



**Digest Of Important Judgements On Transfer Pricing, International Tax And Domestic Tax
(Aug to Oct 2015)**

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I. Transfer Pricing	

a. International transaction

1. The Tribunal held that where it was a concerted action intended in a manner as not to attract section 92B of the Act but in substance the agreements indicated a transaction between two AEs along with an intervening third party, the said transaction was to be classified as a deemed international transaction.
Novo Nordisk India Pvt Ltd v DCIT [IT(TP)A No 146 / Bang / 2015] - TS-366-ITAT-2015(Bang)-TP
2. The Tribunal held that for a deemed AE to exist, the goods / articles manufactured / processed by one enterprise are sold to the other enterprise or to persons specified by the other enterprise and the prices and conditions relating thereto are influenced by such other enterprise. Therefore in spite of the first condition being satisfied in the case of the assessee, since there was no influence exercised over the prices, no deemed AE relationship existed.
DCIT v WB Engineers International Pvt Ltd [ITA No 523 / PN / 2014] - TS-404-ITAT-2015(PUN)-TP
3. The Tribunal held that outstanding receivables on account of services cannot be equated with international transactions in the nature of capital financing as provided for in Explanation to section 92B of the Act as it related to services rendered to the AE and was not in the nature of loans or advances given for capital financing. Accordingly the addition made by the TPO on account of notional interest on outstanding balances was deleted.
Pegasystems Worldwide India Pvt Ltd v ACIT [I.T.A. No. 1758/HYD/2014] – TS-488-ITAT-2015(Hyd)-TP

b. Most Appropriate Method ('MAM')

Comparable Uncontrolled Price Method

4. The Tribunal held that the CUP method was the MAM for benchmarking the brokerage transactions rendered by the assessee as it rendered similar services to non-related parties as well. For determining an appropriate adjustment allowable to the assessee on account of difference in functions performed and risk assumed in respect of services provided to related parties vis a vis unrelated parties, the Tribunal held that the difference in interest earned on margin monies received by the assessee from AE / Non-AE transactions could be taken into account for calculating the said adjustment.
JP Morgan India Pvt Ltd v ACIT [ITA NO 8193/Mum/2010] - TS-354-ITAT-2015(Mum)

5. The Court held that In application of the CUP method the authorities have to go by what was actually paid or charged in the comparable uncontrolled transaction and not the price payable or chargeable in case of an eventuality, which never occurred. Therefore, the Revenue was incorrect in considering the additional discretionary interest rate chargeable by the Bank in the event of default in repayment of loan taken by assessee for benchmarking the interest receivable by the assessee on loans given to its AEs, since the assessee had neither defaulted in its repayments nor paid the additional interest.

CIT v Bumi Highway India Ltd (ITA No 621 / 2015) – TS-437-HC-2015(Del) TP

6. The Tribunal upheld the use of the CUP method for the import of raw cashes from the AE and held that the TPO was to compare the average price published by the Cashew Export Council with the average price charged by the assessee and not the price mentioned in individual transactions. The Tribunal also held that due weightage was to be given to the fact that the assessee had availed credit for 150 days which required to be factored in while determining the ALP.

Reliable Cashew Co (P) Ltd v ACIT (I.T.A. No. 2237/Mds/2013) – TS-420-ITAT-2015 (CHNY) - TP

7. The Tribunal upheld the use of CUP as the Most Appropriate Method noting that there was no difference in the methodology adopted in determining price of copper concentrates between the AEs and Non-AEs and the difference in prices occurred merely because the AEs used the calendar year for determining treatment and refining charges (which was deducted from the price quoted) and the Non-AEs used the financial year which was a temporary difference.

Hindalco Industries Ltd v ACIT – TS-431-ITAT-2015(Mum) – TP

8. The Tribunal held that where the services provided to the AEs are similar to those provided to non AEs the CUP method was the most appropriate method as opposed to TNMM and therefore approved hourly rates charged to non-AEs as internal CUP.

ADIT v ABB Lummus Heat Transfer BV (ITA No.2763/Del/2013) – TS-492-ITAT-2015 (Del) - TP

9. The Tribunal upheld the order of the CIT(A) wherein the CUP method was held to be the most appropriate method since the assessee had similar transactions with its Non-AEs and its AEs.

DCIT v Devendra Kumar Bhasin (ITA No. 12/CHD/2014) – TS-499-ITAT-2015 (Chd) - TP

Profit Split Method

10. The Tribunal upheld the use of the Profit Split Method as the activities performed by the assessee and its AE were inextricably linked, with both entities contributing significantly to the value of the services. Additionally, it held that selecting the most appropriate method does not depend on whether the assessee is loss / profit making and that in the absence of an external comparable relative contribution of each entity based on key value drivers was to be determined ***Infogain India Pvt Ltd v DCIT [ITA No 6134 / Del / 2012] - TS-392-ITAT-2015(DEL)-TP***

Resale Price Method

11. The Tribunal held that where the assessee was engaged in the importing of goods from its AE without making any value additions, the most appropriate method for benchmarking the international transactions was the Resale Price Method.

Transactional Net Margin Method

12. The Tribunal held that charging lesser rates to Non-AEs as compared to AEs was not a reason to reject internal TNMM as it is possible to make a reasonably accurate adjustment for such differences. It also held that internal CUP could not be accepted as the CUP method visualizes comparison on a project to project basis, if similar in all respects which was not the case of the assessee.

Valtech India Systems Pvt Ltd v DCIT [IT(TP)A No 1380 / Bang / 2011] - TS-374-ITAT-2015(Bang)-TP

13. The Tribunal accepted the internal TNMM method adopted by the assessee as the MAM for the software development services provided by it since the transactions with Non-AEs abroad were more than 25 percent of the total value of international transactions and that the assessee was able to demonstrate that the services rendered to unrelated parties were similar to those rendered to the AEs.

Valtech India Systems Pvt Ltd v DCIT [IT(TP)A No 22 / Bang / 2014] – TS-455-ITAT-2015(Bang) – TP

14. The Tribunal held that TNMM and not CUP was to be used for benchmarking the assessee's activity of sale and purchase of diamond and gold jewellery from AEs as the transaction from Non-AEs amounting to 0.59 percent of total transactions was very negligible in comparison to sale transactions with AEs and also held that the transaction of the assessee required high degree of comparability between AE and Non-AE transactions in terms of quantity, specification, design and purity of the stones / metals involved which was absent in the assessee's case.

Vijaydimon Diamond (India) Pvt Ltd v ACIT (ITA No.5182(Mum.) 2013) – TS-453-ITAT-2015(Mum) - TP

General

15. The Tribunal held that where Revenue has accepted the method adopted by the assessee for benchmarking international transactions, in the absence of reasons brought on record, there is no merit in deviating from the stand accepted in the previous and succeeding years.

Racold Thermo Limited v DCIT (ITA No 1454 / PN / 2010) – TS-436-ITAT-2015(PUN)-TP

16. The Tribunal held that an internal comparable is always preferable over external comparable when relevant data is available.

M/s Agila Specialities Pvt Ltd v DCIT [IT(TP)A No.214/Bang/2015] – TS-500-ITAT-2015 (Bang) - TP

c. Comparability – Inter and Intra Industry

Agency services

17. The Tribunal held that companies providing agency services, companies providing commissioning agency services and engaged in trading, companies engaged in publishing news-papers and other publications and companies earning commission from air tickets and transaction fees from sale of holiday packages were not comparable to the assessee who was

engaged in the business of manufacturing and trading of mineral processing equipment and provision of market support services.

Metso Minerals (India) Pvt Ltd v DCIT [ITA No 2449 / Del / 2014] - TS-405-ITAT-2015(DEL)-TP

18. The Tribunal excluded a company engaged in port loading / unloading and storage activities as it was a complete service provider and the assessee was merely providing agency services in respect of shipping activities in India. It also held that merely because the assessee had included the said company in TP study it did not preclude the assessee from raising the objection that the said company was not comparable, if the assessee is able to demonstrate the functional dissimilarity.

NYK Line (India) Ltd v ACIT (ITA No. : 8549/Mum/2011) – TS-464-ITAT-2015 (Mum)-TP

Consultancy / Financial advisory services

19. The Tribunal held that the assessee providing repair services, computer hardware and software related services, erection, commissioning and installation services could not be compared to Capital Trust Ltd which provided consultancy services to foreign banks.

Verient Systems (India) Pvt Ltd v ITO [ITA No 5927 / Del / 2010] - TS-394-ITAT-2015(DEL)-TP

20. The Tribunal excluded Motilal Oswal as a comparable as it was into merchant banking, capital markets, finance markets and therefore functionally dissimilar to the assessee who merely provided non-binding advisory services.

Lehman Brothers Advisors Pvt Ltd v ACIT (I.T.A. No. 7722/M/2012) – TS-465-ITAT-2015 (Mum) - TP

ITES Companies

21. The Tribunal held that companies having multi-stream revenues (product, sales, product maintenance & other IT services) were not comparable with an IT Product company in absence of segmental breakup. It further held difference in depreciation rates warrants appropriate adjustment and not exclusion from the margin of comparables.

