ground that assessee had concealed its particulars of income in respect of specified income whereas assessee had disclosed entire income and simultaneously claimed deduction of that income u/s 80IB(10). Thus the Tribunal held that merely making of claim of deduction which was found to be not allowable did not invite penalty u/s 271(1)(c) and in absence of details of any income where particulars were found to be concealed by assessee, penalty imposed on assessee was untenable thereby deleting the said penalty.

Go to Index

***Maruti Estates (India) Pvt. Ltd v ACIT (2018) 52 CCH 0337 CuttackTrib - ITA No. 321/CTK/2017 dated 17.04.2018***

**4117.** The AO had made certain addition to the assessee's income which was confirmed by the Tribunal. The AO had levied penalty u/s 271(1)(c) on account of such addition and the said penalty was also sustained by the CIT(A). Before the Tribunal, the assessee challenged the penalty order contending it to be barred by limitation. The assessee claimed that though the quantum Tribunal order was received by the concerned Pr.CIT having consideration over assessee on 21st May,2015 but the same was received by the CIT(Judicial) on 9th April 2015 and according to S.275(1)(a) the order of penalty should've been passed within a period of six months from the end of the month in which the order of the Tribunal was received by the CIT(Judicial) i.e. on or before 31st October, 2015. However, the penalty order was passed on 27th November 2015. The Tribunal accepted the assessee's contention relying on the Jurisdictional HC decision in the case of PCIT Vs. Kamaljeet Khosla [ITA. No. 822/2017 (Delhi)] wherein it was held that the limitation period for passing penalty order is to be reckoned from the date of receipt of the Tribunal order by any CIT and not necessarily the 'concerned' CIT. It thus quashed the penalty order as the same was barred by limitation.
***Indian Sugar Exi Corporation Ltd. v DCIT (2018) 52 CCH 0446 DelTrib - IT Appeal No. 3860/Del/2017 dated 16.04.2018***

**4118.** The search and seizure took place at the assessee's business premises. Upon finding certain seized documents and discrepancies in the stock, the Managing Director was asked to explain the same, who declared certain amount as undisclosed income merely to buy peace of mind and avoid litigation. The AO levied penalty u/s 271AAA which was deleted by CIT(A) in view of the provision of S.271AAA(2) which provides that penalty in not leviable on undisclosed income if in the course of search, the assessee admits the income, substantiate manner of deriving the same and pays tax with interest. However, the Tribunal held that since the assessee had failed to specify/substantiate the manner as to how the undisclosed income was derived, the assessee could not avail the benefit of S.271AAA(2) and hence the penalty order passed by AO was restored.
***ACIT v SSA International Ltd. [2018] 94 taxmann.com 17 (Delhi-Trib) – ITA NO 5051 OF 2013 dated 30.05.2018***

**4119.** The Tribunal held that penalty cannot be imposed if the assessing officer does not specify whether the penalty is for concealment of income or for furnishing inaccurate particulars and further, penalty cannot be imposed in respect of income surrendered by the assessee if assessing officer does not link the income to incriminating documents.
***M. G. Contractors Pvt. Ltd vs. DCIT (ITAT Delhi)***

**4120.** Where addition of Share Capital was made by the AO, as the name of the assessee company did not appear either in the 'schedule of investments' or in the loans and advances' of annual accounts of the shareholder (i.e the company to whom shares were issued by the assessee-compnay) and consequently penalty proceedings u/s 271(1)(c) were initiated for filing inaccurate particulars of income and penalty was imposed on the assessee-company, the Tribunal held that it could not be said that assessee had withheld any relevant information regarding receipts

and income from AO as the amounts added back by AO were amounts disclosed by the assessee itself and the Apex Court had authoritatively laid down that making of claim by the assessee which was not sustainable would not tantamount to furnishing inaccurate particulars for the purpose of imposing penalty u/s 271(1)(c). Accordingly, the issue was restored to the file of the AO.

***Gahoi Chemicals Pvt Ltd v Deputy Commissioner of Income Tax - (2017) 49 CCH 0178 DelTrib (ITA No. 1212, 1213/Del/2012)***

**4121.** Addition was made by the AO only on account of dispute pertaining to the value of closing stock of zip fasteners. The AO had taken the value at Rs.59.48 per meter whereas the assessee had offered Rs.33.56 per meter and the CIT(A) finally valued it at Rs.37.96 per meter. Subsequently penalty u/s 271(1)(c) was levied. The Tribunal held that no penalty u/s 271(1)(c) could be imposed with reference to additions made on an estimation basis where assessee had not furnished inaccurate particulars of income and there were no findings of the AO or CIT(A) that the details furnished by the assessee in his return were found to be erroneous or false. Accordingly, the Tribunal deleted the penalty in dispute and quashed the order of CIT(A), allowing appeal filed by the assessee.

***Shruti Fastners Ltd vs. Deputy Commissioner of Income Tax - (2017) 49 CCH 0183 DelTrib (ITA No. 5374/Del/2012)***

**4122.** The Tribunal held that where the assessee had filed its return of income within the time limit stipulated under section 139(1), wherein he surrendered the undisclosed income discovered in search proceedings and attended the penalty proceedings wherein all details with regard to cash seized from his locker were given and the AO wrongly ignored all the explanations furnished, penalty under section 271AAA of the Act was wrongly imposed.

***Vinod Chander Sinha v ACIT – (2016) 47 CCH 0217 (Del – Trib)***

**4123.** The Tribunal quashed the penalty order u/s 271(1)(c) passed by the AO on account of various disallowances made in the assessment order, noting that in the notice issued u/s 274 r.w. 271(1)(c) itself the AO had not specified as to whether he was issuing notice to initiate the penalty proceedings either for “concealment of particulars of income” or “furnishing of inaccurate particulars of such income” rather he had incorporated both the limbs of section 271(1)(c). It held that even from the assessment order, it was prima facie not discernible as to which default has been committed by the assessee since the AO had merely recorded findings at the fag end of his order in mechanical manner that it was a fit case for imposition of penalty u/s 271(1)(c) on all the issue on which addition/disallowances had been made. The Tribunal thus held that from the from the above finding in the assessment order, the factum of non-application of mind on the part of the AO in issuing vague and ambiguous notice u/s 274 r.w.s. 271(1)(c) got further corroborated.

***MODI RUBBER LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX (2018) 53 CCH 0170 DelTrib - ITA No. 2559/Del./2018 (Stay No.353/Del/2018) dated June 14, 2018***

**4124.** The Tribunal deleting the penalty levied by the AO u/s 271(1)(c) on account of the deduction claimed by the assessee with respect interest on delayed payment of TDS and donation, which the assessee had stated were claimed by mistakes and accordingly had surrender the same

during the course of assessment proceeding. With respect to the AO's contention that the act of claiming expenditure which was not allowable under the provisions of the Act was an act of furnishing of inaccurate particulars of income and concealment and the CIT(A)'s observation that the explanation of the assessee regarding inadvertent error lacked bona fides, the Tribunal relied on the decision in the case of CIT v. Reliance Petroproducts (P.) Ltd. (2010) 322 ITR 158 (SC) wherein it was held that in order to expose the assessee to the penalty unless the case was strictly covered by the provision, the penalty provision could not be invoked and by any stretch of imagination, making an incorrect claim in law could not tantamount to furnishing inaccurate particulars.

***G.N. INFOMEDIA P. LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0162 (Del Trib) - ITA No.5371/Del/2016 dated June 13, 2018***

**4125.** Undisclosed investment in property was added to income of assessee on the basis of valuation of Stamp Valuation Authority.Penalty proceedings were initiated for concealment and furnishing of inaccurate particulars of income. A.O levied penalty u/s 271(1)(c) of Act, on aforesaid addition. CIT(A) upheld AO's order. The Tribunal held that, assessee had disclosed all relevant facts of sale of property to Revenue Department. Assessee declared sale consideration as per sale deed and also offered short term capital gain for taxation. Thus, A.O. did not bring any positive evidence on record to show that assessee had concealed particulars of income or furnished any inaccurate particulars. Valuation of Stamp Valuation Authority was not conclusive evidence of receipt of money by assessee over and above what was recorded in sale deed. A.O. had not brought any concrete evidence of concealment of income in order. In absence of any positive evidence with respect to concealment of income, there were no justification for A.O. to levy penalty in matter. Assessee's appeal was allowed.

***Ashwani Jaipaty Vs. Dy. CIT-(2018) 53 CCH 0340 DelTrib-ITA.No.276/Del./2018-Dated Jul 11, 2018***

**4126.** The Tribunal held that if order passed levying penalty is beyond 6 months from when proceedings of penalty were initiated with issuance of show cause notice was barred by limitation and thus quashed the same.

***Sarvottam Construction P. Ltd. Vs. Asst. CIT-(2018) 53 CCH 0346 DelTrib-ITA No.-1650/Del/2009-Dated Jul 11, 2018***

**4127.** The Tribunal held penalty under section 271(1)(c) of the Act could not be levied on the assessee merely because it made an excess claim of depreciation on the basis of a newspaper article stating that the Finance Ministry decided to retain the special depreciation benefits for textile machinery installment under the Technology Upgradation Fund. Further, with regard to the classification of receipt of subsidy as capital or revenue, the Tribunal held that the same was a debatable issue and therefore penalty under section 271(1)(c) of the Act could not be levied.

***ACIT v SPL Industries Ltd - [2016] 46 CCH 0085 (Del Trib)***

**4128.** The Tribunal held that where the AO had initiated penalty on two grounds viz. commission income unearthed during search proceedings based on a statement made and on account of estimation of household expenses, the levy of penalty was unsustainable since a). the Tribunal

had deleted the addition in respect of the commission income considering the merits of the case and b). no penalty could be levied on additions made on an estimate basis.
***Ajay Gupta v DCIT – (2016) 47 CCH 0535 (Del Trib) – ITA Nos. 4144 & 4145/Del/2010, 1259 & 1260/Del/2014***

**4129.** The Tribunal deleted the penalty u/s 271(1)(c) which was levied by the AO in the course of reassessment proceedings alleging that the assesse had received accommodation entries in its bank account from various concerns, noting that the said reassessment proceedings itself were quashed by the Tribunal in quantum appeal.
***INTIME CREDIT & HOLDING PVT. LTD. vs. INCOME TAX OFFICER - (2018) 53 CCH 0192 DelTrib - I.T.A. No. 2944/DEL/2015 dated June 21, 2018***

**4130.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the penalty u/s 271(1)(c) which was levied by the AO on account of addition made in the assessment order passed u/s 144, noting that the CIT(A) had deleted the penalty on basis that entire addition had been deleted by him and, hence, there was no question of imposing penalty.
***INCOME TAX OFFICER vs. YOGESH KATARIA - (2018) 53 CCH 0191 (Del Trib) - I.T.A. No. 3385/DEL/2015 dated June 21, 2018***

**4131.** The AO levied penalty u/s 271(1)(c) on account of certain cash deposits made by the assesee in his bank account on the ground that assessee could not substantiate the source of the same and had agreed to the addition of the same (though the assesse stated that cash deposits were with respect to sale/ purchase of agricultural produce and had produced some bills / vouchers of sale and purchase). It was noted that the said bills/ vouchers were not proven to be false and during the assessment, the assesse had also offered to produce concerned persons if some time was given to him. Noting the above facts and following the decision in the case of CIT Vs. M/s. Gem Granites (Karnataka) [ITA No.504/09 (Mad HC)] wherein it was held that when the assessee discharges the onus cast on it by giving cogent and reliable explanation then the onus shifts to the department to prove that the assessee has concealed the particulars of income or furnished inaccurate particulars of income, the Tribunal held that it was not a fit case for levy of penalty u/s 271(1)(c) and, accordingly, it directed the AO to cancel the penalty.
***ARCHIT AGGARWAL vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0264 (Del Trib) - ITA No.4441/Del/2015 dated June 28, 2018***

**4132.** The Tribunal dismissed the assesse's appeal against the penalty levied u/s 272A(2)(k) on account of substantial delay ranging for almost more than one year in filing quarterly TDS statements. It held that simply because the assessee had deposited amount to the Government account, it would not go to mitigate rigors of the assessee's failure to file TDS statements within stipulated time. Moreover, the assessee being a Government Organization was supposed to make strict compliance of law. The Tribunal held that though there was no loss to revenue due to delay in filing TDS statements, as requisite TDS was deposited to Govt. account in time, but such an inordinate delay might cause loss to the Revenue while processing refunds, if any, to deductees which fetches substantial amount of interest to be paid by Government on such refunds, if paid with delay. Further, it held that the assessee's reason for delay i.e. change /lack

of staff, was not found substantiated by any evidence on record and such a reason, did not constitute to be a reasonable cause to file TDS statements with such an inordinate delay.

***DELHI DEVELOPMENT AUTHORITY COMMON WEALTH GAMES 2010 vs. JOINT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0225 DelTrib - ITA No. 3407/Del/2015 dated June 22, 2018***

**4133.** AO observed that assesee had incurred expenditure on foreign travel of one of its Directors and not filed any evidence to prove purpose of foreign travel to justify assessee's claim expenses as business expenses. The AO also observed that the assessee had shown unsecured loan received from X and failed to prove identity and creditworthiness of party and genuineness of transactions, but only filed confirmation letter purportedly signed by the lender person. Accordingly, the AO levied penalty under section 271(1)(c) of the Act. The Tribunal held that since no other evidence or material was filed to prove genuineness either at assessment stage, appellate stage and during penalty proceedings, the levy of penalty under section 271(1)(c) was justified.

***Sharsh finance & investment co. Pvt. Ltd. Vs.ACIT - (2017) 50 CCH 0015 DelTrib - ITA No. 878/Del/2012 – 05.05.2017***

**4134.** The AO levied penalty u/s 271(1)(c) on account of certain cash deposits made by the assesee in his bank account on the ground that assessee could not substantiate the source of the same and had agreed to the addition of the same, though the assesse stated that cash deposits were with respect to sale/ purchase of agricultural produce and had produced some bills / vouchers of sale and purchase. It was noted that the said bills/ vouchers were not proven to be false and during the assessment, the assesse had also offered to produced concerned persons if some time was given to him. Noting the above facts and following the decision in the case of CIT Vs. M/s. Gem Granites (Karnataka) [ITA No.504/09 (Mad HC)] wherein it was held that when the assessee discharges the onus cast on it by giving cogent and reliable explanation then the onus shifts to the department to prove that the assessee has concealed the particulars of income or furnished inaccurate particulars of income, the Tribunal held that it was not a fit case for levy of penalty u/s 271(1)(c) and, accordingly, it directed the AO to cancel the penalty.

***ARCHIT AGGARWAL vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0264 (Del Trib) - ITA No.4441/Del/2015 dated June 28, 2018***

**4135.** The Tribunal deleted the penalty levied by the AO u/s 271(1)(b) for non-compliance of notice issued u/s 153A(1) for filing of return post search proceedings, noting that –

- no statutory notice u/s 274(1) was ever issued to assessee (to be heard before imposing penalty and thus, no mandatory reasonable opportunity of being heard was ever given to assessee before imposing penalty, which was very essential)
- necessary statutory satisfaction required u/s 271(1) that assessee had failed to comply with notices and AO was satisfied to initiate penalty proceedings had not been recorded anywhere
- entries in order sheets did not show issuance of any notice u/s 274 r/w s 271(1) or of recording of any such satisfaction.

***ANIL KUMAR SETH vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0215 (Del Trib) - ITA Nos. 7516 to 7522/Del/2017 dated June 22, 2018***

Go to Index

**4136.** The Tribunal held that penalty u/s 271(1)(c) could not be levied unless there is evidence beyond doubt that there was concealment of particulars of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee. The fact that the assessee did not voluntarily furnish the return of income, and that the merits were decided against it, does not per se justify the levy of penalty. The bonafides of the explanation of the assessee for not complying with the law have to be seen.
***DDIT vs Metapath Software International Ltd-ITA No. 1393 /del/2011 dated 28.04.2017***

**4137.** The Tribunal deleted penalty levied u/s 272A r.w.s 276BB for failure of non-filing/belated filing of TDS return in case of an assessee engaged in business of production of potable country liquor/alcohol. The Tribunal observed that the assessee had no default in deduction and deposit of TDS, but due to their licensees being small operators who could not provide PAN, and the accounts manager of the company being on leave due to severe illness, there was belated compliance on part of the assessee, resulting in delay in filing return/statement. The Tribunal thus, held that since on filing belated returns/statements, Revenue department had not suffered any loss, because tax deducted was already deposited on time and there was mere a technical or venial breach to provisions contained in Act for submitting return/statement of TDS, penalty was liable to be deleted.
***Haryana Distillery vs JCIT- (2018) 97 taxmann.com 571 (Delhi- Trib)- ITA No 1642 of 2015 dated 04.09.2018***

**4138.** As the assessee had failed to produce books of accounts and audit report u/s 44AB during the assessment proceedings, the AO initiated penalty proceedings u/s 271B. In response to the penalty notice, the assessee furnished the tax audit report. However, subsequent enquiries conducted by the AO revealed that the audit report was manipulated and fabricated and also the CA who had signed the audit report, in a sworn statement, stated that he had prepared tax audit report without examining the books of account. The AO thus levied penalty u/s 271B. The CIT(A) upheld the order of the AO. Before the Tribunal, the assessee contended that the he didn't maintain books of accounts and thus there was no question of their examination or producing the same. The Tribunal rejected the assessee;s above contention noting that the assessee had admitted before the AO that books of account could not be produced on the pretext being misplaced. It further held that the P & L A/c filed with return indicated that the assessee was liable to get his books of account audited u/s 44AB and since the assessee had failed to get his accounts audited, he was liable to penalty u/s 271B. Thus, the assessee's appeal was dismissed
***BRIJ GOPAL CHAUHAN vs. INCOME TAX OFFICER (DELHI TRIBUNAL) (ITA No. 2167/Del./2015) dated May 22, 2018 (53 CCH 0064)***

**4139.** The Tribunal deleted penalty levied by the AO u/s 271(1)(c), absent malafide intent to conceal income or furnish inaccurate particulars. It noted that penalty was levied on account of two additions i) disallowance of 50% depreciation, on car which was forgone by the assessee due to unavailability of documentary evidence to prove purchase was made before September 30th and ii) erroneous debit of loss on sale of assets to P&L instead of reducing the same from WDV. It held that the disallowance of depreciation was a mere deferral of depreciation and that the

addition on account of sale of assets was due to an accounting error. Further, observing the huge quantum of income declared and taxes paid by assessee, it held that it was evident that the assessee intended to be tax complaint and therefore there was no malafide intention to conceal an income of Rs. 13.09 lacs (not even 0.4% of returned income).
***Harish Narinder Salve vs ACIT-TS-414-ITAT-2017(DEL) I.T.A No. 100/del/2015 dated 21.09.2017***

**4140.** Where the assessee showed reasonable cause for failure to comply with the statutory notice issued u/s 143(2)/142(1), the Tribunal deleted penalty imposed under section 271(1)(b) of the Act. Noting that for the preceding two AYs the CIT(A) had deleted the penalty imposed being satisfied with the reasoning of the assessee, the Tribunal, applying the principle of consistency, set aside the order of CIT(A) and cancelled the penalty.
***Neeru Gupta vs ACIT (2017) 51 CCH 77 Delhi Trib.- ITA No. 6569, 6570 & 6571/Del./2014 dated 01.09.2017***

**4141.** The Tribunal, relying on the decision in the case of Reliance Petroproducts Ltd held that where the assessee had not supressed any facts and its claim u/s 80IB and additional depreciation, though disallowed by the AO had been made on basis of audited accounts and on basis of audit report duly furnished by AO, penalty under section 271(1)(c) on account of concealment of particulars of income could not be levied.
***DeputyCIT vs GSC Toughened Glass P ltd (2017) 51 CCH 0023 Delhi Trib. ITA no. 6392 / del / 2013 dated 01.09.2017***

**4142.** The AO made additions to the income of the assessee pursuant to search and seizure operations. Thereafter, the AO levied penalty on the assessee under Section 271(1)(c) of the Act. The CIT(A) upheld the order of the AO. The Tribunal held that imposition of penalty was not justified as the quantum appeal of the assessee was admitted by the High Court on the merits as well as on the legal issue. Further, the Tribunal quashed the penalty proceedings and held that levy of penalty under Section 271(1)(c) was not sustainable as the AO did not levy any specific charge on the additions made in the show cause notice as well as the assessment order (i.e. of concealment of income or furnishing of inaccurate particulars). Thus, the assessee's appeal was allowed.
***HARSH INTERNATIONAL PVT. LTD. vs. DCIT (DELHI TRIBUNAL) (ITA No. 861 & 862/Del/2018) dated May 22, 2018 (53 CCH 0066)***

**4143.** Where the AO made an addition in the hands of the assessee pursuant to search proceedings which was based on material not found during the search proceedings i.e. inquiries during assessment proceedings, the Tribunal deleted penalty levied pursuant to such adjustment and held that the addition itself could not be sustained as it was not made on the basis of any incriminating material found during search.
***GETAMBER ANAND vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0126 DelTrib - ITA No. 3127/Del/2016 dated Feb 27, 2018***

**4144.** The Tribunal allowed Revenue's appeal against the CIT(A)'s order deleting the penalty u/s 271(1)(c) which was levied by the AO after finding that the assessee had made a false claim of

earning agricultural income which actually was business income. It noted that the assesse-company had purchased seeds from the farmers and claimed the said activity of procuring seeds as agriculture income by way of creating a chain of documents or papers of lease agreements etc and thus the explanations furnished by the assessee were not found to be bonafide. It held that it was not the simple case of disallowance of expenditure as in CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158 (SC) wherein it was held that merely because the assessee had claimed deduction which was not accepted by the Revenue, penalty u/s 271(1)(c) was not attracted. It held that the assessee had claimed its activity of purchase of the seeds from the farmers as agriculture income in a fraudulent manner to evade the taxes.
***DEPUTY COMMISSIONER OF INCOME TAX & ORS. vs. PHI SEEDS PRIVATE LIMITED & ORS. - (2018) 53 CCH 0273 (Del Trib) - ITA No. 6622/Del/2013, 6645/Del/2013, 4366/Del/2015 dated June 29, 2018***

**4145.** The Tribunal remanded the matter to the file of CIT(A) where the CIT(A) had upheld the AO's order levying penalty u/s 271(1)(c) of the Act, noting the quantum order of CIT(A) also remanded to the file of the CIT(A) by the Tribunal. Accordingly, it directed the CIT(A) to adjudicate the issue of levy of the said penalty after considering the outcome of the **quantum** appeals.
***HANS ISPAT LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0145 (Del Trib) - ITA No. 3849/Del/2015, 3850/Del/2015, 3851/Del/2015, 3852/Del/2015 dated Jun 13, 2018***

**4146.** Where the AO sought to levy penalty under Section 271(1)(c) of the Act but did not specify the charge against the assessee in its notice under Section 274 of the Act i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars, the Tribunal held that no penalty could be levied.
***OM LOGISTICS LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0173 DelTrib - ITA No. 529/Del/2016 dated Mar 1, 2018***

**4147.** The Tribunal deleted penalty levied u/s 271(1)(c) by the AO towards addition made on account of bogus purchase as

a) there was not even an allegation by the AO anywhere in the assessment order that the assessee had either concealed the particulars of income or furnish inaccurate particulars of income.
b) the AO had initiated penalty proceedings u/s 271(1)(c) issuing notice u/s 274 r.w.s. 271(1)(c) in a standard format without striking-off the inappropriate words so as to constitute his satisfaction as to whether the assessee had concealed the particulars of income or furnished inaccurate particulars thereof.

***INDRANI SUNIL PILLAI v ACIT – (2018) 52 CCH 49 (Del Trib) – ITA Nos. 491/Del/2012, 492/Del/2012, 5647/Del/2011, 446/Del/2012, 447/Del/2012, 5503/Del/2010, 5648/Del/2011 dated 19.01.2018***

**4148.** Where the assessee while claiming deduction u/s 10B, netted interest earned on income tax refund against interest paid which was accepted by the CIT(A) though subsequently reversed by the Tribunal wherein it upheld the order of the AO taxing the interest earned as income from sources, the Tribunal held that the AO erred in levying penalty under Section 271(1)(c) alleging

that the assessee had furnished inaccurate particulars as the assessee's claim was bonafide (as was evident from the notes to the statement of total income filed along with the return wherein it relied on the decision of Commissioner of Income Tax v. Haribhai Estate (P) Limited wherein similar income was treated as business income). It held that the bonafides of the assessee were further enhanced by the fact that the CIT(A) had allowed the assessee's appeal in quantum proceedings. Accordingly, it held that no penalty under Section 271(1)(c) of the Act could be levied.

***DEPUTY COMMISSIONER OF INCOME TAX vs.AMERICAN EXPRESS INDIA PVT. LTD-(2017) 51 CCH 162 DelTrib. ITA No. 4422/del/2014 dated 6.10.2017***

**4149.** The Tribunal deleted the late filing fees (of TDS return) charged u/s 234E by the AO where the assessee claimed that prior to amendment u/s 200A w.e.f. 01.06.2015, levy of fee u/s 234E during processing of TDS statement was not tenable, noting that the said amendment made vide the Finance Act, 2015 enabling the AO to make adjustments while levying fees u/s 234E had prospective effect since the amendment was procedural in nature and, thus, the AO while processing TDS statements/returns for period prior to 01.06.2015 was not empowered to charge fees u/s 234E.

***DHARAM DEEP PUBLIC SCHOOL & ANR. v DCIT – (2018) 52 CCH 16 (Del Trib) – ITA Nos. 3112/Del/2016, 3113/Del/2016, 3114/Del/2016, 3115/Del/2016, 3116/Del/2016, 2317/Del/2016, 2318/Del/2016, 2319/Del/2016 dated 05.01.2018***

**4150.** The Tribunal upheld CIT(A)'s order confirming penalty levied u/s 272A(1)(c) for not furnishing the information called under the summons issued u/s 131(1A), holding that the conduct of assessee was not bonafide as no prejudice would have been caused is by submitting the details called for by the ADIT (Investigation) as per the summons if those details, as claimed by the assessee, were already available in the records of the I.T. Department or on the website of the Ministry of Corporate Affairs.

***Young Indian vs Addl Director of Income-tax [2018] 53 CCH 0498 (Del) (Trib)- ITA No.5303/ Del/ 2016 dated August 30 2018***

**4151.** Where assessee-institute had shown the loan and advances given, in its Audit report, under the head application or use of income or property for the benefit of persons referred to u/s 13(3) and had failed to charge interest on loan in the computation of income due to inadvertent error of the auditor, the Tribunal deleted penalty u/s.271(1)(c) relying on the ratio laid down in CIT Vs Pricewater House Coopers Pvt. Ltd. (2012) 348 ITR 306 (SC). In the said case, it was held that no penalty could be levied when assessee in its tax audit report had indicated that provision towards payment of gratuity was not allowable but it failed to add provision for gratuity to its total income due to bonafide and inadvertent error.

***INSTITUTE OF HAEMATOLOGY vs. INCOME TAX OFFICER (EXEMPTIONS) [2018] 53 CCH 0628 (Del) (Trib)- ITA No.5303/Del/2016 dated August 31 2018***

**4152.** Notice was issued to the assessee u/s 142(1) calling for certain details and thereafter further reminders for hearings were issued. Since the assessee did not comply with the statutory notices, show cause notices for levying penalty u/s 271(1)(b) read with section 274 were issued. In response to the penalty notices, the assessee challenged the legality of the same and claimed

that no evidence as alleged was called for by the AO. The AO not being satisfied with the responses, levied the penalty for repetitive default by the assessee. The CIT(A) confirmed the AO's order of levying penalty. The Tribunal observed that the assessee's non- compliance of statutory notice was for more than 3 times in each A. Y. Accordingly, it upheld the CIT(A)'s order confirming the penalty.

***MANISH PERIWAL vs. DCIT (2017) 50 CCH 0105 DelTrib ITA No. 5157-5162/Del/2014 dated 08.06.2017***

**4153.** Pursuant to search proceedings conducted in the premises of the Shakumbri group of companies, the AO found certain loose papers and documents in the possession of the three directors of the company (one being the assessee) and held that the expenditure reflected therein was incurred by the directors and since no explanation was provided made proportionate addition in the case of each director. Accordingly, the AO levied penalty under Section 271(1)(C) of the Act. The Tribunal noted that penalty was levied merely on the basis of the documents which were undated and that the AO had not been able to rebut the explanation of the assessee that these expenses had been incurred by the company and not by him. Accordingly, in the absence of such rebuttal, no penalty could be levied under Section 271(1)(c).

***Sunil Rastogi v ACIT – (2018) 52 CCH 112 Del Trib – ITA No 1921 / Del / 2016 dated Feb 7, 2018***

**4154.** AO initiated the penalty proceedings u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income while the penalty was levied u/s 271(1)(c) of the Act on account of concealment of taxable income. AO in the notice u/s 274 of the Act has not mentioned the specific charge on which the penalty proceedings were initiated u/s 271(1)(c) of the Act. In Sanraj Engineering Pvt. Ltd. Vs ITO it was held that drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law and the notice issued u/s 274 r. w. s. 271(1)(c) of the Act shall specify under which limb of Sec. 271(1)(c) of the Act the penalty proceedings were initiated, and in the absence of such clarity, the proceedings are bad in law. Following the aforesaid referred to order, the penalty levied by the AO and sustained by the ld. CIT(A) u/s 271(1)(c) of the Act was deleted by the Tribunal.

***Star Wire (India) Ltd. Vs. Asst. CIT-(2018) 53 CCH 0324 DelTrib-ITA No. 4875/Del/2016, 4876/Del/2016-Dated Jul 9, 2018***

**4155.** The Tribunal deleted penalty by holding that penalty levied u/s 271(1)(c.) was not sustainable where the notice issued to assessee does not specify exactly on which limb penalty u/s 271(1)(c.) had been initiated.

***YMK Holdings Ltd vs ITO- (2018) 54 CCH 0082 Del trib- ITA No 2174/Del/2016 dated 12.10.2018***

**4156.** The Tribunal upheld penalty levied u/s 271(1)(c) for AY 2006-07 pursuant to the search and seizure operations carried out u/s 132 wherein the director of assessee-company had surrendered an undisclosed income for entire group for AY 2008-09 and based on entry made in the seized documents, the AO had found that the income offered with respect of assesse-company for AY 2008-09 actually related to AY 2006-07 (i.e. relevant AY). It was noted that the

assesse had not filed a return for the relevant AY and had filed the same only pursuant to notice issued u/s 153A declaring nil income and accordingly, deeming provisions of Explanation 5A to section 271(1)(c) were attracted. As per the said Explanation, assessee is deemed to have concealed particulars of his income or furnish inaccurate particulars of such income if, in course of search proceedings, he is found to be owner of any income based on an entry in document for a previous year for which due date of filing return has expired and no such return has been filed. It was also noted that the assessee had accepted the quantum addition and not filed an appeal against it and had only challenged the penalty addition.

***Spaze Towers Pvt Ltd vs Dy.CIT [2018] 54 CCH 0250 (Del Trib)-ITA Nos. 2044 & 2045/Del/2014 and ITA No.2558/Del/ 2012 dated 20.11.2018***

**4157.** While completing assessment proceeding in case of the assessee, the AO initiated penalty proceeding without specifying any limb u/s 271(1)(c) and the same were confirmed by the CIT(A).The Tribunal relied on Karnataka High Court in case of CIT vs. SSA's Emerald Meadows wherein it was held that notice issued by AO u/s 274 r/w s. 271(1)(c) was bad in law as it did not specify the specific limb u/s 271(1)(c). Further, the Tribunal had observed that when the penalty proceedings was initiated, the notice issued was in standard pro forma wherein irrelevant clauses were not struck off which indicated AO's non-application of mind while issuing such notice. Thus, the Tribunal held that penalty proceedings initiated by AO were bad in law.

***DCIT vs Sahara India Life Insurances Co Ltd – (2018) 54 CCH 0139 Del Trib- ITA No-3509,6243,6244,1347,6245,6246/Del/2013 dated 31.10.2018***

**4158.** The Tribunal upheld the penalty levied u/s 271D on account of violation of provision of section 269SS for receipt of cash from unsecured creditor (being promoter & director), holding that the assessee-company had failed to prove with reasonable cause for such receipt. It was noted that (i) the assessee company had failed to show reasonable cause that the emergency funds in form of cash deposited by Dr.AMA (promoter & director) were for business exingencies as the cash flow produced by assessee clearly negated such claim and (ii) In the assessment order of one Mr.J which was made pursuant to search, a finding was given that the unaccounted income of Mr.J had been routed through Dr.AMA and deposited into the accounts of assessee which were laundered and then withdrawn by Dr.AMA and returned to Mr.J and thus, unaccounted income in respect of loan transaction were traced as unaccounted income of J.

***Vasan Healthcare P. Ltd vs Addl CIT [2018] 54 CCH 0262 (Del- Trib.)- ITA No.42194-21919/CHNY/2018 dated 26.11.2018***

**4159.** The Tribunal held that provisions of Section 269SS of the Act were not applicable on the loan transaction between husband and wife. It relied on the judgment in case of Tuhinara Begum Hoogly Vs JCIT wherein it was held that the provisions of Section 269SS were not applicable on the loan transaction between husband and wife because there was no debtor-creditor relationship. The transaction between the husband and wife are protected from the legislation as long as they are not for commercial use. Thus, the question of levying of penalty u/s 271D of the Act does not arise.

***NABIL JAVED vs. ITO [TS-701-ITAT-2018(DEL)] ITA No.3797&3798/Del/2018 dated 27.11.2018***

Go to Index

**4160.** The Tribunal allowed Revenue's appeal and upheld the penalty levied u/s 271AAA(1) [being 10% of undisclosed income in case where search proceeding are initiated], holding that the assesse could not get benefit of section 271AAA(2)(ii) which provides that penalty will not levied if the assesse inter alia substantiates the manner in which undisclosed income was derived since the assessee, instead of substantiating manner in which undisclosed income was derived, actually took a contrary stand that the undisclosed income had not accrued. Further, it held that to claim benefit u/s 271AAA(2), admission of undisclosed income by an assessee was required to be made in a statement u/s 132(4), whereas the disclosures were not made u/s 132(4) but instead, by way of letter addressed to DDIT(Inv.) which also did not contain specifics of manner in which such income was derived.

***Dy.CIT vs Nirala Housing Pvt Ltd. [2018] 54 CCH 0419 (Del Trib) - ITA Nos. 3531/Del/2015 & 3135, 3136, 3137, 3155/Del/2015 dated 16.11.2018***

**4161.** The Tribunal held that since gross receipts of assessee (engaged in running of trucks and earned commission on hiring trucks) exceeded Rs 1 crore, provisions of section 44AB(a) were applicable and therefore, consequent failure to get his accounts audited called for penalty u/s 271B. It was noted that the assessee did not declare correct income in the return of income and that the assessee had not only income from plying of the six trucks but was also doing business of hiring trucks from which the assessee also earned business commission income which was the reason for the gross receipts of the assessee exceeding Rs. 1 crore. Accordingly, the Tribunal dismissed assessee's appeal

***Jaswant Singh vs ITO [2018] 54 CCH 0289 (Del -Trib)- ITA No.4152/Del/ 2018 dated 01.11.2018***

**4162.** During search operation it was found that assessee had purchased a software but assessing officer held that the assessee had infact taken bogus bills to inflate their expenditure and consequently disallowed 20% depreciation on cost of software. On CIT(A) confirming the disallowance, the assessing officer started penalty proceedings. The Tribunal noting that as no incriminating material was unearthed during search and no independent enquiry and examination had taken place during assessment proceedings and only post search enquires were made basis of entire penalty proceedings, held that penalty proceedings are independent of assessment proceedings and mere confirmation of addition could not be sole ground to levy penalty. The Assessing Officer was thus directed to delete the penalties and Assessee's appeal was, accordingly, allowed.

***Chintels India Ltd vs. Assistant Commissioner of Income Tax (2017) 49 CCH 0134 DelTrib (ITA Nos. 3791,3792,3793/Del/2016)***

**4163.** The Tribunal deleted the penalty levied u/s 271(1)(c) holding that notice issued by AO u/s 271(1)(c) r.w.s. 274 was bad in law as it did not specify under which limb of section 271(1)(c) the penalty proceedings were initiated i.e. whether it was for concealment of particulars of income or furnishing of inaccurate particulars.

***Iqbal Singh Dahiya vs ITO [2018] 54 CCH 0258 (Del -Trib)-ITA No.4861/Del/2018 dated 20.11.2018***

Go to Index

**4164.** The assessee was a registered society and as per the Societies Act, the auditors were to be appointed by Registrar of Societies. There was delay in appointing the auditor by the Registrar. Accordingly, the assessee filed return of income on the basis of provisional accounts audited by Chartered Accountant but did not file audited accounts. The AO issued notice u/s 271D for levy of penalty for non-filing of audit report. The CIT (A), confirmed the order of AO in levying penalty on the assessee. The Tribunal held that the assessee being Govt. organization and Registered Society, had to abide by rules framed under Societies Act and as per said Act, the auditors had to be appointed by Registrar of Societies. Thus, the alleged default in filing audit report was beyond control of assessee. Since the assessee was prevented by reasonable cause for not getting its accounts audited u/s 44AB within prescribed time, the Tribunal deleted the penalty levied by AO.

***A.P. DAIRY DEVELOPMENT COOPERATIVE FEDERATION LTD. & ANR. vs. DCIT & ANR. (2017) 50 CCH 0120 HydTrib ITA No. 741 to 744/Hyd/2015, 1296 to 1298/Hyd/2015 dated 02.06.2017***

**4165.** Where the AO levied penalty on both disallowance under Section 14A as well as adjustment on account of MAT, the Tribunal held that since the income of the assessee under the normal provisions of the Act was lower than the income as per MAT, no penalty could be levied on the disallowance made under Section 14A. Vis-à-vis the penalty under MAT, it noted that neither the AO nor the CIT(A) had provided the assessee to justify its claim (of reducing capital gains from the book profits for MAT) and therefore set aside the order to the AO to reconsider the issue after providing the assessee an opportunity of being heard.

***INCOME TAX OFFICER vs. NCS INVESTMENTS PVT. LTD. - (2018) 52 CCH 0144 HydTrib - ITA No. 1654/HYD/2014 dated Feb 16, 2018***

**4166.** The Tribunal allowed the assessee's appeal against the CIT(A)'s order confirming the penalty levied u/s 272A(1)(c) on the ground that there was no co-operation from assessee on date of survey and even thereafter, neither did any responsible person appear, nor were books of account produced. It held that the levy of penalty u/s 272A(1) was not automatic and compulsory and the provisions of section 272A(1) and (2) [including clause (c) or (d) of sub-section (1)] were covered by provisions of 273B as per which, where assessee had proved that there was reasonable case for default, penalty was not leviable. It held that the assessee had reasonable cause for non-appearance before AO on certain dates of hearing and it could not be considered as case of non-compliance. Further, it was noted that as per section 274(1), no order imposing penalty could be passed by any Income Tax authority unless person on whom penalty was proposed to be imposed, was given an opportunity of being heard in matter by such authority.

***P. MURALI MOHANA RAO vs. ADDITIONAL COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0112 (Hyd Trib) - ITA No. 1173/Hyd/2017 dated Jun 6, 2018***

**4167.** In respect of loan taken from various NBFCs, the assessee did not withhold TDS while making payment of interest on such loans. The AO observed that even though the assessee was to repay to the NBFCs in EMIs, constituting of principal amount and interest component, the exact amount was known and hence the AO treated the assessee as a defaulter u/s 201(1) and 201(1A) and simultaneously initiated penalty proceedings under Section 271C of the Act. Though the assessee furnished copies of Form 26A from the NBFCs, to show that the interest

income was offered to tax in their returns of income, the AO observed that proceedings under Section 201 are different from the proceedings under Section 271C of the Act. The Tribunal deleted the penalty noting that the assessee's failure to withhold TDS was based on a bonafide belief that since the NBFCs had collected post-dated cheque from it, comprising of the principal and interest component, which could be encashed directly from its bank account, there could have been no occasion to deduct TDS. Further, even the auditor, under the above bonafide belief, had certified in his tax audit report that wherever the tax ought to have been deducted at source, the assessee had complied with the statutory obligations.

***SIBY MINING AND INFRASTRUCTURE PVT. LTD. vs. JCIT – [2018] 53 CCH 0140 (Hyderabad ITAT) – ITA. Nos. 28 to 34/Hyd/2018 (S.A. Nos. 13 to 19 / Hyd / 2018) dated May 11, 2018***

**4168.** Pursuant to the issue of notice under Section 148 of the Act, the assessee filed a return of income admitting additional income corresponding to certain cash deposits / withdrawals which were not reflected in the balance sheet of the assessee but were present in its bank account, which was accepted by the AO. Subsequently, the AO proceeded to levy penalty under Section 271(1)(c) contending that the assessee had concealed its income and furnished inaccurate particulars. The Tribunal upheld levy of penalty under Section 271(1)(c) observing that but for the issue of notice under Section 148 of the Act, the assessee would not have disclosed the additional income and therefore rejected the contention of the assessee that no penalty could be levied as the AO had not made any addition to returned income. Further, it dismissed the contention of the assessee that the notice under Section 274 of the Act was bad in law as it didn't strike out the appropriate portion, observing that in the instant case, the assessee had concealed particulars of income as well as furnished inaccurate particulars.

***Jyothirmoy Yamsani – TS-568-ITAT-2017 (Hyd) - ITA No. 1519/Hyd/2016 dated 28.11.2017***

**4169.** The AO had imposed penalty u/s. 271(1)(c) on disallowance of deduction claimed u/s 80IB(10) by assessee and the same was upheld by the CIT(A). The Tribunal noted that the assessee was denied deduction u/s 80IB(10) because commercial constructed area sold by assessee exceeded statutory limit provided under the provisions of Section 80IB(10). Thus, the Tribunal held that may-be technical formality of obtaining completion certificate was not satisfied, but, it would-not mean that assessee had claimed incorrect or false deduction and concluded that mere non-satisfaction of condition of deductions would not mean that assessee had furnished incorrect return, which would make it liable for penalty, thus concluded that lower authorities erred in levying penalty u/s. 271(1)(c) for disallowance of deduction u/s. 80IB(10) merely on technical ground.

***Fortune Builders vs ACIT- (2018) 54 CCH 0098 Indore Trib- ITA No 82-84/Ind/2017 dated 18.10.2018***

**4170.** The Tribunal held that in intimation prepared u/s 200A up to 31st May 2015, late filing fee u/s 234E could not be charged while processing TDS return/statement because enabling clause (c) of s. 200A(1) have been inserted w.e.f. 01.06.2015.

***MADHYA PRADESH POWER TRANSMISSION LTD. & ORS. vs. Dy. CIT (CENTRALIZED PROCESSING CELL-TDS) & ORS. ((2018) 54 CCH 0504 IndoreTrib ITA Nos. 740 & 741/Ind/2014 dated 20.12.2018***

Go to Index

**4171.** The Tribunal relying on the judgement in case of Narad Investment & Trading P Ltd held that in accordance with CBDT circular, where original assessment order has been set aside by the Tribunal and matter was restored to AO for fresh assessment, the interest if any on delayed payment in response to notice of demand could be levied only from date of default of demand notice in pursuance to fresh assessment order. Thus, the Tribunal held that CIT(A)'s order holding that interest u/s 220(2) had to be levied from date of default from original assessment order could not be sustained.
***Premium Capital Market & Invstment Ltd vs ACIT- (2018) 54 CCH 0039 Indore Trib- ITA No 356/2012 & 390/2012 dated 25.09.2018***

**4172.** The AO made additions to the income of the assessee on protective basis pursuant to search and seizure operations. The Tribunal confirmed the same as substantive additions. Thereafter, the AO initiated penalty proceedings without making specific satisfaction as to whether the assessee was guilty of concealing the particulars of income or furnishing inaccurate particulars of income. The Tribunal quashed the penalty proceedings and held that levy of penalty under Section 271(1)(c) was not sustainable as the AO was not sure about the specific charge on the assessee for which penalty was levied.
***GAURAV SHARMA vs. ACIT – [2018] 53 CCH 0041 (Indore ITAT) – ITA Nos. 136 to 141/Ind/2017 dated May 16, 2018***

**4173.** The Tribunal held that penalty levied u/s 271(1)(c) is unsustainable where no specific charge has been leveled against the assessee in the notice and the AO has merely mentioned both the limbs i.e. concealed the particulars of income or furnished inaccurate particulars of income.
***BANSIDHAR SOMANI vs. DEPUTY COMMISSIONER OF INCOME TAX (2018) 54 CCH 0374 IndoreTrib ITA No. 619 to 624/Ind/2017 dated 17.12.2018***

**4174.** Penalty was imposed on assessee bank for not having deducted TDS under section 192 knowing fully that Leave Fare Concession (LFC) is applicable for travel in India only and no foreign travel is allowable. However, it was found that assessee bank had undertaken reasonable steps in terms of verifying assessee's claim towards their LFC claims and was aware of employees travelling to foreign countries as part of their travel itinerary but at same time, there was an error of judgment on part of assessee bank in understanding and applying provisions of section 10(5) because assessee bank was under bona fide belief that there was no bar on travel to a foreign destination during course of travel to a place in India and there was nothing explicit provided in section 10(5) to prohibit such travel in order to deny exemption. Therefore, there being reasonable cause in terms of section 273B for not deducting tax by assessee bank, penalty so levied under section 271C was to be deleted.
***State Bank of India v. Asst. CIT, (TDS) Jaipur- [2019] 101 taxmann.com 61 (Jaipur - Trib.)- ITA Nos. 1135 (JP.) of 2018-December 31, 2018***

**4175.** The Tribunal held that penalty for delay in furnishing tax audit report should not be imposed if there is no mala fide reason for the delay. Dispute with auditor is a reasonable cause u/s 273B for the delay in furnishing the tax audit report.
***Gemorium vs.ITO (Jaipur Trib)- ITA No. 514/JP/2014***

Go to Index

**4176.** Pursuant to search proceedings conducted u/s 132 in the case of the assesse on 30/10/2014, the assesse disclosed and surrendered certain income during the said proceedings as well as the return of income field on 30/09/2015. The AO levied penalty u/s 271AAB with reference to the surrendered income and the same was upheld by the CIT(A). The Tribunal deleted the said penalty relying on the decision in the case of Shri Ravi Mathur [ITA No. 969/JP/2017] wherein it was held that when the assessee was not required to maintain the books of account as per section 44AA and the alleged income was found recorded in the diary which was nothing but the other record maintained in the normal course as per clause (c) to Explanation to section 271AAB, the same would not fall in the definition of undisclosed income and once the said income was found as recorded in the other documents maintained in the normal course, then it could not be presumed that the assessee would not have disclosed the same in the return of income to be filed after about one year from the date of search.
***ANUJ MATHUR vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 53 CCH 0276 JaipurTrib - ITA No. 971/JP/2017 dated June 13, 2018***

**4177.** Where the AO levied penalty under Section 271(1)(c) on the ground that the depreciation claimed by the assessee was not allowable absent physical verification of assets and the Tribunal, on the merits of the case allowed the assessee's claim of depreciation stating that once the assets formed part of a block of assets physical verification would not be required, the Tribunal upheld the order of the CIT(A) deleting penalty proceedings on the ground that the disallowance pertaining to which penalty was initiated had been deleted by the Tribunal.
***ACIT v Ajmet Vidyut Vitaran Nigam Ltd – (2018) 52 CCH 0085 Jaipur Trib – ITA No 933 to 935 / Jp / 2017***

**4178.** The Tribunal remanded the issue of levy of penalty u/s 234E on account of delay in filing TDS return back to the CIT(A) to decide the issue on merit, noting that the CIT(A) had dismissed the assessee's appeal on the ground that there was inordinate delay in filing of appeal without any sufficient cause. It also rejected Revenue's argument that the appeal was not maintainable even otherwise since the order levying penalty u/s 234E became an appealable order only after 01/06/2015 and the notice of demand was sent to the assessee on 30/05/2014 on email. The Tribunal noted that the Revenue could not produce any evidence to establish the above fact and the relevant date of notice of demand was 28/11/2016.
***SUBHASH CHAND NAWAL (HUF) vs. INCOME TAX OFFICER - (2018) 52 CCH 0478 JaipurTrib - ITA No. 1037/JP/2017 dated Apr 10, 2018***

**4179.** The Tribunal cancelled the penalty levied u/s 271(1)(c) by the AO on account of (i) treating the amount offered to tax as capital gains to be business income and (ii) disallowance of claim for deduction u/s 80C regarding the tuition fee and LIC premium. Firstly, it was noted that the charge, viz. for furnishing inaccurate particulars or concealment of income, was not certain from the show cause notice and the levy of penalty in the order u/s 271(1)(c) was for both the limbs which was inconsistent. With respect to capital gains, the Tribunal noted that it was only a case of different view and with respect to claim of deduction u/s 80C, it noted that same was disallowed for want of payment receipt. Accordingly, it held that it could only be considered as

furnishing the inaccurate particulars of income but not as concealment of income and allowed assessee's appeal.
***Kailash Chand JAT vs. ITO [2018] 53 CCH 0590 Jaipur Trib- ITA No.229/JP/2018 dated August 09 2018***

**4180.** The Tribunal held that where the satisfaction for initiation of penalty proceedings under section 271(1)(c) was not discernable from the assessment order and the show-cause notice under section 274 was also defective, penalty levied under section 271(1)(c) was liable to be quashed.
***Uma Shankar Agarwal v DCIT – (2016) 46 CCH 0057 (Kol)***

**4181.** The Tribunal held that where the assessee without any malafide intent, failed to furnish Annual Information Return under section 285BA, but, filed it subsequently on receipt of notice, penalty under section 271FA could not be levied since the breach was only technical and had flown from a bona fide ignorance of the assessee.
***Durgapur Steel Peoples Cooperative Bank Limited vs. Director of Income Tax (2016) 48 CCH 0072 (Kolkata Trib)-ITA Nos.1322 & 1323/Kol/2013***

**4182.** The Tribunal held that where assessee, in course of search, made a statement under section 132(4) in which he admitted an undisclosed income and specified manner in which such income was earned and had also paid tax along with interest, assessee would be liable to pay penalty at rate of 10 per cent in terms of clause (a) of section 271AAB(1) but not under clause (c) at 30 percent of section 271AAB.
***Asst. CIT, Central Circle- 2 (3), Kolkata v. Vishal Agarwal- [2018] 100 taxmann.com 283 (Kolkata –Trib.)-ITA Nos. 1536, 1537 & 1540 (KOL.) of 2017-C.O. Nos. 106 & 107 (KOL) of 2017-dated November 16, 2018***

**4183.** The Tribunal deleted the penalty levied u/s 271(1)(c) holding that the notice issued u/s 274 r.w.s 271 was defective as it did not specify the charge of offence committed by the assessee viz whether it had concealed the particulars of income or had furnished inaccurate particulars of income and imposition of penalty on basis of defective notice was not sustainable in law.
***ZENITH LIFE STYLE PVT. LIMITED. vs. CIT(A) [2018] 53 CCH 0613 Kol Trib- ITA No.1928/Kol/2017 dated August 10 2018***