ACI Worldwide Solutions Pvt Ltd v DCIT [IT(TP)A No 1089 / Bang / 2012] - TS-347-ITAT-2015(Bang)-TP

22. The Tribunal excluded 17 companies on the following grounds:

- Functionality – Activity of software product development, KPO services, product engineering, product designing, sale of licenses carried on by companies were not comparable with software development services provided by the assessee
- Turnover – Companies having turnover in excess of Rs.200 crore were rejected as the assessee's turnover was Rs.66.94 crores
- Employee cost – Companies having employee cost to sales ratio less than 25 percent were rejected

AMD India Pvt Ltd v ITO [IT(TP)A No 437 / Bang / 2013] - TS-352-ITAT-2015(Bang)-TP

23. The Tribunal excluded 13 comparables on the following grounds:

- Functionality – Companies engaged in product development, KPO services, training & software services, software development & analytical services, product engineering,

product designing, incurring high R&D expenses and owning intangibles were not comparable with the assessee engaged designing and development of software.

- Related Party transactions ('RPT') – Companies having RPT in excess of 15 percent

GXS India Technology Centre Pvt Ltd v ITO [IT(TP)A No 1444 / Bang / 2012] - TS-356-ITAT-2015(Bang)-TP

24. The Tribunal held that companies engaged in development of software product and having revenue from both software services and products were not comparable with software development service provider. Further, companies having exceptional year of operations and fluctuating margins are not to be considered as comparable.

ST Microelectronics Pvt Ltd v DCIT [IT(TP)A No 1394 / Bang / 2014] - TS-358-ITAT-2015(Bang)-TP

25. The Tribunal held that companies engaged in product development, sale of product, providing KPO services, providing product engineering services and owning substantial intangibles are not comparable to companies providing software development services. Additionally companies engaged in the ITES sector could not be compared with companies providing complete business solutions, providing high end intangible services, providing engineering design services, owning substantial intangibles or having extra-ordinary events such as mergers.

Kodiak Networks (India) Pvt Ltd v DCIT [IT(TP)A No 1540 / Bang / 2012] - TS-369-ITAT-2015(Bang)-TP

26. The Tribunal held that a company providing pure software development services cannot be compared with companies developing software products, having significant intangibles and huge revenue from software products, engaged in product design services or software product companies ***NXP Semi Conductors India Pvt Ltd v DCIT [IT(TP)A No 1634 / Bang / 2014] - TS-370-ITAT-2015(Bang)-TP***

27. The Tribunal excluded a company on the ground that it had undergone restructuring and acquired another company resulting in a high profit margin and because it had a strong R&D background along with product development expertise which differed from the assessee. Additionally it held that exclusion of a company merely because it was loss making was not warranted ***ACIT v Citi Financial Consumer Finance India Ltd [ITAs No 2848 and 6305 / Del / 2012] - TS-389-ITAT-2015(DEL)-TP***

28. The Tribunal held that the aggregation of the entire software development revenue of the merged assessee was not warranted as the maintenance of accounts was entity specific and the software development services were provided in 2 separate sectors. Additionally in relation to the ITES segment of the assessee the Tribunal excluded companies engaged in product development, dealing in software products and huge companies as they were not comparable with a software development company. Further, it held that provision for bad and doubtful debts was to be considered as operating in nature and that the distribution segment (pure trading) was to be benchmarked using RPM and not TNMM.

OSI Systems Pvt Ltd v DCIT [ITA No 683 / Hyd / 2014] - TS-396-ITAT-2015(HYD)-TP

29. The Tribunal held that companies engaged in the business of software products and providing open and end to end web solutions software consultancy and design and having significant

intangibles and extra-ordinary revenues were not comparable to a pure software development services company.

DCIT v Nvidia Graphics Pvt Ltd [IT(TP)A No 1118 / Bang / 2014] - TS-402-ITAT-2015(Bang)-TP

30. The Tribunal held that companies engaged in the following services were not functionally comparable with the assessee who was engaged in designing and development of software for its parent company:

- Companies engaged in development of software products / business of software products and software consultancy and design, providing training services
- Companies engaged in product development
- Companies providing KPO Services such as consultancy services and technical services
- Companies providing product engineering services and R&D activity resulting in IPRs and companies owning substantial intangibles

GXS India Technology Centre Pvt Ltd v ITO [IT(TP)A No.1444(Bang) 2012] – TS-412-ITAT-2015 (Bang) – TP

31. The Tribunal held that companies engaged in the business of software products and in providing open and end to end web solutions, software consultancy, design and development of software could not be compared with the assessee who was a captive software service provider.

Analog Devices India Pvt Ltd v DCIT [IT(TP)A No 1288 / Bang / 2014] – TS-419-ITAT-2015 (Bang) - TP

32. The Tribunal held that assessee providing data processing and other IT enabled services could not be compared to companies providing KPO services such as engineering design services, companies outsourcing most of its work, having a huge brand impacting profit margins, owning substantial IP or having extra ordinary event during the year impacting profit margins.

Global – e Business Operations Pvt Ltd v DCIT [IT (TP) A No 1678 / Bang / 2012] – TS-426-ITAT-2015 (Bang)

33. The Tribunal held that software product companies, companies such as Infosys being a market leader, having significant R&D activities and owning significant IPRs, intangibles and companies providing embedded product design services, industrial design and engineering services could not be compared with the assessee who was a captive software service provider.

iPass India Pvt Ltd v ITO [IT(TP)A No 1292 / Bang / 2014] – TS-427-ITAT-2015 (Bang) TP

34. The Tribunal held that the assessee, providing software development and IT enabled services could not be compared with Infosys as the assessee was a captive unit assuming limited risk as opposed to Infosys who was a giant company assuming all types of risks leading to high profits. The Tribunal rejected exclusion of companies merely due to supernormal profit. Further it held that only current year data is to be considered for benchmarking purposes.

Xchanging Technology Services India Pvt Ltd v DCIT (ITA No 1222 / Del / 2015) – TS-428-ITAT-2015 (Del) TP

35. The Tribunal held that a high employee-cost was a normal feature in the software development business as it is a skill oriented business and therefore companies having the said feature could not be rejected as comparable.

Arowana Consulting Ltd v ITO [IT(TP)A No 235 / Bang / 2015] - TS-282-ITAT-2014(Bang)-TP

36. The Tribunal held that companies engaged in product development, giant companies engaged in development of niche products could not be compared to a software development company. Further it held that companies having unreliable financial data, not satisfying the RPT and forex revenue filter, having considerable of its business outsourced and having a different business model due to amalgamation could not be taken as comparable.
Goldman Sachs Services Pvt Ltd v DCIT [IT(TP)A No 1423 / Bang / 2010]- TS-435-ITAT-2015 (Bang) – TP
37. The Tribunal held that the assessee, engaged in software development could not be compared to companies having software products, hybrid services business models, engaged in product development services, owning significant intangibles, engaged in product design services and having different financial year ending.
Hewlett Packard India Software Operation Pvt Ltd v ACIT [IT(TP)A 1682 / Bang / 2012) – TS-433-ITAT-2015 (Bang) – TP
38. The Tribunal held that companies failing the related party transaction filter, having extraordinary events resulting in high operating margins, failing the employee cost filter, having directors involved in fraud, owning substantial intangibles and functionally dissimilar with the assessee who was engaged in providing software development and related services could not be considered as comparable. Further it held that reimbursement of costs should be excluded from operating cost while computing the operating margin.
ADP Pvt Ltd v DCIT (ITA No 471 / Hyd / 2011) – TS-417-ITAT-2015 (Hyd) – TP
39. The Tribunal held that the assessee engaged in the business of providing its AE software solutions could not be compared to companies engaged in both software development and ITES absent segmental information, companies having product sales and providing telecommunication software services without a segmental break-up of the said activities and companies engaged in software development services and products.
Pegasystems Worldwide India Pvt Ltd v ACIT [I.T.A. No. 1758/HYD/2014] – TS-488-ITAT-2015(Hyd)-TP
40. The Tribunal held that the assessee providing software development services and marketing services exclusively to its AE could not be compared to companies owning substantial intangibles and having huge revenues, companies engaged in product development and product design services, engaged in both software development services as well as product development services but not having segmental information and companies engaged in clinical research and manufacture of bio products.
Support.com India Pvt Ltd v JCIT [IT(TP)A No.240/Bang/2013] – TS-498-ITAT-2015 (Bang) – TP
41. The Tribunal excluded the following companies as they were not comparable to the assessee engaged in providing software development services:
- Companies engaged in 2D and 3D animation services
 - Companies engaged in software products business
 - Companies engaged in clinical research and manufacture of bio and other products
 - Companies not being a pure software service company
 - Companies providing KPO services

- Companies failing the employee cost filter
- Companies having huge turnover exceeding Rs. 200 crores and significant intangibles

Further it admitted additional ground for exclusion of comparable considered by TPO even though it was chosen by the assessee in its own TP Study and held that the assessee was not estopped from pointing out mistakes in assessment even if such mistake was a result of evidence adduced by it.