**4184.** The Tribunal held that where the show-cause notice under section 274 of the Act was defective as it did not spell out grounds on which penalty was sought to be imposed, no penalty could be levied under section 271(1)(c) of the Act.
***Flow & Fluid Control Centre v ITO – (2016) 48 CCH 0231 (Kol Trib) – ITA No 1051 / Kol / 2016***

**4185.** The Tribunal deleted the penalty levied u/s 271(1)(c) holding that the notice issued u/s 271 r.w.s. 274 itself was defective since it did not specify the charge of offence committed by the assessee viz. whether it had concealed the particulars of income or had furnished inaccurate particulars of income.
***New Life Sonoscan Centre vs ITO [2018] 54 CCH 0416 (Kol -Trib)- ITA No.2560/Kol/ 2017 dated 02.11.2018***

Go to Index

**4186.** The Tribunal deleted the penalty levied u/s 271(1)(c) for capital gains not disclosed by assessee on switch over of investment from one Mutual Fund (MF) scheme to another, holding that assessee was guided by article in Economic Times and thus, was under bona fide belief that such switchover would not qualify as transfer u/s 2(47) to attract capital gains as investment remains with same MF. It also accepted assessee's contention that it was a mere interpretation of a debatable subject and not concealment of income. Accordingly, the Tribunal allowed assessee's appeal.
***Kamalesh Basu v CIT [TS-637-ITAT-2018(Kol)] - ITA No.529/Kol/2014 dated 10.10.2018***

**4187.** The Tribunal held that if notice issued u/s 274 does not specify charge against assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income, then imposition of penalty cannot be sustained.
***Jayant Saha vs DCIT- (2018) 54 CCH 0022 Kol Trib- ITA No 106/2018 dated 19.09.2018***

**4188.** Where assessee had admitted an income out of speculative business from sale of commodities pursuant to search conducted in respect of a group in which assessee was one of the key persons and the penalty was levied u/s 271AAB on ground that the said income admitted by assessee found during search was not reflected in regular books of account, rejecting assessee's contention that since he was not engaged in business or profession, he was not required to maintain books of account as per section 44AA or section 44AA(2), the Tribunal held that since income under question was infact entered in 'other documents' maintained by assessee in normal course, which were retrieved during search, the amount offered by assessee did not fall in ken of 'undisclosed income' defined in section 271AAB and thus no penalty could be levied.
***DCIT v Manish Agarwala – (2018) 92 taxmann.com 81 (Kolkata Trib) – ITA No. 1479 (Kol.) of 2015 dated 09.02.2018***

**4189.** The Tribunal quashed the penalty levied u/s 271D & 271E (for violating section 269SS / 269T conditions by accepting / repaying loan in cash) on individual-assessee on account of cash loan accepted / repaid from/to sister-in-law and nephew for more than Rs.20,000, relying on the co-ordinate bench ruling in the case of Sri Mansur Ali Laskar in ITA No.1094/Kol/2011 wherein the Tribunal had considered Niece, Uncle, Aunty, Wife of brother, Wife's Sister and Cousin sister as family members and noting that the said decision had also been approved by the High court in ITAT No.111 of 2012 GA No.1498 of 2012. The Tribunal also held that the transactions between these family members were neither loans nor deposit and purely a family system and purely a family requirement to help each other in the needy hours.
***Jagmohan Sharma v JCIT [TS-22-ITAT-2018(Kol)] – ITA No. 552 & 553/Kol/2015 dated 10.01.2018***

**4190.** The Tribunal deleted penalty levied u/s 271E (for violating conditions u/s 269T by repaying loan other than through banking channels) for conversion of loan into equity by assessee-company. It held that squaring-off loan by way of allotment of equity shares was a usual business practice and a part of routine corporate debt restructuring exercise and hence could not be held as violation of provisions of Sec. 269T. It dismissed Revenue's contention that the assessee

utilized the amounts raised through share capital for making alternate investment and instead could have utilised the funds to repay the loan & avoid Sec. 269T violation and held that if the Revenue's stand was to be accepted it would only tantamount to stepping into the shoes of the businessman which was not warranted, more so in the penalty proceedings u/s 271E of the Act.
***Arkit Vincom Pvt. Ltd. [TS-105-ITAT-2018(Kol)] - I.T.A No. 2397/Kol/2016 dated 07.03.2018***

**4191.** Where assessee had disclosed an income out of speculative business from sale of commodities pursuant to search conducted in respect of the group to which it belonged and the penalty was levied u/s 271AAB on ground that the said income had been found during search u/s 132 which was not reflected in regular books of account, rejecting assessee's contention that since it was for first time that it was doing unsystematic speculative activity which earned income brought to tax under head 'Income from other sources', it was not required to maintain books of account as stipulated in section 44AA or section 44AA(2)(ii), the Tribunal held that since the speculative transactions had been found to be recorded in 'other documents' which were retrieved from assessee's accountant's drawer and it was based on that the said income offered by assessee under the return of income filed was accepted by the AO as income under head 'Income from other sources', the amount offered by assessee could not be termed as 'undisclosed income' as defined in section 271AAB and thus no penalty could be levied.
***DCIT v Subhas Chandra Agarwala & Sons (HUF) – (2018) 91 taxmann.com 442 (Kolkata Trib) – ITA No. 1470 (Kol.) of 2015 dated 19.02.2018***

**4192.** The Tribunal deleted the penalty levied u/s 271(1)(c) holding that the show cause notice issued u/s 274 by the AO was defective since it did not specify charge against the assessee as to whether it was for concealing particulars of income or furnishing inaccurate particulars of income, by striking out the inappropriate words.
***PEDEN DOMA BHUTIA vs. INCOME TAX OFFICER - (2018) 52 CCH 0458 KolTrib - ITA No. 1659/Kol/2016 dated April 4, 2018***

**4193.** The Tribunal, relying on the decision of the Court in CIT vs Manjunatha Cotton and Ginning factory (2013) 359 ITR 565 held that where the AO sought to levy penalty under Section 271(1)(c) of the Act but did not specify the charge against the assessee in its notice under Section 274 of the Act i.e. whether for concealment of particulars of income or for furnishing of inaccurate particulars, no penalty could be levied. More so, it noted that the Tribunal in quantum proceedings deleted the addition based on which the penalty was levied and accordingly held that the levy of penalty was invalid.
***TRADELINK SECURITIES LTD. vs. INCOME TAX OFFICER - (2018) 52 CCH 0176 KolTrib - ITA Nos. 914&915/Kol/2015 dated Mar 14, 2018***

**4194.** The Tribunal allowed the assessee's appeal against levy of penalty u/s 271FA for delay in furnishing annual information return u/s 285BA and accepted the assessee's "bonafide ignorance" of relevant provisions as sufficient cause for non-compliance. It observed that tax laws are complex and complicated and that it was not possible for even a person specialising in this field, to claim that he knows what exactly the law is on a particular given day or period without making references to the history of the enactments. The Tribunal further noted that the penalty order did not speak as to how assessee gained by contravening the provisions of

Section 285BA or how assessee's contravention resulted in Revenue's loss, therefore no malafides could be attributed to the assessee so as to invoke the penalty proceedings under section 271FA.

***Malda District Central Co-op Bank Ltd. [TS-425-ITAT-2016(Kol)] I.T.A Nos. 956 & 957/Kol/2013***

**4195.** The Tribunal cancelled the penalty levied u/s 271(1)(c) where the assessee had omitted to include capital gains arising on transfer of property while filing return of income and the assessee had paid tax on the same on the date on which the assessment order was passed u/s 143(3) r.w.s. 147, holding that the judicial pronouncements were absolutely clear that if the return of income had certain mistake, which was bona-fide and there was also no loss to the Revenue (as in the present case since the assessee paid the taxes on the date of assessment order itself), then in the absence of any material on record, it could not be concluded that the assessee had deliberately concealed the income or had furnished inaccurate particulars of income. Noting that there was nothing on record to show that there was any malafide intention on the part of the assessee to conceal the income or furnish inaccurate particulars of income, it deleted the penalty.

***Pankaj Kumar Gupta v ITO – ITA No.486/LKW/2016 dated 16.01.2018***

**4196.** Where the assessee claimed deduction of provision for leave encashment which was allowed during original assessment proceedings but subsequently disallowed during reassessment proceedings, the Tribunal upheld the order of the CIT(A) and held that no penalty could be levied under Section 271(1)(c) of the Act as the assessee had not furnished any inaccurate particulars. It held that mere making of a claim which was not sustainable in law would not amount to furnishing of inaccurate particulars.

***DEPUTY COMMISSIONER OF INCOME TAX vs. RELIANCE PETROMARKETING LTD. - (2018) 52 CCH 0252 MumTrib ITA No. 5950/Mum/2016 – dated Mar 21, 2018***

**4197.** The Tribunal held that where assessee's salary was understated in her return due to mistake of online tax return filing portal (TaxSpanner.com) and assessee could not verify contents of return due to her pregnancy and immense pressure in office, concealment penalty was not justified.

***Mrs. Richa Dubey v ITO - TS-228-ITAT-2016(MUM)***

**4198.** The Tribunal held that confirmation of demand raised under section 201, cannot be sole criteria for imposing penalty under section 271C since proceedings under section 271C and 201 are two separate proceedings. It further held that since the assessee being advised by a professional well acquainted with the provisions of Act had not deducted tax at source, no malafide intention could be imputed to assessee for failure to deduct tax and, accordingly, penalty imposed under section 271C was to be deleted.

***Smt. Aishwarya Rai Bachchan v ACIT - TS-206-ITAT-2016(MUM)***

**4199.** The Tribunal held that return filed in response to notice under section 153A was to be considered as return furnished under section 139(1) and therefore, if any undisclosed income as admitted by assessee in statement recorded under section 132(4) during the course of search operation,

was offered in said return and due taxes were paid which were also accepted by assessing officer, then no penalty could be imposed under section 271(1)(c).
***Ramesh D Shah vs. ACIT (2016) 48 CCH 0118 (Mum Trib) (ITA No. 5719/MUM/2012)***

**4200.** Where the AO issued notice under section 274 for concealment of particulars of income but levied penalty for furnishing inaccurate particulars of income, the Tribunal held that the AO did not apply his mind when he issued notice to the assessee and therefore deleted the penalty wrongly levied.
***Dr. Sarita Milind Davare vs. ACIT (ITAT Mumbai) (I.T.A. No. 2187/Mum/2014)***

**4201.** The Tribunal quashed penalty proceedings initiated under section 271(1)(c) as the penalty show cause notice issued under section 274 of the Act failed to specify the default committed by the assessee as the AO did not delete the inappropriate words / parts as a result of which it was not clear as to whether the default committed by the assessee was for concealing particulars of income or for furnishing inaccurate particulars of income.
***Sanghavi Savla Commodity Brokers Pvt Ltd v ACIT – TS-25-ITAT-2015 (Mum)***

**4202.** The Tribunal held that once substantial questions of law were admitted in the High Court, the same would indicate that the issue was debatable / arguable and therefore penalty under section 271(1)(c) was not leviable.
***De Beers UK Ltd v ACIT(IT) – (2016) 46 CCH 0050 (Mum)***

**4203.** The Tribunal held that where the assessments had been completed under section 143(3) r.w.s 153A of the Act, the initial non-compliance with the notice issued under section 142(1) of the Act could be understood to have been made-up subsequently and therefore, levy of penalty under section 271(1)(b) of the Act was not justified.
***Magnum Infraprojects Pvt. Ltd. vs. ACIT (2016) 48 CCH 0137 (Mum Trib) (ITA No. 5642/MUM/2014, 5648/MUM/2014)***

**4204.** The Tribunal upheld levy of penalty under section 271(1)(c) on assessee, a Mauritian Bank for furnishing inaccurate particulars of income by claiming capital expenditure (towards acquisition of fixed asset) as a deduction in addition to depreciation claim on the same and rejected assessee's contention that in view of Article 7(3) of Indo-Mauritius DTAA, all expenses (whether revenue or capital) incurred for the purpose of business of its branches in Mumbai (i.e. PE in India) were deductible. It also held that assessee's claim fell under the category of fanciful claims under the garb of interpretation and mere disclosure in notes to return of income could not be a ground for deletion of penalty.
***State Bank of Mauritius [TS-556-ITAT-2016(Mum)] (I.T.A./3139/Mum/2008)***

**4205.** The Tribunal held that penalty levied under section 272A(2)(k) could not be sustained where income tax deducted at source was deposited in time and only filing of TDS return was delayed in initial years of switch-over from manual system in a e-filing of quarterly TDS returns due to several technical glitches in working of revenue's server.
***Board of Control for Cricket in India v. Asst. CIT, (TDS) - [2018] 100 taxmann.com 2 (Mumbai Trib.) - ITA No. 1999 (MUM.) of 2017 dated October 5, 2018***

Go to Index

**4206.** Where the AO disallowed interest expenditure u/s 36(1)(iii) on account of assessee not carrying on business and without prejudice also made a disallowance u/s.14A in view of assessee investing its borrowed funds in shares which did not yield any dividend income, the Tribunal deleted penalty levied u/s 271(1)(c) by the AO noting that assessee had merely discontinued its transport business and the AO itself had observed that it was still making investments. The Tribunal hed that thus the very premise that the assessee was not carrying on 'any' business had failed and by no stretch of imagination is could be said that assessee's explanation was spurious, vexatious, mere bluster or frivolous, as claimed by the AO. It relied on the Hon'ble Apex Court in the case of Reliance Petroproducts (P.) Ltd. wherein it was held that disallowance of a claim made by the assessee or a wrong claim by the assessee could not by itself lead to levy of penalty u/s 271(1)(c).

***ROBUST TRANSPORATION PRIVATE LIMITED vs.Dy.CIT [2018] 53 CCH 0469 (Mum) (Trib)- ITA No.3195/Mum/2018 dated August 23 2018***

**4207.** The Tribunal deleted the penalty levied u/s 271(1)(c) by the AO on account of disallowance made for interest on loan liability, depreciation and repairs and maintainences noting that (i) the particulars with respect to the loan liability for which assessee had claimed deduction of interest expenditure were on record and hence that it was not a case of concealment of particulars and (ii) with respect to other additions (being repairs and maintainence and depreciation), that assessee had merely made a claim for which was not sustainable in law and could not amount to furnishing of inaccurate particulars.

***MSEB Holding vs. Asst CIT [2018] 53 CCH 0425 MumTrib- ITA No.852 and 853/M/2018 dated August 03 2018***

**4208.** The Tribunal deleted the penalty levied u/s 271(1)(c) on account of disallowance of deduction of administrative expenses against the interest & dividend income received by the assessee (a shipping company). It was noted that though in quantum appeal the Tribunal had upheld the disallowance on the ground that the said incomes could not be classified as income from an activity incidental to the shipping business so as to adjust administrative expenses against them, the assessee had only made a legal claim under a bonafide belief and this took assessee out of clutches of penalty provisions as contained in section 271(1)(c). Further, noting that the High Court had admitted substantial question of law arising from the Tribunal's order in quantum appeal, the Tribunal held that this was also a strong indicative of the fact that the issues under consideration were debatable in nature.

***The Shipping Corporation of India Ltd. vs Dy.CIT [2018] 54 CCH 0286 (Mum -Trib I.T.A. No.3870 & 3871/Mum/2016 dated 02.11.2018***

**4209.** The Tribunal held that when penalty was levied on wrong claim of set off of earlier year's long term capital gains or short term capital gains, which was a genuine claim but claimed under wrong understanding that assessee had to claim these losses instead of the father of the assessee in whose hands assessee's income used to be clubbed prior to earlier assessment year 2003-04, penalty levied was not sustainable.

***Ambika Chauhan v ITO – (2016) 47 CCH 0241 (Mum – Trib)***

Go to Index

**4210.** The Tribunal deleted the penalty as levied by the AO u/s 271(1)(c) and confirmed by CIT(A) with respect to the claim of the assessee for treating income from sale of fixed assets as well income by way of profit from sale of other fixed assets to be income from core shipping activities albeit the said claim stood rejected by all the authorities concurrently including ITAT in assessee's own case for impugned AY 2006-07. It observed that in various decisions it was held that income arising from sale of assets should be treated to be income from core shipping activities. Thus, the issue being a debatable one involving interpretation of legal provisions of a newly inserted special scheme of taxation of shipping companies and the explanations offered by the assessee to that effect could not be termed as not bonafide albeit rejected even by ITAT in quantum. Accordingly, it allowed the assessee's appeal.

***The Shipping Corporation of India Ltd. vs Dy.CIT [2018] 54 CCH 0286 (Mum -Trib I.T.A. No.3870 & 3871/Mum/2016 dated 02.11.2018***

**4211.** The AO rejected assessee's claim of deduction u/s 36(1)(vii) opining that since the assessee-bank was engaged in re-financing of long-term financing loans given by other financial institutions for purchase of residential houses in India and not directly engaged in providing such finance as required by the said section. He levied penalty u/s 271(1)(c) on account of such disallowance which was deleted by the Tribunal. The Court upheld the Tribunal's order deleting the said penalty, noting that the conduct of assessee bank was bonafide and that the assessee had taken due care and caution to make a specific disclosure of the said deduction in its return of income and thus, it could not be regarded as guilty of concealment of income or furnishing inaccurate particulars of income.

***Pr.CIT vs National and Housing Bank [2018] 100 taxmann.com 401 (Mum Trib)- IT APPEAL NO. 1892 and 1893 of 2017 dated August 21 2018***

**4212.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the penalty levied u/s 271D and 271E for accepting loan / deposit from various sister concern through journal entries thereby alleging violation of provisions of section 269SS / 269T. It relied on the High Court decision in the case of assessee's group company i.e. CIT vs. Ajinath Hitech Builders Private and Others [ITA No.171,172,202, 203, 218 and 219 of 2015 (Bom)] wherein it was held that since the transaction by way of journal entries were undisputedly done to raise funds from sister concerns, to adjust or transfer balances to consolidate debts, to correct clerical errors etc, in absence of any adverse finding by authorities that journal entries were made with a view to achieve purposes outside normal business operations or there was any involvement of money, there was a reasonable cause for not complying with section 269SS.

***DCIT v LODHA CONSTRUCTION (DOMBIVALI) & Othrs (2018) 53 CCH 0405 MumTrib - ITA No. 110, 111, 135, 139-142/Mum/2017, 6602-6606, 6612/Mum/2016, (C.O. No.157, 154/Mum/2018) dated July 30, 2018***

**4213.** In a case where during the course of assessment proceedings, the AO had recorded his satisfaction that the assessee had furnished inaccurate particulars of its income, but ultimately he levied penalty u/s 271(1)(c) on both the charges viz. furnishing inaccurate particulars of income and concealing the particulars thereof, the Tribunal deleted the said penalty levied, holding that the AO could not levy penalty on both the charges and the AO must be sure about the specific charge for which assessee is in default. It relied on the decision in the case of CIT

v Samson Perinchery (2017) 392 ITR 4 (Bom) wherein it was held that the order imposing penalty had to be made only on the ground of which the penalty proceedings had been initiated, and it cannot be on a fresh ground of which the assessee had no notice.
***Makcon v ITO – ITA No. 1940/Mum./2016 dated 28.02.2018***

**4214.** Where AO passed penalty order u/s 221(1) on account of assessee's failure to pay self-assessment tax within stipulated period, in view of fact that amended section 140A(3) w.e.f. 01.04.1989 does not envisage any penalty for non-payment of self-assessment tax, the Tribunal deleted the penalty.
***Heddle Knowledge (P.) Ltd. v ITO – (2018) 90 taxmann.com 376 (Mum) – ITA No. 7509 (Mum.) of 2011 dated 19.01.2018***

**4215.** The Tribunal dismissed Revenue's appeal against the CIT(A)'s order deleting the penalty levied by the AO u/s 271(1)(c) where the penalty notice was issued without specifying charge for which penalty was initiated and as there was no striking off of limb in notice. It relied on the decision in the case of Meherjee Cassinath Holdings v. ACIT [ITA.No. 2555/Mum/2012] wherein it was held that the action of AO in non-striking off relevant clause in notice showed that charge being made against assessee was not firm and therefore, the proceedings suffered from non-compliance with principles of natural justice in as much as AO himself was not sure of the charge and the assessee was not made aware as to which of two limbs of section u/s 271(1)(c) he had to respond. Further, following the decision in the case of Orbit Enterprises v. ITO [60 ITR (T) 252] wherein similar view was taken, it held that the notice issued by the AO u/s. 274 r.w.s. 271(1)(c) was on account of non-application of mind and on this account itself, penalty imposed was liable to be deleted.
***DCIT & ANR. v PENNZOIL QUAKER STATE INDIA LTD. & ANR – (2018) 52 CCH 42 (Mum) – ITA Nos. 7386/MUM/2014, 7503/MUM/2014 dated 12.01.2018***

**4216.** The Tribunal deleted the penalty levied u/s 271(1)(c) for concealing particulars of income and furnishing of inaccurate particulars of income on account of addition made to the assessee's income in respect of bogus/unproved purchases admitted by the Director of asssessee-company during search operation on group companies, keeping in view peculiar facts of the case, smallness of amount vis-a-vis returned loss and bonafide explanation of assessee. Noting that the sole reliance of the Revenue was based on an incriminating statement recorded of third person who was never confronted to assessee nor said statement stood test of cross examination by assessee and there was no voluntary disclosure made by assessee company w.r.t. bogus purchases during course of search u/s 132(1), while the same was made by another Group concern, it held that the fact that the assessee had not chosen to further litigate the matter of quantum additions did not mean that penalty u/s 271(1)(c) was to be levied automatically and the penalty proceedings being altogether different proceedings, the Revenue had to show by positive material that the assessee furnished inaccurate particulars of income or concealed particulars of income.
***BALAJI MOTION PICTURES LTD. v DCIT – (2018) 61 ITR (Trib) 0421 (Mum) – ITA No. 7643/Mum/2016 dated 03.01.2018***

Go to Index

**4217.** Pursuant to notice under Section 148 the assessee filed return of income withdrawing its erroneous claim of setting off of long term capital gain from long term capital loss in respect of sale of equity share of D company to NSE which was 100% holding company of assessee company as a result of which the entire long term capital loss claimed by assessee in its original return could no longer be carried forward. The AO accordingly levied penalty under Section 271(1)(c) which was confirmed by the CIT(A). Noting that the withdrawal of claim of set off of long term capital gains were germane to the reassessment proceedings, and that the assessee on coming to know the error had suo-moto disallowed/withdrawn same without being confronted by Revenue, the Tribunal held that the assessee had demonstrated its bona-fide. Accordingly, the Tribunal deleted the penalty levied under Section 271(1)(c). It held that every legal claim which was filed and which was not allowed by Revenue did not automatically lead to levy of penalty u/s 271(1)(c) and further held that since the assessee voluntarily withdrew claim in return of income, no penalty was exigible u/s 271(1)(c).

***NSE IT LTD. vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0235 MumTrib - ITA No. 5935/Mum/2014 dated Mar 28, 2018***

**4218.** The assessee had claimed deduction under Section 35(1) of the Act on account of amount given to Indian Medical Scientific Research Foundation (IMSRF). Pursuant to the investigation conducted by the CBI wherein the CBI found the IMSRF to be bogus, the assessee informed the AO of the development and applied for withdrawal of claim of the deduction. However, the AO completed the assessment without disallowing the claim. Subsequently, the AO reopened the assessment and made disallowance of the said amount and sought to levy penalty under Section 271(1)(c). The Court noted that at the time of making the payment, the assessee had no idea about IMSRF being bogus and upon being informed, withdrew its claim before the AO and accordingly upheld the order of the CIT(A) and Tribunal deleting penalty as there was complete disclosure on the part of the assessee.

***CIT v Man Industries Ltd – (2018) 101 CCH 188 Mum Trib – ITA No 898 of 2015 dated Feb 7, 2018***

**4219.** Where the assessee claimed deduction under Section 80IC of the Act on the manufacture of pharmaceutical products carried out at its Baddi Unit but the AO disallowed the same on the ground that the assessee had not even started production and levied penalty under Section 271(1)(c) for furnishing inaccurate particulars, the Tribunal noting assessee's contention that it was utilizing capacity of its other unit for getting its pharma products manufactured under its supervision and control on job charge basis wherein raw materials and packing material was also supplied by assessee, held that merely because the assessee made a claim of deduction which was not accepted by the AO, no penalty could be levied as the AO had not brought anything on record to prove that the claim was ex-facie wrong or made with the intent to defraud the Revenue. Accordingly, it upheld the order of the CIT(A) deleting penalty

***ASSISTANT COMMISSIONER OF INCOME TAX vs. ANKUR DRUGS & PHARMA LTD. - (2018) 52 CCH 0124 MumTrib - ITA No. 7529/Mum/2011 dated Feb 27, 2018***

**4220.** The Tribunal held that penalty proceedings initiated u/s.271(1)(c) was void ab initio and liable to be quashed, if AO issued vague notice u/s. 274 r.w.s 271(1)(c) without striking off irrelevant portion of notice and also if AO had not made specific charge whether penalty proceeding was

initiated for concealment of particulars of income or furnishing of inaccurate particulars of income. Accordingly, it held that the penalty proceeding initiated by AO were bad in law and liable to be quashed.

***TATA COMMUNICATIONS TRANSFORMATION SERVICES LIMITED vs. DEPUTY COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0114 MumTrib - ITA No. 3108/M/2016 dated Feb 21, 2018***

**4221.** The Tribunal upheld the CIT(A)'s order deleting the penalty levied by the AO u/s 271(1)(c) on account of disallowance made u/s 40(a)(ia) for non-deduction of TDS and non-reconciliation of AIR mismatch, holding that that mere disallowance of certain expenses during assessment proceedings does not attract penalty provisions u/s 271(1)(c) if such disallowance is made for technical or venial breach of TDS provisions. It relied on the decision in the case of CIT vs L.G. Choudhari (2013) 33 taxmann.com 156 (Guj) wherein it was held that where the expenditure is disallowed due to failure to deduct TDS or late deposit of TDS, no penalty is leviable u/s 271(1)(c) on the ground that disallowance shall, at the most, be a technical default, there being nothing to indicate any concealment of income. It also relied on the decision in the case of Satyajeet Movies Pvt Ltd vs ACIT [ITA No.6036/Mum/2011] wherein it was held that no penalty could be levied u/s 271(1)(c) for any addition made u/s 40(a)(ia) for failure to deduct TDS, once such payment has not been doubted.

***ASSISTANT COMMISSIONER OF INCOME TAX vs. WIRE AND WIRELESS TISAI SATELLITE LTD. - (2018) 53 CCH 0166 MumTrib - I.T.A No.09/Mum/2016 dated June 13, 2018***

**4222.** The Tribunal held that once the addition on which penalty had been levied is set aside to the AO for fresh consideration, it is as good as there is no addition for levy of penalty u/s 271(1)(c) and in such case, if at all penalty can be levied, the AO shall take up penalty proceedings after the receipt of order of the Tribunal and modifying the assessment as per directions of the Tribunal. Since, in the present case, the AO had finalized the penalty proceedings before waiting for outcome of the Tribunal's orders, it was held that the issue was to be re-examined by the AO in light of provisions of section 275(1A).

***Asia Investments (P.) Ltd. v ACIT – (2018) 91 taxmann.com 431 (Mum) – ITA Nos. 7539 (Mum.) of 2013 and 62 & 4779 (Mum.) of 2014 dated 23.02.2018***

**4223.** The Tribunal upheld the CIT(A)'s order deleting the penalty levied u/s 271(1)(c) by the AO on account of disallowance made with respect to (i) annual consideration paid to BCCI (ii) lodging, boarding and aircraft expenses, travelling expenses and vehicle hire charges and (iii) payment towards website charges. It was noted that (i) annual consideration was disallowed due to difference in interpretation of law (ii) expenses of lodging, boarding, etc. were disallowance on adhoc basis and (iii) the Tribunal in quantum had restored the matter with regard to disallowance of website charges after observing that the CIT(A) in assessee's own case for the subsequent assessment year had held that website generating charges were revenue expenditure.

***KNIGHT RIDERS SPORTS PVT. LTD. & ANR. vs. ASSISTANT COMMISSIONER OF INCOME TAX & ANR. - (2018) 52 CCH 0336 MumTrib - ITA No. 5587/Mum/2015, 5614/Mum/2015 dated Apr 16, 2018***

Go to Index

**4224.** The assessee, a film actor was gifted a villa in Dubai. He disclosed notional income of the villa at Rs.14 Lakhs but the same was not offered to tax in India as the assessee was under the bonafide view that the income was not taxable in India under Article 6 of Ind-UAE Tax Treaty (which provides that income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State.) However, the AO assessed the said sum of Rs.14 lakhs by way of "Income from House Property" averring that it was taxable by the virtue of Notification No. 90 and 91 issued by the CBDT [which clarifies about the import of the term "may" in Article 6(1) in Ind-UAE DTAA]. During the assessment proceedings, the AO also rejected the assessee's claim for benefit of indexation while computing LTCG on sale of non-convertible debentures on the ground that it was a structural product liable to be taxed as per the proviso to section 112 without claiming indexation benefit. The assessee paid tax on the gain computed without claiming benefit of indexation and did not file an appeal with respect to the same. As regard the addition with respect to income from house property, the same was upheld by the CIT(A) and the Tribunal. The AO levied penalty u/s 271(1)(c) on account of both the additions holding that the assessee furnished inaccurate particulars of income or concealed the actual income. The CIT(A) deleted the said penalty holding that there was no deliberate intention to evade tax by the assessee. On appeal filed by the Revenue before the Tribunal, the assessee also contended that the AO, at the outset, had no jurisdiction to levy penalty as AO had failed to strike off the irrelevant default in the show-cause notice i.e whether assessee furnished inaccurate particulars of income or concealed the actual income and thus the assessee had remained divested of any opportunity of putting forth its case before AO. However, the assessee's contention didn't sustain because the Tribunal held that although S.254 r.w Rule 11 of the ITAT Rules provides that the Tribunal has discretion to allow any party to raise a new point/contention without any new facts required to be brought on record but it is only after giving the other side an opportunity to address the newly raised point and the assessee in the present case had raised objection for the first time during the course of hearing that too orally and without putting the other party to notice in advance. The Tribunal also rejected the reliance placed by the assessee on Section 253 r.w Rule 27 of the ITAT Rules to contend that the assessee can support the order appealed against any grounds decided against it,without filing any cross appeal or cross-objection, noting that in the present case, the assessee's contention that AO exceeded its jurisdiction was not a ground even in the order of the CIT(A) and therefore the question of supporting the order appealed against the assessee did not arise.

However, on merits of penalty, the Tribunal confirmed the deletion of the penalty holding that the addition of house property income was a debatable issue, not justifying levy of penalty and the differential tax treatment given to the capital gain by the AO by denying indexation benefit would also not be a ground for penalty u/s 271(1)(c).

***DCIT v Shah Rukh Khan [2018] 93 taxmann.com 320 (Mumbai – Trib.) – ITA NO. 5767 OF 2014 dated 21.05.2018***

**4225.** Based on the opinion of advocate of Supreme Court, the Assessee revalued its shops and claimed extra depreciation on the same. By taking a conservative view with an object to end litigation and buy peace, the assessee withdrew such claim during the course of assessment proceedings (since the time for filing revised return of income had expired) and also paid taxes on the additional income offered. The AO accepted such withdrawal of claim in the order under

Section 143(3) but initiated penalty proceedings under Section 271(1)(c) for furnishing of inaccurate particulars of income. Tthe Tribunal deleted the penalty levied by the AO (reconfirmed by the CIT(A)), by holding that since the assessee offered bonafide and plausible explanations, mere making of a claim which did not found favour with the Revenue would not automatically lead to levy of penalty under Section 271(1)(c).

***Waman Hari Peths Sons Private Ltd. vs. DCIT – [2018] 53 CCH 0024 (Mumbai ITAT) – ITA No 2730 of 2016 dated May 10, 2018***

**4226.** The assessee had filed its returns declaring total loss. In scrutiny assessment, the AO observed that the assessee had received capital subsidy from different banks towards assistance for purchase of plant & machinery which was not reduced from the cost of the fixed assets, but instead reflected in liability side of the balance sheet.Accordingly, he added back to the returned income, excessive depreciation claimed by assessee by not reducing the cost of asset. He held that the assessee filed inaccurate particulars and sought to evade tax by claiming excess depreciation and thus levied penalty u/s 271(1)(c). The CIT(A) deleted the penalty holding that the assessee had reflected subsidfy on credit side of balance sheet as 'Capital reserve' as the assessee envisaged the likelihood of reimbursement of the subsidy under the TUFS scheme for failure on its part in payment of instalment and interest. The Tribunal held that though treatment given by assessee to capital subsidy received under TUFS scheme did not find favour with the AO, complete details of capital subsidy and computation of deprecation on fixed assets was furnished by assessee as part of enclosures forming part of its return of income and thus no penalty u/s 271(1)(c) was liable to be imposed on the assessee. Accordingly, it dismissed Revenue's appeal.

***DCIT v Federal Brands Ltd. (2018) 52 CCH 0287 MumTrib - ITA No. 741/MUM/2016 dated 06.04.2018***

**4227.** The Tribunal held that the AO had rightly levied the concealment penalty u/s 271(1)(c) on the assessee for not disclosing income on account of director's sitting fee and short term capital gains on redemption of mutual fund in the return of income rejecting assessee's stand that he had inadvertently missed the disclosure of the two incomes. The Tribunal also held that the AO recorded detailed well-reasoned satisfaction before invoking penalty in the assessment order rejected the assessee's legal plea that notice issued u/s 274 did not specify the charge under which penalty proceedings were initiated stating that it was not the case wherein the AO had framed charge under one limb of Section 271(1)(c) of the Act and levied the penalty under second limb of Section 271(1)(c) of the Act

***Shri Mahesh Gandhi vs. ACIT TS-77-ITAT-2017 ITA No. 2976/Mum/2016 dated 27.02.2017***

**4228.** The Tribunal, deleting the penalty u/s 271(1)(c), held that the Assessee (software engineer) had not deliberately furnished inaccurate particulars in respect of interest income. The Tribunal noted that the explanation of the Assessee was bonafide that as the Assessee was out of India and the Assessee's father who suffered stroke and thereby lost his memory had filed the return of income based on Form No.16 and that by mistake he omitted to include therein the interest on savings and fixed deposits.

***Sachidanand Padgaonkar vs. ITO (2017) 49 CCH 0030 Mum Trib (ITA No. 6020/Mum/2014 dated 03.02.2017)***

Go to Index

**4229.** The Tribunal held that concealment of particulars of income and furnishing of inaccurate particulars of income referred to in section 271(1)(c) denote two different connotations and it was imperative for the AO to make the assesse aware in the notice issued u/s 274 r.w.s 271(1)(c) as to which of the two limbs are being put-up against him. Accordingly, it held that failure to do would render the penalty proceedings invalid. The argument that the assesse was made aware of the specific charge during the proceedings would not save the penalty proceedings from being declared void. Accordingly, it directed the penalty proceedings to be deleted.
***Orbit Enterprises vs ITO – ITA No. 1596 and 1507 / mum / 2014 dated 01.09.2017***

**4230.** The Tribunal dismissed assessee's appeal against the CIT(A)'s order confirming the penalty levied u/s 271D for violation of provisions of section 269SS by taking cash loans exceeding the limit specified in the said section. It noted that the assessee had failed to show that there was a reasonable cause for getting loans in violation of provisions of section 269SS as it could not show any urgent business necessity for accepting loans in cash and that it was not having sufficient funds in its possession to fulfill the said business necessity.
***Deepak Sales & Properties (P.) Ltd. v ACIT - [2018] 95 taxmann.com 166 (Mumbai - Trib.) - IT APPEAL NO. 6304 (MUM.) OF 2012 dated June 13, 2018***

**4231.** The Tribunal held that where Assessee had duly came out with bonafide explanation to support transactions for sale and purchase of flat which was supported by its books of accounts, bank statements and confirmatory letter, merely because registered agreement for sale and purchase of flats were not entered in name of assessee, it would not sufficient to saddle assessee with liability to pay penalty u/s 271(1)(c).
***LATE SH. JHAMU SUGHAND vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2017) 51 CCH 0127 MumTrib - ITA No. 5730/Mum/2013 dated 25.09.2017***

**4232.** The Tribunal held that when addition on basis of which penalty u/s 158BFA(2) was imposed, had been restored back to AO for fresh adjudication, penaltyimposed u/s 158BFA(2) would not survive.
***NIRMAL C. JHURANI & ANR. vs.ASSISTANT COMMISSIONER OF INCOME TAX & ANR. -2017) 51 CCH 0086 MumTrib - IT(SS)A No. 5/Mum./2011, 50/Mum./2008 dated 19.09.2017***

**4233.** The Tribunal held that where assessee had claimed incorrect set-off of unabsorbed depreciation inadvertently and which was corrected by filing revised return of income voluntarily by assessee during assessment proceedings, case of assessee was not fit for levy of penalty.
***Deepi Rupindersingh Arora vs. Assistant Commissioner Of Income Tax (2016) 48 CCH 0131 (MumTrib) (ITA NO. 1073/Mum/2015)***

**4234.** The Tribunal upheld penalty levy u/s 271(1)(c) for assessee's excessive claim of unabsorbed depreciation in terms of Explanation to Sec 115JB while computing book profits for AY 2006-07 even though it was fully set off against reserves (i.e. accumulated profits) on the ground that language of relevant provision was very clear and without any ambiguity so as to admit interpretation sought by assessee.

Go to Index

***SBI DFHI Limited - TS 380 ITAT 2016 (MUM) - I.T.A. No. 7433/Mum/2013***

**4235.** Where the order imposing penalty under Section 271(1)(b) was passed in March 2008 whereas the assessment orders forming the basis of initiation of penalty were passed in financial year ended March 2000 and March 2002 and the show-cause notice for levy of penalty had expired on March 2002 and March 2003, the Tribunal deleted the penalty levied observing that the penalty orders were time barred in view of the time limits provided in Section 271(1)(c) of the Act (which provides two time limits, firstly, expiry of the financial year in which the proceedings in the course of which action for the imposition of the penalty is initiated or completed; or secondly, six months from the end of the month in which action for imposition of penalty is initiated). Further, it noted that the quantum proceedings had been set aside for fresh adjudication and therefore held the penalty proceedings would not survive.
***R. K. RANA vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0259 PatnaTrib - ITA Nos. 178, 179 & 180/Pat/2017 dated Mar 9, 2018***

**4236.** The AO levied penalty for delay in filing the TDS return u/s 272(2)(K)/274. The relevant AY under consideration was the first year of filing e-TDS statement. The CIT(A) upheld the penalty for Quarter no III by stating that the Section 273B (which provides that penalty is not to be imposed where the default is on account of reasonable cause) did not cover the said section under which penalty was levied. However, the CIT(A) had deleted the penalty for Quarter no IV by relying on provisions of S.273B. The Tribunal followed Nav Maharashtra Vidyalaya Vs. Addl. CIT (TDS) Range wherein it was held that since this was the first year of requirement of furnishing e-TDS Statement & there were complications because of system failure (admittedly amended 18 times by Department), delay to furnish e-TDS Statement could not be attributed to the assessee. Onus was on the authorities to provide of easy-compliance to newly introduced provisions. The Tribunal observed that e-TDS could not be filed without depositing tax at source to credit of Central Govt. In this case, the assessee had deposited tax at source duly on time but hadn't filed the e-TDS statement due to technical problems and thus the Tribunal held that there was no default on assessee's part as the assessee had reasonable cause to delay in furnishing the e-TDS Statement.
***Director VJNT OBC & SBC Walfare v ACIT (2018) 52 CCH 0403 PuneTrib - ITA NO. 906/PUN/2016 dated 27.04.18***

**4237.** During assessment proceeding, AO levied penalty u/s 271(1)(c) on two grounds viz. (i) in respect of profits on sale of impugned shares & unit treated as 'business income' by the Assessing Officer being upheld by the CIT(A) and (ii) in respect of withdrawal of deduction u/s 80IA(4).CIT(A) sustained penalty imposed in respect of profits on sale of shares (which was accepted by assessee). However, CIT(A) deleted penalty levied in respect of withdrawal of deduction u/s 80IA(4). On appeal by the Revenue, the Tribunal held that CIT(A) passed his decision on factual analysis and interpretation along with guidance taken from decision of Apex Court in Liberty India Vs. CIT wherein, it categorically held that eligible profits were to be computed as if such eligible business was only source of income of assessee.CIT(A) analyzed that AO had apparently proceeded to treat assessee's making a claim of deduction u/s 80IA as furnishing of inaccurate particulars of come.Expression 'inaccurate particulars of income' could not be extended to issues, which were capable of different interpretations under law and

therefore, assessee's case could not be said to be a case of 'furnishing of inaccurate particulars of income'.There was no infirmity found with findings of CIT(A) and hence, relief provided to assessee was ustained and Revenue's ground dismissed.
***Dy. CIT & ANR. Vs. SAKAL PAPERS LTD. & ANR. (2018) 54 CCH 0437 PuneTrib 926/PUN/2013 dated 20.12.2018***

**4238.** The AO made additions in respect of expenditure incurred on account of increasing authorized capital and also denied deduction u/s 10B w.r.t. interest income, sale of scrap and other Misc. business receipts. Consequent to which, penalty proceedings under Section 271(1)(c) of the Act were initiated separately for concealment of particulars of income. The AO levied penalty for furnishing of inaccurate particulars of income. The CIT(A) partially allowed the appeal of the Assessee. The Tribunal observed that since the AO initiated penalty proceedings on one limb and levied penalty on another limb of section 271(1)(c) of the Act, he did not have clarity of thought and suffered from ambiguity in his mind with regard to applicable limb of section 271(1)(c) to facts of case. Thereby, penalty levied by the AO was unsustainable on technical grounds and hence the Assessee's appeal was allowed.
***DCIT & ORS. vs. ENDRESS + HAUSER FLOWTEH INDIA PVT. LTD. & ORS. (PUNE TRIBUNAL) (ITA No. 949, 995& 996/PUN/2016 (C.O.No.09/PUN/2018)) dated May 23, 2018 (53 CCH 0067)***

**4239.** The Tribunal deleted penalty levied under section 272A(2)(k) of the Act for belated filing of TDS returns by granting immunity under section 273B of the Act as the assessee was able to establish reasonable cause for such delay in filing the return. It noted that the impugned assessment year was the first assessment year in which e-filing of TDS returns was introduced as a result of which there were certain technical glitches in its operation which led to practical difficulty in filing such returns. Accordingly, it held that the assessee had reasonable cause for such delay.
***Nav Maharashtra Vidyalaya [TS-571-ITAT-2016(PUN)] (ITA NO. 832/PN/2016)***

**4240.** Where the AO levied penalty u/s 271(1)(c) as the assessee had failed to declare income from capital gains and other sources on which TDS was withheld (as reflected in Form 26AS) in his return of income and such income was offered only by way of a revised computation of income filed during the assessment proceeding when the time for filing of revised return had expired, the Tribunal allowed the assessee's appeal challenging concealment penalty levied and held that the amount declared by the assessee in the revised computation of income was subject to TDS, the details of which were available with the Revenue in Form 26AS i.e. in the public domain and therefore it could not be held that the assessee had furnished inaccurate particulars of income, making the assessee liable for levy of penalty under section 271(1)(c) of the Act. It also noted that even after inclusion of the alleged concealed income in assessee's hands refund was allowed after verifying the details in Form 26AS and therefore deleted the penalty imposed.
***Dhananjay Rajaram Gupte [TS-582-ITAT-2016(PUN)] (ITA No.1311/PN/2015)***

**4241.** The Tribunal dismissed Revenue's appeal filed against the CIT(A)'s order deleting the penalty u/s 271(1)(c) which was levied by the AO on account of certain additions made to the loss computed as per the normal provisions of the Act as well as per the MAT provisions. CIT(A)

held that disclosures made by assessee and other disclosures in financial statements indicated that the assessee had neither concealed any particulars of its income/profit nor furnished any inaccurate particulars thereof and that for (deliberate) concealment of income, there should have been 'hiding of income or profit' or 'keeping of secret' some particulars that resulted in income or profit being concealed. It had thus held that merely because explanations or contention of assessee were not accepted, there was no conclusive ground for levy of penalty. The Tribunal held that the CIT(A)'s order was in conformity with the decision in the case of CIT vs. Nalwa Sons Investment ltd [Special Leave to Appeal (Civil) No(s).18564/2011] wherein it was held that when tax payable on income computed under normal procedure was less than tax payable under deeming provisions of Section 115JB , then penalty u/s. 271(1)(c) could not be imposed with reference to additions /disallowances made under normal provisions.
***DCIT & ANR. vs. USHA MARTIN LIMITED & ANR - (2018) 53 CCH 0260 (Ranchi Trib) - ITA Nos. 185 to 187/Ran/2016 (C.O. Nos.10 & 11/Ran/16) dated June 28, 2018***

**4242.** The Tribunal held that where assessee was found to have received certain sum in cash and contention of assessee that said cash was towards capital contribution of various projects was not supported by any evidence, penalty under section 271D was leviable.
***Golla Narayana Rao v. Asst. CIT, Circle-2(1), Vijayawada- [2018] 100 taxmann.com 174 (Visakhapatnam-Trib.)-ITA Nos. 380, 433, 487-489, 499 & 503(VIZ) of 2017 & ORS. - Cross Objection Nos. 80-85 (viz) of 2017-dated October 5, 2018***

**4243.** In case of an assessee where search u/s 132 was conducted, based on certain seized material and notings on it, the AO held certain amount as unaccounted advances and accordingly assessed the same along with interest as undisclosed income for the block period. The CIT(A) deleted the addition holding that the amount of money was not advanced by the assessee but was borrowed and the same was upheld by the Tribunal. However, the JCIT then initiated penalty u/s 271D for the amount borrowed, which was deleted by CIT(A).The Tribunal held that the department had taken two different stands i.e. while framing assessment it held monies were advanced and assessed as undisclosed income and when appellate authorities deleted addition holding that said sum represents loans borrowed, department had made 'U' turn and initiated penalty proceedings u/s. 271D. The Tribunal relying on Commissioner of Income-tax vs. Standard Brands Ltd, held that once amount in question was assessed as undisclosed income of assessee in block assessment for block period, provision of sec. 269SS r.w.s 271D could not be resorted to and hence upheld CIT(A)'s order cancelling penalty u/s 271D.
***ACIT vs G.V.S.L. Kantha Rao- (2018) 54 CCH 0026- Vishakapatnam Trib- ITA No 108/2017 dated 20.09.2018***

**4244.** Search u/s. 132 was carried out in assessee's case and based on seized material where there was noting of certain amount given to MR and to ANR, the AO held that amount to be unaccounted advances given by assessee and accordingly assessed same along with accrued interest as undisclosed income for block period. The CIT(A) deleted addition holding that amount was not money advanced by assessee but it was the money borrowed by assessee and the same was upheld by the Tribunal. Further, the JCIT initiated penalty u/s. 271D on the ground of borrowed money, which was later deleted by CIT(A). The Tribunal noted that the department had taken two different stands i.e. while framing assessment it was held as monies

advanced and assessed as undisclosed income and when appellate authorities deleted addition holding that said sum represents loans borrowed, department had made 'U' turn and initiated penalty proceedings u/s. 271D. The Tribunal relied on Commissioner of Income-tax vs. Standard Brands Ltd, wherein it was held that once amount in question was assessed as undisclosed income of assessee in block assessment, provision of sec. 269SS r.w.s 271D could not be resorted to. Thus, following the judicial precedents, the Tribunal deleted penalty levied u/s 271D.

***ACIT vs G.V.S.L Kantha Rao- (2018) 54 CCH 0026 Vishakapatnam Trib- ITA No 108/Viz/2017 dated 20.09.2018***

**4245.** Where the AO levied penalty under section 271AAB on the basis that a loose sheet found during search conducted at the premises of the assessee indicated undisclosed income, the Tribunal held that since such loose sheet did not indicate any suppression of income but it was only projection of profit statement, impugned penalty under section 271AAB was unjustified.

***ACIT v Marvel Associates - [2018] 92 taxmann.com 109 (Visakhapatnam - Trib.) - IT APPEAL NOS. 147 (VIZAG) OF 2017 dated MARCH 16, 2018***

**4246.** The assessee possessed manufacturing facility along with license of manufacturing of beer but did not own any brand of its own and since the beer manufactured by it was sold on brand name, it made a payment of royalty to its parent company. Noting that the assessee deducted TDS u/s @2% u/s 194C on payments made to parent company, whereas the brand fee was in nature of royalty for use of brand name liable to tax withholding u/s 194J, the AO treated assessee as assessee-in-default in respect of short deduction of tax at source and raised demand, pursuant to which penalty was imposed u/s 271C for short deduction of tax at source. The Tribunal dismissed the contention of the assessee that it had reasonable cause as it believed the payment to be in the nature of contract and held that the agreement clearly indicated that payment was brand fee and that the assessee had not entered in any contract for rendering services but manufactured goods on its own in brand name of parent company. Accordingly, it held that the argument of assessee that short deduction did not cause loss to revenue was not reasonable explanation and accordingly upheld the levy of penalty.

***UNITED BREWERIES LTD. vs. JOINT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0177 VishakapatnamTrib - ITA No. 454-456/Viz/2017 dated Mar 14, 2018***

**4247.** The Tribunal held that provisions of section 269T are applicable in case of adjustment of loan towards sale of flats but not applicable in respect of payment of interest in cash.

***Golla Narayana Rao v. Asst. CIT, Circle-2(1), Vijayawada- [2018] 100 taxmann.com 174 (Visakhapatnam - Trib) - ITA Nos. 380, 433, 487-489, 499 & 503(VIZ) of 2017 & ORS. - Cross Objection Nos. 80-85 (VIZ) OF 2017-dated October 5, 2018***

**4248.** The Tribunal held that pre-amended Explanation 5A to section 271(1)(c) applies to non-filer assessees where a ROI is not filed before search and undisclosed income is not offered in the ROI and the amended provision of Explanation 5A, which is applicable to both filers and non-filers of returns, does not apply to searches conducted pre 13.08.2009, therefore, penalty levied under section 271(1)(c) to cases which are covered by section 271AAA is void.