AMD India Pvt Ltd v ITO [IT(TP)A No.1244/Bang/2011] – TS-495-ITAT-2015(Bang) – TP

42. The Tribunal held that the assessee, a software development service provider could not be compared to companies having related party transactions in excess of the permitted limit, companies having unusually high profits with a growth rate double the industry average, companies engaged in clinical research and manufacture of bio and other products, companies outsourcing its work therefore failing the employee cost filter, companies owning substantial intangibles and having huge revenues and companies whose income included income from sale of licenses.

M/s SAP Labs India Pvt Ltd v DCIT [I.T(TP).A No.1118/Bang/2011] – TS-497-ITAT-2015 (Bang) – TP

43. The Tribunal held that companies engaged in product development, development of software products, high end technical services such as KPO services, high end hardware and software activities, holding technology and marketing intangibles and assuming full-fledged risk could not be compared to the assessee, a captive offshore development center engaged in software development.

Apigee Technologies (India) Pvt Ltd v JCIT [IT(TP)A No.870/Bang/2013] – TS-472-ITAT-2015(Bang)-TP

44. The Tribunal held that the assessee, engaged in the provision of ITES services to its AE, could not be compared to the following companies:

- Companies outsourcing its services, since the assessee rendered services on its own
- Companies engaged in KPO services encompassing data analytics, data processing services, pricing analytics, content operation, product data management etc (such as Eclerx Services Ltd)
- Companies having extra-ordinary events such as mergers which impact profitability
- Companies for which sufficient information was not available in the public domain
- Companies providing geographical information services

IHG IT Services (India) Pvt Ltd v DCIT (ITA No.6381 /Del./2012) – TS-476-ITAT-2015 (Del)- TP

45. The Tribunal excluded the following companies as comparable to the assessee who was engaged in providing software development services:

- Companies engaged in software product development, absent segmental details
- Companies having large turnover, brand value, scale of operation, diversified activities and owning intangibles
- Companies not satisfying employee cost and RPT filters
- Companies having a variety of services and products and a large magnitude of operations
- Companies providing 2D and 3D animation services

United Online Software v ITO (ITA No.1658/Hyd/11) – TS-493-ITAT-2015 (Hyd) - TP

46. The Tribunal excluded companies having turnover in excess of Rs. 200 crore based on the reasoning that such companies would be in a position to attract more customers and would also

have a broad base of skilled employees able to give better output which would not be available in the case of smaller companies. It further excluded companies having related party transactions in excess of 15 percent.

Additionally, it held that merely because companies had inventories in their balance sheet it was not indicative of the fact that the companies were in the nature of a software product company. It held that segmental analysis was required to arrive at the said conclusion.

Radisys India Pvt Ltd v ITO [IT(TP)A 371 & 345 / Bang / 2015] – TS-489-ITAT-2015(Bang) - TP

47. The Tribunal held that companies having turnover in excess of Rs.200 crore could not be compared with the assessee who had a turnover of Rs. 32.84 crores. Further it excluded companies that were functionally dissimilar with the assessee.

DCIT v Software AG Bangalore Technologies Pvt Ltd [IT(TP)A No 1343 / Bang / 2014] – TS-472-ITAT-2015 (Bang)- TP

48. The Court upheld the order of the Tribunal where in a US based company was excluded as a comparable on the ground that a local software service provider in the US market could not be compared with a software service provider in India due to the difference in markets and also due to the fact that the basis of allocation of costs in the segment was unclear, not reflecting whether the US profits of the said company were entirely from software operations or whether they included other activities.

Pr CIT v Pitney Bowes Software India Pvt Ltd (ITA 681/2015) – TS-473-HC-2015 (Del) - TP

49. The Tribunal held that a).companies earning medical transcription and training receipts besides software service receipts b) companies earning a combined revenue from sales and software services c) companies having acquisitions during the year d). companies functionally dissimilar could not be considered as a comparable to the software development and maintenance support segment of the assessee.

With respect to the assessee's back office support segment the Tribunal excluded companies functionally dissimilar, companies having extra-ordinary financial events, companies outsourcing their activities and KPO service providers.

Sun Life India Service Centre Pvt Ltd v DCIT (ITA No.1489/Del/2014) – TS-482-ITAT-2015(Del) -TP

50. The Tribunal excluded Accentia Technologies (i.e. selected by the TPO) as a comparable on account of the fact that an extra-ordinary event of acquisition had taken place during the year under review. Further it held that the reasons cited by the DRP for exclusion of Microland (selected by the assessee) i.e. non availability of segmental data and lack of information in relation to exports, were incorrect as the published accounts provided both the aforesaid details. Therefore it included Microland as a comparable and held that where the demarcated segment results were available there was no reason to apply revenue ratios.

ISG Novasoft Technologies Ltd v DCIT [IT(TP)A No.185(B)/2015] – TS-485-ITAT-2015(Bang)-TP

Research services

51. The Tribunal while adjudicating on the inclusion / exclusion of 2 companies as comparable on the ground of functionality held that a company performing research in seismic services was comparable with the assessee who was engaged in the research and development for automobile components and since no difference in assets employed or risks assumed were brought there was no reason to exclude the company. Further, it held that a company

providing research and development relating to effects of various drugs on humans involved living beings and human interface and was therefore not comparable with the assessee.

Bosch Ltd v ACIT IT(TP)A No.670/Bang/2011– TS-411-ITAT-2015 (Bang) - TP

52. The Tribunal held that the assessee, engaged in providing research and development services to its AE could not be compared to companies engaged in activities such as mud logging, gas detection, drilling and companies engaged in development and sale of software products and data warehousing.

FMC India Pvt Ltd v DCIT [IT(TP)A No 1039 / Bang / 2012] - TS-480-ITAT-2015 (Bang)

Support Services

53. The Court held that Call Centers are not functionally comparable with KPO service providers and that supernormal profits indicating functional dissimilarity would require further analysis - ***Rampgreen Solutions India Pvt Ltd v Commissioner of Income-tax - [2015] 60 taxmann.com 355 (Delhi)***

54. The Tribunal, following the decision of the High Court in the case of Rampgreen Solutions Pvt Ltd excluded high end KPO service providers as comparable to the assessee's low end back office support services. It also excluded companies involved in fraud and financial irregularities and companies having extra-ordinary events during the year. It further held that the RPT filter of 15 percent was to be applied eliminating companies having RPT in excess of 15 percent.

Avaya India Pvt Ltd v ACIT (ITA No 5528 / Del / 2011) – TS-444-ITAT-2015 (Del) - TP

Other Industries

55. The Tribunal held that compromising similarity to some extent under TNMM does not mean switching over to an altogether different product and therefore companies dealing in tractors could not be compared with the assessee who dealt in harvester combines.

DCIT v Claas India Pvt Ltd [ITA No 1783 / Del / 2011] - TS-371-ITAT-2015(DEL)-TP

56. The Tribunal held that the assessee in the business of computer radiated designing of light vehicle systems could not be compared to companies engaged in clinical research, companies providing KPO services, companies having huge revenues and significant intangibles, companies engaged in software development and product development, providing animation services, companies for which reliable data was unavailable, companies failing the employee cost filter, companies having their own brand, companies which had undergone significant restructuring during the year and earning income from sale of licenses.

Meritor LVS India Pvt Ltd v ACIT [I.T(TP).A No.1231/Bang/2011] – TS-496-ITAT-2015 (Bang) - TP

Filters

57. The Tribunal held that since the assessee had objected against the incorrect RPT to sales filter of 25 percent adopted by the TPO, 15 percent being the reasonable threshold, it could not be estopped from seeking exclusion of comparables even though the said comparables were originally selected by it in its study.

Siebel Pvt Ltd v ITO [IT(TP)A No 1318 / Bang / 2010] - TS-360-ITAT-2015(Bang)-TP

58. The Tribunal held that the RPT to sales filter should be considered at 15 percent and not 10 percent. It further held that size and turnover of a company are deciding factors while considering comparability. Further, companies having erratic margins and growth over the years and incorrect revenue recognition policies were not to be considered
Kodiak Networks (India) Pvt Ltd v DCIT [IT(TP)A No 532 / Bang / 2013]
 - TS-378-ITAT-2015(Bang)-TP
59. The Tribunal held that the application of 0 percent RPT to Sales filter was incorrect and that 15 percent was an optimum threshold. It further upheld the application of an upper turnover filter and the treatment of foreign exchange gains / losses as operating gains / losses
ACIT v Iron Mountain Information Management India Pvt Ltd [IT(TP)A No 445 / Bang / 2012] - TS-373-ITAT-2015(Bang)-TP
60. The Tribunal excluded a certain company as comparable on the ground that its related party transactions were in excess of 50 percent and that it was a government undertaking whose prices were regulated and therefore could not be compared with a non-government company whose prices were determined by market forces.
DCIT v Babite Consultants (India) Pvt Ltd (In ITA. No.1018/Ahd/2011)– TS-414-ITAT-2015 (Ahd) – TP
61. The Court held that removal of filter by the ITAT which had been accepted by the TPO would not be feasible as companies eliminated by the filter could not be brought back for examination. Further high or low turnover was not reason to justify exclusion of a comparable but since the TPO had applied a lower limit of Rs. 5 crore there was no justification in not applying an upper turnover filter.
CIT v Nokia India Pvt Ltd (ITA 676 / 2015) – TS-432-HC-2015 (Del) – TP
62. The Tribunal denied the exclusion of comparable companies on the 15 percent RPT filter based on mere reliance on legal proposition without any supporting evidence to substantiate the said the percentage of related party transactions.
ITO v ICC India Pvt Ltd (ITA No 2630 / Del / 2011) – TS-424-ITAT-2015 (Del) – TP
63. The Tribunal held that when neither the TPO nor the assessee applied the turnover filter while selecting comparables, the same could not be applied for the purpose of rejecting comparables. It further held that low turnover alone may not have an impact on profitability unless there are other factors impacting the profitability.
Ness Technologies (India) Pvt Ltd v DCIT [IT(TP)A no.943/Mum./2015] – TS-483-ITAT-2015(Mum) – TP
64. The Tribunal excluded companies having Related Party transactions in excess of 15 percent and companies that were functionally different being giant companies having significant brand value, R&D activities and owning IPRs. However, it rejected the assessee's prayer for exclusion of a company (selected by the TPO) the assessee had failed to raise the ground for exclusion of the said company before lower authorities.
Misys Software Solutions (India) Pvt Ltd v ITO [I.T.(T.P.) A. No.1425/Bang/2010] – TS-484-ITAT-2015 (Bang) – TP

65. The Tribunal held that the CIT(A) could not arbitrarily modify the 25 percent employee cost filter by including companies have 24.70 percent employee cost on the basis that it was almost 25 percent.
ACI Worldwide Solutions Pvt Ltd v ACIT [IT(TP)A No.651/Bang/2012] – TS-492-ITAT-2015(Del) – TP
66. The Tribunal held that a company having 50 percent of its turnover relating to manufacturing activities could not be compared with the assessee who did not carry on any manufacturing activities.
DCIT v Devendra Kumar Bhasin (ITA No. 12/CHD/2014) – TS-499-ITAT-2015 (Chd) – TP
67. The Tribunal excluded companies having different financial year endings on the ground that comparability would not yield correct results until and unless there are reliable published accounting records for a financial year comparable to that of the tested party.
DCIT v Electronics for Imaging India Pvt Ltd [I.T(TP).A No.876/Bang/2013] – TS-468-ITAT-2015 (Bang) – TP
68. The Tribunal excluded certain companies as comparable on the ground that a). they didn't satisfy the related party transaction filter of 15 percent, b). were functionally dissimilar, c). had turnover in excess of Rs. 200 crore and d). failed the employee cost to total cost filter of 25 percent.
Autodesk India Pvt Ltd v DCIT [IT(TP)A No.912/Bang/2011] – TS-502-ITAT-2015(Bang) – TP
69. The Tribunal held that the following companies could not be considered as comparable to the assessee who was engaged in providing engineering design and related services to its AE:
- Companies who were 100 percent owned by the Government since it was sheltered by its holding company and awarded various projects / contracts by government companies
 - Companies having Related Party Transactions in excess of 25 percent and carrying out activities which were functionally different.
- Bechtel India Pvt Ltd v DCIT [I.T.A.No.882/Del/2014] – TS-487-ITAT-2015 (Del) - TP*

General

70. The Tribunal held that a company could not be rejected as comparable merely because it was not included at the time of TP study since its financial data was not available but included at the appellate stage when the financial details were made available. Additionally, it held comparables could not be excluded merely on the basis of its low turnover. It also held that companies having high significant related party transactions were to be excluded.
American Express (India) Pvt Ltd v DCIT [ITA No 1700 / Del / 2010] - TS-408-ITAT-2015(DEL)-TP
71. The Tribunal held that the assessee is entitled to raise objections regarding comparability at any stage of proceedings and even in cases where it has not raised objections for including companies as comparable before lower authorities or even if the assessee had chosen the company it seeks to exclude in its Transfer Pricing study, subject to providing the TPO with an opportunity to examine the comparables. It further eliminated companies as comparable on functionality as well as by applying a turnover filter of Rs.200 crores since the turnover of the assessee was Rs. 13 crore.
Open Silicon Research Pvt Ltd v ITO [IT(TP)A No.1128/Bang/2011] – TS-454-ITAT-2015 (Bang) – TP

72. The Tribunal held that the TPOs action of excluding companies as comparable due to the fact that the working capital adjustment required for the companies exceeded 4 percent of profits and that their profits consisted of a substantial amount of income from financial activities which was not its operating business, was incorrect as the other income was insignificant and small, not enough to warrant such conclusion.

ARM Embedded Technologies Pvt Ltd v DCIT [IT(TP)A No 1659 / Bang / 2014] – TS-466-ITAT-2015 (Bang) TP

d. Computation / Calculations / Adjustments

73. The Tribunal held that expenses disallowed in the computation of taxable income were to be excluded from the operating margin and that foreign exchange gains / losses pertaining to business activities were to be included being operating in nature. Further it held that where a company's management was tainted causing the financials to be unreliable, it could not be considered as comparable.

Pole to Win India Pvt Ltd v DCIT [IT(TP)A No 1275 / Bang / 2010] - TS-361-ITAT-2015(Bang)-TP

74. The Tribunal allowed 5 percent adjustment under section 92C(2) of the Act on the RBI forex rates used as benchmark for international transactions pertaining to trading in foreign exchange as the RBI rates were an average rate computed.

DCIT v UAE Exchange & Financial Service Ltd [IT(TP)A No 213 / Bang / 2015] - TS-349-ITAT-2015(Bang)-TP

75. The Tribunal allowed deduction under section 10A of the Act in respect of the entire business income as the assessee had made a suo moto transfer pricing adjustment to the arm's length price of its international transactions.

Austin Medical Solutions Pvt Ltd Vs ITO [I.T. (T.P) A. No.542/Bang/2012] - TS-348-ITAT-2015(Bang)-TP

76. The Tribunal held that capacity adjustment allowable has to be on the profit margin of the comparable companies and not vis-à-vis the assessee and laid down the mechanism for computation of the adjustment to be granted.

DCIT v Claas India Pvt Ltd [ITA No 1783 / Del / 2011] - TS-371-ITAT-2015(DEL)-TP

77. The Tribunal held that trading advances written off and foreign exchange fluctuations resulting from trading items are to be considered as an operating items while computing the Profit Level Indicator. Write offs of fixed assets being capital in nature is a non-operating item. Further, it was held that transfer pricing adjustments were to be made in respect of AE related transactions only and that internal comparables were preferential as compared to external comparables.

Claas India Pvt Ltd v DCIT - (2015) 44 CCH 0515 (Delhi)

78. The Tribunal deleted the TP adjustment made by the TPO by re-characterising support services as trading activities. It further held that since the assessee was engaged in providing support services, the berry ratio adopted by it as the PLI was correct and that the TPO erred in attempting to include the cost of sales in the PLI as the assessee had not undertaken any sales

during the year and its costs were the cost incurred towards providing services only and not towards any sales.

Mitsui & Co India Pvt Ltd v DCIT [ITA No 6463 & 5082 / Del / 2011] - TS-390-ITAT-2015(DEL)-TP

79. The Court upheld the order of the Tribunal and held that transfer pricing adjustments were to be restricted to the value of international transactions and not on the entire turnover.

CIT v Firestone International Pvt Ltd [ITA No 1354 of 2013] - TS-401-HC-2015(BOM)-TP

80. The Tribunal held that the assessee could not combine distribution and agency service activities while determining arm's length price as distribution involved import, warehousing, advertisement etc whereas the agency function involved coordination, marketing and logistic services and also due to the fact that the risks assumed in the two activities were different, in spite of the transactions being closely linked.

DDIT v M/s Corning SA [ITA No 2564 / Del / 2011] - TS-403-ITAT-2015(DEL)-TP

81. The Tribunal held that foreign exchange gains / losses arising from the operating activities of the assessee (software development services) was to be considered as an operating item while computing the margin of the assessee.

DCIT v Nvidia Graphics Pvt Ltd [IT(TP)A No 1118 / Bang / 2014] - TS-402-ITAT-2015(Bang)-TP

82. The Tribunal upheld the order of the DRP wherein it was held that subvention income earned from the AE was not to be considered as an operating item but since the assessee had offered the subvention income to tax it was to be reduced from the TP adjustment proposed by the TPO.