***Nukala Ramakrishna Eluru v DCIT (ITAT Vizag)***

Go to Index

***o. Interest***

**4249.** The Apex Court dismissed Revenue's SLP against High Court judgement allowing interest u/s. 244A to assessee on refund arising on account of waiver of interest u/s 220(2) by CCIT. High Court had refused to restrict the scope of expression 'in any other case' as used in section 244A(1)(b) to the cases of refund of tax and penalty observing that the legislative intent was not to limit the expression 'any amount becomes due' occurring in section 244A(1) or the expression 'in any other case' occurring in section 244A(1)(b) only to cases of refund of tax and penalty. High Court had also clarified that payment of aforesaid interest could not be characterised as payment of 'interest on interest' (as contended by revenue).
***Naresh Kumar Aggarwal - TS-18-SC-2018 - SLP (Civil) Diary No(s). 39917, 40007 & 40240/2017 dated 09.01.2018***

**4250.** The Apex Court held that where amount refundable to assessee was not immediately refunded but adjusted against demand for earlier assessment year, interest on said refund was to be allowed.
***CIT v Jyotsna Holdings (P) Ltd - TS-277-SC-2016***

**4251.** The Apex Court held that the right to charge overdue interest on discounted Bills of Exchange is not "interest" under the Interest Tax Act as it does not arise on account of delay in repayment of any loan or advance and section 2(7) of the Interest Tax Act refers only to interest arising directly from a loan or advance. The right of the assessee arises on account of default in the payment of amounts due under a discounted bill of exchange and not loan or advance.
***State Bank of Patiala v CIT – (2015) 94 CCH 0076 ISCC***

**4252.** In appellate proceedings, the Tribunal had held that the assessee was entitled to interest under section 244-A on refund of excess self-assessment tax paid. The High Court noted that the Tribunal passed aforesaid order by following decision of High Court in Stock Holding Corporation of India Ltd. v. N.C. Tewari, Commissioner of Income Tax 373 ITR 282 and had concluded that no substantial question of law arose from the Tribunal's order. The Supreme Court ruled that, where the High Court had held that assessee was entitled to interest under section 244-A on refund of excess self-assessment tax paid, SLP filed against said order was to be granted
***PCIT vs Bank of India-(2018) 100 taxmann.com 106 (SC)- SLP No 29853 of 2018 dated 17.09.2018***

**4253.** Where assessee had promoted a company which was acquired by another company in which he was appointed as the Executive Director pursuant to which he entered into a non-compete agreement with the acquirer co and the High Court had rejected assessee's stand of treating non-compete fees as capital receipt and had held that the non-compete fees to director amounted to salary income on which interest under section 234B/C would be leviable, the Apex Court held that in cases where receipt is by way of salary, TDS under section 192 is required to be made by employer and there can arise no question of payment of advance tax in cases of receipt by way of salary and accordingly, set aside the directions of High Court to the extent of

levying interest under section 234B/C on assessee-director for non-payment of tax on non-compete fees which was assessed as salary income.
***Ian Peter Morris [TS-664-SC-2016] (SLP No. 1196-1197/2013)***

**4254.** The Court dismissed assessee's petition field against the CCIT's order rejecting assessee's application u/s 220(2A) for waiver of interest payable u/s 220(2) on account of delay in payment of tax for the block period 01.01.1985 to 24.0.1995, in regards to which the taxes were fully paid only in September 2016. It rejected assessee's contentions that it was a case of genuine hardship since the entire video cassette industry (to which the assessee-partnership firm belonged) was rendered non-functional in view of change in technology. Noting that the assessee's partners were in possession of sufficient funds to meet the obligation, it held that in view of section 188A which makes the partners jointly and severally liable for the tax payable by the firm under the Act, the assessee's submission that the assessee-firm's hardship should be seen on a standalone basis without considering the partner's financial position could not be accepted.
***Video Master v CCIT – Writ Petition No. 2519 of 2017 (Bom) dated 16.03.2018***

**4255.** The Court upheld the assessee's claim for refund and interest u/s 244A of the Act on tax withheld in advance in anticipation that third instalment of technical know-how fee would have to be paid to non-resident German Company, which was subsequently waived. It dismissed the contention of the Revenue that the assessee would not constitute an 'assessee' as defined under section 2(7) of the Act and therefore not entitled to interest on refund on the ground that the assessee would have been regarded as assessee-in default u/s 201 r.w.s 2(7)(c) if it had failed to withhold TDS, since "assessee in default" also comes within the ambit of the term "assessee".
***Sunflag Iron & Steel Co Ltd v. CBDT - TS-56-HC-2016(BOM)***

**4256.** The Court held that where assessee received interest with amount of refund but did not include it in his profit and loss account under a bonafide belief that since matter was subjudice, it was not to be included in profit and loss account but disclosed same in notes to accounts it could not be said that assessee had furnished inaccurate particulars of income.
***CIT v Pilani Investment & Industries Corporation Ltd - [2016] 67 taxmann.com 60 (Calcutta)***

**4257.** The Court held that interest allowed to assessee under section 244A(1)(b) of the Act on refund of excess payment on self-assessment of tax could not be withdrawn under section 154 of the Act as Explanation to section 244A(1)(b) of the Act does not bar payment of interest upon refund of excess payment on self-assessment.
***CIT v Birla Corporation Ltd - [2016] 66 taxmann.com 276 (Calcutta)***

**4258.** The Court allowed assessee's writ and set aside Settlement Commission's order directing levy of interest u/s 234B by revoking its earlier order and reopening its concluded proceedings by invoking Sec 154. The Court relied on the Apex Court ruling in Brijlal wherein it was held that the Settlement Commission had no power to levy interest u/s 234B in respect of concluded proceedings by taking recourse to Sec 154.
***Poddar Industrial Corporation vs Income Tax Settlement Commission -TS-169-HC-***

***2016(CAL)***

**4259.** The Court dismissed the assessee's writ petition against the CIT's rejection of interest waiver application u/s 220(2A) for want of 'genuine hardship'. It observed that CIT's rejection of 'genuine hardship' plea was not an erroneous exercise of discretion by the CIT and held that the mere fact that the interest u/s. 220(2) was 1.5 times the tax by itself did not have any relevance for determining whether the Assessee was suffering from any genuine hardship. It rejected assessee's contention that the mere fact that it was part of the global conglomerate 'DuPont', which made profits did not mean that it did not suffer any 'genuine hardship' and noted that it had earned operating profits of USD 6.253 billion and that the amount paid by it towards interest u/s. 220 (2) was merely $0.004 billion (approx). Accordingly, it concluded that the view taken by the CIT was a plausible view and did not call for any interference.
***Pioneer Overseas Corporation USA [TS-194-HC-2017(DEL)] - W.P.(C) 5423/2016 dated 17.05.2017***

**4260.** The Court rejected the assessee's contention that if the return of income is treated as invalid under section 139(9), the tax and interest payable in the return becomes nugatory and the advance tax paid would be refundable to him and held that upon filing return under section 139, assessee admits the liability to pay tax under the Act and invalidation of return would not make such admitted liability refundable. It upheld the recovery proceedings under section 226(3) initiated by revenue.
***Shakti Bhog Foods Limited - TS-534-HC-2016 (DEL)- W.P. (C) 2569/2015***

**4261.** The Court for AYs 1994-95 and 1995-96 referring to the ruling of the Special Bench of the Tribunal in the assessee's case for earlier years, held that interest earned by the assessee on deposits (out of surplus funds) with the Steel Authority of India Ltd. (SAIL) did not qualify as 'interest' u/s 2 (7) of the Interest Tax Act, 1974 ('ITA') which uses the word "means" which indicates the definition to be exhaustive and further also expressly includes two other categories(i.e. commitment charges and discount on promissory notes/bills of exchange) and excludes two additional categories. It rejected the Revenue's contention that the expression "interest on loan and advances" occurring in Sec. 2(7) should include interest on deposits as well.
***Housing and Urban Development Corp Ltd - TS-402-HC-2016(DEL) - ITA 348/2003***

**4262.** The Court held that where assessee's claim for refund of excess tax collected was withheld and refunded by department after a huge delay merely on ground of pendency of appeal filed by revenue, since there was no stay granted by Appellate Authorities, assessee would be entitled to compensation by way of interest for such delay but assessee would not be entitled to interest on interest which was awarded as compensation.
***Nima Specific Family Trust v. Asst. CIT, Circle 5(2)- [2018] 100 taxmann.com 262 (Gujarat)- R/Special Civil App. No. 7073 OF 2018-dated October 3, 2018***

**4263.** The Court rejected the assessee's contention that Section 234E levying a fee for failure to deliver TDS statements as per the prescribed time limit was unconstitutional prior to the amendment made in Section 200A with effect from June 2015 (providing that while processing

TDS statements the AO could make adjustments on account of sum payable under Section 234E) as prior to such date Section 200A did not provide for such adjustment. It held that Section 234E was introduced to ensure TDS compliances were met and was in effect a charging section levying fee for defaults in observing compliances which could not be overridden by Section 200A which was a machinery provision merely providing for the processing of TDS statements. Further, it rejected the contention of the assessee that without a regulatory provision in Section 200A providing for adjustment of fee under Section 234E, no fee under Section 234E could be levied.Additionally, it also dismissed assessee's contention that Rule 31A (prescribing a longer period viz. 15 additional days, for the Government to file TDS statements as compared to others) was discriminatory and unconstitutional and held that Article 14 does not prohibit reasonable classification but only frowns upon class legislation. Considering the complexity, volume and turnover of transactions undertaken by the Government, it held that the extended period was perfectly legitimate.

***M/s Rajesh Kourani vs. UOI TS-273-HC-2017(Gujarat) (Special Civil Applicatoin No. 302 of 2014 dated June 20, 2017)***

**4264.** The Court quashed the Commissioner's order directing withdrawal of interest on refund already granted to assessee in terms of Sec 244A(2). The assessee had received incentive subsidy which was erroneously offered to tax in its return, however, CIT(A) deleted such receipt resulting in refund claim. The AO withdrew interest on refund u/s 244A(2) on the ground that assessee raised a belated claim during assessment proceedings, which was affirmed by Commissioner. Quashing the Revenue's action, the Court held that the act of revising a return or raising a claim during the course of the assessment proceedings could not imply that the assessee was responsible for causing the delay in the proceedings resulting into refund and that in essence, the CIT(A) allowed a claim which in law was allowable.

***AJANTA MANUFACTURING LIMITED [TS-453-HC-2016(GUJ)] SPECIAL CIVIL APPLICATION NO. 6830 of 2016 with 6832 of 2016***

**4265.** Where Commissioner (Appeals) set aside levy of interest under section 234B, and no further appeal was filed by revenue against said order, the Court held that it was not open for the Assessing Officer to again levy interest under section 234B in rectification proceedings

***CIT Vs. Amol Decalite Ltd. (2016) 97 CCH 0092 GujHC (Tax Appeal No.7 of 2007)***

**4266.** The Court held that where assessee's claim for refund of excess tax collected was withheld and refunded by department after a huge delay merely on ground of pendency of appeal filed by revenue, since there was no stay granted by Appellate Authorities, assessee would be entitled to compensation by way of interest for such delay but assessee would not be entitled to interest on interest which was awarded as compensation.

***Nima Specific Family Trust v. Asst. CIT, Circle 5(2)- [2018] 100 taxmann.com 262 (Gujarat)- R/Special Civil App. No. 7073 OF 2018-dated October 3, 2018***

**4267.** The Court held that it is not sine qua non for an AO to mention/levy/charge interest under section 234B of the Act in assessment order before he raises demand for same in notice issued under section 156 of the Act.

***ACIT v Norma Detergent P Ltd – TS-91-HC-2016(GUJ)***

Go to Index

**4268.** Where pursuant to an order of the Apex Court, HSBC (who owed money to the assessee) was directed to pay to the assessee a sum of Rs. 102 crore as a result of which the assessee was liable to tax u/s 115JB, the Court dismissed the assessee's writ against the order of the CCIT denying waiver of interest u/s 234C for non-dedcution of advance tax. It rejected the assessee's contention that interest waiver should be granted as the review petition filed by HSBC against the Apex Court order was pending and therefore the asseessee could not anticipate its accrued income while paying the advance tax of quarter ending September 15th and held that as per CBDT circular date June 26, 2006 and sec 234C, waiver could only be granted in respect of income which was neither anticipated nor was in the contemplation of the assessee and the advance tax on the remaining income was duly paid by the assessee and since a favourable order was passed by Apex Court on July 15, 2913 pursuant to which HSBC deposited the amount with the registry, the amount became assessable to tax in assessee's hands.
***Canbank Financial Services Limited vs CCIT-TS-427-HC-2017(KAR) WP No. 7276/2017 dated 15.09.2017***

**4269.** The High Court rejected assessee's interim prayer to submit return of income within the extended due-date of October 15th without insistence of interest payment u/s. 234A; The High Court opined that the matter required further consideration and it was posted for hearing on a later date and directed that the assessee may pay the interest without prejudice to the contentions raised with regard to illegality of interest levy, and clarified that the Department shall refund the interest in case assessee was found not liable for the same.
***Hindu Forum vs UOI- TS-568-HC-2018 (Ker)- WP No 31520/2018 dated 28.09.2018***

**4270.** The AO had not levied interest u/s 234B(1) during the regular assessment, on account of TDS and sufficient taxes paid by the assessee as advance tax but levied interest u/s 234B(3) while passing the reassessment order u/s 147. The Tribunal held that interest u/s 234B(3) was consequential to levy of interest u/s 234B(1) and, thus, since there was no liability to pay interest u/s 234B(1), there would be no liability to pay interest u/s 234B(3). The Court rejected Tribunal's above view holding that under section 234B(3), the words "amount on which interest was payable in respect of shortfall in payment of advance tax for any financial year under sub-section (1) is increased" were not employed to make levy of interest u/s 234B(3) consequential to levy under sub-section (1) but only to specify the amount on which interest was to be levied. However, on peculiarity of facts viz. the advance tax paid by the assessee was in excess of 90% of tax dues for year determined under the second reassessment order (which attained finality) without considering the advance tax amount (along with TDS) refunded to the assessee pursuant to appellate orders passed subsequent to original assessment, the Court held that there was no cause for imposition of interest liability u/s 234(1) or 234(3).
***CIT v BABY MARINE EXPORTS – (2018) 163 DTR 0503 (Ker) – ITA.No. 94 of 2008 dated 11.01.2018***

**4271.** The Court relying on Bombay HC ruling in the case of Rashmikant Kundalia wherein it was held that delay in filing of TDS return has a cascading effect and results in additional burden upon the department with respect to processing deductee's tax status, dismissed assessee

dedcutor's writ challenging the constitutional validity of section 234E (levying mandatory fee for delay in filing TDS returns)
***Sree Narayana Guru Smaraka Sangam Upper Primary School. [TS-704-HC-2016(KER)]***

**4272.** The Court rejected grant of interest on income-tax refund claimed by assessee even though income-tax refund was allowed on the ground that assessee had filed belated return and delay in grant of refund was on account of reasons attributable to assessee. It rejected assessee's stand that once delay in filing return was condoned, it becomes valid return and therefore grant of interest under section 244A would be consequential and stated that delay had been condoned only for the purpose of accepting the return, but it cannot be stated that the delay was not attributable to the assessee.
***Pala Marketing Co-op Society Ltd - TS-531-HC-2016 (KER)- WP(C).No. 17664 of 2013 (G)***

**4273.** The Court dismissed the writ filed by the Petitioner and upheld the order of the Chief Commissioner denying interest on income-tax refund under section 244A for the period of delay which occurred in curing defects in the Petitioner's TDS certificates. It held that while the obligation to provide TDS certificates was on the deductor, if there was any defect in the certificate which was not cured by the payee viz. Petitioner before filing of the return, the delay would be considered to be caused by the Petitioner. It clarified that refunds would only be due upon finalization of returns and not when the amount of tax had been deposited.
***State Bank of Travancore [TS-546-HC-2016(KER)] (WP(C).No. 19283 of 2007 (U))***

**4274.** The Court granted waiver of interest u/s 234A, 234B and 234C in view of clause (e) of CBDT Circular No.400 laying guidelines for waiver of interest u/s 234A noting that assessee was under bonafide belief that it had no taxable income since assessee's main source of income was from property and owing to partition suit pending in relation to family dispute over the properties, assessee could not anticipate the accrual/receipt of property income. It rejected revenue's contention that clause (e), which allows waiver if "The return of income could not be filed by the assessee due to unavoidable circumstances and the return of income was filed voluntarily before detection by the Assessing Officer", was not applicable as the return was filed by assessee consequent upon a survey. It further held that a survey could not tantamount to detection by the AO as referred to in the said clause.
***R.Mani v CCIT - TS-613-HC-2017(MAD) - W.P.No.21477 of 2004 dated 04.12.2017***

**4275.** Where the assessee became entitled to an exceptional/unanticipated income pursuant to favourable decision of the Apex Court relating to purchase tax benefits, the Court upheld levy of Section 234C interest and did not accept taxpayer's argument that deferment in payment of advance tax was beyond the control of assessee despite the fact that the assessee had already paid two instalments of advance tax within due date and there was deferment in payment of advance-tax liability due to unanticipated income. It held that once interest u/s 234C of the Act, was mandatory and automatic, then the reason, or the cause for the delay and justification for deferment of payment of advance tax, was immaterial and therefore the fact that an unanticipated income accrued in the relevant financial year, could not be a ground not to pay advance tax with regard to the returned income.
***MRF ltd [TS-611-HC-2016(MAD)] (Tax Case (Appeal) No.234 of 2016)***

Go to Index

**4276.** Court held that the assessee was not liable to pay interest levied u/s 234B and 234C where the assessee's liability to pay tax was fastened only due to the ruling of AAR which was pronounced after the due date of filing return and thus it could not pay any tax unless case was decided by AAR.
***Van Oord ACZ v CCIT - (2018) 89 taxmann.com 342 (Mad) - W.P..No 14165 of 2009 M.P. No. 1 of 2009 dated 03.01.2018***

**4277.** The Court held thatinterest under section 158BFA(1) could not be levied from assessee for period of delay in filing return caused due to delay in obtaining copies of seized material from department, which was beyond control of assessee.
***K. Balan v DCIT [2018] 93 taxmann.com 452 (Madras) – TAX CASE (APPEAL) NO. 764 OF 2007 dated 23.04.2018***

**4278.** Where the assessee's application filed u/s 154 for rectification of order passed by AO for rejecting assessee's application for waiver of interest u/s 220(2A) was pending before the CCIT, noting that the assessee's contention that CCIT had passed the impugned order without considering the assessee's claim under the appeal that it was not liable to capital gains itself (CCIT had only noticed assessee's claim of quantification of capital gains) and that the CCIT in the impugned order had not stated any cogent reason for rejecting the request, the Court set aside the impugned order and remanded the matter to CCIT for fresh consideration.
***Narayanan Chettiar Industries v. CCIT – (2018) 90 taxmann.com 269 (Mad) – Writ Petition No. 30776 of 2007 M.P. No. 1 of 2007 dated 03.01.2018***

**4279.** The Court held that the appellant, official assignee who had brought to sale the assessee's share of the partnership firm and her properties since she was adjudged insolvent, did not have to approach the CDBT for waiver of interest under sections 234A / B / C when a petition for waiver was filed before the Insolvency Court. It held that the Insolvency Court was empowered to grant waiver under Section 7 of the Presidency Towns Insolvency Act, 1909. Further, it held that section 178 of the Income-tax Act, which deals with the obligation of an official liquidator to set apparat amounts payable to the Department, did not deal with the waiver of interest and therefore was not applicable to the instant case.
***Official Assignee – TS-318-HC-2016 (Mad)***

**4280.** Where the assessee made disclosure of its income only after notice under Section 148 of the Act was issued pursuant to search proceedings carried on in its premises, the Court held that the assessee was not justified in claiming waiving of interest under Section 234A, B & C of the Act based on Circular No. 400/29/2002 as the disclosure made by the assessee could not be considered as a voluntary disclosure.
***A Kuberan v CCIT - [2018] 89 taxmann.com 179 (Madras) - W.P. NO. 5622 OF 2007 dated 07.12.2017***

**4281.** Where the assesssee had surrendered cash credit before the settlement commission for earlier years and immunity was granted for the same, however, for the year under consideration, the interest expenditure claimed on the cash credit was disallowed and penalty under section

271(1)(c) was imposed, the Court held that once the surrender of cash credit had been accepted by the Settlement Commission and the immunity had been granted, then the disallowance for claim of interest expenditure on the cash credit in the succeeding assessment years cannot straightaway give rise to penalty proceedings on the ground that making incorrect claim could not tantamount to furnishing incorrect particulars and it had to be shown that there had been concealment of particulars of income and incorrect particulars had been furnished.
***Aashirbad Enterprises & ANR vs CIT & ANR (2016) 97 CCH 0156 PatnaHC (Tax Cases No. 28 of 1998, 29 of 1998)***

**4282.** The assessee had not filed return in response to notices issued u/s 142(1) on 26.8.2002, 9.9.2002, 17.10.2002 and 17.12.2002 but filed the same only on 13.1.2005 but filed application for rectification u/s 154 as well application for waiver of interest imposed u/s 234A, 234B & 234C. The Court held that it could not be said that return could not be filed due to unavoidable circumstances and the assessee's application for waiver of interest was rightly rejected by the competent authority since the assessee's case was not covered by any of the conditions prescribed in CBDT Circular dated 26.6.2006 (providing for the class of income or class of cases in which reduction or waiver of interest u/s 234A, 234B & 234C could be considered). Further, with respect to application made u/s 154, the Court held that there was no mistake apparent from record.
***HARISH KUMAR GUPTA v CCIT– (2018) 163 DTR 0260 (Uttarakhand) – Writ Petition (M/S) No. 1658 of 2013 dated 10.01.2018***

**4283.** Assessee's TDS returns/statements was being processed. Intimation was issued by AO u/s 200A/206CB of Act, on basis of which AO levied late fees u/s 234E of Act. CIT(A) upheld same. The Tribunal held that, in case of Shri Fatehraj Singhvi and Others', it was held that, it was hardly required to be stated that, as per well established principles of interpretation of statute, unless it was expressly provided or impliedly demonstrated, any provision of statute was to be read as having prospective effect and not retrospective effect. Under circumstances, substitution made by clause (c) to (f) of sub-section (1) of Sec 200A could be read as having prospective effect and not having retroactive character or effect. Resultantly, demand u/s 200A for computation and intimation for payment of fee u/s 234E could not be made in purported exercise of power u/s 200A by respondent for period of respective assessment year. However, if any deductor has already paid fee after intimation received u/s 200A, aforesaid view would not permit deductor to reopen said question unless he had made payment under protest. Hence, in said case grievance of assessee was accepted as justified and levy of fee was cancelled.
***Yasoda Grah Nirman Sahkari Sanstha Maryadit vs. ITO (TDS)-(2018) 53 CCH 0348 AgraTrib-ITA No.414- 415, 474-475, 478- 549 & 551-588/Agr/2018-Dated Jul 11, 2018***

**4284.** The Tribunal held that where the assessee failed to offer any explanation or evidence in respect of capital introduced which it claimed to be a gift and merely submitted the affidavit of the donor and also failed to disclose interest income in its return which was offered as income only once detected by the department, penalty under section 271(1)(c) of the Act was correctly levied.
***Narendra Kumar Singhal v ITO – (2016) 46 CCH 0131 (Agra – Trib)***

Go to Index

**4285.** The Tribunal upheld the CIT(A)'s order and held that the assessee was entitled to interest under Section 244A on the refund of the interest paid by it under Section 234B. It rejected Revenue's contention that Section 244A only provides for interest on refund of tax or penalty and not on interest and relying on the decision of the co-ordinate bench in Alembic Glass – TS-5752– ITAT-2006 (Ahd) – O, held that the expression 'tax' used in Section 244A(1)(b) would include interest. It further held that the definition of tax in Section 2(43) meaning ''income tax'' would not be applicable in the context of Section 244A(1) of the Act.
***ACIT vs National Dairy Development Board-ITA No. /I.T.A. No.1384/Ahd/2014 dated 21.09.2017***

**4286.** The Tribunal held that a levy under section 234E of the Act, which provided for payment of interest on late filing of TDS / TCS returns, could not be effected in the course of intimation under section 200A of the Act, prior to the amendment to section 200A vide Finance Act, 2015 as prior to the said amendment, there was no enabling provision for raising demand in respect of levy under section 234E of the Act and that an appeal could be filed against an intimation under section 200A of the Act as the intimation was deemed to be an order passed under the Act.
***Perfect Cropscience Pvt Ltd v DCIT – (2016) 46 CCH 0003 (Ahd) Dhanlaxmi Developers v DCIT – (2016) 46 CCH 0001 (Ahd)***
***Manu Hari Tobacco v DCIT – (2016) 46 CCH 0002 (Ahd) Amco Construction Co v DCIT – (2016) 46 CCH 0016 (Ahd)***

**4287.** The Tribunal held that where the assessee's return was originally processed under section 143(1) of the Act and later assessed under section 143(3) read with section 147 of the Act, for the purpose of section 234B of the Act, assessment under section 143(3) read with section 147 was to be regarded as 'Regular assessment' and therefore the date of completion of assessment under section 143(3) read with section 147 of the Act would be treated as the end point for charging interest under section 234B of the Act.
***Nuts 'n' Spices v ACIT – (2016) 69 taxmann.com 310 (Chennai-Trib)***

**4288.** The Tribunal held that the insertion of the proviso below s. 209(1)(d) vide Finance Act, 2012, cannot be considered to have retrospective effect so as to expose a non-resident company to levy of interest u/s 234B for the AYs prior to 2013-14.
***Dy. CIT & ANR. vs. TECHNIP UK LTD. & ANR. (2018) 54 CCH 0373 DelTrib ITA No. 1116/DEL/2014 dated 17.12.2018***

**4289.** The Tribunal held that where the assessee purchase land and made payments to its consolidator for which it had submitted adequate details / particulars along with copies of Tribunal decisions in the case of its group concerns wherein it was held that the provisions of section 194C / H were not applicable to such payments, the CIT(A) was incorrect in treating the payments as bogus and imposing penalty under section 271(1)(c) of the Act since there was no furnishing of inaccurate particulars or deliberate attempt to conceal income.
***ITO v Philia Estate Developers Pvt Ltd – (2016) 48 CCH 0013 Del Trib – ITA No 2123 / Del /2014 ITO v Philana Builders & Developers Pvt Ltd – (2016) 48 CCH 0021 Del Trib – ITA***

***No 2122 / Del / 2014 ITO v Penteha Builders & Developers Pvt Ltd – (2016) 47 CCH 0769 Del Trib – ITAT No 2124 / Del / 2014***