UPS Jetair Express Pvt Ltd v DCIT [ITA Nos 1166 and 1219 / Mum / 2014] - TS-413-ITAT-2015 (Mum) TP

83. The Tribunal held that foreign exchange fluctuations was to be considered as operating income, observing the fact that the entire turnover of the assessee was from software exports and therefore rejected the contention that there was no nexus between the foreign exchange fluctuations and software development income.

IGEFI Software India Pvt Ltd [IT(TP)A No 1201 / Bang / 2014] - TS-418-ITAT-2015 (Bang)-TP

84. The Tribunal held that foreign exchange gain on realization of consideration for rendering software development services is to be regarded as part of operating revenue.

Analog Devices India Pvt Ltd v DCIT [IT(TP)A No 1288 / Bang / 2014] - TS-419-ITAT-2015 (Bang) - TP

85. The Tribunal held that foreign exchange fluctuation arising as a consequence of realization of consideration of rendering software development services was to be included while computing the operating revenue of the assessee.

iPass India Pvt Ltd v ITO [IT(TP)A No 1292 / Bang / 2014] - TS-427-ITAT-2015 (Bang) TP

86. The Tribunal held that transfer pricing adjustments could not be added to book profits under MAT as it did not fall under the permissible adjustments enumerated in Explanation 1 to Section 115JB(2) of the Act which are the only adjustments possible to book profits under

section 115JB of the Act. It held that the AO could only travel beyond the net profits declared by the assessee if the accounts were not in accordance with Part I&II of Schedule VI of the Companies Act or if the wrong accounting policies, standards were adopted.

Cash Edge India (Pvt) Ltd v ITO (ITA No 64 / Del / 2015) – TS-443-ITAT-2015(Del) - TP

87. The Tribunal held that the onus for claiming any adjustment in the computation was on the assessee and therefore denied the assessee a risk adjustment as the assessee had made a generalized submission about assuming low / no risk instead of providing a detailed working or exhibiting that specific risk undertaken by the comparables were absent in its case.

Stryker Global Technology Centre Pvt Ltd v ACIT (ITA No 149 / Del / 2013) – TS-450-ITAT-2015(Del) - TP

88. The Tribunal held that operating revenue should be computed by including foreign exchange gains / losses arising as a consequence of realization of consideration for rendering software development services.

DCIT v NXP Semi Conductors India Pvt Ltd [IT(TP)A No 1662 / Bang / 2014] – TS-426-ITAT-2015(Bang) - TP

89. The Tribunal held that deferred revenue expenditure incurred and written off would be classified as operating if they were incurred either after the start date of rendering services, or before but were in relation to such services. Further, it held that if revenue from incurring such expenses was linked with and accounted for in the current year then the corresponding deferred revenue expenses were to be treated as operating notwithstanding that the assessee claimed a deduction of only 20 percent thereof.

Corporate Executive Board Pvt Ltd v ITO (ITA No 4986 / Del / 2010) – TS-423-ITAT-2015(Del) - TP

90. The Tribunal held that foreign exchange income and miscellaneous income were to be considered as operating income while computing the margin of the assessee.

American Express (India) Pvt Ltd v DCIT [ITA No 1700 / Del / 2010] - TS-408-ITAT-2015(DEL)-TP

91. The Court held that adjustment on account of expenses determined by the TPO and attributed entirely to the international transaction was without merit. Since the international transactions constituted 23.38 percent of the total transactions, only a proportionate TP adjustment could be made in respect of such international transactions.

CIT v Keihin Panalfa Ltd (ITA 11 / 2015 and ITA 12 / 2015) – TS-474-HC-2015(Del) - TP

92. The Tribunal held that the approach of the TPO in excluding export incentive entitlement while computing PLI of the assessee and not excluding the same while computing PLI of the comparable companies was incorrect. It held that since the CIT(A) had rightly compared PLI after both, including and excluding the export incentive entitlement from the assessee and the comparable companies, which was within the 5 percent range of comparable companies, no TP addition was to be made.

ACIT v Super House Ltd (ITA No.630/LKW/2013) – TS-460-ITAT-2015(LKW)-TP

93. The Tribunal held that working capital adjustment has to be allowed based on the working capital requirements of the assessee and the comparable companies irrespective of the fact that the adjustment is negative or positive.

DCIT v Software AG Bangalore Technologies Pvt Ltd [IT(TP)A No 1343 / Bang / 2014] – TS-472-ITAT-2015 (Bang)- TP

94. The Tribunal rejected the view of the TPO that working capital adjustments could not be allowed to assessee in the service industry and held that it becomes eminent to allow such adjustment in order to neutralize differences on account of high or low inventories, trade payables and trade receivables in order to bring the assessee at par with other functionally comparable companies.
Further, it held that foreign exchange gains / losses should be treated as operating in nature while computing PLI.

Sun Life India Service Centre Pvt Ltd v DCIT (ITA No.1489/Del/2014) – TS-482-ITAT-2015(Del) -TP

95. The Court held that as per the Provisions of Chapter X of the Act, transfer pricing adjustments were to be made only on transactions undertaken with AEs and not on the assessee's entire sales including Non-AE sales.

CIT v Tara Jewels Exports Pvt Ltd – (ITA No 1814 of 2013) – TS – 481- HC-2015(BOM)

e. Specific Transactions

Advertisement, Marketing and Promotion

96. The Tribunal held that expenses directly related to the sales, marketing and other sales promotion expenses such as trade discounts cannot be included as a part of the AMP expenses for determining ALP.

M/s AW Faber Castell (India) Pvt Ltd v DCIT (ITA No 577 / Mum /2015) – TS-447-ITAT-2015(Mum) – TP

97. The Tribunal held that the TPO had exceeded his jurisdiction in determining the ALP of commission paid as Nil on the premise that the assessee had not explained the need of the services and not demonstrated how the services were actually rendered. The necessity of the commission expense was not to be determined by the TPO.

Durovalves India Pvt Ltd v ACIT (ITA No 2483 / PN / 2012) – TS-452-ITAT-2015 (PUN) – TP

98. The Tribunal held that the TPO was incorrect in comparing the AMP cost incurred by the assessee relevant to its outbound segment with the AMP costs for its inbound segment as such comparison was inappropriate as there was material difference in the inbound and outbound segment as the assessee was required to incur substantial marketing and advertisement expenses in its outbound business whereas those expenses were incurred by the foreign tour operator / travel agent in the inbound business.

Le Passage to India Tours & Travels Pvt Ltd v DCIT (ITA No: 2491/Del/2014 & ITA No. 1529/Del/2015) – TS-471-ITAT-2015 (Del) - TP

99. The Tribunal held that the examination of the AMP functions carried out by the assessee and probable comparables is sine qua non in the process of determination of ALP of the international transaction. It rejected the TPOs application of the bright line test as it was a mere quantitative analysis ignoring the examination of the AMP functions carried out by the assessee and the potential comparables. It held that distribution and AMP functions, which are two separate international transactions need to be compared with uncontrolled transactions and

because of their inter-twining, could be aggregated in the first instance for comparability purposes if the comparables also perform similar distribution and AMP functions. If there are no comparables performing both functions, then the international transaction of AMP should be segregated and determined separately by applying a suitable method.

Nikon India Pvt Ld v DCIT (ITA No.789/Del./2015) – TS-456-ITAT-2015(Del)- TP and Haier Appliances India Ltd v DCIT – (2015) 45 CCH 0148 Del Trib

Corporate Guarantee

100. The Tribunal held that Explanation (i)(c) to Section 92B in no way imposed a new liability with retrospective effect as it was clarificatory in nature. It held that the rate of corporate guarantee was not comparable to the rate of bank guarantee and determined its ALP at 0.50 percent following various Tribunal and High Court decisions.

Hindalco Industries Ltd v ACIT (I.T.A. No.4857/Mum/2012) – TS-431-ITAT-2015(Mum) – TP

101. The Tribunal held that the LIBOR rate should be used to benchmark loan given to AEs situated in a foreign country and following the orders in the assessee's own case in previous year deleted the addition made by the TPO. Further, it held that a rate of 0.5 percent for corporate guarantee provided by the assessee to its AE was wholly justified.

Manugraph India Ltd v DCIT (ITA No. : 491/Mum/2015) – TS-463-ITAT-2015 (Mum) -TP

102. The Tribunal, relying on the decision of the High Court in the case of Tata Autocomp Systems Ltd [TS-45-HC-2016(BOM)-TP], rejected the application of Prime Lending rate prevalent in India for benchmarking foreign currency loans and held that where the assessee had advanced loan to its AEs in a foreign country, then the rate of interest was to be determined on the basis of rate prevailing in the said foreign country viz. where the loan had been consumed.

Varroc Engineering Pvt Ltd v ACIT (ITA No.573/PN/2014) – TS-457-ITAT-2015(PUN)-TP

Cost Contribution

103. The Tribunal held that the TPO was incorrect in determining the ALP of intra-group services at Nil on the ground that the services had not resulted in any profit margin increase.

DCIT vs. Payne (India) Pvt Ltd [IT(TP)A No.446(B)/2012] - TS-346-ITAT-2015(Bang)-TP

104. The Tribunal held that while evaluating ALP of a service the real question was to determine what price an independent enterprise would have paid and not to determine whether the assessee benefits from it or not and that the AO did not have the power to determine the business needs of the company ***DCIT v Danisco (India) Pvt Ltd [ITA No 2444 / Del / 2012] - TS-393-ITAT-2015(DEL)-TP***

105. The Tribunal held that where the assessee had furnished relevant details of services provided and it had also been able to demonstrate its ostensible benefits the AO could not decide the requirement of such services and hold the ALP to be Nil since commercial decisions must be left to the assessee. ***Gillette India Ltd Vs ACIT [ITA No. 1087/JP/2011] - TS-372-ITAT-2015(JPR)-TP***

Issue of shares

106. The Tribunal held that investments in the nature of equity allotted after a delay due to regulatory approvals cannot be treated as loans and advances. Further it held that foreign exchange fluctuations relating to operations was to be considered as an operating item in computing Profit Level Indicators.

Mylan Laboratories Limited v ACIT [ITA No 2123 / Hyd / 2011] - TS-399-ITAT-2015(HYD)-TP

Loan

107. The Tribunal held that for determination of ALP of interest on loan, the interest should be determined according to the market rate applicable to the currency in which the loan was to be repaid and accepted LIBOR over SBI Prime Lending Rate for interest on loan repayable in US Dollars.

Firestar International Pvt Ltd v ACIT [ITA No.488/MUM/2015] - TS-355-ITAT-2015(Mum)-TP

108. The Tribunal held that for the purposes of benchmarking interest on loan given in foreign currency, rates of interest prevailing in India could not be taken and it considered the prevailing ECB rates.

IL & FS Maritime Infrastructure Co Ltd v ACIT [ITA No 867 / Mum / 2015] - TS-381-ITAT-2015(Mum)-TP

109. The Tribunal held that in cases where the lender and borrower are overseas based, the RBI guidelines for benchmarking unsecured loans would be applicable and not the prevailing domestic interest rates.

DCIT v M/s Geodesic Ltd [ITA No 1656 / Mum / 2013] - TS-377-ITAT-2015(Mum)-TP

110. The Tribunal held that the rate of interest paid by the assessee to its associated enterprise was an appropriate rate to benchmark the interest received from its AEs situated in the same country. Further, where interest rates prevalent in the country of the AE was lower than the interest rate received from the said AE, no addition could be made.

iGate Global Solutions Ltd v ACIT [IT(TP)A No 1239 / Bang / 2010] - TS-385-ITAT-2015(Bang)-TP

Management fees

111. The Tribunal held that the domain of examining commensurate benefit derived by the assessee from services received on account of management consultancy and technical fees paid to its AE, lies with the AO and not the TPO.

Forsoc Chemicals India Pvt Ltd v DCIT [M.P. No.47/Bang/2015] - TS-407-ITAT-2015(Bang)-TP

Reimbursement of expenses

112. The Court upheld the order of the ITAT allowing the reimbursement of sales promotion expenses incurred by the AE under the assessee's instruction. Further, it held that the question of benefit to the assessee would only arise when the expenses were incurred by the AE in its own right for the common benefit of the group as a whole and not under instruction from the AE which was the present case.

CIT v Apollo International Ltd (ITA 610 / 2015) – TS-439-HC-2015(Del) – TP

113. The tribunal held that the CUP method was more appropriate than TNMM for benchmarking reimbursement of overhead expenses and consultancy charges expended by the assessee on behalf of the AE as no mark-up was charged. It further held that since the assessee bore lesser business risk as compared to the comparable companies due to its nature of revenue model, the CUP method was better suited.

Lee Harris Pomeroy Architects PC Kolkata v DCIT (ITA No.382/Kol/2015) – TS-458-ITAT-2015 (Kol) - TP

Royalty

114. The Tribunal deleted TP addition on royalty and technical services fee payment to AE which was benchmarked using the CUP method, on the ground that assessee is not required to demonstrate that payment of royalty is justified since such agreements are periodically approved by the RBI and by the Ministry of Industries and the assessee was paying the amount as per agreements.

DCIT vs Kirby Building Systems India Ltd [ITA No.316/Hyd/2015] - TS-363-ITAT-2015(HYD)-TP

115. Though the Tribunal agreed with the contention of the TPO that royalty paid by the assessee to Suzuki on account of license for trademark was not warranted, since Suzuki was a weaker brand as compared to the assessee, it held that it was not permissible for the TPO to bifurcate royalty paid by the assessee to Suzuki into (i). royalty for licensed information and (ii) royalty for licensed trademark so as to determine the ALP of the royalty for licensed trademark as Nil as the royalty payment was a common consideration for use of licensed information and licensed trademarks, which could not be bifurcated.

Maruti Suzuki India Ltd v ACIT - (2015) 44 CCH 0555 Del Trib

116. The Tribunal held that approval from the FIPB cannot substitute the determination of ALP under the provisions of the Act as it is not in context of the ALP under the IT provisions. Further it held that since the payment of royalty was a separate transaction it could not be clubbed with the transactions of purchase and sale of goods and material with the AE.

M/s AW Faber Castell (India) Pvt Ltd v DCIT (ITA No 577 / Mum /2015) – TS-447-ITAT-2015(Mum) – TP

117. The Tribunal held that the TPO had not brought on record any cogent reasoning based on which the royalty payment made by the assessee could be held to be not in line with the arm's length standard. Further, considering that the assessee had consistently earned an operating margin substantially higher than that of the comparable and that the effective rate of royalty was lower than earlier years where no adjustment was made, there was no reason to make any adjustment to the royalty paid.

ACIT v Oracle India Pvt Ltd – (2015) 45 CCH 0116 Del Trib

Others

118. The Court held that unutilized subsidy received from an Associated Enterprise could not be reflected as income unless corresponding expenditure was also debited to the Profit and Loss account as it would be contrary to the matching concept and therefore receipt of the said subsidy could not be subject to transfer pricing.

CIT v Canon India Pvt Ltd - (2015) 93 CCH 0172 Del HC

119. The Tribunal held that once the TPO had accepted the CUP data (valuation report from a Chartered Engineer) submitted by the assessee in relation to the sale of 5 machines, he could not reject the CUP data for the 3 other machines sold merely because they were sold at a loss.
Perma Pipe India Pvt Ltd v DDIT (ITA NO 471/Mum/2015) – TS-470-ITAT-2015 (Mum) - TP
120. The Tribunal deleted the ad-hoc addition made by the TPO on the purchase of second hand machinery by the assessee from its AEs. It held that since the assessee had substantiated the price paid on purchase by producing documentary evidence including the valuation report from an approved valuer in the USA (country where AE was situated), the TPO was incorrect in disallowing 50 percent of the purchase consideration without referring the valuation to the Department Valuation Officer as the TPO is no expert on valuation and the method adopted by him was not as per the provisions of the Act.
Further, it held that the TPO was incorrect in determining the ALP of the cost sharing agreement entered into by the assessee with its AE at Nil since the assessee had furnished all agreements and other ancillary / relevant documents relating to the sharing of cost.
Koch Chemicals Technology Group (India) Ltd v ACIT (ITA no.8091/Mum./2011) – TS-467-ITAT-2015 (Mum) TP

f. Assessment

121. The Tribunal held that the time limit for completion of assessment pursuant to the order of the TPO is contained in section 144C(4) and (13) of the Act. It further held that time limit under section 153 of the Act has no relation with the passing of the draft order which should be passed within reasonable time. Further it was held that the word ‘may’ in section 92CA(3) of the Act was to be read as ‘shall’ providing a mandatory time limit for the TPO to pass an order. If the order of the TPO is time barred by the draft order is timely, the final assessment order would be saved but the TP additions would be deleted.
Honda Trading Corporation v DCIT (IT) – (2015) 61 taxmann.com 223 (Delhi Trib)
122. The Court held that Reference to TPO for the determination of ALP of international transaction could not be made by the AO where there was no assessment pending before him as the determination of ALP envisages computation which is possible only during assessment.
CIT v XL India Business Services Pvt Ltd (ITA No 713 / 2015) – TS-438-HC-2015 (Del) - TP
123. The Tribunal held that when no assessment proceedings were pending in relation to the relevant assessment year, the AO was precluded from making a reference to the TPO under section 92CA(1) of the Act for the purposes of computing the ALP of international transactions and the consequent order of the TPO proposing an addition was void ab initio and not valid material for the AO to entertain belief that certain income chargeable to tax had escaped assessment under section 147 of the Act.
Kaesar Compressors (India) Pvt Ltd v ACIT [ITA No 2379 / PN / 2012] - TS-406-ITAT-2015(PUN)-TP
124. The Tribunal, following the decision of the Special Bench in the case of DCIT v Quark Systems Pvt Ltd [TS-23-ITAT-2009 (CHANDI) – TP], held that an assessee cannot be estopped from seeking an exclusion even from its own selection, at a later stage if it is found that comparables selected were not matching with its profile.