**4290.** The Tribunal held that as per section 234C, interest is required to be calculated on the basis of returned income and not on the basis of assessed income.
***Maruti Suzuki India Ltd vs Addnl CIT- (2018) 54 CCH 0095 DelTrib- ITA No 467/Del/2014 dated 17.10.2018***

**4291.** The Tribunal Held that where in respect of purchase of property, assessee deposited tax at source under section 194-IA and also filed a statement to that effect much prior to date when section 194-IA and also filed a statement to that effect much prior to date when section 234E came into existence, i.e., 1-6-2015, impugned order lying fee under section 234E for violation of section 200(3) was to be set aside
***Meghna Gupta v. Asst. CIT [2018] 99 taxmann.com 334 (Delhi – Trib.) -ITA No. 2649 (DELHI) of 2018 dated October 1, 2018***

**4292.** AO levied interest for alleged late deposit of TDS u/s. 201(1A), in respect of provision made for commission to directors. CIT(A) upheld order of AO. The Tribunal held that Assessee made a provision for commission to directors at the end of the year, which can be paid strictly in accordance with Section 211 of the Companies Act, 1956 and TDS can be deducted and paid, when actual liability is ascertained, which generally happens after five/six months from the end of the financial year. Further, in Finance Bill, 2012, Section 194J of the Income Tax Act, 1961 has been amended and a clause (ba) to sub section (1) of the Section 194J effective from 1st July 2012 has been Introduced wherein tax is required to be deducted on the remuneration paid to director, which is not in nature of salary, at the rate of 10% of such remuneration. Thus, the contention of the Ld. AR that this clause is applicable w.e.f. 1.07.2012 was just and proper.
***Spice Mobility vs ACIT- (2018) 54 CCH 0025 Del Trib- ITA No 2289,2286,2288 & 2287/Del/2016 dated 19.09.2018***

**4293.** The AO found that there was late furnishing of TDS statement by assessee and that late filing fees were levied under Section 234E of the Act. The Assessee claimed that it had neither received any communication from the AO in respect of such fees levied under Section 234E, nor did such communication come to knowledge of Assessee prior to the notice of outstanding demand reference issued by AO. The CIT(A) dismissed the appeals of assessee by holding them to be time barred. The CIT(A) also held that demand raised under Section 234E of the Act was not appealable. Tribunal held that the orders levying fees under Section 234E of the Act were available online and were also served on the same email-id as used for filing the return of income. Accordingly, since no sufficient cause was explained for delay in filing appeals before CIT(A) and since the said orders were not appealable before CIT(A), appeals filed by the Assessee before the Tribunal were dismissed.
***P3P VENTURES PVT. LTD. vs. DCIT, CPC (TDS) (DELHI TRIBUNAL) (ITA.Nos.7593 to 7600 of 2017) dated May 28, 2018 (53 CCH 0084)***

**4294.** The Tribunal held that where on payments received by assessee, payer were required to deduct tax at source u/s 195 and as tax was 'deductible' u/s 195 there was no failure on part of assessee

in payment of advance tax and therefore, assessee could not be saddled with burden of interest u/s 234B.
***ADIT v Parpool Ltd (2016) 47 CCH 0183 DelTrib***

**4295.** The Tribunal held that interest u/s 234B(1) was leviable from first day of assessment year (AY) till the date of processing u/s. 143(1) and then, enhanced interest would be levied u/s 234B(3) pursuant to recomputation u/s 153A (for AYs 2005-06, 2008-09 & 2009-10). It explained that interest u/s. 234B(1) is calculated on the shortfall from first day of AY till the completion of/processing of return for the first time, further in case of re-assessment or re-determination of income either u/s. 147 or u/s. 153A, the Statute provides for further levy of interest u/s 234B(3) from the date of first order to the date of revised order. Further it clarified that Sec 143(1) order is to be considered as 'assessment' for the purposes of Explanation 2, hence the period considered in an intimation u/s. 143(1) shall be excluded while calculating interest u/s. 234B(3).
***MBG Commodities (P) Ltd - TS 390 ITAT 2016 HYD - ITA 1321/Hyd/2015 ITA 1322/ Hyd/2015 ITA 1323/Hyd/2015***

**4296.** The Tribunal held that where interest under section 234A and 234C were not originally levied in an order under section 143(3), levy of interest in consequential order giving effect to the order of ITAT was not warranted.
***ITO & ANR. Vs. Rao Subba Rao & Anr. (2016) 48 CCH 0073 (Hyderabad Trib)-ITA No.759/Hyd/2015***

**4297.** The Tribunal held that amendment to provisions of section 200A with effect from 1-6-2015 empowering Assessing Officer levying fees under section 234E has prospective operation and, therefore, Assessing Officer while processing TDS statements for period prior to 1-6-2015, was not empowered to charge fees under section 234E
***Trimurty Buildcon (P.) Ltd. v. Dy. CIT, CPC, TDS, Ghaziabad-[2018] 100 taxmann.com 39 (Jaipur – Trib.)-ITA Nos. 18 to 20 (JP.) of 2017-dated October 29, 2018***

**4298.** Where AO computed 'assessed tax' for the purpose of sections 234B and 234C without considering available MAT credit, the Tribunal held that in view of Explanation 1(v) of sub-section (1) of section 234B, MAT credit had to be allowed from 'assessed tax' and, thereafter, interest under sections 234B and 234C could be computed only after such set off of MAT credit.
***Ellenbarrie Industrial Gases Ltd. v ITO – (2018) 169 ITD 194 (Kol Trib) – ITA No. 1687 (Kol.) of 2016 dated 07.02.2018***

**4299.** The Tribunal upheld CIT(A)'s order directing the AO to not charge interest u/s 234D (interest on excess refund) noting that the refund was received by the assessee on 01.02.2003, whereas the said section was inserted vide the Finance Act, 2003 w.e.f. 01.06.2003 and thus was not in force when the refund was received.
***Stock Traders Pvt Ltd vs ITO [2018] 54 CCH 0246 (MumTrib) ITA NOS. 2108/MUM/2006, 4403 & 687/MUM/2011 dated 19.11.2018***

**4300.** The Tribunal allowed assessee's appeal against AO's & CIT(A)'s methodology for computation of interest on refund u/s 244A and directed the AO to re-compute interest u/s 244A by first

adjusting the amount of refund already granted towards the interest component payable to the assessee and balance to be adjusted towards the tax component payable to the assessee. It applied the ratio of co-ordinate bench ruling in Union Bank of India (2016) 72 taxmann.com 348 (Mum Trib) wherein it was held that since the statute itself has already prescribed a particular method of adjustment in explanation to section 140A(1) [regarding payment of taxes], then justice, fairness, equity and good conscience demands that same method should be followed while making adjustment for refund of taxes, especially when no contrary provision has been provided.

***Bank of Baroda v DCIT [TS-754-ITAT-2018(Mum)] - ITA No.1646 & 2565/Mum/2017 dated 20.12.2018***

**4301.** The Tribunal held that where refund on account of excess TDS and Advance Tax was less than 10 per cent of total tax determined on regular assessment, no interest under section 244A could have been granted on same in light of the proviso to section 244(1)(a).

***Indian Aluminum Company Ltd. v DCIT - [2018] 92 taxmann.com 141 (Mumbai - Trib.) - IT APPEAL NO. 5326 (MUM.) OF 2015 dated MARCH 23, 2018***

**4302.** The Tribunal accepted assessee's claim that interest u/s 220(2) could not be charged on account of delay in adjustment of refund amount, since the delay in adjustment of refunds was not attributable to assessee at all rather it was on account of procedural problems faced by the department. However, it held that interest u/s 220(2) could be charged if the assesee was granted interest u/s 244A with respect to the said refund amount. Since it was not clear from the records as to whether the assessee was granted interest u/s 244A or not, the AO was directed to verify the same.

The Tribunal rejected the AO's computation of interest u/s 234B from the first day of the relevant AY to the end of the month date in which reassessment order was passed. The Tribunal held that in case of reassessment / recomputation, sub-section (3) of the said section is attracted and the interest was to be computed from the date on which determination of tax was made under section 143(1)(a). [It is to be noted that section 234B(3) has been amended vide the Finance Act, 2015 to provide that in case of reassessment/ recomputation, interest is to be computed from the first day of the relevant AY; however, the AY under appeal in the above case was 2008-09]

***VODAFONE INDIA LTD. vs. ASSISTANT COMMISSIONER OF INCOME TAX - (2018) 52 CCH 0377 MumTrib - ITA No. 4749/Mum/2016 dated Apr 6, 2018***

**4303.** The Court held that assessing officer cannot rely on Instruction No. 1/2015 (which prohibited refund in cases where scrutiny notice under section 143(2) had been issued) to withhold refunds as the same had been stuck down in the Delhi High Court's decision in Tata Teleservices and the same is binding on all assessing officers across country. It further held that in case where the assessing officer did not process the return filed by assesssee and issue refund to him, the action of officer was in complete variance with the higher echelons of administration of the tax administration which is meant to be a assessee friendly regime. It noted that the Citizen's Charter issued by the Income Tax Department in its vision statement states that the it aspires to issue refunds along with interest under Section 143(1) of the Act within 6 months from date of electronically filing the returns and therefore the AO was violating this charter. It also held

that The powers of a Court under Article 226 of the Constitution of India were not only limited to prerogative writs but also to issue any direction or order for doing justice and accordingly directed the AO to consider and process the petitioners return and dispose it off expeditiously.
***Group M.Media India Pvt. Ltd. vs. UOI & ORS. (2016) 97 CCH 0027 (Mum Trib) (W.P. No. 2067 of 2016)***

**4304.** The Tribunal quashed the rectification order passed, reducing the claim of interest on refund on the basis that the assessee made a belated claim for exemption under section 10(23G) resulting in a delay, on the ground that delay in the proceedings resulting in refund and not delay in claim was crucial for denying interest under section 244A of the Act. The Tribunal acknowledged that exemption under section 10(23G) of the Act was dependent on the approval of the Central Government and therefore there could be many reasons beyond the control of the assessee leading to such alleged delay. Further it noted that there was nothing on record to suggest that proceeding leading to the refund were delayed and that a reduction in interest under section 244A was to be decided by the CCIT / CIT which was not done in the present case.
***DBS Bank Ltd v DDIT – TS-8-ITAT-2016 (Mum)***

**4305.** The Tribunal held that when a return is filed for first time in response to notice issued under section 153A, provisions of section 234A(1)(a) are applicable and interest is chargeable for period commencing on date immediately following due date referred to under section 139 and ending on date of furnishing of return.
***B. Subba Rao v. ACIT, Central Circle-2, Visakhapatnam [2016] 75 taxmann.com 136 (Visakhapatnam - Trib.) (IT Appeal Nos. 518 To 520 (Vizag.) Of 2014)***

**4306.** Where the assessee had made payments without deducting tax u/s 194J, and the Assessing Officer treating the assessee as assessee in default, levied interest u/s 201(1), the Tribunal, relying on the decision in the case of Kanoi Properties Pvt. Ltd [TS-5044-HC-2003(CALCUTTA)-O] held that interest had to be charged from the date on which the tax was required to be deducted till the date of furnishing of return of income by the deductee. Rejecting the assessee's contention that since the deductee had filed nil return of income and had no tax liability, even after taking into account receipts from the assessee, no interest could be levied, the Tribunal held that the tax liability in the hands of the deductee had no connection with charging of interest u/s 201(1A). It further held that Proviso to Sec. 201(1A) inserted w.e.f July 1, 2012 makes it very clear that even though the assessee is not deemed to be 'assessee in default' under the first proviso to Sec. 201(1), the interest u/s 201(1A) shall be payable from the date on which such tax is deductible to the date of furnishing of return of income by such deductee. Accordingly, it held that interest u/s 201(1A) was payable by the assessee.
***Aayush NRI LEPL Health Care Pvt. Ltd vs ACIT-TS-475-ITAT-2017(VIZ)- /I.T.A.Nos.10 & 11/Vizag/2016 dated 18.10.2017***

### *p. Minimum Alternate Tax*

**4307.** The Apex Court dismissed the SLP filed by the Revenue and upheld the order of the High Court wherein it was held that once the assessee had incurred expenditure and arrived at the profits, merely because the P&L account prepared for the shareholders show the expenditure as

deferred, the assessee could not be denied the benefit of the entire expenditure. It allowed the claim further noting that there was no intention to avoid tax.
***CIT v Karnataka Soaps and Detergents Ltd (SPL No 19860 / 2015 and 19909 / 2015) – TS-655- SC-2015***

**4308.** The Court dismissed the Revenue's appeal and upheld the order of the Tribunal where it was held that the AO is not entitled to add to the 'book profits' the amounts arising from the sale of land which are directly credited to the Capital Reserve Account in the balance sheet.
***Pr.CIT vs Bhagwan Industries Ltd [2017]- INCOME TAX APPEAL NO.436 OF 2015 dated 18.07.2017 Bombay High Court***

**4309.** The Court held that provision for doubtful debts and depletion of long-term investments are not liabilities and same cannot be added back to net profit for arriving at MAT profits.
***Godrej Industries Ltd. v. B.S. Singh, Dy. CIT[2015] 62 taxmann.com 354 / 235 Taxmann 25 / 377 ITR 1 (Bom.)***

**4310.** Where the assessee, who was subject to tax as per the provisions of Minimum Alternate Tax ('MAT'), filed its return and claimed exemption under section 54EC of the Act, which was denied by the AO stating that such exemptions were not to be accounted for while computing tax liability under MAT, the Court held that the of claim under section 54EC had to be seen in the context of the provisions of section 115JB which was a self-contained code of assessment and since sub-section (5) of section 115JB opens the assessment to the application of all other provisions contained in the Act except if specifically barred by that section itself, the assessee was entitled to relief under section 54EC for purpose of computation of tax under section 115JB as the relief under section 54EC was not specifically barred therein.
***CIT Vs. Metal & Chromium Plater P.Ltd. (2016) 97 CCH 0080 ChenHC (TCA No. 359 of 2008)***

**4311.** The Court allowed deduction towards lease equalization charges debited by the assessee in its profit and loss account while computing book profits for the purpose of MAT u/s 115JB noting that the method employed by the assessee over the full term of the lease period would result in the lease equalization amount being reduced to a naught, as the debit and credits in the profit and loss account would square off with each other and such method of accounting which follows some established principles, one of which includes offering only revenue income for tax, could not be faulted, rather represented a true and fair view of the accounts, which is a statutory requirement u/s 211(2) of the Companies Act.
***CIT v MGF India Ltd – (2018) 91 taxmann.com 405 (Del HC) – ITA Nos. 378 of 2004 and 76 of 2007 dated 21.02.2018***

**4312.** The Court held that clause (i) to the explanation was inserted to supersede HCL comnet (305 ITR 409) and accordingly, a mere provision for bad debts has to be added back for computation of book profit u/s 115JA/JB. However, in terms of Vijaya Bank [323 ITR 155(SC)], if there is a simultaneous reduction from the loans and advances on the asset side of the balance sheet, the provision amounts to a write off of the debt which is not hit by clause (1) of the explanation to section 115JB.

Go to Index

***CIT vs Vodafone Essar Gujarat Ltd-(GujaratHC)ITA No.749 of 2012 dated 04.08.2017***

**4313.** The Court held that lease equalization charges were not to be added back while computing the book profit for the purposes of MAT under section 115JA of the Act since it was not in the nature of reserve and the MAT provisions do not provide for the adding back of such lease equalization charges.
***Pr CIT v Sun Pharmaceutical Industries Ltd – TS-344-HC-2016 (Guj)***

**4314.** Assessee filed its return declaring certain income under section 115JA. Assessee claimed certain amount as provision for 'Non-performing Assets' covered under policy with Deposit Insurance and Credit Guarantee Corporation. Assessing Officer re-computed income under section 115JA and added back said amount of provision to assessee's income. Tribunal, however, directed Assessing Officer to allow provision as deduction while computing book profit under section 115JA. The Court held that in view of order passed by Supreme Court in Vijaya Bank v. CIT [2010] 190 Taxman 257/323 ITR 166, matter was to be remanded back to Commissioner (Appeals) with a direction to look into records and to record a finding as to whether bad and doubtful debts were reduced from loan and advances of debtors from assets side of balance sheet and thereafter, re-compute income under section 115JA.
***CIT v. Syndicate Bank, Mangaluru-[2019] 101 taxmann.com 171 (Karnataka)- ITA No. 164 of 2009-dated December 4, 2018***

**4315.** Where AO while computing book profit under sec. 115JA, added back provision for 'Non-performing Assets' covered under policy with Deposit Insurance and Credit Guarantee Corporation. The Court held that matter was to be remanded back to Commissioner (Appeals) with a direction to look into records and to record a finding as to whether bad and doubtful debts were reduced from loan and advances of debtors from assets side of balance sheet and thereafter, re-compute income under section 115JA.
***CIT v. Syndicate Bank, Mangaluru-[2019] 101 taxmann.com 171 (Karnataka) IT Appeal No. 164 OF 2009 dated December 4, 2018***

**4316.** The Court held that interest under sections 234B and 234C cannot be charged when total income is assessed to tax under section 115J.
***TamilnaduMagnesite Ltd. v DCIT [2018] 94 taxmann.com 245 (Madras)- M.P. NO. 1 of 2008 dated 09.04.2018***

**4317.** The Court allowed the assessee reduction of excess provision credited to the Profit and Loss account on account of change in depreciation method while computing book profits under section 115JA of the Act as Explanation (i) to the said section specifically provides for such reduction. It appreciated the contention of the Revenue that assessee could make themselves zero tax companies even while making profits vide the change in accounting methods but stated that the language of the taxing statute was clear not warranting purposive interpretation and thereby ruling in favour of the assesse.
***Dharmapuri Paper Mills Pvt Ltd v JCIT [Tax Case (Appeal) No 933 of 2005] – TS-502-HC-2015 (MAD)***

Go to Index

**4318.** The Court held that an assessee's case would fall within the ambit of clause (c) of section 115JA(1) only if amount is set aside as provision. The Court further held that the provision is made for meeting a liability and the provisions should be for other than ascertained liabilities i.e. for an unascertained liability.
***L.R.N. Finance Ltd. v. ACIT – [2018] 93 taxmann.com 106 (Madras) – T.C. (Appeal) No. 916 of 2008 dated April 9, 2018***

**4319.** The assessee claimed a tariff adjustment in respect of electricity bills, in respect of which application was pending before CERC for revision in tariff rates. The AO held that assessee's application was pending before CERC and, therefore, it was not an ascertained liability and accordingly added back the amount of provision to book profit under section 115JB. The Court held that although the liability towards power tariff would be quantified and discharged to adjust it at a future date, the liability was capable of being estimated with reasonable certainty and since the assessee estimated the liability after taking all relevant factors into consideration, it held that the addition on account of tariff adjustment was to be deleted as it was not a contingent liability.
***Pr CIT v NHPC Ltd. [2018] 92 taxmann.com 130 (Punjab & HaryanaHC) - IT APPEAL NO. 356 OF 2015 (O & M) dated March 21, 2018***

**4320.** The tribunal held that amount disallowed u/s 14A could not be added to arrive at book profit for purposes of section 115JB. Even if some addition had been confirmed u/s 14A, then also it could not be adjusted in book profit for purposes of section 115JB.
***DCIT vs Ausom Enterprise Ltd- (2018) 54 CCH 0088 AhdTrib- ITA No 1519, 1520/Ahd/2016 and ITA No 857/Ahd/2017 dated 15.10.2018***

**4321.** The Tribunal accepted assessee's contention that the disallowances made u/s 14A r.w.r. 8D cannot be the subject matter of disallowances while determining the net profit u/s 115JB of the Act, relying on the Special Bench decision in the case of ACIT v Vireet Investment Pvt. Ltd. [82 taxmann.com 415 (Del Trib)] wherein it was held that "*the computation under clause (f) of Explanation 1 to section 115JB(2), is to be made without resorting to the computation as contemplated under section 14A, read with rule 8D*". However, relying on the decision in the case of CIT v Jayshree Tea Industries Ltd. [ITAT No.47 of 2014 (Cal)] wherein it was held that since the assessee had not claimed the amount of expenditure relatable to exempted income to be Nil, the amount of the said expenditure was to be computed by applying clause (f) of Explanation 1 u/s 115JB without resorting to section 14A, the Tribunal directed the AO to work out the disallowances in terms of the clause (f) to Explanation 1 of section 115JB independently after considering the expenses debited in the profit & loss account as mandated under the provisions of law.
***INCOME TAX OFFICER vs. NIRMA CREDIT & CAPITAL PVT. LTD. - (2018) 53 CCH 0147 (Ahd Trib) - ITA No. 2830/Ahd/2016 dated Jun 8, 2018***

**4322.** The Tribunal allowed assessee's appeal against CIT(A)'s order and deleted the disallowance made u/s 14A while computing assessee's book profit u/s 115JB, holding that the issue was squarely covered by the co-ordiante bench decision in case of assessee's group company in

Arvind Ltd. vs. DCIT [ITA No.1816/Ahd/2011] wherein it was held that the AO was not entitled to tinker with book profits contemplated u/s 115JB towards disallowance made u/s 14A.
***Arvind Brands Ltd and Anr vs Dy.CIT [2018] 54 CCH 0184 (AhdTrib) I.T.A. No. 1509 & 1639/Ahd/2012 dated 02.11.2018***

**4323.** The Tribunal held that the benefit of clause (iii) to Explanation 1 to section 115JB (i.e. deduction of lower of brought forward losses or unabsorbed depreciation as per books of account) is not available in event either unabsorbed loss or unabsorbed depreciation becomes NIL.
***Milan Intermediates LLP v ITO - [2018] 96 taxmann.com 338 (Ahmedabad - Trib.) – ITA No 209 (ADH.) OF 2018 dated July 26, 2018***

**4324.** The Tribunal allowed assessee's claim for reduction of accumulated unabsorbed depreciation of earlier years while computing book profit u/s 115JB and rejected Revenue's stand that debit balance in profit and loss account was to be taken at nil under Explanation 1 (iii) to Sec. 115JB (which restricts reduction from book profit to lower of debit balance in profit and loss account or unabsorbed depreciation) since the assessee, declared as “sick industrial unit” under the Sick Industrial Companies (Special Provisions) Act, 1985 (‘SICA’), had transferred its credit balances in various accounts such as - security premium account, capital reduction account, etc. to 'rehabilitation scheme account' which was utilized to set off debit balance in P&L account. It held that considering that book profit u/s 115JB was required to computed as per Part-II and Part-III of the Schedule-VI of Companies Act the accounting treatment under Rehabilitation scheme was irrelevant for computing book profit and that SICA had no overriding effect on the Companies Act”. Referring to provisions of Part II and III of Schedule VI and ICAI Guidance note, it further held that that restructuring credits mentioned above came from reserves or capital contribution of equity participants, etc. and did not have an element of 'income' in them and thus loss could not be set off against these items in the accounts prepared as per Part II and III of Schedule VI. Therefore the brought forward losses could not be considered as Nil.
***Surat Textile Mills Ltd – TS-315-ITAT-2016 (Ahd)***

**4325.** The Tribunal held that provisions of section 115JB are not applicable to banking company as the accounts are drawn in conformity with Banking Regulation Act, 1939, and no accounts are drawn up as per requirement of schedule VI of Companies Act, 1956.
***Canara Bank v JCIT - TS-174-ITAT-2016(BANG)***

**4326.** The Tribunal held that remission of liability of one time settlement credit to P&L account formed part of book profits under section 115JB and could not be excluded on the basis that it was capital in nature, as once the P&L account was prepared as per Schedule VI of the Companies Act, then no exclusion or inclusion of any item except as provided under section 115JB of the Act could be made. It distinguished the ruling of Shivalik Venture Pvt Ltd (TS-469-ITAT-2015 (Mum)) relied on by the assessee, as in the said ruling the income of capital nature was disclosed in the notes to account and not in the P&L account, which was not so in the instant case.
***B&B Infotech Ltd v ITO (ITA No 726 / Bang / 2014) – TS-643-ITAT-2015 (Bang)***

Go to Index

**4327.** The Tribunal held that section 115JB does not apply to insurance companies as they are required to prepare accounts as per Insurance Act and regulations of Insurance Regulatory Development Authority (IRDA) and not as per Parts II and III of Schedule VI of Companies Act.
***DCIT v Cholamandalam MS General Insurance Co. Ltd. - [2018] 96 taxmann.com 625 (Chennai - Trib.) - ITA Nos. 1618 to 1621, 1674 to 1676 & 1759 of 2011 & Others dated July 31, 2018***

**4328.** The Tribunal held that Section 115J does not empower Assessing Officer to embark upon a fresh enquiry in regard to entries made in books of account of company and thus, where assessee company received a certain sum on retirement as a partner from a firm and had taken it straight away to General Reserve account and not in Profit and Loss Account, there being no allegation that brought on loss account was not prepared in accordance with Part-II & III Schedule VI of Companies Act, Assessing Officer could not have considered and added back the said amount to determine book profit under section 115JB.
***Sharadha Terry Products Ltd v ACIT - [2016] 68 taxmann.com 282 (Chennai-Trib)***

**4329.** The Tribunal held that since applicability of provisions of Schedule VI of Companies Act was excluded in respect of insurance companies, provisions of Section 115JB which enable companies to compute book profit, is not applicable to insurance companies
***Royal Sundaram Alliance Insurance Co. Ltd. v DCIT [2018] 97 taxmann.com 644 (Chennai - Trib.) ITA Nos 1622 to 1630 (CHNY) OF 2011 & OTHERS dated August 6, 2018***

**4330.** Where assessee had charged depreciation for wind mills at 80 per cent but AO restricted claim of depreciation on windmills to 5.28 per cent as per Schedule XIV of Companies Act, 1956 while computing MAT liability u/s 115JB, the Tribunal held that since nothing was brought on record to show how and on what basis, higher rate of depreciation was arrived at by assessee, lower authorities were justified in holding that assessee had no reason to provide depreciation at higher rate.
***Indus Finance Corpn Ltd. v DCIT [2018] 93 taxmann.com 215 (Chennai – Trib.) – ITA NO. 1348 OF 2017 dated 03.05.2018***

**4331.** The assessee had earned dividends and long term capital gains which were exempt u/s 10(34) and 10(38) respectively. The assessee paid MAT on book profits u/s 115JB. The AO observed that the assessee had claimed expenses against the exempt income and accordingly, disallowed the expenditure u/s 14A and added the same to the book profits. The CIT(A) observed that as per Explanation to Section 115JB(2) expenditure relatable to exempt income [other than income exempt u/s 10(38)] was to be added back to the book profits. Accordingly, he restricted the disallowance made by the AO only to the expenditure relatable to the dividend income u/s 10(34). The Tribunal observed that book profits were to be determined u/s 115JB(2) as per Company's act, 1956. It further observed that for applying the provisions of clause (f) of Explanation to section 115JB(2), there should be nexus between the amount of expenditure relatable to the income exempt u/s 10 of the Act and since no nexus was established with the dividend income, the expenditure could not have been disallowed under clause (f) of the Explanation. Relying on Delhi High Court ruling in the case of Pr. CIT V. Bhushan Steel Ltd ITA No.593/2015, it held that disallowance under section 14A read with Rule 8D could not be added

while computing book profits as per section 115JB as Explanation to that section did not mention section 14A.