Radisys India Pvt Ltd v ITO [IT(TP)A No 371 / Bang / 2015] – TS-489-ITAT-2015 (Bang) - TP

125. The Tribunal held that where the revenue and assessee had not followed any of the prescribed methods envisaged in Rule 10B of the Income-tax Rules and section 92C of the Act, then the method of computation adopted by both of them was erroneous and was to be remitted back to the file of the AO to re-compute the ALP.

Autoneum Nittoku Sound Products India Pvt Ltd v ACIT – (2015) 45 CCH 0088 Chen Trib

126. The Court upheld the decision of the Tribunal wherein the Tribunal deleted penalty by holding that there was reasonable cause on account of which the AMP transactions were not disclosed as international transaction since the assessee was under the bonafide belief that no reporting was required for AMP transactions and that the ruling of the Special Bench of LG Electronics [TS-11-ITAT-2013 (DEL)-TP] which was approved by the High Court in the case of Sony Ericsson Mobile Communications [TS-96-HC-2015 (DEL)-TP], addressing the said issue was passed post the penalty order.

Pr CIT v Haier Appliances India Pvt Ltd (ITA 481 / 2015) – TS-477-HC-2015(DEL)-TP

CIT v Amadeus India Pvt Ltd (ITA 535/2014 & ITA 729/2014) – TS-478-HC-2015 (DEL) – TP

Reebok India Company v ACIT (ITA 23 / 2015 & ITA 55 / 2015) – TS-479-HC-2015 (DEL)-TP

127. The Tribunal held that the AO could not make disallowance under section 40A(2) of the Act once the international transaction was subject matter of Chapter X of the Act.

Herbalife International India Pvt Ltd v DCIT (IT(TP)A No.1679/Bang/2012 & IT(TP)A No.184/Bang/2013) – TS-491-ITAT-2015 (Bang) -TP

128. The Tribunal held that a reference made to the TPO where there was no assessment pending was invalid and bad in law. It further held that the order of the TPO pursuant to the illegal reference could not be used in the reassessment proceedings by the AO and therefore the reassessment proceedings based on illegal reference were held to be void ab initio.

Bucyrus India Pvt Ltd v DCIT [I.T.A No. 616/Kol/2015] – TS-486-ITAT-2015(Kol)-TP

g. Penalty

129. The Court upheld the ITAT's deletion of penalty on non-disclosure of AMP expenses considering that the documentation was correct with the requirement of law at the relevant time and that the Bright Line Test concept was newly framed post the passing of the penalty order.

CIT v Haier Appliances India Pvt Ltd (ITA No 481 / 2015) - TS-400-HC-2015(DEL)-TP

II. International Tax

a. Permanent Establishment

130. The Tribunal held that the Indian subsidiary ('RIPL') of the assessee did not constitute a dependent agent PE by virtue of entering into a distribution agreement as the assessee merely provided products / services to RIPL for further distribution and that RIPL had independent contracts with Indian subscribers, did not maintain stock of the assessee and did not conclude contracts on behalf of the assessee.

It was held that Bureau Chief deputed to India, who only acted as a Chief Reporter in India in the field of collection and dissemination of news, did not constitute a service PE as the functions of the Chief did not perform any services leading to earning of distribution fees to the assessee.

Reuters Limited v DCIT (ITA No 7895 / Mum / 2011) – TS-511-ITAT-2015 (Mum)

131. The Court quashed the ruling of the AAR and held that the assessee's liaison office in India engaged in purchasing activity was not a permanent establishment under Article 5 of the India – USA DTAA as the liaison office was engaged in identifying component manufacturers, price negotiation, discussion of material to be used, quality control and testing of products and coordination with supplier and customer. It observed that where a non-resident purchases goods in India for the purpose of export, no income accrues or arises in India for such non-resident.

M/s Columbia Sportswear Company v DIT (IT) (WP No 39548/2012) – TS-600-HC-2015 (KAR)

132. The Apex Court held that the MAT Provisions were not applicable to foreign companies not (a) having a PE in India (b) required to seek registration under section 592 / 380 of the Companies Act as per Press Release dated September 24, 2015 and Instruction No 9 / 2015 dated September 2, 2015 issued by the Central Board of Direct Taxes

Castleton Investment Ltd v Director of Income tax (IT) – Civil Appeal No 4559 and 4560 of 2013

b. Royalty and Fees for technical services ('FTS')

133. The Authority for Advanced Rulings ('AAR') held that business guidance and procurement services provided by a company situated in the UK to an Indian company could not be classified as technical or consultancy services and moreover it did not 'make available' any technical knowledge and therefore could not be classified as FTS.

Measurement Technology Limited – (2015) 123 DTR (AAR) 34

134. The AAR held that payments received by the applicant on sale of its e-learning software products to Skillsoft India for onward sale to final customers constituted Royalty under the Treaty as 'software' was included within the ambit of 'literary work' and the end-customers were granted license to access software providing them the right to use the copyright embedded in the product notwithstanding its non-transferability.

SkillSoft Ireland Limited - (2015) 123 DTR (AAR) 17

135. The Tribunal held that reimbursement of costs (without any mark-up), allocated to group entities on the basis of headcount which was paid to the Non-Resident Head Office ('HO') on account of usage of software purchased by the HO from various vendors was not chargeable to tax and did not attract provisions of section 195 of the Act.

Lionbridge Technologies Pvt Ltd v ITO(TDS) - (2015) 45 CCH 0006 Mum Trib

136. The Tribunal held that once the assessee has complied with the provisions of section 195 of the Act by obtaining the certificate under section 195(2) then no disallowance can be made in respect of the said amount paid to the non-resident by invoking section 40(a)(i) of the Act.
DCIT v Carl Zeiss India Pvt Ltd [IT(IT)A Nos 1258(B) / 2014 & IT(IT)A No 1251(B) / 2014] - TS-463-ITAT-2015(Bang)
137. The Tribunal held that when amount received by assessee was not in nature of “Fee for technical services” as per definition of Article 13(4)(c) of the India-UK DTAA, there was no necessity to examine its taxability u/s 9(1)(vii).
IMG Media Ltd v DDIT - (2015) 44 CCH 0553 Mum Trib
138. The Tribunal held that consideration received by the assessee for providing access to internet and other networking facilities to an Indian entity was royalty under Article 12(3) of the India-US DTAA observing that such payment was for the use of embedded security software enabling Indian customers to call residents of the USA and vice versa. Following the AAR Ruling in the case of ABC (238 ITR 296), it held that the transaction would be related to scientific work and would partake the character of intellectual property.
Cincom System Inc v DDIT (ITA No. 952/Del/2006) – TS-568-ITAT-2015 (Del)
139. Services provided by Chinese subsidiary of Indian holding company in connection with procurement of goods by Indian company from Chinese vendors involving specialized services of market research, information on new developments was taxable as fees for technical services on the gross amount @ 10 percent.
Guangzhou Usha International Ltd In re – (2015) 62 taxmann.com 96 (AAR – New Delhi)
140. The Court held that the income of the assessee from rendering ISO certification and audit services was not taxable as fees for technical services under the Act or under the India-Germany DTAA as there was no transfer of technology and that the assessee was not involved in management of clients business. It held that though there were some instances of advice given it could not be termed as a pure consultancy service.
DIT v TUV Bayren (ITA No 1304 of 2013) – TS-586-HC-2015 (BOM)

c. Shipping Income

141. The Tribunal held that the profits of the assessee from operation of ships was not taxable in India as per Article 8 of the India-UAE DTAA. It disagreed with the contention of the Revenue that since no taxes were actually paid in the UAE, the LOB clause was applicable and held that the requirement of actual liability had been done away with by the India-UAE protocol and thus the treaty benefits could not be denied. Further, it denied the Revenue’s contention that the LoB clause was applicable as the vessel was owned by a non-treaty partner by observing that ownership of the vessel was not a condition precedent under Article 8.
ITO v MUR Shipping DMC Co (ITA No 405 / Rjt / 2013) – TS-603-ITAT-2015 (Rjt)
142. The Tribunal held that freight receipts of Singapore based shipping company was not taxable in India under Article 8 of the India-Singapore DTAA. It held that the LOB clause was not triggered as the income was taxable on accrual basis and therefore the conditions stipulated in the LOB clause were not satisfied.
Alabra Shipping Pte Ltd v ITO (I.T.A. No.: 392/RJT/2014) – TS-588-ITAT-2015 (Rjt)

d. Interest

143. The Tribunal held that interest paid by the assessee company to non-resident investors on FCCBs is specifically excluded from the deeming provision as per section 9(1)(v)(b) of the Act, as per which interest payable in respect of any debt incurred outside India and used for the purpose of business or profession carried on by such person outside India or for the purpose of making any investment outside India, could not be covered in the definition of income deemed to accrue or arise in India. It further held that the place of actual lending was important to determine the place where the interest income can be said to have accrued or arisen. Accordingly, the assessee was not an assessee in default within the meaning of section 201(1) of the Act.