***ACIT vs. VIREET INVESTMENT PVT. LTD. & ANR. (2017) 50 CCH 0145 DelTrib dated 16.06.2017***

**4332.** The Tribunal held that the amount of the MAT tax credit, inclusive of surcharge and education cess etc., if any, should be reduced from the amount of tax determined on the total income after adding surcharge and education cess, etc. It explained that the prescription of section 115JAA(2A) is that if the amount of tax under the regular provisions is, say, Rs. 110/- (tax of Rs. 100 and surcharge and cess etc. at Rs. 10) and u/s 115JB(1) it is Rs. 121/- (tax of Rs. 110 and surcharge and cess etc. at Rs. 11), the assessee is entitled to tax credit of Rs. 11/- (Rs.121/- minus Rs. 110/-) in subsequent years, which has two components, viz., tax of Rs. 10 and surcharge etc. of Rs. 1. Accordingly, in the subsequent year, the assessee is entitled to take MAT tax credit of Rs.11 against the tax liability determined under regular provisions after adding surcharge and education cess, etc, if any. The Tribunal also held that the charging of interest u/s 234B and 234C etc. is to be done on the net amount of tax determined after reducing the amount of MAT tax credit from the amount of tax payable for the year in the same way as advance tax and TDS are reduced.

***Consolidated Securities Ltd. v ACIT - [2018] 96 taxmann.com 418 (Delhi - Trib.) – ITA NO. 3739 (DELHI) OF 2015 dated July 26, 2018***

**4333.** The assessee was engaged in business of distribution of electricity and during assessment proceeding the AO had enhanced assessee's book profit u/s 115 JB and the same was upheld by the CIT(A). The Tribunal held that the CBDT understood that companies engaged in business of generation and distribution of electricity and enterprises engaged in developing, maintaining and operating infrastructure facilities, as a matter of policy, were not brought within purview of amendment (s. 115JA) for the reason that such a policy would promote infrastructural development of country and such an understanding of CBDT was binding on Department. Thus, the Tribunal held that section 115JB had no application to facts of case in hand and accordingly additions made to enhance book profits were directed to be deleted.

***North Delhi Power Ltd vs ACIT- (2018) 54 CCH 0137 Del Trib-ITA Nos 4848/Del/2010 dated 29.10.2018***

**4334.** The assessee earned gains on sale of agricultural land and the AO did not make any addition to the book profit while calculating MAT under Section 115JB. However, (on appeal being filed by the assessee on other issues) the CIT(A) directed the AO to include income earned from sale of agricultural land in book profits and determine tax payable under Section 115JB. The Tribunal allowed the assessee's appeal against the said direction of CIT(A). It held that since the income from sale of agricultural land was exempt from tax, the said exempt income could not be added to the books profit while calculating the MAT under Section 115JB.

***ITO & Anr. vs. Gomantak Exims Ltd. & Anr. – [2018] 53 CCH 0106 (Delhi Tribunal) – ITA No. 2708/DEL/2012 (CO No. 435/DEL/2012) dated May 15, 2018***

**4335.** The AO disallowed assessee's claim for provision for bad and doubtful debts, while determining the book profits for the purpose of MAT liability, considering the same to be unascertained

liability as per clause (c) of the Explanation 1 to section 115JB. The Tribunal held that provision made for doubtful debts, being unascertained liability, deserved to be added to book profit. However, noting that the amount claimed was actually part of the ascertained liability, i.e. bad and doubtful debts written off, which was only adjusted in the provision account separately maintained by the assessee, it held that since the aforesaid clause (c) speaks of making additions to book profit only in event where provision made for meeting unascertained liability, the disallowance made by the AO was to be deleted.

***Southern Power Distribution Company of AP Ltd. v DCIT - [2018] 93 taxmann.com 451 (Hyderabad - Trib.) (TM) - IT APPEAL NOS. 1460 & 1533 (HYD.) OF 2013 dated April 27, 2018***

**4336.** The Tribunal held that where assessee relied on ITR-6 format to arrive at total liability as well as MAT credit calculations, Assessing Officer could not overlook the said format and proceed to calculate MAT credit u/s 115JB in the assessment u/s 143(1) without including surcharge and education cess while arriving at the amount of total tax payable under the normal provisions of the Act.

***Virtusa (India)(P)Ltd v DCIT - TS-121-ITAT-2016(HYD)***

**4337.** The Tribunal held that section 115JB was not applicable to entities registered and recognized as companies under the Companies Act and therefore, since the assessee was a corporation established under the Damodar Valley Corporation Act, 1948, the provisions of section 115JB were not applicable.

***Damodar Valley Corporation v Add CIT – (2016) 66 taxmann.com 25 (Kol)***

**4338.** The Court held that loss incurred by assessee-company on transfer of its investment division to another company was to be debited to its profit and loss account and said loss was not required to be added back while computing book profit under section 115JB

***CIT v Binani Cement Ltd - TS-111-ITAT-2016(KOL)***

**4339.** The Tribunal held that subsidy received by the assessee from Government of West Bengal under Incentive Scheme 1999 is a capital receipt is not taxable under normal provision of Act. Assessee had established a new industrial undertaking and subsidy was given to assessee for establishment of new industrial unit. In case of CIT vs. Rasoi Limited, High Court held that Sales Tax Incentive granted by GOWB to assessee with object to a provide incentive to set up new industrial undertaking or substantial expansion of existing undertakings was capital receipt and not revenue in nature. Also, incentives received was not liable for consideration under book profit under MAT proceedings u/s.115JB.

***Haldia Petrochemicals Ltd. & ANR. vs. Asst. CIT & ANR.- (2018) 53 CCH 0294 KolTrib-ITA No.1533/Kol/2015,168/Kol/2016-Dated Jul 6, 2018***

**4340.** Where the assessee had made only a provision for doubtful investments and doubtful loans and advances which was not written off in the books by the assessee, the Tribunal held that the said provision being provision made for dimunition in value of any asset as per Explanation 1 to section 115JB had to be added back to book profits.

Go to Index

***West Benegal Electronics Industry Development Corp. Ltd vs Dy.CIT &Anr [2018] 53 CCH 0475 (Kol Trib) - ITA NOS. 1982 /Kol /2013 Dated August 24, 2018***

**4341.** Where the assessee had claimed deduction on account of bad debts written off through provision for doubtful debts under clause (i) of Explanation 1 to section 115JB without providing details in support of his claim to the AO and the CIT(A) had deleted the addition made by AO in this regard after the assessee submitted the relevant documents before it, the Tribunal remanded the matter back to AO for re-examination, noting that necessary details of provision created by assessee in earlier years for bad debts were not supplied by assessee to AO at time of assessment proceedings and CIT(A) had admitted fresh evidences in contravention of the provisions of rule 47A.
***EPCOS India (P.) Ltd. v ITO – (2018) 169 ITD 541 (Kol Trib) – ITA Nos. 2553, 2758 (Kol.) of 2013 & 688, 1325, 1718 & 1895 (Kol.) of 2014 dated 02.02.2018***

**4342.** The Tribunal held that provision made for liabilities incurred but not reported (IBNR) made by assessee as per regulations framed byInsurance Regulatory Development Authority (IRDA) based on a scientific calculation with a proper rationale could only be termed as ascertained liability and hence, the same need not be added back by treating the same as an unascertained liability while computing the book profits under section 115JB.
***DCIT v. National Insurance Co. Ltd. [2016] 72 taxmann.com 116 (Kolkata - Trib.) IT APPEAL NOS. 674, 982 & 983 (KOL.) OF 2012***

**4343.** The Tribunal held that the MAT provisions do not apply to the assessee (UCO Bank), a nationalized bank as it did not qualify as a 'company' under section 3 and consequently section 211 of the Companies Act, 1956 therefore falling outside the purview of Explanation 3 to Section 115JB of the Act. It also noted that the assessee was declaring dividends to shareholders and paying huge income tax under the Act.
***UCO Bank v DCIT (I.T.A No. 1768/Kol/2009) – TS-687-ITAT-2015 (Kol)***

**4344.** Where waiver of principal and interest under one-time settlement with lender was disclosed in 'Notes' to Auditors Report. The Tribunal held that it was obligatory on part of Assessing officer to have considered same while determining 'book profit' under section 115JB.
***Mukand Ltd. v. ITO, 3(2)(2), Mumbai-[2019] 101 taxmann.com 214 (Mumbai - Trib.)-IT Appeal No. 679 (Mum.) of 2011 dated December 5, 2018***

**4345.** The Tribunal held that while computing book profits under section 115JB, assessee's claim for deduction in respect of prior period adjustments could not be allowed.
***Mukand Ltd. v. ITO, 3(2)(2), Mumbai-[2019] 101 taxmann.com 214 (Mumbai - Trib.)-IT Appeal No. 679 (Mum.) of 2011- dated December 5, 2018***

**4346.** The Tribunal held that capital gains from transfer of asset by Holding Company to its Wholly Owned Subsidiary which is exempt from tax under section 47(iv) of the Act is not 'income' as per section 2(24)(vi) of the Act and therefore cannot be included in computation of book profit for MAT purposes.
***Shivalik Venture Pvt Ltd v DCIT - 60 taxmann.com 314 (Mumbai – Trib)***

Go to Index

**4347.** The Tribunal held that no disallowance relatable to exempt income can be made u/s 14A r/w Rule 8D while computing book profit u/s 115JB.
***TATA SONS LIMITED vs. Asst. CIT (2019) 54 CCH 0505 MumTrib ITA No. 1213/Mum/2018 dated 13.12.2018***

**4348.** The Tribunal allowed assessee's appeal against CIT(A)'s order for AY 2008-09 wherein the CIT(A) had confirmed AO's action in not considering the surcharge and education cess alongwith MAT paid for AY 2006-07 while allowing MAT credit against the income-tax liability (including surcharge and education cess) for AY 2008-09, relying on Eastern Jewels Pvt. Ltd. vs ACIT (ITA No.163/Jp/2017) wherein it was held that MAT credit including surcharge and cess would be allowed to be carried forward and set off against income-tax including surcharge and cess. It also noted that Explanation 2 to section 115JB (though not in context of MAT credit but) clearly states that tax includes surcharge and cess.
***SI Group India Pvt. Ltd. v DCIT [TS-711-ITAT-2018(Mum)] - ITA NOs.2348 & 2350/Mum/2017 dated 11.10.2018***

**4349.** The Tribunal allowed assessee's appeal and deleted adjustment made by AO towards capital gains arising to assessee-company on sale of property while computing book profit u/s 115JB, though the assessee had credited profit derived from transfer of property to the Reserves & Surplus account in the balance-sheet without routing it through P&L Account, rejecting Revenue's contention that financial statements were not in accordance Parts II and III of Schedules VI to the Companies' Act, 1956. It held that the AO has to accept the authenticity of the accounts prepared as per provisions of Companies Act and certified by the statutory auditors and further approved by the company in general meeting. The Tribunal relied on the decision of Apollo Tyres Ltd v CIT [255 ITR 273 (SC)] wherein it was held that the AO does not have a power to embark upon the fresh enquiry with regard to the entries made in the books of account of the company, when the accounts of the assessee company is prepared in terms of Parts II and III of Schedules VI to the Companies' Act, 1956.
***Acmevac Pumps & Engg Pvt Ltd v ACIT [TS-463-ITAT-2018(MUM)] - ITA No.5155/MUM/2017 dated 10.08.2018***

**4350.** The assessee had debited certain amount as 'diminution in value of investment' to the P&L A/c, being the amount resulting on account of the accounting principle laid down in AS 13 requiring the assessee to value the current investments at the lower of cost and fair value. The AO added the said amount while computing book profits u/s 115JB considering the amount to be Provision for diminution in value of current investment. Noting that the assessee had credited the difference between the sale price and fair value as on 31.03.2008 to P & L A/c and not the difference between sale price and its cost, the Tribunal held that such accounting treatment was impossible where the provision was made instead of write off. It held that the said amount was not a provision for diminution in value of investment but the actual charged for the loss in the diminution in value of investment, not warranting an increase in the book profits computed u/s 115JB. Further, it relied on the decision in the case of CIT v Vodafone Essar Gujarat Ltd. [Tax Appeal No.749 of 2012 (Guj)] wherein the above issue had been discussed in detail and, accordingly, dismissed the Revenue's appeal.

Go to Index

***ACIT v Reliance Welfare Association Circle – (2018) 52 CCH 35 (Mum) – ITA No. 976/M/2012 dated 15.01.2018***

**4351.** The Tribunal held that waiver of amount of loan credited to the P/L A/c was not be included for calculation of 'Book Profit' on the ground that surplus resulting in the books of accounts of the Assessee Company upon waiver of a loan was not required to be credited to the profit and loss account of the Assessee and in any case the same could not be treated as working result of the Assessee during the period covered by the Accounts, so as to treat it as part of the 'Book Profit' of the Assessee. The Tribunal clarified that the object of enacting of section 115J, 115JA & 115JB was never to fasten any tax liability in respect of something which was not an income at all or even if it was income but was not taxable under the normal provisions of the Act. Further, the provisions of section 115JB could not be so interpreted so as to require accounting of what in substance was capital in nature to the credit of the profit & loss account and get indirectly taxed as book profit. The Tribunal relied on the ruling of the Special Bench in the case of Sutlej Cotton Mills Ltd. (45 ITD 22). The Tribunal further held that waiver of interest on loan as well could not be included for the purpose of determining 'Book Profit' since it was not taxable u/s 41(1) as the Assessee had never claimed a deduction of the said interest in view of the provisions of section 43B nor was it a remission of trading liability. Further, the Tribunal clarified that waiver of interest dues was a capital surplus item and following the same analogy for waiver of loan it could not be included for determining 'Book Profit'. Also, 41(1) is a deeming fiction and the same could not be extended to section 115JB. The Tribunal further rejected the contention of the Department (that the Assessee itself had included the said amounts while computing 'Book Profits', therefore, the same cannot be tinkered with) on the ground that the Assessee had specifically given a caveat with the computation of income that out of abundant caution it had included the said amounts in 'Book Profit', that the Assessee had reserved the right to exclude the said sums and contest the same during the assessment proceedings.
***JSW Steel Ltd. vs. ACIT [TS-76-ITAT-2017(Mum)] (ITA No. 923/Bang/2009 dated 13.01.2017)***

**4352.** The Tribunal held that the assessee's share of income from association of persons even though credited to Profit and Loss account was to be reduced while calculating book profits for the purpose of MAT calculation on the ground that relief under clause (iic) to explanation 1 to Sec 115JB introduced vide Finance Act 2015 was to be applied retrospectively. Observing that there was already a deduction under Explanation 1 to Section 115JB for exclusion of share of partners income credited to P&L a/c, the Tribunal held that the intention of the legislature was to provide similar remedy to share of AOP as well. Further, clarifying that the purpose of Sec 115JB was not to tax any income which is otherwise not taxable, it held that it was a settled proposition that an explanatory Act which was curative in nature or any remedial statute was brought in the statute either to remedy unintended consequence or to provide benefit which was applicable to particular class of assessee and was extended to other class of assessee, was to be declared retrospective in operation.
***Goldberg Finance Pvt. Ltd. vs. ACIT TS-45-ITAT-2017(Mum) ITA No.7496/Mum/2013 dated 19/01/2017***

Go to Index

**4353.** The Tribunal held that section 115JB of the Act provides for the adding back of income tax paid / payable and any income tax provision created which was not applicable for wealth tax and therefore deleted the addition made on account of provision for wealth tax.
***Reliance Industries Ltd v ACIT – (2015) 45 CCH 0055 Mum Trib.***

**4354.** The Tribunal held that under the accounting terminologies provision for doubtful debts and writing off bad debts had a distinct meaning and a provision created was to take care of the dimunition in the value of Sundry Debtors and would not tantamount to a write off of bad debts and therefore confirmed the CIT(A)'s rectification order making an addition of provision for doubtful debts for the purpose of computing book profits under section 115JB pursuant to amendment to Explanation 1 to Secton 115JB vide Finance Act, 2009. It further held that the CIT(A) was justified in rectifying an order based on a subsequent amendment made with retrospective effect.
***Reliance Industries Ltd v ACIT – TS-309-ITAT-2016 (Mum)***

**4355.** The Tribunal held that the book profit computed u/s 115JB can be increased by the amounts specified under Explanation 1 to the said provision. Explanation 1 to s. 115JB makes it clear that it does not refer to the disallowance made u/s 14A r/w Rule 8D. Therefore, the AO could not increase the book profit by taking recourse to the provisions of s. 14A r/w Rule 8D. However, clause-(f) to Explanation-1 to s. 115JB empowers the AO to increase the book profit by the amount of expenditure relatable to exempt income.
***Tata Petrodyne Ltd vs ACIT- (2018) 54 CCH 0285 Mum Trib- ITA No 4887,5571,4914/Mum/2012 dated 28.09.2018***

**4356.** Where the Assessee earned exempt dividend income, the AO made disallowance under Section 14A of the Act read with Rule 8D of the Rules as he was of the opinion that huge investments could not be made without the help of financial advisors and directors and therefore administrative expenditure was incurred by the Assessee. Further, the AO also made an addition in respect of disallowance made under Section 14A of the Act while computing book profits under Section 115JB of the Act. CIT(A) upheld the order of the AO. Relying on the *assessee's own case before the Mumbai Tribunal in ITA No. 2474/Mum/2013 (AY 2007-08) dated 06.08.2014*, the Tribunal restricted the disallowance to 5% of the exempt income earned. In respect of the computing book profits under Section 115JB of the Act, the Tribunal relied on the order of the *Special Bench of the Delhi Tribunal in ACIT vs. Vireet Investments (P.) Ltd. (58 ITR (AT) 313)* and held that no disallowance under Section 14A of the Act read with Rule 8D of the Rules could be made while computing book profit under section 115JB of the Act. Thus, the Assessee's appeal was partly allowed.
***ZEE ENTERTAINMENT ENTERPRISES LIMITED vs. ACIT (Mumbai TRIBUNAL) (ITA No. 6969/ Mum/ 2016) dated May 31, 2018 (53 CCH 0204)***

**4357.** The Tribunal following the decision of Hon'ble Calcutta High Court in the Case of Srei Infrastructure Finance Ltd [(2016) 72 taxmann.com 239] held that MAT Credit u/s 115JAA of the Act brought forward from earlier years is to be set off against the tax on total income under normal provisions after taking into account the amount of Surcharge and Education Cess computed on such tax.

Go to Index

***Chanda Investment and Trading Co Pvt. Limited v ACIT [TS-717-ITAT-2018(PUN)] – ITA No.2451/PUN/2017 dated 01.11.2018***

**4358.** The Tribunal dismissed Revenue's appeal against CIT(A)'s order allowing exclusion of profits of assessee (sick company) from computation of book profits till the AY 2010-11, being the year in which the net worth of company became positive as per Explanation 1 (vii) to section 115JB, rejecting AO's contention that since in the impugned AY the net-worth had turned positive, the aforesaid benefit was not available. It noted that the said Explanation clearly defines ending point for exclusion of book profit, which is AY in which the net worth of the company becomes equal to or exceeds the accumulated losses and thus held that the benefit of exclusion of the entire profit shall be available for the year in which net worth becomes positive and the company shall be liable to pay tax u/s 115JB from the next year.
***ACIT v Gujarat Sidhee Cement Ltd [TS-716-ITAT-2018(Rjt)] - I.T.A No.688/RJT/2014 dated 11.12.2018***

### *q. Miscellaneous*

**4359.** The Apex Court dismissed Revenue's SLP filed against the High Court's order allowing credit of advance tax paid and TDS paid against the tax payable under the Income Declaration Scheme, 2016 (IDS) where the assessee had not filed return u/s 139 from AY 2010-11 onwards owing to non-audit of accounts, however had paid advance tax for past 5 years, credit for which had been claimed along with TDS while making declaration under IDS.
***Kumudam Publications [TS-46-SC-2018] – SLP (CIVIL) Diary No(s). 33000/2017 dated 29.01.2018***

**4360.** The Apex Court held that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons. Further, it held that given section 238 of the Insolvency and Bankruptcy Code, 2016, the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act.
***PCIT vs. Monnet Ispat And Energy Ltd - Petition(s) for Special Leave to Appeal (C) No(s). 6483/2018 (SC) dated 10.08.2018***

**4361.** The Apex Court clarified that the Superannuation age of President and Members of ITAT would be 65 years and 62 years respectively.
***Kudrat Sandhu v UOI [2018] 95 taxmann.com 167 (SC) - WRIT PETITION (CIVIL) NO. 279 OF 2017 dated July 16, 2018***

**4362.** The Apex court dismissed petition filed by Shanti Bhusan & Prashant Bhushan, seeking constitution of special investigation team to direct investigation of the alleged incriminating material seized in CBI/Tax departments raid conducted on Birla & Sahara group of companies on the ground that entries in loose papers/sheets were irrelevant and not admissible. Further, it held that entries in books of accounts alone would not constitute sufficient evidence to implicate a person since the same was only corroborative evidence.
***Common Cause (A Registered Society) [TS-22-SC 2017]***

Go to Index

**4363.** The Apex court held that Income derived from slot charter operations of a Tonnage Tax Company being deemed tonnage tax is liable to be included while determining Tonnage Income under tonnage tax scheme even if such operations are carried on in ships which are not qualifying ships in terms of provisions of Chapter XIIG without valid certificate since there would not be any possibility of producing a certificate because identification of vessel for slot charter cannot be done as entire ship is not chartered and arrangement pertains only to purchase of slots, slot charter and an arrangement of sharing of break-bulk vessel.
***CIT v. Trans Asian Shipping Services (P) Ltd – TS-361-SC-2016 - CIVIL APPEAL NO. 5869 OF 2016***

**4364.** The Apex Court held that receipt on account of interest on debentures, upfront fees and interest on deposits given to other corporations by assessee-company was not chargeable to tax under erstwhile Interest Tax Act, 1974 on the ground that investment in debenture could never be equated with the 'advancement of loans made in India' as envisaged in the definition of interest under Interest Tax Act.
***Gujarat Industrial Investment Corp. [TS- 541-SC-2016]***

**4365.** The Apex Court reversed the order of the Rajasthan High Court and disregarded the transfer of shareholding by the assessee company (formed by conversion of a partnership firm holding leasehold mining rights) to third company for consideration observing that though there was nothing wrong in two transactions when viewed separately, but the combined effect and real substance was that the firm holding lease hold rights had successfully transferred the said rights to a third party for consideration in the form of share price which is nothing but price for sale of mining lease which was not allowed without statutory consent as mining rights belong to the State and not to lessee. It held that the doctrine of lifting the veil could be invoked if the public interest so requires or if there was allegation of violation of law by using the device of a corporate entity.
***State of Rajasthan & Ors v Gotan Lime Stone Khanji Udyog (P) Ltd.& Anr - TS-61-SC-2016***

**4366.** Where the Central Board of Direct Taxes (CBDT) issued a Circular under Section 119 of the Income Tax Act,1961, which amended the provisions contained in Rule 68B of the IInd Schedule to the Income Tax Act, 1961, the Apex Court upheld the decision of the High Court in quashing the circular as ultra vires and held that the legislative provisions cannot be amended by CBDT in exercise of its power under Section 119 of the Act.
***The CIT v SV Gopala – Civil APPEAL NO(S). 4901/2010 dated 13-07-2017***

**4367.** Single judge upheld entitlement of the assessee to have their applications processed for benefit of the Direct Tax Dispute Resolution Scheme, 2016. The Revenue on appeal submitted that only those the assesses, who had been levied penalty under provisions of the Income-tax Act which provided for levy of minimum penalty and maximum penalty alone could claim benefit of the Scheme. Hence, according to revenue instant cases being cases where penalty had been levied under sections 271D and 271E and as sections did not specify any minimum penalty or maximum penalty, cases of the assessees were outside the Amnesty Scheme. The High Court held that according to section 271D, a person who was liable to pay penalty thereunder was liable to pay, by way of penalty, a sum equal to amount of loan or deposit or specified sum so

Go to Index

taken or accepted, in contravention of section 269SS. Similarly, under section 271E also, penalty provided was a sum equal to amount of loan or deposit or specified advance, if so repaid. Thus, when a specified sum is so provided as penalty, such specified sum is minimum penalty payable and it does not mean that benefit of the Scheme could be claimed only by those the assesses who had been levied penalty under provisions of the Act providing for minimum penalty and maximum penalty. Therefore, the assesses could not be denied benefits of the scheme. SLP filed by Revenue against the High Court order is dismissed by the Supreme Court.