ADIT (IT) v Adani Enterprise – (2015) 45 CCH 0029 Ahd Trib

e. Capital Gains

144. The Court held that the AAR was incorrect in rejecting the application based on the fact that it was a prima facie case of tax avoidance as there was not a single finding of fact to prove so. The Court stated that the TRCs issued by the Mauritius authorities were sufficient evidence for accepting the status of residence and beneficial ownership. Further it interpreted the words “liable to taxation” to mean that the Government is entitled to tax the person whether or not he actually pays the tax and accordingly held that the DTAA would be applicable and no tax was deductible on capital gains arising from sale of shares from the Mauritius entity to the Indian assessee company.

Serco BPO Private Limited v AAR - (2015) 60 taxmann.com 433 (Punjab & Haryana)

f. Reimbursement of expenses

145. The Tribunal held that when expenses are in the nature of reimbursements they are not liable to tax. Further it was held that where the assessee merely rendered services without imparting any knowledge or skills, the said service could not be considered as fees for technical services under the India-Israel Double Tax Avoidance Agreement.

ADIT v TTI Team Telecom International Ltd – (2015) 45 CCH 0042 Mum Trib

g. Withholding tax

146. The Court held that demurrage charges paid by an Indian company to a foreign shipping company without deducting tax at source do not attract disallowance under section 40(a)(i) of the Act as it was covered specifically by section 172 of the Act which is a code in itself. Due to the conflicting view expressed by the co-ordinate bench in DCIT v Orient (Goa) Pvt Ltd, the Court held that the issue was to be resolved by a larger bench and sought for the direction for constitution of a Larger Bench.

CIT v VS Dempo and Company Pvt Ltd (ITA No 989 and 991 of 2015) – TS-526-HC-2015 (BOM)

147. The Court held that mere passing of book entries, which were reversed would not give rise to an obligation to deduct tax at source under section 195 of the Act as the assessee had neither paid the royalty nor reflected the same as payable and therefore the assessee could not have been treated as an assessee in default under section 201 of the Act.

DIT v Ericsson Communications Ltd – (2015) 61 taxmann.com 117 (Delhi)

h. Others

148. The Court rejected the argument of the Revenue that only if the income is chargeable to tax in India could the assessee claim benefit of foreign tax credit (under the India-Canada DTAA). It held that income under section 10A of the Act was chargeable to tax under section 4 and 5 of the Act but no tax is charged because of the exemption given under section 10A only for a period of 10 years and therefore merely because the exemption was granted, it could not be postulated that the assessee was not liable to tax. It further held that the benefit of foreign tax credit has been extended and hence payment of tax in both jurisdictions was not sine qua non for granting relief.
Wipro Limited v DCIT – TS-565-HC-2015(KAR)
149. The Court held that where during the assessment under section 143(3) of the Act, receipts by the assessee was treated as royalty and taxed on gross basis at 15 percent, but the AO initiated reassessment proceedings contending that the said amount was to be taxed at 20 percent considering that the assessee had a PE in India and the royalty was attributable to the Indian PE, the reassessment proceedings were to be quashed as the AO had earlier examined the issue of royalty and its taxability in its entirety and all relevant facts were truly disclosed by the assessee.
Oracle Systems Corporation v ADIT – (2015) 62 taxmann.com 291 (Del)
150. The Tribunal held that the assessee, a partnership firm registered in the UK, was entitled to the benefits of the India – UK Treaty even though it was not recognized as a taxable entity under the taxation laws of UK.
DDIT(IT) v Zee Telefilms Ltd – (2015) 45 CCH 0112 Mum Trib

III. Domestic Tax

a. Income

151. 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)
152. 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)
153. 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.
154. 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 (Delhi)

b. Year of taxability

155. 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 Maharashtra State Electricity - (2015) 44 CCH 0513 Mum Trib

156. 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)

c. Salary

157. 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

d. Business income

158. 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

159. 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 Mum HC

160. 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)

161. 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

e. Deductions / Disallowances

Deductions

Section 10A / B

162. 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 (KAR)

163. 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 assessee.

DCIT v Syngene International Limited (ITA No 1106 & 1107 / Bang / 2012) – TS-571-ITAT-2015 (Bang)

Section 32

164. 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

165. 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 Maharashtra State Electricity - (2015) 44 CCH 0513 Mum Trib

166. 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

167. 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)
168. 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
169. 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
170. 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 Intrade Corporation v ACIT – [2015] 62 taxmann.com 239 (Kar)
171. 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 CIT's revisionary order under section 263 of the Act.
SEC Industries Pvt Ltd v DCIT – TS-585-ITAT-2015 (Hyd)

Section 32AB

172. 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
173. 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

Section 37(1)

174. 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

175. 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 revenue expenditure.

ACIT v Gravis Foods Pvt Ltd - (2015) 44 CCH 0560 Mum Trib

176. 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

177. 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

178. 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)

179. 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 (Calcutta)

180. 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 (PAN)

181. 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

182. 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 (Del)

183. 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)

184. 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

Section 57(iii)

185. 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

Chapter VIA

186. 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)

187. 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)

188. 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)

Disallowances

Section 14A

189. 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
190. 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
191. 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
192. 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
193. 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)
194. 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
195. 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
196. 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)

Section 40(a)(ia)

197. 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

198. 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

Section 43B

199. 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 Maharashtra State Electricity - (2015) 44 CCH 0513 Mum Trib

200. 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)

f. Capital Gains

201. 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)

202. 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

203. 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

204. 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.

Fibre Boards (P) Ltd. Vs. CIT [CIVIL APPEAL NOS. 5525-5526 OF 2005] - TS-454-SC-2015

205. 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
206. 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
207. 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
208. 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
209. 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)
210. 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
211. 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)

212. 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 leasehold 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)
213. 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
214. 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 All HC
215. 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

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

Assessment

216. 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)
217. 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

218. 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)

Re-assessment

219. 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)
220. 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)
221. 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)
222. 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)
223. 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
224. 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

225. The Tribunal held that when the AO has no fresh material to form his opinion regarding escapement of assessment and he has not 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
226. 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 (UTT)
227. 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 reopening 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
228. 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
229. 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
230. 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
231. 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.
Consulting Engineering Services India Pvt Ltd v DCIT – (2015) 94 CCH 0023 Del HC

232. 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
233. 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
234. The Court held that if an expenditure or a deduction is wrongly allowed while computing the taxable income of the assessee, 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
235. 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
236. 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
237. 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
238. The Court quashed the reassessment order of the AO as the basis for re-opening the assessment was information from the Enforcement 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
239. 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
240. 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

Revision

241. 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)

242. The Tribunal held that an order can be revised under section 263 of the Act only if the 1). the order is 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

243. 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

244. 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

245. The Court held that surpluses recorded by the assessee in its books maintained in the normal course, which according to the assessee 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

246. 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 Asr Trib

Search

247. 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.
ACIT v Shivaansh Advertising & Publications Pvt Ltd - (2015) 44 CCH 0494 Del Trib
248. 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
249. 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
250. 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.
Dr B Narsaiah v DCIT – (2015) 45 CCH 0031 Hyd Trib
251. 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
252. 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
253. The Tribunal held that where the assessee surrendered additional income pursuant to search 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 Asr Trib

254. 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

255. 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

256. 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

h. Withholding tax

257. 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)

258. 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)

259. 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(PAN)

260. 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)

261. The Tribunal 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)

262. 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)

263. 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)

264. 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

265. 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)

266. 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 assessable in the sister concern's hand who had not availed of such TDS

CIT v Relcom (ITA 26/2015) – TS-618-HC-2015 (Del)

i. Others

Cash Credits

267. 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

268. 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

269. 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

270. 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. 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 Budhreja – (2015) 94 CCH 0048 Del HC

Charitable Trust / AOP

271. 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.

CIT v GR Govindarajulu & Sons (CIVIL APPEAL NO(S).4916/2006) – TS-552-SC-2015

272. The Court, applying the principle of mutuality, held that premium received by the assessee (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)

Clubbing of income

273. 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

Deemed Dividend

274. 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

275. 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

276. 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 All HC

Jurisdiction

277. 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)

Method of Accounting

278. 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

Minimum Alternate Tax

279. 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.

280. 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 assessee.

Dharmapuri Paper Mills Pvt Ltd v JCIT [Tax Case (Appeal) No 933 of 2005] – TS-502-HC-2015 (MAD)

Penalty

281. 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.

Chimabhai Patel v ITO – (2015) 45 CCH 0130 Ahd Trib

Set-Off of income

282. 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)

Transfer of case

283. 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)

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