***Jt. CIT v. Grihalakshmi Films [2018] 96 taxmann.com 176/257 Taxman 188(SC); Grihalakshmi Films v. Jt. CIT[2017] 83 Taxmann.Com 215(Ker.) Special Leave Petition (Civil) Diary No. 14034 of 2018 dated July 2, 2018***

**4368.** The Revenue held auction of certain property fixing reserve price of Rs. 32.11 crores but none participated. After auction, the petitioner communicated an offer to CBDT for purchase of said property at Rs. 32.11 crores but same was not entertained. The Revenue held fresh auction, wherein reserve price was fixed at Rs. 30 crores and the Petitioner submitted its Bid at Rs. 30.10 crores along with other documents. The Revenue did not accept the bid on grounds that the petitioner had itself offered Rs. 32.11 crores in respect of the said property prior to holding of the auction. Further, CBDT directed Revenue to cancel the earlier auction and hold fresh auction after re-determining a reserve price by taking into account fresh valuation report of District Valuation Officer determining fair market value of the said property at Rs. 31.07 crores. The writ petition filed by the petition against the said cancellation of earlier auction was dismissed by the Court holding the same as not arbitrary.

***Sankalp Recreation (P.) Ltd. v UOI - [2018] 96 taxmann.com 349 (Bombay) - WRIT PETITION NO. 1598 OF 2018 dated July 27, 2018***

**4369.** Where due to a communication gap between the Revenue's Counsel and the AO, incorrect information was given to the Revenue's counsel causing unintended waste of time of the Court and the revenue sought closure of matter by giving an assurance that it would be more careful in future in respect of statements made in Court, the Court held that the CBDT should lay down a standard procedure in respect of manner in which the Departmental Officer/ AO should assist the Counsel for the Revenue while promoting/ protecting the Revenue's cause. It also directed the CBDT to reconsider the practice of appointing retired revenue officers as panel counsel. The Court explained that while the retired officials have domain expertise and do render assistance, they lack the skill and conduct required to appear as an Advocate and also lack the objectivity expected from officers of the Court. It held that the CBDT could consider holding of a training programme, where leading Advocates could address the domain expert on the ethics, obligation and standard expected of Advocates before they start representing the State.

***CIT v Grasim Industries Ltd. - [2018] 94 taxmann.com 81 (Bombay) - IT APPEAL NO. 778 OF 2015 dated April 18, 2018***

**4370.** The Court laid down the following guidance for the Department;

a. Department must have in place a system of keeping a record of questions of law which have been admitted or dismissed by Court as it would enable a consistent stand being taken by the revenue when a similar question arises before the same or different Bench of Court.

Go to Index

b. Framing of a substantial question of law needs legal acumen and experience in drafting to bring out the controversy appropriately and therefore, framing of question of law has be done by the counsel briefed to draft the appeal, no doubt with aid/assistance of officers of Revenue involved in the matter.

c. Quality of advocate would be best judged by his performance and not in result of litigation and this evaluation can take place only when Advocate is seen in action and that one of criteria mentioned in Instruction No. 3/2012, dated 11-4-2012 relating to renewal of appointment of counsel on basis of number of cases won by counsel for department was not justified.

d. There is a need to appoint more number of Advocates on panel and distribute work amongst them in an equitable manner as it would at least give an opportunity to Advocate to prepare properly for appropriate representation.

***CIT v. TCL India Holdings (P) Ltd – (2016) 71 taxmann.com 216 (Bom) - IT APPEAL NO. 2287 OF 2013***

**4371.** The Court held that there is no discipline in the manner the income-tax dept. conducts matters. It held that the dept. should not take legal matters casually and lightly. There should be a dedicated legal team in the department. Lack of preparation is affecting the performance of the advocates. They do not have full records & do not have the assistance of officials who can give instructions. The CITs should devote more time to their work rather than attending some administrative meetings and thereafter boasting about revenue collection in Mumbai.

***PCIT vs. Radan Multimedia Ltd – ITA NO.1320 of 2018 (Bom HC) dated 26.09.2018***

**4372.** Assessee-company was engaged in the business of printing and publishing newspapers, and out of the profits, acquired some properties. Consequent to enactment of S.40 of the Finance Act,1983 (bringing land & building not used for business purposes by companies in which public are not substantially interested to wealth tax), the assessee received notices u/s 16(4) of Wealth Tax Act, directing the assessee to file its return of wealth & notices of penalty were also issued. The assessee challenged S.40 on the ground that it was unconstitutional, violated Art. 14(not bringing to wealth tax the companies in which public are substantially interested) and thus to be regarded void. However, the Court rejected assessee's claim holding that the allegation against the statute was to be specific, clear and unambiguous. Further, it was observed that the Finance Minister, in his speech, made it clear about the purpose of enacting S.40 for the reason that individuals would transfer their assets to the company closely held by them to evade wealth tax since wealth tax was not attracted to companies. Therefore, the Court held that the fact that land and building owned by company was not used for purposes of business was sufficient to hold that these assets were to be taken into account u/s 40(3) of the Finance act for purposes of wealth tax and the said section was not violative to the constitution.

***Indian Express Newspapers (Bombay) Pvt. Ltd. & Anr. v Inspecting Asst. CIT & Anr (2018) 101 CCH 0129 BomHC - WRIT PETITION NO. 2983 OF 1987 dated 02.04.18***

**4373.** The Court dismissed writ petition of the assessee filed for grant of stay as the assessee and Tax Recovery Officer (TRO) willfully disobeyed the instructions of the Court. The Court in its earlier order had refused to grant ad-interim stay to the Tribunal's order requiring the assessee to pay certain amount to revenue for keeping the remaining demand in abeyance. However, assessee-society's President wrote a letter to the bank stating that the High Court, through 'oral'

directions, had instructed the tax department to not withdraw the funds received by the assessee in its bank account. TRO also wrote to bank stating the High Court through 'oral' directions, had instructed the department to allow assessee to withdraw funds; whereas no such directions/ instructions were given by the Court. The Court directed initiation of civil as well as criminal contempt against the assessee-society's President and TRO and appreciated Senior counsel J. D. Mistry's conduct, who withdrew himself as petitioner's counsel, acted as an officer of Court and brought to the notice of the Court the facts of the case.

***Sinhgad Technical Education Society v DCIT - TS-6-HC-2018(BOM) - WRIT PETITION NO. 13099 OF 2017 dated 05.01.2018***

**4374.** The Court held that a co-operative housing Society is not expected to indulge into profiteering business from its members and thus Transfer fees cannot be charged under the pretext of "voluntary donation". It held that amount which is accepted above permissible limits towards transfer fee is illegal and taxable as income in the hands of the society.

***Alankar Sahkari Griha Rachana Sanstha Maryadit vs. Atul Mahadev Bhagat - WRIT PETITION No. 4457 OF 2014 with CIVIL APPLICATION No. 2589 OF 2015 (Bom HC) dated 31.08.2018***

**4375.** Where e-returns filed by assessees were forwarded by CPC to AO for processing, but were not processed within the time-frame prescribed u/s. 143(1) second proviso as proper ITBA software was not available, the Court, referring to Centralized Processing of Return Scheme, 2011 and the relevant CBDT notifications of January, 2012, held that there was no provision in both the notifications which laid down that after the returns were sent to AO, if he found that the returns could not be processed on ITBA or any other software, the same could not be processed manually. The Court directed expeditious processing of assessees' returns for AYs 2014-15 to 2016-17 within 2 weeks' time and issue of refunds (if any) within 3 weeks' time. It directed Govt/CBDT to issue necessary directions to IT Department permitting manual processing in such cases within one month of the judgment. The Court expressed surprise regarding absence of order of priority laid down by any authority which would bind the AO for processing of returns and held that there could not be a pick and choose policy. It directed CBDT to formulate a ' rational' policy for processing of returns without any arbitrariness within 2 months

***Tata Projects Limited - TS-1-HC-2018(BOM) - WRIT PETITION NOs. 782 & 2051 of 2017; WRIT PETITION (L) NO. 2498 of 2017 dated 21.11.2017, 22.11.2017 & 23.11.2017***

**4376.** The Court dismissed assessee's appeal where the assessee claimed that the urban land held by it was not chargeable to wealth tax since the definition of "assets" contained in section 2(ea) Clause (v) of the Wealth tax act excludes from its scope "urban land" on which construction of a building is not permissible under any law for the time being in force. It held that there is a clear distinction between a case where the construction of a building is not permissible under any law for the time in force and where construction though permissible, must be preceded by permission, approval or sanction from the prescribed authority. Court upheld wealth tax liability on urban land held by assessee noting that construction was permitted on the said land subject to prior approval of authority.

***SAROVAR HOTELS PVT. LTD vs. DEPUTY COMMISSIONER OF WEALTH TAX [TS-703-HC-2018(BOM)] - Wealth Tax Appeal No.414, 415, 418,425,426 ofp 2016 dated 03.12.2018***

Go to Index

**4377.** Where the Assessee failed to pay full amount of 25% of tax payable on undisclosed income declared under the Income Declaration Scheme, 2016 on or before 30-11-2016 due to demonetization of Rs. 500 and Rs.1000 currency notes on 08-11-2016 and requested the Revenue to accept the balance amount of tax payable after the said due date, the Court held that there was no provision under the scheme which permitted the Authorities to accept part payment of tax after the specified date had passed. It further observed that the Scheme was optional, date of payment was known at the time of declaration and above all it was a facility made available to the parties who had failed to disclose their income under the Income Tax Act, 1961, to come clean. Hence, there was no reason for exercising extraordinary writ jurisdiction in these facts and accordingly assessee's writ was dismissed.
***Nandu Atmaram Wajekar [TS-141-HC-2017 (BOM)] (WP No. 3578 of 2017)***

**4378.** The Court held that the requirement of a certified copy of instrument of partnership deed being filed along with return of income for assessment years commencing from amendment to section 184 on 1-4-1993, only applies to firms which seek to be assessed as a partnership firm for first time after the said amendment. Where the assessee firm was assessed as a partnership firm prior to assessment year 1993-94 and there was no change in its constitution, it should continue to be assessed as a partnership firm for subsequent assessment years.
***Badshah Enterprises v. Assessing Officer [2018] 95 taxmann.com 245 (Bom.)- IT Appeal No. 28 of 2002 dated July 2, 2018***

**4379.** The Court held amounts of advance tax paid prior to the declaration made under the Kar Vivad Samadhan Scheme could not be adjusted while determining the tax arrears under the scheme noting that Explanation to Section 2(m) of the Finance Act (No.2) ipso facto excluded amounts paid prior to the declaration and that the entire unpaid amounts were to be treated as tax arrears.
***Inter Craft & ANR vs CIT & ANR (2016) 97 CCH 0146 DelHC(W.P.(C) 1706/1999, W.P.(C) 1707/1999)***

**4380.** The Court held that where the assessee-companies were registered under Registration of Companies (Sikkim) Act, 1961 but their management and control was wholly with a Delhi based CA firm (wherein The CA firm determined who would be directors of said companies and further blank signed cheque books of assessees together with rubber seals, letter heads and other records were found during search at said CA firm), they would be considered as resident Indian companies under section 6(3)(ii) even prior to application of Income-tax Act, 1961 to Sikkim with effect from 1-4-1990.
***CIT v Mansarovar Commercial P Ltd – TS-87-HC-2016(DEL)***

**4381.** The High Court directed the Tribunal to examine as to whether the assessee company (incorporated under Registration of Companies (Sikkim) Act, 1961) was an Indian company during AY 1987-88 to 1991-92. The lower authorities proceeded on the basis that the assessee was a foreign company. However, the assessee had argued that it fell within the description of Indian company as defined in section 2(26) and that it could not be treated as a foreign company u/s 115A for the purpose of taxing dividend income received by it as well as for other provisions of the Act. The assessee contended that the Indian Income Tax Act was brought into force or

extended to the territory of Sikkim w.e.f. 01.04.1990. The Court held that the question as to the applicability of Section 2(26) and its interplay with other provisions of the Act went to the root of the matter and accordingly, remanded the matter to Tribunal to examine as to whether the assessee company was an Indian company.

***Sikkim Janseva Pratishtan P. Ltd vs. COMMISSIONER OF INCOME TAX [2018] TS-464-HC-2018(Del)] ITA 89/2004 dated August 02,2018***

**4382.** The Court allowing assessee-company's writ, directed the Revenue to grant credit of advance tax paid and TDS deducted against the tax payable under the Income Declaration Scheme, 2016 (IDS). The Court accepted that IDS had to be interpreted on a stand-alone basis but held that there was nothing in the IDS Scheme which provided that such past amounts were not to be reckoned for the purpose of payments under IDS.

***Kumudam Publications (P.) Ltd. V. Central Board of Direct Taxes [2017] 79 taxmann.com 466 (Delhi) (WP (C) No. 11216 of 2016)***

**4383.** Where the assessee who had filed declaration of undisclosed income under Income Declaration Scheme, 2016 had paid only 50% of total tax, surcharge and penalty in two instalments and had filed an application to Chairman, CBDT seeking extension of time for making payment of third instalment on the reasoning that he was involved in office work and marketing activities and forgot to pay third instalment, the Court held that the order passed by Chairman, CBDT rejecting the prayer for extension, did not require invoking of writ jurisdiction since assessee had not made out an extraordinary cause for grant of further time, even if it is assumed that time stipulated under Scheme could be extended by Board u/s 119(2).

***Siddharth Rastogi v Central Board of Direct Taxes – (2018) 402 ITR 17 (Del HC) – W.P. (C) No. 1069 & 1070 of 2018 CM Nos. 4455 to 4458 of 2018 dated 05.02.2018***

**4384.** The Court dismissed the assessee's Petition praying for condonation of delay in making payment of the third installment of undisclosed income under the Income Declaration Scheme Rules, 2016 and held that the reasons given by the Petitioner i.e. that she was 70 years of age and suffering from ill health which had become a hurdle in her day-to-day work and that she had forgotten to pay the third installment was unbelievable and a lame excuse. It observed that such declarations were unique and made after due deliberation and thought and further observed that the amount payable towards the third installment was substantial and therefore concluded that it was clear that the Pfetitioner was unable to pay the amount, and thereafter pleaded and attributed it to loss of memory. It held that the time period fixed was mandatory and had to be adhered to and accordingly dismissed the petition challenging the order of the CBDT denying it condonation of delay.

***MEENA RASTOGI vs. CENTRAL BOARD OF DIRECT TAXES & ANR. - (2018) 101 CCH 0168 DelHC - W.P.(C) 1219/2018, CM Nos.5050-5051/2018 dated Feb 9, 2018***

**4385.** The Court set-aside Central Information Commission's ('CIC') order directing the CBDT to supply the information pertaining to the net wealth of certain MLAs and MPs under the Right to Information Act, 2005 ('RTI'). It noted that the respondent (an individual) had alleged that the net wealth of certain MLAs and MPs had increased five-fold and CBDT had denied the information on the ground that the affidavits submitted by MPs and MLAs disclosing their assets

were forwarded to DG (Investigation) for verification, and pending such 'investigation', the information (including DG's responses) was exempt from disclosure u/s. 8(1)(h) of the RTI Act. At the outset, the Court rejected CBDT's stand on Sec. 8(1)(h) exemption and held that verification from records could not be termed as an 'investigation' and that regular assessment proceedings could not be considered as part of 'process of investigation'. However, it held that the DGIT (Investigations) was listed as excluded offices from RTI applicability (under the Second Schedule as contemplated u/s. 24 of the RTI Act) and accordingly concluded that the CBDT was right in denying information.

***Satya Narain Shukla -TS-98-HC-2018(DEL) - W.P.(C) 5547/2017 & CM No. 23333/2017 dated 19.02.2018***

**4386.** The Court dismissed the petition filed by the Union of India's (UOI) for permanent injunction against the Vodafone Group and restraining them from pursuing arbitrations under India UK bilateral Investment Promotion Agreement (BIPA) since the arbitration proceeding under India Netherland BIPA initiated in 2012 were pending. However, it provided liberty to UOI to raise the issue of abuse of process before Arbitration Tribunal constituted under India-United Kingdom BIPA. The Court observed that it can grant injunction only if there are very compelling circumstances, where the Court has been approached in good faith and there is no alternative efficacious remedy available. Further, noting the UOI's contention that Vodafone's claim under India Netherlands BIPA was without jurisdiction, the Court held that invocation of another treaty could not be regarded as an abuse per se. It also directs that the Arbitration Tribunal while deciding the issue will take into account the Vodafone's undertaking to the Court that if the UOI gives its consent, it would agree to consolidation of the two BIPA arbitration proceedings before the India-United Kingdom BIPA Tribunal.

***UOI v Vodafone Group Plc United Kingdom & Anr [TS-230-HC-2018(DEL)] - CS(OS) 383/2017 & I.A.No.9460/2017 dated May 7, 2018***

**4387.** The Court upheld the Tribunal order, deleting addition made u/s. 206C(1) on account of non-collection of tax at source ('TCS') on sale of scrap by assessee-seller, despite buyers declaration in Form 27C furnished belatedly on the ground that as per Sec 206C(1A) the seller is not liable to collect TCS in a case where the buyer purchases goods in retail sale for personal consumption and he furnishes a declaration in writing to that effect in prescribed Form 27C to the seller notwithstanding that the fact that the same is filed belatedly so long as the genuineness of the same is not doubted.

***Siyaram Metal Udyog (P) Ltd - TS-400-HC-2016(GUJ) - Tax Appeal No. 519 of 2016***

**4388.** The Court rejected the Petitioner's claim that the AO erred in issuing summons under Section 131 to him without appreciating that he had immunity from responding to such summons as per Section 8 of the Diplomatic Relations (Vienna Convention) Act, as he was appointed as Honorary Consulate of Federal Democratic Republic of Ethiopia. It held that as per Section 131 of the Act, the AO had power vested under the Code of Civil Procedure 1908 and the said section does not carve out any exemption for any designation of office held by a person to whom summons are issued. Further it noted that the Petitioner himself had violated the provisions of the Diplomatic Relations (Vienna Convention) Act by carrying on business activities in the same premises in which he carried on his consular activities.

Go to Index

***Sri Sai Ramakrishna Karuturi v UOI – TS-536-HC-2017 (KAR) - WRIT PETITION No.22849/2017 (T-IT) dated 08.11.2017***

**4389.** Where the assessee, a co-operative society formed for the manufacturing of salt and its by-products, took over the manufacturing rights of its members (over their individual pieces of land) and installed necessary plants and machinery to manufacture salt by way of which it produced and sold salt, the Court, referring to the bye laws of the society, held that the AO was incorrect in taxing the entire amount of sale consideration in the hands of the society when the society had rightly and in accordance with its bye laws, contributed a certain amount towards the individual members (as consideration for the manufacturing rights obtained by it) via contribution to a Distribution Pool Fund Account and offered the balance income to tax. It held that the income of the society could not go beyond the scope of its bye laws.
***CIT v. Nagarbail Salt-Owners Co-operative Society Ltd. [2016] 76 taxmann.com 2 (Karnataka) (IT Appeal No. 100067 Of 2015)***

**4390.** The Court dismissed Revenue's writ filed against the grant of stay by Tribunal on payment of certain of amount, with exemplary cost of Rs. 50,000 each, to be paid personally by 2 Pr.CITs & an ACIT, for their irresponsible and unfair behaviour in filing the writ petition just for the sake of proving their 'fictional desires'. It held that the entire demand raised was prima facie not even sustainable as the controversy was apparently covered in assessee's favour by non-jurisdictional High Court and jurisdictional Tribunal bench decisions.
***ACIT v Epson India Pvt Ltd - TS-19-HC-2018(KAR) - Writ Petition No.12913/2017 (T-IT) dated 09.01.2018***

**4391.** Where assessee disclosed undisclosed income for a year under Income Declaration Scheme, 2016 and paid first instalment of tax, while notice under section 143(2) had already been issued for scrutiny assessment and, therefore, Revenue rejected assessee's application under Disclosure Scheme, the Court directed the Revenue to adjust amount of tax deposited by assessee.
***Smt. Sangeeta Agrawalvs v. Pr.CIT [2018] 96 taxmann.com 171 (Madhya Pradesh)- W.P. NO. 16028 of 2018 dated August 03 2018***

**4392.** The Court held that where there was uncertainty regarding applicability of section 206C to cotton waste and it was always open to buyers to seek refund by filing appropriate returns, Writ Petition to restrain mill owners from whom petitioners purchased goods, to stop collecting TCS on purchase of cotton waste would not be maintainable.
***Amarjeet Beeton v. CIT (TDS), Chandigarh [2016] 76 taxmann.com 160 (Punjab & Haryana) (CWP NO. 17623/2016)***

**4393.** The Tribunal held that the sale of de-oiled cake and maize husk did not attract the provisions of section 206C of the Act as they were by products and could not be considered as 'scrap' and therefore there was no default on part of the assessee in collecting tax at source.
***DCIT v Gujarat Ambuja Exports Ltd – (2016) 46 CCH 0065 (Ahd)***

Go to Index

**4394.** Assessees who were owners of land at village had not included the value of the land in their returns of net wealth. AO initiated porceedings and issued notice under section 17 of the Wealth Tax Act. The assessee had stated that the said lands did not come under the ambit of definition of wealth as per Explanation 1(b) to section 2(ea) which defined 'urban land' as it was situated 11 kms away from BBMP limits. The AO concluded the order of assessment holding that the land was situated within 8 kms away from the BBMP limits in straight line method and further held that the said land fell within the jurisdiction of newly created administrative authority i.e. BIAPPA. The AO also held that BIAPPA had all the powers assigned to any local administrative authority and therefore, should also be considered to be Municipality for the purpose of tax administration. The AO brought the aforesaid lands under the ambit of wealth and adopting a guideline value of the lands brought the same to tax. The CIT(A) allowed the assessee's appeal. On appeal, the Revenue submitted that the calculation of the distance of 8 kms from BBMP limits has to be measured as the crow flies i.e. that the aerial distance has to be caculated and not the distance as per road.The Tribunal dismissed Revenue's appeal and upheld the order of CIT(A) by holding that provisions of item(b) of sub-clause(iii) of section 2(14) of 1961 Act which provides for considering distance aerially, not by road and which have been substituted by Finance Act,2013 with effect from 01.04.2014 are applicable only for and from AY 2014-15 onwards and therefore, would operate prospectively and cannot be given retrospective operation.

***ACIT vs MR Padmavathy Trust 2018] 97 taxmann.com 349 (Bang Trib)- IT Appeal No.24 and 29 (Bang) of 2017 CO Nos. 39 and 43 (Bang) of 2018 dated August 17 2018***

**4395.** Where the assessee owned ground floor of a house property and purchased the first floor of the said house and claimed exemption for both the ground floor and the first floor under section 5 of the Wealth Tax Act by treating both the floors as one single residential unit, the Tribunal, relying on the decision in the case of Shiv Narain Choudhari vs CWT held that two different floors of one house property owned by assessee had to be regarded as single residential unit and exemption was allowable in respect of the same u/s 5(1)(iv).

***ITO vs Nathamuni Krishnaswany Balaji 85 taxmann.com 201(Chennai Trib.) – W.T Appeal No. 17 of 2017 dated 01.09.2017***

**4396.** The Tribunal held that though section 206C does not impose any limitation period for the AO to hold the assessee to be in default for collection of tax at source, a reasonable time limit of four years has to be read into the statute. Orders passed after this period are beyond the limitation and are void. The fact that the Dept became aware of the default later is irrelevant. The fact that the assessee admitted his liability is also irrelevant.

***ITO vs. Eid Mohammad Nizamuddin - ITA No. 316/JP/2018 dated 29.08.2018***

**4397.** The Tribunal rejected revenue's request for constitution of special bench with respect to issue of software taxation involving assessee group's various companies wherein Tribunal in its original order had held that receipts from sale of software are not taxable as 'royalty' on the ground that –

- Firstly, a reference to constitute a Special Bench must flow from the members and not from the parties to the case

Go to Index

- Furthermore, such a reference can be made by the members when they do not agree with the view taken by the earlier order of the Tribunal

***DDIT v Reliance Communication Ltd - TS-2-ITAT-2018(Mum) - ITA No.4672/Mum/2007 and other appeals dated 03.01.2018***

**4398.** The NCLT held that objections of the income-tax dept. that the scheme of amalgamation was a deliberate measure to avoid tax burden and was an 'Impermissible Avoidance Agreement' (a pre-requisite to attract GAAR provisions) because it would result in avoidance of Divided Distribution Tax (DDT), tax on business profits and MAT u/s 115JB, etc had merit and accordingly, the scheme was not in public interest and thus could not be sanctioned.

***In Re Gabs Investments Pvt Ltd & Ajanta Pharma Ltd - CSP No. 791 & 792, 995 & 996 of 2017 (NCLT Mumbai) dated 30.08.2018***

**4399.** The Tribunal held that if the assessee manages his transactions of sale and purchase of shares in the cash and future segments as a composite business, the transactions cannot be segregated to arrive at profit or loss in each segment separately and the provisions of the Income-tax Act cannot be interpreted to the disadvantage of the assessee and to segregate the transactions in cash and future segment which will be against the spirit of the taxation law.

***J. M. Financial Services Ltd vs. JCIT (ITAT Mumbai)***

**4400.** The Tribunal held that securities transaction tax collected through a member could be made under a particular client code only which is provided by the members to the brokers and therefore if a member / broker does not collect STT through a client code or has not taken separate client codes in case of an FII then no liability could be fastened on the NSE under section 98 to 100 of the Act.

***National Stock Exchange v Add CIT – (2016) 68 taxmann.com 256 (Mumbai – Trib)***



Go to Index